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PROGRESS REPORT

to : Permanent Representatives Committee

N° Cion Prop. : 10867/96 UEM 45 COM(96) 499 final
N° prev. doc. : 11754/96 UEM 59 ; 11755/96 UEM 60

Subject :
- **Proposal for a Council Regulation on some provisions relating to the introduction of the euro (legal basis Article 235)**
- **Proposal for a Council Regulation on the introduction of the euro (legal basis Article 109 L (4))**

INTRODUCTION

The Madrid European Council on 15/16 December 1995 called upon the ECOFIN Council to complete at the latest by the end of 1996 the technical preparatory work for the legal framework of the Euro.

The Commission submitted on 18 October 1996 proposals for Council Regulations

- on some provisions relating to the introduction of the euro (based on Article 235 of the Treaty)

- on the introduction of the euro (based on Article 109 L (4) of the Treaty).

The reason for the presentation of two separate proposals is to permit an early adoption of the first proposal where there is an urgent need for legal certainty for market participants in all Member States.

Consequently, the first proposal based on Article 235 of the Treaty deals with the continuity of contracts, with the replacement of the ECU by the euro at a rate of one to one and with rules for conversion and rounding.

The proposal based on Article 109 L (4) of the Treaty lays down all the other provisions of monetary law which will be necessary for the introduction of the euro as the single currency of the participating Member States. This regulation can only be adopted under Article 109 L (4) once the participating Member States are known. This regulation deals, notably, with the substitution of the euro for the currencies of participating Member States, with transitional rules on in particular the legal equivalence of the national currencies and the euro and for the redenomination of debt and with rules relating to the issue of banknotes and coins in euro.

The European Parliament and the European Monetary Institute have been consulted on both proposals by a letter dated 5 November.

The Working Party EMU examined both proposals at its meetings of 24/25 October, 4/5 November, 14/15 November and 20/21 November 1996.

The Monetary Committee, for its part, examined some outstanding issues concerning both proposals at its meeting on 19 November 1996.

DRAFT REGULATION UNDER ARTICLE 235

Subject to linguistic scrutiny and any amendment that could be agreed on the basis of the forthcoming opinions of the European Parliament and the European Monetary Institute, the Working Party reached agreement on the text reproduced in Annex I to this document.

DRAFT REGULATION UNDER ARTICLE 109 L (4)

The work of the Group is reflected in the text reproduced in Annex II to this document which contains :

- an amended version of the proposal (the last amendments being underlined) which the Presidency considers by and large acceptable to delegations, subject to scrutiny reservations;

- footnotes indicating the substantial reservations maintained by delegations at this stage.

The main outstanding issues identified by delegations are :

- the legal question concerning obligations imposed under Article 109 L (4) on non-participating Member States

- the question of the end-date for the transitional period

- the question whether the balance between the principles of "no compulsion" and "no prohibition", concerning the use of the euro during the transitional period, as resulting from the conclusions of the Madrid European Council, is respected

- the question to what extent obligations for conversion will be imposed on commercial banks

- the question to what extent and under which conditions participating Member States may redenominate debt issued in the national currencies of participating Member States.

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

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 the Member States which will adopt the euro as the single currency in accordance with Article 109 k of the Treaty will be defined for the purposes of the present regulation as the "participating Member States" ;

(2) Whereas it also agreed 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 participating Member States will be divided into one hundred sub-units with the name “cent”; whereas the European Council furthermore considered that the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets;

(3) Whereas a Council regulation on the introduction of the euro will be adopted on the basis of Article 109 l (4), third sentence of the Treaty as soon as the participating Member States are known in order to define the legal framework of the euro; 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 in the course of the operation of the common market and for the changeover to the single currency to provide legal certainty for economic agents in all Member States on some provisions relating to the introduction of the euro well before the entry into the third stage; whereas this legal certainty at an early stage will allow preparations by economic agents to

proceed under good conditions;

(5) Whereas Article 109 l (4), third sentence, which allows the taking by the Council, acting with the unanimity of participating Member States, of "other measures necessary for the rapid introduction of ... the single currency" is only available as a legal basis when it has been confirmed, according to Article 109 j (4), which Member States fulfil the necessary conditions for the adoption of a 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; whereas_therefore the Council Regulation on some provisions related to the use of the euro and the Council Regulation on the introduction of the euro will together provide the legal framework for the euro, the principles of which legal framework were agreed by the European Council in Madrid; whereas the introduction of the euro concerns day-to-day operations of the whole population in participating Member States; whereas measures other than those in this regulation and in that which will be adopted under Article 109 l (4), third sentence, should be examined to ensure a balanced changeover, in particular for consumers;

(6) Whereas the ECU as referred to in Article 109 g of the Treaty and as defined in Council Regulation (EC) No. 3320/94 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, 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 such presumption should be rebuttable taking into account the intentions of the parties;

(7) Whereas it is a generally accepted principle of law that the continuity of contracts and other legal instruments is not affected by the introduction of a new currency; whereas the principle of freedom of contract has to be respected; whereas the principle of continuity should be compatible with anything which parties might have agreed with reference to the introduction of the euro; whereas in order to reinforce legal certainty and clarity it is appropriate explicitly to confirm that the principle of continuity of contracts and other legal instruments 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; whereas the provisions on continuity can only fulfil their objective to provide legal certainty and transparency to economic agents, in particular for consumers, if they enter into force as soon as possible;

(8) Whereas the introduction of the euro constitutes a change of the monetary law of each participating Member State; whereas the recognition of the monetary law of a State is a universally accepted principle; whereas the explicit confirmation of the principle of continuity should lead to the recognition of continuity of contracts and other legal instruments in the jurisdictions of third countries;

(9) Whereas the term "contract" used for the definition of legal instruments is meant to include all types of contracts, irrespective of the way in which they are concluded;

(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 participating Member States; 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 define the result; whereas the use of inverse rates for conversion would imply rounding of rates and could result in significant inaccuracies, notably if large amounts are involved;

(11) Whereas the introduction of the euro requires the rounding of monetary amounts; whereas an early indication of rules for rounding is necessary in the course of the operation of the common market and to allow a timely preparation and a smooth transition to Economic and Monetary Union; whereas these rules do not affect any rounding practice providing a higher degree of accuracy for intermediate computations;

(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.

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this regulation:

- "legal instruments" shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect;

- "participating Member States" shall mean those Member States which adopt the single currency in accordance with the Treaty;

- "conversion rates" shall mean the irrevocably fixed conversion rates that the Council adopts according to Article 109 l (4) first sentence of the Treaty;

- "national currency units" shall mean the units of the currencies of participating Member States, as those units are defined on the day before the start of the third stage of Economic and Monetary Union;

- "euro unit" shall mean the unit of the single currency as defined in the Council Regulation on the introduction of the euro which will enter into force at the starting date of the third stage of EMU.

Article 2

(1) 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, such presumption being rebuttable taking into account the intentions of the parties, 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) Council Regulation (EC) No. 3320/94 is repealed.

(3) This article shall apply as from 1.1.1999 in accordance with the decision pursuant to Article 109 j (4).

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 participating Member States. 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 amounts to be converted from one national currency unit into another shall first be converted into a monetary amount expressed in the euro unit, which amount may be rounded to not less than three decimals and shall then be converted into the other national currency unit. No alternative method of calculation may be used unless it produces the same results.

Article 5

Monetary amounts 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 amounts to be paid or accounted for which are 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 law or practice 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[1]

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 [...]; <u>whereas the introduction of the euro concerns day-to-day operations of the whole population in participating Member States; whereas measures other than those in this regulation and in the regulation on some provisions relating to the introduction of the euro should be examined to ensure a balanced changeover, in particular for consumers;</u>

(2) Whereas the European Council has <u>agreed</u> 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 <u>participating</u> Member States 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; <u>whereas the European Council furthermore considered that the name of the single currency must be the same in all the official languages of the European</u>

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[1] General <u>Danish and United Kingdom</u> reservation on the legal basis of article 109 l (4) in respect of obligations imposed on non participating Member States.

Union, taking into account the existence of different alphabets;

(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 participating Member State, 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 should be interpreted accordingly;

(7) Whereas the term "contract" used for the definition of legal instruments is meant to include all types of contracts, irrespective of the way in which they are concluded;

(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 in accordance with Article 109 g of the Treaty and with Council Regulation [...] on some provisions relating to the introduction of the euro, the euro will replace the ECU as from 1 January 1999 as the unit of account of the institutions of the European Communities; whereas the euro should also be the unit of the European Central Bank (ECB) and of the central banks of the participating Member States; whereas, in line with the Madrid conclusions, monetary policy operations would be carried out in the euro unit by the ESCB; 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 contracts, national laws and other legal instruments can be drawn up validly in the euro unit or in the national currency unit; whereas during this period, nothing in this regulation should affect the validity of any reference to a national currency unit in any legal instrument;

(10 bis) 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;

(10 ter) Whereas the euro unit and the national currency units will be units of the same currency; whereas it is also necessary to ensure the smooth functioning of the payments systems; whereas the provisions on payments by crediting an account do not prohibit financial intermediaries from coordinating the introduction of payment facilities denominated in the

euro unit which rely on a common technical infrastructure during the transitional period;

(10 quater) Whereas in accordance with the conclusions reached by the European Council at its meeting held in Madrid in December 1995, new tradeable public debt will be issued in the euro unit by the participating Member States as from 1 January 1999; 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; whereas limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of Euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available;

(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.

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 and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect.
- "conversion rate" shall mean the irrevocably fixed conversion rate adopted for each participating Member State by the Council according to Article 109 l (4) first sentence of the Treaty.
- "euro unit" shall mean the currency unit as referred to 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 on the day before the start of the third stage of Economic and Monetary Union.
- "transitional period" shall mean the period beginning on 1.1.1999 and ending on [31.12.2001 at the latest].[2]

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[2] Reservation by Germany and United Kingdom on the text between brackets. Germany, supported by several delegations, suggested the following text : "date to be decided by the Council, in accordance with the Madrid scenario, when adopting the present regulation." There is agreement that brackets are to be maintained until formal adoption of the regulation.

Part II

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

Article 2

As from 1.1.1999 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 currency of each participating Member State at the conversion rate.

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 according to the conversion rates.

Article 7

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

Article 8[3]

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

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

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[3] Belgian reservation linked to its request (supported by Luxembourg) to add the following paragraph :
"As from 1.1.1999, all legal and statutory restrictions relating to the use of the euro will become inapplicable".

(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[4] be credited to the account of the creditor in the denomination of his account, with any conversion being effected at the conversion rates.[5,6]

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

- enable the issuers to redenominate in the euro unit outstanding debt denominated in national currency units; this provision shall apply to bonds and other forms of securitized debt which are negotiable on the capital markets.[7]
- enable the change of the unit of account of their operating procedures from a national currency unit to the euro unit by :

  a) markets for the regular exchange, clearing and settlement of any instrument listed in section B of the annex of Directive 93/22/EEC on investment services in the securities field and of commodities; and

  b) systems for the regular exchange, clearing and settlement of payment.

(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.[8]

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4 Reservations by Belgium, Greece, Italy, Luxembourg, Portugal, Spain and Austria linked to their request to substitute "shall" for "may".

5 United Kingdom reservation on the scope of this provision. The Netherlands can accept the paragraph if it is not modified.

6 Austrian and Belgian reservation to cover cross-border payments other than in euro during the transitional period and to delete or qualify the words : "within that Member State" in the third line of para3.

7 German reservation.

Germany and the Commission submitted drafts for this paragraph to be discussed. The Italian delegation kept a reservation on the definition of debt.

8 Belgium, French and Luxembourg reservation, linked to their request to insert "for

(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.[9]

Article 9

Banknotes and coins denominated in a national currency unit shall retain their status as legal tender within <u>their</u> territorial limits <u>as of the day before the entry into force of this regulation.</u>

<u>Part IV</u>

EURO BANKNOTES AND COINS

Article 10

As from [1 January 2002 at the latest[10]], 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[10]], 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

public sector operations".

9 <u>Danish</u> reservation, supported by <u>Sweden and United Kingdom</u>, on any obligation imposed on non-participating Member States under Article 109 l (4).

10 <u>German and United Kingdom</u> reservation on the text between brackets (see footnote 2).

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[11]

Participating[12] Member States shall ensure adequate sanctions against counterfeiting and falsification of euro 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. The rounding rules laid down in Council Regulation shall apply.

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[11] Spanish reservation related to its view concerning the absence of Community competence on penal sanctions.

[12] Belgian reservation on the word "Participating" at the beginning of the sentence.

Article 15

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

(2) Each participating Member State may, for a period of up to 6 months after the end of the transitional period, lay down rules for the use of the banknotes and coins denominated in its national currency unit as referred to in Article 6(1) and take any measures necessary to facilitate their withdrawal.

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.

Part VI

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.[13]

[13] General United Kingdom reservation on obligations imposed on non-participating Member States. (see footnote 1)
