DRAFT COMMUNITY PROVISIONS (PROVISIONS RELATING TO THE INTRODUCTION OF THE EURO) (JERSEY) REGULATIONS 199

Lodged au Greffe on 22nd September 1998
by the Finance and Economics Committee

STATES OF JERSEY

STATES GREFFE

175 1998 P.194

Price code: C

REPORT

Community Provisions (Provisions relating to the Introduction of the Euro) (Jersey) Regulations 199 ("the Jersey Regulations")

1. General statement

The purpose of these Regulations is to implement in Jersey Law certain of the European Union provisions preparing for the introduction of the single currency. These provisions deal with issues which arise irrespective of whether the United Kingdom or Jersey participate in the single currency. Their implementation will assist the Island's financial services industry in preparing for the introduction of the euro, and provide the same degree of stability and legal certainty as will apply in the European Union upon the introduction of the euro.

The provisions in the European legislation dealing with the conversion rate and with rounding do not need to be reflected in the new Jersey Regulation as they form part of the *lex monetae* of the Member State of the currency being converted, which will be recognised by the Jersey Courts.

2. Summary of the provisions of the Regulations

The Regulations implement, by incorporation and pursuant to the European Communities Legislation (Implementation) (Jersey) Law 1996, certain of the provisions of the Council Regulation (EC) No. 1103/97 of 17th June 1997 on provisions relating to the introduction of the euro (the "European Regulation").

3. Summary of the provisions of the European Regulation

The European Regulation contains the ancillary provisions necessary to establish the legal framework to prepare for the introduction of the single currency. These are -

(i) a provision designed to ensure that contracts will not be frustrated by the introduction of the euro (although this is subject to anything which the parties may have agreed);

(ii) the automatic replacement of every reference to the ECU (as defined in the Treaty) with a reference to the euro, as from 1st January 1999; and

(iii) the rebuttable presumption that a reference to an ECU, without an express definition, is a reference to the ECU as defined in the Treaty.

4. <u>Reasons for implementing the European Regulation in Jersey law</u>

The need for a firm legal basis for the introduction of the euro has been identified as a key concern since the European Commission's green paper of December 1995 launched a wide-ranging consultation exercise throughout Europe's financial centres, in particular the City of London.

One major concern, particularly in the common law jurisdictions (although similar issues also arise within civil law systems), was the possibility that contracts may be held to have been frustrated as a result of the replacement of the original currency of payment by the new single currency.

A second concern was the effect on payment obligations which were expressed in ECU, which is a measure of value rather than a currency in its own right, but is also due to be abolished upon the introduction of the euro.

On the first point, the European Regulation strikes a balance between the need to ensure an adequate level of legal certainty, without removing the parties' freedom to agree that they do wish for their contract to be terminated, frustrated, etc. upon the introduction of the euro. The drafting of the European Regulation also seeks to meet the requirements of all of the European Union's legal systems. While some concerns do still exist, it is generally thought to have succeeded in the difficult task of addressing the problem both under common law systems and civil law systems.

On the second point, the European Regulation again balances the need for certainty (by providing for a one-to-one replacement of the ECU by the euro, as defined in the Treaty, and creating a rebuttable presumption that references to the ECU are intended to be as defined in the Treaty), with the need to preserve freedom of contract of the parties (by allowing parties to rebut this presumption by showing that they intended the ECU to have a different meaning which would prevent it being converted into euro).

The European Regulation containing these provisions has been adopted by the Council of Ministers of the European Union and is now binding in it entirety and directly enforceable in all Member States.

Having resolved these matters within the European Union, concern has been expressed by financial institutions as regards contracts which are governed by the laws of jurisdictions which are outside the European Union, and therefore not subject to the European Regulation. As a result of this concern, certain of the U.S. legislatures have passed legislation dealing with some of these aspects, in particular the frustration of contract point.

Similar concerns also apply to contracts governed by Jersey law, which are amplified by the close relationship of the Island to the European Union, and the interdependence of its financial services industry with that of the rest of Europe. There will be many contracts subject to Jersey law which will contain references to the currencies of participating Member States, or to the ECU. Furthermore, the currency of the Island may itself at some stage become linked to the euro in the event of the United Kingdom participating in EMU.

In seeking to resolve these concerns, the States of Jersey could adopt one of two approaches. First, they could examine in detail the particular issues which are likely to arise under Jersey law, and frame specific Jersey laws to address these issues. Secondly, they could make use of the existing 1996 Law to implement certain parts of the existing European Regulation as Jersey law. The recommended approach is the second one, for two principal reasons.

First, it is in everyone's interest that contracts governed by Jersey law are treated in the same way upon introduction of the euro as those governed by the laws of Member States. The particular concerns, upon which litigation might arise, are the frustration of contracts and the replacement of the ECU by the euro. By implementing relevant aspects of the text of the European Regulation, the States of Jersey ensure an identity of legislative provisions, and, pursuant to Article 3 of the European Communities (Jersey) Law 1973, allow any European case-law upon that Regulation to be taken into account by the Jersey Courts.

Secondly, the European Regulation has been drafted to take into account the concerns of both common law and civil law systems. While neither of these mirror exactly Jersey's own legal system, they are its two major influences. Drafting a specifically Jersey solution in law (in relation to frustration and the replacement of the ECU) would be unlikely to have any advantages over adopting the uniform solution of the rest of Europe.

Explanatory Note

The purpose of these draft Regulations is to give effect in the Bailiwick to part of Council Regulation (EC) No.1103/97 on certain provisions relating to the introduction of the euro ("the Community provisions").

Regulation 1 defines the Community provisions.

Regulation 2 gives effect in the Bailiwick to so many of the Community provisions as are needed in the Bailiwick to prepare for the introduction of a single currency, the 'euro', in certain Member States on 1st January 1999, and the disappearance of the ECU. Article 1 of the Community provision is the interpretation clause. Article 2 provides for every reference to the ECU in legislation, administrative acts, judicial decisions, contracts, payment instruments and other instruments having legal effect to be replaced by a reference to the euro, at the rate of one euro to one ECU. Article 3 makes it clear that, unless agreed by the parties, the introduction of the euro does not affect rights or obligations under a legal instrument, or entitle a party to alter or terminate a legal instrument.

Regulation 3 is the citation and commencement provision.

The text of the Community provisions as modified follows the draft Regulations, for the purposes of information only.

European Communities (Implementation) (Jersey) Law 1996

COMMUNITY PROVISIONS (PROVISIONS RELATING TO THE INTRODUCTION OF THE EURO) (JERSEY) REGULATIONS 199

(Promulgated on the day of 199)

STATES OF JERSEY

The day of 199

THE STATES, in pursuance of Article 2 of the European Communities (Implementation) (Jersey) Law 1996[1] have made the following Regulations -

1. In these Regulations, "the Community provisions" means the provisions of Council Regulation (EC) No. 1103/97 on certain provisions relating to the introduction of the euro (OJ No. L162, 19.6.97, p.1).

2. The Community provisions shall have full force and effect in the Bailiwick subject to the following modifications -

(a) in Article 1, the omission of all the definitions with the exception of the definition of "legal instruments";

(b) in Article 2, the omission of paragraph 2; and

(c) the omission of Articles 4, 5 and 6.

3. These Regulations may be cited as the Community Provisions (Provisions relating to the introduction of the euro) (Jersey) Regulations 199 and shall come into force on the seventh day following promulgation.

[1] Recueil des Lois, Volume 1996-1997, page 4.

THE TEXT OF THE COMMUNITY PROVISIONS AS MODIFIED IS SET OUT BELOW FOR INFORMATION ONLY, AND DOES NOT FORM PART OF THE REGULATIONS

COUNCIL REGULATION (EC) No 1103/97

of 17 June 1997

on certain provisions relating to the introduction of the euro

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Monetary Institute,

(1) Whereas, 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 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,

* * *

* * *

* * *

* * *

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. * * * * *

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

* * * * * * *

Article 5

* * * * * * *

Article 6

*   *   *   *   *   *   *

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

Done at Luxembourg, 17 June 1997.

For the Council
The President

A. JORRITSMA-LEBBINK