

Law Department

*Euro Spectator: Implementing the Euro*

1999

National Reports  
Austrian Report/Belgian Report

Project Director  
JEAN-VICTOR LOUIS

LAW No. 2000/5

# EUI WORKING PAPERS



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***Euro Spectator: Implementing the Euro***

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A project directed by:  
**JEAN-VICTOR LOUIS**

**BADIA FIESOLANA, SAN DOMENICO (FI)**

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## **National Reports**

### **Austrian Report**

HERTA BAUMANN, HELMUT LANG

### **Belgian Report**

DIEGO DEVOS, PAUL MAGNETTE

WITH THE PARTICIPATION OF VINCENT MEUNIER,  
JACQUES DELPÉRÉE

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## AUSTRIAN REPORT

Herta Baumann<sup>\*</sup>  
Helmut Lang<sup>\*\*</sup>

### 1. Political Aspects

by *Helmut Lang*

#### 1.1 Public Opinion

With the exception of late 1997 (see below) European Monetary Union (EMU) has never been an important topic of public debate. After entering the third stage of EMU, interest in euro-related topics concentrated seemingly on the exchange rate of the euro against the American dollar<sup>1</sup>. Other issues publicly debated were related to the introduction of the euro coins and notes in 2002. Institutional questions about the European System of Central Banks (ESCB) or political implications of EMU for Austria and the European Union are usually not discussed, not even - as it seems - within the political parties (see below). Public opinion polls concerning the euro did not take place frequently in 1999. Two institutions conducted large-scale surveys on a quarterly basis: the Euro-Initiative - the euro information centre of Austria's federal government - and the Austrian Central Bank. However, the surveys of the Central Bank, based on a sample of 2000 face-to-face interviews, are confidential and are intended for internal use only. Therefore, I will concentrate on the surveys conducted by the

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<sup>1</sup> This impression of the rapporteur was shared by some interview partners who interpreted it as a certain lack of many journalist's understanding of the basic features of EMU and its consequences for Austria. A member of the government's Euro-Initiative reported that the most frequently asked question concerned the depreciation of the euro against the dollar.

Euro-Initiative, which are based on samples of 1000 face-to-face interviews<sup>2</sup>, as well as on the Eurobarometer studies<sup>3</sup>.

Overall support of the single currency has increased significantly since the summer of 1997. At that time, a majority of the Austrian population still opposed the euro (38% in favour and 50% against)<sup>4</sup>.

A significant change in public opinion concerning the euro took place in the last quarter of 1997. Since then, a fairly stable net majority of more than 20% has supported the single currency. In the last week of November 1997, the Freedom Party (Freiheitliche Partei Österreichs - FPÖ) organised a popular initiative in favour of a referendum on the euro, arguing for a postponement of the third stage of EMU (see also below: "The Freedom Party"). At about the same time, the government started its information campaign in favour of the euro<sup>5</sup>. It seems that the anti-euro campaign of the Freedom Party and the pro-euro campaign of the government led to a public debate which resulted in a significant increase of support of the euro.

Since the topic of EMU was very low key in the public debate before the referendum about Austria's entry into the European Union in 1994, the euro was debated intensely for the first time in public in the discussions ignited by the popular initiative of the Freedom Party. During this debate many Austrians probably realised for the first time that Austria would change the schilling for

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<sup>2</sup> The surveys for the Euro-Initiative are conducted by the "market-institute". Fieldwork for the three studies so far published in 1999 took place respectively: 17/03/99-14/04/99 (997 interviews); 22/06/99-06/07/99 (511 interviews); 15/09/99-14/10/99 (1000 interviews).

<sup>3</sup> Eurobarometer 50 and 51.

<sup>4</sup> See the surveys of the Euro-Initiative, which always sum up the long-term trend of overall support.

<sup>5</sup> Both, the popular initiative of the Freedom Party and the starting of the government's information campaign were announced in August 1997.



the euro. At the same time, however, they realised that the main decisions had already been taken. The most frequently mentioned argument of those, who did not support the popular initiative of the Freedom party, was that a referendum at that time would be useless<sup>6</sup>. This coincided with the view of the overwhelming majority of legal experts who considered the main decisions concerning Austria's participation in EMU as irrevocable.

Since December 1997 EMU support increased slowly from 55% to 63% in October 1999. It reached the highest level in April 1999 with 69% and the lowest in March 1998 with 53% in favour of the single currency.

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<sup>6</sup> Österreichische Gesellschaft für Europapolitik, 1997: Das Meinungsklima über das Euro-Volksbegehren in Österreich [Public opinion about the popular initiative on the euro in Austria]; Vienna

*Table 1 - Support of the single currency (in percentage)*

	very much in favour	in favour	against	very much against
October 1999	17	46	24	12
July 1999	17	45	27	12
April 1999	29	40	21	9
December 1998	16	49	22	11
September 1998	14	50	24	10
July 1998	12	42	24	11
March 1998	12	41	20	12
December 1997	15	40	24	6
September 1997	13	30	26	17
June 1997	13	25	26	24

*Source: Survey on behalf of the Euro-Initiative, published in October 1999.*

The conspicuous deviation of data in the April 1999 survey may be partly the result of a differently worded question as compared with the studies conducted



afterwards<sup>7</sup>. Another study<sup>8</sup> suggests, however, that support in favour of the euro indeed reached its highest level so far in the first quarter of 1999, supposedly as a reaction to the successful launching of the euro.

On the other hand, according to the Eurobarometer survey number 51<sup>9</sup>, support of the euro in Austria decreased sharply in the first quarter of 1999 (Eurobarometer 50: 57% in favour; Eurobarometer 51: 53% in favour). Austria thus replaced Germany as the Euro-11 country with the lowest support of public opinion for the euro. Net support dropped from 29% to 23%. Among the Euro-11 only Finland shows a lower net support of the euro (21%).

The analysis by demographic variables shows that men are significantly more supportive of the single currency than women; that support of the euro sharply drops among those aged 60 or more and that the backing of the single currency rises with formal education.

Geographically, support is weakest in the capital Vienna, which can be attributed at least partly to the age structure. Relatively weak support is also found in the eastern and southern states<sup>10</sup>. The euro receives strongest endorsement in the western states<sup>11</sup> with borders to Germany and Italy.

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<sup>7</sup> The question used in March was: "In May the European Union has decided on the introduction of the single currency euro. What do you think about the single European currency?". Later on the question was: "Since January 1, 1999, the euro is the single currency in Austria and 10 other European countries. What do you think about the single currency?".

<sup>8</sup> A confidential study I could use as background information.

<sup>9</sup> Fieldwork in March and April 1999; released in July 1999. Eurobarometer 50 was released in March 1999; fieldwork was done in October and November 1998.

<sup>10</sup> Burgenland, Lower Austria, Carinthia and Styria.

<sup>11</sup> Upper Austria, Salzburg, Tyrol and Vorarlberg.

*Table 2 - Support of the euro by demographic variables (in percentage)*

	very much in favour	in favour	Against	very much against
Men	22	51	16	9
Women	13	41	31	14
Aged 15-29	21	50	21	7
Aged 30-39	19	46	21	12
Aged 40-49	20	51	20	9
Aged 50-59	20	55	21	3
Aged 60+	9	32	34	24
Elementary school	11	44	30	14
Higher school, University	34	48	15	2
Upper Austria	14	58	23	5
Lower Austria, Burgenland	13	51	26	10
Vienna	14	39	24	22
Styria, Carinthia	20	39	33	6
Salzburg, Tyrol, Vorarlberg	26	47	12	14

*Source: Survey on behalf of the Euro-Initiative, published in October 1999.*

This assessment of the euro largely coincides with economic expectations. The more optimistic people are about the future development of the economy the more they perceive the euro as positive. The net result of people who think the economy will improve in the next 12 month minus those, who think it will change for the worse, is, respectively:

Vienna	-1
Lower Austria and Burgenland	-6
Carinthia and Styria	-10
Upper Austria	+7
Salzburg, Tyrol, Vorarlberg	+13

### ***1.2 The current debate on EMU***

Before Austria joined the European Union on January 1, 1995, (and thereby accepted the whole "acquis" including the provisions for the monetary union) the public debate widely ignored the topic of European Monetary Union and its implications for Austria. The discussion was dominated by other topics, such as the future of Austria's neutrality law in the context of the common foreign and security policy (CFSP) and transit traffic.

The main reason for neglecting monetary union at the time of Austria's pre-accession may have been that the topic seemed too distant and abstract at that time (in 1994). The Freedom Party argued in the context of its popular initiative in late 1997 that the government deliberately concealed the fact that a vote for membership of the EU also meant a vote to replace the Austrian schilling by the



single currency. This would have made it much more difficult to get a pro-EU vote at the referendum.

The coalition government always supported Austria's participation in the monetary union and clearly stated the aim of wanting to belong to the first group of countries entering the third stage of EMU. This position was illustrated by a declaration concerning Article 118 of the EC-Treaty<sup>12</sup>, which was included in the final act of the Accession Treaty<sup>13</sup>.

Since the year 1981, Austria had formed a de-facto monetary union with Germany. Since then Austria strictly followed the policy of binding the schilling to the German mark at a fixed rate of a little bit more than seven schillings for one mark.

This policy was chosen mainly for two reasons:

- a) Exchange-rate stability with Austria's by far most important trading partner was highly desirable (about two thirds of imports and exports were exchanged with Germany; about 80% of the tourists visiting Austria were Germans).
- b) Price stability should be secured by binding the schilling to the traditionally stable German mark<sup>14</sup>.

This policy of binding the schilling to the mark was considered highly successful. As a consequence, the idea of a monetary union was not new to Austria and the transition from a de-facto monetary union with Germany to the European Monetary Union constitutes a relatively small change in Austria's monetary policy. Austria loses the possibility to adjust the exchange rate in case

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<sup>12</sup> Former Article 109g.

<sup>13</sup> Declaration 41. In this declaration the Austrian government confirmed its support of the EMU and its determination to keep the schilling stable in order to contribute to the implementation of the euro.

<sup>14</sup> Lachs Thomas/Ritzberger-Grünwald Doris, 1998: Der Euro - Europas neue Währung; Vienna; pages 126f.

of serious trouble, but gains, on the other hand, a seat in the Council of the European Central Bank (ECB).

Given the emergence of the Euro-zone, joining the Monetary Union together with Germany was the only acceptable alternative for Austria<sup>15</sup>.

### ***1.3 Institutional Positions***

#### ***1.3.1 Introduction***

Before concentrating on the positions of the most important political institutions I will make a comment on their role in the context of monetary union. This will be followed by an overview of the current political situation in Austria.

The most important players in the political system of Austria are:

The government, now consisting of a coalition of the Freedom Party (FPÖ) and the People's Party (Österreichische Volkspartei - ÖVP).

The social partners: the Federation of Austrian Trade Unions (Österreichischer Gewerkschaftsbund - ÖGB) and the Chamber of Labour, the Chamber of Commerce and the Chambers of Agriculture. In the context of the EU, another interest organisation has to be added: the Association of Austrian Industrialists (Vereinigung Österreichischer Industrieller - VÖI), which represents Austria's industry in the Union of Industrial and Employers' Confederations of Europe (UNICE)<sup>16</sup>.

The states ("Länder"), represented on the federal level by the "liaison office of the states".

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<sup>15</sup> See Lachs/Ritzberger-Grünwald 1998, page 129.

<sup>16</sup> The Chamber of Commerce can not be a member of UNICE because it relies on compulsory membership.

The Federation of Austrian Cities and Municipalities (Österreichischer Städte- und Gemeindebund).

The Austrian Central Bank.

All these institutions take part in the normal co-ordination procedure to define Austria's positions concerning EU-matters. They are also represented in the co-ordination groups installed under the guidance of the Ministry of Finance and the Austrian Central Bank to co-ordinate the preparations for the euro.

The Austrian parliament enjoys the constitutional right to be comprehensively informed about EU-policy initiatives and the legislative process and has the right to take binding decisions which have to be observed by the members of the government acting in the EC-Council. But since the coalition government parties are not eager to bind its own ministers by parliamentary decisions, this power of parliament is rarely used. The opposition parties may put topics on the agenda but only the government parties can provide a majority to take decisions. The influence of the opposition parties on Austria's EU policy is, therefore, rather limited.

### *1.3.2 The Current Political Situation*

After the general elections held on October 3, 1999, the political situation in Austria was unclear and blocked. The SPÖ ruled out a coalition with the Freedom Party (FPÖ) for several reasons, the biggest obstacle being the party leader Jörg Haider. The ÖVP had committed itself to opposition in case of falling behind the Freedom Party, which it did by a narrow margin of only 415 votes.



Official result of the general election of October 3, 1999:

SPÖ	33,15%	65 seats
FPÖ	26,91%,	52 seats
ÖVP	26,91%,	52 seats
Green Party	7,40%	14 seats
Liberal Forum	3,65%	0 seats <sup>17</sup>

In mid-December the ÖVP gave up the self-binding decision for opposition and started into coalition negotiations with the chairman of the SPÖ, Victor Klima. These negotiations failed on January 21, 2000. Immediately afterwards, the ÖVP started negotiations with the Freedom Party which were concluded in 10 days. The intention of the ÖVP to form a government with the Freedom Party led to a public outcry in Austria and Europe. Nevertheless, the new government coalition was sworn in by President Klestil on February 4, 2000.

In its first statements, the new government under chancellor Wolfgang Schüssel committed itself to the need to reduce the deficit of the federal budget with a view to the Growth and Stability Pact.

According to the autumn economic forecasts published by the European Commission on November 24, 1999, Austria faces the worst prognosis of all the 15 member states as regards its budget deficit. The Commission predicts an annual deficit of 2,6% of GDP for the year 2000 and of 2,4% for the year 2001, which puts Austria a full percentage point behind the next to the last, France. The figures predicted by the Austrian Stability Programme for the next two years are 1,7% and 1,5% respectively<sup>18</sup>. The difference between the figures

<sup>17</sup> The Liberal Forum this time missed the 4%-threshold needed to be represented in Parliament.

<sup>18</sup> Austrian Stability Programme for the years 1998 to 2002; dated 05/11/1998.

mainly results from a tax reform concluded after the Stability Programme was adopted. The reform will reduce the tax revenue by about 30 billion Austrian schillings (2,18 billion euro). This represents a difficult situation for the incoming government whose first task will be to present a budget compatible with the Stability Pact.

Though the Freedom Party promised a number of potentially costly measures in the election campaign, such as a flat-tax and the so-called "children-cheque"<sup>19</sup>, most experts expected that the Freedom Party, will, once in government, commit itself to keep Austria's budget below the stability criteria<sup>20</sup>. The working program of the government seems to confirm these expectations.

### *1.3.3 The Federal Government*

The government always supported EMU and was determined to belong to the first group of countries entering the third stage of EMU. Austria joined the EU accepting the "acquis" without "opting-out" of the provisions concerning EMU and declared that it wanted to belong to the "core of stability" from the beginning. Shortly after joining the EU, on January 9, 1995, the Austrian schilling joined the EMU exchange rate mechanism.

In its "coalition agreement", the former government (the SPÖ/ÖVP-coalition) has confirmed that Austria wants to participate in every central field of integration and to contribute to its further development. The government further declared that it was committed to making a considerable effort in starting the euro in accordance with the provisions and the timetable agreed in the Treaty of

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<sup>19</sup> Every mother should get 5.700 schillings per month for a child under the age of seven years. For each additional child under the age of seven she should get 2.850 schillings per month (FPÖ - Der Haider-Prinzhorn Plan (Manifesto for the general elections); Vienna, 1999; page 32.)

<sup>20</sup> Almost all of my interview-partners shared this view.

Maastricht. The government expected that EMU could give a fresh impetus to the economic development and employment in Europe<sup>21</sup>.

The core of the coalition agreement consisted of a programme for the consolidation of the federal budget. Though the connection with the EMU was not explicitly mentioned in the coalition agreement, it was always clear that an effort to reduce the public deficit was needed to meet the Maastricht convergence criteria.

The coalition agreement of the new government also concentrates on the consolidation of the federal budget and contains a clear commitment to the euro and monetary union.

### *1.3.4 Political Parties*

It is rather difficult to get information from the political parties in Austria concerning their positions on EMU, the Stability Pact and so forth. I could not find any information concerning EMU on the homepages of the four parliamentary parties and repeated requests were necessary to get at least some sort of information<sup>22</sup>.

This remarkable inability to respond leads me to several speculations:

a) EMU, the Stability Pact, policy implications and related issues are of little interest to Austria's main political parties. It seems that they have not produced any position papers, conclusions, resolutions, statements etc.

b) The Austrian electorate obviously does not care much about these questions. Therefore, the parties are not confronted with questions concerning their positions or ideas about EMU and related topics. If voters had asked for their

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<sup>21</sup> Koalitionsübereinkommen zwischen der Sozialdemokratischen Partei Österreichs und der Österreichischen Volkspartei [Coalition agreement between the Austrian Social Democratic Party and the Austrian People's Party] 11/03/1996; Vienna; page 16.

<sup>22</sup> With the exception of the Green Party, which was able to provide information quickly.



opinion, the parties would have had their position papers and policy statements prepared and would have sent them sooner.

c) A third and more general hypothesis is that Austria's political parties still have not fully realised the close connection and interaction between the European and the national level - or that they just do not care about. Therefore, a seemingly European topic such as EMU is perceived as being distant. This, again, could be connected to indifferent voters who do not expect their representatives to be concerned with European matters which do not relate to them directly.

d) Another hypothesis could be that short term thinking and pragmatism are so wide-spread that the parties are completely concentrated on the technical matters of the transition from the schilling to the euro and do not think about fundamental questions or political implications.

#### *1.3.4.1 Social Democratic Party (Sozialistische Partei Österreichs - SPÖ)*

For the Social Democratic Party the euro is the logical next step on the way to European integration after the implementation of the common market. In the view of the SPÖ, the whole project of European integration is the best way to secure freedom, peace, welfare and employment all over Europe. EMU will enhance the efficiency of the common market and thereby lead to higher growth, lower inflation and higher employment and income. Of course, the emphasis is on "putting jobs first". The euro should help to achieve that paramount goal: "The euro must contribute to sustained growth, low inflation and high levels of employment."<sup>23</sup> Furthermore the euro should protect Europe

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<sup>23</sup> See the manifesto of the Parliamentary Group of the Party of European Socialists for the elections to the European Parliament, to which the SPÖ referred: <http://www.europarl.eu.int/pes/en/Working/Euro/Euro.htm>.

against the destabilising pressures of currency speculation and contribute to a new and more stable world financial system.

The full support of European integration and the euro does not, however, include the support of all the methods used. The Social Democrats oppose the neoliberal-conservative approach to deregulate and to leave everything to market forces. The SPÖ wants to complement the monetary union with a social union. This implies that deregulation on the national level needs compensation on the European level in order to secure economic and social stability. A certain degree of co-ordination and harmonisation in the fields of economic, social and environmental policies is considered necessary.

The main advantages of EMU for Austria can be seen in the abolition of currency fluctuations and exchange rate exposure.

The Growth and Stability Pact is considered to be an important confidence building measure but it has to be applied in such a way that it does not endanger employment and does not intensify a cyclical downturn. At least the effect of automatic stabilisers has to be secured.

The independence of the ECB is supported by the Social Democrats. It must not, however, be used as a pretext to avoid dialogue and co-ordination between the national and the European levels and the different actors in the field of economic policy. To attain all the goals of EMU "it is essential to achieve an appropriate policy mix between the national fiscal policies and the monetary policy of the ECB". The independence of the European Central Bank "has to go hand in hand with its democratic accountability, for which the natural counterpart is the European Parliament."<sup>24</sup> According to the Social Democrats,

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<sup>24</sup> All quotations: <http://www.europarl.eu.int/pes/en/Working/Euro/Euro.htm>.

the European Parliament should have the right to vote on the nominees for the executive board of the ECB.

The Austrian socialist party's member in the Economic and Monetary Affairs Committee of the European Parliament, Harald Ettl, criticised the dialogue between the ECB and the European Parliament in January 1999, after a hearing of the committee with the president of the ECB, Wim Duisenberg. According to Ettl, Wim Duisenberg's appearance in the committee had nothing to do with accountability and dialogue. Duisenberg had just tried to sell his policy well.

In the field of taxation, the following arguments were put forward:

"> unfair tax competition causes distortions in the Single Market and will lead to the erosion of Member States' tax revenues. Better policy co-ordination is required at EU level to prevent harmful tax competition in the form of unfair tax breaks and hidden subsidies;

> taxation systems should be designed to favour the creation of jobs and the protection of the environment"<sup>25</sup>.

#### *1.3.4.2 The Austrian People's Party (ÖVP)<sup>26</sup>*

The ÖVP fully supports EMU and Austria's membership in it. Several statements of party members in parliament suggest that the ÖVP interprets EMU as a very important next step for the project of European integration<sup>27</sup>. Several advantages for Austria are mentioned:

<sup>25</sup> <http://www.europarl.eu.int/pes/En/Working/Priorities/market/singlemark.htm>.

<sup>26</sup> In spite of several requests since October I received some information from the Austrian Peoples' Party only at the end of November.

<sup>27</sup> European Monetary Union was discussed in parliament on several occasions. I used the minutes of the sessions of the Main Committee of the National Council on 13/11/96 and 22/04/98, and the minutes of the plenary session of the National Council on 17/06/98, when the popular initiative of the Freedom Party was discussed.



- > stability of exchange rates, which is especially important in the case of Italy, Austria's second most important trading partner concerning agriculture;
- > removal of transaction costs;
- > belonging to one of the most important currencies world-wide;
- > facilitation of trade and comparable prices in the Euro-area;
- > over-proportional representation of a small country like Austria in the ECB.

The ÖVP strongly supports the independence of the ECB and price stability as its primary target so that the other economic goals, such as economic growth or employment, have to be attained without prejudice to price stability. These goals should rather be solved by tax policy or budgetary measures.

#### *1.3.4.3 The Freedom Party of Austria (FPÖ)<sup>28</sup>*

It is a difficult task to evaluate the positions of the Freedom Party concerning EMU, because it does not seem to have any. And even if it had, that would not tell us much about its policy in the future<sup>29</sup>.

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<sup>28</sup> In response to my first inquiry the Freedom Party sent me two documents (the manifesto for the general elections on 3 October 1999 and the party programme) that do not mention the euro or EMU. After my reclamation and a reference to the Freedom Party's popular initiative concerning the euro in late 1997, I received:

- > two other copies of the manifesto for the general elections and the party programme;
  - > the manuscript of a speech, given by party leader Jörg Haider on 12 November 1999 to the "state of the republic and the state of the FPÖ";
  - > a paper dealing with migration and asylum policy;
  - > other papers dealing with cultural policy, enlargement and structural policy;
  - > another paper called "The Freedom Party's positions for the future of Austria".
- All these papers have at least one thing in common: they do not deal with EMU and related topics.

My requests to get an interview with a member of parliament responsible for economic affairs also remained futile.

<sup>29</sup> See for example the position of the FPÖ towards enlargement, which was always clearly rejected. Last year, Party leader Haider even talked of the government acting like an "occupying power", waging a war of extermination against Austria's agricultural sector and selling off Austria ("Der Standard", 29.1.1998 and 10.9.1998). In November 1999, he

In 1997, the Freedom Party organised a popular initiative with the aim of holding a plebiscite about the transition from the Austrian schilling to the euro<sup>30</sup>. Legally, this question had already been decided by the plebiscite about Austria's entry into the European Union in 1994<sup>31</sup>. Based on opinion polls, showing a majority of Austrians against the euro, the Freedom party hoped for a huge number of votes for its popular initiative. But the referendum did not meet the expectations of the Freedom Party for several reasons<sup>32</sup>. The arguments of the Freedom Party were ambiguous and inconsistent. It proposed a plebiscite about EMU, the result of which would have been irrelevant concerning decisions already taken to join monetary union. The FPÖ did not argue against EMU, but for a postponement because a majority of the member states could not fulfil the convergence criteria. It opposed the euro in the short term, because it would be, according to the FPÖ, weaker than the schilling. On the other hand, it argued for binding the schilling to the euro. Above all, the Freedom Party could not offer better alternatives<sup>33</sup>.

The FPÖ repeated the arguments used during the campaign for the popular initiative in the course of 1998. In the discussion on EMU in the Main Committee (Hauptausschuß) of the National Council on April 22, 1998, the Freedom Party tabled two motions. The most important of which demanded that the Austrian representatives in the EU-Council should vote against the euro on

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supported enlargement with certain conditions (i.e. transitional periods) and added that he had never said otherwise ("Der Standard", 19.11.1999).

<sup>30</sup> The referendum took place in the last week of November 1997.

<sup>31</sup> For a discussion of the legal arguments of the Freedom Party, see for example Fischer Heinz (Editor), 1998: Österreich und die Währungsunion; Vienna, New York; pages 70ff.

<sup>32</sup> The referendum got the support of 253 949 voters (4,43% of the electorate), putting it on number 13 out of 23 referendums in Austria at that time (Van der Bellen Alexander, 1998: Das Euro-Volksbegehren der FPÖ; in: Khol/Ofner/Stirnemann (Eds.): Österreichisches Jahrbuch für Politik 1997; Vienna; 112f.).

<sup>33</sup> See Van der Bellen, 1998.



the basis that several member states (i.e. Italy and Belgium) had not fulfilled the convergence criteria<sup>34</sup>.

In the coalition agreement with the ÖVP the Freedom Party committed itself to EMU and the need to reduce the deficit of the federal budget.

#### *1.3.4.4 The Green Party*

The Green Party criticises EMU, its organisation and objectives, fundamentally as an incarnation of the neo-liberal ideology. They are not against a monetary union as such but against its neo-liberal features. This ideology concentrates on the market and market forces as its central element and reduces freedom to the freedom of making money. It discredits important values, such as social justice and ecological policy and undermines democracy itself by reducing the competencies of national democracies without creating compensations on the European level.

The Greens interpret the EU as a possibility to create a European-wide union of peace and justice where important goals such as sustainable and ecological growth and social justice are attainable. The current reality, however, is the completely lopsided integration of markets by widely ignoring a political union which results in a significant loss of democratic accountability and legitimacy. Decisions are taken behind closed doors in the Council of Ministers, the European Council and the European Central Bank. This situation is made worse by the narrowing of national policy options through convergence criteria and the Stability Pact. The national governments block the development of a "social union" and the development of a common European policy in the fields of

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<sup>34</sup> The second motion called upon the government to inform the European Commission, the European Parliament and the member states, that Austria's contributions to the community budget must not increase and that countries that qualified for the third stage of the EMU must not receive any further payments out of the cohesion fund. Both motions were rejected by the majority of the Committee.

employment, taxes and economy. The intended result of this strategy is the reduction of social standards through internal European economic competition.

From this fundamental critique follow the arguments of the Greens for a better organisation of EMU. The one-sided orientation on monetary policy and price stability of EMU should be supplemented by social and ecological goals. The Greens had always argued for another set of convergence criteria. The public finance criteria should have been replaced by criteria which specify the reduction of unemployment and the fulfilment of obligations of international treaties concerning environmental protection.

The Stability Pact should be extended to include binding and controllable social and employment criteria as well as sanctions for failing to fulfil these criteria. In addition to this, the evaluation of a member state's budgetary compliance with the criteria of the Stability Pact should at least partly exclude public investments promoting employment.

The ECB should be subject to the principles of democratic accountability and control. Furthermore, as already indicated, the objective of monetary stability should be supplemented by other economic criteria.

To achieve the goals of sustainable and ecological economic growth and social justice under the conditions of the common market and monetary union the Greens also argue for measures in different policy fields:

- > Binding minimum social standards;
- > Homogeneous, European-wide taxation of property and speculative profit;
- > Harmonisation of corporate taxes together with the introduction of contributions to finance employment policies;
- > Gradual development of a European financial adjustment;

> Reducing the cost of labour through an ecological tax reform.

### *1.3.5 Social Partners*

First of all the joint position of Austria's social partners will be summarised and then I will illustrate the most important differences, especially between the employees' associations and the employers' associations.

The Advisory Council for Economic and Social Affairs<sup>35</sup> conducted a study on "room for manoeuvring in economic policy", which was published in May 1998<sup>36</sup>. The main message of the study was that the internal market and EMU have already restricted the member state's competence in the field of national economic policy in the preparatory phase. This has not only happened because of the shifting of competencies to the European level but also because of the need to meet the convergence criteria and the pressure to improve international competitiveness in the race for investment. The study concludes: "If the loss of national competencies is not to result in a vacuum in economic policy, these tasks need to be performed on a supra-national level."<sup>37</sup>

The study analyses the possibilities for policy actions in different policy areas under the conditions of monetary union.

#### **A - Monetary policy:**

The study stresses that the common monetary policy has clear advantages: "The European Central Bank will enjoy more room for policy measures than all the constituent national central banks of EMU. Also there will no longer be

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<sup>35</sup> This is a sub-committee of the Joint Commission on Wages and Prices (the centre-piece of Austria's Social Partnership). Its task is to conduct surveys concerning economic and social policies and to issue recommendations that contribute to a stable purchasing power, steady economic growth and full employment.

<sup>36</sup> Advisory Council for Economic and Social Affairs, 1998: Room for Manoeuvring in Economic Policy; Vienna.

<sup>37</sup> Advisory Council for Economic and Social Affairs, 1998; Preface.



currency speculation between member states."<sup>38</sup> From the Austrian point of view, a "responsible monetary policy (rather than a single-mindedly restrictive one)" should try to boost the economy by using the room available for interest rate reductions. Following the apparent price stability which has recently been established, the ESCB should now (without prejudice to the objective of price stability, according to Art. 105 (1) EC-Treaty) concentrate on the other objectives of the EU such as - among others - a high level of employment and of social protection (Art. 2 EC-Treaty).

The Advisory Council stresses the importance of co-ordination between the different players of economic policy, because stability goes beyond price stability. Only a well-co-ordinated macro-economic policy-mix can provide long-term stability<sup>39</sup>.

Further propositions in the field of monetary policy are to use low interest rates to stimulate exports through an appreciation of the US dollar against the euro and a regulatory framework for capital flows<sup>40</sup>.

#### B - Fiscal policy:

The Advisory Council holds the view that public policy needs to maintain its ability to counteract a downturn in the business cycle. It is, therefore, necessary to interpret the Stability Pact in a way that allows a certain degree of counter activity.

National fiscal policy should focus on promoting employment by reducing tax on labour, the promotion of investment and by enhancing the effect of expenditures on employment.

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<sup>38</sup> Ibid, page 87.

<sup>39</sup> Ibid, page 89.

<sup>40</sup> Ibid, page 90f.



Concerning institutional matters on the European level, the study asks for the creation of "a suitable mechanism for harmonising taxes", meaning qualified majority voting in the Council instead of unanimity<sup>41</sup>.

#### C - Tax policy:

The common market and monetary union reduce the national autonomy in the field of tax policy significantly. It is to be expected that indirect taxes will become more harmonised due to competitive pressures. Concerning direct taxes, the study argues for harmonisation of several taxes, especially taxation at source and corporate taxes, in order to avoid a competitive race towards lower taxes. This competition would lead to an ever lower taxation of capital versus a higher taxation of labour. Taking into account the European unemployment rate, the tax policy should aim at reversing that development and to reduce the cost of labour. Therefore, the Advisory Council stated: "A tax policy needs to provide a clear framework for competition in a common market, but must not be subject to competition itself."<sup>42</sup> It is necessary to agree on a certain minimum tax rate for capital gains and profits on the European level. In this context it would also be necessary to find a consensus on the kind of tax brakes that are compatible with the goals of the common market, such as tax brakes for investment in research and development.

The overall conclusion is that major changes in the tax structure and the type of taxes are only possible through a supranationally co-ordinated approach. The Austrian tax policy should, therefore, aspire to be more active on the supranational level.

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<sup>41</sup> Ibid, page 93.

<sup>42</sup> Ibid, page 94.

#### D - Wage and Income policy:

Austria already has some experience in conducting a wage and income policy under the conditions of a monetary union due to the binding of the schilling to the German mark since 1981. Austria's social partners have shown that they are capable of carrying out a responsible wage and income policy in the framework of a monetary union. To ensure a stable macroeconomic development, it will be important to continue a wage policy guided by long-term productivity development.

#### E - Policies to improve the quality of a location:

The policies needed to improve the quality of a location - such as education and training, regulation of the labour market, rules for working time, infrastructure or the efficiency of public administration - remain largely at the national level. The room for policy action on the national level, however, is restricted by the availability of public funds. The study identifies ample room for national policy action in areas relating to a more efficient production of public goods. This means reducing public service production costs and reducing the public administration follow-up costs.

#### F - Social and Labour Market Policy:

It is the opinion of the Austrian social partners that it "would be neither possible, nor useful, to merge the 15 different social security systems, with their widely differing traditions, into a single common system. Neither would it be desirable to have all policy measures adopted in the member states centrally administrated from Brussels".<sup>43</sup>

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<sup>43</sup> Ibid, page 102.

On the national level, efforts should be made to improve education and training, to enhance employment in new areas of activity, to optimise the distribution of work (meaning mainly to enhance the flexibility of labour) and to improve the active labour market policy.

On the European level, a closer co-ordination of the social policies of individual member states as well as the establishment of binding minimum standards is necessary in order to avoid a "competitive race towards lower social standards (social dumping) or a violation of established minimum standards"<sup>44</sup>. This includes the strengthening of the social dialogue on a European level, which is necessary when considering the repercussions of EMU on social policy. From the Austrian point of view, the integration of the social partners into the policy process was highly successful and should, therefore, be repeated on the European level.

To avoid social dumping, a closer network of minimum standards in the area of social security is desirable. Taking into account the conditions in the less developed member states, such harmonised standards are likely to remain below the level of protection currently existing in Austria.

Another important point from the perspective of Austria's social partners is to keep enough room for national policy action in case of short-term economic downturns: "Complementary to the European monetary and fiscal policies' focus on stability, corresponding room for employment and social policy measures must be preserved for periods of economic crises."<sup>45</sup>

### *1.3.6 Employees' Associations*

The main preoccupation of the trade unions and the Chamber of Labour is employment or, more precisely, the attainment of full employment together with

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<sup>44</sup> Ibid, page 104.

<sup>45</sup> Ibid, page 105.



the maintenance (or improvement) of the quality of working conditions, protective labour legislation and wages. EMU has been and is still supported by the employees' associations. It is perceived as a possible means of reaching their goals on the European level. The main advantages of the EMU for Austria are as follows: the abolition of unstable exchange rates; the participation in one of the world's leading currencies and the replacement of the German "Bundesbank" by the ECB.

The policy of the German Bundesbank had few supporters within the employees' associations, who sharply criticised its high interest rates. The unions and the Chamber of Labour are hoping that the ECB will be less stubborn and will concentrate on the European and not only on the German situation. This will represent an improvement for Austria as compared to the previous situation - when the Austrian Central Bank had to follow the decisions of the German Central Bank - as the governor of the Austrian Central Bank will participate in the decisions of the ECB-Council. On the other hand, however, EMU and its emphasis on the Central Bank's independence led to changes in the organisation of the Austrian Central Bank which reduced the influence of the social partners in the decisions of the Central Bank.

The main critique of the labour representatives concerns the perception that EMU in its current shape is an expression of the neo-liberal ideology which widely ignores the importance of employment. Neo-liberalism is opposed because of various reasons:

- + it sees the markets as the most important and efficient mechanism to organise an economy; as a consequence, unemployment can be reduced only through the market mechanism;
- + it perceives the state and interest organisations as dispensable and even contra-productive, because they interfere with the market forces;

+ it attributes unemployment mainly to so-called over-regulation, meaning anything from unemployment benefits to protective labour legislation.

The philosophical background of the neo-liberal ideology is the interpretation of men as self-interested individuals but not as part of the society and a social being<sup>46</sup>.

This ideology can be recognised in the main features of EMU, most of all in the one-sided concentration of EMU and the ECB on price stability and the strong emphasis on the independence of the ECB. From this critique the following requests are deduced:

- First and foremost, economic growth and full employment should be made equal goals to monetary stability;
- Policy co-ordination between the different actors of economic policy has to be improved. Independence of the ECB must not be used as a pretext to avoid a genuine dialogue with the social partners on the European level. Policy co-ordination is important because, in the view of the employees' associations, it is not only the Central Bank that influences price stability but also fiscal policy and of course wage and price policy. To avoid unnecessary disturbances due to a lack of mutual information, early co-ordination is needed.
- The executive board of the ECB should be staffed with experts with different backgrounds from several economic sectors who are acquainted with the interests of employees. Today, neo-liberal central bankers, who do not perceive trade unions as their potential partners in achieving the goal of overall stability and growth, dominate the ECB and the ESCB. The selection of "excessively stability-oriented" and "inflation paranoid" central bankers has also to do with the public perception: a central banker has to be like that, other features would be interpreted as weakness<sup>47</sup>.

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<sup>46</sup> See: Federation of Austrian Trade Unions, 1999: *Wirtschaft statt Herrschaft*; Vienna.

<sup>47</sup> Interview with Günther Chaloupek, Chamber of Labour.



- Last, but not least, the highly centralised monetary policy needs a higher level of co-ordination of related policies on the European level, which could be summarised under the heading of an European social union. This would have to include, among other measures, efforts to reduce the relatively high tax burden on labour as compared to capital. This could be achieved by a certain degree of tax harmonisation.

### *1.3.7 Employers' Associations*

The employers' associations stress almost exclusively the advantages of EMU and have only minor points of critique. By far the most important aspect of EMU is the creation of a large common market with a single currency which removes the destabilising and harmful currency fluctuations. This makes life much easier for a country with a very open and export oriented economy. Especially the depreciations of the Italian lira in the 1990ies caused severe problems for many parts of the Austrian economy.

Another advantage is the removal of currency-related transaction costs and belonging to one of the world's most important currencies. This is especially favourable for Austria's small and medium sized enterprises with trading links with Eastern European countries. In many cases, the euro now replaces the US dollar or the German mark as trading currency, thereby transferring the currency exposure to the trading partners.

Another big advantage of EMU can be seen in the external pressure to reduce the budget deficit. Not only is the reduction of the public debt positive but also the pressure on the government to organise the public sector more efficiently<sup>48</sup>.

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<sup>48</sup> Interview with Erhard Fürst, Association of Austrian Industrialists.

All this taken together strengthens the position of Europe's agriculture on the world market and the bargaining position of the EU in international trade negotiations.

### *1.3.9 Reactions to the policy decisions of the ECB*

The decision of the ECB to reduce the interest rates on April 8, 1999, was welcomed in Austria. The lowering of the interest rates had been expected, though most commentators were surprised by the size of the reduction. Economic experts classified the decision of the ECB as a positive signal but doubted whether it had positive effects on economic growth.

The Governor of the Austrian Central Bank argued that monetary policy had contributed to economic growth. He appealed to the government to act now and reform the labour market and secure a balanced budget<sup>50</sup>.

Much more controversial was the decision of the ECB on November 4, to raise the interest rates by 0,5%. The Minister of Finance, Rudolf Edlinger, called the ECB-decision unnecessary at that time but added that the upward trend of the economy was not in danger. The Minister of Economic Affairs, Hannes Farnleitner, reacted similarly. According to him, the ECB had over-estimated the danger of inflation, but the economic situation would not be damaged.

The employees' associations clearly rejected the step of the ECB. They did not share the view of the ECB Governing Council that price stability was at risk. Mr. Günther Chaloupek, from the Chamber of Labour, described the decision to raise the interest rates "very strange" and "ridiculous"<sup>51</sup>. The employers' associations also would have preferred to wait for a stronger economic upturn before raising the interest rates. Mr. Erhard Fürst, from the Association of Austrian Industrialists, would have preferred a smaller reduction of the interest

<sup>50</sup> "Die Presse", 10/04/1999.

<sup>51</sup> Interview with Günther Chaloupek, Chamber of Labour.

Furthermore, the stronger competition due to transparent prices has made it even more important to make Austria an attractive investment. This, in turn, also exerts pressure for measures favourable for Austria's industry.

However, the advantages of the common market and the single currency do not materialise by themselves. The new economic environment has to be acknowledged and the new opportunities have to be taken. Enhanced competition is positive for the economy as a whole but poses serious risks and challenges for many enterprises. And in this respect, parts of the Austrian economy still have a long way to go. Many firms have not yet realised the profundity of the changes that EMU brings with it<sup>49</sup>.

### *1.3.8 Chambers of Agriculture*

The chambers of agriculture have concentrated in all their statements regarding EMU on one point: that the single currency will do away with exchange-rate caused distortions. This is especially important in the case of Italy, Austria's second largest market for farm products. For example, the depreciation of the Italian lira in 1995 caused financial damage of more than one billion schillings (about 73 million euro) for Austria's agriculture.

Further advantages of EMU are the removal of the agricultural monetary regime which constituted an enormously complicated mechanism and brought disadvantages for farmers in hard-currency countries such as Austria.

Finally, the euro will provide the financial foundation which the common agricultural policy has always needed. The euro will also offer fair competitive terms to all participants for the first time.

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<sup>49</sup> Interview with Matthias Koch, Chamber of Commerce.



rates in April which could have avoided November's increase, for which he also could not see any reason.

### *1.3.10 Institutional and Procedural Matters*

The Stability Pact is - generally speaking - accepted but not loved by the main political institutions of Austria. As Thomas Wieser, a Department Head in the Ministry of Finance, pointed out, the Stability and Growth Pact is nothing new but simply specifies the provisions of the Treaty of Maastricht. In the discussions about the Stability Pact, there had been "two groups" of countries: Germany that pushed it intensely, and the other 14 countries that were not completely convinced of its necessity. Austria could have lived with a slightly larger room for interpretation but finally accepted the Stability Pact. It may have positive effects for all participants of the euro-zone including Austria, especially by providing an additional external motivation to reduce budget deficits.

Mr. Wolfgang Ruttensstorfer, state secretary in the Ministry of Finance, sees the advantage of the Stability and Growth Pact in its function to speed up necessary reforms in Austria. In connection with the Stability Pact, Austria decided to implement strict budget controlling in the federal ministries and improved co-ordination among the different levels of the state (federal level, the states, cities and municipalities). To achieve the latter, an inner-Austrian Stability Pact and consultation mechanism between the territorial authorities was concluded<sup>52</sup>.

The necessity of measures ensuring that no single country's irresponsible deficit spending policy could endanger the stability of the euro is widely acknowledged, but, of course, there are different points of emphasis. Political organisations on the so-called right of the political spectrum (employers' associations, Peoples Party) tend to be satisfied with the Stability Pact and its

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<sup>52</sup> Austrian Press Agency (APA), 12/04/99.



focus on balanced budgets. Political organisations on the left (employees' associations, Social Democratic Party, Green Party) tend to criticise the limited scope for policy measures in the case of an economic downturn. They criticise the one-sided concentration on price stability and attribute more importance to employment. The Green Party suggests to add social and ecological goals to the deficit criteria of the Stability Pact.

Hans Sallmutter, head of the Union of Private Employees, one of the most important unions within the Federation of Austrian Trade Unions, interpreted the Stability Pact as a de-facto aggravation of the 3% deficit criterion, because it requests budgets close to balance or in surplus in times of economic growth. Mr. Sallmutter concludes that this means the almost total loss of any room for manoeuvre for national fiscal policy. This emasculates also the national parliament and may require further austerity measures<sup>53</sup>.

The ECB still has some way to go to get appreciation in Austria. So far, critical comments dominate. This concerns most of all the lack of transparency and the overestimation of inflationary tendencies. The left side of the political spectrum also criticises an insufficient preparedness of the ECB (and the employer's side) for an open dialogue and again its overestimation of price stability as compared to economic growth and employment.

Most criticism concerns the perceived lack of transparency, for example that the monthly reports do not contain useful information, that an inflation forecast and the ECB's target inflation has been missing and that the minutes of the meetings of the ECB-Council are not published. An expert in the Ministry for Labour, Health and Social Affairs summarised this as the most extreme expression of independence with a dogmatic and messianic touch. Mr. Thomas Wieser,

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<sup>53</sup> Gewerkschaft der Privatangestellten, 1997: Hart, härter, Euro?; Vienna; page 6.

Department Head in the Ministry of Finance, concluded that the ECB will need some time, before it "acts with the cool confidence of a mature institution".

The existing co-operation mechanisms linking the ECB with other actors of the political system are assessed differently according to different interests. Representatives of the political left demand a better co-ordination of related policies (monetary policy, economic policy, wages and prices) and an intensified dialogue with the ECB. They make the criticism that the employer's side is not interested in genuine talks and that the ECB lacks the willingness to listen.

Accordingly, the employer's side thinks that the current co-ordination mechanisms are sufficient. An enhanced integration of the ECB into the political system could endanger the necessary independence of the Central Bank and is therefore opposed<sup>54</sup>.

According to Mr. Thomas Wieser, the Euro-11 Council does not yet work completely satisfactorily. He identifies two aspects. First, it is rather a sequence of monologues than a real discussion. Second, the Euro-11 discussions mostly miss the point of co-ordinating economic policies. It is rather a slightly more open exchange of views about topics that are also discussed in the ensuing Ecofin Council. The reason for that is mainly the much more limited number of participants in the Euro-11 meetings (not only of member states but also of officials).

The responsibility of the insufficient development of the Euro-11 is placed on the German presidency, especially on Mr. Oscar Lafontaine, who was not overly concerned with the Euro-11.

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<sup>54</sup> Interview with Erhard Fürst, Association of Austrian Industrialists.

## 2. Legal Framework

by *Herta Baumann*

### 2.1 *The law as it stands*

The preparations for the introduction of the single currency were designed as a long-term project within the Austrian administration. In 1996 a co-ordination mechanism was established, with representatives of the federal ministries, the governments of the states ("Länder"), the local authorities and the social partners. Within this co-ordination mechanism several working groups dealt with special aspects of the changeover to the single currency. The working group "Legistik" dealt with the legal framework of the changeover. This group compiled a list with all legal provisions that would have to be adjusted. Subsequently a plan for legislative adaptation on the federal level was designed.<sup>55</sup> On the state level ("Länder") and on the local authorities level similar plans were outlined.

The plan for legislative adaptations is based on two principles: Firstly, each federal ministry is responsible for the adjustment of the legislative provisions within its sphere of competence; and secondly, each legislative provision should be changed individually and not through a general amendment.

The main part of the legislative adaptations relates to "technical" aspects, meaning the replacement of references to the schilling as such or to a certain amount of schillings by references to the euro. A more complex part concerns substantive adjustments, due to the loss of competencies in the monetary field

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<sup>55</sup> Federal Ministry of Finance: Euro-Umstellung. Aktionsplan des Bundes [Transition to the euro], Vienna 1997.



and the new role of the Austrian Central Bank within the ESCB, and due to the two Council regulations relating to the introduction of the euro.<sup>56</sup>

These substantive changes were accomplished in four different fields:

1. The adaptation of the legal framework of the public finances between the different levels of government.<sup>57</sup>
2. Adjustments in the private law, including major modifications of the provisions concerning corporations and companies.<sup>58</sup>
3. Changes in the law of taxation and the re-denomination of public debt.<sup>59</sup>
4. The new Statute of the Austrian Central Bank.<sup>60</sup>

These amendments cover the necessary adjustments at the start of the transitional period. Further amendments will be necessary at the start of the circulation of euro banknotes and coins, especially physical re-denominations of legal provisions referring to the schilling.

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<sup>56</sup> Council Regulation (EC) No. 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro, OJ L 162, 19.6.1997, pp. 1-3; and Council Regulation (EC) No. 974/98 of 3 May 1998 on the introduction of the euro, OJ L 139, 11.5.1998, pp. 1-5.

<sup>57</sup> Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften [Agreement on a consultation mechanism between the territorial authorities], BGBl I No. 35/1999; and Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden betreffend die Koordination der Haushaltsführung von Bund, Ländern und Gemeinden - Österreichischer Stabilitätspakt [Austrian Stability-Pact], BGBl I No. 101/1999.

<sup>58</sup> Erstes Euro-Justiz-Begleitgesetz [Accessory-Law to the Introduction of the Euro, concerning adjustments of the private law], BGBl I No. 125/1998; *hereinafter*: Private Law Amendment.

<sup>59</sup> Erstes Euro-Finanzbegleitgesetz [Accessory-Law to the Introduction of the Euro, concerning adjustments of the financial law], BGBl I No. 126/1998; *hereinafter*: Financial Law Amendment.

<sup>60</sup> Nationalbankgesetz [Central Bank Act ], BGBl I No. 60/1998.



## 2.2 The Austrian Stability Pact

With reference to the European Stability and Growth Pact, the Austrian territorial authorities adopted two agreements<sup>61</sup>, concerning the co-ordination of their budgetary and financial positions. The Community law calls for an overall public budget close to balance or in surplus, including the finances of the regional and local authorities. In the Austrian federal system, on the regional level, the nine states ("Länder") have legislative and executive power of their own; on the local level the cities ("Städte") and municipalities ("Gemeinden") have an autonomous executive sphere of responsibility ("eigener Wirkungsbereich"), but no legislative power. Because of this federal structure it was necessary to find an agreement on the co-ordination of the budgetary and financial positions between the territorial authorities. The Austrian Constitution offers in its Article 15a the possibility of agreements between the federal government and the governments of the states ("Länder"), so called "Article 15a-Agreements"; but it does not provide for the municipalities and the cities to be parties to such agreements, since the local authorities have no legislative power. Therefore a constitutional amendment was necessary, which enabled the cities and municipalities, represented by the Federation of Austrian Cities and Municipalities ("Österreichischer Städte- und Gemeindebund"), to be parties to these two agreements.<sup>62</sup>

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<sup>61</sup> Agreement on a consultation mechanism between the territorial authorities, BGBl I No. 35/1999 and Austrian Stability-Pact, BGBl I No. 101/1999.

<sup>62</sup> Bundesverfassungsgesetz über Ermächtigungen des Österreichischen Gemeindebundes und des Österreichischen Städtebundes [Constitutional law on the authorisation of the Austrian Communal and Municipal Federation], BGBl I No. 61/1998.

In June 1998, the first agreement, a "consultation mechanism" was adopted.<sup>63</sup> Its purpose is to improve the financial co-ordination between central, regional and local authorities. Under the mechanism, authorities will be required to provide information on legal changes which may have financial effects on other authorities.<sup>64</sup> Within a certain period of time, the other territorial authorities can submit their opinions to the bill.<sup>65</sup> On their demand a consultation committee, with representatives of the federal, the regional and the local authorities shall deal with the financial effects of the bill and shall try to find a solution on the bearing of the costs.<sup>66</sup> A decision by that committee shall bind every territorial authority. Where there is no agreement on bearing costs, the authorities which have suffered costs may sue for compensation. Any dispute arising out of the agreement shall be decided by the Austrian Constitutional Court.<sup>67</sup> Article 6 of the agreement stipulates, that the agreement is not applicable to legal changes, which are imposed by Community legislation, or which are necessary to be in conformity with Community law.

The "consultation mechanism" was a prerequisite for the Austrian Stability Pact. The main focus of the "consultation mechanism" is to carry out an equalisation of burden between the territorial authorities with reference to new legislation of one of these authorities. Still, the federal character of Austria, with its different levels of authorities and their legal capacities, has to be considered and maintained. Thus, this "consultation mechanism" can only lead to an agreement on bearing costs (by unanimity) and not to the avoidance of legal changes.<sup>68</sup>

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<sup>63</sup> Agreement on a consultation mechanism between the territorial authorities, BGBl I No. 35/1999.

<sup>64</sup> Article 1, Section 1, 2 and 3 leg cit.

<sup>65</sup> Article 1, Section 4 leg cit.

<sup>66</sup> Article 2, 3 and 4 leg cit.

<sup>67</sup> Article 4, Section 2 leg cit.

<sup>68</sup> Government Bill, Commentary, 1210 Blg NR 20. GP.

The Austrian Stability Pact<sup>69</sup> was adopted at the end of 1998. It contains provisions on the acknowledgement of joint budget co-ordination, medium-term orientation of budget management, drawing-up of stability programmes and of the allocation of any penalties to the authorities causing an excessive deficit. The Austrian Stability Pact refers to the Stability and Growth Pact on Community level. Besides the budgetary co-ordination it lays down the procedure of the allocation of the deficit ratio of 3% of GDP between the central, regional and local authorities.<sup>70</sup> In a first step a co-ordination committee, with representatives of the territorial authorities, shall agree on the allocation of the deficit ratio; without such an agreement, Article 4, paragraph 3 stipulates, that from the overall public deficit ratio of 3%, the share of the federal deficit shall be 2.7% and the share of the regional and local deficits shall be 0.3% of GDP. The Austrian Stability Pact sets out a complex system of allocation rules of the deficit ratio between the different regional and local authorities. It governs the shifting of allotted deficit ratios in case of a surplus or an excessive deficit of one of the regional or local budgets. It also provides for any sanctions because of an excessive overall public deficit, stipulating that each territorial authority, which is responsible for the excessive deficit, shall bear the burden of the sanctions, applied by the Council in accordance with Article 104, paragraph 11 EC-Treaty.

Article 3 of the Austrian Stability Pact provides that the federal government shall design and submit stability programmes. Because Article 3 contains a mere repetition of Community Law, it is redundant.

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<sup>69</sup> Austrian Stability Pact, BGBl I No. 101/1999.

<sup>70</sup> Article 4 Austrian Stability Pact.



These two agreements on co-operation and co-ordination of the public finances of the different territorial levels are very important for the Austrian political system, because of the interwoven character of the public finances. It exists an elaborated fiscal equalisation between central and regional governments. Most taxes are federal ones and therefore the revenues have to be transferred to the regional and local level. These transfers constitute the main source of revenue for the states ("Länder") and communities.

The Austrian Stability Programme<sup>71</sup> sets out that "the budgetary policy target is an overall public budgets deficit of 1.5% of GDP for normal cyclical situations."<sup>72</sup> The decline of the deficit ratio shall be reached by reducing the deficit of the federal budget to 1.9% of GDP and with the budgetary positions of the regional and local authorities in surplus of 0.5% of GDP.

With reference to the fiscal equalisation and the objectives of the Austrian Stability Programme, the Austrian Stability Pact cannot solve two problems: Firstly, it only rules the procedure of the allocation of the 3% deficit ratio, but it does not provide for a procedure in case of divergence with the figures of the Austrian Stability Programme: Which territorial authority shall be responsible for such a divergence and which authority shall reduce its deficit additionally?<sup>73</sup> Secondly, the interwoven character of the public finances leaves no room for corrective budgetary action on the regional and local level.<sup>74</sup> The Austrian Stability Pact does not alter this situation.

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<sup>71</sup> Federal Ministry of Finance: Austrian Stability Programme for the Period 1998 to 2002, Vienna 1998.

<sup>72</sup> Austrian Stability Programme, p. 4.

<sup>73</sup> Lehner, Gerhard: Der innerösterreichische Stabilitätspakt [The -Austrian Stability Pact], in: Khol/Ofner/Stirnemann (eds.): Österreichisches Jahrbuch für Politik 1998, Vienna 1999, p. 374.

<sup>74</sup> Lehner, p. 377.

## 2.3 Private law

The adjustments in private law take place in two steps: In a first phase, applicable as from the start of the transitional period, substantive changes were laid down, which were necessary to avoid legal uncertainty, to enhance legal clarity and to ensure the timely preparation for firms and citizens. The Private Law Amendment is based on the two Council regulations<sup>75</sup> relating to the introduction of the euro. Although these regulations contain mainly monetary law provisions, some important principles of private law are also affected. Firstly, the principle of the continuity of contracts; Article 3 of Council Regulation (EC) No. 1103/97 provides that the introduction of the euro does not excuse the unilateral alteration or termination of contracts. Furthermore, the redenomination, which means changing the unit in which the amount of outstanding debt is stated from a national currency unit to the euro unit, does not have the effect of altering any other term of the debt, especially does not alter the value. The Austrian private law is perfectly in line with these principles. The principle of the continuity of contracts in case of an alteration of the legal tender, is deeply incorporated in Austrian private law, since during this century, several currency reforms took place in Austria. Even in case of hyperinflation, it was standing jurisprudence, that the changeover should be a nominal one, thus the burden of the risk of realignment is borne by the creditor.<sup>76</sup> Therefore it was not necessary to take legislative measures to enforce the principle of nominal value. However, because of the bad experience with previous currency reforms, it has been explicitly stated by members of the federal government that the changeover to the euro is not a currency reform

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<sup>75</sup> Council Regulation (EC) No. 1103/97; and Council Regulation (EC) No. 974/98.

(with changes in the inner value), but only a currency conversion (only a change in the denomination).<sup>77</sup>

The Private Law Amendment contains:

1. Changes in the law of accountancy: since 1 January 1999 the firms can make out their balance sheet alternatively, either in schillings or in euros. Further new provisions deal with the booking of the changeover costs.
2. Procedural law and the law of the land register: actions and entries are now also valid if made in the euro unit.
3. Consumer legislation: in medium and long term contracts with consumers, the monetary amount must be denominated in schilling and euro.
4. The most substantive changes concern company law and new standards of value, due to the ending of the key interest rate of the Austrian Central Bank: basically, according to Article 6, paragraph 2 and Article 8, paragraph 2, Council Regulation (EC) No. 974/98, the economic agents shall be free to use the single currency through the transitional period or not. Thus, with the introduction of the euro, the economic agents shall gain the possibility to found joint stock companies in schilling or in euros. Changes in the company law concern: the possibility to found a new corporation in euros and to convert the joint capital of existing corporations into euros;<sup>78</sup> and in relation to the changeover, the procedure for the adjustment of the memorandum of association

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<sup>76</sup> Kathrein, Georg: Aspekte der Umsetzung in Privatrecht [Adjustments in Private law], in: Ditlbache/Höllinger (eds.): Ökonomische und juristische Aspekte der Europäischen Wirtschafts- und Währungsunion, Vienna 1997, p. 66.

<sup>77</sup> Edlinger, Rudolf (Federal Minister of Finance): Die Neuordnung der Oesterreichischen Nationalbank am Vorabend der EURO-Einführung, in: Khol/Ofner/Stimemann (eds.): Österreichisches Jahrbuch für Politik 1997, Vienna 1998, p. 436 and Stanzel, Anton: Der Anpassungsbedarf für das österreichische Recht [The necessary adjustments within the Austrian law], in: Rill/Griller: Rechtsfragen der Europäischen Wirtschafts- und Währungsunion, Vienna 1998, p. 112.

<sup>78</sup> Article I, Section 8 and Article IV Private Law Amendment.



was simplified. But the most remarkable change is the introduction of non-par-value shares.<sup>79</sup> With this legislative measure the system of the Austrian corporation law was fundamentally altered, since before only par-value-shares were allowed. Although this change is not essential because of the introduction of the single currency, it constitutes a useful measure for a balanced changeover to the euro unit. Without a nominal amount the conversion and smoothing of the par value is not necessary. In accordance with Community legislation there is no obligation to convert the joint capital and the shares to euros, nevertheless, the new legislation has put a "gentle" pressure on corporations, because after the transitional period, it will be no longer be possible for non-converted companies to make a registration in the Austrian company register.<sup>80</sup>

With the integration of the Austrian Central Bank in the ESCB and the attribution of its monetary instruments to the ECB, the key interest rates of the Austrian Central Bank are no longer available as standards of value. It is a general accepted principle of the Austrian law that in case of the end of a particular standard of value a similar standard of value shall apply, taking into account the functions of the original one and the intentions of the parties.<sup>81</sup> The Private Law Amendment explicitly states this general principle.<sup>82</sup> Nevertheless, since in many legal provisions reference is made to the key interest rates of the Austrian Central Bank as standards of value, new "artificial" key interest rates were introduced to replace the key interest rates of the Austrian Central Bank.<sup>83</sup> With this new "reference interest rates", which shall be adopted and altered by the federal government, legal certainty shall be enforced.

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<sup>79</sup> Article IV, Section 8 Private Law Amendment.

<sup>80</sup> Article X, Sections 3, 4, 5 and 6 Private Law Amendment.

<sup>81</sup> Reich-Rohrwig, Johannes: Euro-Umstellung: Gesellschaftsrecht, Bilanz- und Zivilrecht, Vienna 1998, p. 40.

<sup>82</sup> Article I, Section 2, paragraph 1 Private Law Amendment.

The majority of the adjustments in private law concern the replacement of references to the schilling in legal provisions by references to the euro. Although Article 14 of Council Regulation (EC) No. 974/98 stipulates that a physical re-denomination is not necessary, preamble (20) of that Regulation lays down, that "for reason of clarity it may be desirable that the physical re-denomination will take place as soon as appropriate". On this legal basis, the federal ministry of justice will submit - in a second phase - a bill with these physical re-denominations. This amendment shall enter into force with the start of the circulation of the euro banknotes and coins.<sup>84</sup>

## **2.4 Financial Law**

Similar to the Private Law Amendment, also the Financial Law Amendment can be considered as the first step in the adaptations of the taxation and banking legislation. The major part of the replacement of references to the schilling by references to the euro, and the smoothing of the amounts in the euro unit, will be adopted at the start of the circulation of the euro banknotes and coins.<sup>85</sup> Therefore, this first Financial Law Amendment contains the necessary adaptations for a balanced changeover during the transitional period: mainly, references to the schilling and to the amended Private Law provisions were adopted, but also provisions concerning public debt: Article 1 Financial Law Amendment states the re-denomination of the public debt in the euro unit, in accordance with Article 8, paragraph 4 Council Regulation (EC) No 974/98. Article 2 Financial Law Amendment provides that private issuers may redenominate their debt in the euro unit, too. In the taxation law some special

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<sup>83</sup> Article I, Section 1 Private Law Amendment.

<sup>84</sup> Kathrein, p. 76; and Government Bill, Commentary, 1203 Blg NR 20. GP.

<sup>85</sup> Government Bill, Commentary, 1187 Blg NR 20. GP.

rules for the transitional period were adopted, because during the transitional period schilling and euro are equal legal tenders in Austria, amongst other technical adjustments.<sup>86</sup> The adaptation of the banking legislation<sup>87</sup> relates to references to the amended law of corporation, and it specifically anticipates necessary transformations, such as those that will derive from a drafted Council Directive concerning the solvency of banks<sup>88</sup>.

The amendment of the banking law as well as the legislative changes concerning the supervision of insurance undertakings<sup>89</sup> demonstrate that on the occasion of the introduction of the single currency many provisions without reference to the single currency were adapted. As a result, the adoption of the euro has led to legal clarity and legal certainty to a great extent.

## ***2.5 The new Statute of the Austrian Central Bank***

The core of the legislative adaptations in the course of the introduction of the single currency consists in the new Statute of the Austrian Central Bank. With the integration of the Austrian Central Bank in the ESCB and the requirement of its independence a large part of the legal basis of the Austrian Central Bank had to be changed. Before the legislative changes, the Austrian Central Bank was directed by the General Council, which comprised representatives of the government and the economic interest groups. The composition of the General Council reflected the characteristic Austrian corporatism the so called "Social

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<sup>86</sup> Articles 3 to 6 Financial Law Amendment.

<sup>87</sup> Article 8 Financial Law Amendment.

<sup>88</sup> Draft Directive Concerning the Change of Council Directive (EEC) No. 647/89.

<sup>89</sup> Article 7 Financial Law Amendment.



partnership".<sup>90</sup> The General Council took all basic decisions on monetary policy. The Board of Executive Directors conducted the current business. It had to report to and to act in accordance with the General Council's guidance. Furthermore, a state commissioner, representing the Federal Ministry of Finance, exercised control over the Austrian Central Bank's activities to ensure compliance with the Central Bank Act.

The objective of the new Statute, laid down in the Central Bank Act 1998<sup>91</sup>, is, on the one hand to achieve full compatibility with Community Legislation, and on the other hand to maintain the characteristic structure of the Austrian Central Bank as far as possible. The amendment of the Central Bank Act - once again - refers not only to the adoption of the single currency, but also to national legislation: through this amendment, requirements of the national legal system were also fulfilled.<sup>92</sup> The two major requirements of the Community law independence and integration in the ESCB, led to a wide range of legal changes; concerning the independence of the Austrian Central Bank, the decision making power was transferred from the General Council to the Board of Executive Directors; the appointment procedure of the members of the Board of Executive Directors, their minimum term of office and the grounds for their dismissal were regulated in accordance with Article 14.2 of the ESCB Statute; the provisions concerning the incompatibility of further activities were extended.

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<sup>90</sup> The interest groups take part in almost every decision on the political level, their representatives are members of the parliament and other important decision making bodies, such as the General Council of the Austrian Central Bank.

<sup>91</sup> Nationalbankgesetz [Central Bank Act ], BGBl I No. 60/1998.

<sup>92</sup> Government Bill, Commentary, 1080 Blg NR 20. GP

Concerning the integration of the Austrian Central Bank in the ESCB the provisions about its objectives, powers and tasks were changed.<sup>93</sup> The instruments of monetary control had to be adjusted to the competencies of the ESCB.<sup>94</sup>

The Austrian Central Bank is a joint stock company. The former main decision-body, the General Council, has now only advisory capacities and has the function of the supervisory board of a joint stock company.<sup>95</sup> Since the members of the General Council - representatives of the social partners - do not fulfil the requirement of personal independence, it was necessary to remove the Council's former competencies in the area of monetary policy.

The new decision making body in monetary policy is the Board of Executive Directors:<sup>96</sup> It consists of the Governor as its chairman, the Vice-Governor and two other members. All of them are appointed for five years, the grounds for their dismissal are in conformity with Article 14.2 of the ESCB Statute and any activity susceptible of doubts as to their personal independence are prohibited. Section 34 Central Bank Act stipulates explicitly that the Governor and Vice-Governor when acting as members of the ECB Governing and General Council are not bound by any decisions of the Bank's General Council or Board of Executive Directors.

The power of the state commissioner was reduced<sup>97</sup>. The only remaining right is to attend the shareholders' General Meeting and the General Council meetings

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<sup>93</sup> Section 2 Central Bank Act.

<sup>94</sup> Article X Central Bank Act.

<sup>95</sup> Sections 20 to 31 Central Bank Act.

<sup>96</sup> Sections 33 to 36 Central Bank Act.

<sup>97</sup> Section 40 Central Bank Act.

in an advisory capacity. Although the Austrian Central Bank is now "an integral part of the ESCB"<sup>98</sup>, it continues to fulfil other functions, unless the Governing Council of the ECB finds, in accordance with Article 14.4. ESCB Statute, that these functions interfere with the objectives and tasks of the ESCB.<sup>99</sup>

## *2.6 National law from the EC Perspective*

From the point of view of the European Commission "legislation in Austria is compatible with the requirements of the Treaty and the ESCB Statute."<sup>100</sup> Although this statement was made in early 1998 explicitly referring to the new Central Bank Act, the finding should still be the same, since all relevant amendments were drafted at that time and since there are no further statements to the contrary. An expert of the Federal Ministry of Justice stated, that no concerns existed about the consistency of the Austrian legislation with Community law.<sup>101</sup>

Three aspects of the legislation relating to the euro are noteworthy:

1. The current amendments cover the necessary adjustments at the start of the transitional period. Further amendments will be necessary at the start of the circulation of euro banknotes and coins. These adjustments especially concern the replacement of references in legal provisions to the schilling by references to the euro. This is not necessary, since the Community provisions, which stipulate that references to national currencies shall be read as references to the euro, are directly applicable. But for the purpose of legal clarity and certainty the affected provisions will be amended.

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<sup>98</sup> Section 2 Central Bank Act.

<sup>99</sup> Sections 4 and 7 Central Bank Act.

<sup>100</sup> European Commission: Convergence Report 1998, COM(98) 1999 final, 25 March 1998



2. Many legislative changes which were made with the adoption of the euro, do not refer to the euro, but to other realms of Community or national legislation: the new provisions fulfil also other requirements of the Community law or of the national law. As a result, the adoption of the euro leads to legal clarity and legal certainty in a great extent.

3. Many of the new provisions, especially in the Central Bank Act, are very similar to the provisions in the Treaty or in the ESCB Statute, sometimes even literally.

### ***2.7 The Application of the law***

Since the new provisions have only been applicable since 1 January 1999, there are no surveys about proceedings in this realm. An expert of the Ministry of Justice stated that he has neither information about current proceedings nor about judgments concerning the adoption of the euro.<sup>102</sup>

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<sup>101</sup> Telephone-Interview 23 November 1999.

<sup>102</sup> Telephone-Interview 23 November 1999.

### 3. Some Trends Towards Spill Over

by *Helmut Lang*

Members of Austria's *former* federal government called the euro on several occasions an important step on the way to better and more comprehensive European integration. Further steps of integration are seen as unavoidable and necessary. On the occasion of the final decision about the participants of the first group of countries entering the third stage of EMU in the beginning of May 1998, *then* Chancellor Klima and Foreign Minister Schüssel declared that the euro enforces a European economic policy. The Chancellor went on to say that EMU will not only be a driving force for a better co-ordination of economic and social policies but hopefully also for the common foreign and security policy<sup>103</sup>. The first priority is seen in the creation of jobs through European-wide effort and co-ordination. Consequently, employment was one of the main priorities of Austria's EU-presidency in the second half of 1998.

An Austrian-wide consensus exists concerning the necessity of tax harmonisation or co-ordination - another priority of Austria's EU-presidency. More precisely, minimum levels of the taxation at the source and corporate taxes to avoid a competition race towards lower taxes are seen as an immediate priority. Consequently, Austria always argued for qualified majority voting in the Council of Ministers in the field of taxes and will continue to do so. Mr. Erhard Fürst, from the Association of Austrian Industrialists, points out that certain minimum levels for direct taxes to avoid unfair competition are supported. But harmonisation must not lead to tax increases. A certain level of limited tax competition is stimulating and should continue to exist<sup>104</sup>.

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<sup>103</sup> Austrian Press Agency (APA), 03/05/98.

<sup>104</sup> Interview with Erhard Fürst, Association of Austrian Industrialists.

Consensus between the employees' and the employers' associations exists also concerning the necessity of addressing the topics of tax evasion and tax avoidance through loopholes<sup>105</sup>.

Another priority is seen in European-wide efforts to reduce the tax-burden on labour.

In the medium-term, the *former* Minister of Finance, Rudolf Edlinger, *expected* that EMU will put pressure on a European-wide co-ordination of social, ecological and health-standards<sup>106</sup>. This should not include, however, a harmonisation or equalisation of social security systems. A European-wide minimum wage should not be included in the co-ordination of social security because of different levels of productivity. A concern of the employees' associations is the possibility of wage-dumping due to a competition to improve the quality of a location. Therefore, a certain co-ordination of wage negotiations could be useful. The employers' associations would prefer to restrict the wage negotiations to the national level with the argument that productivity is determined nationally.

Not surprisingly, political organisations belonging to the political right welcome a reduction of state interference and do not tend to argue in favour of compensation for the loss of competencies of the nation state on the European level. The political left, on the other hand, favours the creation of EU policies in the fields in which nation states lose their influence. Demands for a social union and better co-ordination of policies on the European level therefore usually come from the Social Democrats, the Green Party and the trade unions.

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<sup>105</sup> Interviews with Günther Chaloupek and Matthias Koch.

<sup>106</sup> Austrian Press Agency (APA), 17/06/98.



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## **BELGIAN REPORT**

**Diego Devos\***  
**Paul Magnette\*\***

*With the participation of:*

**Vincent Meunier**  
**Jacques Delpérée**

### **Political Aspects**

*by Paul Magnette*

#### **Foreword**

This being the first report, some preliminary remarks may be necessary concerning this part of the report:

1. Given the traditional analytical requisite that public opinions are largely influenced by opinion-makers, we will begin with "institutional positions". If, for reasons of harmonisation, the suggested structure needed to be strictly followed, this would not make any problem.
2. The sources of the analysis of "institutional positions" are documents published by state institutions, political parties, trade-unions, lobbies... and completed by press articles when necessary. EMU matters being the object of large consensus in Belgium, some institutions have not published opinions on this question in the last ten months. The analysis is thus not really exhaustive, though most segments of Belgian élites are represented.

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It must be added that, even when public institutions publish opinions on these questions, they rarely give rise to public debate: it must be remembered that the existence of an official position may be very confidential in practice.

3. The sources of the analysis of “public opinion” attitudes are unfortunately limited, in the Belgian case, to European polls. As far as the author of this section is aware, there have indeed been no national poll on these questions in the last ten months. Methodological precautions usually applied to Eurobarometer thereby apply :

- the “confidence limit” of Eurobarometer is rather large. It is 2.7% for observed percentages of 30 or 70% and 3.0% for observed percentages of 40 or 60%. This means that only large differences should be taken as significant ;
- it is well known that the high level of aggregation adopted to reach harmonised results at the EU level conceals most sociological and cultural variations ;
- as Belgium is taken as a whole, regional differences can not be underlined.

## ***1.1 Opinion makers and the Euro***

### ***1.1.1 Introduction***

In Belgium, European integration has always been the object of a large consensus among political leaders and organised interests. Well before the adoption of the

Maastricht treaty, the conviction that Belgium was a too small and too open economic space to manage a truly independent monetary policy was widespread. Belgian leaders were convinced, during the negotiations of the Maastricht treaty, that the EMU would help the country, which had entered the Mark zone some years earlier, retrieve some part of its monetary sovereignty. Some conservative and even socialist politicians were also convinced that this would help realise structural reforms which would otherwise be opposed strong internal reluctance.

The only segments of the Belgian political class who opposed these projects during the ratification of the Maastricht treaty were the extreme-right wing parties, supporting a nationalist view of the State's independence and usually opposed to any form of further integration; and the Greens who, though they agreed with the objectives of the EMU, contested the austerity inherent in the process of convergence.

These initial positions have not been fundamentally altered since then. The government has continued to present the Euro as an advantage for national economic interests and as a starting-point for further European integration. A political division remains visible between those who think that the Euro requires further budgetary discipline and structural reforms of the labour market and those who are trying to use it as a means for growth and employment policies. The opposition remains limited to the left-wing and right-wing parties who initially criticised the project.

The absence of public debates on these issues is another crucial peculiarity of the Belgian situation as compared to other European States.



### 1.1.2 Governmental positions

Belgium was governed, until June 1999, by a centre-left government, composed of christian-democrat and socialist parties. The Prime Minister, during this first part of the year, was the Flemish Christian-democrat Jean-Luc Dehaene, who had himself negotiated the Maastricht treaty.

In a speech before a forum of Belgian industries in October 1998, he summarised the traditional position of his government concerning the Euro<sup>107</sup>. The common currency, he argued, will enhance the economic stability of the country, and simultaneously strengthen economic growth. Taking a more clearly right-wing position, he added that the Euro would strengthen budgetary discipline, internally necessary but long delayed, and that it would help launch deeper reforms of the labour market. Finally, from a more European point of view, he concluded that the Euro could give rise to spill over in terms of fiscal and social harmonisation, and that it would enhance the European Union's weight in international forums.

This restatement of classic pro-Euro arguments is largely shared by most political forces in Belgium. The idea that the Euro is the inception of a new phase of integration, because a common monetary policy requires a better co-ordination of economic policies and the gradual creation of a European social and fiscal basis, is a commonplace in Belgium. The impact of the Euro on budgetary policies and on the labour market are, however, more debated.

The new government, installed after the general elections of June 1999, has not altered the traditional Belgian position so far. The coalition directed by the Flemish liberal Guy Verhofstad is composed of liberal, socialist and Green parties.

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<sup>107</sup> Jean-Luc DEHAENE, *L'Euro, une nouvelle chance pour la Belgique*, Discours au Forum Euro Entreprises, La Hulpe, 01 octobre 1998.

European matters appeared as secondary preoccupations in the government's declaration in July. The government recalled the official positions of its predecessor concerning the next IGC (deep institutional reform before the next enlargements) and made plain that it would follow the classic line according to which the creation of a fiscal and social basis in European law is considered by Belgian authorities as a natural consequence of the EMU<sup>108</sup>. It must be noticed that the tough positions of the former government on budgetary discipline and reforms of the labour market have disappeared from these positions. The government has not given more precise information so far, and no debate on this question has been held in the Parliament.

### 1.1.3 Left-wing nuances

Left-wing parties, namely Green and socialist parties, have expressed some nuances about this official position, though without trying to give rise to public debates.

The Flemish and French-speaking socialist parties have not published opinions on these questions recently. But their traditional position is usually more critical than that of the PSE of which they are part. In its Congress on employment in March 1999, the PSE had indeed tried to combine doctrines of economic and budgetary discipline with objectives of growth and employment, considering these two sets of objectives as equally important, and carefully avoiding to precise how this combination could be reached in practice<sup>109</sup>. By contrast, the Belgian *Parti socialiste* has always had a more traditional discourse, stating notably that "the European public power has to be able to combat capitalism", and that in order to use the Euro as a means towards social progress and full

<sup>108</sup> *La voie vers le XXI<sup>e</sup> siècle*, accord de gouvernement, Bruxelles, 07 juillet 1999.

<sup>109</sup> *A European Employment Pact for a New European Way*, Report from PES Party Leaders, A. Guterres, Milan, 1 & 2 March 1999.

employment, a European economic government is necessary, to counterbalance the European Central Bank and contribute to the emergence of a fiscal and social Europe<sup>110</sup>. This being a clear difference with the former Prime Minister's argument that economy can not be governed nowadays, and that the idea of a "European economic government" is absurd.

Green parties have also, though with less emphatic and more precise opinions, tried to nuance the Belgian consensus on the EMU. During the campaign for the June 1999 European elections, ECOLO (French-speaking Green party), denounced the asymmetry of the European Union, where monetary policies are centralised while fiscal and social matters remain submitted to less co-ordinated mechanisms, and the risks of social and fiscal dumping inherent in this asymmetry. In addition to the classic Belgian argument that fiscal and social harmonisation are necessary after the implementation of the Euro, this Green party has required stronger environmental co-ordination and the creation of a European tax on international financial movements (Tobin Tax)<sup>111</sup>. Following their French-speaking colleagues on these points, the Flemish Greens (AGALEV) have moreover insisted on the necessity to enhance the transparency of the European Central Bank and its accountability to the European Parliament<sup>112</sup>.

#### *1.1.4 Trade-unions : the quest for a social Europe*

Belgian trade unions usually share left-wing parties' opinions on the EMU. Following the arguments made by the CSE during its Congress in Helsinki in June 1999, they criticise the ECB for following the objective of price stability at the expense of the other missions defined by the treaty (art. 105 CE: *contribute, without*

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<sup>110</sup> Parti socialiste, *Construire l'Europe dans une perspective internationale*, Bruxelles, mars 1998.

<sup>111</sup> Ecolo, *Par-dessus le marché, refaire l'Europe*, Bruxelles, June 1999.



*prejudice of this objective, to support the general economic policies in the Community...).*

The *Confédération des syndicats chrétiens* (CSC), the largest trade-union confederation of the country, has notably published a detailed study of the European monetary policy, before the ECB's decision to reduce interest rates in April 1999. In March 1999, this trade-union pleaded for a rapid and massive reduction of interest rates by the ECB, arguing that the small reductions made until then had been lower than inflation rates, so that they had had no effects on economic growth<sup>113</sup>.

The socialist and liberal trade unions share this diagnosis and regularly recall that the EMU is not an end in itself and that the ECB must opt for policies which contribute to economic growth and cohesion. They recall their traditional position that the EMU requires social and fiscal cohesion to avoid competition between Member states and social dumping, and notably plead for the adoption of a legally effective Charter of social rights<sup>114</sup>. The independence of the ECB and its dialogue with the European Parliament is usually not debated.

#### *1.1.5 Other interest groups : practical problems*

Organised interests play an important role in the Belgium political system. Their comments on the Euro have, however, been very rare, and limited to some expected practical problems of the transition towards the Euro in January 2002.

The *Fédération des entreprises de Belgique* (Federation of Belgian Industries, FEB) has not published opinions on the EMU so far. It is usually in favour of the Euro, on the ground of classic economic reasoning (stability, lower

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<sup>112</sup> AGALEV, *Levende Europese democratie*, in Europa Magazine, maart 1999, p. 7.

<sup>113</sup> Confédération des syndicats chrétiens, *Un indicateur politique pour juger la contribution de la BCE à la réalisation de croissance et de l'emploi dans l'UEM*, Brussels, March 1999.

<sup>114</sup> Confédération générale des syndicats libéraux de Belgique, *Europe, Progrès ou déclin social ?*, Congrès du 18 décembre 1998, Bruxelles.

transaction costs...). Belgian industries actually worry about the practical effects the Euro might have in everyday management rather than about macro-economic questions. The FEB has published a "Eurobarometer", based on an inquiry with 300 industries, showing that most of them fear the practical consequences (on their accounts, transactions...) of the transition to the Euro and that only a minority of them are already adapting to the Euro<sup>115</sup>. The President of this Federation has taken the example of his own enterprise in an interview: only one of his 4000 customers has asked his enterprise receipts in Euro so far. The inquiry made by the FEB reveals less pessimistic scenarios of adaptation: 40% of Belgian industries sometimes send receipts in Euro; 9,7% have published their annual accounts in Euro; 6,5% give their employees their salaries in Euro<sup>116</sup>. These are still very limited proportions, and another inquiry made by a bank (Bacob) with its customers shows that 72% of them do not plan to use Euro before the very last moment<sup>117</sup>. The idea that the technical transition to the Euro might give rise to deep practical problems in 2002, amounting to a sort of second bug, seems to be growing in Belgium, though no inquiry has been made on this question so far.

The *Union des classes moyennes*, an organisation of shop-keepers, has published a communiqué arguing that the transition to the Euro should be delayed to February 2002, because... January is traditionally the period of sales in Belgium, and they fear this important economic event might be disturbed by Euro-problems<sup>118</sup>.

To conclude with practical problems, an independent organisation of consumers, *Test-achat*, has published a study on transaction costs since the introduction of the Euro, showing that most banks had enhanced their costs.

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<sup>115</sup> Fédération des entreprises de Belgique, Eurobaromètre n°1, Bruxelles, mars 1999.

<sup>116</sup> Ibid.

<sup>117</sup> See *Le Soir*, 30 juin 1999.



They denounce this practice, while the banks answer that, given the fixed exchange rates they are unable to draw benefits from exchange rates and must therefor charge customers with standard costs for Euroland exchanges<sup>119</sup>.

Though these might appear as details, compared to macro-economic questions, they should not be ignored. As will be shown in the following section, the Belgian public opinion seems to worry about the practical effects of the Euro more than about its macro-economic consequences. The legitimacy of the European currency certainly depends on the solution of these material problems as much as on its perceived general economic results.

#### *1.1.6 Economists and monetary institutions*

As in most other European countries, economic and financial newspapers play an important role in the public's perception of economic events. The opinions published by these organs should thus not be ignored.

The ECB's decision to reduce the main interest rate on April 8<sup>th</sup> 1999, has generally been welcomed by economists in Belgium. Two arguments were made. First, this proved that the ECB was not following a unilateral line and that it was able to pursue the general objectives of the Community's economic policy. Second, this decision was seen as an answer to political discourses from France and Germany, which would enhance the ECB's independence because tensions with political leaders would decline. Some commentators added that this decision would, given the necessity of a comprehensive policy-mix, encourage governments to further reduce public deficits and to enhance the flexibility of labour markets<sup>120</sup>.

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<sup>118</sup> Union des classes moyennes, *Y a de quoi râler*, Communiqué, Bruxelles, mars 1999.

<sup>119</sup> See *Le Soir*, 9 April 1999.

<sup>120</sup> See *L'Echo de la Bourse*, 10 April 1999.



The Governor of the Belgian Central Bank, the French-speaking socialist Guy Quaden, has been very discrete in this period. In an interview with the most read French-speaking newspaper (*Le Soir*), he has supported the ECB's policy. He first argued that the ECB and national central banks are actually, and not only formally, independent from political organs while at the same time able to listen to political messages. He also tried to forge a consensus on the ECB's decision, arguing on the one hand that reducing interest rates was a good thing for economic growth, and recalling on the other hand that this reduced the benefits of those who, actually a very large proportion of the Belgian population, spare and "invest" a part of their salaries. He has finally tried to avoid conflicts between Flemish and French-speaking authorities, recalling that the Belgian Central Bank respected rules of parity and maintained the balance between the interests of the North and the South of the country. The governor has, in other words, played a subtle political role in trying to prevent political tensions about monetary policies<sup>121</sup>.

The ECB's decision to enhance its rates on November 4 1999 has similarly been welcomed by most commentators. While most general newspapers just mentioned the fact without commentaries, economic papers and economists interviewed generally supported this decision. It was defined by the influential *Echo de la Bourse* as a "brilliant evidence of independence", a realistic and long-term decision<sup>122</sup>. Though some economists were surprised by the level of the enhancement, they understood it as a sign of stability, as this gave the ECB the possibility not to change its rates for a longer period. Some also underlined that this decision demonstrated that the ECB could follow the general interest and not be strictly influenced by some member states, as most German economists were not favourable to this decision which was on the other hand

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<sup>121</sup> See *Le Soir*, 2 April 1999.

<sup>122</sup> *L'Echo de la Bourse*, 05 November 1999.

welcomed by Ireland, Portugal, Spain... The governor of the Belgian National Bank, Guy Quaden, again organised a press conference to explain and justify this decision: he notably insisted on the fact that it would not affect economic growth, and that it could be seen as a contribution to employment policies since it was a guarantee of long-term growth and stability.

## ***1.2 Public Opinion***<sup>123</sup>

### *1.2.1 General support for the Euro*

The last Eurobarometer polls confirm that the Belgian population largely supports the Euro. 76% of persons asked in March-April 1999 answered that they were “for” the Euro, 2% more than in the former inquiry. Belgium thereby has the third highest score in the EU, after Luxembourg and Italy. This is a particularly high score if one underlines two parallel trends.

First, the general support for the Euro in the EU has been declining since the end of 1998, after a two-year period of constant growth (47% “for” in March 1997; 64% in September 1998; 61% in March 1999)<sup>124</sup>. Belgium is here an exception to this evolution.

Second, Belgium, which had been among the stronger supporters of European integration generally speaking until 1994, has become since then a relatively weak supporter. Only 47% of persons asked in March 1999 think that “generally speaking (...) Belgian membership of the European Union is a good thing”. Compared with the scores of Ireland (78%), Luxembourg (77%), the Netherlands (73%), this is a relatively weak score, Belgium being at the ninth rank, *ex æquo* with France. Apart from Germany and Finland, only classically

<sup>123</sup> All the data mentioned in this section are drawn from Eurobarometer 51, Spring 1999.

<sup>124</sup> Similar trends may be observed in the euro-zone : there were 52% for in March 1997 ; 70% in September 98 ; 68% in March 1999.



Eurosceptic countries (Sweden, Austria and the United Kingdom) have lower scores. The same results are reached when the other classic Eurobarometer question is used (*Taking everything into consideration, would you say that Belgium has on balance benefited or not from being a member of the European Union ?*). Only 44% of persons asked answer that Belgium has benefited from EU membership, with again nine other member states reaching higher scores. This means that, in spite of declining support for European integration generally speaking, Belgium is among the strongest supporters of the Euro.

This contrast can not be easily explained. The relatively weak support for European integration generally speaking can be seen as an element of a typically Belgian distrust for public authorities: in national polls, only 25% of persons asked generally support the government<sup>125</sup>. But why, if people do not trust the EU in very large proportions, are they nevertheless in favour of the Euro? Probably – hypothesis are here the only possible interpretation given the absence of more precise inquiries – because they have been convinced by official positions: the Euro will strengthen the weight of the country, contribute to economic growth... Another poll shows that persons asked think that their country will benefit from Euro-membership (65%, Belgium being in this question at the third highest score)<sup>126</sup>. Also probably because they consider the practical advantages of the common currency: as Belgian citizens are used to travelling around Europe, they welcome the end of exchange rates and different national currencies.

Another aspect of Eurobarometer polls confirms these hypotheses. Asked whether they think monetary matters should be dealt with at the national or European level, 77% of persons asked are in favour of a European decision-

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<sup>125</sup> See the polls published by *La Libre Belgique* four times a year.

<sup>126</sup> European Commission, DGX, *European Public Opinion on the single currency*, January 1999.



making in March 1999. There, Belgium reaches the third score, just after Italy (81%) and the Netherlands (80%). The former experience of a monetary union with Luxembourg might help explain this enthusiasm – though the dimensions of this experience and the Euro are not comparable. More probable is the hypothesis, made by many political scientists, that in this field as in others, the EU appears as an efficient public authority, able to tackle problems the national government is unable to. Generally speaking, countries where the confidence in the national government is low because it is perceived as a political system in crisis (Belgium, Italy, Greece) tend to understand the EU as a remedy to internal evils.

There is, however, some monetary peculiarity in this phenomenon. As far as other competencies are concerned, persons asked are less enthusiastic with European action in Belgium: if humanitarian aid is seen as a valuable common policy by 74%, immigration by 63%, defence by 62%, EC unemployment policies are only supported by 53%, health and social welfare by 37%.

However, fighting poverty and unemployment are seen as priorities of the Union by 93% of persons asked, peace and security by the same proportion, fighting organised crime by 89%, while implementing the Euro successfully is seen as priority by “only” 75%. These results can be explained by classic hypothesis. According to most political scientists, the end of the century is characterised by deep worries among European citizens concerning their physical and material security – they are, in political sciences jargon, materialistic citizens<sup>127</sup>. This explains why they mention all “security matters” as priorities. This hypothesis is confirmed by the fact that, when they are asked what the priorities of the European Parliament should be, they select the same items. Just to take one example: 69% think the EP should focus on

<sup>127</sup> See D. KLINGEMANN et D. FUCHS (Eds.), *Citizens and the State, Beliefs in Government Vol. I*, Oxford, Oxford University Press, 1995.

unemployment, while only 53% think unemployment should be a common policy! This may be understood as follows: when they see a list of items presented as possible priorities, people select those they consider as priorities generally speaking, without really bearing in mind the question of which level of authority tackles with these problems. The two kinds of questions are, in other words, not really connected: a quasi-unanimity of Belgians can consider a common currency as a good thing while a much smaller proportion sees it as a priority.

It would be interesting to focus on the socio-cultural differentiation of these data. But the results published by Eurobarometer are aggregated at the European level. It is well known that this "harmonisation" conceals social differences: compared with more precise national polls, differences between educated and not educated people are always smaller<sup>128</sup>. They are, however, significant. At the EU level, 70% of self-employed and managers are for the Euro, while only 53% of retired persons 57% of manual workers and 68% of unemployed are for. This is a classic phenomenon too: persons who are active in social life tend to welcome political innovation with more enthusiasm than isolated persons. The same holds true for the level of education: 72% of those who have studied beyond the age of 20 are for the Euro, while only 54% of those who have stopped education before the age of fifteen share the same opinion. It must be recalled that this last factor may produce a bias in the analysis of the impact of the age of persons on their opinion: though young people are generally more favourable to the Euro (64% for the 15-24 years old) than older ones (56% of people aged 55+), this may actually be due to the fact that younger people are

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<sup>128</sup> See the classic study of A. PERCHERON, « Les Français et l'Europe : acquiescement de façade ou véritable adhésion ? », in *Revue française de sciences politiques*, 1991, Vol. 41, n° 3, pp. 382-407.



more educated than older ones. In any cases, the Euro is, as European integration taken as a whole, a “privilege of the privileged”.

### *1.2.2 Trust in the European Central Bank*

The average support for the ECB does not seem to be very high in the EU (42%). It must however be recalled that, apart from the European Parliament (50%) and the Court of Justice (44%), other institutions have lower records: 40% for the Commission; 36% for the Council; and only 22% for the Committee of the Regions. The Belgian situation is close to the EU average in this case: 44% tend to trust the ECB. It is much less than its two Benelux partners: the Netherlands (68%) and Luxembourg (61%). Within the members of the euro-zone, Belgium reaches a medium rank: higher than Spain (37%), France (41%), Portugal (42%), but lower than the other Benelux countries and Finland (54%), Germany (50%), Italy (49%), Ireland (48%), Austria (44%). More instructive is the fact that 29% have no opinion on this question (while only 14% in the case of the EP and 15% for the Commission). This high level of “no answer” may be understood as a sign of the relatively low notoriety of the ECB (the level of “no answer” for the committee of the Regions reaches 46%).

The existence of the ECB and its independence of Member States are usually not debated in Belgium. 72% of persons asked support this, Belgium being at the third rank here (after its two Benelux partners again and *ex æquo* with Italy). This simply means that the independent ECB is seen as a normal consequence of the EMU, less debated than is the case in some other Member states. 77% also think that the ECB has to be accountable to the European Parliament. Here six northern countries have reached higher scores. Parliamentary controls in Belgium are usually very poor, as compared to the tradition of Scandinavian and British democracies and this may explain the relative indifference of public opinion to this question.



### *1.2.3 Information about the Euro*

Persons asked in Belgium usually think that they have received information about the single currency (91%), though a much smaller proportion feel informed (63%). These are relatively high levels, compared to the EU averages (78%/45%) and even to the euro-zone averages (87%/51%). 98% have heard about the Euro, 82% know its name and 68% are able to answer some simple questions about it. These scores are close to, and somewhat higher than, the Euro-11 average. Most of them have been informed through television (71%) and banks (62%). The information they are looking for concern the practical aspects of the Euro: its value (92%), how to avoid fraud (92%) and banking implications (90%) more than the macro-economic and institutional consequences it might have.

### *1.2.4 Feelings about the Euro*

When asked about their feelings about the Euro, most persons mention their interest (76%) and a large majority of them say they feel "European" (61%). More sentimental feeling do not seem to be part of the question: a quite small proportion feel "enthusiastic" (41%) and very small proportions express fears to be "powerless" (37%) or sadness (15%).

Most worries about the Euro remain limited to very practical aspects of the question: people are, in a much larger proportion than in other member states, worrying about the consequences the Euro might have on prices (67%, as compared to 35% in the Euro-11), on the use of coins and notes and on the value of their money (67%; respectively 35 and 42 % in Euro 11). A pragmatic people must have pragmatic feelings.

### *1.3 Provisional conclusions*

Belgium has always been perceived by its inhabitants as a small and open economic space. Interdependence, co-operation and integration have thereby always been praised by Belgian élites and citizens since the beginning of the century. More recently, the crisis of trust vis-à-vis political institutions has tended to perceive EU institutions as a remedy to the tensions and the paralysis of the country.

These long-term elements, combined with a natural disdain of Belgian citizens for political discussions, probably explain why the Euro is not a debated issue nowadays. Nationalist extreme-right wing parties are the only segment of the Belgian citizenry who criticise Europe as a whole and the Euro in particular, without however rejecting them. Beyond these oppositions, a classic left-right cleavage can be observed around the spill over expected from the Euro. While right-wing parties, employers' organisations and some economists hope that the Euro will strengthen budgetary discipline and induce more flexibility of labour markets, left-wing parties and trade-unions call for a "regulative spill-over" consisting in the rise of an "economic government" and the creation of a European fiscal and social basis, designed to avoid social and fiscal dumping. Governments being coalitions between both wings, official Belgian positions usually amount to compromise between these two positions.

While public opinion are generally in favour of the Euro in Belgium, even if their general trust in the EU has been declining in the last years, worries about the practical problems which might follow the transition to the Euro seem to be growing. Interests groups have already, though without much public debate, drawn the attention of leaders on some "negative externalities" the Euro might have in micro-economic terms. Since people seem to try and delay these problems until the

very last moment, it is not impossible that, as conscience of these problems grows, the general support of public opinion will decline in the following months.



## 2. Legal Framework

by *Diego Devos*\*

With the contribution of *Vincent Meunier* and *Jacques Delpérée*

### 2.1 The law as it stands

#### 2.1.1 Introduction

In the course of 1998, the Belgian authorities chose to concentrate in one single Act the legislative changes that were made necessary in numerous and various fields by the arrival of the euro and were not yet covered by the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium (see below). The legislative work so undertaken resulted in the Law of 30 October 1998 ("Loi relative à l'euro - Wet betreffende de euro")<sup>129</sup>, described below under 2. A short assessment of the new Organic Law of the Belgian central bank against the EMU legal convergence's criteria (based on the EMI's own assessment) is contained in point 3.

#### 2.1.2 The Belgian Law relating to the Euro

##### a) General provisions

##### *Conversion and rounding*

Articles 3 to 6 of the Euro Law are devoted to the conversion and rounding rules established in accordance with EC Council Regulation No. 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro (especially its articles 4 and 5) which is binding and directly applicable in all EU Member States.

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\* *Service Juridique Banque Nationale de Belgique.*

<sup>129</sup> *Moniteur belge - Belgisch Staatsblad* of 10 November 1998.

Article 3 of the Euro Law states that monetary amounts to be paid or accounted for<sup>130</sup>, which are expressed in Belgian francs and to be converted into euro, shall be converted (at the official conversion rates) into a monetary amount expressed in the euro unit which amount shall be rounded to two decimals.

In the opposite case, monetary amounts to be converted from euro into BEF shall be converted at the official conversion rates (with six significant figures: 1 euro = 40,3399 BEF) and then be rounded up or down to the nearest franc (one franc higher if the decimals are equal or higher than 50 cents, one franc lower if below to 50 cents) (article 4 of the Euro Law).

Any breach to the obligations laid down in the above articles 3 and 4 of the Euro Law relating to conversion and rounding rules shall be punished by penal sanctions (fines and/or imprisonment), with specific rules for the relations between public authorities and the general public on one hand, and on the other hand, for the relations between employers and employees. Article 6 states expressly that a difference of one cent between the amount of a claim expressed in euro and the amount resulting from its conversion first in BEF and then in euro does not affect neither the discharging character of the payment, nor the accurateness of the book-entry of the claim, when the above difference comes from the conversion and rounding rules laid down in the Council Regulation 1103/97.

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<sup>130</sup> The same rule is also applicable to other monetary amounts (especially for small value payments) expressed in BEF and in euro, which shall be converted into euro rounded up to two decimals at least. A Royal Decree of 27 November 1998 has made application of this specific rule in the fields of work regulations and social security (after conversion of amounts in BEF into euro, they are rounded with two additional decimals).

### *Reference rates*

Article 7 of the Euro Law substitutes the rates of the European Central Bank, as single monetary policy authority within the Euroland, to the previous monetary policy rates fixed by National Bank of Belgium (in particular the tender rates and the discount rate for bills of exchange<sup>131</sup>), for the purposes of the references to such NBB rates in statutory, regulatory or contractual provisions (generally referring to such rates for the calculation of penalties for late payments).

A Royal Decree of 26 November 1998 has implemented in practice the above rule by setting up a concordance table showing for each and every rated previously used by the NBB and GDI, the new ECB rate applicable as substitute.

In the same vein, references to BIBOR (Belgian Interbank Offered Rate) made in statutory, regulatory or contractual provisions are replaced by reference to EURIBOR (or EONIA) rate.

### *Tax and administrative provisions relating to the euro*

One should mention in particular article 9 of the Euro Law which gives to the taxpayers the option to establish in euro their income declaration<sup>132</sup>, in which case this choice will be mandatory for the following income declarations.

The same principle also applies for VAT declarations according to article 14 of the Euro Law.

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<sup>131</sup> There was also intermediation here of the Guarantee and Discount Institute (Institut de Réescompte et de Garantie), now abolished.



## b) Financial provisions

A part of the Law of 30 October 1998 is, unsurprisingly, devoted to financial markets. It covers actually three types of provisions, which will be described successively hereunder.

### *Redenomination of debt securities*

Article 8.4. of the EC Council regulation N° 974/98 of 3 May 1998 on the introduction of the euro allowed the Member States to redenominate in euro the public sector debt securities denominated in their own "in" currency. The above-mentioned Law of 30 October 1998 made use of this possibility. On the one hand, the Law itself decrees the redenomination of the most important categories of securities issued by the Belgian State<sup>133</sup>. On the other hand, the Law authorises the Belgian government<sup>134</sup> and the organs of the public sector issuers<sup>135</sup>, each for its own field of competence, to redenominate other debt securities.

Article 8.4. of the said Council regulation provides for that the decision by a Member State to redenominate the public sector debt securities issued in its own currency creates a similar possibility for the other issuers of securities denominated in this currency (unless the applicable contractual provisions expressly prohibit it). Accordingly, the Law of 30 October 1998 specifies the terms applicable to the redenomination of securities governed by Belgian law

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<sup>132</sup> In case of balance-sheets supporting the income declaration, this latter must however follow the currency unit in which the balance-sheet is expressed.

<sup>133</sup> Article 15, par. 1.

<sup>134</sup> Article 15, par. 3, Articles 16 & 17.

<sup>135</sup> Article 18.

and issued either in Belgian franc or in another "in" currency of a State that chose to redenominate its debt<sup>136</sup>.

In regulating the redenomination mechanism, the Belgian legislator followed three basic principles:

- favouring the redenomination of purely dematerialised securities, while discouraging the redenomination of physically represented securities<sup>137</sup>;
- guaranteeing the correct information of the securities holders (the issuer must publicise in the Official journal its decision to redenominate, as well as the modalities of the redenomination process)<sup>138</sup>;
- increasing the legal certainty of the redenomination by limiting the grounds upon which it may be questioned in court and by fixing a short term of limitation for any judicial action<sup>139</sup>.

A Royal Decree of 26 November 1998 (Monit. 1 December 1998) has further specified the Euro Law with regard to the conversion of BEF into euro in the fields of dematerialised public-debt securities issued and held in the NBB clearing system.

### *Suppletory exchange rates*

Article 212 of the Belgian Law of 4 January 1990<sup>140</sup> provided for that the exchange rates published by the Belgian central bank would apply to the currency conversion operations on a suppletory basis.

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<sup>136</sup> Article 19.

<sup>137</sup> See for instance the distinction made in Articles 15 & 19.

<sup>138</sup> Article 20.

<sup>139</sup> Article 21.

The arrival of the euro required amending this provision for two reasons:

- the conversion rates between the euro and each "in" currency, as well as between two "in" currencies, would be fixed according to the EC Treaty;
- the allocation of tasks inside the ESCB implied that the indicative exchange rates of the euro towards the most important "out" and non-EC currencies would henceforth be published by the ECB.

Consequently, the Law of 30 October 1998<sup>141</sup> amended the said Article 212. This provision provides from now on for that, in so far as Belgian law is applicable, the indicative exchange rates published by the ECB will suppletorily be applicable to the conversion operations between, on the one hand, the euro or the Belgian franc and, on the other hand, the "out" and non-EC currencies.

#### *Amendments necessitated by the advent of the ECB*

The Belgian legislator felt it necessary to adapt various provisions in the financial market legislation in order to prepare the arrival of a new actor in the financial sphere, i.e. the ECB. One may flag, notably, the following amendments:

- the addition of the ECB among the persons which may conduct banking and financial intermediation activities in Belgium<sup>142</sup>;
- the addition of the ECB among the issuers which may issue securities (debts certificates, in particular) in public offering in Belgium without the approval of the Belgian public authorities<sup>143</sup>;

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<sup>140</sup> "Loi relative aux opérations financières et aux marchés financiers - Wet op de financiële transacties en de financiële markten" (Moniteur belge - Belgisch Staatsblad of 22 December 1990).

<sup>141</sup> Article 26.



- a waiver of the insider dealing prohibition for the monetary policy and foreign exchange policy operations of the ECB<sup>144</sup>;
- the addition of the ECB to the list of institutions for which Belgian law specifically guarantees the enforceability of contractual netting and closeout provisions<sup>145</sup>.

### **Other provisions in the fields of company and financial laws, consumer protection, continuity of contracts and social law**

Most public limited companies ("sociétés anonymes, sociétés en commandites par actions, SPRL, sociétés coopératives") are encouraged to convert their capital into euro units between 1 January 1999 and 31 December 2001 with subsequent rounding of this capital through specific limited capital increase, by way of simplified procedures, under a preferential taxation regime.

The legislation relating to the balance sheets of credit institutions, UCITS, and other financial institutions has also been adapted, by several Royal Decrees of 26 November 1998, in order to allow to express balance sheets (including consolidated balances) either in BEF or in euro.

As far as the general legislation on balance-sheets of enterprises is concerned, one must mention the Royal Decree of 15 December 1998 relating to the euro change-over in accountancy law (Monit. b. 25 December 1998) allowing enterprises to establish their balance-sheets in euro, and several opinions of the Commission of Bookkeeping Standards ("Commission des normes comptables")

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<sup>142</sup> See notably Articles 28, 29, 31, 33 & 34.

<sup>143</sup> Article 32.

<sup>144</sup> Article 25.

in relation with the establishment of balance-sheets in euro and its consequences (Avis CNC 173/1, Bull. CNC n° 37, January 1997), the bookkeeping treatment of rounding (Avis CNC 173/2, Bull. CNC n° 42, February 1998, among others) as completed, from a taxation perspective, by circulars of the Tax administration (cir. n° CI.D 421/494.543 dated 8 October 1997).

The Belgian legislator has specified, during the preparatory works of the Euro Law, that any prices must still be expressed in BEF *and not only in Euro* (before the end of the transitional period). But of course, double indication of prices is recommended.

By a Royal Decree adopted on 17 December 1998 (Monit. 29 December 1998, 41298) the King has adopted specific rules aiming at the protection of consumers according to articles 55 to 57 of the Euro Law<sup>146</sup>, in particular when there is a (non-mandatory) double indication (in BEF and in euro) of prices, for example in retail commerce, consumers credit or mortgage loans.

One can however note that the freedom to publish prices expressed in BEF and in the euro might also be viewed on the other hand as delaying the single use of the euro since the "man in the street" could still rely only on prices expressed in BEF and may forget the prices in euro when applicable. In other business areas, specific statutory authorisations to express prices in euro shall be required before the end of 2001, like for petrol pumps.

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<sup>145</sup> Article 38.

<sup>146</sup> See also the Royal Decree of 15 December 1998 implementing article 17 of the Law dated 12 June 1991 relating to the credit to consumers.



In the same vein, as a specific rule aiming at implementing the principle of continuity of contracts (as laid down, in a general manner, in article 3 of Council Regulation No. 1103/97) in the area of consumers' protection, article 58 forbids expressly the seller to unilaterally alter or terminate a contract covered by the law on consumers' protection of 14 July 1991, because of the introduction of the euro, subject to those contracts which have been negotiated on a case-by-case basis (to be justified by the seller).

As far as public administrations (including tax administrations) are concerned, the transition to the euro (in particular for computer applications) should start in the course of this year 2000, under the aegis of the Belgian "Euro Commissariat", with application of the above-mentioned conversion and rounding rules, taking into account the peculiarities of this area.

Concerning the activities of social secretariats which are managing social formalities of most enterprises, those bodies would prefer a straightforward computer change-over on the first of January 2002 in order to avoid dual regimes in the meantime. They should therefore still be authorised to fill in documents expressed in BEF after 1 January 2002 provided that they are relating to transactions in BEF carried out in 2001. But an early transition to the euro in 2001 cannot be excluded.

**Conversion of payment of monetary amounts and of bank accounts expressed in BEF into euro; exchange of (old) banknotes and coins expressed in BEF against the new banknotes and coins denominated in euro (and vice-versa)**



Article 59 of the Euro Law stipulates the "free of charge" principle for any conversion of payments of monetary amounts or of bank accounts expressed in BEF into euro (or vice-versa) during the transitional period. As from the 1 January 2002 (subject to limited front-loading operations earlier on), exchange of banknotes and coins shall also be carried out by the financial institutions *free of charge for their (regular) customers*, under time and proportion limits to be further determined (before October 2001) by the financial sector.

One must point out that a draft bill has just been adopted by the Belgian Government at the end of 1999 in order to get from the Parliament a special delegation allowing the Executive to simplify and co-ordinate further Belgian legislation with regard to the euro (in particular the amounts, rates, tables, a.s.o. stated in the current laws and the application of price-pegging (indexation) regime).

Special Euro legislation have also been adopted, at regional level, by the Flemish Parliament on 14 July 1998 (Monit. 31 July 1998), by the Walloon Region on 25 February 1999 (Monit. 12 March 1999) and by the Region of Brussels on 11 March 1999 (Monit. 16 July 1999, 27380), in order to mirror the main provision of the Euro Law applicable at national level (choice of currency in administrative declarations, double pricing, etc.).

*2.1.3 The new organic law of the National Bank of Belgium dated 22<sup>nd</sup> February 1998 (Moniteur belge 28.03.1998, p. 9377<sup>147</sup>; hereafter "the new law") and other monetary legislations*

In accordance with Article 108 of the Rome Treaty, Belgium was under the duty to ensure, at the latest at the date of the establishment of the ESCB, the compatibility of its national legislation, and in particular of the statutes of its national central bank, with the Treaty and the Statute of the ESCB.

The following is an overview of the adaptations made in the Belgian monetary legislation in order to meet Treaty and Statute requirements for Stage Three of Economic and Monetary Union. This text is based on the assessment of Belgium against the legal convergence's criteria made by the former European Monetary Institute in its "Convergence Report" of March 1998 (Annex to chapter II: "compatibility of national legislation with the Treaty/Statute, pages 306 to 308; see also the EMI report of October 1997 entitled "Legal convergence in the Member States of the European Union", in particular the specific criteria discussed, pages 2 to 5).

**a) Legislation within the scope of Article 108 of the Treaty**

The following legislation required adaptation under Article 108 of the Treaty:

- the Organic Law on the National Bank of Belgium of 24 August 1939 as amended (the "old law");
- the Law of 12 June 1930 creating a Monetary Fund;
- the Law of 28 December 1973;
- the Law of 23 December 1988;

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<sup>147</sup> See also the Explanatory Memorandum of this Law (Doc. Ch. session 1996-1997, 1061/1).

- Decree-Law N° 5 of 1 May 1944.

#### b) Adaptation of the statute of the National Bank of Belgium

The following points in particular have been amended in order to meet the Treaty/Statute requirements.

#### Independence

With regard to the Bank's independence, the following adaptations of the old law have been made in the new law with effect from the date of the establishment of the ESCB (1 June 1999).

##### *Institutional independence*

Article 29 (old) gave the Minister for Finance the right to oppose the execution of any measure adopted by the Bank which would be contrary to the law, statutes or interests of the State. In addition, Article 30 (old) gave the Government Commissioner the right to suspend any decision by the Bank that would be contrary to the law, statutes or interest of the State. These articles were already amended by the Law of 22 March 1993, but the possibility for the Minister for Finance or the Government Commissioner to challenge decisions of the Bank on legal grounds, which could potentially also extend to decisions on ESCB-related tasks, was maintained and, therefore, remained contrary to the independence required by the Treaty/Statute. This possibility has now been restricted by Article 22 (new) to the Bank's non-ESCB related tasks.

In addition, whereas under the old law the Council of regency was competent to take certain monetary policy decisions (article 23; article 64 of the old statute), Article 20 (new) restricts the Council of Regency's involvement to an advisory



role without an ex ante right of consultation (which was contrary to the independence of central banks). The provisions of the old law concerning the competencies of the Council of Regency have been abrogated on the date of establishment of the ESCB (Royal Decree of 24 April 1998, articles 2 and 5).

### *Personal independence*

Under Article 44 of the old statutes of the Bank, the Governor could be suspended or dismissed by the King without indication of a reason. This incompatibility with Article 14.2 of the ESCB Statute has been resolved in Article 25 (new), in which the grounds for dismissal are reproduced as laid down in Article 14.2.

### *Legal integration in the ESCB*

With regard to the Bank's legal integration, the following adaptations have been made with effect from the date on which Belgium adopted the single currency.

### *Statutory objective*

The old law neither reflected the primacy of the ESCB's statutory objective nor anticipated the Bank's integration in the ESCB. This has been resolved in the new law through the fact that the Bank's statutory objective in Stage Three is determined by directly applicable Community law and in particular Article 105(1) of the Treaty and Article 2 of the Statute and through Article 2 (new), which explicitly acknowledges the Bank's integration in the ESCB.

### *Tasks*

Articles 6 to 9 (old) on the issuance, design, text, replacement and withdrawal of banknotes did not recognise the ECB's powers in this field. This has been

resolved in Article 2 (new) through the general reference to the Bank's status as an integral part of the ESCB. In addition, Articles 11 to 19 (old), which listed inter alia the Bank's tasks, have been adapted in Chapter II, Articles 5 to 9 (new), which bring the description of the Bank's tasks into line with the Treaty and the Statute as far as ESCB-related tasks are concerned.

### *Instruments*

Articles 11 to 19 (old), which established inter alia the instruments which the Bank was empowered to apply in carrying out its tasks, have been adapted in Chapter II, Articles 5 to 9 (new) so as to be in line with the Treaty and the Statute (in particular articles 17 to 24 of the Statute of the ESCB relating to monetary policy transactions, clearing and payment systems, external operations) in this respect.

### *Organisation*

Whereas under the old law the Council of Regency had the competence to take certain monetary policy decisions, in Article 20 (new) its role has been restricted to advisory tasks, as indicated earlier.

#### c) Adaptation of other monetary legislation

##### Law of 12 June 1930 creating a Monetary Fund

Article 1 of this law, which sets a limit on the volume of divisionary monies which may be issued by the Treasury (which may be extended by Royal Decree), did not recognise the ECB's power of approval of the volume of issuance as laid down in Article 105a (2) of the Treaty. The so-called "euro

legislation" of 30 October 1998 has removed this incompatibility (art. 40 and seq.)

#### Law of 28 December 1973

Articles 1 to 3 of this law relating to budget proposals for 1973 and 1974, which were the legal basis for the imposition of minimum reserves on credit institutions by the Bank before the Third Stage, did not respect the ECB's competencies in this field. According to Article 38 (4), third paragraph, of the new law, the above provisions have been repealed with effect on 1 January 1999 (Royal Decree of 26 October 1998, art. 3, 2°).

#### Law of 23 December 1988

Article 2 of this law, which authorised the Government to determine the exchange rate of the Belgian franc without prejudice to international obligations applicable to the Belgian State, neither envisaged the introduction of the euro nor recognised the Community's powers in the field of exchange rates. According to Article 38(4), fourth paragraph, of the new law, the above article has been repealed with effect on 1 January 1999 (Royal Decree of 26 October 1998, art. 3, 3°). The same applies to Article 3 of this law, which entrusted a special regulatory power to the Minister for Finance with regard to the application of Royal Decrees relating to the Government's power to determine the exchange rate for the Belgian franc. According to Article 38 (4), fourth paragraph, of the new law, Article 3 of the Law of 23 December 1988 has also been repealed with effect from the date on which Belgium adopted the single currency.



## Decree-Law N 5 of 1 May 1944

This Decree-Law was incompatible with the Treaty and the Statute to the extent that it related to the execution of international payment, exchange and compensation agreements entered into by the Bank for the account of the State and to the extent that it related to credit activities exercised by the Bank outside the scope of monetary policy such as bilateral payments agreements with foreign states. According to Article 38(4), second paragraph, of the new law, this Decree-Law has been repealed with effect on 1 January 1999 (Royal decree of 26 October 1998, art. 3, 1°).

### *2.2 National law from the EC perspective*

No possible conflicts or redundancies vis-à-vis Community law have been identified or reported so far.

### *2.3 The Application of the law*

To the best of our knowledge, no proceedings or case law on these issues have been initiated or handed down at this early stage.



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