COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.10.1996
COM(96) 499 final

96/0249 (CNS)
96/0250 (CNS)

Communication to the European Parliament, the Council and
the European Monetary Institute

Secondary legislation for the introduction of the euro and some provisions relating to the introduction of the euro

Proposal for a

COUNCIL REGULATION (EC)

on some provisions relating to the introduction of the euro

Proposal for a

COUNCIL REGULATION (EC)

on the introduction of the euro

(presented by the Commission)

Secondary legislation
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(Communication to the European Parliament, the Council and the European Monetary Institute)

The European Council of December 1995 in Madrid adopted a scenario for the introduction of the single currency and asked for the technical preparatory work for a Council Regulation providing the legal framework for the use of the euro to be completed at the latest by the end of 1996. In this perspective the Commission herewith transmits two draft proposals for Council Regulations. The annexed draft Regulations have been prepared in compliance with the principles for such a framework as laid down under point 9 of the reference scenario.

The legal framework has been defined following intensive consultations with representatives from the private sector and has benefited from valuable input from the European Monetary Institute.

The consultations held by the Commission services have made it clear that the concrete preparations for the changeover to the single currency in the private as well as the public sector call for a timely clarification of the legal framework for the euro well in advance of the start of stage three of Economic and Monetary Union. For some provisions, especially on the continuity of contracts and rounding, the legal certainty required for timely preparations can only be achieved if they are adopted and if they enter into force long before the start of stage three.

Article 109 l (4), third sentence, which allows the adoption of "other measures necessary for the rapid introduction of ... the single currency", will only be available as a legal basis in early 1998, when it has been decided according to Article 109 j (4), which Member States fulfill the necessary conditions for the adoption of the single currency. Therefore, the Commission proposes, in accordance with the understanding reached at the informal Ecofin in Dublin in September 1996, to base those provisions for which there is an urgent need for legal certainty on Article 235 of the Treaty, and to adopt the other provisions of the legal framework on the basis of Article 109 l (4) of the Treaty.

The Commission suggests seeking political endorsement of the two draft Regulations at the meeting of the European Council in Dublin in December 1996.

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The following draft proposals are annexed to this Communication:

- Council Regulation on the introduction of the euro (Article 109 l (4) of the Treaty). The objective is to define monetary law provisions for the Member States without a derogation. The Regulation would enter into force on 1 January 1999. It provides for the substitution of the euro for the national currencies. During a transitional period ending on 31.12.2001 at the latest, the national currencies of participating Member States are redefined as sub-divisions of the euro. During this period the euro unit and the national currency units are legally equivalent. The draft Regulation includes rules for the use of the national currency unit and the euro in its own unit. It also determines rules for banknotes and coins denominated in the euro which will be put into circulation at the latest on 31.12.2001.

  The consultation of the European Central Bank is required according to Article 109 l (4) of the Treaty, but can be substituted according to Article 109 f (8) of the Treaty by the consultation of the European Monetary Institute. The consultation of the European Parliament is not formally required but highly desirable.

- Council Regulation on some provisions relating to the introduction of the euro (Article 235 of the Treaty). The purpose of this regulation is to lay down those provisions relating to the introduction of the euro where there exists an urgent need for legal certainty. The draft Regulation confirms that the introduction of the euro does not affect the continuity of contracts or other legal instruments. Moreover it is confirmed that from 1.1.1999 one ECU in its composition as a basket of component currencies will become one euro. Finally the draft determines the degree of accuracy at which conversion rates will be fixed on 1 January 1999 and establishes rounding rules for conversions between the euro and the national currency units.

  The European Parliament is to be consulted according to Article 235 of the Treaty. The European Monetary Institute is to be consulted according to Article 109 f (6) of the Treaty.

EXPLANATORY MEMORANDUM

1. INTRODUCTION - GENERAL CONSIDERATIONS

Principal objectives of the proposals

Now that preparations for EMU have turned to practical questions, operators have increasingly demanded that complete legal certainty on the use of the euro be established well in advance of the start of stage three of EMU.

The European Council of December 1995 in Madrid recognised this need for legal certainty, setting forth a scenario for the introduction of the single currency, and stipulating notably that a Council Regulation, whose technical preparatory work shall be completed at the latest by the end of 1996, will enter into force on 1st January 1999 and provide the legal framework for the use of the euro. The European Council also confirmed the principle of continuity of contracts and the conversion at a rate of one to one of references to the ECU basket by references to the euro.

The Commission is responding to the need for legal certainty by proposing legal provisions in this text that should make up the legal framework for the use of the euro.

The provisions are included in two separate draft Regulations for the following reason:

Article 109 l (4), third sentence, provides for the taking of "other measures necessary for the rapid introduction of ... the single currency". However, this Article will only be available as a legal basis in early 1998 when it has been decided according to Article 109 j (4) which Member States fulfil the necessary conditions for the adoption of the single currency. Therefore, those provisions for which it is urgent to establish legal certainty by having them adopted in the near future are based on Article 235 of the Treaty. The other provisions which define the monetary law of the participating Member States are based on Article 109 l (4) of the Treaty. By already proposing them at this stage, the Commission opens the possibility for a political agreement on them, such that their formal adoption in 1998 will be a mere formality.

The objectives of the draft Council Regulation on some provisions relating to the introduction of the euro are:

- to confirm that with effect from 1st January 1999 references to the ECU in contracts and other legal instruments are replaced by references to the euro at a rate of one euro for one ECU;

- to confirm the continuity of contracts which are denominated in national currencies and in ECU and which extend beyond 1st January 1999;
- to determine the degree of precision at which conversion rates will be irrevocably fixed on 1st January 1999;
- to establish rounding rules.

Moreover, by this draft Regulation the name "euro" is introduced into EC legislation. The reference to the decision by the European Council on the name is included in the recitals.

Among the noteworthy consequences of the draft Regulation are the following:

- confirmation and assurance for markets that contracts will remain unaffected by the introduction of the euro;
- affirmation of the rights and obligations deriving from contracts which are denominated in the basket ECU;
- facilitation of the technical preparation for the changeover to the euro, in particular in the field of information technology.

The draft Regulation on the introduction of the euro has the following main objectives:

- to determine the time-frame for the completion of the changeover to the euro;
- to substitute the euro for the national currencies with effect from 1st January 1999;
- to establish legally enforceable equivalence between the euro and the national currency units during the period when euro banknotes and coins are not yet in circulation;
- to ensure that during this transitional period private economic agents will be free to use the euro; but that at the same time they should not be obliged to do so;
- to establish rules relating to the circulation and protection of banknotes and coins.

This draft Regulation also provides economic agents with increased certainty about:

- the time-frame for the completion of the changeover;
- the scope for the use of the euro during the transitional period in its own denomination and in the form of national currency units;

- the exchange of banknotes and coins denominated in euro by national notes and coins at the end of the changeover process.

2. **COMMENTS ON THE ARTICLES OF COUNCIL REGULATION OF | | ON SOME PROVISIONS RELATING TO THE INTRODUCTION OF THE EURO**

Article 1

This Article provides definitions of various terms used in this draft regulation.

The term "legal instruments" is meant to cover all instruments which are of legal relevance and which refer to currencies, currency units or amounts of currency units. It also expressly includes payment instruments, like cheques, other than banknotes and coins.

The term " national currency units" defines the units of the currencies of the Member States without a derogation which are still in use in the transitional period.

The conversion rates can only be adopted on 1.1.1999, in accordance with Art. 109 l (4), first sentence of the Treaty (see Article 4).

Article 2

This Article has a declaratory value. It confirms the replacement of references to the ECU as a basket of component currencies as referred to in Art. 109g of the Treaty and as defined in Council Regulation (EC) No. 3320/94, by references to the euro at a rate of one to one.

This definition is unequivocally used in EC legislation. As for the use of the ECU in private law, a presumption is established that contracts which use the ECU without clearly defining it shall be assumed to refer to the ECU as defined by EC law. It may safely be assumed that in most cases the intention of parties to ECU contracts was to make reference to the official ECU even if this was not always properly reflected in the wording of the individual contract. The establishment of the assumption follows the approach taken in the Commission Recommendation 94/284/EC concerning the legal treatment of the ECU and of contracts denominated in ECU in view of the introduction of the single European currency. Such a presumption fully respects the freedom of contract in that it allows the parties to a contract to agree on something different, thus "destroying" the presumption.

This Article uses the name "euro" for the single currency. A reference to the decision of the European Council of Madrid on the name has been included in the recitals.

Paragraph 2 repeals Council Regulation (EC) No. 3320/94. This Regulation would in any case, because of the Treaty provisions and in particular Articles 109 g and 109 l (4), become ineffective at the start of Stage 3.

Article 3

This Article serves to confirm the continuity of legal instruments, notably of contracts. It has a declaratory purpose only. As EMU can neither be qualified as an unforeseeable event nor as a severe disruption of circumstances, the introduction of the euro does not justify invoking the principle of frustration or "Wegfall der Geschäftsgrundlage", or the "théorie de l'imprévision" or principles with similar effects. The principle of continuity was already underlined by the European Council of Madrid in the scenario for the changeover.

The "terms of a legal instrument" include, in particular, interest rates in financial contracts but also cover all other terms.

The provision applies to contracts denominated in currencies of participating Member States and in ECU, irrespective of whether they are set up under the law of participating or non-participating Member States.

The Article refers to the "introduction of the euro", a term used in Article 109 l (4) of the Treaty; it is broader than "substitution". The term includes the replacement of references to the ECU as referred to in Art. 2 of this Regulation by references to the euro.

The last sentence confirms that the generally accepted principle of freedom of contracts is preserved.

Article 4

This Article establishes rules on the conversion rates. According to the first sentence of Article 109 l (4) the rates themselves can only be adopted on 1.1.1999.

The first paragraph provides certainty about the category of rates to be fixed and about the number of significant figures; the latter expression means that a rate, when counted from the left and starting by the first non-zero figure, has six figures (not to be confused with the number of decimal points). The Council commits itself to fixing the rates with this degree of precision. The choice of six significant figures follows the standards of the EMS.

In order to avoid inaccuracies in conversions, the irrevocable fixing only includes the conversion rate between the euro and the national currency units. The bilateral rates between the national currency units will be derived from these conversion rates.

Paragraph 2 stipulates that economic agents must not round the conversion rates when making conversions.

Paragraph 3 bans the use of inverse rates because this would imply rounding of the rates and could result in significant inaccuracies due to the multiplicative effect of the rounding, notably if large currency amounts are involved.

Paragraph 4 provides a binding algorithm for conversions between national currency units, given that those bilateral rates will not, according to the definition of "conversion rates" in Article 1, be defined directly.

Article 5

This Article defines a number of rounding rules for conversions of monetary sums between euro and national currency units as well as between national currency units. Monetary sums in euro shall always be rounded to the nearest cent. Monetary sums in national currency units shall be rounded to the nearest sub-unit or to the nearest unit of the national currency unit. National practices are respected. This flexibility allows in particular for the continuation of practices in some countries by which monetary sums are rounded to units other than those referred to in the Article (for example, where sums are rounded to a multiple of the currency unit).

Article 6

This Article determines the entry into force. The Regulation will enter into force the day after its publication in the Official Journal. Article 2 will have effect only as from 1st January 1999.

3. COMMENTS ON THE ARTICLES OF THE COUNCIL REGULATION ON THE INTRODUCTION OF THE EURO

Article 1

The first Article defines the terms "participating Member States", "legal instruments", "conversion rates", "euro unit", "national currency units", "transitional period" and "organised markets".

The term "participating Member States" is used to describe the Member States without a derogation. Though it is understood that in principle all EU Member States participate in the third stage of EMU albeit under different rules, the term "participating Member States" is used in order to enhance the readability of the draft regulation. The enumeration of the participating Member States will facilitate the recognition of "lex monetae" in third countries.

The term "legal instruments" is meant to cover all instruments which are of legal relevance and which refer to currencies, currency units or amounts of currency units. It is notably meant to include all kinds of contracts, either written or oral, tacitly concluded contracts and contracts implied from the conduct of the parties.

According to Article 109 l (4) of the Treaty, the conversion rates can only be adopted on 1.1.1999. Rules for the adoption of the conversion rates have been adopted in Council Regulation [...] on some provisions relating to the introduction of the euro. To avoid problems of rounding, only conversion rates of one euro expressed in terms of each of the national currencies of the Member States will be defined. Bilateral rates will have to be derived from the euro rates; a binding algorithm for this purpose is determined in the said Council Regulation. No inverse rates of one national currency unit in terms of euro units will be defined.

During the transitional period there exist several units of the euro as the currency of the participating Member States: the "euro unit" and the "national currency units". The term "euro unit" is used to distinguish decimal expressions of the euro in units of the euro itself from non-decimal expressions of the euro in the national currency units. The "national currency units" refer to the currencies of the participating Member States, which were currencies in their own right before being substituted by the euro.

The end of the transitional period will have to be determined later.

The definition of "organised markets" refers to the Directive 93/22 EEC on the investment services in the securities field. It includes markets for the regular exchange, clearing and settlement of transferable securities, units in collective investment undertakings, money market instruments, financial-futures contracts, forward interest rate agreements, swaps, options on financial instruments and instruments of payment.

Article 2

By the first sentence and in combination with Article 17, as from 1st January 1999 the euro is introduced as the currency of the participating Member States. The reference to the Member States (and not to the Monetary Union) serves to make clear that the euro is the currency of each Member State. This should help to avoid ambiguity as to the continuity of contracts, in particular at the international level.

A distinction is made between the name of the currency (euro) and the unit of account (one euro) in which all currency amounts are to be measured. As agreed at the informal Ecofin meeting in Verona in April 1996, the euro is divided into one hundred "cent". As explained in the recitals, the definition of the name "cent" is not meant to prevent the tolerance of the use of variants of this name in common usage, without calling into question the principle that the name of the single currency and its sub-units can only be determined at Community level.

Article 3

By providing for the substitution of the former national currencies by the euro at the conversion rates, this Article establishes the "recurrent link" between each of the former currencies and the new currency. It therefore ensures the continuity of contracts and other legal instruments in accordance with the principle of nominalism. The substitution of the former national currencies of the participating Member States takes place on 1st January 1999. The transitional provisions defining the status and use of the national currency units do not affect this substitution in the legal sense.

Article 4

This Article determines the unit of account of the ESCB which is neither specified in the Treaty nor the ESCB Protocol.

It is to be noted that the present provision, as it only enters into force on 1st January 1999, does not define the unit of account for the period between the establishment of the ECB and the start of stage 3. If the decision were taken to use the basket ECU, which is the unit of account of the European Monetary Institute, the present draft Regulation would ensure that the unit of account would be the euro as from 1.1.1999; the present Article would then be declaratory.

Article 5

Article 5 limits the applicability of Articles 6-9 to the transitional period.

Article 6

Article 6 introduces the concept of a national currency unit which is defined in Article 1. By way of the first sentence of paragraph 1, further divisions of the single currency unit, the euro, (further to that of Article 2, which is permanent) are introduced temporarily. By this sentence, the EC legislator makes use of his competence to introduce as many divisions of the single currency as he likes, in any fraction of the single currency unit and under any name. This operation may involve conversion factors which are lower than 1. The national sub-divisions remain in force.

The Article opens the possibility to use the single currency not only under its own name, but also under the denominations and in the units of the former national currencies which become expressions of the euro.

The third sentence ensures that those provisions of the national monetary law which are compatible with the present Regulation continue to apply during the transitional period. This essentially concerns provisions which relate to banknotes and coins.

Paragraph 2 makes clear that it makes no difference to the legal value whether in a legal instrument the national currency unit or the euro unit itself is referred to. By virtue of this provision contracts denominated in either the euro unit or the national currency units are equally valid.

The same holds for legislative provisions and other legal instruments.

Article 7

This Article deals exclusively with legal instruments which were established before 1.1.1999. Without such a provision it would, for example, be uncertain whether a claim in a national currency on 31.12.1998 would have to be considered on 1.1.1999 as a euro claim expressed in the euro unit itself or a euro claim expressed in that national currency unit.

According to this Article, a contract imposing an obligation to pay, for example, 100 FF will on 1.1.1999 become an obligation to pay the corresponding amount of euros (this follows from Article 3), but denominated in 100 FF, which will be a sub-unit of the euro. It is only after the transitional period that references in legal instruments to national currency units are by virtue of Article 14 to be read as references to the euro unit (and thus as obligations to be fulfilled in the euro unit).

The Article maintains the status quo of denominations; it does not prevent parties to a contract from agreeing to change its denomination, or the legislator from changing the currency denomination in a law. Neither will it have any standstill effect on legislation in general.

Article 8

This Article strikes the balance between the principle of "no compulsion" and the principle of "no prohibition" as laid down in the reference scenario decided by the European Council of Madrid. The first paragraph stipulates that the denomination of a legal instrument - either the euro unit or the national currency unit - shall be respected. It ensures that the currency unit which is stipulated under the relevant legal instrument (e.g. a contract or a law) shall be the one to be used in the performance of all acts (statements of accounts, invoices, payments, etc.) to be carried out under that legal instrument. Thereby, paragraph 1 ensures that, notwithstanding the provisions of the following paragraphs, economic agents will only have to use the unit - either euro or national currency - to which they have agreed.

Likewise, paragraph 1 ensures that laws stipulating the use of one unit, e.g. for the publishing of accounts, shall be applied according to the denomination stated in them.

Paragraph 1 does not, of course, prevent a debtor, in cases where a cashless payment has not been explicitly agreed, from discharging a debt denominated in the euro unit by paying with banknotes or coins denominated in the national currency unit which is legal tender in the place of performance.

Paragraph 2 leaves it to the parties to agree on the use of a different denomination than that of the legal instrument underlying their contractual relationship.

The third paragraph serves to enhance the fungibility between the euro and the national currency units for payments by crediting an account. It gives the debtor the choice of paying his debt in the euro unit or the national currency unit which is stipulated in the contract. This provision also makes clear that a bank receiving a payment to the euro account is entitled to make the necessary conversion for crediting an account in the respective national currency unit, and vice versa, without asking for the consent of the beneficiary. The provision is limited to domestic payments in the euro or the respective national currency unit.

The fourth paragraph enables Member States to take measures to enhance the use of the euro unit in two specific cases, even if these measures may imply an obligation for certain economic agents to use the euro unit. The first indent covers public and private debt. Excluded from the application of this provision is non-securitized debt like bank accounts, loans, etc. The second indent covers organized markets as defined in Article 1.

By virtue of the fifth paragraph, the list of exceptions from the principle of no compulsion is closed. The drafting makes use of paragraph 12 of the reference scenario adopted by the European Council of Madrid, where it is said that the "time-frame (for the generalization of the use of the euro for public sector operations) will be laid down in Community legislation and might leave some freedom to individual Member States."

The sixth paragraph confirms for legislative provisions on netting, etc. that the euro unit and national currency units are to be considered as the same monetary unit.

Article 9

This Article confirms that national banknotes and coins remain legal tender in the transitional period. Their legal tender status is confined to the territory where they were legal tender before the start of the third stage. It ends at the latest six months after the end of the transitional period (see Article 15).

Article 10

This Article reflects the provisions of Article 105 a of the Treaty. The formulation "put into circulation" does not prejudge the decision of who will be the issuer of banknotes (the ECB or national central banks). The euro banknotes are the only ones which are legal tender in all participating Member States, in contrast to the national banknotes.

Article 11

This paragraph addresses the rules for coins. As the Treaty is silent about the legal tender status of coins, the Article gives such status to them. The limit to the liberatory power of coins is set to be 50 coins irrespective of the face-value of individual denominations. The Article does not address the rights of Member States with respect to the issuance of coins for numismatic or commemorative purposes.

Article 12

This Article provides for protection of banknotes and coins against counterfeiting and falsification. The provision refrains from setting standards directly, but obliges Member States to ensure adequate sanctions. This does not exclude common steps from being taken in the future, be it under the first or the third pillar of the Union.

Article 13

This Article enumerates a number of provisions which apply only as from the end of the transitional period, either for a limited period of time or for an indefinite period.

Article 14

After the end of the transitional period, the national currency units cease to exist. The Article confirms that from this date onwards, references in legal instruments which existed at the end of the transitional period to these currency units have to be read as references to the euro unit. This follows from Articles 2 and 3. The Article clarifies that a physical "redenomination" in the sense of a redrafting of legal instruments which still refer to the former national currency units is not necessary for its validity. There may, however, be other reasons which make such a physical redenomination desirable or even indispensible in certain cases. References to the national currency units in laws etc. will have to be formally adjusted within a reasonable time-span by the national legislator.

After the transitional period, the former national currency units can no longer validly be used for setting up contracts, etc. since any reference to a former national currency unit in a new contract would be a reference to a term which is no longer recognized by monetary law.

Article 15

This Article aims at facilitating the exchange of new banknotes and coins for old ones at the end of the transitional period. National notes and coins may continue to circulate as legal tender for six months at the most after the transitional period. In order to provide flexibility, a Member States may shorten this period according to the speed at which the changeover can be accomplished on its territory.

Article 16

This Article leaves to the Member States the competence to determine for how long after the transitional period they will continue to accept banknotes and coins in the national currency unit issued by them. Depending on national rules and practices, these periods may differ. Member States may choose to accept notes and coins in the national currency units for an indefinite period of time.

Proposal for a

Council Regulation on some provisions relating to

the introduction of the euro

(PRESENTED BY THE COMMISSION)

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Proposal for a Council Regulation [ ] on some provisions relating to the introduction of the euro

96/0249 (CNS)

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Monetary Institute,

(1) Whereas the European Council has confirmed at its meeting held in Madrid on 15/16 December 1995 that the third stage of Economic and Monetary Union will start on 1.1.1999 as laid down in Article 109 j (4) of the Treaty; whereas in accordance with Article 109 k of the Treaty the Member States which will adopt the euro as the single currency are the Member States without a derogation;

(2) Whereas it also decided that the name given to the European currency shall be the "euro"; whereas the specific name "euro" will be used instead of the generic term "ECU" used by the Treaty to refer to the European currency unit; whereas the euro as the currency of the Member States without a derogation will be divided into one hundred sub-units with the name "cent";

(3) Whereas a Council regulation, defining the legal framework for the use of the euro should be adopted on the basis of Article 109 l (4), third sentence of the Treaty as soon as the Member States without a derogation are known; whereas the Council when acting at the starting date of the third stage according to Article 109 l (4), first sentence of the Treaty, shall adopt the irrevocably fixed conversion rates;

(4) Whereas it is necessary for the smooth operation of the common market and the changeover to the single currency to provide legal certainty for market participants in all Member States on some provisions relating to the introduction of the euro well before the entry into the third stage;

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(5) Whereas Article 109 l (4), third sentence, which allows the taking by the Council, acting with the unanimity of Member States without a derogation, of "other measures necessary for the rapid introduction of ... the single currency" is only available as a legal basis when it has been decided, according to Article 109 j (4), which Member States fulfil the necessary conditions for the adoption of the single currency; whereas it is therefore necessary to use Article 235 as a legal basis for those provisions where there is an urgent need for legal certainty;

(6) Whereas the ECU as referred to in Article 109 g of the Treaty and as defined in Council Regulation (EC) No. 3320/94[1] will cease to be defined as a basket of component currencies on 1 January 1999 and the euro will become a currency in its own right; whereas the decision of the Council regarding the adoption of the conversion rates shall not by itself modify the external value of the ECU; whereas this means that one ECU in its composition as a basket of component currencies will become one euro; whereas Council Regulation (EC) No. 3320/94 therefore becomes obsolete and should be repealed; whereas for references in legal instruments to the ECU under private law, parties shall be presumed to have agreed to refer to the ECU as referred to in Article 109 g of the Treaty and as defined in Council Regulation (EC) No. 3320/94; whereas the provisions on continuity can only fulfil their objective to provide legal certainty to the markets if they enter into force as soon as possible;

(7) Whereas it is a generally accepted principle of law that the continuity of legal instruments is not affected by the introduction of a new currency; whereas the principle of freedom of contract has to be respected; whereas in order to reinforce legal certainty and clarity it is appropriate explicitly to confirm that the principle of continuity of legal instruments and in particular of contracts shall apply between the former national currencies and the euro and between the ECU as referred to in Article 109 g of the Treaty and as defined in Council Regulation (EC) No. 3320/94 and the euro; whereas this implies in particular that in the case of fixed interest rate instruments the introduction of the euro does not alter the nominal interest rate payable by the debtor;

(8) Whereas the explicit confirmation of the principle of continuity will also contribute to the recognition of continuity of contracts in the jurisdiction of third countries;

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[1] Council Regulation (EC) No 3320/94 of 22 December 1994 on the consolidation of the existing Community legislation on the definition of the ecu following the entry into force of the Treaty on European Union (OJ No L 350, 31.12.1994, p.27).

(9) Whereas the term "contract" used for the definition of legal instruments is meant to include inter alia written and oral contracts, tacitly concluded contracts and contracts implied from the conduct of the parties;

(10) Whereas the Council when acting according to Article 109 l (4), first sentence of the Treaty shall define the conversion rates of the euro in terms of each of the national currencies of the Member States without a derogation; whereas these conversion rates should be used for any conversion between the euro and the national currency units or between the national currency units; whereas for any conversion between national currency units a fixed algorithm should be used;

(11) Whereas the introduction of the euro requires the rounding of monetary amounts; whereas an early indication of rules for rounding is essential to allow a timely preparation and a smooth transition to Economic and Monetary Union;

(12) Whereas in order to achieve a high degree of accuracy in conversion operations, the conversion rates should be defined with six significant figures; whereas a rate with six significant figures means a rate which, counted from the left and starting by the first non-zero figure, has six figures;

(13) Whereas according to Article 109 f (6) of the Treaty the EMI has to be consulted regarding any proposed Community act within its field of competence.

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this regulation:

- "legal instruments" shall mean legislative provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect;
- "conversion rates" shall mean the irrevocably fixed conversion rates adopted by the Council according to Article 109 l (4) first sentence of the Treaty;

- "national currency units" shall mean the units of the currencies of Member States without a derogation, as those units are defined in their respective monetary law on the day before the start of the third stage;

- "euro unit" shall mean the unit of the single currency as adopted by the Member States without a derogation on 1.1.1999;

Article 2

(1) As from 1.1.1999 every reference in a legal instrument to the ECU, as referred to in Article 109 g of the Treaty and as defined in Council Regulation (EC) No. 3320/94, is replaced by a reference to the euro at a rate of one euro to one ECU. References in a legal instrument to the ECU without such a definition shall be presumed to be references to the ECU as referred to in Article 109 g EC and as defined in Council Regulation (EC) No. 3320/94.

(2) As from 1.1.1999 Council Regulation (EC) No. 3320/94 is repealed.

Article 3

The introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or terminate a legal instrument. This provision is subject to anything which parties may have agreed.

Article 4

(1) The conversion rates shall be adopted as one euro expressed in terms of each of the national currencies of the Member States without a derogation. They shall be adopted with six significant figures.

(2) The conversion rates shall not be rounded or truncated when making conversions.

(3) The conversion rates shall be used for conversions either way between the euro unit and the national currency units. Inverse rates derived from the conversion rates shall not be used.

(4) Monetary sums to be converted from one national currency unit into another shall first be converted into a monetary sum expressed in the euro unit, rounded to at least three decimals, and then be converted into the other national currency unit.

Article 5

Monetary sums to be paid or accounted for when a rounding takes place after a conversion into the euro unit according to Article 4 shall be rounded up or down to the nearest cent. Monetary sums converted into a national currency unit shall be rounded up or down to the nearest sub-unit or in the absence of a sub-unit to the nearest unit, or according to national practices to a multiple or fraction of the sub-unit or unit of the national currency unit. If the application of the conversion rate gives a result which is exactly half-way, the sum shall be rounded up.

Article 6

This Regulation shall enter into force on the day after publication in the Official Journal.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

PROPOSAL FOR A COUNCIL REGULATION ON THE INTRODUCTION OF THE EURO

(PRESENTED BY THE COMMISSION)

22

Proposal for a Council Regulation [ ] on the introduction of the euro

96/0250 (CNS)

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 109 l (4) third sentence thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Parliament

(1) Whereas this regulation defines monetary law provisions of the Member States which have adopted the euro; whereas provisions on continuity of contracts, the replacement of references to the ECU in legal instruments by references to the euro and rounding have already been laid down in Council Regulation [...]; whereas measures pertaining to other areas of law will, if necessary, have to be considered such as those concerning double price displays, conversion fees;

(2) Whereas the European Council has decided at its meeting held in Madrid on 15/16 December 1995 that the name given to the European currency shall be the "euro"; whereas the specific name "euro" will be used instead of the generic term "ECU" used by the Treaty to refer to the European currency unit; whereas the euro as the currency of the Member States without a derogation shall be divided into one hundred sub-units with the name "cent"; whereas the definition of the name "cent" does not prevent the use of variants of this term in common usage in the Member States;

(3) Whereas the Council when acting according to Article 109 l (4), third sentence of the Treaty shall take the measures necessary for the rapid introduction of the euro other than the adoption of the conversion rates;

(4) Whereas whenever under Article 109 k (2) of the Treaty a Member State becomes a Member State without a derogation, the Council shall according to Article 109 l (5) of the Treaty take the other measures necessary for the rapid introduction of the euro as the single currency of this Member State;

(5) Whereas according to Article 109 l (4) of the Treaty the Council shall at the starting date of the third stage adopt the conversion rates at which the currencies of the participating Member States will be irrevocably fixed and at which irrevocably fixed rate the euro will be substituted for these currencies;

(6) Whereas given the absence of exchange rate risk either between the euro unit and the national currency units or between these national currency units, legislative provisions shall be interpreted accordingly;

(7) Whereas the term "contract" used for the definition of legal instruments is meant to include inter alia written and oral contracts, tacitly concluded contracts and contracts implied from the conduct of the parties;

(8) Whereas in order to prepare a smooth changeover to the euro a transitional period is needed between the substitution of the euro for the currencies of the participating Member States and the introduction of euro banknotes and coins; whereas during this period the national currency units will be defined as sub-divisions of the euro; whereas thereby a legal equivalence is established between the euro unit and the national currency units;

(9) Whereas the euro shall be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States; whereas this does not prevent national central banks from keeping accounts in their national currency unit during the transitional period, in particular for their staff and for public administrations;

(10) Whereas during the transitional period legal instruments can be drawn up validly in the euro unit or in the national currency unit; whereas, unless agreed otherwise, economic agents have to respect the denomination of a legal instrument in the performance of all acts to be carried out under that instrument; whereas in order to ensure the smooth functioning of the payments systems exceptions from this general rule are necessary; whereas in order to allow, where necessary, the redenomination of outstanding debt in the euro unit and the change of the unit of account of the operating procedures of organized markets, Member States should be able to take appropriate measures;

(11) Whereas in transactions with the public sector participating Member States may allow the use of the euro unit but can only impose it on the basis of Community legislation;

(12) Whereas according to Article 105a of the Treaty the Council may adopt measures to harmonise the denominations and technical specifications of all coins;

(13) Whereas banknotes and coins need adequate protection against counterfeiting.

(14) Whereas banknotes and coins denominated in the national currency units lose their status of legal tender at the latest six months after the end of the transitional period; whereas for practical reasons it might be appropriate to introduce the euro banknotes and coins already a short time before the end of the transitional period;

(15) Whereas as from the end of the transitional period references in legal instruments existing at the end of the transitional period will have to be read as references to the euro according to the respective conversion rates; whereas a physical redenomination of existing legal instruments is therefore not necessary to achieve this result; whereas the rounding rules defined in Council Regulation [...] shall also apply to the conversions to be made at the end of the transitional period or after the transitional period; whereas for reasons of clarity it may be desirable that the physical redenomination will take place as soon as appropriate; whereas from the end of the transitional period the former national currency units can no longer validly be used for the setting up of new legal instruments;

HAS ADOPTED THIS REGULATION:

Part I

DEFINITIONS

Article 1

For the purpose of this regulation:

- "participating Member States" shall mean (Countries A, B ...)
- "legal instruments" shall mean legislative provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect.

- "conversion rates" shall mean the irrevocably fixed conversion rates adopted by the Council according to Article 109 l (4) first sentence of the Treaty.

- "euro unit" shall mean the currency unit as defined in the second sentence of Article 2.

- "national currency units" shall mean the units of the currencies of participating Member States as those units are defined in their respective monetary law on the day before the start of the third stage.

- "transitional period" shall mean the period beginning on 1.1.1999 and ending on 31.12.2001 at the latest.

- "organized markets" shall mean markets for the regular exchange, clearing and settlement of any of the instruments listed in section B of the annex to Directive 93/22/EEC[1] on the investment services in the securities field and shall include systems for the regular exchange, clearing and settlement of instruments of payment.

Part II

SUBSTITUTION OF THE EURO FOR THE CURRENCIES OF THE PARTICIPATING MEMBER STATES

Article 2

The currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cent.

Article 3

The euro shall be substituted for the currencies of the participating Member States at the conversion rates.

1 Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ No L 141, 11.6.1993, p.27).

Article 4

The euro shall be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States.

Part III

TRANSITIONAL PROVISIONS

Article 5

Articles 6-9 apply during the transitional period.

Article 6

(1) The euro shall also be divided into the national currency units according to the conversion rates. Any sub-division thereof shall be maintained. Subject to the provisions of this Regulation the monetary law of the participating Member States shall continue to apply.

(2) Where in a legal instrument reference is made to a national currency unit, this reference shall be as valid as if reference were made to the euro unit.

Article 7

The substitution of the euro for the currencies of the participating Member States shall not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution.

Article 8

(1) Acts to be performed under legal instruments stipulating the use of a national currency unit shall be performed in that national currency unit. Acts to be performed under legal instruments stipulating the use of the euro unit shall be performed in this unit.

(2) The provisions of paragraph 1 are subject to anything which parties may have agreed.

(3) Notwithstanding the provisions of paragraph 1, any amount denominated either in the euro unit or in the national currency unit of a given participating Member State and payable within that Member State by crediting an account of the creditor, can be paid by the debtor either in the euro unit or in that national currency unit. The amount may be credited to the account of the creditor in the denomination of his account, with any conversion being effected at the conversion rates.

(4) Notwithstanding the provisions of paragraph 1, each participating Member State may take measures which may be necessary in order to:

- redenominate in the euro unit outstanding debt denominated in national currency units; this provision shall apply to bonds and securitized debt.

- allow organized markets to change the unit of account of their operating procedures from a national currency unit to the euro unit.

(5) Other provisions than those of paragraph 4 imposing the use of the euro unit may only be adopted by the participating Member States according to any time-frame laid down by Community legislation.

(6) National legal provisions which permit or impose netting, set-off or techniques with similar effects shall apply to monetary obligations, irrespective of their currency denomination, if that denomination is in euro or in a national currency unit, with any conversion being effected at the conversion rates.

Article 9

Banknotes and coins denominated in a national currency unit shall retain their status as legal tender within the territorial limits as of the last day before the third stage.

Part IV

EURO BANKNOTES AND COINS

Article 10

As from 1 January 2002 at the latest, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro. Notwithstanding Article 15, these banknotes shall be the only banknotes which have the status of legal tender in all these Member States.

Article 11

As from 1 January 2002 at the latest, the participating Member States shall issue coins denominated in euro or in cent and complying with the denominations and technical specifications which the Council may lay down in accordance with Article 105 a (2) second sentence of the Treaty. Notwithstanding Article 15, these coins shall be the only coins which have the status of legal tender in all these Member States. Except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, no party shall be obliged to accept more than fifty coins in any single payment.

Article 12

Participating Member States shall ensure adequate sanctions against counterfeiting and falsification of banknotes and coins.

Part V

FINAL PROVISIONS

Article 13

Articles 14-16 apply as from the end of the transitional period.

Article 14

Where in legal instruments existing at the end of the transitional period reference is made to the national currency units, these references shall be read as references to the euro unit according to the respective conversion rates and calculated according to the rounding rules laid down in Council Regulation [...].

Article 15

Banknotes and coins denominated in a national currency unit as referred to in Article 6 (1) shall remain legal tender in their respective territorial limits until six months after the end of the transitional period at the latest; this period may be shortened by national law.

Article 16

In accordance with the laws or practices of participating Member States, the respective issuers of banknotes and coins shall continue to accept, against euro at the conversion rate, the banknotes and coins previously issued by them.

<u>**Part VI**</u>

ENTRY INTO FORCE

Article 17

This Regulation shall enter into force on 1st January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Annexe financière

The present proposals do not have any impact on the budget of the European Community.

Annexe Petites et Moyennes Entreprises

The two draft Regulations will have a direct effect on all citizens and all sectors of the economy. It will be of particular significance to the banking sector and to distributive trades, where citizens will encounter the immediate commercial effects of the changes.

The importance of adjustments to the new situation which will be required of enterprises will vary. Small and medium sized enterprises may find adjustment costs proportionately higher if the transition is not planned sufficiently in advance. The Commission is working closely with these sectors to identify more precisely potential problems.

[redacted]

ISSN 0254-1475

COM(96) 499 final

DOCUMENTS

EN 09 10 01

Catalogue number : CB-CO-96-524-EN-C

ISBN 92-78-10378-0

Office for Official Publications of the European Communities

L-2985 Luxembourg

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