The Law of the EUROPEAN UNION

Teaching Material

ECONOMIC AND MONETARY UNION

UNIT 8

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NOTE AND QUESTIONS

Economic and Monetary Union (EMU) started on January 1, 1999. It is an event of capital importance in the process of European Integration. If successful, it will be a qualitative leap forward for the integration. If a failure, it could give rise to political scepticism and financial and economic turmoil.

In this Unit you will find an Article by Roger Goebel explaining the planning and implementation of EMU.

You will also find the following legislation regarding EMU:

- Decision on the participating Member States

1. Please recall the position of the German Constitutional Court in its judgment of October 12, 1993. In the light of this decision, how would you argue that EMU is in conflict with German Constitutional law? How would you argue the opposite?

- The so-called Art. 308 Regulation on the Euro:

Question: Is Art. 308 (ex Art. 235) TEC a legitimate basis for such a regulation? Why?

- Some US States, namely New York, Illinois, California have adopted legislation on the consequences of the introduction of the Euro. In particular, New York introduced § 5-1601 through 5-1604 in its General Obligations Law.

2. Is there any conflict between the content of the NY legislation and the EU regulations on the Euro? If yes, how can it be resolved?

1 TOWARD ECONOMIC AND MONETARY UNION, BY ROGER GOEBEL

Chapter

TOWARD ECONOMIC AND MONETARY UNION

Prof. Roger J. Goebel*

The goal of an Economic and Monetary Union (EMU), sometimes also called the European Monetary Union, has been a central preoccupation of the Community for many years. In fact, the idea of substantial economic and monetary coordination dates to the origin of the Community, and a proposal for a monetary union was first advanced in 1971. This chapter will deal with the following topics: 1) the goals of the present plan to create an Economic and Monetary Union, 2) the historical background, notably the European Monetary System, 3) the Delors Report and the shaping of the EMU; 4) free movement of capital as an essential prerequisite for EMU; 5) the Maastricht Treaty's provisions on EMU, especially describing its institutional structure; 6) certain constitutional and legal issues concerning the EMU structure; 7) the sectage of development of EMU and the economic and monetary convergence criteria necessary to move to the third and final stage; 8) the initial policy decisions and regulatory measures to prepare for EMU; and 9) preparations for the Euro, the proposed single currency of EMU.

1. The Goals of an Economic and Monetary Union

The attainment of an Economic and Monetary Union will transform the European Community, and its over-arching structure, the European Union, in a more fundamental manner than any development since the substantial achievement of the internal market program. Indeed, the 1995 Green Paper on the Introduction of the Single Currency, discussed later, depicted EMU as the "logical and essential complement" to the internal market. The recent impetus toward EMU undoubtedly stems in large measure from the generally satisfactory progress to date in attaining an internal market.

The goal of EMU has three components: 1) an integrated Community monetary system; 2) an institutional structure, with a European Central Bank at its center; 3) a single currency, the Euro, replacing present national currencies in all the participating Member States. Each will be described in greater detail later, but some preliminary notes should be made.

The Commission estimates that use of a single currency will save the Community annually around 20-25 billion ECU, or approximately 0.4% of GDP, through the elimination of currency-related transaction costs, i.e., the expense of changes in currency when transacting commercial and personal affairs across

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frontiers within the Community. On the other hand, as planning for the introduction of the Euro moves ahead, private financial sector and other sources are estimating more precisely the transition costs in abandoning current currencies and shifting to a single currency. The final cost is still unknown, but it will represent tens and perhaps hundreds of billions of ECU in the aggregate. In addition, there will be serious adjustment shocks when governments, financial institutions, businesses and all private parties must cope with the change-over to an unfamiliar single currency. It is possible that the transition costs will exceed the savings in transaction costs in the initial years.

But there is a further and more important economic benefit flowing from a single currency, namely, the achievement of far greater price and cost transparency in all trans-border financial, commercial and private transactions. Thus, purchasers of raw materials and supplies, intermediate distributors of products, persons providing services, and consumer of goods, services or credit will all be able easily and quickly to compare prices or expenses when dealing with domestic and foreign parties. This will considerably facilitate the business operations of large financial institutions and multinational corporations, which have, not surprisingly, become strong supporters of the efforts to attain EMU.

Prospects of greater market integration, especially in the financial services sector, are bound to lead to enhanced merger and acquisition activity, coupled with the disappearance of smaller or less efficient enterprises. The Commission estimates that several Member States are “over-banked,” having too many banks or other financial institutions in proportion to their general population and commercial activity. The wave of trans-border and domestic financial sector mergers and acquisitions has increased sharply in 1996-97 and may be expected to continue. Although manifestly leading to a more efficient financial sector, this process will also produce far more powerful market players, whose conduct will have to be carefully monitored by Community and national competition authorities, as well as by financial regulatory bodies.

On the global monetary stage, the importance of a successful EMU also is very great. Use of the Euro for international trade and as a reserve currency will be far more substantial than is the present use of individual national currencies, even the German mark. Moreover, the existence of a European Central Bank with a mandate for price stability and a strong currency is quite apt to promote the desirability of the use of the Euro in international transactions. The Euro may become a serious competitor for the US dollar in global transactions, especially in the international oil and commodities markets and in trans-border credit and financial operations.

Finally, a successful EMU will have a great impact on the political aspect of the European Community. One of the most essential types of sovereign power, namely the control over monetary policy, will be transferred to a Community institution. It is true that the institution, the European Central Bank, will be independent of the traditional other political institutions, namely the Commission, Council and Parliament, but it will still be a Community entity that possesses the monetary power. Such a transfer of vital power necessarily diminishes the role of national governments.

The transfer of monetary power to the European Central Bank and the creation of a single common currency are bound to produce significant psychological consequences. Citizens of the Member States will perceive more readily the extent, importance and hopefully the value of European integration. Replacement of national currency and coins by the Euro will represent a far more meaningful symbol of Union integration than the current European passport or the Union flag can ever be.

Thus far, it has been assumed that the Community will successfully attain an Economic and Monetary Union. Although the prospect for its success are increasingly bright, this is not a guaranteed result. To some degree, the plan for EMU represents an audacious gamble. If successful, the economic, monetary and political benefits will be enormous. But if the progress is stalled, or too many Member States remain outside of EMU, or a monetary shock destabilizes the entire structure once created, the adverse impact on the Community would be serious, perhaps very grave. American economists in particular were initially highly skeptical of the merits of EMU and concerned about its potential risks. While they have become less pessimistic in view of recent progress, still it must be said that EMU does bring significant risks as well as benefits.

The current mood in the European Community is one of guarded optimism. As will be described in Section 7, the current prospects are that eleven Member States will launch the monetary union in 1999, with a reasonable likelihood that the four others will join by 2002, the date set for the introduction of the Euro as legal tender, or shortly thereafter.

2. The Historical Background, Notably the European Monetary System

A. The Treaty of Rome: Economic and Monetary Coordination

It may seem a bit surprising, but in fact the initial European Economic Community treaty, or Treaty of Rome, did include the topic of economic and monetary coordination, although naturally the idea of a monetary union was not yet advanced. Thus, in the EEC Treaty, Title II on Economic Policy contains several articles relevant to economic and monetary coordination. Article 104 requires Member States to "pursue the economic policy needed to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency, while taking care to ensure a high level of employment and a stable level of prices." Article 105 further requires states to "coordinate their economic policies," as well as policies "in the monetary field." Article 106 liberalizes current transborder payments for goods and services, and Articles 108 and 109 permit safeguard measures for states encountering serious balance of payments difficulties.

Article 105(2) created a body whose importance has steadily increased over the years. This is the Monetary Committee, composed of two representatives from each Member State and two persons appointed by the Commission, whose role is to "review the monetary and financial situation of the Member States and the Community," and to provide opinions and reports to the Commission and Council. Another specialist body, the Committee of Governors of Central Banks, was established in 1964 to facilitate contacts among the banks and to provide advice on monetary affairs.

The EEC monetary structure first assumed importance at the end of the 1960s as the world monetary system established under the Bretton Woods accords started to break down. In the halcyon days of the 1950s and 1960s, states' currency exchange rates were fixed in relation to one another, and the US dollar, backed by substantial gold reserves, provided international monetary stability. As world trade and investment expanded enormously during that period, states became much more interdependent, both in economic and monetary terms. Then, in the 1960s, as the economies of some states developed far more rapidly than others, and as certain states suffered serious bouts of inflation, balance of payments difficulties became inevitable. France, Italy, the United Kingdom and certain other states were compelled to devalue their currencies in successive monetary crises, while Germany, the Netherlands and Switzerland were obliged to revalue them.

The most serious monetary crisis arose when the dollar came under severe pressure in 1971. President Nixon decided to end the gold standard on August 15, 1971, allowing the dollar to float against other currencies. The Smithsonian Accord of December 18, 1971 institutionalized the system of floating exchange rates. However, because such rates create uncertainty and instability in long-term financial and commercial transactions, ever since 1971 governments have sought to find a way to return to some form of fixed, or at least relatively stable rates.

Making use of Article 105, the Commission and Council began a series of attempts to alleviate monetary crises in particular Member States and to coordinate economic and monetary policy in order to achieve greater stability within the Community. The 1969 Barre Plan, named after Raymond Barre, then president of the central bank of France, is usually considered to have initiated monetary coordination. In a related move, the Committee of Governors of Central Banks agreed on February 9, 1970, to provide lines of credit to support Member States in times of monetary crisis.

A stage-by-stage plan for attaining economic and monetary union was presented to the Council of Ministers in October 1970 in the form of the Werner Report, named after the Prime Minister of Luxembourg. Bull. EC 1970-II Supplement. A Council resolution endorsed the Werner Report in general terms and resolved to develop an economic and monetary union over a ten year period. Bull. EC 1971-4, at 19. Pursuant to this plan, Council Regulation 907/73, O.J. L 89/1 (May 4, 1973), established a European Monetary Cooperation Fund to provide short-term monetary support and facilitate concerted monetary action. A later Council decision urged Member States to align their economic policies with guidelines to be issued periodically by the Council, and called on the central banks to coordinate their monetary policies. Council Decision 74/120, O.J. L 63/1 (Mar. 5, 1974). Most Member States entered a system to reduce exchange rate fluctuations to a narrow band, popularly called the "snake." (The band is commonly called a "snake," because, when graphically depicted, it resembles an undulating wave as a particular national currency moves above or below the pegged rate.)

Unfortunately, the energy recession of the mid-1970s and further monetary crises in certain Member States prevented these Community measures from becoming truly effective. Coordination efforts were reduced, rather than enhanced, in the late 1970s. The goal of a union receded farther into the distance.

B. The European Monetary System.

In the late 1970s, the leadership of President Giscard d'Estaing of France and Chancellor Schmidt of Germany, both former Finance Ministers, together with Commission President Roy Jenkins, formerly the UK chancellor of the Exchequer, caused new attention to be focussed on monetary coordination and stabilization. The European Council Meeting at Bremen in August 1978 officially endorsed the concept of a European Monetary System (EMS), which came into force in March 1979. Bull. EC 1978-6, at 5.

Membership in the EMS is voluntary, and therefore has produced since its inception a sort of "two-tier" Europe. The Benelux states, Denmark, France, Germany and Italy have been members from the start. The United Kingdom initially joined, but withdrew after a two-month run on its currency reserves, and only joined again in October 1990. Since 1991, all the other States except Greece have become members.

The Commission has described the European Monetary System as intended to achieve the following objectives:

> To attain a zone of internal and external monetary stability in Europe (involving both low inflation and stable exchange rates); to provide the framework for improved economic policy cooperation between Member States ***; to help to alleviate global monetary instability through common policies vis a vis third currencies ***.

The EMS: Ten Years of Progress in European Monetary Cooperation 3 (EC Off'l Pub. Office 1989). The Commission further described the EMS as "a pragmatic attempt to progress along the road to economic and monetary union." Id.

The European Monetary System has three basic components: an artificial currency, the ECU; exchange rates which are permitted to fluctuate only in a narrow band; and a system of credit and loan reserves to stabilize Member State currencies in times of crisis. All three merit brief treatment.

First, the EMS created an artificial European monetary unit, the ECU, which replaced the prior artificial unit known as the European Unit of Account (EUA). The value of the ECU is fixed as a composite of a "basket" of Member State currencies with weighted values one to another. A macroeconomic calculation of the proportionate size of the national economy underlying each State's currency is used in allocating weights to the different currencies. The weighted value assigned to each State's currency in the basket is fixed at the outset. The weighted value is then revised every five years, most recently on September 21, 1989. To give an idea, in the 1989 revision, the German Mark was set at 30.1% of the total basket value, the French Franc 19%, the Pound Sterling 13%, the Italian Lira 10.15%, with the other currencies set at lower percentages. In 1994, as planning for Economic and Monetary Union began, the "basket" was frozen at the 1989 levels, pending the final creation of a single currency.

The European Community uses the ECU for its own budget. All revenues and all expenditures are calculated in the form of ECUs. This enables a standard base to be used in the calculation of budget items from year to year. The European Investment Fund and other financial organs of the Community likewise deal in ECUs. These institutions and the Community itself on occasion float loans on international markets denominated in ECUs. For that matter, in the 1980s private financial institutions began to float loans denominated in ECUs. In recent years, ECUs have often been regarded as virtually as stable as Eurodollars for purposes of long term financial transactions. In 1994, the Commission estimated that there were over 200 billion ECU in private loans. The ECU is quoted on monetary exchanges and floats against the dollar and other currencies - in December 1997, the ECU equaled $1.10. The ECU is, of course, not an actual currency: there are no bills or coins denominated in ECU, nor is the ECU used as legal tender for everyday private commercial transactions.

The second component of the European Monetary System is its system for the stabilization of the exchange rates of the currencies of the Member States participating in the EMS. This is called the Exchange Rate Mechanism (ERM). The exchange rates were fixed in 1979 at the outset of the EMS and have been changed only at relatively infrequent intervals. A very moderate degree of floating was initially allowed between currencies, within a band with a maximum range of 2.25% above or below the exchange rate. This band was permitted to be increased to 6% for certain States during periods of monetary stress or weakness - for example, Italy was allowed to use the 6% margin until 1989, and Portugal and Spain entered the ERM with the same 6% margin.

The functional merit of this limited rate of fluctuation around pegged rates set for long periods of time is that it serves as a reasonably close approximation of the fixed rates of the Bretton Woods system. This means that financial institutions, commercial enterprises, and private investors can enter into medium and long-term transactions with a reasonable assurance that neither an unexpected exchange rate gain nor loss will occur at the end of the transaction. Moreover, the requirement that Member States must maintain their currencies within the flotation band means that Member States are encouraged to combat inflation and to avoid deficit spending on the one hand, and to spur investment and combat recession on the other.

The EMS' pegged exchange rate levels proved to be highly satisfactory in practice for over a decade. Realignment of rates occurred at infrequent intervals in the 1980s, and usually involved only two or three currencies. To give an example, the most significant currency realignment occurred in March 1983 when the German Mark rose 5.5%, several other currencies rose 1.5% to 3.5%, and three currencies went down 2.5% to 3.5%.

The third component of the European Monetary System is a credit mechanism by which short and medium term support can be given to Member States encountering serious monetary troubles. The usual mode of support foreseen was the Very Short-Term Financing (VSTF) facility, intended to provide support for 30-45 days. A reserve fund was created, composed of the equivalent of 20% of the gold and 20% of the dollars held by each participating State's central bank. This fund was initially set at 25 billion ECU. The EMS can also provide medium term support for a maximum period of 5 years, with a loan fund available of up to 6 billion ECUs. A Member State receiving such a loan must reduce any deficit spending and take action to control inflation.

Confidence in the Exchange Rate Mechanism of the EMS was badly shaken in September 1992. Stimulated by concern that France might not ratify the Maastricht Treaty, substantial speculation developed on the currency markets, directed against the currencies of States whose economies were perceived as weak, and in favor of the German mark. Investors perceived the German mark as the safest long-term currency, because the German central bank, the Bundesbank, persisted in keeping interest rates at very high levels in order to prevent inflation from being spurred by large government expenditures to meet the cost of German unification. Major financial interests, such as multinational corporations and pension funds, decided that it was more prudent to shift large volumes of capital from other currencies to the German mark.

Despite massive intervention efforts by central banks to support currencies under attack, the pressure increased. Several States nearly exhausted their currency reserves in a fruitless effort to stabilize their currency. Italy and the United Kingdom concluded that they must temporarily withdraw from the ERM and float their currencies, which then dropped sharply in an effective devaluation, and Ireland and Spain instituted emergency exchange controls. Financial observers noted that the volume of currency market activity, especially the use of currency options on a large scale, had increased enormously since the 1970s, which made it very difficult for governments and central banks to cope with speculative attacks on currencies.

Predictably, Prime Minister Major urged that movement toward economic and monetary union be delayed, while Chancellor Kohl contended that the monetary crisis demonstrated the need to move ahead toward an EMU.

The stability which the exchange rate mechanism is supposed to provide within the EMS, already shaken in September 1992, was even more seriously undermined in 1992-95. The United Kingdom continued to stay outside the ERM, and Italy withdrew until late 1996. Although remaining within the ERM, Spain and Portugal had to devalue their currencies four times against the mark, cumulatively about 25%, and the Irish pound was devalued by 10% in early 1993.

Despite France’s relatively healthy economic condition, the French franc became the subject of such a severe speculative attack on “black Friday,” July 29, 1993, that even massive intervention by the German and French central banks was not sufficient to support it. The Community finance ministers and central bank governors were compelled to enlarge radically the fluctuation bands of the ERM from 2.25% to 15% above or below the central standard rate. Although the exchange markets then quieted without a devaluation of the franc, the ERM has not been able formally to return to a narrower band. Indeed, in March 1995 a new wave of speculation, triggered by the Mexican debt crisis and the renewed weakness of the dollar, pushed the mark substantially higher in comparison to the franc and several other currencies.

Fortunately, since 1995 the currency markets in the Community have calmed down and exchange rate shifts have been minor. Indeed, by the end of 1996, the currencies of all the States operating within the Exchange Rate Mechanism were well within the 2.25% fluctuation band that had prevailed in the 1980s. Moreover, Austria, Finland and Sweden all joined the EMS (although Sweden did not join the ERM), and Italy reentered the ERM in late 1996.

Since 1996, the general exchange rate stability has been promoted by the parallel efforts of State governments to meet the criteria necessary to join the final stage of Economic and Monetary Union, discussed in section 7 below, coupled with the growing belief of financial market operators that a large majority of States will in fact participate in that union. However, in mid-1997, the strong economic performance of the US, together with a growing view that a single currency would not be as strong as the mark, pushed the dollar around 20% higher vis-à-vis the mark and other continental currencies, while the UK pound also rose vis-à-vis the mark, due in part to the view that the pound will remain a strong independent currency for at least some time after the commencement of the monetary union.

3. The Delors Report and the Shaping of the Economic and Monetary Union

The Single European Act amendments to the EEC Treaty, effective July 1, 1987, added a new chapter, Cooperation in Economic and Monetary Policy (Economic and Monetary Union). This consisted of a new

Article 102(a), which called for further cooperation to meet the objectives of Article 104, and raised the possibility of further Treaty amendments to make institutional changes. As the Community progressed toward achievement of the internal market, proposals for an Economic and Monetary Union moved to center stage.

At its June 1988 Hanover meeting, the European Council referred to Article 102(a) and "confirmed the objective of progressive realization of economic and monetary union." Bull. EC 1988-6, at 20. It created a special committee, chaired by Jacques Delors, President of the Commission, to study and propose "concrete stages" toward this goal. The committee consisted of all the central bank governors and several economic and banking experts.

The Delors Committee Report of April 17, 1989 provided a thorough review of the essential character of an Economic and Monetary Union, together with a pragmatic presentation of three proposed stages in its development. Bull. EC 1989-4, at 8. Due partly to the practical nature of the committee's proposals, and partly to respect for the high qualifications of the committee itself, this report not only formed the basis for all subsequent discussions, but largely shaped the agenda of the Rome Intergovernmental Conference.

The Delors Report defined the EMU's goal as the common management of monetary and economic policies to attain common macroeconomic goals. It identified three preconditions for the establishment of an EMU, namely, total and irreversible convertibility of currencies; complete liberalization of capital transactions and integration of the financial sector; and irreversible locking of exchange rates. The report also endorsed the ultimate adoption of a single European currency. The report proposed a treaty amendment to create a major new institution, the European System of Central Banks (ESCB). The ESCB would evolve through different stages of activities, but its ultimate role would be to formulate and implement monetary policy for the Community, participate in banking supervision on a Community level, and assist Member States to attain price stability and curb budgetary deficits. (The US Federal Reserve System and the German Bundesbank were obviously the models for much of the ESCB structure.)

The Delors Committee Report further laid out three proposed stages toward achieving the EMU. Each stage would require the attainment of certain results, both at the Community and Member State level. The final stage would give the ESCB responsibility for monetary policy, lock exchange rates, and perhaps lead to the creation of a common Community currency. Because so many of the report's proposals were adopted in the Treaty on European Union, it is unnecessary to discuss further the text. The report is analyzed in J.-V. Louis, A Monetary Union for Tomorrow, 26 Common Mkt. L. Rev. 301 (1989).

The Delors Report initiated a widespread and probing debate on the necessity for, and the goals of an EMU, both at the Community level and in the private sector, and the topic received great attention in the media. It quickly became the most fascinating single idea for the further unification of the European Community since the Commission White Paper of June 1985 on Completing the Internal Market.

At this point, the reaction of the European Council to the Delors Report became critical. At its December 1989 meeting in Strasbourg, the European Council approved the main themes of the Delors Report. Moreover, after intensive debate, the European Council voted 11 to 1, over the opposition of the United Kingdom, to call an intergovernmental conference for the purpose of adopting an Economic and Monetary Union. The European Council specifically urged the intergovernmental conference to respect the principle of subsidiarity in formulating plans for an EMU, i.e., the Community's institutions should not be given monetary functions or powers that can be better exercised by the Member States. The European Council finally decided that the first stage set out in the Delors Report should commence as of July 1, 1990, the date of entry into effect of the 1988 directive on freedom of capital movements, discussed in section 4 below.

A March 1990 Commission study, "EMU: rationale and design of the system," recommended that the European System of Central Banks (then popularly known as the Eurofed) should be independent, but that it should nonetheless be subject to "democratic scrutiny." The study also emphasized that the ESCB should delegate most policy implementation to the central banks, in accord with the principle of subsidiarity. The study further endorsed the idea that the ECU should become a single currency for the Community, and not a thirteenth currency in use alongside national currencies.

During the year preceding the Rome Intergovernmental Conference, the Conservative government of the United Kingdom continued its strong opposition to key features of the EMU. Prime Minister Thatcher opposed the idea of a European central bank and preferred a weaker body which would only coordinate monetary policy. The UK also rejected the concept of Community macroeconomic policy making. Instead of a single European currency, John Major, then Chancellor of the Exchequer, proposed that the ECU represent a thirteenth or alternative currency.

The European Council meeting in Rome in October 1990 effectively set the agenda for the intergovernmental conference. Over the opposition of the UK, the European Council decided that there should be "a new monetary institution comprising Member States' central banks, and a central organ, exercising full responsibility for monetary policy." The Rome Intergovernmental Council worked earnestly for nearly a year to draft the text of the treaty outlining the structure of EMU. Most of the articles relating to the Economic and Monetary Union were shaped by technical experts tending to follow the views of Germany and the Netherlands, both States with powerful central banks and a tradition of strict monetary policy and hard currencies. Reaching a consensus proved extremely difficult, due not only to UK opposition, but also to hesitations on the part of other States. Ultimately, several issues were left to the European Council meeting at Maastricht in December 1991, which, after intensive debate, arrived at essential compromises. The provisions on Economic and Monetary Union in the Treaty on European Union, or Maastricht Treaty, could then be completed.

4. Free Movement of Capital as a Pre-condition for Monetary Union

Free movement of capital is an essential condition for the attainment of an Economic and Monetary Union. Significant restrictions on the movement of capital, or upon payment for sales or services, would frustrate the achievement of an integrated monetary system and of an integrated market with a single currency. Accordingly, the Delors Report stipulated that free movement of capital was a requirement for the first stage of movement toward EMU.

The Treaty of Rome contained detailed provisions for attaining free movement of capital, one of the “four freedoms,” along with free movement of goods, services and persons. The basic provision, Article 67, declared that “Member States shall progressively abolish between themselves all restrictions on the movement of capital.” However, this declaration of principle was modified by the language, “to the extent necessary to ensure the proper functioning of the common market.”

The Court of Justice relied upon this rather ambiguous proviso in concluding that Article 67 did not have direct effect, and accordingly required implementing legislation to be adopted by the Council, pursuant to the legislative procedures set out in Article 69. In Criminal Proceedings against Casati, Case 203/80, [1981] ECR 2595, the Court accordingly rejected a challenge to Italian exchange controls brought by a private party defendant based upon the alleged direct effect of Article 67. The Court’s judgment thus left in place national exchange controls long after the end in 1969 of the transition period to achieve the common market. The Court reached this conclusion, despite the fact that it had previously held that Articles 9, 12, 30 and 34, achieving free movement of goods, Article 48 on free movement of workers, Article 52 on the right of establishment, and Article 59 on the free provision of services, all had direct effect after the end of the transition period in 1969. Presumably the Court was motivated in Casati by a view that the monetary sphere was particularly sensitive and that free movement of capital could only safely be executed through careful review and regulation by the Council.

Two early measures, the First Capital Directive 921/60 and the Second Capital Directive 63/21, did provide for substantial liberalization, freeing most common commercial and private movements of capital from exchange controls or other governmental restrictions. For example, the directives ended restrictions on personal capital movements (through gifts, inheritance, or movements resulting from the change of a person's residence), on the purchase or sale of real estate, on the purchase or sale of securities, and on short or medium term credit connected with commercial transactions.

This early progress was set back in the 1970s, when several States sought to use exchange controls to protect their monetary policies and their currencies during and after the world-wide energy recession. Articles 73, 108 and 109 of the EEC Treaty permitted emergency safeguard measures by the Community, or in emergencies by Member States themselves, with the acquiescence of the Commission. France and Italy made extensive use of such exchange controls. Moreover, when Greece, Portugal and Spain joined the Community in the 1980s, these States had a long tradition of exchange controls, and the Treaties of Accession permitted them to keep them for long transition periods.

It is noteworthy that when the Commission issued the famous White Paper on Completing the Internal Market in June 1985, it did not include in its legislative agenda any measure for achieving total free movement of capital. When, however, the internal market program met with enthusiastic endorsement, the Commission proposed such a measure, and it was adopted with surprising ease and rapidity. Presumably the Member States regarded the proposed directive on free movement of capital as indispensable to an integrated financial market.

Directive 88/361 to implement Article 67, O.J. L 178/5 (July 8, 1988), mandated the removal of all forms of government restrictions on the movement of capital, and on all payments for goods and services, no later than July 1, 1990 (although Ireland and Spain could keep certain restrictions until 1992, and Greece and Portugal until 1995). The directive was rapidly implemented by France, Italy and Spain – a rather dramatic development, since their exchange controls dated in some instances to the 1940s. Greece, Ireland and Portugal also acted to abolish their exchange control structures before the end of their periods of derogation, so that free movement of capital under Directive 88/361 became fully effective in 1994.

Even more important than the directive was the Maastricht Treaty's insertion of Article 73 into the European Community Treaty, totally replacing Article 67 and the related EEC Treaty provisions. The core coverage is now Article 73b:

> "1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.
> 2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited."

The language is absolute and unconditional. It is therefore not surprising that the Court of Justice held that Article 73b has direct effect, enabling private parties to invoke it to strike down incompatible State legislation or regulations. This occurred in Criminal Proceedings against Sanz de Lera, Cases 163/94, 165/94 and 250/94, [1995] ECR I-4821. In that judgment, the Court also interpreted Article 73d, which permits State "measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions." The Court concluded that Article 73d permitted Spain to require a prior declaration to its responsible authorities before the export of large sums in banknotes, in order to deter "tax evasion, money laundering, drug trafficking or terrorism," but that Article 73d did not permit any system of prior or subsequent authorizations or licenses for such movements of funds.

Thus, Article 73, as interpreted by the Court in Sanz de Lera, requires the complete free movement of capital since January 1, 1994. Member States may only enforce limited systems of prior declarations for large capital movements, in cash or otherwise, in order to try to prevent illicit activities, or "for purposes of administrative or statistical information, or [as] justified on grounds of public policy or public security (Article 73d). A vital pre-condition for monetary union was accordingly achieved.

5. The Maastricht Treaty Provisions on Economic and Monetary Union

No aspect of the Maastricht Treaty on European Union is of greater importance than the provisions on Economic and Monetary Union. Article B of the TEU lists an economic and monetary union and a single currency as among the principal objectives of European Union. A new Article 3a of the EEC Treaty declares that the Community should adopt a common economic policy, to be attained "in accordance with the principle of an open market economy with free competition."

Article 3a(2) further requires:

> "the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition."

Thus, the guiding principles of an Economic and Monetary Union are given Treaty (or constitutional) force. Note in particular the emphasis of "price stability," i.e., the maintenance of a low inflation rate (usually perceived to be 2% or less), as the "primary objective" of the Community's monetary policy. Article 3a(3) notes other guiding principles: "stable prices, sound public finances and monetary conditions and a sustainable balance of payments."

The TEU amendments to the EEC Treaty providing for aspects of the economic and monetary union, together with the Protocols, are extremely complicated. Only an overview is presented here, concentrating on the stages for progressive creation of the EMU, and upon the key features of the proposed constitutional structure for the monetary union.

A new Article 103 requires Member States to "regard their economic policies as a matter of common concern" and to coordinate them in accordance with guidelines established by the Council, acting by qualified majority. Because this is a highly sensitive area, the Council must first submit its draft guidelines to the European Council for its "conclusion" on them. This is one of the instances in which the TEU recognizes a specific role for the European Council. The Parliament is to be kept informed, but does not participate in shaping the guidelines.

The Maastricht Treaty follows the three stage structure proposed in the 1989 Delors Report for the gradual creation of EMU. In accordance with this scheme, on June 1, 1990, the Community began the first stage of progress toward the EMU. The first stage had three components: 1) free movement of capital, already achieved by the 1988 directive described previously; 2) adherence (at least in principle) of all Member States to the European Monetary System and to its Exchange Rate Mechanism; 3) an increased level of monetary coordination, both by governmental action and through coordination among the central banks.

The Treaty fixes January 1, 1994 as the date for passage to the second stage (Article 109e). The second stage has two essential features: the creation of the European Monetary Institute (EMI), and the commencement of an obligation on the part of Member States to meet certain key economic and monetary conditions for EMU. The European Monetary Institute is described in Article 109e and its Statute is laid down in a Protocol. The EMI is composed of a President, named by the Council, and the governors of the Member State central banks. The EMI's purpose is to coordinate policy and action by the central banks, monitor the European Monetary System, and prepare the instruments and procedures for the single monetary policy of the third stage. The EMI is thus an intermediary body, paving the way for the European System of Central Banks (ESCB), described below.

The conditions which Member States are supposed to fulfill during the second stage are critical to further progress, but have proved to be quite difficult for many States. For the purpose of a more coherent presentation, the description of the so-called “convergence criteria” and the current state of progress within the Community in the effort to achieve them is provided in section 7 infra.

The third stage in achieving EMU is to begin on a date to be fixed by a qualified majority decision of the Council (Article 109j). However, the importance of the decision is such that the Council shall meet as Heads of State or Government, which makes this in effect a European Council decision. (The TEU presumably did not formally make this action one to be taken by the European Council, because to date that body has never been given any legislative or legally-binding decision-making function.) Article 109j(3) foresaw that the Council might act to commence the third stage by a decision taken before December 31, 1996, if a majority of Member States met the necessary criteria, but this in fact did not occur. Article 109j(4) prescribed a fall-back position: in all events, the third stage is to begin on January 1, 1999 for those States which fulfill the prescribed economic and monetary conditions, even if they do not represent a majority of the Community States. In effect, this means that the "two-tier" Europe approach of the EMS will definitely persist in the EMU -- some States will participate from the outset, while others will join later (or, conceivably, will never join).

Indeed, due to the implacable oppositionof the UK government, then led by Prime Minister Major, to any absolute obligation on Member States to join in the final stage of EMU, the European Council meeting at Maastricht in December 1991 agreed upon a special Protocol for the UK. By its terms, the UK has an option to remain outside of the third stage of monetary union even if it meets the economic and monetary conditions set to join it. Denmark then demanded and received a similar Protocol: as a consequence, both Denmark and the UK have the right not to participate in the monetary union, i.e., not to be represented in the European System of Central Banks nor to be governed by its rules, and not to replace their currency with the single currency, the Euro.

When the third stage begins, the European Monetary Institute is to be replaced by the European System of Central Banks (ESCB), described in Article 106 and a Protocol. The ESCB will be composed of a European Central Bank (ECB) and the national central banks. The ECB in turn will have an Executive Board composed of the President, a Vice-President, and four members, all named for eight year terms by common accord of the Member States, without any possibility of reappointment. Parliament is only consulted in the process of the Executive Board selection. The ECB’s Governing Council, composed of the Executive Board and the Governors of the participating Member State central banks, will be the usual decision-making body, although some issues of lesser importance may be dealt with by the Executive Board alone.. This structure is accordingly analogous to that of the US Federal Reserve Board and the Bundesbank.

Article 107 states the important principle that the ECB, the ESCB, and Member State central banks shall have total independence in their decision-making. They are categorically forbidden to take instructions either from Community institutions or from Member States. This provision was debated for some time, because most central banks were not independent of their governments, and because some Member States were reluctant to allow the ECB and ESCB to enjoy independence from the Council. The principle of independence was strongly advocated by Germany, whose Bundesbank enjoys such independence from its government, as critical in order to ensure that the ECB and ECSB would have the freedom to follow strict, and hence often unpopular, monetary policies.

Article 109e(5) requires Member States to take action to ensure the independence of their central banks during the second stage. In addition, Article 108 stipulates that States must put their national regulations concerning central banks into full compliance with the Treaty before the creation of the European Central Bank, which implicitly makes national central bank independence a pre-condition for a State’s participation in the third stage of EMU. France, Italy and Spain have all acted to guarantee the independence of their central banks. In a surprise post-election move, the new UK Labor Government of Prime Minister Blair declared the independence of the Bank of England in June 1997. On the other hand, Sweden has refrained from making its central bank independent, a point of importance with regard to its eligibility for the third stage.

The role and powers of the European System of Central Banks are set out in Article 105. Thus, Article 105(1) declares:

> "The primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 3a."

Article 105 thus gives Treaty (or constitutional) force to the concept that the ESCB's "primary objective" is "price stability," or a low inflation rate. This is also the primary objective of the Bundesbank, and Germany prevailed in having it accepted as that of the ESCB. Other Member States either had no express principal policy goal for their central banks, or had a more general economic welfare goal (e.g., the Netherlands).

Article 105(2) sets out the "basic tasks" of the ESCB, namely "to define and implement the monetary policy of the Community," to conduct foreign exchange operations, to hold the Member States' official foreign reserves (initially to be set at 50 billion ECU), and to promote the smooth operation of the Community payment systems. The most important point to note here is that this article effectively transfers most monetary power from the Member States to the ESCB (and not the other Community institutions). Since, as will be seen in section 8, the States participating in the third stage must follow monetary guidelines in their national policies, this represents a genuine and significant transfer of power – and implicitly of sovereignty.

During the Rome Intergovernmental Conference, there was considerable debate concerning the extent of the role the ESCB might play in prudential supervision of banks and other financial institutions. In some Member States, the central bank has broad powers of prudential supervision, in others (rather like the American model) most prudential supervision is carried out by other regulatory authorities.

A compromise was struck: Article 105(5) calls on the ESCB to "contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system." This would suggest merely a role of advice, coordination and cooperation for the ESCB.

However, Article 105(6) authorizes the Council to "confer upon the ECB specific tasks" in the prudential supervision of financial institutions (but the text specifically excludes supervision of insurance companies). Such legislation may prove difficult to adopt: the Council must act unanimously, and the Parliament must give its assent (incidentally, this provision constitutes the sole example of significant legislative power given to the Parliament in connection with EMU). It may be expected that serious proposals for any specific role for the ESCB in the prudential supervision of financial institutions will not be raised until the ESCB has been operational for some time, perhaps years.

The creation and control of the single Community currency, now scheduled to be called the Euro (and not the Ecu, although that term is used for the single currency in Articles 3a and 109 of the Maastricht Treaty), is placed in the ECB by Article 105a. With regard to the bank notes, which will be the only "legal tender" in the participating third stage States, the ECB's power of emission and control is exclusive. The ECB alone will determine the denomination and features of banknotes, but, to enable speed in producing the banknotes, the European Monetary Institute has already taken the initial decisions, as will be discussed in section 9.

Member States will continue to have the power to issue coins, but the ECB can control the total volume of any issue. The power to determine the denominations and specifications of coins is given to the Council by Article 105a(2), but the Council must act in accordance with the parliamentary cooperation procedure. (It is interesting to note that the European Council's mandate that the Turin Intergovernmental Conference should not discuss any change in the Maastricht Treaty's EMU articles resulted in the survival of the cooperation process in this provision, although the Treaty of Amsterdam will replace elsewhere in the Treaty all references to the cooperation procedure by the codecision procedure.)

The European Central Bank has been granted an unusual degree of regulatory power. Pursuant to Article 108a(1), the ECB may issue regulations to implement its monetary policy for the Community, to govern the minimum reserves which it requires banking institutions to keep on deposit with the ECB and national central banks, to regulate bank clearing and payment systems, and to carry out prudential supervision of financial institutions (to the extent authorized by the Council, as noted above). The ECB may also take binding decisions or issue recommendations or opinions. Further, under Article 108a(3), the ECB may impose sanctions – "fines or periodic penalty payments on undertakings for failure to comply with its regulations or decisions."

In view of the scope of the European Central Bank's role and tasks, and the dimension of its regulatory powers, it is important that the Treaty clearly delineates the principle of judicial review. Article 173 was amended to grant the Court of Justice jurisdiction over actions brought by Member States, the Council, the Commission or private parties against the ECB to review the legality of its acts, and for actions brought by the ECB against the Community political institutions in order to protect its "prerogatives." Similarly, the ECB will have the power to sue the Council, Commission and the Parliament under Article 175 for their failure to fulfill a duty to act in areas "falling within [the ECB's] field of competence," and the ECB can itself be sued for a failure to act to fulfill its duties by those institutions, Member States, or private parties. Article 177 was amended to include the acts of the ECB among those which may be the subject of questions referred to the Court of Justice by national courts. Finally, the Court of Justice was given the power, under Article 180(d), to review the compliance of national central banks with their obligations in the ESCB, and to compel their compliance if necessary.

Decision-making in the ESCB and the ECB is governed by a Treaty Protocol on the Statute of the European System of Central Banks and of the European Central Bank. For the Governing Council, article 10 prescribes a quorum of two-thirds, usual action by simple majority, and grants the President a tie-breaking vote. Proxies are not permitted, although action by teleconferencing is. A type of qualified majority voting, with the weight of votes set in accord with national central bank shares in subscribed capital, is mandated for important decisions on the ECB's capital structure, control of foreign reserves, and accounts.

Article 11 prescribes that the six Executive Board members must serve full time, be "persons of recognized standing and professional experience in monetary or banking matters," and sets voting rules for the Executive Board parallel to those for the Governing Council. Under Article 13, the President of the ECB chairs both the Governing Council and the Executive Board, and represents the ECB in external matters.

Presumably for purposes of coordination, EC Treaty Article 109b(1) grants the President of the Council and a member of the Commission the right to participate, without vote, in meetings of the Governing Council. The President of the Council may even "submit a motion for deliberation" to the Governing Council. Correlatively, the President of the ECB may participate in Council meetings when "matters relating to the objectives and tasks of the ESCB are discussed."

As the prior review suggests, the European Parliament has been given only a modest role in the developmental stages of EMU, and in the instititutional structures after it becomes operational. Parliament need only be consulted in the Council's crucial decision on which Member States qualify for entry into the third stage (Article 109j(4)), and in the designation of the members of the ECB's Executive Board (Article 109a). Parliament's most substantial power is negative, its right of assent (or veto) with regard to Council decisions to accord the ESCB prudential supervisory authority over financial institutions (Article 105b), and with regard to Council action to amend certain key provisions of the Statute of the ESCB (Article 106(5)).

Parliament will exercise a limited power of surveillance or monitoring of the ESCB once the latter commences operations. Article 109b(3) prescribes that the ECB must provide an annual report on the ESCB's operations and upon its monetary policies to the European Parliament (as well as to the Council, Commission and, somewhat unusually but showing the high profile of the report, to the European Council). The Parliament may hold "a general debate" upon the report. In addition, relevant competent committees of Parliament may request the President of the ECB and other Executive Board members to come to a hearing (or correlatively, they may request to be heard by such committees).

Finally, the Maastricht Treaty also dealt with international agreements in the monetary sphere in a complicated provision, Article 109, which constitutes a derogation from the usual international agreement procedures laid down in Article 228.

The principal role is given to the Council which, acting unanimously, can conclude any formal agreements on exchange rates with third countries (Article 109(1)). Acting by qualified majority, the Council may enter into binding agreements with international organizations or third countries on monetary matters (Article 109(3)). The Commission does not have the power to negotiate these arrangements, as it usually does under Article 228. Instead, under Article 109(3), the Council, acting on a Commission recommendation and after consulting the ECB, decides how negotiations shall be conducted, which may well mean that Council representatives directly do the negotiating. The Commission is only given the comfort that it "shall be fully associated with the negotiations." Manifestly, the Member States want the Council to have the central power position in the sensitive area of international monetary relations and affairs.

6. Constitutional and Legal Issues Concerning the EMU Structure

Not surprisingly, the complex provisions of the Maastricht Treaty concerning the Economic and Monetary Union proved to be among the most controversial aspects of the Treaty on European Union during the debates upon its ratification in 1992-93. Many Member State citizens, and a substantial number of political party leaders, felt that the creation of the ESCB would result in centralized Community bureaucratic regulation, instead of national self-determination, in an area of great politicial, economic and social importance. This feeling certainly contributed to the adverse June 1992 ratification referendum in Denmark, and the narrow level of support for ratification in the September 1992 French referendum and the July 1993 UK Parliament vote. It is noteworthy that the favorable 1993 Danish referendum only occurred after the December 1992 Edinburgh European Council meeting expressly recognized Denmark's exercise of its Treaty Protocol option to remain outside of the third stage of EMU.

Even if one supports the basic concept of monetary union, the provisions on EMU contained in the Maastricht Treaty, and the institutional structure devised for the monetary union, raise interesting and serious constitutional and legal issues. These are surveyed in this section.

a. The Treaty Force of Detailed Provisions

The Court of Justice in the famous Les Verts judgment, Case 294/83, [1986] ECR 1339, has described the European Economic Community Treaty and the other constitutive treaties as a "constitutional charter," a characterization repeated with even greater force to justify its conclusions striking down aspects of the European Economic Area Agreement in its European Economic Area Opinion, Opinion 1/91 […]. If anything, the Treaty on European Union seems even more aptly to be described as a type of "constitutional charter."

Accordingly, the decision taken by the Turin Intergovernmental Conference, and confirmed by the European Council, to place so many complex and detailed provisions on EMU in the Treaty, and in Protocols which have Treaty force, is certainly a debatable one. Many of these provisions would seem to be more suitably embodied in secondary legislation, which could then be adjusted to meet changing needs. As it is, revisions in many provisions of relatively secondary importance can only occur through Treaty or Protocol Amendment. This is not only time-consuming and cumbersome, but carries as a consequence the obligation to resort to popular referenda in some States in order to achieve ratification of the amendments. In contrast, the rules governing the structure and operations of the Federal Reserve in the US, or national central banks in Europe, are essentially embodied in legislation.

The motive for the extensive use of Treaty provisions for the structure of EMU, and the description of the stages and conditions for its attainment, presumably was to ensure unanimous backing from the Member States at the outset, and greater certainty in the progressive execution of the successive stages and in the ultimate structure, e.g., with regard to the firm date of January 1, 1999 for the start of the third stage, or with regard to the principle of independence for the ECB and the national central banks. Although undoubtedly the goals of Economic and Monetary Union, and certain key structural features merit a place in the Treaty, it may be doubted that a number of details of planning or policy belong there.

Already the Treaty reference to Ecu as the name for the single currency in Articles 3a and Article 109 is clearly wrong, because the December 1995 Madrid European Council chose the name, Euro, instead. (This reference should have been amended in the Treaty of Amsterdam, but no such action was taken.) The failure to foresee the need to enable legislation to adopt certain essential rules in advance of the third stage has meant that the important regulation on continuity of contracts, discussed in section 9, has had to be adopted by the use of Article 235, and the equally important regulation on the introduction of the Euro cannot be adopted at all until the number of Member States participating in third stage is set and the ECB is constituted.

Indeed, the fixing of the January 1, 1999 date for the start of the third stage irrevocably in Treaty Article 109j(4) is a very debatable proposition. The efforts to adhere to that timetable have led to severe economic strains in many States and, as will be discussed in section 7, only the application of highly elastic standards will enable the date to be met. One may wonder whether 2000 or 2001 might not have been more propitious dates, and query whether the Treaty needed to fix a terminal date, or might rather have better set parameters for a final date, leaving the final timetable to be set by a European Council closer in time to the event.

b. The Principle of Independence

Not only is the principle of independence for the European Central Bank, and all national central banks participating in the ESCB, given Treaty (or constitutional) status in Article 107 (repeated in Protocol article 7), but it is stated in very strong terms: members of these bodies shall neither "seek or take instructions from Community institutions or bodies, from any government of a Member State, or from any other body." Moreover, the Community institutions and Member State governments pledge to "respect this principle and not to seek to influence" the ECB or the national central banks. The decision to give the Executive Board members a non-renewable, but relatively long eight year term, was linked to the principle of independence – it was felt that any possibility of reappointment might open the way for undue influence on the Executive Board members.

Note also that this Treaty-enshrined principle of independence applies not only to the Executive Board and the Governing Council of the European Central Bank, but also to all the national central banks participating in the European System of Central Banks. As observed in section 5, Article 108 requires Member States to ensure that their national rules governing their central banks are "compatible with this Treaty" prior to the creation of the ESCB, so that implicitly independence of national central banks should be attained during the second stage (see also Article 109e(5)).

The motive for this strong declaration of independence for the ECB and national central banks lies in the manifest success of the Bundesbank in achieving stable monetary conditions, a low inflation rate, and a solid currency virtually since the German economic recovery under Chancellor Konrad Adenauer in the 1950's. Ludwig Erhard, then Finance Minister and Adenauer's successor as Chancellor, advocated a strong, independent central bank. Much of the success enjoyed by the Bundesbank in its regulatory efforts has been attributed both within and outside Germany to the basic legislation governing the Bundesbank, enhanced by custom, according it substantial independence from the political sphere.

Prior to the Maastricht Treaty, most other European central banks were not granted totally independent regulatory powers by legislation. Although custom usually accorded the central banks wide discretion in decision-making, governments did from time to time block central bank decisions or, more rarely, dictate monetary policy to be implemented by the central banks. This was particularly true in France, but also in some measure in Italy, Spain and the United Kingdom.

France, Italy, Spain and the UK have now all acted to adopt the principle of independence for their central banks. It remains to be seen whether the principle will be respected in practice, especially in those States that have customarily possessed political control over central banks. Efforts by the executive branch, and especially finance ministers, to influence central bank decisions on interest rates or liquidity may well occur.

After all, although the Commission is also guaranteed independence by Article 157 of the EC Treaty, it is well known that on occasion Member States have tried to influence commissioners initially nominated by them. In August 1995, President Santer's rebuke of the German government for its efforts to incite the two German members of the Commission to oppose the draft consumer warranty directive was published in the press.

Independence of the ECB does not mean that it will be free from all commentary or political pressure. The Commission in its initial advocacy of the principle of independence in 1990 called it independence under "democratic scrutiny." As previously noted, Article 109b grants the President of the Council and a member of the Commission the right to "participate" without a vote in Governing Council (but not Executive Board) meetings. The word "participate" implies a right to speak and join in deliberations, not simply a right to attend silently. Indeed, the President of the Council may even "submit a motion for deliberation."

Moreover, the Parliament may at least make its views known in the debate following the ECB's annual report to Parliament (Article 109b(3)). Perhaps more important, competent Parliament committees may "hear" the President of the ECB and other Executive Board members. Since committees may include members specialized in legal and monetary affairs, and committee meetings can be scheduled at times of major monetary policy decisions, a certain degree of influence can be brought to bear on the ECB.

A final point is that some legitimate question may be raised as to the wisdom of incorporating the principle of independence into the Treaty. On a comparative note, the US Federal Reserve Board does not enjoy constitutional status and, although it enjoys great independence by custom, nothing prevents the Congress from adopting legislation mandating certain goals or policies, a power that the Congress has on rare occasion exercised. Indeed, even the threat of legislation raised by a powerful Congressional committee may well have some influence on the Federal Reserve.

This observation leads naturally to the next legal and political issue meriting review, the "democratic deficit."

c) The "Democratic Deficit" of the Monetary Union

Over the years, Parliament's endeavors to gain greater powers have been supported by academic and media commentary complaining of the "democratic deficit" of the Community. While the Rome Intergovernmental Conference experts devised the Maastrich Treaty provisions on EMU, Parliament in several resolutions urged that it be given a considerable role in the evolution of monetary union and in its operations once constituted. In large measure, this did not occur, probably because the political leadership of the Member States did not want Parliament to interfere with the decisions taken en route to EMU, and because the drafting experts insisted on the principle of ECB independence in operations after its creation.

The December 1995 Maastricht European Council decision to the effect that the TEU's monetary provisions should not be reexamined by the 1996 Turin Intergovernmental Council had the consequence that Parliament's position could not be improved in the Treaty of Amsterdam. Indeed, as noted above, the parliamentary cooperation procedure survives in the monetary chapter, although being replaced by the co-decision process everywhere else in the Treaty of Amsterdam.

Perhaps the most important and regrettable illustrations of the democratic deficit are Parliament's meager involvement in the political determinations in the shift to the third stage. It may be appropriate that Parliament is only informed in the process of providing economic and monetary guidelines to Member States during the second stage (Articles 103(2) and (4) and 104c(10)), since this is a highly technical process. But the Treaty provides that Parliament is only to be consulted in the Council decision identifying the Member States which fulfill the necessary conditions for participation in the third stage (Article 109j(4)), and in the subsequent designation of the Executive Board (Article 109a(2)).

The determination of those States that qualify for the third stage is not purely a technical matter. As will be examined in section 7, this is a highly political decision. The sensitivity and importance of the decision is underlined by the unusual requirement that the Council be composed of Heads of State and Government for this purpose-a unique example of the taking of a Community legal act at the highest political level.

A decision of parallel significance is that on the admission of new Member States, governed by Article 0 of the TEU. In this provision, the Council can act only after receiving the assent of the European Parliament, i.e., the Parliament has a veto power. Why should not the Parliament likewise have the right to assent to the determination of the States comprising the final stage of monetary union? Surely such a decision of capital political importance ought to have the strongest democratic support. The risk that Parliament would block the decision is an minimal as the risk that Parliament would block an accession - although admittedly that risk might enable Parliament to exert some degree of influence on such a capital decision.

Once the monetary union is fully constituted and the ESCB operational, the Parliament's role is also quite minimal. It is true that Parliament must give its assent to any Council legislation granting the ECB powers of prudential supervision over credit institutions and other financial institutions (Article 105(5), or in any change in significant provisions of the Statute of the ESCB (Article 106(5)). Otherwise the principle of independence dictated that Parliament be given no role in the ESCB system of monetary policy-setting and regulation. As remarked in (b) above, the total insulation of monetary decision-making from democratic control is certainly a debatable proposition. Making it hard for Parliament to interfere with the monetary expert bodies is one thing, making it impossible (by the Treaty force of these provisions) is quite another.

(d) Judicial Review by the Court of Justice

The Treaty's provisions on the role of the Court of Justice in the monetary union's operations have a dual importance: the Court will serve to guarantee the powers and the independence of the ECB, but it will also provide a check on ECB power that is all the more significant in view of the "democratic deficit."

As previously discussed in section 5, to ensure the rule of law, the Court of Justice has jurisdiction in actions brought by the ECB "to protect its prerogatives" against the other institutions or Member States under Articles 173 and 175, as well as in actions brought by Member States and the other institutions against the ECB. It is quite likely that the Court of Justice may be called upon to decide disputes over the extent of ECB competence or power (commonly called “turf battles”), for example, in the field of monetary supervision of financial institutions. The Court may also have to decide the force and extent of Treaty obligations and ECB decisions in proceedings against recalcitrant national central banks under Article 180d.

Moreover, not only Member States and Community political institutions, but individuals may to some extent question ECB regulations and decisions either directly under Article 173 or indirectly in national court proceedings, through the Article 177 reference procedure. Article 190's obligation that regulations and decisions must have a reasoned basis is apt to be applied by analogy. Although any recourse to a legal challenge of an ECB decision is apt to be only occasional, the possibility of Court of Justice review should serve as a restraint against arbitrary, capricious or totally unfounded rules or decisions, in line with well-established Court precedents on the need for a reasoned basis for Council, Commission and Parliamentary acts.

Also, although the scope of ECB and national central bank independence will probably be more guaranteed by custom, it is not inconceivable that the precise parameters of independence may have to be settled by the Court.

Another issue that may require Court review is the extent of confidentiality of ECB and ESCB decision-making. This issue had to be addressed already with regard to the extent of bank secrecy in application of the First Banking Directive in a criminal proceeding involving a bank. The Court’s judgement setting limits on the extent of bank secrecy in Hillegom v. Hillenius, Case 110/84 [1985] ECR (…), caused the amendment of the bank confidentiality provision, Article 16, in the Second Banking Directive 89/646,O.J.L. 386/1 (Dec. 30, 1989).

The sensitive nature of ECB or national central bank confidentiality is manifestly more marked than that of commercial banks, but there may nonetheless be some limits on such confidentiality to obtain other public interests.

e) The ECB Objective of Price Stability and the Amsterdam Treaty Goal of High Employment

Article 105(1), quoted in section 5 above, set “price stability” as the “primary objective” of the ESCB, thus accepting the German argument that the Bundesbank’s monetary policy success was due in large measure to its principal emphasis on price stability. Price stability is equated with a low inflation rate for products and services, especially consumer products and services. Although the Treaty fixes no specific target, price stability is usually seen as requiring an inflation rate lower than 2%, preferably approaching zero.

The ESCB is also required to “support the general economic policies in the Community” and to “act in accordance with the principle of an open market economy with free competition.” Article 3a (3) lists some other guiding principles which the ESCB should respect: “sound public finances and monetary conditions and a sustainable balance of payments.” But although the ESCB will certainly often develop rules and shape decisions to achieve one or another of these other objectives, Article 105(1) unequivocally declares these to be “without prejudice to the objective of price stability,” which is manifestly given the primary emphasis.

German fears of inflation are understandable, given the economic disaster of the 1920's, and Germany’s enviable post World War II record of low inflation is certainly in large measure due to Bundesbank policies. A low inflation rate encourages long-term investment, confidence in long-term supply contracts, market stability, certainty in budgetary planning, insurance for long-term savings, social protection for pensioners, etc.

But giving primary attention to a low inflation rate may handicap State action to combat economic and monetary crises and, in particular, efforts to reduce high unemployment and concommitant social distress. Economists are, not surprisingly, divided on their assessment of the degree of social and economic harm produced by high inflation versus that produced by high unemployment, and upon the precise nature of the link between inflation rates and unemployment rates.

Before the Maastricht Treaty, some States, like the Netherlands, assigned their central bank a broader goal than that of price stability, that of promoting general social and economic welfare. Most States' governments and central banks looked to other goals in the setting of monetary policy. On a comparative note, in the United States the Federal Reserve places a high premium on maintaining price stability, but that is not its only concern. For the last two years, some monetary and economic specialists have urged that the Federal Reserve raise interest rates to cut off incipient inflation because unemployment dropped below 6%, and then below 5%, but the Federal Reserve has declined to do so. The inflation rate has continued to be well below 2%. The debate is ongoing in the US, but it is clear that the Federal Reserve is sensitive to concerns for a low unemployment rate as well as for a low inflation rate.

The 1991-93 recession in the Community was quite severe and produced historically high unemployment virtually everywhere. Some States were especially hard hit - Finland, Portugal and Spain had unemployment at or approaching 20%. Although unemployment declined during the 1994-96 recovery, it still averages over 10%, and in fact has increased in both France (now at 13%) and Germany.

Beginning with the December 1994 Essen European Council, the Community has given priority attention to programs to combat unemployment and promote stable, long-term jobs. After several European Councils continued this emphasis, the Turin Intergovernmental Council was directed to take up the issue.

The Treaty of Amsterdam highlights the importance of Community activity to promote employment by amending Article B to insert "a high level of employment" as a Treaty goal. Similarly, Article 2 of the EC Treaty now includes among the Community's tasks "a high level of employment and social protection" immediately before "sustainable and non-inflationary growth."

The Amsterdam Treaty inserted a new Title VIa on Employment. A central provision is Article 109p(2), which states that "The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and objectives." The European Council, the Council and the Commission are all expressly mandated to implement this new emphasis on high employment.

Will this have potential consequences for the European Central Bank? The text of Article 105(1) was not modified, but obviously a high level of employment is now an integral part of the Community policies which the ESCB is required to support. Will this new factor affect to some degree the ECB's emphasis on price stability? Given the political realities - virtually all Member States currently have liberal or social democratic governments - there is certainly the possibility that the ESCB's policies will be influenced by the Member States governments' desire to reduce unemployment.

7. <u>The Second Stage and the Convergence Criteria</u>

When the Maastricht Treaty finally entered into effect on November 1, 1993, its provisions delineating the stages of progress toward an Economic and Monetary Union became operative. Although Denmark formally exercised its right to opt-out of the third stage at the time of its ratification of the TEU in June 1993 (and thus will not participate in the ESCB, nor adopt the single currency), and the United Kingdom, even after the new Labor government's election in May 1997, continues to hold open its option to participate or not, the other Member States remained committed to the EMU goal. The German Parliament did insist during its ratification process that it provide a specific assent to Germany's entry into the third stage immediately prior to that stage, and the German Constitutional Court stressed the importance of that final parliamentary assent in the court's well-known 1993 Maastricht judgment. In the

1993-94 negotiations with Austria, Finland and Sweden, their commitment to join in the proposed monetary union was made a condition for their accession, and the 1995 Treaty of Accession accordingly binds these States also to participate in the EMU.

As Article 109e of the TEU provided, on January 1, 1994 the Community entered into the second stage of preparation for the EMU. Pursuant to Article 109j(4), this stage is to be followed by the final one no later than January 1, 1999. The European Monetary Institute, composed of the Governors of each Member State central bank and a President named by common accord of the Member States, was created in 1994. The October 1993 European Council meeting in Brussels established EMI's seat in Frankfurt, Bull. EC 10/93, at 12, in a decision reached with some difficulty because both Amsterdam and London also sought this seat. (Note that the same decision specified that the European Central Bank should also be sited in Frankfurt.) The first President of the EMI was a highly respected banking expert, Alexandre Lamfalussy, formerly head of the Bank of International Settlements in Basel.

Wim Duisenberg, its second president, who took office on July 1, 1997, is the former president of the Netherlands Central Bank, well-known as an advocate of a strong central bank and strict monetary policy. He is now regarded as the leading candidate to become the first President of the European Central Bank.

In 1994, the European Monetary Institute commenced operations, first establishing its own procedures, and then starting the task of advising Member States on their monetary policies. Working with a small staff of experts (250 in 1997), the EMI issues an annual report on monetary policy each April, monitors the EMS, and regularly prepares studies and recommendations on aspects of monetary policy, banking and finance. Article 109f mandates the EMI to prepare the "regulatory , organizational and logistical framework" for the ESCB. Accordingly, together with the Commission, the EMI has been providing the recommendations for legislation and policy in preparing the transition to the third stage of monetary union. In particular, the EMI has been responsible for the technical preparation of the banknotes that will become the single currency, discussed further in section 9.

Because 1994 marked the start of recovery from the serious 1992-93 recession that affected the entire Community, the prospects for successful attainment of an EMU then began to improve. As previously noted, the Madrid European Council, held in December 1995, instructed the Intergovernmental Conference not to modify the TEU provisions on the EMU, with the result that the Amsterdam Treaty makes no change in that regard. Government leaders certainly realize that attaining the requisite convergence criteria demands hard effort and some unpopular measures, but they also appear to recognize the high economic and political costs of failing to create an EMU. Successive European Council meetings in 1995-97, especially those of Madrid, Dublin and Amsterdam, took several key policy decisions concerning the planning for the third stage, and directed the Commission, Council and the EMI to make further efforts to achieve the EMU in accordance with the Treaty time-table.

In application of Articles 103 and 104c, the Community has energetically undertaken the serious coordination of economic and monetary policy, in particular to give guidance to Member States in the elimination of excessive deficits and accumulated debt. The Council adopted a series of technical regulations and decisions in late 1993 in order to make more precise the standards for avoiding excessive government debt and for the calculation of financial resources, as well as to oblige Member States to consult the EMI on any monetary proposals. Article 104's ban on the direct financing of government deficits by central banks (popularly referred to as "no more bailouts") came into effect on January 1, 1994. The Commission reviewed the excessive deficit levels that were considered to prevail in all Member States except Ireland and Luxembourg and on November 7, 1994 the Council for the first time issued guidelines for corrective action. This process of review and guidance continued in 1995-97, with the Council issuing further guidelines for States whose monetary conditions had deteriorated (e.g., France and Germany), while removing others (Denmark, Finland and the Netherlands) from the list of those having an excessive deficit. Bull. EU 5/97, at 16.

The economic condition of all Member States improved radically in 1995, and moderately since then. Due in part to this, but perhaps even more to unusually strong political will, every Member State has made great and in some instances surprisingly rapid progress toward attaining the TEU's mandatory convergence criteria, which now need to be explained in this text.

Article 109e(2) prescribes that Member States shall, during the second stage, adopt “multi annual programmes intended to ensure the lasting convergence necessary for the achievement of economic and monetary union, in particular with regard to price stability and sound public finances,” and 109e(4) adds that the States “shall endeavor to avoid excessive government deficits.” Articles 104c(2) and 109j(1), supplemented by the Treaty Protocols on the Excessive Deficit Procedure and on the Convergence Criteria, set in more specific terms the economic and monetary conditions States must meet for eligibility for the third stage of monetary union.

Three of these conditions were set fairly early in the Rome Intergovernmental Conference, are relatively easy to understand, and have proved surprisingly attainable. The first is “a high degree of price stability,” measured by the attainment of an inflation rate close to that of the three best performing Member States in terms of price stability. The text is somewhat ambiguous: it is not clear whether the point of reference should be the average inflation level of the three best performing States, or the inflation rate of the poorest among the three best performing States. However, the use of the word “close” to that level permits a degree of flexibility in application in any event. Article 1 of the Protocol on Convergence Criteria specifies that “close” shall mean that the target inflation rate should be one not in excess of 1½ percent above the inflation rate of the three best performing States, using the “consumer price index on a comparable basis” to gauge the inflation rate.

In the period 1994-97, the Member States made highly satisfactory progress in lowering their inflation rates, in some cases to one half or one third of their prior level. By the end of 1996, the Commission estimated the average inflation rate of all States at slightly above 2.5%, and the Commission expects that figure to drop to around 2.2% in 1997. The average inflation rate for the three best performing States was 1%, and should stay around that level in 1997. By the end of 1996, the Commission concluded that ten States were within the required inflation rate range, and by the end of 1997 only Greece is certain to have an excessive inflation rate (and even Greece has made significant progress in this regard).

Closely connected to the inflation rate criterion is the second one, requiring States’ long term interest rates to attain a level not exceeding by more than 2% the level of the three best performing States (Protocol on the Convergence Criteria, Article 5). Long term interest rates tend to move in tandem with inflation rates (although not invariably), and these rates fell throughout the Community in 1994-97. By the end of 1997, only Greece is fairly certain to have long term interest rates exceeding by 2% the average level (slightly above 6%) of the three best performing States.

The third criterion is that States’ currency must remain within “the normal fluctuation margins provided for by the exchange rate mechanism of the European Monetary System without severe tensions for at least the last two years before the examination” (Article 109j(1) and Protocol on the Convergence Criteria, Article 3). Neither the Treaty nor the Protocol specifically require that Member States formally adhere to the Exchange Rate Mechanism - an important point, since Italy only rejoined the ERM in November 1996, and Greece, Sweden and the UK continue to remain outside the ERM. As was noted in section 2 above, the exchange markets have been quite stable since mid-1995. Satisfaction of this criterion is expected for all States, with the possible exception of Greece.

The fourth and by far the most difficult criterion is that States must not have an excessive deficit. Under Article 104c and Article 1 of the Protocol on the Excessive Deficit Procedure, this has two aspects: 1) the current annual government deficit should not exceed 3% of the national gross domestic product (GDP) at market prices; 2) the accumulated total government debt should not exceed 60% of GDP. Article 2 of the Protocol specifies that key terms are defined in accordance with the usage of the European System of Integrated Economic Accounts and that, in particular, the term “government” includes “central government, regional or local government and social security funds, to the exclusion of commercial operations.” This definition is especially important for the calculation of total government debt of federal states, since their component states or regions often have substantial debt.

Although almost all States made remarkable progress in 1995-97 toward reducing their annual deficit and lowering their accumulated total debt, nonetheless many would be unable to meet the Protocol criteria if these were to be applied strictly. This is especially true for the total debt aspect, because several States have attained extremely high levels in the past. Thus, at the end of 1996, Belgium, Greece and Italy had total debt levels well in excess of 100% of GDP, and Austria, Ireland, the Netherlands and Sweden all had debt levels in excess of 70% of GDP.

Fortunately, the drafters of the relevant TEU Treaty provisions foresaw the need for a certain degree of flexibility. Article 109j(1) stipulates that States must not have an excessive deficit, but cross-references to Article 104c(6), which gives the Council the responsibility for deciding "after an overall assessment whether an excessive deficit exists." The Council in turn works on the basis of a Commission report which need only find, according to Article 104c(2), that the current annual deficit "has declined substantially and continuously" and is "close to the reference level," and that the total accumulated government debt "is sufficiently diminishing and approaching the reference value at a satisfactory pace."

Accordingly, both the Commission in its report and the Council in its final decision may conclude that a State's sustained progress toward meeting the Protocol levels is sufficient, even though the State has not yet attained the required levels. It is noteworthy that the Council decided in 1997 that Denmark, Ireland and the Netherlands do not have an excessive deficit, even though all three States still have accumulated government debts in excess of 60% of GDP, because all three have continuously and significantly reduced the total government debt.

This degree of flexibility in applying the Protocol standards is extremely important because in early 1997 the severe unemployment rates in several States (which continue to exceed 10% throughout the Community, and currently exceed 13% in France and Spain), together with other economic problems (notably the continued cost to Germany of its financial aid to former East Germany), have compelled several States to incur budget costs that make it quite unlikely that they will precisely hit the Protocol targets by the end of 1997. Indeed, when the new French Socialist government of Prime Minister Jospin won its surprising victory in June 1997, it announced its intention to giving the battle against high unemployment a higher priority than meeting the deficit criterion, although it subsequently reaffirmed its intention to meet the Maastricht treaty convergence criteria.

Despite the manifest unhappiness of Germany's Bundesbank with the prospect, it appears likely that the Community leaders will be relatively lenient in 1998 when they assess how closely States must come to the deficit and debt target figures. Several States may barely meet or marginally exceed the 3% annual deficit criterion, in some instances (as in France and Italy) by the use of extraordinary sales of state assets or unusual taxes. Article 109j(4) stipulates that in early 1998, the Council acting in the composition of Heads of State or Government, based on Commission and EMI reports, must decide which States meet the convergence criteria, and accordingly move to the third stage of the monetary union. France attempted to have the June 1997 Amsterdam European Council delay this date, but without success. Most observers, including financial market experts, currently expect that the Council will consider that almost all Community States will be deemed to meet the convergence criteria, with the exception of Greece.

At the time of the Danish referendum in June 1993, Denmark exercised its opt-out right stipulated in a TEU Protocol, but the current Danish government is believed likely to move for reconsideration of the issue in a referendum at some auspicious point after the third stage begins. Similarly, the Labor government of Prime Minister Blair in the UK announced in late 1997 its intention to exercise the UK opt-out granted by its Protocol, but to try to secure popular support for UK's entry into the third stage of EMU no later than the date of the next UK election (hence, no later than May 2002).

The Swedish government presently does not desire to join the third stage. Although Sweden is quite likely to satisfy the convergence criteria, Sweden has not made its central bank independent and accordingly technically does not satisfy a Treaty-based criterion for joining. At present it appears that the other States will acquiesce in Sweden's failure to take the necessary measure to join the third stage.

Accordingly, the current prospect is that a large majority of States, probably eleven, (excluding Denmark, Greece, Sweden and the UK), will begin the third stage of monetary union on Jan. 1 , 1999, the date set by Article 109j(4). This has a number of important consequences. Politically, this is quite desirable, because it will reduce the tensions inevitably produced by a "two-tier" Europe, tensions that would be particularly severe if all the Mediterranean States failed to join. With regard to the States that don't join in 1999, there is a good prospect that all will join by or around 2002 (even Greece has pledged to meet the criteria by that date). Moreover, most of the Eastern European States that are scheduled to begin negotiations in 1998 to join the Union are also reasonably likely to be capable of joining the monetary union as well by the date of their accession (which in any event is unlikely to be earlier than 2002).

From a monetary point of view, the addition of a number of States that traditionally have not had strong economies, or have often been willing to incur substantial government deficits, may well mean that the monetary union will be less likely to follow strict monetary policies, so that the new single currency may well be less solid than the German mark has been. That is certainly the forecast of most financial market experts presently. (In section 2 above, it was noted that both the dollar and the UK pound have markedly appreciated against all the continental Community states' currency in 1997.) This adverse result may however be balanced by greater Community and Member State flexibility in coping with high unemployment or other economic problems.

8. Policy Decisions and Measurers to Prepare for EMU

During 1995-97, the Commission and the European Monetary Institute worked intensively to prepare reports, studies and draft proposals for the policy decisions and regulatory measures necessary to successfully prepare in time for the shift to the third stage of EMU in 1999. The Council, working usually in its composition of finance ministers, generally approved the proposed initiatives, although often with significant modifications. The most serious issues were transmitted to the European Council for determination, sometimes by compromises, at its regular meetings.

The first series of major policy decisions were taken by the Madrid European Council in December 1995. This meeting endorsed the "scenario for the changeover to the single currency," largely as proposed by the Commission and the EMI. Bull. EU 12/95, at 24-28. The name, Euro, was adopted for the banknotes and largest denomination coins for the new single currency. (The name, Ecu, was rejected, because of fears that investors who had lost money through their purchase of Ecu-denominated securities, in comparison to the stronger dollar or mark-denominated securities, would not have total confidence in a currency using the Ecu name.)

The scenario, or timetable, called for the preparation of all essential draft texts by the end of 1996, and their revision and approval in 1997-98. As soon as possible after the determination of the States qualifying for entry into the third stage in early 1998, those States should select the Executive Board and the central bank governors constituting the Governing Council of the ECB. The ESCB should then begin preliminary operations. In 1998, the Council and the ESCB should complete the adoption of secondary legislation and start the production of Euro banknotes and coins.

On January 1, 1999, the formal date of commencement of the third stage, the critical legislation should enter into force, notably that irrevocably fixing the rates for conversion from national currencies into the Euro, and that on continuity of contracts. During 1999-2001, the Euro would be used for Community and participating Member State accounts, loans and inter-State financial transactions. The Euro banknotes and coins would be introduced and become legal tender on January 1, 2002, and national currency would cease to be legal tender not later than June 30, 2002.

The next major policy decisions came at the Dublin European Council in December 1996. Bull. EU 12/96, at 10 and 20-30. The meeting officially confirmed that the third stage of EMU could not begin early, but would definitely start on January 1, 1999. This insistence on adherence to the Treaty timetable marked the political determination of Chancellor Kohl of Germany and President Chirac of France in particular, as several other States were inclined to postpone that date.

A major debate in late 1996 concerned the Commission's proposed "stability and growth pact," intended to ensure that States would continue to maintain budget discipline and comply with the deficit criteria after joining the monetary union. Germany fought vigorously for strict standards, while most other States wanted more lenient ones, applied through a political decision, rather than by the Central Bank on purely monetary grounds. The December 1996 Dublin European Council set a compromise. States that do not continue to meet the annual standards will be sanctioned by being obliged to pay over a large non-interest bearing deposit equivalent to a sum representing from 0.2% to 0.5% of their GDP to the European Central Bank, to be kept until the deficit is reduced, with the risk that the deposit would be forfeited if the deficit status is not corrected within two years. However, the Council can waive this sanction for States suffering a severe recession or other economic crisis.

The Dublin European Council also endorsed the proposal from the Econfin Council and the EMI for a new Exchange Rate Mechanism, ERM II, to govern relations between the States joined in EMU's third stage and those remaining outside. This was obviously a topic of considerable sensitivity. The proposal does not require any State to join in ERM II. Those that do join will only be obliged to keep their currencies within a relatively wide band, presumably the present ±15% one.

At the June 1997 Amsterdam European Council meeting, an effort by the newly-elected French Socialist government of Prime Minister Jospin to retard the 1999 target for the third stage was firmly rejected by the other States. The meeting reaffirmed the need to act early in 1998 to set the number of participating States and the creation of the ESCB. The meeting also endorsed the text of the key pieces of secondary legislation, the formal structure of ERM II, and the technical decisions on the design of the Euro coins, described below. EU Bull. 6/97, at 9-10 and 20-21.

The December 1997 Luxembourg European Council meeting endorsed the further progress on the legislative front, and urged that action be speeded up in 1998. Thus, it requested Member States to present their final 1997 statistics in February 1998, that the Commission and the EMI issue their reports on the States' convergence levels in March, and stipulated that the final decision on the identity of the participating States should be taken in May 1998.

Turning to the regulatory measures adopted to facilitate the progress toward EMU, a matter of great concern since the Delors Report has been the degree of differences between Member States in their computation of key statistics. In 1991, a committee on monetary, financial and balance of payment statistics was created to try to improve the consistency and reliability of statistics in that field. Undoubtedly the most important single measure adopted in this field is Council Regulation EC 2494/95 on harmonized indices of consumer prices, O.J. L 257/1 (Oct. 27, 1995). This regulation set up a system to improve the comparability of consumer prices in Member State statistics, imposed an obligation to provide "honest and complete information," required monthly production of source data, and created a structure for the compilation of a European Index of Consumer Prices by the Commission. Obviously, the need to ensure accurate national consumer price statistics is critical for the ultimate assessment of the number of States that meet the price stability criterion for entry into the third stage.

The Dublin European Council's policy decision on the nature of the "stability and growth pact" has been carried out by the adoption of two regulations, both on July 7, 1997. The first, Council Regulation EC 1466/97 on the surveillance of budgetary positions and economic policies, O.J. L 209/1 (Aug. 2, 1997), is intended, as its name suggests, to improve the flow of economic information from States to the Commission and Council, and thereby to improve the surveillance of the States' economic and monetary position. Each State participating in the final stage of EMU must adopt annually a Stability Programme, consisting of medium-term budgetary objectives which show the State's budget to be in surplus or at least close to balance, and which provide relevant data and assumptions on economic developments. These State Stability Programs are to be assessed by the Commission and the Council. The Council may, if it has concerns, provide recommendations intended to serve as an "early warning" to the State to make adjustments. The Council has the discretion to decide whether to make its recommendations public (a step that might well create greater pressure upon the State in question). A similar approach is to be followed for non-participating States to monitor their progress toward satisfying the convergence criteria.

The second, Council Regulation EC 1467/97 on the implementation of the excessive deficit procedure, O.J. L 209/6 (Aug. 2, 1997) provides the legal force and the details for execution of the Dublin European Council policy decision. This regulation notes the obligation upon States participating in the final stage of EMU to continue to avoid excessive deficits. If the Council decides that a State has an excessive deficit, the Council shall promptly recommend corrective measures. If the State fails to take effective action expeditiously, the Council may impose a sanction in the form of a non-interest bearing deposit equivalent to at least 0.2% of the State's GDP, with possible higher levels of sanction in function of the size of the State's deficit. This deposit shall "as a rule" be converted into a non-recoverable fine if within two years, in the opinion of the Council, the excessive deficit status is not corrected. The Council may excuse the excessive deficit if the State has experienced "an annual fall of real GDP of at least 2%," or if the State can demonstrate that its annual GDP reduction of less than 2% is nonetheless sufficiently exceptional in character. The system set up for penalties is obviously intended to constitute a deterrent that would motivate any State to avoid an excessive deficit, or to correct one quite expeditiously.

As the other measures adopted or in progress in 1997 more directly relate to the single currency, they are better discussed in the next section.

9. Preparation for the Single Currency, the Euro

The dimensions of the technical difficulties involved in creating a single currency were outlined in a Commission communication, "Practical problems involved in introducing the ECU as the EU's single currency," O.J. C 153/3 (June 4, 1994). The Commission provided a longer study in its Green Paper on the Introduction of the Single Currency, COM (95) 333 (May 31, 1995). Both rejected a "big bang" rapid introduction in favor of a carefully regulated preparation over three years, followed by a several month transition period for the actual introduction of the single currency.

The studies note that the banking industry and the financial sector will require massive revision of denominations of loans, deposits, security instruments and operating procedures, and that automatic teller machines must be modified, computer software programs revised, etc. The public administration, especially the tax, social security and budgetary authorities, will likewise have serious problems in restructuring, while in the private sector the retail industry will need substantial revisions in operations. Since 1995, the Commission, together with the Monetary Institute, has encouraged studies and conferences to involve as many interested parties as possible in the process of planning and concrete preparation..

In accordance with the timetable approved by the December 1995 Madrid European Council, on January 1, 1999 the States participating in the final stage of monetary union will permanently freeze their national currencies into the as-yet merely nominal single currency, the Euro. In fact, to provide greater stability to the financial markets, the December 1997 Luxembourg European Council instructed the Council to take the decision on the precise conversion rate for each participating national currency as soon as possible after the creation of the ESCB, presumably in May 1998.

As noted before, in the three year period from 1999 to 2001, the participating States will use the Euro for all national budgetary and accounting purposes, will float their debt only in Euros, and use Euros for their inter-State monetary movements. In effect, their national currency will be only an expression, or sub-units, of the Euro as the official currency.

Financial institutions and commercial enterprises will be encouraged to use the Euro as much as possible in their internal accounts and external transactions, but will not be required to do so - the principle is one of "no prohibition, no compulsion." Many large banks and multi-national groups, especially in Germany and the Netherlands, have already announced their intention to do so. Thus, they will set up their internal accounts on a dual basis, keeping them both in Euros and their national currency, will float their debt predominantly in Euros, and will invoice and accept payment in Euros as well as in national currency. London and other financial centers are expected immediately to trade securities denominated in Euros.

Note that all enterprises organized in corporate form must redenominate their capital, securities and debt in Euros no later than June 30, 2002. Many are engaged in advance planning. The Commission has urged that all States create the legal possibility of no-par shares to facilitate this changeover.

Because it will take several years to print and safely store the enormous number of new Euro banknotes to issue as legal tender on January 1, 2002, the European Monetary Institute has moved rapidly to fulfil its role, foreseen in Article 109f(3), of setting the technical specifications for the banknotes. An April 1995 EMI report set the denominations at 5, 10, 20, 50 and 100. After detailed studies and a competition in mid-1996 to select the design for each face of the banknotes, the EMI decided to use non-existent monuments and bridges with a European cultural flair on the banknote faces, together with the European flag. Each denomination will have a different color and will have tactile qualities to help the visually impaired to differentiate them.

Article 105a gives the Council the power to determine the nature of Euro coins. The process of setting their denominations and features is now well advanced. The Commission proposed a draft Council regulation on the denominations and technical specifications of Euro coins, O.J. C 208/5 (July 9, 1997), which, incidentally, must be reviewed by the Parliament under the cooperation procedure. This text proposes one and two Euro coins, and 1, 2, 5, 10, 20 and 50 cent coins. The draft sets their shape, size, color and edges, and notes that the vending machine association representatives and the European Blind Union were duly consulted to ensure that the coins would be as suitable as possible for convenient and safe use. Since the December 1997 Luxembourg European Council has given its endorsement to the Commission draft, the Council should adopt the final regulation soon.

The most important measure necessary to launch the single currency is still in draft form, a proposed Regulation on the introduction of the Euro, O.J. C 236/8 (Aug. 2, 1997). This must remain a draft, because it is to be adopted using Article 109 l (4) as its legal basis, which means that action must be taken by the Council in a special body representing the participating States after they are designated, presumably in May 1998, and after the ECB is constituted and can give its opinion on the text. However, in view of the critically important nature of the draft, and to promote legal certainty, the European Council meeting at Amsterdam in June 1997 took the unusual step of adopting a specific resolution endorsing the draft text. O.J. C 236/7 (Aug. 2, 1997).

The draft regulation on the introduction of the Euro essentially gives legal force to the policy decisions reached by the Madrid European Council in December 1995. Article 2 adopts the name, Euro, for the single currency, and divides one Euro into one hundred cents. Article 3 prescribes that the Euro is to be substituted for national currency units at the irrevocable fixed rates to be set by the Council pursuant to Article 109 l (4). (As noted above, this is now scheduled to occur in May 1998.) The Euro is then to be the unit of account for the ECB and all participating national central banks.

Articles 10-11 of the draft regulation mandate the ECB to put Euro banknotes into circulation on Jan. 1, 2002 at the latest, and the Member States to issue Euro and cent coins at the same date, both assuming the status of legal tender. Under article 15, national currency banknotes and coins may remain legal tender for no longer than six months thereafter. Article 12 requires participating States to "ensure adequate sanctions against counterfeiting" of Euros.

The transition period, 1999-2001, is covered in articles 6-9 of the draft regulation, which provide essentially that all legal instruments (laws, regulatory or administrative acts, judicial decisions, contracts, instruments of payment, etc.) may be set either in Euros or in a national currency. Acts to be performed under the instrument (e.g., payment under a sales contract) are then to be carried out in the currency specified - but subject to anything the parties involved may agree (thus adopting the principle of private party autonomy). However, a debtor always has the option to pay a creditor either in Euros or the national currency. Member States may redenominate their prior outstanding debt into Euros, but they are not obligated to do so. They may also permit organized markets (e.g., stock or commodities exchanges) to change their units of account from the prior national currency to Euros.

Of equal importance, and finally adopted, is Council Regulation EC 1103/97 on certain provisions relating to the introduction of the Euro, O.J. L 162/1 (June 19, 1997). This is commonly known as the Article 235 Regulation, because it was adopted by use of Article 235 of the Treaty, since the monetary provisions of the TEU set no legal basis for it. It is also known as the continuity of contracts regulation, since that is its principal subject. Although a recital (or Whereas clause) to the Regulation notes that "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," nonetheless "in order to reinforce legal certainty and clarity," the regulation was adopted. Another recital expresses the hope that third country jurisdictions will accept and apply the principles set in the regulation, because its terms represent the monetary rules of the jurisdiction issuing the currency.

The key provision is Article 3, which states:

> "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 such an instrument. This provision is subject to anything which parties may have agreed."

This expressly binding rule of continuity of contracts is meant to bar completely any claim for rescission, cancellation or non-performance under national law based on statutory or case law rules on frustration, impossibility, material alteration of terms, inequity, etc. Note however that the principle of party autonomy is respected: the parties may agree to the contrary. While it is probably true that the rule of continuity of contracts would have been applied in national courts in any event, the Regulation will certainly provide clear guidance to business operators and avoid unnecessary litigation.

Article 2 of the Regulation further specifies that any reference in a legal instrument to an Ecu should be replaced by one to a Euro, on a one Ecu to one Euro basis. Finally, Article 4 stipulates that conversions from national currencies into Euros shall be made by a calculation with six significant figures, without any rounding off. This sets a standard with considerable precision.

Thus, although not all issues have been completely resolved, the basic structural devices for the introduction of the Euro as the new single currency for all participating States have been set by the end of 1997.

Important recent books are:

K. Dyson, Elusive Union: The Process of Economic and Monetary Union in Europe (Longman 1994)

K. Gretschmann, Economics and Monetary Union: Implications for National Policy Makers (1993)

R. Smit, The European Central Bank - Institutional Aspects (Kluwer 1997)

J. Usher, The Law of Money and Financial Services in the EC, chs. 7-8 (Clarendon 1994)

P. Welfens, ed., European Monetary Integration (Springer 2d ed. 1994)

Among the many recent useful articles are the following:

D. Dunnett, Some Legal Principles Applicable to the Transition to the Single Currency, 33 Common Mkt. L. Rev. 1133 (1996)

L. Gormley & J. de Haan, The Democratic Deficit of the European Central Bank, 21 European L. Rev. 95 (1996)

R. Inman & D. Rubinfeld, The EMU and Fiscal Policy in the New European Community, 14 Int'l Rev. L. & Econ. 147 (1994)
R. Martha, The Fund Agreement and The Surrender of Monetary Sovereignty to the European Community, 30 Common Mkt. L. Rev. 749 (1993)
J. Pipkorn, Legal Arrangements in the Treaty of Maastricht for the Effectiveness of the EMU, 31 Common Mkt. L. Rev. 263 (1994)
P. Slot, The Institutional Provisions of the EMU, in D. Curtin & T. Henkels, ed., Institutional Dynamics of European Integration II 229 (Nijhoff 1994)
F. Snyder, Monetary Union: a Metaphor for European Union, in R. Dehousse, ed., Europe After Maastricht 63 (C. H. Beck, 1994)
N. Thygesen, Why is EMU an Important Objective for Europe?, 14 Int'l Rev. L. & Econ. 133 (1994)
V. Wolker, The Continuity of Contracts in the Transition to the Third Stage of Economic and Monetary Union, 33 Common Mkt. L. Rev. 1117 (1996)
C. Young, The Ramification of the Exchange Rate Collapse in Europe: Implications for Monetary Union, 13 Boston U. Int'l & Comp. L.J. 263 (1995)

2 LEGISLATION

2.1 Decision on the participating Member States

COUNCIL DECISION No. 98/317/EC of 3 May 1998 in accordance with Article 109j(4) of the Treaty (Official Journal NO. L 139 , 11/05/1998 p. 0030 - 0035)

THE COUNCIL OF THE EUROPEAN UNION, meeting in the composition of Heads of State or Government,
Having regard to the Treaty establishing the European Community, and in particular Article 109j(4) thereof,
Having regard to the report from the Commission,
Having regard to the report from the European Monetary Institute,
Having regard to the recommendations from the Council of 1 May 1998,
Having regard to the opinion of the European Parliament (1),
(1) Whereas, in accordance with Article 109j(4) of the Treaty, the third stage of economic and monetary union (EMU) shall start on 1 January 1999;
(2) Whereas, in accordance with Article 109j(2) of the Treaty, on the basis of reports presented by the Commission and the European Monetary Institute on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of EMU, the Council has assessed on 1 May 1998, for each Member State, whether it fulfils the necessary conditions for the adoption of the single currency and has recommended to the Council, meeting in the composition of the Heads of State or Government, the following findings:

Belgium
In Belgium, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the European System of Central Banks (ESCB).
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Belgium in the year ending in January 1998 stood at 1,4 %, which is below the reference value,
- Belgium is not the subject of a Council decision on the existence of an excessive government deficit,
- Belgium has been a member of the exchange-rate mechanism (ERM) for the last two years; in that period, the Belgian franc (BEF) has not been subject to severe tensions and Belgium has not devalued, on its own initiative, the BEF bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Belgium was, on average, 5,7 %, which is below the reference value.

Belgium has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, Belgium fulfils the necessary conditions for the adoption of the single currency.

Germany
In Germany, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Germany in the year ending in January 1998 stood at 1,4 %, which is below the reference value,
- Germany is not the subject of a Council decision on the existence of an excessive government deficit,

- Germany has been a member of the ERM for the last two years; in that period, the German mark (DEM) has not been subject to severe tensions and Germany has not devalued, on its own initiative, the DEM bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Germany was, on average, 5,6 %, which is below the reference value.

Germany has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, Germany fulfils the necessary conditions for the adoption of the single currency.

Greece
In Greece, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Greece in the year ending in January 1998 stood at 5,2 %, which is above the reference value,
- the Council decided on 26 September 1994 that an excessive government deficit exists in Greece and this Decision has not been abrogated,
- the currency of Greece did not participate in the ERM in the two years ending in February 1998; during this period, the Greek drachma (GRD) has been relatively stable against the ERM currencies but it has experienced, at times, tensions which have been counteracted by temporary increases in domestic interest rates and by foreign exchange intervention. The GRD joined the ERM in March 1998,
- in the year ending in January 1998, the long-term interest rate in Greece was, on average, 9,8 %, which is above the reference value.

Greece does not fulfil any of the convergence criteria mentioned in the four indents of Article 109j(1).
Consequently, Greece does not fulfil the necessary conditions for the adoption of the single currency.

Spain
In Spain, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Spain in the year ending in January 1998 stood at 1,8 %, which is below the reference value,
- Spain is not the subject of a Council decision on the existence of an excessive government deficit,
- Spain has been a member of the ERM for the last two years; in that period, the Spanish peseta (ESP) has not been subject to severe tensions and Spain has not devalued, on its own initiative, the ESP bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Spain was, on average, 6,3 %, which is below the reference value.

Spain has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, Spain fulfils the necessary conditions for the adoption of the single currency.

France
France has taken all the necessary steps to make its national legislation, including the statute of the national central bank, compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in France in the year ending in January 1998 stood at 1,2 %, which is below the reference value,
- France is not the subject of a Council decision on the existence of an excessive government deficit,

- France has been a member of the ERM for the last two years; in that period, the French franc (FRF) has not been subject to severe tensions and France has not devalued, on its own initiative, the FRF bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in France was, on average, 5,5 %, which is below the reference value.

France has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, France fulfils the necessary conditions for the adoption of the single currency.

Ireland
In Ireland, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Ireland in the year ending in January 1998 stood at 1,2 %, which is below the reference value,
- during the second stage of EMU, Ireland was not the subject of a Council decision on the existence of an excessive government deficit,
- Ireland has been a member of the ERM for the last two years; in that period, the Irish pound (IEP) has not been subject to severe tensions and the IEP bilateral central rate has not been devalued against any other Member State's currency; on 16 March 1998, at a request of the Irish authorities, the bilateral central rates of the IEP against all other ERM currencies were revalued by 3 %,
- in the year ending in January 1998, the long-term interest rate in Ireland was, on average, 6,2 %, which is below the reference value.

Ireland has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, Ireland fulfils the necessary conditions for the adoption of the single currency.

Italy
In Italy, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Italy in the year ending in January 1998 stood at 1,8 %, which is below the reference value,
- Italy is not the subject of a Council decision on the existence of an excessive government deficit,
- Italy rejoined the ERM in November 1996; in the period from March 1996 to November 1996, the Italian lira (ITL) appreciated vis-à-vis the ERM currencies; since it re-entered the ERM, the ITL has not been subject to severe tensions and Italy has not devalued, on its own initiative, the ITL bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Italy was, on average, 6,7 %, which is below the reference value.

Italy fulfils the convergence criteria mentioned in the first, second and fourth indents of Article 109j(1); as regards the criterion mentioned in the third indent of Article 109j(1), the ITL, although having rejoined the ERM only in November 1996, has displayed sufficient stability in the last two years. For these reasons, Italy has achieved a high degree of sustainable convergence.
Consequently, Italy fulfils the necessary conditions for the adoption of the single currency.

Luxembourg
Luxembourg has taken all the necessary steps to make its national legislation, including the statute of the national central bank, compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Luxembourg in the year ending in January 1998 stood at 1,4 %, which is below the reference value,

- during the second stage of EMU, Luxembourg was not the subject of a Council decision on the existence of an excessive government deficit,
- Luxembourg has been a member of the ERM for the last two years; in that period, the Luxembourg franc (LUF) has not been subject to severe tensions and Luxembourg has not devalued, on its own initiative, the LUF bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Luxembourg was, on average, 5,6 %, which is below the reference value.

Luxembourg has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, Luxembourg fulfils the necessary conditions for the adoption of the single currency.

The Netherlands
In the Netherlands, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in the Netherlands in the year ending in January 1998 stood at 1,8 %, which is below the reference value,
- the Netherlands is not the subject of a Council decision on the existence of an excessive government deficit,
- the Netherlands has been a member of the ERM for the last two years; in that period, the Dutch guilder (NLG) has not been subject to severe tensions and the Netherlands has not devalued, on its own initiative, the NLG bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in the Netherlands was, on average, 5,5 %, which is below the reference value.

The Netherlands has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, the Netherlands fulfils the necessary conditions for the adoption of the single currency.

Austria
In Austria, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Austria in the year ending in January 1998 stood at 1,1 %, which is below the reference value,
- Austria is not the subject of a Council decision on the existence of an excessive government deficit,
- Austria has been a member of the ERM for the last two years; in that period, the Austrian schilling (ATS) has not been subject to severe tensions and Austria has not devalued, on its own initiative, the ATS bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Austria was, on average, 5,6 %, which is below the reference value.

Austria has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, Austria fulfils the necessary conditions for the adoption of the single currency.

Portugal
In Portugal, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Portugal in the year ending in January 1998 stood at 1,8 %, which is below the reference value,

- Portugal is not the subject of a Council decision on the existence of an excessive government deficit,
- Portugal has been a member of the ERM for the last two years; in that period, the Portuguese escudo (PTE) has not been subject to severe tensions and Portugal has not devalued, on its own initiative, the PTE bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Portugal was, on average, 6,2 %, which is below the reference value.

Portugal has achieved a high degree of sustainable convergence by reference to all four criteria.
Consequently, Portugal fulfils the necessary conditions for the adoption of the single currency.

Finland
In Finland, national legislation, including the statute of the national central bank, is compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Finland in the year ending in January 1998 stood at 1,3 %, which is below the reference value,
- Finland is not the subject of a Council decision on the existence of an excessive government deficit,
- Finland has been a member of the ERM since October 1996; in the period from March 1996 to October 1996, the Finnish markka (FIM) appreciated vis-à-vis the ERM currencies; since it entered the ERM, the FIM has not been subject to severe tensions and Finland has not devalued, on its own initiative, the FIM bilateral central rate against any other Member State's currency,
- in the year ending in January 1998, the long-term interest rate in Finland was, on average, 5,9 %, which is below the reference value.

Finland fulfils the convergence criteria mentioned in the first, second and fourth indents of Article 109j(1); as regards the convergence criterion mentioned in the third indent of Article 109j(1), the FIM, although having entered the ERM only in October 1996, has displayed sufficient stability in the last two years. For these reasons, Finland has achieved a high degree of sustainable convergence.
Consequently, Finland fulfils the necessary conditions for the adoption of the single currency.

Sweden
In Sweden, national legislation, including the statute of the national central bank, is not compatible with Articles 107 and 108 of the Treaty and the Statute of the ESCB.
Regarding the fulfilment of the convergence criteria mentioned in the four indents of Article 109j(1) of the Treaty:

- the average inflation rate in Sweden in the year ending in January 1998 stood at 1,9 %, which is below the reference value,
- Sweden is not the subject of a Council decision on the existence of an excessive government deficit,
- the currency of Sweden has never participated in the ERM; in the two years under review, the Swedish crown (SEK) fluctuated against the ERM currencies reflecting among others the absence of an exchange rate target,
- in the year ending in January 1998, the long-term interest rate in Sweden was, on average, 6,5 %, which is below the reference value.

Sweden fulfils the convergence criteria mentioned in the first, second and fourth indents of Article 109j[1] but does not fulfil the convergence criterion mentioned in the third indent thereof.
Consequently, Sweden does not fulfil the necessary conditions for the adoption of the single currency;

[1] Opinion delivered on 2 May 1998 (not yet published in the Official Journal).

(3) Whereas the Council, meeting in the composition of Heads of State or Government, after having made an overall evaluation for each Member State, taking into account the above reports of the Commission and the European Monetary Institute, the opinion of the European Parliament and the Council's recommendations of 1 May 1998, considers that Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland fulfil the necessary conditions for the adoption of the single currency;

(4) Whereas Greece and Sweden do not at this stage fulfil the necessary conditions for the adoption of the single currency; whereas Greece and Sweden will consequently have a derogation as defined in Article 109k of the Treaty;

(5) Whereas, in accordance with paragraph 1 of Protocol 11 of the Treaty, the United Kingdom has notified the Council that it does not intend to move to the third stage of EMU on 1 January 1999; whereas, by virtue of this notification, paragraphs 4 to 9 of Protocol 11 lay down the provisions applicable to the United Kingdom if and so long as the United Kingdom has not moved to the third stage;

(6) Whereas, in accordance with paragraph 1 of Protocol 12 of the Treaty and the Decision taken by the Heads of State or Government in Edinburgh in December 1992, Denmark has notified the Council that it will not participate in the third stage of EMU; whereas, by virtue of this notification, all Articles and provisions of the Treaty and the Statute of the ESCB referring to a derogation shall be applicable to Denmark;

(7) Whereas, by virtue of the above notifications it was not necessary for the Council to make an assessment under Article 109j(2) concerning the United Kingdom and Denmark,

HAS ADOPTED THIS DECISION:

Article 1

Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland fulfil the necessary conditions for the adoption of the single currency on 1 January 1999.

Article 2

This Decision is addressed to the Member States.

Article 3

This Decision shall be published in the Official Journal of the European Communities.

2.2 Article 109l(4) Regulation on EMU

COUNCIL REGULATION (EC) No 974/98 of 3 May 1998 on the introduction of the euro (Official journal NO. L 139 , 11/05/1998 P. 0001 - 0005)

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 109l(4), third sentence thereof,
Having regard to the proposal from the Commission (1),
Having regard to the opinion of the European Monetary Institute (2),
Having regard to the opinion of the European Parliament (3),

(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 (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (4); 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 Regulation (EC) No 1103/97 should be examined to ensure a balanced changeover, in particular for consumers;
(2) Whereas, at the meeting of the European Council in Madrid on 15 and 16 December 1995, the decision was taken that the term 'ecu` used by the Treaty to refer to the European currency unit is a generic term; whereas the Governments of the 15 Member States have reached the common agreement that this decision is the agreed and definitive interpretation of the relevant Treaty provisions; whereas the name given to the European currency shall be the 'euro`; whereas the euro as the currency of the participating 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; 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 the Council when acting in accordance with the third sentence of Article 109l(4) 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 109k(2) of the Treaty a Member State becomes a participating Member State, the Council shall according to Article 109l(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 the first sentence of Article 109l(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 shall be irrevocably fixed and at which irrevocably fixed rate the euro shall 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 109g of the Treaty and with Regulation (EC) No 1103/97, 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 account 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 will be carried out in the euro unit by the European System of Central Banks

(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 each participating Member State may allow the full use of the euro unit in its territory during the transitional period;
(11) 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;
(12) 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;
(13) Whereas the euro unit and the national currency units are units of the same currency; whereas it should be ensured that payments inside a participating Member State by crediting an account can be made either in the euro unit or the respective national currency unit; whereas the provisions on payments by crediting an account should also apply to those cross-border payments, which are denominated in the euro unit or the national currency unit of the account of the creditor; whereas it is necessary to ensure the smooth functioning of payment systems by laying down provisions dealing with the crediting of accounts by payment instruments credited through those systems; whereas the provisions on payments by crediting an account should not imply that financial intermediaries are obliged to make available either other payment facilities or products denominated in any particular unit of the euro; 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;
(14) Whereas in accordance with the conclusions reached by the European Council at its meeting held in Madrid, new tradeable public debt will be issued in the euro unit by the participating Member States as from 1 January 1999; whereas it is desirable to allow issuers of debt to redenominate outstanding debt in the euro unit; whereas the provisions on redenomination should be such that they can also be applied in the jurisdictions of third countries; whereas issuers should be enabled to redenominate outstanding debt if the debt is denominated in a national currency unit of a Member State which has redenominated part or all of the outstanding debt of its general government; whereas these provisions do not address the introduction of additional measures to amend the terms of outstanding debt to alter, among other things, the nominal amount of outstanding debt, these being matters subject to relevant national law; whereas it is desirable to allow Member States to take appropriate measures for changing the unit of account of the operating procedures of organised markets;
(15) Whereas further action at the Community level may also be necessary to clarify the effect of the introduction of the euro on the application of existing provisions of Community law, in particular concerning netting, set-off and techniques of similar effect;
(16) Whereas any obligation to use the euro unit can only be imposed on the basis of Community legislation; whereas in transactions with the public sector participating Member States may allow the use of the euro unit; whereas in accordance with the reference scenario decided by the European Council at its meeting held in Madrid, the Community legislation laying down the time frame for the generalisation of the use of the euro unit might leave some freedom to individual Member States;
(17) Whereas in accordance with Article 105a of the Treaty the Council may adopt measures to harmonise the denominations and technical specifications of all coins;
(18) Whereas banknotes and coins need adequate protection against counterfeiting;
(19) 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 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;
(20) 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 unit 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 Regulation (EC) No 1103/97 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;

(21) Whereas paragraph 2 of Protocol 11 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland stipulates that, inter alia, paragraph 5 of that Protocol shall have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage; whereas the United Kingdom gave notice to the Council on 30 October 1997 that it does not intend to move to the third stage; whereas paragraph 5 stipulates that, inter alia, Article 109l(4) of the Treaty shall not apply to the United Kingdom;
(22) Whereas Denmark, referring to paragraph 1 of Protocol 12 on certain provisions relating to Denmark has notified, in the context of the Edinburgh decision of 12 December 1992, that it will not participate in the third stage; whereas, therefore, in accordance with paragraph 2 of the said Protocol, all Articles and provisions of the Treaty and the Statute of the ESCB referring to a derogation shall be applicable to Denmark;
(23) Whereas, in accordance with Article 109l(4) of the Treaty, the single currency will be introduced only in the Member States without a derogation;
(24) Whereas this Regulation, therefore, shall be applicable pursuant to Article 189 of the Treaty, subject to Protocols 11 and 12 and Article 109k(1),
HAS ADOPTED THIS REGULATION:

PART I

DEFINITIONS

Article 1

For the purpose of this Regulation:

- 'participating Member States` shall mean Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Austria, Portugal and Finland,
- '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 the currency of each participating Member State by the Council according to the first sentence of Article 109l(4) 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 January 1999 and ending on 31 December 2001,
- 'redenominate` shall mean changing the unit in which the amount of outstanding debt is stated from a national currency unit to the euro unit, as defined in Article 2, but which does not have through the act of redenomination the effect of altering any other term of the debt, this being a matter subject to relevant national law.

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

Article 2

As from 1 January 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, 7, 8 and 9 shall 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 subdivision 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

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 that 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 shall 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 issued by that Member State's general government, as defined in the European system of integrated accounts, denominated in its national currency unit and issued under its own law. If a Member State has taken such a measure, issuers may redenominate in the euro unit debt denominated in that Member State's national currency unit unless redenomination is expressly excluded by the terms of the contract; this provision shall apply to debt issued by the general government of a Member State as well as to bonds and other forms of securitised debt negotiable in the capital markets, and to money market instruments, issued by other debtors,
- 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 to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (5) and of commodities; and
    (b) systems for the regular exchange, clearing and settlement of payments.

5. Provisions other than those of paragraph 4 imposing the use of the euro unit may only be adopted by the participating Member States in accordance with any time-frame laid down by Community legislation.

6. National legal provisions of participating Member States 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 the euro unit 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 their territorial limits as of the day before the entry into force of this Regulation.

PART IV

EURO BANKNOTES AND COINS

Article 10

As from 1 January 2002, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro. Without prejudice to Article 15, these banknotes denominated in euro shall be the only banknotes which have the status of legal tender in all these Member States.

Article 11

As from 1 January 2002, 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 the second sentence of Article 105a(2) of the Treaty. Without prejudice to 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 50 coins in any single payment.

Article 12

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

PART V

FINAL PROVISIONS

Article 13

Articles 14, 15 and 16 shall 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 Regulation (EC) No 1103/97 shall apply.

Article 15

1. Banknotes and coins denominated in a national currency unit as referred to in Article 6(1) shall remain legal tender within their 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 six 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 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States, in accordance with the Treaty, subject to Protocols 11 and 12 and Article 109k(1).

[footnotes:]

(1) OJ C 369, 7. 12. 1996, p. 10.

(2) OJ C 205, 5. 7. 1997, p. 18.

(3) OJ C 380, 16. 12. 1996, p. 50.

(4) OJ L 162, 19. 6. 1997, p. 1.

(5) OJ L 141, 11. 6. 1993, p. 27. Directive as amended by Directive 95/26/EC of the European Parliament and of the Council (OJ L 168, 18. 7. 1995, p. 7).

2.3 Art. 235 Regulation on EMU

COUNCIL REGULATION (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (Official journal NO. L 162 , 19/06/1997 P. 0001 - 0003)

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 (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the European Monetary Institute (3),

(1) Whereas, at its meeting held in Madrid on 15 and 16 December 1995, the European Council confirmed that the third stage of Economic and Monetary Union will start on 1 January 1999 as laid down in Article 109j (4) of the Treaty; whereas the Member States which will adopt the euro as the single currency in accordance with the Treaty will be defined for the purposes of this Regulation as the 'participating Member States;

(2) Whereas, at the meeting of the European Council in Madrid, the decision was taken that the term 'ECU` used by the Treaty to refer to the European currency unit is a generic term; whereas the Governments of the fifteen Member States have achieved the common agreement that this decision is the agreed and definitive interpretation of the relevant Treaty provisions; whereas the name given to the European currency shall be the 'euro`; 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 Regulation on the introduction of the euro will be adopted by the Council on the basis of the third sentence of Article 109l (4) 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 in accordance with the first sentence of Article 109l (4) 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 citizens and firms in all Member States on certain 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 citizens and firms to proceed under good conditions;

(5) Whereas the third sentence of Article 109l (4) of the Treaty, which allows the Council, acting with the unanimity of participating Member States, to take other measures necessary for the rapid introduction of the single currency is available as a legal basis only when it has been confirmed, in accordance with Article 109j (4) of the Treaty, which Member States fulfil the necessary conditions for the adoption of a single currency; whereas it is therefore necessary to have recourse to Article 235 of the Treaty as a legal

basis for those provisions where there is an urgent need for legal certainty; whereas therefore this Regulation and the aforesaid 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 the Regulation which will be adopted under the third sentence of Article 109l (4) of the Treaty should be examined to ensure a balanced changeover, in particular for consumers;

(6) Whereas the ECU as referred to in Article 109g of the Treaty and as defined in 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 (4) 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 in 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 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 109g of the Treaty and as defined in the aforesaid Regulation; 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 109g of the Treaty and as defined in 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 fulfil their objective to provide legal certainty and transparency to economic agents, in particular for consumers, only if they enter into force as soon as possible;

(8) Whereas the introduction of the euro constitutes a change in 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 in accordance with the first sentence of Article 109l (4) 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, convention or national provisions 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 which the Council adopts in accordance with the first sentence of Article 109l (4) 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 Regulation on the introduction of the euro which will enter into force at the starting date of the third stage of Economic and Monetary Union.

Article 2

1. Every reference in a legal instrument to the ECU, as referred to in Article 109g of the Treaty and as defined in Regulation (EC) No 3320/94, shall be 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 109g of the Treaty and as defined in Regulation (EC) No 3320/94.

2. Regulation (EC) No 3320/94 is hereby repealed.

3. This Article shall apply as from 1 January 1999 in accordance with the decision pursuant to Article 109j (4) of the Treaty.

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 such an 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 pursuant 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 following that of its publication in the Official Journal of the European Communities.

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

[footnotes:]

(1) OJ No C 369, 7. 12. 1996, p. 8.

(2) OJ No C 380, 16. 12. 1996, p. 49.

(3) Opinion delivered on 29 November 1996.

(4) OJ No L 350, 31. 12. 1994, p. 27.

2.4 New York legislation

N.Y. GEN. OBLIG. LAW § 5-1601, § 5-1602, § 5-1603, § 5-1604 (McKinney Supp. 1997), as amended on July 29, 1997

TITLE 16
CONTINUITY OF CONTRACT

Section 5-1601. Definitions.
5-1602. Continuity of contract.
5-1603. Effect of agreements.
5-1604. Application.

S 5-1601. Definitions. As used in this title the following terms shall have the following meanings:
1. "Euro" shall mean the currency of participating member states of the European Union that adopt a single currency in accordance with the treaty on European Union signed February seventh, nineteen hundred ninety-two.
2. "Introduction of the euro" shall mean and include the implementation from time to time of economic and monetary union in member states of the European Union in accordance with the treaty on European Union signed February seventh, nineteen hundred ninety-two.
3. "ECU" or "European Currency Unit" shall mean the currency basket that is from time to time used as the unit of account of the European Community as defined in European Council Regulation No. 3320/94. When the euro first becomes the monetary unit of participating member states of the European Union, references to the ECU in a contract, security or instrument that also refers to such definition of the ECU shall be replaced by references to the euro at a rate of one euro to one ECU.
References to the ECU in a contract, security or instrument without such a definition of the ECU shall be presumed, unless either demonstrated or proven to the contrary by the intention of the parties, to be references to the currency basket that is from time to time used as the unit of account of the European Community.

S 5-1602. Continuity of contract. 1. (a) If a subject or medium of payment of a contract, security or instrument is a currency that has been substituted or replaced by the euro, the euro will be a commercially reasonable substitute and substantial equivalent that may be either:
(i) used in determining the value of such currency; or (ii) tendered, in each case at the conversion rate specified in, and otherwise calculated in accordance with, the regulations adopted by the council of the European Union.
(b) If a subject or medium of payment of a contract, security or instrument is the ECU, the euro will be a commercially reasonable substitute and substantial equivalent that may be either: (i) used in determining the value of the ECU; or (ii) tendered, in each case at the conversion rate specified in, and otherwise calculated in accordance with, the regulations adopted by the Council of the European Union.

(c) Performance of any of the obligations described in paragraph (a) or (b) of this subdivision may be made in the currency or currencies originally designated in such contract, security or instrument (so long as such currency or currencies remain legal tender) or in euro, but not in any other currency, whether or not such other currency (i) has been substituted or replaced by the euro or (ii) is a currency that is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.
2. None of: (a) the introduction of the euro; (b) the tendering of euros in connection with any obligation in compliance with paragraph (a) or (b) of subdivision one of this section; (c) the determining of the value of any obligation in compliance with paragraph (a) or (b) of subdivision one of this section; or (d) the calculating or determining of the subject or medium of payment of a contract, security or instrument with reference to interest rate or other basis [that] has been substituted or replaced due to the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent, shall either have the

effect of discharging or excusing performance under any contract, security or instrument, or give a party the right to unilaterally alter or terminate any contract, security or instrument.

S 5-1603. Effect of agreements. The provisions of this title shall not alter or impair and shall be subject to any agreements between parties with specific reference to or agreement regarding the introduction of the euro.

S 5-1604. Application. 1. Notwithstanding the uniform commercial code or any other law of this state, this title shall apply to all contracts, securities and instruments, including contracts with respect to commercial transactions, and shall not be deemed to be displaced by any other law of this state.
2. In circumstances of currency alteration, other than the introduction of the euro, the provisions of this title shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of contracts, securities or instruments denominated in whole or in part in a currency affected by such alteration.

3 FURTHER READING

BOOYSEN H., A Future Currency ECU, Journal of World Trade 1994, p. 83 et seq.

BOOTLE R., Das Ende der Inflation, 1997

FISCHER R. et KLANTEN T., Langfristige Bankverträge und die Euro-Währung, ZBB, 1997 p. 1 et seq.

GRUSON M., Altwährungsforderungen vor US-Gerichten nach Einführung des Euro, Zeitschrift für Wirtschafts- und Bankrecht WM 15/1997, p. 707

GRUSON M., The introduction of the Euro and its implications for obligations denominated in currencies replaced by the Euro, Fordham International Law Journal, 1998, p. 65 et seq.

HAHN H. J. et SIEBELT J., Währungswesen, Kapital- und Zahlungsverkehr, in: DAUSES M. A. (editors), Handbuch des EG-Wirtschaftsrechts, 1995, p. 17 et seq.

HÄDE U, Währungsintegration mit abgestufter Geschwindigkeit, in: WEBER A. (éditeur), Währung und Wirtschaft. Das Geld im Recht, 1997, p. 141 et seq.

HÄDE U., Die Europäische Wirtschafts- und Währungsunion und ihr Bargeld, WM 1993, p. 2031 et seq.

HAFKE H. C., Währungsrechtliche Fragen auf dem Weg zur Europäischen Währungsunion, in: RESS G. et STEIN T. (editors), Vorträge, Reden und Berichte aus dem Europa-Institut-Sektion Rechtswissenschaft, n. 358, 1997

HERRING R. et KÜBLER F., Grenzüberschreitende Bankgeschäfte im Zielfeld politischer Intervention, Zeitschrift für Bankrecht und Bankwirtschaft (ZBB), 1995, p. 113 et seq.

LENIHAN N., The Legal Implications of the European Monetary Union Under U.S. and New York Law, 1998 (http://europa.eu.int/comm/dg02/document/ecopap/ecp126en.htm, visited on July 10,1998)

LOUIS J.-V. et DE LHONEUX E., The Developments of the ECU: Legal Aspects, Common Market Law Review (MLRev) 28, p. 335 et seq.

MANN F. A., Legal Aspects of Money, 1992

MEYERS J. et LEVIE D., The Introduction of the Euro: Overview of the Legal Framework and Selected Issues, Columbia Journal of European Law, 1998, p. 321 et seq. (335-336)

NOÉ C., Auf den Hund gekommen, Die Zeit, March 28,1997, p. 30

SAMM C.-T., «Geld» und «Währung» - begrifflich und mit dem Blick auf den Vertrag von Maastricht, in: WEBER, cit., p. 227 et seq.

SANDROCK O., Der Euro und sein Einfluß auf nationale und internationale privatrechtliche Verträge, Recht der Internationalen Wirtschaft 1997, Beilage 1 zu Heft 8, p. 1-20 et seq.

SCHEFOLD D., Die Europäischen Verordnungen über die Einführung des Euro, Zeitschrift für Wirtschafts- und Bankrecht Wertpapier-Mitteilungen (WM) 4/1996, p. 1 et seq.

SCHWARZE J., Das Staatsrecht in Europa, Juristen Zeitung (JZ) 1993, p. 585-586

SCHWERER F., Lois américaines relatives au passage à la monnaie unique, Revue de droit des affaires internationales (RDAI) nº 6 1997, p. 783 et seq.

SNYDER F., EMU Revisited: Are we making a Constitution? What Constitution are we making?
In The Evolution of EU Law by Craig and de Burca eds, OUP, 1999, p.417-478

STEINBERGER H., Sovereignty, in: Encyclopedia of Public International Law, 1988, p. 397 et seq.

SUNT C., Legal Aspects of the Ecu, 1989

SWANN D., European Economic Integration, 1996

VANDEMEULEBROEKE M., L'euro et le droit des pays tiers, Euro 1997/IV, p. 20 et seq.

VON BORRIES R. et REPPLINGER-HACH, Auf dem Weg zur ,,Euro-Verordnung", NJW 1996, p. 3111 et seq.

WEIKART T., Geldwert und Eigentumgarantie: Grundrechtsschutz im Währungswesen, 1993

WOLF M., The deflation nightmare, Financial Times, February 24, 1998, p. 16

ZEHETNER F., Der Euro im System der Geldwertklauseln, in: WEBER, supra, p. 293 et seq.