

**COMMISSION OF THE EUROPEAN COMMUNITIES**

SEC(92) 2472 final

Brussels, 23 December 1992

**REMOVING THE LEGAL  
OBSTACLES TO  
THE USE OF THE ECU**

**COMMISSION WHITE PAPER FOR THE COUNCIL**

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THE ECU IN EMU

LEGISLATION, STATEMENTS BY THE EUROPEAN COUNCIL, AND TREATY  
SIGNED IN MAASTRICHT

1. The creation of the ecu

- "1. [...] The European currency unit (ecu) will be at the centre of the [European monetary] system; in particular, it will be used as a means of settlement between EEC monetary authorities."

Annex to the conclusions of the Presidency of the European Council, Bremen, 6 and 7 July 1978

"2. The ecu and its functions

- 2.1 A European currency unit (ecu) will be at the centre of the EMS. The value and the composition of the ecu will be identical with the value of the EUA at the outset of the system."

Resolution of the European Council, Brussels,  
5 December 1978

2. Extracts from the Report on Economic and Monetary Union,  
Committee for the study of EMU, May 1989

- "49. Fourthly, the Committee agreed that there should be no discrimination against the private use of the ecu<sup>1</sup> and that existing administrative obstacles should be removed."

"The principal steps in stage one

[...]

52. In the monetary field,<sup>2</sup> the focus would be on removing all obstacles to financial integration and on intensifying cooperation and the coordination of monetary policies. [...] Action would be taken along several lines.

[...]

Thirdly, all impediments to the private use of the ecu would be removed."

3. Statements by the European Council concerning the ecu

- "2. The European Council considered that the report by the Committee chaired by Jacques Delors, which defines a process designed to lead by

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1 Italicized in the text.

2 Italicized in the text.

stages to economic and monetary union, fulfilled the mandate given in Hannover [...]

3. The European Council decided that the first stage of the realization of economic and monetary union would begin on 1 July 1990."

Madrid, 26-27 June 1989

"The European Council examined the work carried out since the European Council meeting in Madrid with a view to a meeting of the intergovernmental Conference [...]. It notes that these decisions will enable the first stage of EMU as defined in the Report from the Delors Committee to begin on 1 July 1990."

Strasbourg, 8-9 December 1989

"The first stage of Economic and Monetary Union will come into effect on 1 July 1990. The European Council considered that this stage should be used to ensure convergence in the economic performance of Member States to advance cohesion and to further the use of the ecu, all of which are of importance for further progress towards EMU."

Dublin, 25-26 June 1990

"With the achievement of the final phase of Economic And Monetary Union, exchange rates will be irrevocably fixed. The Community will have a single currency - a strong and stable ecu - which will be the expression of its identity and unity. During the transitional phase, the ecu will be further strengthened and developed."

Rome, 27-28 October 1990

#### 4. Provisions of the Treaty signed in Maastricht

New Article 3a(2) "Concurrently with the foregoing, and as provided for in this Treaty and in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ecu [...]"

New Article 109f "1. At the start of the second stage, a European Monetary Institute (hereinafter referred to as EMI) shall be established and take up its duties; [...]"

2. The EMI shall: [...] facilitate the use of the ecu and oversee its development, including the smooth functioning of the ecu clearing system.

3. For the preparation of the third stage, the EMI shall: [...] supervise the technical preparation of ecu banknotes."

New Article 109g "The currency composition of the ecu basket shall not be changed. From the start of the third stage, the value of the ecu shall be irrevocably fixed in accordance with Article 109l(4)."

New Article 109j "The Commission and the EMI shall report to the Council on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of economic and monetary union. [...]"

The reports of the Commission and the EMI shall also take account of the development of the ecu [...]"

New Article 109l [...]4. At the starting date of the third stage, the Council shall [...] adopt the conversion rates at which their currencies shall be irrevocably fixed and at which irrevocably fixed rate the ecu shall be substituted for these currencies, and the ecu will become a currency in its own right. This measure shall by itself not modify the external value of the ecu. The Council shall, acting according to the same procedure, also take the other measures necessary for the rapid introduction of the ecu as the single currency of those Member States."

INTRODUCTION: THE ECU AND ECU MARKETS

1. In December 1978, the ecu ceased to be simply a European unit of account (EUA in English, UCE in French and Italian, ERE in German, Dutch and Danish),<sup>3</sup> and became a "European currency unit"<sup>4</sup> - "ecu" in all the Community languages<sup>5</sup> - at the centre of the EMS. The ecu is used in the EMS for the following purposes:

- as the denominator ("numéraire") for the exchange-rate mechanism;
- as a basis for establishing the divergence indicator;
- as a denominator for operations under the intervention mechanism and the credit mechanism;
- as a means of settlement between monetary authorities of the European Community.

Moreover, the European Monetary Cooperation Fund can grant non-Community central banks and international monetary institutions the status of "other holders" of ecus;<sup>6</sup> it has already done so in several cases. The monetary nature of the ecu is thus based on the EMS.

1. The ecu: a high-profile financial instrument

2. The development of the ecu on the financial markets and its rapid adoption by private operators is a remarkable success story. From the beginning of the 1980s private operators of all nationalities realized that they could benefit from using the ecu, especially for international loans and bond issues. The benefits increased as the EMS gained credibility, which magnified the intrinsic financial qualities of the ecu, a basket of the currencies of an increasingly homogenous economic area.

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3 Council Decision of 21 April 1975 (75/250/EEC) on the conversion of the European unit of account used to express amounts of aid appearing in Article 42 of the ACP-EEC Lomé Convention; Commission Decision No 3289/75/EEC of 18 December 1975 on the definition and conversion of the unit of account to be used in decisions, recommendations, opinions and communications for the purposes of the Treaty establishing the European Coal and Steel Community; Article 10 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities.

4 Article 2.1 of the Resolution of the European Council on the establishment of the European Monetary System (EMS) and related matters (Brussels, 5 December 1978); second recital of the Agreement of 13 March 1979 between the central banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary system.

5 Article 1 of Council Regulation (EEC) No 3180/78 of 18 December 1978.

6 Council Regulation (EEC) No 3181/78 of 18 December 1978 relating to the European Monetary System.

Thus by 1984 bond issues denominated in ecus represented 2.7% of international issues in all currencies, and ecu loans represented 3.4% of international loans. The share of non-Community borrowers has always been significant: from the start, in March 1981, they have consistently accounted for between 21% and 47% of international issues.

3. The development of the ecu market, set in train by private operators, was boosted when the ecu acquired legal status as a foreign currency in most of the Member States and a number of non-Community countries between 1981 and 1984.<sup>7</sup> This was a condition for its use by these countries as a currency of financing. In fact, since 1981, when the first private international ecu issue was floated, the share of sovereign borrowers (Community and non-Community) has represented between 30% and 60% of total annual issues. Altogether over sixteen governments, including seven from outside the Community, have made calls on the ecu market.

4. More recently, against the background of a renewed drive towards European integration, several Member States have introduced issuing programmes for short-term securities (Italy and the United Kingdom) or long-term securities (Spain, Greece, Italy, France and the United Kingdom).<sup>8</sup>

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7 Belgium and Luxembourg in March 1982; Greece in July 1984; France in May 1982; Italy in July 1981. In Denmark, Ireland, the Netherlands and the United Kingdom, the ecu is treated as a foreign currency in practice, since the legal system does not seem to require the adoption of any provisions of positive law. The Federal Republic of Germany has not recognized the ecu as a foreign currency. Spain and Portugal, which joined the Community at a later date, recognized the ecu as a foreign currency in July 1987 and January 1990 respectively (see Annex III).

8 Italy was the first country to float regular ecu issues: one-year Treasury bonds since 1982, Treasury certificates since 1983. The United Kingdom launched a programme of Treasury bonds in October 1989, and a programme of 3-year notes in January 1992. Greece has issued Treasury certificates index-linked to the ecu, of variable duration, since November 1986. France has announced that it would finance about 15% of its needs through ecu OATs, the first issue of which was launched in April 1989.

Moreover, most of the central banks of the Member States have acquired ecu reserves and intervene in ecus on exchange markets to regulate the rate of exchange of their national currency.

Since 1990, several non-Community states have decided to link their currencies to the ecu, either directly or indirectly, with the ecu as one of the currencies in a wider basket. These countries have helped to develop the use of the ecu on exchange markets, and in some cases on financial markets.

5. The increase in the volume of issuing on the long-term market (bonds) and in liquidity on secondary markets in securities has been accompanied by the development of derivative products denominated in ecus (interest rate and currency swaps, forward financial instruments and exchange or interest options), mainly in London (LIFFE) and Paris (MATIF), but also in New York (FINEX) for ecu/dollar options and futures.

6. On the whole, the ecu has become, over some ten years, one of the major international financial market instruments, and its market shares have grown steadily. By 1991, the ecu had become the second most important currency for bond issues, and the third most important for international loans, after the US dollar and the Yen. The following table summarizes the various financial uses of the ecu.

Ecu financial markets (ecu billion) (1)

	Amount outstanding		Growth as %
	1991	1989	
*Bonds (national and international)			
- primary market	124	74	67%
-secondary market (monthly average, flows) (343%)	(75)	(17)	
* net assets of banks (Sept. 1991)	176	119	76%
of which:			
- international loans:	56	31	81%
*Euro-paper and Treasury bills	18	13	39%
*Estimated reserves of central banks	30	17	76%
*Derived instruments outstanding) (options and futures)	(thousands	of	contracts
- MATIF (Paris)	57		did not exist
- LIFFE (London)	13		did not exist
- FINEX (New York)	-	23	

(1) round figures; source: Commission of the European Communities, BIS, IFR. The above figures should not be added together.

2. The ecu: a transaction currency with unused potential

7. The use of the ecu as a transaction currency in international trade has not developed in the same way as its use on the financial markets. A number of multinational companies did find it useful to denominate internal invoices in ecu from the early 1980s, the most famous example being the glass division of Saint-Gobain. This type of use has since spread to external invoicing. The most interesting examples include multinationals such as Hercules, Tioxide, Firestone and especially Alcatel NV.

Moreover, international associations of firms or business organizations use the ecu as a currency for accounting and settlement in their internal clearing systems. Examples are Eurocontrol, Amadeus (a reservation system for air tickets and hotels), and European railway companies. The European Communities, through the Community budgets (Commission's operating budget, structural Funds, EDF) make wide use of the ecu as a transaction currency. In 1991, according to the latest estimates, the use of the ecu in the general budget accounted for almost 30%, or about ECU 15 billion.

However, the total amount represented by these uses of the ecu is limited, and difficult to evaluate precisely because of the shortage of statistics. According to available information, the commercial use of the ecu does not appear to account for more than about 1 or 2% of the Community Member States' external trade (see points 5 and 6 below). There are a number of factors that explain the relative weakness of the ecu as a transaction currency.

8. First of all, as the ecu is not a national currency, there is no "natural" user. International transactions involve existing national currencies, the most intensively used of which are protected against exchange and interest-rate risks by a range of sophisticated instruments. The principles of active cash-flow management by a firm working in foreign currency are not the same as those governing prudent management of a financial portfolio. The firm needs to hedge against exchange rate and interest rate risk, but it also needs highly liquid financial instruments that produce a return while keeping the funds available at very short notice. The financial investor needs to minimize the portfolio risk while ensuring a good yield. The financial instruments and derived products used are different, and what is more they are managed from a different point of view.

The wide exchange fluctuations of the early 1980s did not create the same need for protection against risks on the exchange and transactions market as on the financial market. On the exchange markets short-term instruments are required; on the financial market a suitable portfolio mix may be enough.

This partially explains the success of the ecu on the financial markets, while the development of short-term risk management instruments in ecus lagged behind. Consequently, the ecu was not so suitable for active cash management as other currencies with more highly developed and more liquid short-term markets.

9. Secondly, many importing and exporting firms trade with only one or two foreign countries, and rarely find themselves in a situation where they can insist on a particular currency of settlement. The fact that the ecu is not any country's national currency makes it more expensive to use by firms that do not need to manage a multi-currency cash flow. This is because both purchaser and seller must pay transaction costs, since the ecu is a foreign currency for both.

It could of course be argued that such reasoning does not prevent the wide use of the US dollar by non-American firms. But the dollar is the currency of the world's most powerful economic and financial entity, and it developed into an international currency only after a century and a half of existence, and two world wars that seriously impoverished Europe and accelerated the collapse of the European countries' colonial empires. Moreover, the US Dollar continues to play a predominant role on the commodities markets.

10. Thirdly, one of the characteristic features of the behaviour of economic operators is inertia. Innovations always take time to develop and psychological resistance to change must be overcome. It took about fifteen years for a significant level of activity to develop around the new financial instruments such as options or forward contracts on interest rates or exchange rates perfected in the early 1970s.

The cost of overcoming the resistance of operators is not negligible: training the staff of customers and/or suppliers, introduction of new data-processing systems, etc. Many firms are not prepared to incur such expenditure when the benefits are uncertain or unlikely to materialize for a long time. Their attitude could be quite different once the benefits of using the ecu become clearly apparent. The uncertainty about the future of the ecu that existed prior to the signing of the Maastricht Treaty certainly hampered the development of its use for commercial transactions.

11. Finally, one of the major reasons why the ecu is not used more for transactions is that there are a number of legal and administrative obstacles to its use in the different Member States.

For while market operators will be able to solve their problems of inertia and economic reasoning, provided they receive the appropriate signals - such as that given by the Maastricht Treaty - the use of the ecu cannot develop unless the rules in force are favourable to its development. For the moment, operators cannot get round the arsenal of legal provisions in force in their home country. Only the authorities are in a position to remove or change the laws and rules hampering the wider use of the ecu.

Consequently, with a view to the application of the planned measures to promote the ecu, the Commission has drawn up this white paper. This paper lists all the legal obstacles to the use of the ecu, and suggests possible measures to be taken by the Member States to remove them.

I. WHY REMOVE THE LEGAL OBSTACLES TO THE USE OF THE ECU?

12. The removal of all legal obstacles to the use of the ecu is one of the measures that must be taken during the first stage of EMU, as proposed in the report drafted and unanimously adopted by the Committee for the Study of Economic and Monetary Union (points 49 and 52). The Madrid European Council (June 1989), setting 1 July 1990 as the date for embarking on the first stage of economic and monetary union, confirmed that the obstacles to the use of the ecu should be removed during the first stage. Article 109l(4) of the Treaty provides that "the ecu will become a currency in its own right" at the starting date of the third stage, which implies that by that date there should be no discrimination between the ecu and national currencies.

13. With the signing of the Maastricht Treaty, the adoption of a single currency within a few years has now been decided, by virtue of the new EEC Treaty Article 109j(4), which provides that "if by the end of 1997 the date for the beginning of the third stage has not been set, the third stage shall start on 1 January 1999," and Article 109l(4), which provides that "at the starting date of the third stage, ... the Council shall ... also take the other measures necessary for the rapid introduction of the ecu as the single currency of those Member States."

For firms, banks and individuals, in particular for consumers, the change from national currencies to a single currency will be both difficult and costly.

14. There will be a number of technical problems to be solved, especially for accounts (continuity of accounting documents, changes in accounting machines), management (adapting investment programmes to the new monetary set-up), technological adjustment (electronic management of bank accounts and conversion), staff training, getting consumers used to new price structures, etc. Preparations will need to start in good time, as experience with the somewhat simpler matter of decimalization in the UK shows.<sup>9</sup>

15. The development of the use of the ecu from now on would be the best way to deal with this challenge. It is important to give those who wish to try out the new arrangements an opportunity to see what the world will be like when the single currency has replaced their national currency, and to enable them to gain practical experience.

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<sup>9</sup> The decimalization of sterling was decided by the UK Government in 1962; the process began with the Decimal Currency Act of July 1967, setting up the Decimal Currency Board to manage the transition, which took place in February 1971.

## II. THE LEGAL OBSTACLES TO THE USE OF THE ECU

16. In order to define the nature of the obstacles to be removed, the Commission, with the help of experts,<sup>10</sup> undertook a survey among European banks and firms.<sup>11</sup> The results led to the launching of a vast study, commissioned, after a call for tenders, from a specialized legal consultancy,<sup>12</sup> with the purpose of identifying, in each Member State, the laws, regulations, administrative rules and legal decisions that could hamper the use of the ecu. The study was finished for the end of 1991. This report summarizes its findings, and draws conclusions from the basic research. Despite all the careful work that went into obtaining the most reliable information possible (see preface to the annexes), it is possible that certain points of law may have escaped the vigilance of the analysts. It should also be noted that the results presented here are based on the generally recognized or suggested interpretation of national laws.

17. The studies, surveys and analyses carried out by the Commission and by specialist associations show that there are two types of legal obstacles:

- (i) those related to the nature of the ecu and national currency rules;
- (ii) those related to laws, rules, regulations, case-law or national practice in areas outside the strictly monetary field.

### 1. Obstacles related to the nature of the ecu and national currency rules

18. As no sovereign state issues ecus, there is no country where the ecu is legal tender<sup>13</sup>. (The Belgian and Irish issues of gold and silver coins, regarded as legal tender for tax reasons, do not count: they were coins issued for collectors.) Only money issued by a sovereign state is legally regarded as currency. To get around this difficulty, most of the Member States have given the ecu the status of a foreign currency; however, problems arise in the countries where this has not been done: the United Kingdom and Germany, where the ecu is regarded as a unit of account.

<sup>10</sup> The "Association pour l'Union Monétaire de l'Europe" (AUME).

<sup>11</sup> "A strategy for the ecu", NIESR, Ernst & Young and the AUME, 1990.

<sup>12</sup> J. & B. CREMADES and partners; this work was verified by F. De Bourgerel

<sup>13</sup> The French law (n° 92666) of 16th July 1992 which introduces the legal possibility of using the ecu as a means of payment between residents, nevertheless retains the status of the French franc as the only legal tender.

19. For example, in the United Kingdom, where the legislation relating to the use of foreign currency is probably the most permissive in Europe (see below), a company may issue its capital in ecus and have its shares quoted on the stock exchange; however, in order to do so, it must be registered. The Register of Companies may include companies whose accounts are drawn up in a currency issued and used as legal tender anywhere in the world. As the ecu is not legal tender anywhere, it is impossible in practice for a company to be registered in ecus; specific legislation would be required.<sup>14</sup>

A similar problem arises in Germany, where it affects an even wider range of uses of the ecu, which is once again regarded under law as a unit of account. The situation here is different from that in other countries, since a Parliamentary decision would be required to give the ecu foreign currency status.

20. Under the rules of private international law governing contracts, when there is no provision in an international contract establishing which country's law applies, the courts may decide this matter for the parties. For example, in the case of a contract signed in the United Kingdom between a Frenchman and a Belgian to be executed in Spain, containing no provision on which law was applicable, the courts would need to determine, on the basis of certain factors, which national law the contract was most closely related to. Under the rules of private international law, the currency chosen by the parties is considered at least a secondary indicator of their willingness for the contract to be governed by the law of the country issuing the currency.

As the ecu is not for the moment an issued currency related to the legal order of a specific country, it cannot serve this purpose. However, if they changed their rules of private international law, the Member States could allow the ecu to be taken into account for decisions concerning contractual relations between Community nationals and non-Community nationals (see paragraph 55).

21. Under present law in the different Member States, the national currency is the only legal tender with unlimited powers for the settlement of liability.

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<sup>14</sup> This matter was raised by the Jack Committee in the report on the law and practice of banking services published in February 1987 (paragraph 8.7). The UK Government has undertaken to take the necessary steps in its White Paper entitled "Banking Services: law and practice", presented to Parliament in March 1990. The status of the ecu raises other problems: e.g., there is a provision of the Bills of Exchange Act requiring that bills of exchange should represent a "sum certain in money"; as the ecu is regarded as a unit of account, its use to denominate bills of exchange is not authorized.

Consequently, even if the contracting parties have agreed to payment in ecus, which would be quite legal in several Member States, the debtor could always insist on paying in the legal currency of the place of payment, and the creditor would not be able to refuse.

This problem persists even when, in case of dispute, the courts order payment in ecus, which is possible in certain Member States. Moreover, the legal obstacle is accompanied by a practical aspect, since there is no actual monetary sign denominated in ecus. If the debtor agrees to pay in ecus, both debtor and creditor must hold ecu accounts so that a bank transfer can be made without any exchange transaction taking place. A further problem arises when the contract is executed by court order if the debtor has no ecu assets.

22. In such cases, the choice of calculation date for the exchange rate (should it be that obtaining on the date of the obligation under the contract, the date of the court order or the date of actual payment as ordered by the court?) is crucial, and may put the creditor at a disadvantage.

Another problem is that there is no complete structure of interest rates for a full set of maturities on the ecu to serve as a reference to the courts in determining default interest in cases of dispute. The legal interest rates provided for in the Member States irrespective of the currency concerned vary from one to another.

23. Apart from the lack of foreign currency status in two countries, the legal and administrative obstacles to the use of the ecu as a foreign currency are mainly due, in certain countries, to the retention of obstacles to the free movement of capital and financial services.

## 2. Obstacles related to national legal systems

24. There are a number of obstacles in all the areas related in one way or another to government resources and citizens' incomes. This applies to all the legislation relating to contractual obligations, the setting up of businesses, stock exchange quotations, accounts, pay, and taxation.

On the basis of principles of consumer protection and the protection of purchasing power, moreover, some countries allow prices to be determined and displayed only in national currency.

Obstacles mainly concerning the international use of the ecu.

25. These are the obstacles that prevent two firms or two people from different Member States who so wish from denominating and paying in ecus their contractual undertakings and obligations, and from having their contractual options upheld by the courts. Such obstacles vary from one country to another, since the principles underlying national law of contract are not identical.

26. The use of the ecu to denominate transferable instruments (cheques, promissory notes, bills of exchange, warrants etc.) and financial instruments comes up against different types of obstacle in Germany, Spain, Greece, Portugal and to a lesser extent Italy. In Germany, the obstacle is related to the status of the ecu, which is not legally recognized as foreign currency. In Spain, Greece and Portugal, the problem comes from the obstacles to capital movements.

27. Outside the countries that have ratified the Geneva Convention of 19 March 1931 providing a uniform law for cheques, and the convention on bills of exchange and promissory notes, and have transposed them into their internal legal systems (i.e., Belgium, Ireland, Luxembourg and the Netherlands and France, since the law of 16th July 1992), the use of the ecu as the currency of payment for negotiable instruments raises problems. This type of obstacle arises because the "effective payment" of negotiable instruments in a currency that is not legal tender at the place of payment requires the agreement of the parties (see above, point 21), which remains the case in France.

28. In the banking sector, there are specific regulations to guard against the risk of insolvency of banks. These regulations usually involve a requirement to constitute reserves of an amount proportional to assets, known as solvency ratios. The currency in which these reserves are constituted is very important in hedging against exchange risks, if banks carry out transactions in currencies other than national currency, or in ecus, which is increasingly common. In Denmark, France, Greece and Portugal and, without doubt, still in France, reserves must be constituted in national currency, which penalizes transactions in foreign currency, and therefore in ecus, by making them more expensive.

29. In many countries, the prices charged by shops and firms may not be set (Spain, Greece) or displayed (Greece, Netherlands) in ecus or other foreign currency, but only in national currency. The laws or rules concerned usually go back a long time, and their purpose was to ensure transparent prices. In a world where tourism is highly

developed, and where the free movement of people, goods, services and capital is the rule rather than the exception, genuinely transparent prices could be achieved now by displaying prices in two units, ecus and national currency.

30. Legal provisions governing contractual obligations are obstacles to the development of trade using the ecu as a currency of accounting (specific case of Greece) or payment (Germany and Greece).

31. It is not enough to be allowed to denominate contracts in ecus if, in cases of dispute, the courts cannot confirm ecu clauses. In certain countries, the courts may not pronounce judgments in ecus (Italy, and, unless certain conditions are fulfilled, or Greece), or enforce judgments denominated in ecus (Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, United Kingdom).

#### Obstacles concerning the use of the ecu as a currency of business

32. Only Belgium, France, Luxembourg, the United Kingdom and, with reservations, Ireland, authorize businesses to set up, issue or increase their capital in ecus. If it is accepted, the draft Directive on the European company provides that company capital will be constituted in ecus. However, this does not solve the problem for other types of company. Moreover, although the draft Directive provides that the equity and shares of the European company will be in ecus, its accounts are still subject to national laws and must therefore be drawn up in national currency, which raises problems of translation. It would be advisable to adopt more far-reaching provisions on this point.

33. It would seem that, legally, there are obstacles on the one hand to admitting shares in ecus to stock exchanges in Germany, Denmark, Italy, the Netherlands, Spain and Greece and, subject to reservations, France, and on the other to quoting such shares in Germany, Spain and probably France. In practice, however, except in Luxembourg, shares are always quoted in the national currency of the country of the transaction, whatever the original currency of denomination.

34. In law, company accounts may be drawn up and presented in ecus only in the United Kingdom. Experience will indicate whether this is the case in France. In Denmark, tax procedures prevent it. In Ireland, tax procedures prevent the accounts from being published in ecus, and in Luxembourg they prevent them from being drawn up in ecus. Directive 90/604/EEC on annual accounts, which provides that, in addition to publication in the currency in which they have been drawn up, accounts may be published in ecus after translation at the rate obtaining on the date the balance sheet was finalized, is not much help; for it does not affect the obligation to publish accounts in national currency. The need to use a specific rate for translation (that obtaining on the date the balance sheet was closed) makes it impossible to keep day-to-day accounts in ecus. In practice, the "ecu" provision in the directive has only symbolic value.

Obstacles relating to the use of the ecu for the current expenditure of firms: wages and salaries, social security contributions and taxation

35. Luxembourg and Greece prohibit the setting of wages and salaries in ecus; in Germany, the obstacle is practical. Spain, Greece and Portugal prohibit the payment of social security contributions in foreign currency, which includes ecus. As to the actual payment of wages and salaries in ecus, this is prohibited in Germany, Belgium, Greece, Ireland, Luxembourg, and (unless the central bank has agreed) Portugal. There is no specific law to prevent wages and salaries from being paid in foreign currency, including ecus, in the other countries, where pay is covered by private contract.

36. For direct and indirect taxes, laws and procedures are such that no Member State allows both the determination of the tax base and the payment of tax in ecus, except in France, where the personal income-tax payer or the company concerned must provide evidence of international activity and if upon introduction of the law of 16th July 1992, the fiscal authorities agree to carry it out.

37. Another obstacle to the use of the ecu arises because of the tax advantages granted to securities, investments and savings instruments denominated in national currency and issued and sold by national financial institutions.

#### Specific obstacles in certain sectors

38. In the insurance sector, the only countries where there is no obstacle to the use of the ecu for constituting company capital, technical reserves, the payment of premiums and the evaluation of claims are the United Kingdom, the Netherlands, Luxembourg and usually in France following the law of 16th July 1992. Laws vary from one country to another, but are increasingly related to Community legislation - which, however, does not always make it easier to introduce the use of the ecu.

Only the second Directive on insurance other than life assurance, Directive 88/357/EEC of 22 June 1988, which came into force on 1 July 1990, enables insurance companies to hold up to 50% of the securities to fulfil their obligation to balance risks and claims in ecus. The draft third Directive would, if adopted, increase the proportion to 100%. Similarly, the draft Directive on pension funds, which could come into force by the middle of 1995, provides that assets in ecus should be treated as assets in national currency. However, the second Directive on life assurance, 90/619/EEC of 8 November 1990, which comes into force in May 1993, contains no reference to the ecu.

39. In the public sector, the use of foreign currencies and of the ecu for public procurement in particular is authorized only in Italy and the Netherlands. In Denmark and the United Kingdom the obstacles are procedural; partial obstacles exist in France and Greece.

However, with the exception of Portugal, there does not seem to be any legal obstacle to the use of the ecu as a financial instrument by federal bodies or local authorities in the public sector. Moreover, except in Germany, Greece and Spain, there is no formal obstacle to state aid payments in ecus.

### III. REMOVING OBSTACLES TO THE USE OF THE ECU

40. The necessary and gradual development of the use of the ecu should not be imposed by the Community or the governments of the Member States; it should be based on the economic advantages of using the ecu straight away - especially for international transactions - and on preparations for the third stage of economic and monetary union, the features and timetable for which were set by the Community at Maastricht.

Consequently, individuals and firms who wish to use the ecu should not be prevented or discouraged from doing so by laws or procedures in force in the Member States.

41. The Commission therefore requests each Member State, first to ensure that the ecu is recognized unequivocally as a foreign currency, and secondly to remove the obstacles listed in this white paper so that the commercial use of the ecu can develop gradually on a voluntary basis. In this regard, the Commission also recalls the obligations which fall to Member States as a consequence of the Treaty provisions which govern the free movements of capital.

This would help it to develop into a "currency in its own right" by the beginning of the third stage (Article 109l(4) of the Treaty).

42. The removal of obstacles could be achieved through the following logical steps:

- establishing freedom to conclude contracts in ecus;
- introducing the necessary corollary in the following areas:
  - . authorization of value clauses and payment clauses in ecus;
  - . liberalization of the rules governing ecu accounts, so that value and payment clauses can be effective;
  - . amendment of procedural rules to enable the courts to hand down judgments denominated in ecus in cases of dispute;
  - . changes in the rules governing invoicing and accounts to allow of the allocation of assets and liabilities denominated in ecus without translation;
  - . the payment in ecus of VAT or direct taxes on sales and income.

43. A good example of a stage-by-stage process could be provided by Belgium, where measures were recently taken to remove certain obstacles to the use of the ecu. The Law of 12 July 1991 amending Article 3 of the Law of 30 December 1885 allows public and official documents to refer to amounts denominated in Belgian francs, but also in ecus or in the currency of any member country of the OECD. This decision founds a general principle and removes the legal basis for a number of obstacles to the use of the ecu, especially in the fields of court procedures and taxation; it could be accompanied by implementing legislation in the areas mentioned above.

For example, a company may, by virtue of the new provisions, denominate its capital in ecus. However, it may not draw up its accounts in ecus, because of another type of legislation that expressly forbids it to do so. The amendment of the general law cannot be effective in all areas until other specific laws have also been amended.

44. Article 14 of the law (n° 92666) of 16th July 1992 in France, relating to the 'Plan d'Epargne en Actions' (PEA), provides another example. According to this law, the clauses of a contract which call for settlement between two residents in foreign currency could be nullified by public order, in the absence of an additional element allowing the contract to be recognised as an international contract. Such a possibility is envisaged by this law exclusively in the case of the ecu.

45. It is difficult, however, to draw up a timetable that would be valid for all countries, for several reasons. The first is that the background and legislation vary widely from one country to another. The obstacles, as the annexed summary table shows (see Annex I) are quite different from one country to another. The second reason is that the use of the ecu has developed in a wide variety of areas, and that a number of simultaneous measures in different fields would need to be introduced to govern and develop pre-existing practice. The third reason is that many of the sectors in question are independent of each other, and the national or Community legislator may intervene in one or another in no particular chronological order. This applies especially to insurance or public procurement, which are partially governed by Community Directives.

It is thus up to each Member State, as a function of the specific legal background and the desire to develop the use of the ecu, to organize its action. It would be in the common interest for certain Member States to take the initiative in rapidly allowing the widest possible use of the ecu.

46. In the final analysis, there are five sets of measures that could be taken:

- measures relating to the status of the ecu;
- measures relating to the use of the ecu as a means of payment and a store of value in private contracts;
- measures relating to decisions by the courts;
- measures relating to business organization and management;
- measures relating to systems and treaties

1. Measures relating to the status of the ecu

47. By granting the ecu the legal status of a foreign currency, through a government order (Italy, Portugal) or an administrative measure (Belgium, Luxembourg, Greece, France, Spain), or by treating it in practice as a foreign currency (Denmark, Ireland, the Netherlands, the United Kingdom), most of the Member States have enabled the ecu to be treated in the same way as the other monetary units granted foreign currency status.<sup>15</sup> Consequently, except in Germany, there is no discrimination against the ecu in relation to other foreign currencies within the Member States.

48. Thus, except in the countries where exchange controls are still applied to all foreign currencies, including the ecu, it is possible to obtain and use all existing financial instruments. Only Germany, despite the measures taken by the Bundesbank in 1987 and in 1990 allowing monetary operations in ecus, still considers the ecu legally as a mere unit of account.<sup>16</sup>

49. The status of the ecu is nonetheless precarious in several countries. In the absence of Community legislation establishing its status, it would be advisable for all the Member States that have not yet granted the ecu official and uniform recognition as a foreign currency to do so.

2. The ecu as means of payment and store of value

50. Among the first measures that are probably needed once the status of the ecu is clear are those relating to monetary and financial instruments in ecus, to their use, and to the possibility of denominating contracts in ecus. There can be no development of the ecu as a transaction currency unless the right to denominate contracts in ecus is guaranteed, and the parties may use all the instruments required to extinguish their contractual obligations and manage their debts and claims.

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<sup>15</sup> A currency is not necessarily, in a given State, granted official foreign currency status simply because it is legal tender in another country. Legal status as a foreign currency may be granted to a limited number of currencies. In Belgium, for example, the central bank has drawn up a list of 18 currencies subject to special requirements such as quotation on the foreign exchange market.

<sup>16</sup> Communication No 1002/90 of 5 January 1990, replacing and supplementing communication No 1010/87, gives the necessary authorization for a number of commitments to be denominated either in ecus or in SDRs, both regarded as units of account and treated in exactly the same way. Among the operations authorized are: opening bank accounts, granting loans, concluding insurance contracts, issuing bonds.

51. As pointed out above, measures relating to the status of the ecu and the abolition of any remaining exchange controls will remove a number of obstacles to the use of the ecu as a means of payment and a store of value. However, there remain a few obstacles due either to the impossibility of denominating and/or negotiating bills in ecus, or to the prohibition in certain countries on effective payment clauses in ecus (and other foreign currencies) both for relations between residents and for relations with non-residents.

52. Rules in some of the Member States prohibit the issuing of bills denominated in ecus on national territory, or even the payment of bills denominated in ecus issued in other Member States or in third countries.

It would be important for those Member States that have not yet done so to adopt provisions similar to those laid down in the uniform laws on negotiable instruments (cheques, bills of exchange and promissory notes) that exist in many Member States, tending towards generalized negotiability for instruments denominated in ecus.

53. Similarly, liberalization and harmonization of the rules governing ecu bank accounts would be necessary in certain countries. Like ecu payment clauses (points 53 and 54), the system of ecu bank accounts is a major factor in ensuring freedom of payments throughout the single European market.

Consequently, individuals and companies should be allowed to hold an unlimited number of all types of sight and deposit accounts in ecus. It should be possible for these accounts to bear interest, if the equivalent national currency account does, and for ecu assets to be subject to all the usual banking transactions. Overdrafts should be authorized if they are allowed on similar accounts in national currency, and supervision by the authorities should not be stricter than for accounts in national currency. It should also be permissible to set the various types of negotiable instrument against ecu assets.

54. As a complement to the above measures, ecu bank accounts should be assimilated to accounts in national currency for the purposes of credit institutions' prudential obligations, and monitoring rules should be harmonized. The requirement to maintain a certain ratio between own funds and total risks directly affects the management costs of banking and financial organizations.

If conditions are tighter for ecu risks than for risks in national currency, the cost of ecu transactions would be higher, which will make the ecu less attractive for operators.

55. As to clauses on the currency of payment, certain Member States still distinguish between international and domestic payment clauses. Rules on legal tender and discharge of liability can be an obstacle to the validity of domestic payments in foreign currency, which includes domestic payments in ecus.

Freedom of trade would require that when parties enter into commitments in a currency that is not legal tender in the place of payment, liability can be effectively discharged in the currency in which the debt is denominated. Free movement of goods and services and free trade naturally imply freedom of the counterpart, i.e., payment.

56. It therefore appears necessary for all the various national legal systems to provide, as many of them already do, for the authorization of ecu payment clauses in contracts between residents, between a resident and a non-resident, and between non-residents. Provision should also be made for factors constituting evidence that a contract is subject to the national law of a given state (see point 20).

Private international law in various Member States could be amended to ensure that, at the request of the interested party, a contract between a Community national and the national of a non-Community country denominated in ecus should, if neither party stipulated otherwise, be deemed to be subject to the national law of the Community national.

### 3. Measures relating to court decisions

57. Once freedom to denominate contracts and financial and monetary instruments in ecus has been guaranteed, it is important for the contracts to be enforceable in the currency chosen by the parties.

The law relating to court procedures concerns the conditions for exercising the right to bring a case. Consequently, it is a logical extension of obligations, and ensures their fulfilment. However, certain Member States wholly or partially exclude the use of foreign currency (including the ecu) in court proceedings.

58. It would be important for parties to contracts and others entering into commitments in ecus to be able to bring proceedings and plead claims as provided for at the discretion of the Member States to defend their rights and obtain legal redress in ecus when contractual obligations refer to the ecu.

Whatever may be the intrinsic benefits and advantages of the ecu, its attractiveness will be only theoretical as long as there is no guarantee that parties to a contract who so wish may, when payment in ecus is stipulated in the original contractual obligation, insist on

being paid in ecus without going through the uncertain and costly process of conversion into the national currency of the place of enforcement. In court judgments concerning conversion, the problem of the exchange risk is usually not addressed, while the actual transaction is postponed until the day of effective payment.

59. Precautionary measures should be authorized for accounts in ecus, foreign currency and national currency to guarantee claims in national currency, ecus and foreign currency. Similarly, the courts should be able, at the request of the interested parties, to order provisional measures denominated in ecus. Finally, the enforcement of provisional measures denominated in ecus ordered by a foreign court should be authorized. This could imply in certain Member States changing the wording used by the courts to express provisional measures denominated in ecus when it implies the translation of amounts in ecus into national currency.

60. Applications and claims should be accorded the same attention. There should be no doubt about the admissibility of claims for amounts in ecus, about rulings or orders for the payment of sums of money or cash payments, or about the enforcement as such of an order in ecus, national currency or foreign currency - changing the standard wording if necessary. This would mean providing that when assets in national or foreign currency were seized for the purpose of enforcing an order for payment denominated in ecus, the debtor would bear the costs of conversion.

When disputes go to arbitration, equalizing procedures should be amended to provide that national or foreign court orders for payment in ecus could be enforced in ecus.

61. Besides the purely monetary questions, there is the matter of compensatory interest payments: when the ecu is adopted for procedural purposes, the interest rates to be used for judicial purposes should also be defined. Pending the new definition of commercial interest reference rates (CIRR) required by the OECD, the securities market reference rates - e.g., rates on Treasury bills and other bond issues by sovereign borrowers - could be used. Moreover, as mentioned above (point 22), the harmonization of the legal rate used for ecu operations would be needed to avoid so-called "forum-shopping" in the context of court procedures.

4. Measures concerning business management and organization

62. Because there is no sovereign issuer of ecus, the ecu has no natural habitat and until stage three it constitutes a foreign currency for all its users. This raises a specific problem for firms: when they use the ecu, they must translate all their operations into national currency pursuant to legislation in force. The choice of a date and arrangements for translation may have decisive effects on the profit and loss account.

63. Once contractual commitments can be denominated in ecus and effective payment in ecus has been authorized and made possible in practice by the availability of all existing monetary and financial means (except coins and notes), once creditors can require payment in ecus through the courts, steps should be taken to enable company capital to be constituted, increased or decreased in ecus, contributions of assets to be denominated in ecus, and company equity floated and quoted on stock exchanges in ecus; companies should also be given the option of making accounting entries and drawing up and publishing cash journals, annual accounts, consolidated accounts and balance sheets in ecus.

64. This means publication and display of prices in ecus, and invoicing in ecus without translation. Otherwise, there is still the same obstacle to the use of the ecu in transactions in goods and services or capital. Indeed, the obstacle is accentuated since the exchange risk is greater than before if conversion is delayed.

65. Finally, to ensure that accounts are not distorted because of the use of different currencies, it should also be possible to use the ecu to pay wages, social security contributions and taxes (see below).

66. If certain Member States thought it necessary, the possibility of making generalized use of the ecu for all business activities and for recording them in accounts and documents for the information of shareholders could be limited at first, as under Netherlands law, to companies producing evidence of the cross-border nature of their activities, or of the activities of the group to which they belong.

5. Measures concerning customs and taxation

67. Except in France<sup>17</sup> for direct taxes on income resulting from international transactions, and in the Netherlands for capital tax, all tax returns and settlements must be in national currency.

68. Apart from the fact that a company whose accounts were in ecus would be at a disadvantage if it had to produce accounts in national currency for tax purposes, the difference in dates for translation from one country to another would lead to an accounting distortion in terms of outturn in relation to competing firms in other countries and for firms with multinational activities.

69. It is therefore important not only for the tax base to be determined in ecus, and for tax to be calculated in ecus on the basis of ecu accounts, but also for settlement of the tax to be possible in ecus. This would enable the entire economic relation to be denominated and settled in ecus, without any conversion. This does not mean making the ecu legal tender everywhere, since the choice of the ecu can be limited to certain types of companies irrespective of size (those with cross-border activities), and the discharge of liability would apply only to the vertical relation between the taxpayer and the authorities.

70. Customs duties are governed by Regulation 523/91; customs valuation, customs duties, anti-dumping duties and other trade protection measures are all denominated and settled in national currency. This is the more paradoxical as customs duties constitute direct revenue for the Community budget, which is drawn up in ecus.

71. It would be advisable to include an additional provision in Article 35 of the proposed Regulation establishing the Community Customs Code (see OJ C 128, 23 May 1990) allowing the value for customs purposes to be expressed in ecus, and to add an appropriate box in customs forms. The same proposal for a Regulation should provide for the settlement of duties in ecus, and the Member States should open ecu accounts to receive the payments.

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<sup>17</sup> In the case of France, it sums that allowing payment of touch in ecu would need a general regulation from the taxation authorities or a specific provision in the Finance Act.

CONCLUSION

72. Strengthening and developing the use of the ecu during the transitional phase of EMU, as required by the Heads of State and Government meeting at the European Council in Madrid, Strasbourg, Dublin and Rome, and making it into a currency in its own right as provided for in Article 109l(4) of the Treaty as amended at Maastricht, means that the obstacles to the use of the ecu as a currency of transaction must be removed.

73. The development of the uses of the ecu as an instrument for transactions is essential to ensure that citizens, firms and government departments can gradually adapt to the new situation that will soon be reality: the adoption of a single currency different from the one with which they are familiar.

The countdown has already started. In 1997, or at the latest 1999, there will be a single monetary policy, and even if national currencies continue to exist for a time, they will have become only nominal images of the single monetary reality materialized in the ecu.

74. It is true that during the transitional phase, the ecu is not the best currency for transactions, especially transactions between residents of the same country. However, it can be used with no economic disadvantage for cross-border transactions. The changeover to the single currency will be a complex event, and the ground will be best prepared by getting some practice in beforehand.

Apart from the problem of psychological barriers to adopting the new currency, which should not be underestimated, practical problems of varying degrees of difficulty need to be addressed: they include, for example, the technical problems of changing accounting machines and programs.

In the common interest, as much opportunity as possible should be given for using the ecu, at least in some Member States, so that all the practical problems can be solved gradually, and the economy can take advantage of the "learning by doing" technique.

75. The Commission would like each Member State at least to confirm the full foreign currency status of the ecu, and then, depending on priorities, to give to those who wish to use the ecu in the areas referred to in this paper ever wider possibilities for doing so freely.

76. Moreover, a number of Community Regulations are being prepared or discussed, especially in the areas of insurance, financial services and accounting (e.g., the statutes of the European company), where it seems a good idea to introduce the use of the ecu. It is important for these instruments to confirm the natural role of the ecu in those areas.

77. By way of conclusion, the Commission is presenting this White Paper to encourage the removal of obstacles to the use of the ecu during the transition to the single currency, on the basis of pragmatic activism (on the part of both the Member States and the people of Europe). The Commission feels that the gradual development of the commercial use of the ecu will ensure the success of the transition to the ecu as the single currency for use by business, government departments and individuals.

ANNEXES

ANNEXES TO THE WHITE PAPER

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## PREFACE

The results presented in the following annexes are the outcome of summarizing a voluminous report of several thousand pages. It is not always possible to give a simple yes or no answer to questions of law, and many qualifications have had to be omitted because of the need to be as succinct as possible.

The bases for this report are the result of work carried out by legal specialists in twelve Community countries. The work (up to date on 31 July 1991)<sup>1</sup> has been certified by twelve legal experts from the Member States well known for their expertise in monetary law.

In spite of all our efforts to ensure accurate and exhaustive treatment of national legislation, the comments below are based on generally recognized or suggested interpretations of this legislation, and do not constitute a definitive solution to the problems raised by the need for interpretation of legal provisions.

It should be noted that any new legal provisions adopted since the end of July 1991 are not taken into account.

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1 Only in the case of France, where the consequences of the Law n° 92666 of 16th July 1992 which introduces the legal possibility of using the ecu as unit of account and payment between residents have been taken into account. In our knowledge, this is the only Member State to have taken such measures since the end of July 1992, and if it is only for the ecu (contrary to the provisions of the Belgian Law of 12th July 1991 which opens several possibilities to use not only the ecu, but a variety of foreign currencies in public acts).

**ANNEX I**

**Summary table of obstacles, by country**

Annex I-1

OBSTACLES TO THE USE OF THE ECU BY TYPE OF OBSTACLE AND BY MEMBER STATE

MEASURES/PROBLEMS	B	DK	D	G	E	F	IRL	I	L	NL	P	UK
I. LEGAL STATUS OF THE ECU	-	-	0	-	-	-	-	-	-	-	-	0
II. FINANCIAL AND MONETARY INSTRUMENTS												
1. Cheques	-	-	0	0	0/-	-	-	-	-	-	-	-
2. Bills of exchange	-	-	0	0	-	-	-	0	-	-	-	-
3. Promissory notes	-	-	0	0	-	-	-	-	-	-	-	-
4. Bills payable to bearer	-	-	0	0	0/-	-	-	-	-	-	-	-
5. Deposit accounts	-	-	-	-	-	-	-	-	-	-	-	-
6. Personal accounts	-	-	0	0/-	-	-	-	-	-	-	0	-
7. Overdrafts	-	-	-	0	0	-	-	-	-	-	-	-
8. Limits on the number of accounts	-	-	-	0	-	-	-	-	-	-	-	-
9. Limits on operations using the accounts	-	-	-	0	0	-	-	-	-	-	0	-
10. Company borrowing	-	-	-	0	-	-	-	-	-	-	0	-
11. Bond issues by firms	-	-	-	0	0	-	-	-	-	-	0	-
III. BANKING REGULATIONS												
1. Prudential ratios	-	0	-	0	-	0	-	-	-	-	0	-
2. Clearing arrangements	-	-	-	P	-	-	-	-	-	-	-	-
IV. PRICING POLICIES												
1. Price setting	-	-	-	0	0	-	-	-	-	-	-	-
2. Display of prices	-	-	-	0	-	0	-	-	-	0	P	-
V. TRADE												
1. Accounting currency	-	-	-	0/-	-	0/-	-	-	-	-	-	-
2. Settlement currency	-	-	0/-	0/-	-	0/-	-	-	-	-	-	-

NB: 0 = obstacles; - = no obstacle; 0/- = partial obstacle; P = obstacle in practice but not in law

Annex I-2

MEASURES/PROBLEMS	B	DK	D	G	E	F	IRL	I	L	NL	P	UK
<b>VI. LEGAL PROCEEDINGS</b>												
1. Formal notice	-	-	-	-	-	-	-	-	-	-	-	-
2. Precautionary and provisional measures	-	-	-	0	-	-	0/*	-	-	-	-	-
3. Proceedings	-	-	-	0	-	0/-	0	-	0	0/-	-	-
4. Judgments	-	-	0	0	-	0/-	0	0	0	0/-	-	0
(a) enforcement of national judgments	-	-	0	0	-	0/-	0	0	0	0/-	-	0
(b) enforcement of foreign judgments	-	-	0	0	-	0/-	0	0	0	0/-	-	0
<b>VII. COMPANY CAPITAL</b>												
1. Constitution of capital	-	0	0	0/-	0	-	-	0	-	0	0	-
2. Increases and decreases in capital	-	0	0	0/-	0	-	-	0	-	0	0	-
3. Remuneration of shareholders	0	-	0	0	0/-	-	-	0	-	0/-	0	-
<b>VIII. REGULATION OF STOCK MARKETS</b>												
1. Admission of securities to a stock exchange	-	0	0	0	-	-	-	0	-	0	-	-
2. Quotation of securities	-	-	0	-	0	-	-	-	-	-	-	-
3. Unit trusts	-	-	0	0	-	-	-	-	-	-	-	-
<b>IX. ACCOUNTS</b>												
1. Own accounts	0	P	0	0	0	0/-	0	P	0/-	0	0	-
2. Consolidated accounts	0	P	0	0	0	0/-	-	0	-	-	0	-
3. Publication of accounts	0	P	0	0	0	0/-	P	0	-	-	0	-
4. Notification of accounts to partners	0	-	0	0	0	0/-	P	0	-	0	0	-
<b>X. WAGES AND SALARIES</b>												
1. Definition of remuneration	-	-	P	0	-	-	-	P	0	-	-	-
2. Payment of wages and salaries	0	-	0	0	-	-	0	P	0	-	0	-

NB: 0 = obstacles; - = no obstacle; 0/- = partial obstacle; P = obstacle in practice but not in law; \* = no obstacle for precautionary measures; obstacle for provisional measures.

Annex I-3

MEASURES/PROBLEMS	B	DK	D	G	E	F	IRL	I	L	NL	P	UK
<b>XI. TAXATION</b>												
A. Indirect taxation												
1. Tax base	0	P	0	0	0	0/-	P	-	P	P	0	0
2. Payment of tax	P	P	0	0	0	0/-	P	0	P	0	P	0
B. Direct taxation												
1. Tax base	0	P	0	0	0	0/-	P	0	P	P	0	0
2. Determination of tax payable	0	P	0	0	0	0/-	P	0	0	0/-	0	0
3. Settlement of tax	0	0	0	0	0	0/-	P	0	0	0	0	0
C. Customs												
1. Value for customs purposes (1224/80)	CE	CE	CE	CE+0	CE	CE	CE	CE	CE	CE	CE	CE
2. Payment of customs duties	CE	CE+0	CE+0	CE+0	CE+0	CE	CE	CE+0	CE	CE+0	CE+0	CE

SPECIFIC PROVISIONS THAT COULD BE AMENDED AT ANY TIME

<b>XII. INSURANCE</b>												
1. Company capital	-	-	-	-	0	-	0	-	-	-	-	-
2. Technical reserves	0	0	0	-	0	-	0	0	-	-	0	-
3. Premiums	0	-	0	0	-	-	-	-	-	-	0	-
4. Evaluation of claims	-	-	0	0/-	-	-	-	-	-	-	0	-
<b>XIII. ACTIVITIES OF THE PUBLIC SECTOR</b>												
1. State aid	0/-	-	0	0	0	-	-	-	-	-	-	-
2. Government borrowing	-	-	-	-	-	-	-	-	-	-	0	-
3. Local authority borrowing	-	-	-	-	-	-	-	-	-	-	0	-
4. Public procurement	0	P	0	0/-	0	0/-	0	-	0	-	0	P

NB: 0 = obstacles; - = no obstacle; 0/- = partial obstacle; P = obstacle in practice but not in law; CE = obstacle due to the application of Community law.

**ANNEX II**

**List of obstacles to the use of the ecu,  
by obstacle and by country**

**I. LEGAL STATUS OF THE ECU**

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**1. Belgium: no obstacle**

The ecu is regarded as a foreign currency.

**2. Denmark: no obstacle**

The ecu is treated in practice as a foreign currency, although there has been no legal decision to that effect.

**3. Germany: obstacle**

The ecu is not regarded as a foreign currency within the meaning of paragraph 3 of the Currency Act of 20 June 1948. However, Bundesbank communications No 1010/87 and No 1002/90 on bonds denominated in ecus and in Special Drawing Rights (SDR) granted general authorization for a large number of operations in ecus. Despite this, the present status of the ecu in Germany is still a legal obstacle to the validity of bills and notes denominated in ecus. The German law on trade bills requires that negotiable instruments should be formally denominated in currency.

**4. Greece: no obstacle**

The ecu is regarded as a foreign currency.

**5. Spain: no obstacle**

The ecu is regarded as a foreign currency.

**6. France: no obstacle**

The ecu is regarded as a foreign currency, and may be used, if an agreement between parties is specifically couched in terms of the ecu, for the denomination and settlement of obligations between residents (Article 14 of the Law on PEA of 16th July 1992). This law, however, does not give the ecu legal tender status identical to the French franc, which remains the sole legal tender in France.

**7. Ireland: no obstacle**

The ecu is regarded as a foreign currency.

**8. Italy: no obstacle**

The ecu is regarded as a foreign currency.

**9. Luxembourg: no obstacle**

The ecu is regarded as a foreign currency.

**10. Netherlands: no obstacle**

The ecu is regarded as a foreign currency.

**11. Portugal: no obstacle**

The ecu is regarded as a foreign currency.

**12. United Kingdom: obstacle**

The status of the ecu is not clearly specified, since the common law system tends to take a case-by-case approach. As an example, the Jack Committee report published in February 1987 considers the ecu rather as a unit of account for the purposes of bills of exchange.

## II. FINANCIAL AND MONETARY INSTRUMENTS

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### 1. Cheques

1. Belgium: no obstacle

2. Denmark: no obstacle

However, an agreement between parties is required before a cheque can be denominated in ecus.

3. Germany: obstacle

The ecu is not considered to be a currency or a legal instrument for payment in Germany, because of its status as a unit of account.

4. Greece: obstacle

- Article 5(3) of Law 362/1945

- Article 1 of Law 33/1936

These provisions prohibit the endorsement of a cheque in ecus. However, Act No 1554 of 5 June 1989 allows exporting firms to denominate cheques in ecus.

5. Spain: partial obstacle

- Resolution of 22 June 1990

A cheque drawn in ecus may not be made payable to the bearer; if the payee is resident in Spain, the account-holder must endorse the cheque with the words "negotiable in Spain only".

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: indirect obstacle

However, Article 39 of Royal Decree 21-XII-1933 No 1736 establishes that the issuer of the cheque must provide explicitly for payment in foreign currency. Otherwise the cheque will be paid in lire when the place of payment is Italy.

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

2. Bills of exchange

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: obstacles

As the ecu is not regarded as a currency, a bill of exchange denominated in ecus would not fulfil the formal conditions for bills and notes; problem of status.

4. Greece: obstacle

Bills of exchange are subject to the same rules as cheques; thus a bill of exchange can be denominated in foreign currency if it relates to an international transaction.

5. Spain: no obstacle
6. France: no obstacle
7. Ireland: no obstacle
8. Italy: obstacle

- Article 1(2) of the Decree of 14.12.1933

The bill of exchange is defined as an unconditional order to pay a definite sum; as the ecu is at present a foreign currency, its value in lire fluctuates, so that a sum in ecus is not definite.

9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: no obstacle
12. United Kingdom: no obstacle

3. Promissory notes

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: obstacle

As the ecu is not considered a currency in Germany (see above), promissory notes are not authorized; problem of status.

4. Greece: obstacle

Promissory notes are subject to the same rules as bills of exchange; thus a promissory note may be denominated in foreign currency if it relates to an international transaction.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

4. Bills payable to bearer

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: obstacle

The same problems as above: question of status.

4. Greece: no obstacle specific to foreign currency.

Bills payable to bearer are not recognized by Greek law.

5. Spain: partial obstacle

- See case 1.: cheques.

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

5. Deposit accounts

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: no obstacle
4. Greece: no obstacle
5. Spain: no obstacle
6. France: no obstacle
7. Ireland: no obstacle
8. Italy: no obstacle
9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: no obstacle
12. United Kingdom: no obstacle

6. Personal accounts

1. Belgium: no obstacle
  2. Denmark: no obstacle
  3. Germany: obstacle
- Articles 21 and 22 of the Banking Act (KWG)

Although current accounts in ecus are allowed, savings accounts in ecus are prohibited.

4. Greece: partial obstacle

- Decisions 1946/11/16.4.1968, 1537/9/19.8.1969, 279/11/15.7.1980 and 281/4/1.8.1980 of the Monetary Committee.

Current accounts in ecus may be opened only by citizens whose occupation is related to overseas, or who have special links with overseas.

5. Spain: no obstacle
6. France: no obstacle
7. Ireland: no obstacle

8. Italy: no obstacle
9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: obstacle

Holders of Portuguese accounts denominated in foreign currency may open an account in ecus only if the funds in the account are to be invested in foreign securities.

12. United Kingdom: no obstacle

7. Overdrafts

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: no obstacle
4. Greece: obstacle

Overdrafts are prohibited.

5. Spain: obstacle

Overdrafts on foreign currency accounts are not authorized.

6. France: no obstacle
7. Ireland: no obstacle
8. Italy: no obstacle
9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: no obstacle
12. United Kingdom: no obstacle

8. Limits on the number of accounts

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: no obstacle

4. Greece: obstacle

- Order of the Governor of the Bank of Greece No 1554/15.6.1989

An exporting firm may have a foreign currency account only with the bank through which it carries out its export-related transactions; it may not open a foreign currency account with another bank until it has closed the original account.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

9. Limits on operations using the accounts

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: no obstacle

4. Greece: obstacle

Operations are authorized by the Bank of Greece.

5. Spain: obstacle

With a few exceptions, transactions in ecus must be authorized by the Bank of Spain.

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: obstacle

There is a blanket authorization for certain operations; others must be specifically authorized by the Bank of Portugal.

12. United Kingdom: no obstacle

10. Company borrowing

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: no obstacle

4. Greece: obstacle

- Decision No 187/1/19.10.1978 of the Credit Sub-Committee of the Monetary Committee.

Only shipping companies realising revenue in free currency (i.e., currency that does not need to be handed over to the Bank of Greece) may borrow in foreign currency, including ecus.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: obstacle

- Article 5(2)(d) of Decree-Law 13/90

The Bank of Portugal lays down rules for three types of financial transaction that may be expressed in ecus: financial transactions in anticipation of export profits, transactions to settle import operations, and external borrowing and lending operations. However, all ecu transactions between residents are regarded as foreign exchange transactions and thus subject to the approval of the Bank of Portugal.

12. United Kingdom: no obstacle

11. Bond issues by firms

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: no obstacle

(However, Article 3(1) of the Currency Act provides for prior authorization; since 1990, there has been blanket authorization for residents.)

4. Greece: obstacle

- Article 11 of Law 5422/1932
- Article 4 of Law 362/1945

General prohibition on foreign currency operations.

5. Spain: obstacle

- Article 291 of the Law on limited companies.

Bond certificates must bear a value expressed in pesetas.

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: obstacle

- Article 352.13 of the Companies Code.

Bonds issued by a company must be denominated in escudos.

12. United Kingdom: no obstacle

### III. BANKING REGULATIONS

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#### 1. Prudential ratios, compulsory reserves

1. Belgium: no obstacle

2. Denmark: indirect obstacle

- Law 1990-05-16 n° 306

- Law 1989-11-30 n° 740

Under these laws, the capital of banks must represent permanently at least 8% of own assets; banks may also decide to constitute capital of total 10% of assets and capital loaned. At all events, the capital of a Danish bank must represent the equivalent in Danish kroner of at least ECU 5 000 000.

3. Germany: no obstacle

4. Greece: obstacle

- Decisions by the Monetary Committee

Sums deposited by banks with the Bank of Greece must be in drachmas.

5. Spain: no obstacle

6. France: obstacle

- Banking Supervision Committee Regulation n° 86-14 of 24 November 1986.

Credit institutions must constitute a minimum reserve in the form of an interest-free deposit in French francs with the Bank of France; the ecu may not be used for this purpose. It is not clear that Article 14 of the Law (n° 92-666) on the PEA of 16th July 1992, is sufficient to remove this obstacle.

7. Ireland: no obstacle

8. Italy: practical obstacle

Since 1975 the deposits of credit institutions with the central bank have been constituted exclusively in lire.

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: obstacle

- Bank of Portugal instructions D-0919-1/01 and D-0919-2/01.

The ratio for cash and short-term investment securities is 17%; the instructions specify that amounts deposited with the central bank must be in escudos.

12. United Kingdom: no obstacle

2. Clearing arrangements

In all countries the clearing system is denominated in national currency (which constitutes a practical obstacle to the use of the ecu); however, there is no legal obstacle.

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: no obstacle
4. Greece: practical obstacle

The clearing system operates through current accounts with the central bank, always denominated in national currency.

5. Spain: no obstacle
6. France: no obstacle
7. Ireland: no obstacle
8. Italy: no obstacle
9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: no obstacle
12. United Kingdom: no obstacle

#### IV. PRICING POLICIES

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##### 1. The establishment of rates and prices for sales to the public

###### 1. Belgium: no obstacle

Since official prices are published by the authorities, and recent legislation allows official documents to be denominated in the currencies of the OECD countries (including the ecu), it is possible for official prices to be in ecus.

The establishment of other rates and prices is subject to the principle of freedom to contract, which makes it possible to use the ecu.

###### 2. Denmark: no obstacle

###### 3. Germany: no specific obstacle

However, public tariff ceilings on rates and prices are always expressed in national currency.

###### 4. Greece: obstacle

Article 11(2) of Law 5422/1932 and Article 4(1) of Law 362/1945; these laws require that obligations should be expressed in drachmas.

###### 5. Spain: obstacle

- legislation from 1870

Where prices and rates are published by the authorities, they must be denominated in pesetas, by virtue of the Decree of 1870.

###### 6. France: no obstacle

Ceilings on rates and prices are always expressed in national currency. The previously cited PEA law allows denomination and payment in ecu, which implies that all parties agree to this.

###### 7. Ireland: indirect obstacle

Ceilings on rates and prices are always expressed in national currency.

###### 8. Italy: indirect obstacle

Ceilings on rates and prices are always expressed in national currency.

###### 9. Luxembourg: indirect obstacle

Ceilings on rates and prices are always expressed in national currency.

10. Netherlands: no obstacle

11. Portugal: no specific obstacle

Public tariffs and ceilings on rates and prices are always expressed in national currency.

12. United Kingdom: no obstacle

2. Advertising and display of prices

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: no obstacle

4. Greece: obstacle

The prohibition on expressing obligations in foreign currency means that prices cannot be displayed in ecus.

5. Spain: no obstacle

6. France: no obstacle

The PEA law n° 92-666 ought to cancel the effect of the Order of 3/12/1987, which provides that the price displayed for products sold on the national territory ought to represent the total with-tax price in French francs.

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

The Grand-ducal Regulation of 8 April 1986 lays down, in Article 5, that the prices of products and services offered to the final consumer must be expressed in Luxembourg francs, and can also be displayed in a foreign currency.

10. Netherlands: obstacle

- Decree of 1980 on prices

Prices must be denominated in national currency.

11. Portugal: no specific obstacle

- Decree 13/90

The Bank of Portugal has power to authorize or prohibit the use of the ecu by residents; in practice, the use of the ecu between residents is not allowed, which is an obstacle to displaying prices in ecus.

12. United Kingdom: no obstacle

**V. TRADE**

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**1. Role of the ecu as currency of accounting**

**1. Belgium: no obstacle**

Obligations of a commercial nature are possible in ecus if this has been expressly agreed by the parties.

**2. Denmark: no obstacle**

Valuation clauses in ecus are accepted in all contracts.

**3. Germany: no obstacle**

The obstacle has been removed by the blanket authorization of the Bundesbank. Valuation clauses in ecus no longer require individual approval; for contracts between residents, Bundesbank communication 1002/90 grants blanket authorization.

**4. Greece: partial obstacle**

- Article 4 of Law 362/1945.

Valuation clauses in ecus are not accepted in contracts between residents, but are allowed if one of the parties is non-resident.

**5. Spain: no obstacle**

Valuation clauses in foreign currency are accepted by virtue of the independence of contracting parties under Article 1255 of the Civil Code.

**6. France: no obstacle**

The PEA law (n° 92-666) cancels the effect of the ruling of Cour de cassation of 11.10.89, which limited the use of valuation clauses in ecus in commercial relations between residents. This use was authorized under condition. Indeed, the Cour de cassation ruled on 11 October 1989 that expressing a claim in foreign currency was tantamount to index-linking it, and was valid if the requirements of the decree of 4 February 1959 (amending Article 79 of the decree of 30 December 1958) had been fulfilled. Thus the use of a foreign currency in France was possible only if the currency was directly or indirectly related to the object of the contract or the occupation of one of the parties.

**7. Ireland: no obstacle**

The choice of the ecu as a currency to denominate contracts between residents, or with non-residents, is valid if the provisions of exchange-control legislation are complied with.

8. Italy: no obstacle

The use of the ecu as a currency to denominate contracts between residents, and with non-residents, is accepted.

9. Luxembourg: no obstacle

The use of the ecu as a currency to denominate contracts between residents, and with non-residents, is accepted.

10. Netherlands: no obstacle

Valuation clauses in ecus are accepted.

11. Portugal: no obstacle

Valuation clauses in ecus are accepted.

12. United Kingdom: no obstacle

Valuation clauses in ecus are accepted.

2. Role of the ecu as currency of settlement

1. Belgium: no obstacle

The question is governed by Article 1243 of the Civil Code, which provides that debtors must honour their obligations as agreed. If a currency has been chosen by the parties, that currency is due. This applies to relations between residents as well as to those with non-residents.

2. Denmark: no obstacle

A resident may insert a payment clause in ecus into commercial relations with other residents, and with non-residents.

3. Germany: partial obstacle

- Article 3 of the Currency Act

A payment clause in ecus is not allowed in a contract between two residents. Clauses of this type must always be interpreted as indexation clauses, and therefore require authorization, pursuant to Article 3 of the Currency Act.

Between residents and non-residents, the insertion of a payment clause in ecus is facilitated by Bundesbank Communication 1009/61 of 24 August 1961, which exempts transactions between residents and non-residents from prior approval required under Article 3 of the Currency Act.

4. Greece: partial obstacle

- Article 11(2) of Law 5422/1932

A resident may not include a payment clause in ecus in relations with another resident. However, a resident may include a payment clause in ecus in relations with a non-resident.

5. Spain: no obstacle

Payment clauses in ecus are allowed in commercial relations between residents, and those between residents and non-residents.

6. France: indirect obstacle

Article 14 of the law of 16th July 1992 (n° 92-666) cancels, as regards only the ecu, existing jurisprudence (ruling of the Cour de Cassation of 10.5.1966) which laid down the general principle that currency clauses obliging debtors to pay for domestic transactions in foreign currency are null. However, in order that payment in ecu may be effected, the two parties to the transaction must be in agreement.

7. Ireland: no obstacle

Section 25 of the Control Bank Act of 1989 implicitly recognizes the right of residents to conclude contracts containing a payment clause in foreign currency.

8. Italy: no obstacle

It is possible for a resident to insert a payment clause in ecus in a contract with a resident or with a non-resident.

9. Luxembourg: no obstacle

It is possible for a resident to insert a payment clause in ecus in a contract with a resident or with a non-resident.

10. Netherlands: no obstacle

Foreign currency payment clauses are legal, as long as the other party agrees, for transactions between residents, and for those between a resident and a non-resident.

11. Portugal: no obstacle

12. United Kingdom: no obstacle

VI. LEGAL PROCEEDINGS

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1. Formal notice and default interest

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: obstacle

- Zivilprozessordnung par. 688

Pursuant to this provision, notice to pay must always be denominated in marks. It is therefore impossible to calculate default interest in ecus.

4. Greece: no obstacle

If the claim is denominated in ecus, formal notice must also be denominated in ecus, as must default interest.

5. Spain: no obstacle

Formal notice to pay in the strict sense does not exist under Spanish law. Article 1108 of the Civil Code states that if an obligation consists of the payment of a sum of money, and if the debtor incurs a delay, compensation and interest, unless agreed otherwise, consist of the payment of the interest agreed between parties. This payment may be made in ecus.

6. France: no obstacle

There is no legal provision to prevent the sum mentioned in formal notice to pay from being denominated in ecus; if it is, default interest will also be expressed in ecus.

7. Ireland: no specific obstacle for foreign currency

There is no procedure for formal notice to pay; creditors may bring proceedings directly. there is thus no need to calculate default interest from the date of the notice.

8. Italy: no obstacle

Formal notice to pay may be denominated in ecus; default interest will be calculated in ecus from the date of the notice.

9. Luxembourg: no obstacle

Formal notice to pay may be denominated in ecus if that is the currency chosen by the parties. Default interest will therefore be expressed in ecus.

10. Netherlands: no obstacle

The creditor may give notice to pay in ecus if the agreement provides for actual payment in ecus. In this case, default interest will be due in ecus from the date of the formal notice.

11. Portugal: no obstacle

There is no legal provision to prevent formal notice or default interest from being expressed in ecus.

12. United Kingdom: no specific obstacle for foreign currency

The procedure of serving formal notice is not known in the United Kingdom.

2. Provisional and precautionary measures

1. Belgium: no obstacle

There is nothing to prevent distraint being imposed upon an account denominated in ecus. Similarly, it is possible to apply a precautionary measure to an account in national currency to guarantee the payment of a claim originally denominated in ecus.

Provisional measures denominated in ecus are also conceivable.

2. Denmark: no obstacle

Precautionary measures may be applied to accounts in ecus.

To guarantee the payment of a debt denominated in ecus, precautionary measures may be applied to accounts in national currency.

3. Germany: no obstacle

4. Greece: obstacle

- Article 1 of Law 1059/1971

By virtue of this provision, distraint cannot be imposed upon accounts with Greek banks. Therefore precautionary measures cannot be applied to these accounts.

5. Spain: no obstacle

There is no difference in Spanish law, for purposes of distraint, between debts in pesetas and debts in foreign currency. Precautionary measures can therefore be applied to foreign currency accounts, including ecu accounts.

6. France: no obstacle

7. Ireland:

- no obstacle for precautionary measures;
- obstacle for provisional measures.

There is no obstacle to precautionary measures applied to accounts in national or foreign currency. However, under Section 9 of the "Jurisdiction of courts and enforcement of judgments Act", provisional measures may not be denominated in foreign currency.

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

3. Main proceedings

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: no obstacle

An application may be expressed in foreign currency when the debt is in foreign currency.

4. Greece: obstacles

- Article 4 of Law 362/1945
- Article 6 of Law 5422/1932

These laws provide that all official documents representing claims or obligations to pay may be expressed only in drachmas.

Moreover, obligations legally expressed in foreign currency and payable in Greece may be settled only in drachmas (Article 6 of Law 5422/1932).

Thus only applications concerning the payment of a sum in national currency would be admissible.

5. Spain: no obstacle

6. France: no obstacle

A priori there is no obstacle if the 2 parties to the contract envisaged use of the ecu.

7. Ireland: no obstacle

8. Italy: obstacle

- Article 163 C.P.C., point 3.

The application must refer to a determinate object: but as the ecu is a foreign currency, its value fluctuates and cannot be determined.

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

4. Judgments

4(a). Enforcement of judgments

1. Belgium: no obstacle

All public and official documents may be denominated in ecus.

2. Denmark: no obstacle

3. Germany: obstacle

A legal decision which refers to the ecu can be enforced only after translation into marks.

4. Greece: obstacle

A judgment denominated in ecus can be enforced, but the sum to be paid will be translated into drachmas at the official exchange rate obtaining on the day of payment.

5. Spain: no obstacle

6. France: partial obstacle

There is nothing to prevent a French court from imposing a penalty in ecu, but the debtor must still be given the opportunity to translate the debt into French francs at the rate of exchange obtaining on the day of payment, since the French franc remains sole legal tender and means of settling debt.

7. Ireland: obstacle

Under case-law, judgments may be expressed in ecus, but enforcement always requires translation into national currency at the rate obtaining on the day of the judgment.

8. Italy: obstacle

A judgment by an Italian court denominated in ecus may be enforced in Italy, but the debtor must pay in lire.

9. Luxembourg: obstacle

- Article 551 of the Civil Proceedings Code

A ruling by a Luxembourg court denominated in ecus may be enforced, but the court must order the translation of the amount into Luxembourg francs; it would appear that enforcement in another currency is not possible, in particular because Article 551 of the Civil Proceedings Code provides that restraint may be imposed upon movable and immovable property only for liquid and certain objects. Foreign currencies, including the ecu, do not meet this requirement.

10. Netherlands: partial obstacle

A decision by a Netherlands court denominated in ecus may be enforced in the Netherlands, provided the claimant is given the right to require payment in guilders.

11. Portugal: no obstacle

12. United Kingdom: obstacle

Enforcement procedures must always be accompanied by a certificate stating the equivalent in sterling of the amount required. The enforcement order will refer to the sum in sterling given in the certificate.

4(b). Enforcement of foreign judgments in ecus

1. Belgium: no obstacle

A foreign judgment expressed in ecus can be enforced in Belgium as long as the proper enforcement proceedings provided for in the judicial code have been followed.

2. Denmark: no obstacle

3. Germany: obstacle

A foreign judgment expressed in ecus will be enforced after translation into marks by the courts.

4. Greece: obstacle

A judgment by a foreign court denominated in ecus can be enforced once it has been declared applicable by the court of first instance of the place of enforcement. Translation into drachmas of the sum to be paid is compulsory, at the official rate obtaining on the day of payment.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: obstacle

See case 4(a).

8. Italy: obstacle

See case 4(a).

9. Luxembourg: obstacle

See case 4(a).

10. Netherlands: partial obstacle

A judgment by a foreign court denominated in ecus can be enforced in the Netherlands on condition an international convention has been concluded with the State concerned (this is not specific to the ecu), and with the reservation that the claimant is given the right to require actual payment in guilders.

11. Portugal: no obstacle

12. United Kingdom: obstacle

See case 4(a).

## VII. COMPANY CAPITAL

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### 1. Constitution of company capital

1. Belgium: no obstacle

2. Denmark: obstacle

- Danish Companies Act No 434, 1968-06-20

The Act provides for a minimum company capital denominated in kroner.

3. Germany: obstacle

- Articles 5 to 8 of the Companies Act;

- Article 244 of the Commercial Code.

The capital of public and private limited companies must be denominated in marks. These Articles provide for a minimum amount of capital in marks, and a minimum amount of shares in marks. Article 244 of the Commercial Code requires that accounts should be drawn up in marks.

4. Greece: partial obstacle

- Article 11(2) of Law 5422/1932

- Article 4 of Law 302/1945

These provisions, which require that company capital should be expressed in drachmas, prevent the use of the ecu. However, shipping companies, and companies established with imported foreign capital may be constituted in foreign currency and consequently in ecus.

5. Spain: obstacle

- Article 4 of Law No 1564/1989 (public limited companies)

- Article 3 of the Law of 17 July 1953 (private limited companies)

The capital of both public and private limited companies must be denominated in pesetas.

6. France: no obstacle

Article 14 of the law 92-666 of 16th July 1992 and practice establishment of companies Acts 1162 of 30 December 1981 and Law of 24 July 1966 amended by the Law of 1 March 1984, which could be implied as meaning that a minimum capital be laid down for public and private limited companies, and must be expressed in French francs.

7. Ireland: no specific obstacle

Although the 1963 and 1990 Companies Acts do not prohibit the use of the ecu, it is possible for the Irish courts to require denomination in Irish pounds, since the Acts refer exclusively to the national currency. However, there is no specific obstacle.

8. Italy: obstacle

- Articles 2327 and 2474 of the Civil Code

The minimum company capital must be expressed and paid up in lire.

9. Luxembourg: no obstacle

10. Netherlands: obstacle

- Articles 67 and 178 of the Civil Code

The minimum company capital must be expressed in guilders for both public and private limited companies.

11. Portugal: obstacle

- Article 4 of the Companies Code (Decree-Law No 262 of 2 September 1986)

The minimum company capital must be denominated in escudos.

12. United Kingdom: no obstacle

2. Increases and decreases in capital

1. Belgium: no obstacle

See case 1.

2. Denmark: obstacle

See case 1.

3. Germany: obstacle

See case 1.

4. Greece: partial obstacle

See case 1.

5. Spain: obstacle

See case 1.

6. France: no obstacle
7. Ireland: no specific obstacle

See case 1.

8. Italy: obstacle

See case 1.

9. Luxembourg: no obstacle

10. Netherlands: obstacle

See case 1.

11. Portugal: obstacle

See case 1.

12. United Kingdom: no obstacle

See case 1.

3. Remuneration of shareholders

1. Belgium: indirect obstacle

- Article 2/37 of the Royal Decree of 8 October 1976

There is no specific obstacle, but remuneration in ecus would be difficult because of the Royal Decree of 8 October 1976, which requires that the current accounts of companies should be denominated in Belgian francs.

2. Denmark: no obstacle

Remuneration is possible in ecus, as companies are allowed to keep two sets of accounts.

3. Germany: obstacle

- Article 174 of the Companies Act

- Article 244 of the Commercial Code

Dividends must be determined on the basis of the balance sheet; Article 244 of the Commercial Code requires that company accounts should be drawn up in marks.

4. Greece: obstacle

- Article 41 of Decree-Law 99/1977
- Article 43 of Law 2190/1920

Annual accounts must be denominated in drachmas (including those of shipping companies and companies founded with foreign capital), which makes it difficult to pay dividends in ecus.

5. Spain: indirect obstacle

- Article 29.2 of the Commercial Code

This Article provides that accounts must be drawn up in pesetas.

6. France: no obstacle

If shareholders are in agreement, Articles 245-1 of the Decree of 23 March 1967 and Article 16 of the Commercial Code<sup>1)</sup> can no longer be interpreted as being restrictive as a result of Article 14 of Law n° 92-666.

7. Ireland: no obstacle

8. Italy: obstacle

- Article 2433 and Article 2424/2425 of the Civil Code

Dividends must be paid on the basis of the profits declared in the annual accounts (Article 2433); these annual accounts must be drawn up in lire (Article 2424/2425).

9. Luxembourg: no obstacle

10. Netherlands: partial obstacle

In general, if annual accounts are denominated in guilders, dividends must also be denominated in guilders; however, when the international activity of the company justifies the presentation of the annual accounts in foreign currency, dividends may be expressed in ecus.

11. Portugal: obstacle

- Article 5.2.1 of the Accounting System

Annual accounts must be denominated in escudos; dividends are paid on the basis of the profits appearing in the balance sheet.

12. United Kingdom: no obstacle

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1) Article 245 of the Decree of 23 March 1967 on companies whose shares are quoted on the stock exchange provides that the dividend may not lower than FF 5 per share. Article 16 of the Commercial Code stipulates that accounting documents must be drawn up in French francs.

VIII. REGULATION OF STOCK MARKETS

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1. Admission of securities to a stock exchange

1. Belgium: no obstacle

2. Denmark: indirect obstacle

- See Company capital

As Danish companies may not issue shares in ecus, it is impossible for shares in ecus to be admitted to the stock exchange.

3. Germany: obstacle

- Article 6 of the Companies Act

Company shares must be denominated in marks; pursuant to the Stock Exchange Act and the Act concerning on admission to the stock exchange, only securities denominated in marks can be traded on a stock exchange.

4. Greece: indirect obstacle

Most Greek companies are barred from issuing shares in ecus.

5. Spain: no obstacle

6. France: no obstacle

- See Company capital

7. Ireland: no obstacle

8. Italy: indirect obstacle

- Articles 2327 and 2474 of the Civil Code

Italian companies may not issue shares in ecus.

9. Luxembourg: no obstacle

10. Netherlands: indirect obstacle

As Netherlands companies may not issue company capital in ecus, their shares cannot be admitted to the stock exchange in ecus (see Company capital). However, foreign shares in ecus may be admitted to the stock exchange.

11. Portugal: no obstacle

12. United Kingdom: no obstacle

2. Quotation of securities

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: obstacle

- Article 2 of the Stock Exchange Act

Shares may be quoted only in marks.

4. Greece: no obstacle

5. Spain: obstacle

- Rule 8, Law of 5.4.1989

The Law of 5.4.1989 on the operation of the market prevents quotation in ecus.

6. France: no obstacle

See VII.1.6 Company Capital.

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

3. Stock exchange transactions (mainly unit trusts)

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: obstacle

- See The status of the ecu

As the ecu is not regarded as a currency in Germany, it is impossible to set up a unit trust in ecus.

4. Greece: obstacles

- Article 11(2) of Law 5422/1932

- Article 4(1) and (2) of Law 362/1945

Unit trusts denominated in ecus are not allowed in Greece because of legislation prohibiting the definition of obligations in Greece in foreign currency.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

## IX. ACCOUNTS

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### 1. Own accounts

#### 1. Belgium: obstacle

- Article 2 of the Royal Decree of 8 October 1976

Annual accounts must be denominated in Belgian francs; however, the Royal Decree does not seem to be an obstacle to a company using the ecu for internal accounting.

#### 2. Denmark: indirect obstacle

- taxation

Although there are no specific legal obstacles, in practice accounts must be kept in kroner for tax purposes. However, it is possible to keep two sets of accounts.

#### 3. Germany: obstacle

- Article 244 of the Commercial Code

Annual accounts must be denominated in marks; however, it would seem that two sets of accounts could be kept for internal use.

#### 4. Greece: obstacle

- Article 41 of Decree-Law 9/1977
- Article 43 of Law 2190/1920

The balance sheet and annual accounts must be expressed in drachmas. There are major exceptions in the case of shipping companies and companies founded with foreign capital. Moreover, it would seem that two sets of accounts could be kept.

#### 5. Spain: obstacle

- Article 29.2 of the Commercial Code, reformed by the Law of 25 July 1989

Annual accounts must be denominated in pesetas; however, it would seem that two sets of accounts could be kept.

#### 6. France: no obstacle

It is not clear that Article 14 of the law n° 92-666 of 16th July 1992 clarifies the fact that Article 16 of the Commercial Code can be interpreted as implying that accounting documents must be drawn up in French francs; there are also major obstacles created by the tax system. However, the establishment of the company SACELY, in which all accounts are denominated in ecu, seems to argue in favour of the absence of obstacles. The problem of taxation remains to be resolved.

7. Ireland: no obstacle

8. Italy: partial obstacle

- Articles 2421/2425 and 2219 of the Civil Code

It can be deduced from the provisions of Articles 2421/2425 and 2219 of the Civil Code that accounts must be denominated and presented to shareholders in lire. The ecu may be used only to draw up documents for internal use. However, Presidential Decree No 917 of 22 December 1986 specifically authorizes the keeping of two sets of accounts, in lire and in ecus.

9. Luxembourg: practical obstacle

- Article 2 of the Law of 20.12.1848

- Article 1 of the Law of 15.3.1979

There is no legal provision explicitly imposing the use of the national currency for company balance sheets; however, the authorities deduce from the provisions referred to above that companies are required to translate into Luxembourg francs the amounts appearing on their ecu balance sheet on the day the balance is closed.

10. Netherlands: partial obstacle

By virtue of paragraph 7 of Article 362 of Book II of the Civil Code, Netherlands companies are authorized to draw up their annual accounts in foreign currency if this is justified by the nature of their activities or of those of the group to which the company belongs. One company already makes full use of this possibility.

11. Portugal: obstacle

- Article 5.2.1 of the Accounting Scheme

All accounting operations must be entered in escudo accounts. However, it is possible to use the ecu for internal accounting.

12. United Kingdom: no obstacle

## 2. Consolidated accounts

1. Belgium: obstacle

- Article 2 of the Royal Decree of 8 October 1976

Consolidated accounts are subject to general rules requiring that accounting entries should be denominated in Belgian francs.

2. Denmark: obstacle

- official practice

There is no legal provision to prohibit the use of the ecu, it is in fact only impossible because of official practice.

3. Germany: obstacle

- Article 244 of the Commercial Code

Consolidated accounts must be denominated in marks; however, it is possible to keep two sets of accounts (in national currency and in ecus).

4. Greece: obstacle

- Article 41(6) of Decree-Law 99/1977
- Article 43(8)(a) of Law 2190/1920

Consolidated accounts, like all company accounts, must be expressed in drachmas.

5. Spain: obstacle

- Article 44.7 of the Commercial Code

Consolidated accounts must be denominated in pesetas.

6. France: no obstacle

See IX-1-6: the same doubts remain as regards the cancellation included in Articles 357.7 of the Law of 24 July 1966, and Article 16 of the Commercial Code.

Recent practice (the SACELY company) tends to show that there is no real obstacle<sup>1)</sup>.

7. Ireland: no obstacle

8. Italy: obstacle

- Articles 2424 and 2425 of the Civil Code

Consolidated accounts must always be denominated in lire.

9. Luxembourg: no obstacle

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1) Consolidated accounts must be drawn up according to the accounting principles and valuation rules of the Commercial Code; Article 16 of the Code specifies that accounting documents must be expressed in French francs. However, it is possible to keep two sets of accounts, in national currency and in ecus.

10. Netherlands: no obstacle

Pursuant to paragraph 7 of Article 362 of Book II of the Civil Code, the Register of Commerce will accept consolidated accounts denominated in ecus.

11. Portugal:

See case 1.

12. United Kingdom: no obstacle

3. Publication of accounts

1. Belgium: obstacle

- Article 37 of the Royal Decree of 8 October 1976

Company accounts and balance sheets must be submitted, denominated and drawn up in Belgian francs. However, alongside the accounts published in francs, it will be possible to publish accounts in ecus.

2. Denmark: obstacle

- practice

See case 2: Consolidated accounts.

3. Germany: obstacle

- Article 244 of the Commercial Code

At present annual accounts must be drawn up in marks and published as drawn up. However, parallel publication of the accounts in ecus is possible.

4. Greece: obstacle

- Article 41 of Decree-Law 99/1977

- official practice

Company balance sheets and accounts must be denominated in drachmas. However, parallel publication is allowed.

5. Spain: obstacle

- Article 29.2 of the commercial Code reformed by the Law of 25 July 1989

See case 1.

6. France: no obstacle

7. Ireland: practical obstacle

The law does not expressly prohibit the presentation of accounts in ecus, but the current interpretation is that it is not possible to present accounts in a currency other than the Irish pound.

8. Italy: obstacle

- Articles 2424 and 2425 of the Civil Code

See above cases.

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

By virtue of paragraph 7 of Article 362 of Book II of the Civil Code, companies are authorized to draw up their annual accounts in foreign currency and consequently to publish them in foreign currency if this is justified by the cross-border nature of their activities.

11. Portugal: obstacle

- Article 5.2.1 of the national accounting system

Company accounts and balance sheets must be published exclusively in escudos.

12. United Kingdom: no obstacle

4. Notification of accounts to partners

1. Belgium: indirect obstacle

- Article 2 of Royal Decree of 8 October 1976

There are no provisions governing the currency of denomination of the results to be notified to shareholders. In general, however, the right of information of shareholders relates principally to the annual accounts, which must be denominated in Belgian francs.

2. Denmark: no obstacle

3. Germany: obstacle

- Article 244 of the Commercial Code

See case 3.

4. Greece: obstacle

- Decree-law 99/1977

Company balance sheets and accounts must be notified to partners, in national currency. However, the company may give information in ecus.

5. Spain: indirect obstacle

- Article 212 of the Limited Companies Act

Any shareholder may obtain documents containing annual accounts as soon as the annual meeting has been called; as the annual accounts must be denominated in pesetas, it follows that notification must also be denominated in national currency.

6. France: no obstacle

If partners are in agreement, article 14 of the law of 16th July 1992 ought to cancel interpretation of Article 16 of the Commercial Code<sup>1)</sup>.

7. Ireland: practical obstacle

The law does not explicitly prohibit the presentation of accounts in ecus, but the current interpretation is that it is not possible to present accounts in a currency other than the Irish pound.

8. Italy: obstacle

- Article 2424 of the civil Code

Company accounts must be notified to partners in lire.

9. Luxembourg: no obstacle

Luxembourg law requires that company accounts should be notified to partners in the same currency as that of company capital.

10. Netherlands: obstacle

See case 3.

11. Portugal: obstacle

- Article 5.2.1 of the national accounting system

Company accounts may be published only in escudos.

12. United Kingdom: no obstacle

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1) The general accounting system enables companies to denominate accounting documents in ecus on condition they are translated on the closing date of the accounting year (requirement under Article 16 of the Commercial Code). Thus information intended for partners concerning completed accounting years must be denominated in French francs.

## **X. WAGES AND SALARIES**

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### **1. Definition of remuneration**

#### **1. Belgium: no obstacle**

There is no explicit obstacle to wages and salaries being defined in ecus.

#### **2. Denmark: no obstacle**

Most labour contracts are subject to collective agreements between trade unions and employers' organizations. Private sector employees usually conclude individual contracts as far as their remuneration is concerned: in this case it is possible to define the remuneration in ecus if both parties agree.

#### **3. Germany: obstacle**

- practice.

Although there is no legal obstacle, there are practical obstacles.

#### **4. Greece: obstacle**

- Article 11 of Law 5422/1932

- Article 4 of Law 362/1945

It is forbidden to define obligations in foreign currency; moreover, contracts between employers and employees are subject to national rules (established in drachmas).

#### **5. Spain: no obstacle**

Article 261 of the Labour Statute permits wages and salaries to be set in a currency other than the peseta.

#### **6. France: no obstacle**

Although there are certain limits on freedom to define wages and salaries, there is no provision expressly prohibiting the use of a foreign currency as an accounting currency (to determine the amount of pay in French francs). Moreover, if salaried staff agree, article 14 of the Law 92-666 of 16th July 1992 authorises this explicitly.

#### **7. Ireland: no obstacle**

#### **8. Italy: practical obstacle**

Most labour contracts are subject to collective agreements between trade unions and employers' organizations. Remuneration is defined in lire.

9. Luxembourg: obstacle

- Article 1 of the Law of 27 May 1975
- Law of 12 March 1973
- Law of 22 June 1963

There are several obstacles: Article 1 of the Law of 27 March 1975 on the adaptation of wages and salaries to the cost of living, (which specifies an amount in Luxembourg francs), the Law of 12 March 1973 on the reform of the minimum wage, (defined in Luxembourg francs), and Article 11 of the Law of 22 June 1963, (which stipulates that the amounts calculated on the basis of the Law on the minimum wage must be expressed in Luxembourg francs). Consequently, the denomination of pay in foreign currency, including the ecu, is prohibited.

10. Netherlands: no obstacle

Under Article 1638h of the Civil Code, remuneration for labour may be set in foreign currency.

11. Portugal: no obstacle

12. United Kingdom: no obstacle

2. The payment of wages and salaries

1. Belgium: obstacle

- Articles 4 and 5 of the Law of 12 May 1965 on the protection of the remuneration of workers

Cash payments must be made in a currency that is legal tender in Belgium; cash must be handed over in person or transferred in the form of bank money. It would seem that payment in ecus is impossible (even by means of a cheque).

2. Denmark: no obstacle

3. Germany: obstacle

The obstacle consists in the requirement for payment to be in currency that is legal tender in Germany; consequently, payment in ecus is prohibited.

4. Greece: obstacle

See case 1.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: indirect obstacle

- Section 6 of the 1954 Exchange Control Act

Although there are no specific obstacles, payment in ecus is unlikely because of exchange control provisions.

8. Italy: obstacle

See case 1.

9. Luxembourg: obstacle

- Case 1
- Law of 12 July 1895

Wages: under the law of 12 July 1895, wages must be paid in coin or fiat money, which excludes the use of the ecu. Salaries: the obstacles to the payment of private-sector salaries in ecus are given under case 1.

10. Netherlands: no obstacle

However, Article 1638h of the Civil Code provides that remuneration defined in foreign currency should be translated into national currency for payment.

11. Portugal: partial obstacle

- Decree-Law 13/90

Payment in ecus is possible, but only with the agreement of the central bank.

12. United Kingdom: no obstacle

## XI. TAXATION

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### A. Indirect taxation

#### 1. Determination of the tax base and the tax payable

##### 1. Belgium: obstacle

- Article 27 of the VAT code

This Article states that when the factors that serve to determine the basis for taxation are expressed in foreign currency, the King shall determine the exchange rate to be applied.

##### 2. Denmark: obstacle

- Practice

Although there is no legal obstacle to the use of the ecu to determine the tax base and calculate the tax payable, the complexity of the system is such that in practice the tax has to be paid in national currency.

##### 3. Germany: obstacle

- Article 11 of the law on turnover tax

Prices of supplies of goods and services subject to VAT are usually expressed in marks. Where this is not the case, they must be translated into marks pursuant to Article 11 of the law on turnover tax.

##### 4. Greece: indirect obstacle

- Article 11 of Law 5422/1932

With a few exceptions, (foreign currency that is part of an inheritance taxable in Greece, taxes on certain banking activities), the basis for indirect taxation is denominated in drachmas. This is because Greek law prohibits foreign currency contracts and debts.

##### 5. Spain: obstacle

- Law 30/1985 on VAT

Under Law 30/1985 on value added tax, for transactions whose value is defined in foreign currency, translation into pesetas must be effected at the selling rate quoted by the Banco de España for the date on which the tax falls due.

6. France: possibilities

- judgment by the Cour de cassation of 11 October 1989

The basis for taxation is the price or remuneration concerned, including all costs. The price or remuneration may be declared in ecus when the operation takes place in an international context. However, for domestic operations, tax returns may be denominated in ecus only within the limits set by the law on indexation (judgment by the Cour de cassation of 11 October 1989). Article 14 of the Law n° 92-666 of 16th July 1992 opens the possibility of using the ecu in relations with taxation authorities, but it seems that settlement allowing it would be necessary.

7. Ireland: obstacle

- Practice

Although there is no obstacle to the use of the ecu in the legislation governing the basis for indirect taxation, the fact that thresholds, exemptions, fines etc. are all denominated in Irish pounds, and the usual practice, mean that the tax payable is determined in national currency.

8. Italy: no obstacle

The amount of tax is calculated as a percentage of the basis for taxation. The currency used is irrelevant.

9. Luxembourg: obstacle

- Interpretation of the Law of 20 December 1848

Although there are no legal provisions or rules prohibiting income tax returns in a currency other than the Luxembourg franc, the tax authorities conclude from the law of 20 December 1848, which imposes the use of the Luxembourg franc for official documents, that the tax base must be expressed in national currency.

10. Netherlands: obstacle

- interpretation of 1980 Decree on product prices

The tax base and the tax payable are always expressed in guilders since the prices of goods and services are so expressed.

11. Portugal: obstacle

- Law 1368 of 21 September 1922

If the price of goods is expressed in foreign currency it must be translated at the average exchange rate for the preceding quarter pursuant to law 1368 of 21 September 1922.

12. United Kingdom: obstacle

- case-law

The 1983 VAT Act does not refer explicitly to the currency for determining the tax base; it concerns the payment of the tax. Court judgments have established that the tax base should be expressed in sterling.

2. Payment of indirect tax (VAT)

1. Belgium: obstacle

- Official practice

This matter is governed by Royal Decree 24 of 23 October 1970 on the payment of VAT, which does not mention the currency of payment. However, it does require payment on the basis of forms issued by the authorities, using Belgian francs.

2. Denmark: obstacle

- practice

There is no legal provision imposing payment in kroner. However, in practice it is impossible to express the tax in foreign currency, which means that the tax must also be paid in kroner.

3. Germany: obstacle

- Article 37 et seq. of the Decree concerning taxes

Indirect taxes must be paid in marks by virtue of the principle of nominal value.

4. Greece: obstacle

- Article 6 of law 5422/1932

Indirect taxes are to be paid in drachmas.

5. Spain: obstacle

- Law No 30/1985 on VAT, Article 18.10

When the consideration for a transaction is defined in foreign currency, the value of the consideration in national currency is to be determined by applying the selling exchange rate quoted by the Banco de España for the day on which the tax falls due.

6. France: some possibilities

Like the determination of the tax base, payment may be made in foreign currency in the context of international transactions.

7. Ireland: obstacle

- Practice

As with direct taxes, although not prohibited by law, it is difficult to see how indirect taxes could be paid in any other than the national currency.

8. Italy: no obstacle

However, as prices of goods and services are always expressed in lire, indirect taxes are in practice due in lire.

9. Luxembourg: obstacle

- Practice and interpretation of law

Taxes are payable solely in Luxembourg francs.

10. Netherlands: obstacle

- Article 11 of the General Tax Act; Article 53 and 54 of the Personal income tax Act; Article 22 of the Corporation tax Act

Indirect taxes are payable only in guilders, except for capital tax, which may be determined and settled in the currency in which the capital is denominated.

11. Portugal: obstacle

- Interpretation of Decree-Law 13/9

Like direct taxes, indirect taxes are payable in national currency.

12. United Kingdom: obstacle

- Case-law

By virtue of court judgments and of the VAT Act of 1983, it may be concluded that the tax will always be paid in sterling.

B. Direct taxation

Direct taxes are taxes imposed on a given taxpayer on the basis of his personal taxable capacity; they are collected by means of assessment books and borne by the person legally liable to pay. The most usual forms of direct tax are personal income tax, corporation tax and tax on commercial companies.

1. Determination of the tax base

1. Belgium: obstacle

Although the law of 12 July 1991 stipulates that public and official documents may be expressed in ecus, there is still an obstacle, since Article 208 of the Income Tax Code, and Article 16 of the coordinated law of 26 February 1954 stipulate that taxable income must be determined in Belgian francs.

2. Denmark: obstacle

- practice

All the provisions concerning direct taxation assume that income will be declared in kroner. Moreover, all the functions for checking income statements include systems of deduction, depreciation, etc. that are drawn up in kroner. All this makes the use of the ecu under the present system impossible.

3. Germany: obstacle

- Articles 37 et seq. of the decree relating to taxes;
- Paragraph 2 of the Law relating to income taxes;
- Article 2 of the Law on wealth tax;

Tax relations as governed by Articles 37 et seq. of the Decree relating to taxes are subject to the principle of nominal value expressed in marks. The tax base must therefore always be expressed in marks. Paragraph 2 of the law relating to income tax provides in the second indent that taxable income must be established in marks. For the wealth tax, the basis of assessment is total wealth, which must be evaluated in marks pursuant to Article 2 of the law on wealth tax.

4. Greece: obstacle with exceptions

- Article 43 of Law 2190/1920
- Article 41 of Decree-Law 99/1977
- Article 19-37 of Law 1249/1982

Personal incomes must be declared in drachmas, pursuant to Article 43(8) of Law 2190/1920 and to Article 41(6) of Decree-Law 99/1977.

The same applies to corporate income. If certain income or expenditure items have been realised or incurred in foreign currency, the rate of translation applied is that at which the company acquired or disposed of the foreign currency. Certain exceptions are granted for shipowners. The basis of assessment for the tax on real estate is also expressed in drachmas, by virtue of Article 19-37 of Law 1249/1982.

5. Spain: obstacle

- Article 16 of Law 6/1978 on corporation tax
- Articles 51 and 99.1 of the Tax Regulation
- Royal Order of 24 June 1870

There is a legal obstacle affecting all arrangements concerning taxation: the Royal Order of 1870, which imposes that all public and official documents must be denominated in pesetas. As there is no exception for the presentation of accounts, (Article 16 of Law 61/1978 on corporation tax), income statements must be in pesetas. Moreover, the tax regulation establishes a direct requirement to present accounts in pesetas since it refers to the arrangements for translating foreign currency in the books (Articles 51 and 99.1). The same rules apply to personal income tax and wealth tax.

6. France: no obstacle

7. Ireland: indirect obstacles

In practice, the authorities would not accept documents in foreign currency.

There are no explicit provisions prohibiting the declaration of income to the tax authorities in ecus, but the thresholds and allowances are laid down in Irish pounds; moreover, it is specified that income in foreign currency must be translated for the purpose of calculating the tax base. Translation is carried out at the rate of exchange obtaining on the day the income accrued.

8. Italy: obstacle

- Article 9 of Presidential Decree 917 of 22 December 1986

In order to calculate the tax base, income and costs denominated in foreign currency must be translated into lire at the official rate obtaining on the day the income accrued or the cost was incurred.

9. Luxembourg: indirect obstacle: interpretation of the following provisions:

- Laws of 20 December 1848 and 15 March 1979
- Decision of Direct Tax department of 10 February 1977

There are no laws or regulations prohibiting income statements by personal income tax payers and corporations in currencies other than the Luxembourg franc. However, the tax department has implicitly concluded from the Laws of 20 December 1848 and 15 March 1979 that returns must be made in Luxembourg francs; these laws concern references to Luxembourg francs in public and administrative documents, and the status of the franc as legal tender. If the taxpayer keeps accounts in ecus, expenditure and costs are recorded in ecus and the accounts and balance-sheet are translated into Luxembourg francs at the rate obtaining on 31 December. This results from administrative practices that have developed in collaboration with the occupations concerned (Decision of the Direct Tax department of 10 February 1977).

10. Netherlands: legally authorized, but practical obstacle

Under Article 4 of the 1964 Law on personal income tax, income is expressed as an amount that is not necessarily denominated in Dutch guilders. However, it would seem that in practice, the tax authorities do not accept statements in currencies other than the guilder.

Some tax inspectors have accepted returns from Dutch firms in other currencies on a case-by-case basis, however. This results from the possibility provided by company law, (Article 362 of Book II of the Civil Code), which allows the commercial accounts of a company to be expressed, in certain circumstances, in a currency other than the guilder. If cash journals are kept in foreign currency, the tax return may also be made in that currency, with amounts subsequently translated into guilders.

11. Portugal: obstacle

- Article 22 of the personal income tax code

The basis for direct taxes must be denominated in national currency. Income in ecus must be translated into escudos at the rate of exchange obtaining on the day when the payments were carried out, or when the amounts became available to the taxpayer (Article 22 of the personal income tax code). For companies, accounting rules require translation at the rate obtaining on the day the amounts were entered in the accounts.

12. United Kingdom: obstacle

- practice and case-law

The tax base is always denominated in sterling. When income and expenditure are in ecus, the amounts must be translated into sterling at the rate of exchange obtaining on the date when the payment is recorded in the accounts. This practice is based on official accounting standards and case-law.

## 2. Determination of tax payable

In the Member States where there are obstacles to the use of the ecu to determine the tax base, it is clearly impossible to express the tax payable in ecus. In those countries, once laws or rules have been amended to allow the tax base to be denominated in ecus, provisions specifically prohibiting the use of the ecu to calculate tax payable will also have to be changed.

In Denmark and Ireland, although there is no direct obstacle to expressing the tax base in ecus, the practical impossibility of doing so means that the ecu cannot be used to determine the tax payable.

In the United Kingdom, a rate of taxation is applied to a taxable amount in sterling, which means that the tax will also be expressed in sterling.

In Luxembourg, if the taxable amount could be expressed in ecus, it would also be necessary to amend Article 2 of the Law of 20 December 1848 and Article 1 of the law of 15 March 1979 providing that official and public documents should be denominated in Luxembourg francs.

In France and the Netherlands, the tax payable can be expressed in ecus to the extent that the tax base is expressed in ecus.

## 3. Settlement of tax

### 1. Belgium: obstacle

- practice and Law of 23 December 1988

None of the provisions governing the payment of tax mentions the use of Belgian francs. However, the tax authorities draw up assessment books in francs. Although the Law of 12 July 1991 provides that public and official documents may be expressed in ecus, settlement in ecus would come up against the provisions of the law of 23 December 1988 on legal tender and discharge of liability: there is no reason to suppose that the tax authorities would accept payment in ecus.

### 2. Denmark: indirect obstacle

- practice and law of 21 December 1988

Although there is no legal obstacle to the use of the ecu, tax payments in Denmark can be made only in kroner in view of official practice and tax administration arrangements. The question of legal tender may arise in connection with the law of 21 December 1988 if the tax authorities do not accept payment in foreign currency.

3. Germany: obstacle

- Article 37 et seq. of the Decree concerning taxes

Direct taxes must be settled in marks, pursuant to the principle of nominal value given in Article 37 et seq. of the Order relating to taxes.

4. Greece: obstacle

- Article 2 of Law 362/1945

Income tax (Article 2 of Law 362/1945) must be paid in drachmas, as must wealth tax. There is an exception for the payment of income tax by shipowners.

5. Spain: obstacle

- Reglamento General de Recaudación

This general regulation, applicable from 1 May 1991, stipulates that taxes must be paid in legal tender, or by any other means authorized by the Ministry of Finance. To date there has been nothing to authorize payment in any currency other than the legal tender, i.e., the peseta.

6. France: no obstacle

Extension of Article 14 of the Law n° 92-666 of 16th July 1992 ought to permit this, but implies agreement of the fiscal authorities. A general regulation would clarify the situation.

7. Ireland: obstacle

- practice

There is no legal obstacle to the use of foreign currency for the payment of tax debts (although the tax authorities may require payment in legal tender), but as it is practically impossible to define the tax base and the tax payable in foreign currency, payment in ecus would be extremely difficult.

8. Italy: obstacle

- Article 9 of the Decree of 22 December 1986

As the tax payable is denominated in lire (Article 9 of the Decree of 22 December 1986), payment must also be in lire.

9. Luxembourg: obstacle

- practice, and interpretation of the Law of 20 December 1848

Although there are no laws or administrative regulations prohibiting income statements or the determination of the taxable amount in a currency other than the Luxembourg franc government departments conclude from the laws governing references to the franc in official and public documents, (Law of 20 December 1848), and on the status of the Luxembourg franc as legal tender, that the use of the franc is compulsory for purposes of taxation, including the payment of tax.

10. Netherlands: obstacle

- Article 11 of the General Tax Act; Articles 53 and 54 of the Personal Income Tax Act; Article 22 of the Corporation Tax Act

In all cases, taxes must be paid in guilders.

11. Portugal: obstacle

- Interpretation of Decree-law 13/90

Direct taxes must be paid in escudos. This results from Decree-law 13/90, which assimilates foreign currency transactions between residents to exchange operations, and subjects them to authorization by the Bank of Portugal.

12. United Kingdom: obstacle

- Income and Corporation Tax Act 1988

Legislation in force prohibits the payment of taxes in a currency other than sterling.

C. Customs

Customs are mainly governed by Community rules. In general, Member States merely regulate specific points or arrangements for application.

Although the Community rules do not explicitly prevent the use of the ecu for customs purposes, they imply the use of national currency by providing a rate of exchange for the translation of amounts.

Value for customs purposes is calculated in the Member States in national currency and settlement is also in national currency. Similarly, duty-free allowances are also denominated in national currency.

1. Value for customs purposes: obstacle

- Article 9 of Regulation (EEC) No 1224/80 of 28 May 1980

Article 9 provides that "where factors used to determine the value for customs purposes of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that duly published by the competent authorities of the Member State concerned".

Greece: further obstacle

- Article 11 of Law 5422/1932

It is forbidden to stipulate obligations in foreign currency, which makes it impossible to determine value for customs purposes in ecus. This obstacle is not specific to customs questions.

2. Payment of customs duties: obstacle

- legal tender
- Regulation (EEC) 1224/80

In all the countries, customs duties are settled in national currency. This is partly because of rules on legal tender, and partly because of Council Regulation 1224/80 of 28 May 1980, which provides for a rate of conversion to be applied when the items serving to determine the value for customs purposes are expressed in ecus.

Moreover, the law in several Member States provides for the payment of customs duties in national currency. When there is a reference to Community law, the introduction of the ecu into Community legislation would not raise any problem.

1. Belgium: no specific obstacle

Article 2 of the Royal Decree of 18 July 1977 coordinating the general provisions on customs and excise refers to Community law.

2. Denmark: obstacle

- Customs Act of 14 October 1988 No 610

This act stipulates that the currency of account is the krone.

3. Germany: derived obstacle

- Paragraph 2 of Article 40 of the Criminal Code

German law refers back to Community law, which provides that the value for customs purposes should be translated into national currency. Moreover, fines are denominated in marks pursuant to paragraph 2 of Article 40 of the Criminal Code.

4. Greece: obstacle

- Article 11 of Law 5422/1932 (see above, 1. value for customs purposes)

5. Spain: obstacle

- Article 11.2 of the Reglamento General de Recaudación

Tax debts must always be settled in pesetas.

6. France: no obstacle

The legislation refers to Community law.

7. Ireland: no obstacle

The legislation refers to Community law.

8. Italy: obstacle

- Presidential Decree 43 of 23 January 1973: implementing legislation

These provisions require payment in lire.

9. Luxembourg: no specific obstacle

Article 2 of the Belgian Royal Decree of 18 July 1977 coordinating the general provisions on customs and excise refers to Community law.

10. Netherlands: obstacle

- General Law on customs and excise 1961

The General law on customs and excise 1961 imposes the settlement of customs duties in guilders, as well as that of fines, interest and costs of collecting taxes.

11. Portugal: indirect obstacle

- Exchange Regulations, Article 5.2.d and Article 11 of Decree-law 13/90

Under exchange regulations, transactions between residents in ecus must be authorized by the Bank of Portugal, which makes it impossible for the moment to pay customs duties in ecus.

As in Greece, this obstacle is not specific to customs questions.

12. United Kingdom: no obstacle

Payment is always made in sterling, pursuant to Community rules.

## XII. INSURANCE

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### 1. Company capital

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: no obstacle

4. Greece: no obstacle

5. Spain: obstacle

- Article 10 of Law 33/84 of 2 August 1984

This law lays down a minimum capital in pesetas.

6. France: no obstacle

Article 14 of the Law n° 92-666 of 16th July 1992 ought to cancel the effect of Articles R 322-5 and R 322-6 of the Insurance Code, which envisages that the company capital must be at least equal to a minimum amount expressed in French francs.

7. Ireland: obstacle

- Section 33 of Insurance Law 3/1989

This law sets a minimum of IRL 500 000 for the capital of companies wishing to engage in insurance business.

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: no obstacle

12. United Kingdom: no obstacle

### 2. Technical reserves

1. Belgium: obstacle

- Articles 11 to 13 of the Royal Decree of 12 March 1976

These provisions refer to a system of monitoring establishing reserve ratios in Belgian francs.

2. Denmark: obstacle

- Law No 407 of 6 December 1987

Reserves and solvency ratios must be in kroner.

3. Germany: obstacle

- Article 53 C.2 of the Versicherungsaufsichtsgesetz (VAG)

This provision prohibits the constitution of statutory reserves in ecus, and requires minimum reserves in national currency.

4. Greece: no obstacle

5. Spain: obstacle

- Law 33/84 of 2 August 1984

Minimum amounts of guarantees are set only in pesetas.

6. France: no obstacle

- see Company capital

7. Ireland: derived obstacle

- see Company capital

8. Italy: obstacle

- Article 27 B of Presidential Decree 449 of 13 February 1959

Statutory reserves must be in national currency.

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: obstacle

- Decree 188/91 of 17 May 1991

Financial guarantees must be expressed in escudos.

12. United Kingdom: no obstacle

3. Premiums

1. Belgium: obstacle

- Article 9 of the Decree of 15 June 1945

Requires the payment of premiums in Belgian francs.

2. Denmark: no obstacle

3. Germany: obstacle

- Articles 11 and 12, VAG

- Article 8 of the law on compulsory insurance

The basis for the calculation of premiums is officially determined in marks.

4. Greece: obstacle

- Article 11(4) of Law 5422/1932

This provision prohibits foreign currency insurance policies.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: obstacle

- Article 1 of Decree 431/78

Clauses in the contracts of insurance companies operating in Portugal must be denominated exclusively in escudos.

12. United Kingdom: no obstacle

4. Evaluation of claims

1. Belgium: no obstacle

2. Denmark: no obstacle

3. Germany: obstacle

- Articles 11 and 12, VAG

- Article 8 of the Law on compulsory insurance (see Premiums)

The basis for the calculation of premiums is officially determined in marks.

4. Greece: partial obstacle

- Article 10(4) of Law 489/1976

For motor vehicle insurance, claims may be determined in ecus if the party in receipt of compensation is non-resident.

5. Spain: no obstacle

6. France: no obstacle

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: no obstacle

10. Netherlands: no obstacle

11. Portugal: obstacle

- Article 1 of Decree 431/78 of 27 December 1978

All clauses in contracts must be in escudos.

12. United Kingdom: no obstacle

XIII. ACTIVITIES OF THE PUBLIC SECTOR

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1. State aid

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: indirect obstacle

State aid from the Federal Budget denominated in marks is paid in national currency.

4. Greece: obstacle

- Law 1892/1990

State aid to the private sector is governed by the above law, which stipulates that the aid shall always be paid in drachmas.

5. Spain: obstacle

- Decree of 24 June 1870

As state aid is granted by means of an official document, it must always be denominated in pesetas.

6. France: no obstacle
7. Ireland: no obstacle
8. Italy: no obstacle
9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: no obstacle
12. United Kingdom: no obstacle

2. Government borrowing

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: no obstacle
4. Greece: no obstacle
5. Spain: no obstacle

6. France: no obstacle
7. Ireland: no obstacle
8. Italy: no obstacle
9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: obstacle

- Decree-Law No 327 of 23 September 1988

There is no general legal framework for the issuing of government securities denominated in ecus or in foreign currency. For the only bond issue ever floated in ecus, it was agreed that interest and redemption payments would be in escudos. As all ecu transactions are considered foreign exchange operations, they are subject to authorization by the Bank of Portugal.

12. United Kingdom: no obstacle

3. Financing through borrowing by federal bodies and local authorities

1. Belgium: no obstacle
2. Denmark: no obstacle
3. Germany: no obstacle
4. Greece: no obstacle
5. Spain: no obstacle
6. France: no obstacle
7. Ireland: no obstacle
8. Italy: no obstacle
9. Luxembourg: no obstacle
10. Netherlands: no obstacle
11. Portugal: obstacle

See case 2: Government borrowing

12. United Kingdom: no obstacle

**4. Public procurement**

This covers official contracts by local authorities or public institutions for works, supplies or services under conditions laid down by general rules.

**1. Belgium: obstacle**

- Article 22 of the Royal Decree of 22 April 1977

Prices quoted in a bid for a public contract must be in Belgian francs.

**2. Denmark: practical obstacle**

There is no obstacle in law, but in practice the currency of payment is normally the krone.

**3. Germany: obstacle**

The Bundesbank has given no authorization to enable financial relations between the authorities and successful tenderers to be denominated in ecus. However, if the contract involved cross-border payments, it would be possible to denominate it in ecus.

**4. Greece: partial obstacle**

- Article 11(2) of Law 5422/1932

- Article 4(1) of Law 362/1945

In the framework of contracts with Greek companies, the rules require that obligations should always be denominated in drachmas. However, the use of the ecu in external contracts (i.e., contracts with companies whose headquarters are not in Greece) seems possible.

**5. Spain: indirect obstacle**

- Royal decree of 24 June 1870

No specific obstacle, but the Royal Decree of 24 June 1870 establishes the peseta as the only currency unit for official documents.

**6. France: partial obstacle**

If the authorities decide, application of article 14 of the Law n° 92-666 of 16th July 1992 ought to cancel the effect of Article 168bis of the Public Procurement Code, which requires that public procurement contracts should be denominated in French francs.

However, the circular of 27 June 1972 (amended on 2 April 1974) lays down rules to be applied for price changes due to exchange rate fluctuations; these rules allow the use of foreign currency when it is impossible to denominate the contract in French francs.

7. Ireland: no obstacle

8. Italy: no obstacle

9. Luxembourg: obstacles

- Article 29 of the Grand-Ducal Regulation of 6 November 1974
- Grand-Ducal Regulation of 14 June 1974
- Articles 36 and 38 of the Law of 27 July 1936

The Grand-Ducal Regulation of 6 November 1974 provides that the prices in the bid must be given in Luxembourg francs; that of 14 June 1974 provides that the unit prices in the bid must be determined in Luxembourg francs in contracts signed by municipal authorities.

Moreover, Articles 36 and 38 of the Law of 27 July 1936 give minimum and maximum amounts, in Luxembourg francs, for public invitations to tender.

10. Netherlands: no obstacle

11. Portugal: indirect and practical obstacles

- exchange controls

For residents there are no legal obstacles (Article 558 of the Civil Code provides for the use of foreign currency), but there are practical obstacles: residents may not have bank accounts abroad and any foreign currency received from non-residents must be converted into escudos through an approved institution. For non-residents there are no legal obstacles but the use of the ecu seems difficult in practice because of exchange control regulations.

12. United Kingdom: practical obstacle

There is no obstacle, but in practice the currency of payment will usually be sterling.

**ANNEX III**

**National legal provisions,  
by country**

LEGAL PROVISIONS

Belgium

Articles 2 and 37 Royal Decree of 8 October 1976	VII.3:	remuneration of shareholders
Article 2 Royal Decree of 8 October 1976	IX.1: IX.4:	own accounts notification of accounts to partners
Article 37 Royal Decree of 8 October 1976	IX.3:	publication of accounts
Articles 4 and 5 Law of 12 May 1965	X.2:	payment of wages and salaries
Article 27, VAT Code  Royal Decree 24 of 23 October 1970	XI.A.1:  XI.A.2:	indirect taxation, determination of the tax base and the tax payable  payment of indirect tax
Article 208 of the Income Tax Code Article 16 of the coordinated laws of 26 February 1954  Law of 23 December 1988	XI.B.1:   XI.B.3:	direct taxation, determination of the tax base  direct taxation, payment of tax
Article 2 Royal Decree of 18 July 1977, reference to Community law	XI.C:	customs
Articles 11-13 Royal Decree of 12 March 1976	XII.2:	insurance, technical reserves
Article 9 Decree of 15 June 1945	XII.3:	insurance, payment of premiums
Article 22	XIII.4:	public procurement

Denmark

Law 306 of 16 May 1990 and  
Law 740 of 30 November 1989

III.1: prudential ratios and  
compulsory reserves

Danish Companies Act No 434  
of 20 June 1968

VII.2: constitution of company  
capital

VIII.1: admission of securities  
to a stock exchange

Customs Act of 14 October 1988  
No 610

XI.C: customs

Germany

Article 3 Currency Act of 20 June 1948	I: legal status of the ecu II.1: cheques II.3: bills of exchange II.4: promissory notes II.5: bearer notes V.2: ecu as currency of settlement
Articles 21 and 22 Banking Act :	II.6: savings accounts
Par. 688 Civil Code	VI.1: formal notice and default interest
Articles 5 and 8 Companies Act	VII.1: constitution of company capital
Article 6 Companies Act	VIII.1: admission of securities to a stock exchange
Article 244 Commercial Code	VII.1: constitution of company capital VII.3: remuneration of shareholders IX.1: own accounts IX.2: consolidated accounts IX.3: publication of accounts
Article 174 Companies Act	VII.3: remuneration of shareholders IX.4: notification of accounts to partners
Article 2 Stock Exchange Act	VIII.2: quotation of securities
Articles 37 <u>et seq.</u> Decree concerning taxes	XI.A2: payment of indirect taxes XI.B.1: direct taxation, determination of the tax base XI.B.3: direct taxation, payment of tax

Paragraph 2 of the law on income tax	XI.B.1: Direct taxation, determination of the tax base
Article 2 of the law on wealth tax	XI.B.1: Determination of the tax base
Article 40(2) of the Criminal Code	XI.C.B.2: payment of customs duties
Article 53.C.2 Private Insurance Companies Act (VAG)	XII.2: insurance, technical reserves
Articles 11 and 12, VAG	XII.3: insurance, payment of premiums XII.4: insurance, evaluation of claims
Article 8, Law on compulsory insurance	XII.3: insurance, payment of premiums

Greece

Article 5(3) Law 362 of 1945	II.1:	cheques
Article 1 Law 33 of 1936	II.1:	cheques
	II.2:	bills of exchange
	II.3:	promissory notes
Decisions 1946/11/16.4.68 1537/9/19.8.69 279/11/15.7.80 281/4/1.8.80 of the Monetary Committee	II.6:	personal accounts
Decision No 1554/15.6.89 of the Governor of the Bank of Greece	II.8:	number of accounts
Decision No 187/1 of 19 October 1978 of the Subcommittee on Credit of the Monetary Committee	II.10:	company borrowing
Article 11, Law 5422 of 1932 Article 4, Law 362 of 1945	II.11:	bonds issued by firms
	IV.1:	price setting
	IV.2:	publication of prices
	VII.1:	constitution of company capital
	VII.2:	increases and decreases in capital
	VIII.3:	unit trusts
	X.1:	definition of remuneration
	X.2:	payment of wages and salaries
	XIII.4:	public procurement
Article 4 Law 362 of 1945	V.1:	accounting currency
	VI.3:	proceedings
Article 11 Law 5422 of 1932	V.2:	settlement currency
	XI.A:	tax base
	XI.C:	customs 1. customs valuation 2. payment of duties
Article 11 Law 1059 of 1971	VI.2:	provisional and precautionary measures
Article 6 Law 5422 of 1932	VI.3:	proceedings
	XI.A.2:	payment of direct taxes

Article 41	VII.3: remuneration of
Decree-Law 99 of 1977	shareholders
Article 43, 2190 of 1920	IX.1: own accounts
	IX.2: consolidated accounts
	XI.B.1: basis for direct
	taxation
Article 41	IX.3: publication of accounts
Decree-Law 99 of 1977	IX.4: notification of accounts
	to partners
Articles 19-37	XI.B.1: basis for direct
Law 1249 of 1982	taxation
Article 2	XI.B.3: payment of direct tax
Law 362 of 1945	
Article 10	XII.4: evaluation of claims
Law 489 of 1976	
Law 1892 of 1990	XIII.1: state aid

Spain

Resolution of 22 June 1990	II.1: cheques II.4: bills payable to bearer
Article 291 Law on limited companies	II.11: bonds issued by firms
Royal Decree of 24 June 1870	IV.1: price setting XIII.1: public aid XIII.4: public procurement
Article 4 Law 1564 of 1989	VII.1: constitution of capital
Article 3 Law of 17 July 1953	VII.2: increases and decreases in capital
Article 29.2 Commercial Code	VII.3: remuneration of shareholders IX.1: own accounts IX.3: publication of accounts
Rule 8 Law of 5 April 1989	VIII.2: quotation of securities
Article 44.7 Commercial Code	IX.2: consolidated accounts
Article 212 Law on limited companies	IX.4: Notification of accounts to partners
Law 30 of 1985 on VAT	XI.A.1: indirect tax base XI.A.2: payment of indirect tax
Article 16 Law 6 of 1978 Articles 51 and 99.1 Regulation on taxes	XI.B.1: direct tax base
Reglamento general de Recaudación of 1 May 1991	XI.B.3: payment of direct tax XI.C: customs 2. payment of duties
Law 33 of 2 August 1984	XII.1: capital of insurance companies XII.2: insurance, technical reserves

France

Banking Supervisory Committee Regulation of 24 November 1986	III.1:	prudential ratios
Decree of 3 December 1987	IV.2:	advertising of prices
Law 1162 of 30 December 1981 Law of 24 July 1966, amended by the Law of 1 March 1984	VII.1:	constitution of company capital
	VII.2:	increases and decreases in capital
	VIII.1:	admission of securities to a stock exchange
	VIII.2:	quotation of securities
Article 245.1, Decree of 23 March 1967 Article 16 Commercial Code	VII.3:	remuneration of shareholders
Article 16 Commercial Code	IX.1:	own accounts
	IX.2:	consolidated accounts
	IX.3:	publication of accounts
	IX.4:	notification of accounts
Article 357.7 Law of 24 July 1966	IX.2:	consolidated accounts
Articles 322-5 and 322-6 Insurance code	XII.1:	capital of insurance companies
	XII.2:	insurance: technical reserves

Remark: The Law on 'Plans d'Epargne en Actions' (PEA) n° 92-666 of 16th July 1992 envisages in its article 4 that: 'Obligations can be denominated and paid in ecu'. The interpretation of the consequences of this law is delicate, since it does not call into question legal tender issues regarding the French franc and introduces the legal possibility of using the ecu in relations between residents. In order that in all contracts, except express agreement of two parties in using the ecu, restrictive legislation would remain in force.

In relations between a resident and public authorities (public markets; taxation) an ad hoc regulation would facilitate positive interpretation of this law which present practice seems to confirm.

Ireland

Section 25 Control Bank Act 1989	V.2:	settlement currency
Section 9 Jurisdiction of Courts and Enforcement of Judgments Act	VI.2:	precautionary and provisional measures
Companies Acts 1963-1990	VII.1:	constitution of company capital
	VII.2:	increases and decreases in capital
Section 6 Exchange Control Act 1954	X.2:	payment of wages and salaries
Section 23 Insurance Law 3/1989	XII.1:	capital of insurance
	XII.2:	insurance: technical reserves

Italy

Article 39 Royal Decree 21-XII-1933	II.1:	Financial and monetary instruments - cheques
Article 1, No 2 Decree of 14-XII-1933	II.2:	bills of exchange
Article 163, p. 3 Civil Proceedings Code	VI.3:	legal proceedings
Articles 2327-2474 Civil Code	VII.1:	constitution of company capital
	VII.2:	increases and decreases in capital
Articles 2433 and 2424/2425 Civil Code	IX.1:	own accounts
	IX.2:	consolidated accounts
	IX.3:	publication of accounts
Article 2424 Civil Code	IX.4:	notification of accounts to partners
Article 9 Presidential Decree No 917 of 22 December 1986	XI.B.1:	Direct tax: determination of the tax base
	XI.B.3:	payment of tax
Presidential Decree No 43 of 23 January 1973	XI.C.2:	payment of customs duties
Article 27B Presidential Decree No 449 13 February 1959	XII.2:	insurance: technical reserves

Luxembourg

Article 5 Grand-ducal Regulation of 8 April 1986	IV.2: advertising and display of prices
Article 551 Civil Proceedings Code	VI.4(a): enforcement of national judgments VI.4(b): enforcement of foreign judgments
Article 2, Law of 20.12.1848 Article 1, Law of 15.3.1979	IX.1: own accounts XI.B.1: determination of direct tax base
Article 1, Law of 27.5.1975 Law of 12.3.1973 Law of 22.6.1963 Law of 12.7.1895	X.1: definition of remuneration X.2: payment of wages and salaries X.2: payment of wages and salaries
Law of 20.12.1948	XI.A.1: determination of the basis for taxation and tax payable: indirect taxation
Article 2 Belgian Royal Decree of 18.7.1977	XI.C.2: payment of customs duties
Article 29, Regulation of 6.11.1974 Regulation of 14.6.1974 Articles 36 and 38, Law of 27.7.1936	XIII.4: public procurement

Netherlands

Decree of 1980 on prices of products	IV.2: advertising and display of prices XI.A.1: determination of tax base and tax payable: indirect taxation
Articles 67 and 178 Civil Code	VII.1: constitution of company capital VII.2: increases and decreases of capital
Article 362(7) Book II of the Civil Code	IX.1: own accounts IX.2: consolidated accounts IX.3: publication of accounts IX.4: notification of accounts to partners
Article 1638h Civil Code	X.1: definition of remuneration X.2: payment of wages and salaries
Article 11, General tax act Articles 53 and 54, Personal income tax Article 22, Corporation tax act	XI.A.2: payment of indirect tax XI.B.3: payment of direct tax
General Law of 1961 on customs and excise	XI.C.2: payment of customs duties

Portugal

Article 5.2.d Decree-Law 13/90	II.10:	financial and monetary instruments - company borrowing
Article 352.13 Companies Code	III.1:	bond issues by firms
Bank of Portugal instructions D-0919-1/01 and D-0919-2/01	III:	banking regulations
Decree-Law 13/90	IV.2:	advertising and display of prices
	X.2:	payment of wages and salaries
	XI.A.2:	payment of indirect taxes
	XI.B.3:	payment of direct taxes
	XI.C.2:	payment of customs duties
Article 4 Companies Code	VII.1:	constitution of company capital
	VII.2:	increases and decreases in capital
Article 5.2.1 Accounting system	VII.3:	remuneration of shareholders
	IX.1:	own accounts
	IX.2:	consolidated accounts
	IX.3:	publication of accounts
	IX.4:	notification of accounts to partners
Law 1368 of 21.9.1922	XI.A.1:	determination of tax base and tax payable: indirect taxation
Article 22 Personal Income Tax Code	XI.B.1:	determination of direct tax base
Decree 188/91 of 17 May 1991	XII.2:	insurance: technical reserves
Article 1 Decree 431/78	XII.3:	insurance: payment of premiums
	XII.4:	insurance: evaluation of claims
Decree-Law 327/88	XIII.2:	government borrowing
	XIII.3:	local authority borrowing

United Kingdom

VAT Act 1983

XI.A.2: payment of indirect tax

Income and corporation tax  
Act 1988.

XI.B.3: payment of direct tax