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**INTRODUCING EURO IN THE NEW EU
MEMBER STATES: COMPARISON OF LEGAL
PROBLEMS BETWEEN MALTA AND SLOVAKIA**

Diplomová práce

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(i) Čestné prohlášení/Statement of Authenticity

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I declare that this thesis is solely my work and that the use of other sources has been appropriately acknowledged.

V Praze, dne 7.10. 2009/In Prague, 7 October 2009

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(i) Abstrakt

Nové členské státy vstoupily do Evropské unie s tím, že přijetí eura je součástí požadavků jejich smlouvy o přistoupení, a tak jsou povinny přijmout euro, jakmile splní vstupní kritéria. Malta vstoupila do eurozóny k 1. lednu 2008 a Slovensko k 1. lednu 2009. Udělali to v rámci nového rámce, který je podstatně odlišný od toho, který použili členské státy v první vlně přijímání eura. Tato práce se snaží prozkoumat cestu vedoucí k zavedení eura v obou členských státech. Rozebírá právo vztahující se k euru v rámci měnové unie, zkoumá změny potřebné pro vnitrostátní právní předpisy v tomto kontextu, porovnává rozhodování obou členských států v procesu přechodu na euro, hodnotí rozdíly v řešeních právních otázek a problémů, které vznikla v této souvislosti zmiňuje i některé nejvíce patrné právní účinky plného členství v eurozóně. Přes silný právní rámec pro euro na evropské úrovni, existuje velký rozsah, často nutnost, pro vnitrostátní právní předpisy komplementovat proces zavádění eura se všemi jeho důsledky. Kvalita těchto právních předpisů a včasné přípravy jsou klíčovými faktory úspěchu při přechodě na euro. Jelikož ostatní nové členské státy se mohou hodně naučit z předešlých zkušeností jiných členských států, je přínosné jejich porovnání.

Klíčová slova: zavádění eura, nové členské státy, změna měny

(i) Abstract

The New Member States joined the European Union with the adoption of the euro forming part of the requirements of their Accession Treaty, thus are obliged to adopt the euro as soon as they fulfil the entry criteria. Malta joined the euro area on 1 January 2008 and Slovakia on 1 January 2009. They did it under a new framework that is substantially different from that used by the first-wave countries. This thesis endeavours to examine the path leading to introduction of the euro in both Member States. It analyses the law related to single currency within the frame of European Monetary Union, investigates the changes necessary to national laws in this context, compares the decisions taken by both Member States in the euro changeover process, appraises the differences in the course of dealing with legal issues and challenges that arose in this context and even mentions some most apparent effects of full membership of the euro zone in law. Despite the strong legal framework for the euro changeover at European level, there is a strong scope, often necessity, for national legislation to compliment the euro introduction process with its all repercussions. The quality of this legislation and early preparations are a key determinant of the success of the changeover. As other new Member States can learn a lot from passed experiences, it is efficient to evaluate the differences in these practices.

Key Words: Euro Introduction, New Member States, Currency Changeover

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(i) Abbreviations

CBM	Central Bank of Malta
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice
ECU	European Currency Unit
EMI.....	European Monetary Institute
EMS.....	European Monetary System
ERM.....	Exchange Rate Mechanism
ESCB.....	European System of Central Banks
ESCB Statute	Statute of the European System of Central Banks and the ECB
EU.....	European Union
MS	Member State
NBS	National Bank of Slovakia
NCB.....	National Central Bank
NECC.....	National Euro Changeover Committee
NMS.....	New Member State
TEC/Treaty	Treaty Establishing the European Community
TEU	Treaty on European Union

● 1 Preface

The euro is the single currency shared by (currently) 16 of the European Union's (EU) Member States (MS), which together make up the euro area.

Despite some critiques, doubts and fears in the beginning of the process of introduction of euro, now after 10 years of its smooth functioning, it seems that these fears were unfounded. Quite the contrary, the euro - this unique experiment in economic history - has proved a remarkable success.¹ Creation of the European Monetary Union (EMU), as envisaged long before it actually took place in reality in 1999, brings many advantages among participating states. Benefits of euro came forth recently as the global environment has changed significantly, market economies have emerged and inter linked prominently, and even more nowadays, in the time of financial turmoil, as the effects of sharp downturn and high degree of uncertainty in the economy is felt worldwide. Financial market turbulence has shown us an important advantage of euro: 'in stormy seas it's better to be on a large ship than in a small boat.'² There is a strong hypothesis that without a euro the Europe would face strong, erratic fluctuations between Europe's national currencies. Such as difficulties which occurred in 1992 and 1993, the time of crises on European Monetary System (EMS). The euro improves resilience against crises in financial markets,³ as it protects from distortions in the currency field, thus helping to avoid major turbulences in European countries as seen already in recent years and as is happening at present. Although the euro holds many benefits, but obviously it cannot protect from a financial crises combined with a recession.

Participation in EMU and euro adoption has even more benefits for the small states

1 Speech by JOAQUÍN ALMUNIA, European Commissioner for Economic and Monetary Policy, *Slovakia on the eve of euro adoption – achievements and challenges*, SPEECH/08/446 from <http://europa.eu/rapid/pressReleases>

2 Speech by JEAN-CLAUDE TRICHET, President of the ECB, on 12 February 2009, *Ten years of the euro: successes and challenges*, from <http://www.ecb.int/press/>

3 Speech by JEAN-CLAUDE TRICHET, President of the ECB, on 14 January 2005, *The euro ; successes and*

(particularly if its trade is grossly conducted with other euro area members) and mainly as recent events have shown that it brings price stability and low inflation rates where without euro states are facing complex effects of global financial crises. Slovakia, that introduced euro in January 2009, but even Malta, which took the path to euro a year earlier, both states have avoided some major economic problems by the adoption of euro (e.g. weakening currencies in Central and Eastern Europe).

But it is not an easy process towards euro adoption. It requires thorough and well-timed preparations in various fields, such as technical, logistic, social, legal. The first wave introduction of euro was a big success due to the quality of the preparations made by all players involved and at all levels. 'The efficiency and enthusiasm with which this changeover took place was exemplary'⁴ thus new Member States (NMS) should work on a strong campaign to boost up a feeling of community and trust among all the users of the currency as the public support to euro adoption plays a key role for the smooth changeover. The aim of this thesis is to elaborate on the legal aspect of such preparations, thus other points of such preparations will be mentioned only to the minimum extend, where relevant.

As the legal base of EMU is entailed in various sources and on various levels, all these complex rules have to be taken into consideration when preparing for the joining the euro area. The essential law governing euro is to be found in the European legislation. But there are some necessary changes in national law that have to be undertaken by the MSs in order to accommodate the euro changeover. Despite there is just one set of European rules governing the introduction of euro, it gives to the MSs certain options as to how to conduct the process. But it does not give to NMS, any option whether to actually adopt euro or not. All NMS joined the EU as 'Member States with a derogation' as defined in Article 122 Treaty establishing the European Community (TEC/Treaty). Thus these states are bound to adopt euro as soon as possible. The process of introduction of euro is actually a process of lifting up of this derogation. For NMS it is a condition to become a full member of EMU.

Reasons for not granting full membership from as soon as the entry to EU are mainly of economic nature. In the time of accession to EU NMS were not ready to be members of EMU. In order to maintain macroeconomic stability within EMU all its members' economies have to

challenges, <http://www.ecb.int/press/>

4 Ibid.

be converged sufficiently, as the European Central Bank (ECB) conducts a single monetary policy for whole euro area and then only the fiscal policy remains in the hands of the individual MS. The economic convergence is measured through the fulfilment of so called 'Maastricht criteria' as defined in TEC and in the Protocol on Convergence Criteria cited in Article 121 of the Treaty and include assessing of price stability, sound public finances (government deficit and debt), exchange rate stability (through Exchange Rate Mechanism) and long-term interest rates. These criteria are designed to ensure that a MS economy is sufficiently ready for adoption of the single currency and as a member without a derogation will not cause any disruptions to euro area. In addition, MSs have to achieve also real and legal convergence (that national legislation must be compatible with the Treaty, independence of national central banks must be prescribed, etc.)

The progress of each member state is closely monitored and assessed. Until the final decisions are issued to give a go ahead for removal of the derogation. The Treaty lays out procedures and timing. The Commission and the ECB issue regular convergence reports for those MS which have not yet adopted the euro to examine whether countries satisfy the conditions for adopting the single currency. Based on a proposal from the Commission, the Council, after consulting the European Parliament (EP) and discussions at the level of the heads of state and government, approves the MS's entry to the euro area. The irrevocable conversion rate, between country's currency and the euro is set.

When a MS enters the euro area, its central bank becomes a part of the euro system made up of the national central banks (NCB) of the euro area and the ECB, which conducts monetary policy independently from national governments. Fiscal policy retains in the national hands but its exercise is restricted by The Stability and Growth Pact (SGP) as laid down in the Treaty. This ensures sound and sustainable public finances even after the euro adoption, since fiscal discipline is an important factor of economic stability.

In this paper it will be explained in general framework how was euro introduced for the first time when compared to the differences with NMS applying for a full membership in EU, with emphasis on particular road to euro of Slovakia and Malta. As every state has its own characteristics, legal system and tradition, thus new challenges, debates and questions arise when deciding on how to introduce euro. This is enabled by European monetary law since it gives certain flexibility to MS in order to adapt better to these divergence among MSs.

Although, the Commission analyses the state of practical preparations in the countries not forming part of the euro zone, it does not directly compare the preparations between one country and another. In this paper, the comparison of differences and similarities, as how Malta and Slovakia dealt with the legal challenges of euro introduction, will be elaborated so that other MSs ('pre-ins') can learn from these experiences in order to ease their future introduction of euro. It will however limit itself to such a legal analysis, and will not try to delve into the complex arguments that fall squarely within the competence of economic, financial or policy analysts. While the legal analysis of economic and monetary law often requires one to touch upon some of these issues, this will be done only where necessary in light of the legal position being analysed.

● 2 Background

○ 2.1. Euro

The euro is an important component for completion of a the single European market. The advantages of the single market could be better exploited by the common currency.

The benefits of the euro are diverse, felt on different scales from individuals and businesses to whole economies (through lowering the costs). These include more choice and stable prices for consumers and citizens, greater security and more opportunities for businesses and markets, more integrated financial markets, more cross border trade, a stronger presence for the EU in the global economy, improved economic stability and growth, more resistance to external shocks as economies become more flexible. Thus the euro secures prosperity in participating states (if it is supported by appropriate policies). It also represents a tangible sign of a European identity.

Although the term euro is not contained in European primary law, at the meeting of the European Council in Madrid, the decision was taken that the term 'ECU' used by the Treaty to refer to the European currency unit is a generic term thus the Governments of the fifteen MSs have achieved the common agreement that definitive interpretation of the relevant Treaty provisions will apply to 'euro' as this was the name given to the European currency. The European Council considered that the name of the single currency must be the same in all the official languages of the EU, taking into account the existence of different alphabets.

According to Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro, the euro (with its divisions into one hundred sub-units with the name 'cent') is the currency of the participating MSs which adopt the single currency as from 1 January 1999 (Article 2). It serves as the unit of account of the ECB and of the central banks of the participating MSs (Article 4).

The euro will be substituted for the national currencies of MSs at conversion rates⁵ (Article 3) as multilaterally agreed on, irrevocably fixed and stated in the Council Regulation (EC) No 2866/98 on the conversion rates between the euro and the currencies of the Member States adopting the euro. Thus the euro will become a monetary successor to all national currencies of MS participating in EMU and being without derogation.

Monetary succession takes place when the 'old' currency is being replaced by a 'new' one, with new name and legitimacy. Declaration of continuity of rights and obligations should assure legal certainty in such a case (in the case of euro this is done through the European legislation - Council Regulation (EC) No 1103/97 on certain provisions relating to the introduction of the euro, as regards members of the EU. Towards non-members it is the international principle *lex monetae* assuring the continuity. Thus in national law the continuity of contracts is only to be declared, if any reference at all.

Currency is specific indicator of economic situation on particular territory during time period and also an attribute of state sovereignty (making currency also a state symbol). Monetary sovereignty of each state gives it vested rights over a currency and conduct of monetary policy. This traditional concept is overcome as in EMU monetary sovereignty is transferred to bodies of the EU. Thus the law governing the currency, *lex monetae*, is no more at national level but at supranational level.

○ 2.2. History

● 2.2.1. Economic and Monetary Union

EMU was born much before the euro. The most precisely legally defined, it is an objective of the European Community (EC) as set out in Article 2 of the Treaty. EMU is one of the stages of European integration towards ever closer Europe with its economic and social benefits, thus even bringing the peace in European continent. It supports sustainable economic growth and high employment through appropriate economic and monetary policy-making (having single monetary policy and coordinating economic policies of MSs).

EMU as so far the highest achieved stage of European integration is characterised by one

⁵ note that a conversion rate is not an exchange rate – it is the rate at which an outgoing currency is converted into a new one

single currency in circulation, one central bank conducting single monetary policy (as is completely passed over to European level) while coordinating economic policies of MSs (being not transferred to European level (as EMU actually consists of two distinct components: economic union and monetary union).

EMU did not develop in a vacuum. In fact, many of the developments in Europe leading to EMU were tied to developments in the international monetary system: rise and fall of the Bretton Woods system, the economic divergences in the 1970s, the consequences of the fall of the Berlin wall etc. (As it is not in scope of this paper these developments will not be discussed here).

It was a committee, chaired by the President of the Commission Jacques Delors, which suggested introduction of EMU, over three stages. In June 1989 European Council took decision to do so. Stage I of EMU, which involved the removal of all capital flow restrictions between Member States⁶, progressing the completion of the single market and closer coordination of the economic policies of Member States, came into being on 1 July 1990.

Stage Two began on 1 January 1994 and involved intensifying the co-ordination of Member States' economic policies. Stage II and III, however, could not be implemented with the same relative ease and the Treaty change was required. The Treaty on European Union (TEU or Maastricht Treaty), in fact, amended the TEC⁷ making the necessary changes for the perusal of a single currency. The TEU also established the European Monetary Institute (EMI), predecessor to the current ECB. As a result, on 1 January 1994, Stage II came into being and MSs undertook to reduce excessive government deficits with review of their efforts by the EU⁸.

The ECB, with the conduct of the single monetary policy under its responsibility, came into being on 1 June 1998 on light of the major envisaged development – the creation of the European single currency – the euro.

The euro was born on 1 January 1999, and ushered in the start of Stage III of EMU. This date resulted in the locking of the exchange rates of the currencies of the eleven participating

6 See Council Directive No. 88/361, OJ (1998) L 178/5

7 Treaty Establishing the European Economic Community, 3 March 1957, as amended by Single European Act, OJ. L 169/1 (1987)

8 See TEU, Article 116, and the Protocol on the excessive deficit procedure

currencies; Greece joined Stage III two years later⁹. It also replaced ECU, which had been created within the context of EMU, at a rate of 1:1. On 1 January 1999, national currencies were legally abolished; they continued in circulation, but became 'denominations' of the euro, as “nominal subdivisions of the euro” (like the cent)¹⁰.

However, it was only after three more years of preparation, aimed at permitting Europe and the world to accommodate the use of a single currency, that the euro became sole legal tender in the participant MSs.

During a three-year transitional period beginning at the start of Stage III, the euro existed only in paperless form, pending the production of euro banknotes and coins and their release on 1 January 2002. From the start of stage III, the Participating MSs' currencies ceased to be independent currencies, but remained legal tender, as a denominations of the euro at the conversion rate irrevocably fixed separately for each participating national currency to the euro. At the end of three-year transitional period, the introduction of the euro was completed by the physical replacement of all participating national currency notes and coins by euro notes and coins. Within six months, the participating national currencies ceased to be legal tender.

Of course, the transition was hardly as simple as that. During the transitional period, there were extensive preparations: business had to changeover prices, accounting systems and IT systems, and financial markets had to conduct the large scale systematic changes that allowed bonds, securities, derivatives, and other financial instruments to be issued, traded, and settled in euro denominated form.

○ Exemptions

As stated above, the single European currency was agreed upon by twelve out of the fifteen member states. Denmark, the UK and Sweden were exempted from adopting euro. First two (the UK at first supported idea of euro) by an ‘opt-out’ clause in the Treaty (as stated in particular protocols)¹¹ although their position to EMU is different.¹² Sweden, as it became

9 Greece adopted the euro on 1 January 2001, with a transitional period of only one year until circulation

10 MANCE, *Possible Legal Problems Affecting Financial Transactions at the time of European Monetary Union*, in *European Business law Review*, Vol. 8, No. 11-12, 1997, p.266 et seq.

11 Note that their position to EMU is different

12 SMITS, *The European Central Bank*, in *Kluwer law international*, Hague, London, Boston, 1997, p. 138

member of EU in 1995, has *sui generis* relation to euro, besides the lack of political will, Sweden is not fulfilling all the conditions to enter the euro area.¹³

○ New Member States

When Malta and Slovakia, just as other 8 states, joined the EU on the 1 May 2004, by the same act they also joined the EMU as a member with a derogation. Therefore all MSs with such a status were exempt from requirements of EMU. Becoming a member of a single currency area may be summed up legally as the removal of this derogation. In fact, when they joined the EU, by the means of the Treaty Accession, both MSs undertook to converge with the Maastricht criteria and *EMU acquis* in light of eventual full EMU membership and adoption of the euro and thus the removal of the derogation. None of the NMS had a possibility for a special status, an 'opt-out', as regards the introduction of the euro. Thus the adoption of the single currency is bound to happen as soon as the necessary criteria are fulfilled (but, in fact, the treaty speaks about at any future date and above this there are no sanctions for late adoption or any at all).

Since the eventual adoption is inescapable thus only the question of a speed at which the transition to the euro should be undertaken arises. There seems to be a rationale to adopt for NMS quickly¹⁴ while other suggest caution with quick adaptation of euro.¹⁵

By 2005 the NMS' preferences on pursuing rapid euro adoption diverged and had split them into 'pacesetters' (the Baltic states, Slovenia, Malta and Slovakia) and 'laggards' (Poland, the Czech Republic, and Hungary).¹⁶ A domestic cost-benefit analysis turned the smaller NMS into 'pacesetters'. On the other hand the possibility for NMS to delay entry, the difficulty of the entry conditions and internal problems undermining the euro zone's legitimacy and attraction discouraged the 'laggards' from making euro area entry a domestic priority. This contrasts with their previous agreement on the desirability of full EU membership. (Much was publicly discussed on the issue of timing of the euro adoption, mostly concerning its feasibility for the

13 TOMÁŠEK, *Evropské měnové právo*, 2.aktualizované vydání, C.H.Beck, Praha, 2007, p. 25,26

14 EICHENGREEN and GHIRONI, 2002

15 ALTOMONTE, NAVA, *Economics and Politics of an Enlarged Europe*, Cheltenham,UK and Northampton, MA, USA, 2005, p.152

16 JOHNSON, *The remains of conditionality: the faltering enlargement of the euro zone*, in *Journal of European Public Policy*, Volume 15, Number 6 (2008), p.826 - 841

MS to introduce the euro sooner or rather later. Details can be found elsewhere¹⁷ as this issue is not relevant for this paper.)

Nevertheless, so far four of NMS have adopted the European single currency. First, Slovenia on 1 January 2007, then Cyprus and Malta on 1 January 2008. And the newest euro zone member, Slovakia, on 1 January 2009.

● 2.2.2. Historical development of monetary law in Malta and Slovakia

As it is important to follow conditions under which EMU and the euro have developed, it is also imperative to understand the historical implications of the country's monetary development as it influences its opinions and decisions when passing changes in its monetary sovereignty. Euro introduction is heavily influenced by passed experiences and characteristics of particular country.

○ Overview of Slovak monetary law

First coins used in the area of Slovakia were of the Celtic origin. These so called *biateky*, mainly silver but even golden, were of Roman type coins. This dates back to 400 BC. Since expansion of German monarchy the Celtic influence became weaker which also resulted in monetary field. Strike of coins in Slovakia dates back as early as to third century AC. In 1122 for the first time expressly the right of ruler to mint coins and exploit silver was mentioned (in concordate). The mint in Kremnica works continuously from 1328¹⁸ until now.

Monetary development in Slovakia was for a long time connected to development in Bohemia. So called 'Prague's sous' (*Pražské groše*) were used as a currency even in Germany and Austria. Czech coinage was considered to be one of the most advanced in Europe, mostly during the rule of Wenceslas II. Eventually, the historical events (after 1620) resulted in the downfall of Czech coinage (ending 'the taler period'). During the rule of Maria Theresa of Austria (1750 terezian monetary reform) credit paper money was introduced, mainly since the growing public (Austrian) debt. The first banknotes (*Bankozetteln*) were put into circulation in 1792, as an internal currency in Austrian empire. But for external payments conventional

17 JANÁČKOVÁ, KOTLÁN, SINGER, SKOPEČEK, MACH, KLAUS, *Euro: dříve, nebo později?* Sborník textů, Centrum pro ekonomiku a politiku, Praha 2007

18 PAULIČKOVÁ–BAKEŠ, *Finančné právo na Slovensku a v Čechách*, Eurounion, Bratislava, 2007, p.249

silver currency was used. *Bankocetle* (*Bankozetteln*) were replaced in 1811 by so called *šajny* (*Einlösungscheine*) and anticipation notes (*Anticipationsscheine*). Together they formed so called 'Vienna currency' (*Wiener Währung*), which from 1813 to 1816 was the real currency in Austria, since the valuable teresian silver talers almost disappeared from the circulation, being used only for business.

The name of monetary unit as crown (*koruny*) has 115 years old tradition which was introduced by Act of 2. August 1892 as the golden crown currency became national currency in Austro-Hungarian empire,¹⁹ to substitute for the guilder (*zlatý*), one guilder was equal two crowns. Crowns were subdivided into 100 halers (*halěr*).

During the first world war the Austro-Hungarian empire could not cover all its expenditure and that is why the ordinance prohibiting issuance of uncovered money was abrogated and coins from less valuable metals were coined, golden and silver coins disappeared from the circulation, inflation turned up and caused catastrophic exchange rate. That is why the separation from Austro-Hungarian monetary circulation, completion of monetary reform and securing of financial balance was the priority of newly founded Czechoslovakia. Foreign currency, golden and silver coins (domestic and foreign) were withdrew from circulation in order to be able to convert the currency into gold (golden standard) and payments abroad.²⁰ The Bank authority at the Ministry of Finance was established to administer the function of emissive bank. Laws to protect currency and circulation of legal tender were adopted. Half of the submitted banknotes were stamped another half was converted into non-transferable government bonds.²¹ This took place from 3. to 12. March 1919, by the Act No. 187/1919 established Czechoslovak crown currency, *koruna československá*. There was a big discussion about the name of new Czechoslovak currency. Many were suggested, such as *sokol* (falcon), or Czechoslovak franc, taler, *rašín*, *lev* (lion), sou, denier etc.

The separation and reform in 1919 was a big success and enabled Czechoslovakia to have a strong currency when neighbouring states were in monetary and fiscal chaos. Despite all this, some Austrian coins were used in Czechoslovakia until 1928²². The monetary reform was

19 POŠVÁŘ, *Měna v Čechách, na Moravě a ve Slezsku*, Národní Muzeum, Praha, 1977, p 109

20 HORNIÁKOVÁ – MARUCHNÍČ, *Verejné financie a úvod do meny*, Vydavateľské oddelenie univerzity Komenského v Bratislave - Právnická Fakulta, Bratislava, 2006, p.156-157

21 VENCOVSKÝ, *Naše měnové reformy a odluky*, in *Finance a Úvěr*, Vol. 43, 9/1993, p.395-402

22 HUS, *Tisíc let české mince*, in *Průvodce výstavou*, Západočeské muzeum, Plzeň, 2000

carried out by the Act No. 84/1919. In the beginning of its existence 1 Czechoslovak crown was worth 1 Austrian–Hungarian crown but soon after the exchange rate changed and Czechoslovak crown became superior. In 1924 economic situation stabilised and made so good that the preparations for gradual return to gold standard started as according to contemporary broad attitude return to convertibility into gold was a necessity. The adoption of the Bank Act was the first step towards it. From 1. April 1926 the national Bank of Czechoslovakia was established as an emissive bank and indirectly set convertibility into gold in range of 2,90 – 3,03 US dollar for 100 Czechoslovak crowns and directly from November 1929 as to 44,58 mg²³ of gold. But actual free convertibility into gold, as a last stage, did not happen. The great depression prevented it and on the top of it caused monetary and financial instability even despite the neutrality of the state emissive bank. Valorisation of gold in the world resulted in rough deflation process in all the countries with the gold standard that is why Czechoslovak currency depreciated in February 1934 and October 1936.

State disintegration after 1938 together with other facts (disadvantageous exchange rate of Czech protectorate and Slovak crown to German mark, payment of compulsory contribution to Germany, the loss of monetary gold, inflation) caused complicated situation in monetary field of liberated Czechoslovakia after 1945. The Slovak crown was also the currency of the WWII Slovak Republic between 1939 and 1945.

Monetary reform 1945 followed from a fact that there was a monetary overhang as a result of war finances. As a consequence of war expenditures and exploitation of occupied territory the currency purchasing power decreased. Together with the monetary chaos it was a big challenge of liberated Czechoslovakia. There were many currencies in circulation, such as protectorate currency, Slovak crowns, German *reichsmark*, but also Polish zloty, Hungarian pengó, Soviet rouble and war army notes. Not even legal regulations were unified in Czechoslovakia. Monetary reform was prepared ahead in London, during the second world war, as the legal and international continuity of Czechoslovakia was preserved by the establishment of government abroad. Thus preparations started in 1941. The presidential decree No. 91/1945 from 1. November 1945 re-established Czechoslovak crown as an unified currency on the whole area. Money was printed abroad and then later by air transported to

23 HORNIAKOVÁ – MARUCHNIČ, *Verejné financie a úvod do meny*, Vydavateľské oddelenie univerzity Komenského - Právnická fakulta, Bratislava, 2006, p.158

Prague. And the mintage of Czechoslovak coins resumed. The monetary reform in 1945 meant very fierce nullification from all the previous currencies. And prices were adjusted to have unified level in the whole Czechoslovakia, price level in Slovakia was tripled, when in Bohemia it was just a slight increase. The exchange rate of 50 Czechoslovak crowns for one dollar was set (convertibility into gold was only indirect) and notified to International Monetary Fund as Czechoslovakia was its member, but only until 1953 when due to political situation in Czechoslovakia it canceled its membership.

Monetary reforms in 1919 and 1945 were connected with the founding of the new state or its liberation and to get over the consequences of wars these were expected and necessary to happen. Contributed to consolidation of Czechoslovak crown and provided for prosperous economic development take-off . But monetary reform in 1953 introduced by Act No. 41/1953, took place too soon after the preceding reform. It was a surprise. Officially it was reasoned by shortcomings of the monetary reform in 1945, unsound emissive politics leading to inflation and problems in price development, together with political arguments after the accession of communists in government. But the true reasons were mainly to accommodate for the total transformation of economy to so called socialist soviet system which would help to „built up socialism“. Political aspect was heavily involved.²⁴ Money was printed in Moscow and transported by military forces. Eventual printing of banknotes and mintage of coins took place in Prague and Kremnica in Czechoslovakia. Money was changed in three days according to heavily reduced rate from 5:1 to 50:1, this resulted in large over-valuation of Czechoslovak currency. Thus the discontent of the population was manifested in demonstrations which were to be the first open critique of political and economic regime. Monetary reform in 1953 enunciated gold content of Czechoslovak crown as 0,123426 gram of gold which also determined the exchange rate as to other currencies. In connection with the monetary reform it was proposed to rename the crown to rouble or denier but it was not accepted. Foreign trade was monopolised and trade in currency was fully in hands of the state.

Within the frame of The Council for Mutual Economic Assistance the convertible rouble as a currency unit was used from 1964. But it was not convertible to all intents and purposes but it was more of imperfect system of limited multi-clearing.

24 VENCOVSKÝ, *Naše měnové reformy a odluky*, in *Finance a Úvěr*, Vol. 43, 9/1993, p.402

Czechoslovak crown did not have its reputation in the West but it was still accepted as a means of payment in some other countries (Poland, USSR, Hungary) thus in practice it was not that different when compared to the situation during the first Czechoslovak Republic.²⁵ And after November 1989 Czechoslovak crown had far the strongest place among post-socialist currencies.

As the currency is a characteristic of every state (outside the exceptions) the creation of Slovak own currency proceeded in few phases together with forming of Slovak republic and begun during the existence of the Czechoslovak federation.²⁶ But constituency of Slovak crown took longer than establishment of Slovak Republic. In the Constitution of Slovak Republic the word „currency“ is not present as is understandable from the actual creation of Slovak Republic. In the article 56 only the establishment of the emissive bank is mentioned and for details it refers to the Act No. 566/1992, the National bank of Slovakia, where also Slovak crown as such is regulated. There in sections 15-17 the grounds of Slovak monetary law are to be found. The act entered into force on 1 January 1993 thus with the establishment of the Slovak Republic itself. But according to the Agreement from 1992 between governments of Czech and Slovak Republic both newly established republics were to use the common currency, Czechoslovak crown although the legal tender in Slovakia from then on became Slovak crown „Sk“, subdivided into 100 halers. The emission was in the competence of the National bank of Slovakia which was also obliged to lay down detailed rules related to the emission. Such a regulation of monetary affairs is not standard nor preferable. The second phase of creating the separate Slovak currency started 2. February 1993 by adopting the Act no. 26/1993 on measures to ensure the transition Czech-Slovak currency for Slovak currency and amending the Foreign Exchange Act. It set forth what exactly is the legal tender in Slovakia (banknotes with adhesive stamps affixed to them, banknotes not requiring such stamps, coins, commemorative coins). It also specified the conditions under which the exchange of banknotes took place. After monetary separation was publicly announced, all payments between the two new countries stopped and border controls were stepped up to prevent transfers of cash. The public was given a deadline in which to deposit old bills in banks, so that they could be marked by a stamp (adhesive stamps were affixed to them)

25 GRÚŇ – PAULIČKOVÁ, *Finančnoprávne Inštitúty*, Eurounion, Bratislava, 2003, p.169 – 180

26 BALKO, *Finančné právo: Obchodné a finančné právo II. Diel*, EPOS, Bratislava 2001

making them valid in the new state. Only the 100, 500 and 1000 crown denominations were over-stamped. Coins and small denomination notes were in use unchanged during this transitional period. The former circulated until end-August, the latter until end-July. The power was vested to government to determine, by means of the statutory order²⁷ the day of changeover from Czechoslovak to Slovak crown. This was to be 8 February 1993 at 00:00h. Other statutory order²⁸ set up the essentials of the adhesive stamps and how to affix them. By 8 February the third phase of Slovak monetary law began in which „federal“ currency was withdrawn and emission of Slovak means of payment started. Brand new Czech and Slovak notes gradually replaced the stamped banknotes at par value. For natural persons exchange took place 4.-6. February, for self-employed and legal persons 6.-7. February. Each person was limited as to the value to exchange, amounts above the limit were put as deposits on accounts. Thus the new currency became valid. From 3.-7. February no payments and transactions took place between newly founded republics. And as from 8 February for some time period a limitations for withdrawal and payments were set. The emission itself was regulated by issuing of legal enactments of NBS, one ordinance for each denomination. NBS slowly replaced „federal“ monetary regulations by its own acts. Another phase of the development of Slovak monetary law was when in 1995 for the first time it was not needed any-more to deal with the consequences of the creation of independent state and its impact in monetary field. That time, the monetary law in Slovakia was considered not to be completed since the general act was not present.

Thus, in the history of Slovakia the monetary succession happened twice. First in 1919 after monetary separation of Czechoslovak crown from Austro–Hungarian crown. And secondly in 1993 after monetary separation of Slovak crown from Czechoslovak crown. Although in both cases the conditions were similar since they took place as a natural historical process (as a new state wants to have its own currency as attribute of its own sovereignty, but mostly as one of the main factors of its economic policies). Also the way the conversion rate between an „old“ currency and a „new“ one was set the same in both cases, by means of an Act.²⁹ The difference was that in 1919 the radical monetary reform happened as well, in order to increase the purchasing power and to evaluate the crown. In 1993 it was only the monetary

27 Regulation No. 27/1993 on some measures in the transition to the Slovak currency

28 Decree No. 28/1993 establishing stamped banknotes and stamps particulars

29 TOMÁŠEK, *Právní nástupnictví měny euro*, Linde, Praha 2000, p.250

separation. Another difference is that while in 1919 it was by unilateral act of Czechoslovak government against which the Austro-Hungarian bank officially protested and complained on breaching of its monetary privilege, in 1993 it was jointly settled action of both governments, Czech and Slovak, in accordance with the Agreement of monetary arrangement from 29 October 1992 where all the conditions of dissolution of Czechoslovak currency were set in the detail.

○ Overview of Maltese monetary law

Thanks to Maltese strategic position, as a mid way in Mediterranean, it attracted many empires to rule it and with each alien government a different currency was foisted to use.³⁰ Such as Greek, Phoenician, Carthaginian, Roman, Byzantine, Arabian, Sicilian, Norman, Swabian, Angevinian, Aragonian, Knightly, Ottoman, French-Napoleonic, British.

The first coins bearing the Island's name date back to the third century BC when under a Roman control it was allowed to strike local own money. They were presumably first circulated in 211 BC. They were all struck in bronze on the Roman weight standard. The names of the Romano-Maltese coins changed as the culture developed gradually from a Punic culture, to Punic -Greek, Graeco-Roman and finally to a Latin one. The coins last issued at the close of the first century BC had the Graeco-Latin inscription MELITAS (of Malta). After the first century the Roman metropolitan coinage became the standard currency in the Maltese Islands.

Between the division of the Roman Empire in AD 395 and the arrival of the Hospitaller Order of St John, the circulating medium consisted of coins of the Islands' successive rulers: Arabs (870 -1091), Normans (1091 – 1194), Swabians (1194 – 1266), Angevins (1266 – 1282) and the Aragonese and Castillians (1282 – 1530). The Order of St John was granted by the Emperor Charles V, the right to set up their own mint in Malta. In 1609 it was decided that henceforth all gold, silver and copper coins of the Order were to conform in weight and fineness to those of the Sicilian mint. The Maltese currency was the *Scudo*, equal to 12 *Tari*, each *Tari* being equal to 20 *Grani*. The *Grano* was subdivided into 6 *Piccioli* (Dinieri). When Napoleon conquered Malta in 1798 French seized whatever gold and silver from churches and other state institutions and some of the confiscated silver was converted into silver coins

30 SAMMUT, *Outlines of Malta's Numismatic History*, from <http://www.eabh.info/pdf/>

bearing the bust and arms of Ferdinand von Hompesch, the last Grand Master governing Malta. Following the revolt of the Maltese against the French garrison, most of the gold and silver of *the Monte di Pietà*, a state owned pawning institution, were converted into ingots, stamped with their intrinsic value and circulated as money.

After 1800 Malta came under British control. During the first fifty years of British rule, the circulating medium in Malta consisted of the remaining coins of the Order of St John, a pot-pourri of foreign coins such as the Sicilian denominations, Neapolitan, French, Spanish, Mexican and South American Doubloons and Dollars as well as British silver and copper coins.³¹ Thus creating a confusing and problematic situation on the market. British silver and copper coins were declared legal currency in 1825. Government Departments were ordered to start keeping their accounts exclusively in sterling with effect from 25 December 1825 but, for a long time the banks, the commercial community and the inhabitants still continued to keep their accounts and to transact their business in *Scudi*, *Tari*, and *Grani*. Even despite the fact that the copper coins of the Order were demonetised in 1827 and a copper coin, the British One-Third Farthing or Grain piece, was struck at the Royal Mint for exclusive use in Malta to replace the Maltese copper *Grano* piece.

As In October 1855 British coins were declared the sole legal tender with the remaining coins of the Order. All foreign coins were demonetised.³² Concurrently the remaining gold and silver coins of the Order were withdrawn so that Sterling finally established itself as the sole legal tender currency in Malta, consisting of Pounds, Shillings and Pence. Probably as the result of over-valuation of the British currency (in terms of its silver content), local intransigence, and the requirement of trade, which took place mainly with Sicily, thus especially because of its “prominent role in import trade financing”³³, the Sicilian currency remained the most important currency used. It was only the withdrawal of the Sicilian dollar by the Italian Government in November 1886, coupled with a strict prohibition of Sicilian currency imports, that British coins became prominent.

It was therefore the year 1887 that represented the creation of a more modern single monetary system, with one currency widely used for all internal transactions, and with

31 SAMMUT, *Currency in Malta*, 2001, p.61

32 By Order of the Queen in Council (13 August 1855)

33 SAMMUT, op. cit., p.63

merchants keeping reserves of foreign currency for trade purposes. Sterling treasury notes subsequently were made legal tender on 16 June 1915. In 1939, due to a shortage of Sterling and the onset of the war, the issuance of Malta Pound banknotes were allowed³⁴. These were to be exchangeable at par with the Sterling, and can barely be described as a currency in their own right – in effect, they were promissory notes underwritten by legislation. This changed on 21 January 1949, when the Currency Notes Ordinance³⁵, restated the parity while setting up a Currency Board. The Sterling was demonetised in Malta, though for practical purposes the currencies were freely convertible and there were no exchange control requirements between them. Nonetheless, this represented the true birth of the Malta Pound as a currency. British coins, however, continued to be in use. Despite some changes in coinage, and many developments in banking, this system remained largely stable until the events set into motion by Maltese Independence in 1964.

The CBM was set up in 1968 by means of Act No. XXXI of 1967³⁶. However it was the later Legal Notice No. 48 of 1968³⁷ that shifted responsibility for currency to the Bank; section 37, in articular, established the Maltese Pound as a currency of Malta “this being divided into twenty shillings, and each shilling being divided into twelve pence”. Legal Notice No. 47 of 1968³⁸, furthermore caused the elimination of the Currency Board's Note Security Fund by transferring its assets to the CBM (thus becoming its capital and reserves). Even then, however, the currency used generally continued to be the same, in essence, as that in UK, and by virtue of Article 38, the Maltese Pound was defined to the same gold standard as British Pound.

In 1971 Malta followed suit of the UK from 1967 and decimalised the currency, though in Maltese case, the pound was divided into cents not pence, and cents were further divided into ten *mils*. The same Act of 1971³⁹ also cut British coinage out of Malta by demonetising the British coins that were still legal tender as a result of the Order of the Queen in Council of October 1886. The Maltese pound and its divisions thus became the sole currency with the legal tender status. The parity of Maltese pound to gold, and thus the Sterling, was broken on

34 By Paper Currency Ordinance 1939

35 Ordinance No. I of 1949

36 Act No. XXXI of 1967, Supp. GG No. 12085, A289

37 LN No. 48 of 1968, Supp. GG No. 12140, B174

38 LN No. 47 of 1968, Supp. GG No. 12140, B172

39 Act XX of 1971, Supp. GG No. 12590, A141

25 August 1971⁴⁰, when as a consequence of the breakdown of the Bretton-Woods system, the lira started to be defined in terms of, and quoted at a 5% premium over, the Sterling – in fact the Maltese pound first ever devaluation. It was on 1 July 1972, however, that the ensuing non-equivalent hard peg to the Sterling was also broken, as the value of Maltese pound started to be calculated on the basis of a trade-weighted basket of currencies. Over the years, the composition of the basket changed, also as a reflection of increase trade with the European mainland, until it was 70% on the euro before Exchange Rate Mechanism II (ERM II) entry, becoming a 100% hard peg to the euro thereafter. Ironically, the last characteristic earned by the Maltese currency was its name. In fact, it was only on 15 July 1983 that the words 'Maltese pound' were substituted in all laws and legal instruments by the words 'Maltese lira' – a name that been already being used locally. To reflect this, the lira's symbol was also changed from '£m' to 'Lm'.

In the light of above mentioned information it seems that the only currency changeover in Maltese recent history that is comparable with the changeover to the euro is the one in 1971 under Act XX of 1971. The change from the British to Maltese Pound happened gradually, with many years of overlapping coinage or legal tender status, at least until British coins were demonetised under Act XX of 1971 itself, and parity was subsequently broken. It is therefore considered relevant to look at the provisions of Act XX of 1971, which represents such a changeover. The key section effecting the change was the new Section 37 (4), which provided for the switch to the decimalised currency in legal instruments. Provided there was no distinct intention to the contrary,

“...any reference in any law and in any instrument having the force of law, and any reference in any deed, contract, bill of exchange, promissory note or other written instrument, and in any other document whatsoever, to any amount of money (whatever such amount results directly from the reference or derives there-from) shall, in so far as it refers to an amount in shillings or pence or fractions thereof be read as corresponding amount in the new currency calculated in accordance with the provisions of the Second Schedule of this Act ...”

Although not identical but similar provision can be found in the law books of various Commonwealth countries. There was no analogous provision in the sections governing the introduction of the Maltese pound in the Central Bank Act before amendment – contracts

40 SAMMUT, op. Cit., p.234

denominated in British pounds remained payable in British pounds, though this was technically a foreign currency. This provision, however, changes over all instruments referring to shilling or pence, whichever of the currencies they were a denomination of. Legally speaking, one did not only have a decimalisation of Maltese currency, therefore, but also a veritable changeover from the British coinage, the last of which was further demonetised by virtue of the same Act. The newly inserted Section 37 (5) proceeds to give the Minister the power to change Acts by Legal Notice in order to cater for this change.

All this seems remarkably similar to the mechanism used for the changeover to the euro, where Article 6 (2) of Council Regulation 974/98⁴¹ provides that all references to national currencies in 'legal instruments'⁴² are to be read as references to the euro, converted according to established conversion rates. Though a slightly different terms used (The Regulation refers most generically to 'instruments with legal effect', The Central Bank Act referred to 'any instrument having the force of law' but also 'any other document whatsoever' but in effect they are identical, both serving the purpose of ensuring a smooth changeover to a new currency.

Moreover, when implementing the euro changeover, all the first wave countries included in their national laws a delegated power, usually to a Minister (or drafting committee or other council) to re-denominate all amounts in primary and secondary legislation by a simplified procedure, involving simply the publication of documents legally akin to the Maltese Legal Notice. Interestingly, the Maltese Euro Adoption Act uses the same method as in Act XX of 1971 to do this.

On the other hand, there is a major departure, as while the conversion in 1971 happened according to a table – half a pence corresponds to two *mils*, one pence to 4 *mils* and so on, the conversion to the euro involved a decimal conversion rate one euro to be 0,429300 Lm, thus more complex rounding rules were needed. Furthermore, the 1971 Act did not make any provisions for dual pricing. Not even any special provision to ensure the continuity of contracts in terms of *force majeure* or frustration doctrines. However, the Central Bank of Malta Act got away with this, perhaps because of the clarity of the definition, but certainly also because of the population size differential, thus the limited number and breath of issues appearing before the Courts. On the contrary, The 1971 Act does provide for dual-circulation.

41 Council Regulation (EC) No 974/98, op. cit.

42 As interpreted in Article 1(definitions) of the Regulation 974/98

The 'old' currency was to remain legal tender until cancellation, under Sections 40 or 41 of the Central Bank of Malta Act and was to be subsequently exchangeable at the Central Bank of Malta (CBM).⁴³

⁴³ BONNICL, *Joining the euro: legal implications of Malta's adoption of the European Single currency*, Doctor of Laws LL.D. Faculty of laws at University of Malta, 2006, p. 23

● 3 Law governing euro

Every currency has to be defined and regulated by law (*lex monetae*). In the case of euro, it is mostly the EC law, since the MSs have delegated their monetary sovereignty to EC. European monetary law is created by a variety of different legal instruments.

○ 3.1. European law

● 3.1.1. Primary law

The EC Treaty as a legal basis with its Title VII - Economic and monetary policy contains Articles 98 – 124 divided into four Chapter that are relevant for EMU.

First Chapter, titled Economic Policy, sets the economic policy 'as a matter of common concern' which shall be coordinated. Specifies the procedure how to coordinate. Sets certain prohibitions concerning and imposes an obligation on a MS to 'avoid excessive government deficits' together with the eventual procedure as 'specified in the Protocol on the excessive deficit procedure annexed to this Treaty'. In second Chapter, titled Monetary Policy, provisions on monetary and exchange rate policies can be found. In particular the right to issue currency, the primary objective of price stability, and the tasks of the European system of Central Banks (ESCB). Third Chapter, titled Institutional Provisions, deals with appointment and representation rules of relevant institutions, as well as consultation procedures between these bodies.

As already mentioned, provisions on EMI, ECU, that are no longer relevant are contained in the Chapter IV, titled Transitional provisions. Nonetheless, some provisions from this chapter still do apply to 'pre-ins', as do Article 120 in case of sudden crisis in the balance of payments of a member state, and Article 124, which requires 'pre-ins' to treat 'the exchange-rate policy as a matter of a common interest'. But in particular Article 122 as it establishes the

status of a member state with a derogation and the procedure how of its abrogation.

Simply put, TEC has one set of articles (Article 121 and 123(1) to (4)) which have been exhausted (by application in case of first wave countries) and has become obsolete, and second set of rules (Article 122 and Article 123(5)), as regards to the introduction of the euro itself.⁴⁴

As an integral part of a Treaty, protocols are part of primary law as well. There are few relevant to EMU, such as already mentioned Protocol on the excessive deficit procedure annexed to this Treaty, the Protocol on the convergence criteria referred to in Article 121 (1) of the Treaty, the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland (allowing the 'opt-out'), The Protocol on certain provisions relating to Denmark (allowing the 'opt-out'), The Protocol on the Statute of the European System of Central Banks and of the ECB (on its organisation and structure), the Protocol on the statute of the European Monetary Institute, Protocol on the transition to the third stage of Economic and Monetary Union.

There are also other provisions relevant to EMU, such as Articles 56-60 concerning free movement of capital and payments.

● 3.1.2. Secondary law

The legal framework for the introduction and the use of the euro is based on the three Council Regulations.⁴⁵ These governed the initial establishment of the euro area. But as not all the MS have adopted the single currency these regulations do not apply to all the MSs the same.⁴⁶

○ **Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro**

Provisions of this Regulation are of a general use and are independent from individual accessions to the euro area. The Regulation is relevant to both past and future euro area

44 EUROPEAN COMMISSION, DG ECFIN, Occasional Papers, SCHÄFER, *The Legal Framework for the Enlargement of the Euro Area*, No 23, 2006, p.29

45 Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro, Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro, Council Regulation (EC) No 2866/98 on the conversion rates between the euro and the currencies of the Member States adopting the euro

entrants (it applies to all MS). It also provides for replacement of the ECU by the euro, for continuity of contracts (Article 3), and for conversion rates and rounding rules. Thus it assures legal certainty of the introduction of euro in the whole area of EU.

To achieve a high degree of accuracy in conversion operations, the conversion rates are defined as one euro (six significant figures) expressed in terms of each of the national currencies of the participating MSs. All the conversions (from the day of adoption of the euro) of amounts between the euro unit and the national currency unit⁴⁷ and vice versa and between national currency units themselves are to be done according to these conversion rates. Monetary amounts to be converted from one national currency unit into another national currency unit shall first be converted into a monetary amount expressed in the euro unit (triangulation). Inverse rates derived from the conversion rates are prohibited.

The introduction of the euro requires the rounding of monetary amounts. But the rounding or truncating of the conversion rates when making conversions is prohibited. After a conversion, all the monetary amounts to be paid or accounted for are to be rounded up or down to the nearest cent (in case of amounts in the euro unit) or to the nearest sub-unit or in the absence of a sub-unit to the nearest unit, or according to national law or practice to a multiple or fraction of the sub-unit or unit (in the case of amounts in the national currency unit), if it is exactly half-way, the sum shall be rounded up.

In order to reinforce legal certainty and clarity to economic agents, in particular for consumers, and since it is a generally accepted principle of law that the continuity of contracts and other legal instruments is not affected by the introduction of a new currency, article 3 only declares the continuity of contracts (includes all types of contracts, irrespective of the way in which they are concluded) and other legal instruments (as defined by the Regulation).

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

46 TOMÁŠEK, *Evropské měnové právo*, 2. aktualizované vydání, C.H. Beck, Praha, 2007, p.16

47 Note that in European law the term 'currency' has a different meaning than 'currency unit'. The euro is the currency of the MS, the latter means a currency denomination, 'sub-division' or 'expression' of the euro

○ **Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro**

This Regulation applies only to MSs in euro zone. It provides for the core monetary law provisions for the euro area since it sets up euro as a currency of participating MSs as to substitute for the currency of each of those MSs at the conversion rate. Thus making euro full-bodied money, stating monetary succession. Also, it contains set of rules applicable during the transitional period (for the case of Malta and Slovakia it is not relevant as transitional period is absent).

And the actual introduction of euro banknotes and coins is dealt in this Regulation. Giving euro banknotes and coins legal status in all participating countries but allowing national currencies, just as denominators of euro (Article 15) to retain their legal tender status for six months at most after the introduction of euro (the so-called dual circulation period). Yet, MSs issued a common statement in November 1999 on the guidelines for the introduction of euro banknotes and coins and agreed to limit this period to between one and two months. Accordingly, in most euro area countries it was 28 February 2002 when dual circulation period came to an end. recommend even shorter period than six months.

It makes it possible for MS to define rules for this dual circulation period for the use of national notes and coins, and to take any measures which may be necessary to facilitate their withdrawal (Article 15). It lays banks in NMS joining the euro under an new obligation to exchange banknotes and coins free of charge during the dual circulation period, as while for the Euro-12 the Commission had only issued a Recommendation⁴⁸ that there should be no banking charges for the conversion to the euro, (it was the amendment of this regulation that set this concept as hard law rule). The national law may set a ceiling for this service and even the concept of household amount which, if acceded, requires a notice of exchange in advance. If national law does not set this amount it can be defined by credit institutions themselves, which is not the case for the determination of the ceiling, unless it concerns other persons than customers. National law can moreover limit the obligation to specific types of credit institutions or extend it upon other persons. And in the Article 12 it lays an obligation to participating MS to ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.

48 Commission Recommendation (EC) No. 98/286 of 23 April 1998 concerning banking charges for conversion to the euro, OJ (1998) L 30

Each time a MS is to join the euro area the Regulation is amended so that it defines which scenario is relevant for particular country. In Annex to Regulation it is specified the particular dates for the introduction of the euro for each new MS.

This Regulation, as amended, recognises also the legal tender status of euro coins issued by certain non-EU countries (Monaco, San Marino, Vatican City State).

○ **Council Regulation (EC) No 2866/98 on the conversion rates between the euro and the currencies of the Member States adopting the euro**

It lays down rules on defining the conversion rates. The other two regulations complement it with the rules on how to apply these conversion rates. Each time the derogation of the particular MS is lifted thus a conversion rate is set and it needs to be added to the list of conversion rates in the Regulation which means that the Regulation has to be amended and such an amendment enters into force on the day of the adoption of the euro by particular country.

● **3.1.3. Other Acts**

There are also other acts relevant for the EMU such as regulations⁴⁹ governing the ECB exercise of its monetary policy, Council Decision⁵⁰ on the consultation of the ECB by national authorities regarding draft legislative provisions, and other akin secondary instruments⁵¹. Many instruments with various functions in the form of regulations, decisions, recommendations, guidelines, instructions and agreements, has been created by the ECB⁵² and the ESCB (generally, these are subject to implementation by the NCBs). Various Council

49 Council Regulation (EC) No. 2531/98 on 23 November 1998 governing the application of minimum reserves by the European Central Bank, OJ (1998) L 318

Council Regulation (EC) No. 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions, OJ (1998) L 318

Council Regulation (EC) No. 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank, OJ (1998) L 318

50 Council Decision (EC) No. 98/415 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions, OJ (1998) L 189

51 Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers, Regulation 2560/2001 on cross-border payments in Europe

52 Such as Decision of the European Central Bank of 30 August 2001 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (ECB/2001/6), or Recommendation of the Governing Council of the European Central Bank of 7 July 1998 regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins (ECB/1998/7), OJ C 11

Decisions administer the use of euro in territories outside the EU.⁵³ A European Council Resolution⁵⁴, followed up by an agreement⁵⁵ (as amended after each abrogation of a derogation), governs the exchange rate relations between the euro area and other non-euro EU member states, to provide for the ERM II.

● 3.1.4. Relation to third pillar

Criminal law is not in the community competence, although in order to assure proper operation of every currency it is very important to protect it by particularly criminal provisions.⁵⁶ Despite internalisation of criminal law in the monetary field (to protect not only own currency but also the foreign one), the Europeanisation of this branch of law is necessary to combat the crime as maintaining and developing of the Union as an area of freedom, security and justice (being an aim of third pillar).

There are two regulations⁵⁷ which serve to protect euro but these can not prescribe criminal sanctions as are the first pillar instruments. The first Regulation defines 'counterfeiting' for the purpose of sanctioning and it speaks about certain consequences (not criminal) of such a fact. Another Regulation protects public from mistaking the reproductions for genuine euro coins and banknotes.⁵⁸

Instruments from the third pillar⁵⁹ oblige MS to take measures necessary to ensure that the conduct as specified in council frameworks is punishable by effective, proportionate and dissuasive criminal penalties, including penalty of imprisonment, which may entail

53 Monaco, San Marino, Vatican City, French overseas territories and departments

54 Resolution of the European Council on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union, Amsterdam, 16 June 1997, OJ (1997) C 236

55 Agreement of 1 September 1998 between the European Central Bank and the national central banks of the Member States outside the euro area, laying down the operating procedures for an exchange rate mechanism in stage three of economic and monetary union, OJ (1998) C 345

56 TOMÁŠEK, *Evropské měnové právo*, 2. aktualizované vydání, C.H. Beck, Praha, 2007, p. 18–24

57 Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting,

Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins

58 Decision ECB/2003/4 describes the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes. The denominations and technical specifications of euro coins are governed by Regulation (EC) No 975/98, as amended by Regulation (EC) No 423/1999.

59 Such as Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, Council Decision 2001/887/JHA of 6 December 2001 on the protection of the euro against counterfeiting, Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of

extradition. MS are also obliged to recognize judgements of other MSs in connection with counterfeiting the euro.

● 3.1.5. Case law

The law of EMU is quite a new branch of law, thus there haven't been delivered many judgements concerning the euro introduction yet. Nevertheless, some of these judgements influence the introductory process significantly, in particular, for implementation and application of the European law in the national legislation.

In the judgement of 14 September 2004 in case C-19/03⁶⁰ concerning the rounding rules (as governed by Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro) The European Court of Justice (ECJ) held that other amounts than those to be paid or accounted for should not necessarily be rounded to the nearest cent, as unnecessary rounding could violate the principle of the continuity of contracts (if such rounding affects the parties' contractual obligations or have a real impact on the price actually to be paid) and the objective that the transition to the euro should be neutral (if such rounding has a real impact on the price actually to be paid).

Analogously, in related following judgement of 18 January 2007 in case C-359/05⁶¹ the court gave the interpretation on Regulations Nos 1103/97 and 974/98 (in connection with 2866/98), while recognising the fiscal competence of MSs and their ability to increase the amount of their taxes, and the principle of continuity of legal instruments, the objective of neutrality in the transition to the euro, the requirements of legal certainty and transparency allowing for protection of the confidence of economic agents in the introduction of the euro. The Regulations should be interpreted as precluding national legislation from effecting the conversion of amounts into euros is the resulting amount is raised to an amount higher than that which would have resulted from application of the rules of conversion provided for in those regulations. The only exception is if such an increase meets the requirements of legal certainty and transparency guaranteed by those Regulations, by providing a clear discernment in the legislative texts that it is the decision of the authorities of a MS to increase that amount from the operation of conversion of that amount into euros. In short, this implies that the

payment(2001/413/JHA)
60 C-19/03 *Verbraucher-Zentrale hamburg eV v O2 (Germany) GmbH & Co. OHG*, [2004] ECR I-8183

amounts, fees or payments (payable amounts) for legal or natural persons, are converted exclusively in connection to the euro changeover, then the conversion should be according to the conversion rate, or to the benefit of those legal or natural persons.⁶²

In the recent judgement C-454/2006⁶³ the ECJ decided that

“The terms ‘awarding’ and ‘awarded’, used in Articles 3(1) and 8 and 9 of Directive 92/50 relating to the coordination of procedures for the award of public service contracts must be interpreted as not covering an adjustment of the initial agreement to accommodate changed external circumstances, such as the conversion to euros of prices initially expressed in national currency, a minimal reduction in the prices in order to round them off, and a reference to a new price index where provision was made in the initial agreement to replace the price index fixed previously.”

In addition it states that

“where, following the changeover to the euro, an existing contract is changed in the sense that the prices initially expressed in national currency are converted into euros, it is not a material contractual amendment but only an adjustment of the contract to accommodate changed external circumstances, provided that the amounts in euros are rounded off in accordance with the provisions in force, including those of Council Regulation (EC) No 1103/97”

and

“where the rounding off of the prices converted into euros exceeds the amount authorised by the relevant provisions, that is an amendment to the intrinsic amount of the prices provided for in the initial contract. The question then arises as to whether such a change in prices constitutes a new award of a contract. Nevertheless, the conversion of contract prices into euros during the course of the contract may be accompanied by an adjustment of their intrinsic amount without giving rise to a new award of a contract, provided the adjustment is minimal and objectively justified; this is so where it tends to facilitate the performance of the contract, for example, by simplifying billing procedures.”

Besides these key judgements there are also others relevant for the process of the euro introduction.

It is the judgement of 10 October 1973 C-34/73⁶⁴. While a regulation is having an

61 C-359/05 *Estager SA v Receveur principal de la recette des douanes de Brive*[2007] ECR I-00581

62 SLOVAK GOVERNMENT, *The National Euro Changeover Plan for the Slovak Republic*, 2008, p.94

63 C-454/06 *pressetext Nachrichtenagentur GmbH v Republik Österreich (Bund) and Others* of 19 June 2008; OJ C 209; 15 August 2008; ECR. 2008

64 C-34/73 *Fratelli Variola S.p.A. v Amministrazione italiana delle Finanze*, [1973] ECR 981

immediate effect, and are of direct application, no measure of national law can affect this nor should it compromise the essential character of the Community rules and the fundamental principle that the Community legal system is supreme.

As the euro introduction is mostly regulated by regulations, the judgement C-272/83 of 28 March 1985⁶⁵, on direct applicability of Community regulations shall be observed by the MS and the direct effect of such instruments should not be compromised. However, in some cases, for the sake of coherence and comprehensibility, some elements of the Community regulations could be incorporated in the national law.

○ 3.2. National law (in general)

The introduction of the euro constitutes a change in the monetary law of each participating MS. Every national legislator has to take it into account when drafting legislation. The national law caters for introduction of a currency as a legal tender in particular country by adoption of comprehensive set of rules governing all relevant aspects. But the national law in euro introduction process is only supplementary to the basis founded by the Community legal framework. As the euro is, in particular, governed by Regulations which are in its nature directly applicable and don't need to be nationally transposed, only implemented. Thus, in some cases, it is necessary to adopt national legislation, in other cases it is just advisable. In general, there are two cases to be distinguished.⁶⁶ First, when the Community law expressly spurs the adoption of national law. In second case such adoption stems from other motivations.

The Regulation on the introduction of the euro expressly calls or allows for national law:

- National law can designate persons which are obliged to accept more than 50 coins in any single payment (Article 11)
- National law shall ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins (Article 12). This obligation has been specified in greater detail, notably by the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against

⁶⁵ Case-272/83 *Commission of the European Communities v Italian Republic* [1985] ECR 1057

⁶⁶ EUROPEAN COMMISSION, DG ECFIN, Occasional Papers, SCHÄFER, *The Legal Framework for the Enlargement of the Euro Area*, No 23, 2006, p.27 - 29

counterfeiting in connection with the introduction of the euro (2000/383/JHA)⁶⁷ which sets standards for national legislative measures in this regard.

- National law can shorten the dual circulation period (Article 15(1)).
- For a period of up to six months from the respective cash changeover date, national law can lay down rules for the use of the banknotes and coins denominated in its national currency unit and take any measures necessary to facilitate their withdrawal (Article 15(2)).
- National law can set a ceiling corresponding to a household amount in excess of which credit institutions may require that notice be given prior to the exchange of their customers' banknotes and coins denominated in the national currency unit of the MS concerned. In the absence of such provisions, credit institutions may set such ceiling themselves (Article 15(3)).
- National law can set a ceiling up to which credit institutions are obliged to exchange banknotes and coins denominated in the national currency unit of the MS concerned of persons other than their customers free of charge. In the absence of such provision, credit institutions may set such ceiling themselves (Article(3)).
- National law can limit the obligation for credit institutions exchange their customers' banknotes and coins denominated in the national currency unit of that MS for banknotes and coins in euro, free of charge, to specific types of credit institutions. National law may also extend this obligation upon other persons (Article 15(3)).
- National law or practices can regulate the rules for the respective issuers of banknotes and coins to accept, against euro at the conversion rate, the banknotes and coins previously issued by them (Article 16).

For the latter case (not mandatory but some MS deem certain measures necessary, other not):

- The dual display of prices and amounts
- The protection (by the provisions on counterfeiting of currency) of banknotes and coins denominated in the national currency even after they have lost their tender

67 OJ L 140/1 of June 2000, as amended by Council Framework Decision of 6 December 2001, OJ L 329/3 of

status

- The conversion and rounding of amounts denominated in the national currency unit.
 - All these amounts are by virtue of Article 14 in Regulation 974/98 as amended to be read as amounts in the euro, according to conversion rate, without the need of any action at national level. Observant the principle: “The figures change, but not the value”. Legally speaking, a physical re-denomination of these legal instruments is not necessary, although it may be useful in certain cases.
 - Some amounts, so-called “signal amounts” are used as e.g. fees, fines, charges, thresholds for other purposes, etc. After the conversion of amounts takes place and possible rounding (according to conversion and rounding rules as set by Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro), some final amounts might be considered “awkward” for the use as a “signal amounts”. Thus national legislator can realign these amounts and make them convenient through the change of a relevant legal act. It is a good practice to round to the benefit of the citizen: amounts to be paid by the citizen to the state should be rounded down, while amounts to be paid by the state to the citizen should be rounded up.

National legislator is obliged to take into account and respect European law (concerning euro) as a whole, when drafting (and executing) national law. That is why it is also important to consider carefully time schedule for adoption of such law so that it takes proper effect. Thus, a strategy is required to ensure the necessary regulatory provisions are in place.

The law governing euro is indeed a blend⁶⁸ of private, public, national, European and international law methods and instruments, combining 'hard' and 'soft' law with political commitment. That creates a complex system and as such must be observed when introducing the euro. Therefore the exhaustive preparatory steps have to be taken by any MS on its way to euro adoption.

14 December 2001

68 BONNICL, *The law of the Euro: Constitutive, Institutional and external aspects*, Central bank of Malta, Valletta, 2008

● 4 Legal path towards the euro - in general

○ 4.1. Phases of the process

Process necessary to undergo before the adoption of the single currency can be divided into four phases as the preparations are getting closer to actual changeover:⁶⁹

1. From the very first steps towards the euro adoption, until the entry into ERM II
2. From the participation in ERM II, until the decision on abrogation of the derogation
3. From the decision allowing the euro adoption, until the introduction of the euro
4. After the entry to euro area

○ Status of 'pre-ins' (before entry) NMS

Status of all new EU member states, including Malta and Slovakia, before joining the euro was established by Article 4 of the Act of Accession⁷⁰ which enunciates that they will be bound by the provisions of the EMU acquis, as countries with a derogation under Article 122 (1) of the EC Treaty, as from date of accession (since these states did not meet the conditions for entry to the euro area, therefore the Treaties of Accession allow them time to make the necessary adjustments). Thus non-participating MS still retain their national currencies and continue to determine their national monetary policy independently.

Article 122 (3) sets out provisions in the Treaty that are not applicable to members with a derogation (such as those relating to the ECB's right to conduct monetary policy, issuing of euro notes and coins, the right to have members on the ECB's executive board) and as a

69 BALKO, *Než k nám pride euro*, EPOS, Bratislava, 2006, p.68-72

70 Act concerning the conditions of accession of Czech republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (Act of Accession), AA 3/03, OJ L 236, 23 September 2003

consequence, acts adopted under them do not apply either (such as instruments for conduct of monetary policy, exchange rate agreements with non-EU countries), and in turn such MS has no voting rights in Council in relation to these Treaty Articles. Furthermore, Chapter IX of the Statute of the European System of Central Banks (ESCB) caters for the exclusion of a Member State with a derogation, and their central banks, from a number of rights and obligations within the ESCB (as from date of membership of the EU the NCB becomes a member of the ESCB but not of the Euro system, with its governor as a member of the ECB General Council, but not of the ECB Governing Council).

On the other hand, there are some obligations from EMU law that do apply to MS with a derogation, such as to regard its economic policies as a "matter of common interest" or to consult the ECB on legislative proposals within the ECB's area of competence.

And by virtue of Council Regulation 1467/97, pre-ins are also subject to the requirement to avoid "excessive government deficits"⁷¹, but at the same time (by virtue of the same regulation) the penalty provisions of the Stability and Growth pact do not apply to them.

Furthermore, at least once every two years, or at the request of the MS itself, the Commission and the ECB are to report to the Council in terms of that MS's "obligations regarding the achievement of economic and monetary union" and "the compatibility [of its] national legislation, including the statutes of its national central bank" with the requirements under the Statute of the ESCB (Article 109), of independence of its Central Bank (Article 108).

The process of abrogation of such derogation is set in detail by community law.

○ **1. preparatory period**

First phase of the path towards euro begins as the very idea of the euro adoption is considered by particular country. Preparations involve changes in rules on free of movement of capital and payments, independence of the NCBs and their governors, the NSB's relationship with government, prohibition of public sector financing, etc. (all in order to comply with the requirements of European law); as well as the NCB relationship (and membership of) the ESCB.

Signing the Agreement between the ECB and the national central banks of the Member

71 Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the

States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of EMU. On a national level, euro adoption strategy is discussed and particularised and eventually a government decision on the date of the entry to euro zone is taken. The National Coordination Committee for Euro Changeover (NECC) is designated to consult with European Institutions about the entry to ERM II and the determination of the central parity rate between the euro and the national currency. There are three major decisions that need to be taken concerning participation in ERM II: the timing of entry, the central parity rate, the width of the fluctuation band.

The national changeover plan is elaborated (and regularly updated as needed since it is not possible to count with all the plausibilities of the changeover few years in advance). It covers all aspects of the organisation of the euro changeover following the discussion with the representatives of the main economic operators (credit institutions, retail sector, the vending industry, consumer associations, chambers of commerce etc.).⁷²

And after informal consultations with European Institutions the actual access procedures to ERM II take place. In this phase, all the necessary reforms ensuring the economic stability in during ERM II should commence in the MS, as by then the monetary policy becomes even more limited (than is in the conditions of liberalised capital market), and after joining the euro area it becomes completely transferred to ECB.

○ 2. ERM II Period

Joining the ERM II is the starting point of second phase. The European Commission and ECB issue convergence reports resulting from the assessing procedure, as each MS must fulfil certain economic and legal conditions to be allowed to gain a full membership in EMU. Reports include an examination of the compatibility of MS's legislation with European monetary law, but, in particular, they examine the fulfilment of the four economic convergence criteria.

On the basis of such assessment, the Commission submits a proposal to the Council which, having consulted the European Parliament, and after discussion in the Council, in a meeting among the heads of state or government decides (by qualified majority voting) whether the

excessive deficit procedure, OJ 1997 L 209

72 Commission Recommendation on the Organisation of the Euro Changeover (2008/78/EC)

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country fulfils the necessary conditions and may adopt the euro. If the decision is favourable, the Council sets the date on which the derogation shall be abrogated. This date is the date of the adoption of the euro, when the national currency shall cease to exist. And, based on a Commission proposal, having consulted the ECB, the Council (acting with the unanimity of the euro area MSs and the MS concerned) adopts the conversion rate (under Article 123(5) TEC) at which the national currency will be replaced by the euro, which thereby becomes irrevocably fixed. Such a rate is added to the list of conversion rates in the Council Regulation (EC) No 2866/98 on the conversion rates between the euro and the currencies of the Member States adopting the euro. Such an amendment enters into force on the day of the adoption of the euro by particular country.

In addition, for each individual accession, a separate Regulation is adopted, modifying Regulation (EC) No 974/98, to extend the list of participating members of the euro area and to indicate the type of changeover scenario chosen by MS, and relevant euro adoption and cash changeover dates.

By this phase the major reforms in the MS should be completed. The planning and preparation of the euro changeover through the launching of key activities takes place. The NECC, and in particular its Legal Sectoral committee are the main actors carrying out such preparations in the legal field, publishing guidelines and other documents, enacting the acts. The public informative campaign commences. The length of the preparatory process is considered according to the experiences of the other MS that already adopted the euro (in general 2 years, adding 3 months for formal assessing and approval procedures) and should be taken into account.

○ **3. Pre-entry period**

After deciding the fixed exchanged rate the third phase of the path towards euro starts. The MS commences with the rapid logistic and technical preparations for the changeover itself, in both public and private sector, to be able to use euro in both cash and non cash transactions, The euro banknotes are reserved and euro coins are minted so that the necessary amount of cash for the circulation is assured. Eventually frontloading, to central bank and commercial banks, and later sub-frontloading to retail sector take place. The dual display of prices ordinarily takes place. All cash and vending machines and other devices functioning with cash

form of money are converted.

Usually it takes just several months to complete this phase.

○ 4. Post-entry period

Final phase is actual joining of the euro area as the Council Decision on the abrogation of the derogation comes into effect (as at the euro adoption date inserted into regulation 974/98). The dual circulation takes place for time period as is chosen by the MS. This means that all payments can be done in both currencies, but any change is given in euro only. The mandatory dual pricing takes place. The „old” currency is being withdrawn from the circulation and the exchange of void national currency continues under certain conditions.

○ 4.2. Criteria for the abrogation of the derogation

In short, the entry criteria are intended to ensure convergence.

Nominal convergence is assessed through nominal 'convergence criteria' (or 'Maastricht criteria') which were agreed by the EU MSs in 1991 in Madrid, as part of the preparations for introduction of the euro. The same entry criteria, as held to first wave countries, apply to all countries which have since adopted the euro and all those that will in the future (unless the law changes). They are designed to ensure that a MS's economy is sufficient enough for smooth integration into the euro area, without any risk of causing disruption for the MS or the euro area as a whole. Often, these criteria are criticised from many points of views. Nevertheless, they still remain legal conditions and are to be complied with. Thus the deficiencies of these criteria are paid no attention in this paper, as Malta and Slovakia simply followed them on their way to the euro and were not concerned about changing them nor commenting on them.

In addition, a euro area candidate country must make changes to national laws and rules, notably governing its national central bank and other monetary issues, in order to make them compatible with the Treaty. In particular, national central banks must be independent, such that the monetary policy decided by the ECB is also independent, including other institutional set-ups to provide for the changes the the euro changeover brings. Naturally, the Four Freedoms protecting the ability of goods, capital, services, people and labour to move freely within the internal market of the EU must be assured even within national legislation.

Real convergence requires also comparison of economic level of members with derogation to euro area members. This is done through the assessment of gross domestic product per capita, price and wage level, structural characteristics of economy. The key role here is played by legislative reforms.

○ **Maastricht criteria**

These criteria, as set out in Article 121 (and the Protocol on the convergence criteria referred to in Article 121 of the Treaty) of the Treaty, are formally defined set of macroeconomic indicators which measure:

- Price stability, to show that inflation is controlled
 - 1 - the rate of inflation must not exceed by more than 1½ percentage points that of, at most, the three best-performing MSs in terms of price stability,
- Soundness of public finances, through limits on government borrowing
 - - a government budgetary position without a deficit that is excessive, the annual government deficit not exceeding 3% of GDP
- Sustainability of public finances through national debt to avoid excessive deficit
 - - the ratio of government debt to GDP below 60%
- Exchange-rate stability, through participation in the ERM II for at least two years without strong deviations from the ERM II central rate
 - - the observance of the normal fluctuation margins provided for by the ERM II, without severe tensions and without devaluing against the currency of any other MS for at least two years
- Long-term interest rates, to assess the durability of the convergence achieved by fulfilling the other criteria
 - - an average nominal long-term interest rate that does not exceed by more than 2 percentage points that of, at most, the three best performing MSs in terms of price stability over a period of one year.

More details on 'Maastricht criteria' are provided in an organised manner in the Table 1 of Annex to this paper.

According to the Treaty, at least once every two years, or at the request of a MS with a derogation, the Commission and the European Central Bank assess the progress made by the euro area candidate countries and publish their conclusions in respective convergence reports.

○ 4.3. ERM II

Under Article 124 of the EU, each NMS after accession to the EU is required to consider its exchange rate policy as a matter of common interest, but ERM II participation, which is one of the conditions for euro adoption, provides for framework for testing the sustainability of the convergence, while also supporting it. As a high degree of exchange rate stability is only sustainable where economic structures have converged significantly towards those of the economy of the anchor currency.

Eligibility for participation is not dependant on the fulfilment of a set of formal criteria, but a country is expected to show progress in addressing any economic imbalances before joining. ERM II rules require that the national currency is fully pegged to the euro at the time of entry into the mechanism. The determination of the date of entry into ERM II is within the competence of the government of the MSs. The decision takes into account all factors which may affect the stability of the course.

In fact, ERM II is the system of fixed exchange rates, the so-called soft peg exchange rate regime and as such, its sustainable functioning requires mutually consistent economic policies focused on macroeconomic stability. Thus its function is to coordinate and guide its members policy to achieve a stable macroeconomic environment, and promote structural reforms necessary for rapid nominal and real convergence towards the euro area economies.

The exchange-rate stability criterion is chosen to demonstrate that a MS can manage its economy without recourse to excessive currency fluctuations, which mimics the conditions when the MS joins the euro area and its control of monetary policy passes to the ECB. It also provides an indication of the appropriate conversion rate that should be applied when the MS qualifies and its currency is irrevocably fixed.

The legal basis for the ERM II are two documents. The European Council resolution on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union adopted in 1997 and The Agreement of 16 March 2006 between the ECB and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union. (The legal basis for the ERM II, therefore it is not the Treaty, but multilateral intergovernmental agreement.) The first necessary step for the participation in ERM II is the

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accession of the national central banks of NMS to this agreement, which formally confirms the fact that a NMB is subject to the legislation of the ESCB ("*ESCB acquis*") on the functions and operation of ERM II, as it becomes member of ESCB. The second condition of participation in ERM II is the decision on the central parity rate of a national currency against the euro and a fluctuation band around this parity. The central parity rate, as agreed on⁷³, does not prejudice the final conversion rate against the euro on entry into the euro area. Realignments in the central parity rate in ERM II are possible, subject to multilateral agreement, if necessary due to economic development. Revaluation does not violate the criteria of ERM II regime. The standard fluctuation band range is $\pm 15\%$ from the agreed central rate. Under Article 2.4 of the Resolution, it is possible, at the request of the Member States, to agree to closer range if a high degree of economic convergence with the euro area allows it. Any country seeking entry into the ERM II is assessed individually, on the principle of equal treatment. Interventions in foreign exchange markets to stabilise the rate are, if needed, in principle automatic and unlimited, unless it is a threat to the primary objective of maintaining price stability (Article 3.1. Of agreement Of central banks). The ECB and the NCBs participating in ERM II may also agree to coordinated interventions inside margins (e.g. in the event that NCB is seeking to maintain the course in the narrower band than officially agreed). However, this type of intervention may not be automatically supported by the ECB.

⁷³ between the Ministers of Finance (economy) of the Member States of the euro zone, the ECB and finance ministers (economy) and the central bank governors of Member States outside the euro area participating in ERM II

● 5 Legal path towards the euro - Malta and Slovakia

○ 5.1. Scenarios for the changeover

Malta and Slovakia, along with its counterparts of the EU's fifth enlargement, will join the euro under a different legal regime than its predecessors. Amendments⁷⁴ to the legal framework which governs changeover to the euro enabled that these MSs are able to choose a changeover scenario out of three options, as opposed to first wave countries that did not have such a choice.

Each MS can decide which scenario would suit its national peculiarities best and informs about such a decision to the European Commission. Then the Council will add the country to the list of participating Member States and specify what changeover scenario applies to the country concerned and also the euro adoption date. Respectively, Community law is adapted.⁷⁵

First wave 12 countries introduced euro with a transitional period (called also “Madrid scenario” since this legal framework was established by the European Council meeting in Madrid in 1995), meaning that the euro would first be adopted as Member States's currency, with notes and coins entering circulation at a later date, at the lapse of the transitional period. In December 2005, the Council adapted Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro to provide the rules for the introduction and the use of the euro in MS adapting the euro after 2006 thus allowing for alternative two scenarios of the changeover so a more expeditious changeover is possible since now the euro banknotes and coins are widely available. Although this way even more rigorous timing and preparations are

74 Council Regulation (EC) No 2169/2005 of 21 December 2005 amending Regulation (EC) No 974/98 on the introduction of the euro, OJ L 346/1

75 The euro adoption date, the cash changeover date, and the phasing-out period, if applicable, for each Member State is set out in the annex to the Regulation (EC) No 974/98

required. This so-called 'big bang'⁷⁶ scenario is, legally speaking, a sub-category of the traditional transitional period scenario where the start of the transitional period and its end coincide. Thus the provisions governing the transitional period will take no effect. Transitional period in this case is reduced to zero and leads to the adoption of the currency, banknotes and cash at the same time. The transitional period of 'one logical second' would mean that when a country adopts euro (in one logical second later) all the financial operations and references in legal instruments are to be carried out in euro.

Another option for MS is to have a 'big bang' scenario combined with a 'phasing-out' period allowing a belated use of the national currencies in some instruments, like invoices and companies' books, for a limited period of time.

This scenario preserves the advantages of the big bang approach (a swift introduction of the euro), while allowing some leeway, which can be useful for the conversion of complex systems, such as IT systems. However, it is only recommended as solution to difficulties that can emerge at a late stage in the proceedings of the implementation of the normal big bang scenario.⁷⁷

Both, the transitional period and the phasing out period if chosen as a scenario, can be adjusted within certain limits to needs of a MS⁷⁸.

The 'big bang' scenario requires stringent preparations for the operators in private and public sector. But there are several preferences for NMS why to choose this scenario instead of traditional one. Firstly, euro banknotes and coins are already in circulation, thus general public can obtain euro banknotes and coins and it might even be difficult to prevent them from using cash for payment purposes. Secondly, under a 'Madrid – style' scenario certain sectors are obliged during the transitional period to operate in both national currency unit and the euro unit. This double functionality creates extra costs. The distinction between cash and non-cash operations could be perceived as confusing, particularly since euro cash already exists and can be easily obtained. Thirdly, eventuality that delayed introduction of euro banknotes and coins might be overtaken in practice by consumer willingness to use cash as

76 Note that this is not a legal term – it is commonly used shorthand for a changeover with no transitional period

77 For further details see Euro Papers of the European Commission:

http://europa.eu.int/comm/economy_finance/publications/europapers_en.htm

78 EUROPEAN COMMISSION, DG ECFIN, Occasional Papers, SCHÄFER, *The Legal Framework for the Enlargement of the Euro Area*, No 23, 2006, p.6

soon as possible. Which would cause an involuntary and protracted period of dual circulation.

And finally, several NMS changed its currency in the recent past and thus have experience in this field.

On the other hand, when using so called 'big bang' approach all sectors and operators must comply with rigorous timing requirements which sometimes may cause them considerable difficulties with changeover process. Unless the “phasing-out” approach takes place, in which case the national currency unit still can be used as a reference to the euro unit according to the respective conversion rates and applying the rounding rules in Community Law (Regulation (EC) No 1103/97, but only as to some legal instruments and for short period of time.⁷⁹ It is used in situations where systems and processes cannot be logistically adapted to operate with the euro currency overnight. Despite its flexibility this approach still encourages the completion to be as soon as possible in order to avoid the burden of having systems running in the former currency while all payments are carried out in euro.

A gradual introduction of euro cash creates complications for citizens and enterprises. On the other hand, a rapid introduction benefits all parties involved, provided it is carefully prepared. The same applies to the period of dual circulation, which should preferably be short. The 'Big Bang ' scenario decreases project costs but increases the pressure in terms of the preparation of entrepreneurial, as well as non-entrepreneurial, entities. Consequently, the shorter the changeover, the sooner the preparations will have to start.

In the light of above mentioned advantages, Malta as well as Slovakia, chose the 'big bang' scenario (just as did other NMS Cyprus and Slovenia).

Although at first, Malta opted for the 'big-bang' scenario with 'phasing out' period, as stated in the Changeover Master Plans. But after re-evaluation the Government of Malta's preferred suggested 'big-bang' scenario although Malta reserved to call-up a “phasing out” period, whereby a more staggered approach to the euro introduction is facilitated in certain situations where systems and/or processes cannot logistically be adapted to operate with the euro currency overnight. After consultation with the European Commission, the 'phasing out'

⁷⁹ EUROPEAN COMMISSION, DG ECFIN, Occasional Papers, SCHÄFER, *The Legal Framework for the Enlargement of the Euro Area*, No 23, 2006, p.18 - 22

period has been redefined as an optional requirement that is unlikely to be invoked.⁸⁰

○ **5.2. Some of the differences between Malta and Slovakia in the process of introduction of the euro**

Every MS is different with its economic, political and social specifications. Thus the path towards the euro adoption does vary, although only within the limits set by European law. To understand the legal issues that Malta and Slovakia had to deal with it is important to understand at least some of their particularities.

○ **Malta**

The smallest country in the EU, with specific position in centre of Mediterranean, having particular climate, and without rich natural resources, has based its economy mainly on tourism, and services. It has one of the most open and vulnerable economies (with an average import-export-to-GDP ratios over 80 percent), thus the euro provides a shelter from external shocks and volatility. Single monetary policy conducted by ECB replaces the manifold risks inherent in managing a small, vulnerable currency such as the Maltese lira by the greater security afforded of major reserve unit.

Maltese population is very traditional one (also having a great regard for their historical heritage), which together with relatively high working hours and tendency for high savings, result in exceptionally high amounts of cash in the circulation⁸¹, which at times is undeclared. This aspect is, particularly in the case of small countries, even emphasised as the large amounts of coins are requested for export for collector market.

Nevertheless, Maltese public bodies had to take these characteristics into consideration when preparing for the changeover, also within the legal acts.

Thus the dual circulation was set to be one month to be able to withdraw all the cash (in former national currency) from circulation, although in the end it was shown that such long period was not even necessary⁸². Besides long dual circulation period, the CBM also encouraged the public to deposit excess cash at the bank as from 1 December. Simultaneously,

80 NECC, *Final master plan for the euro changeover in Malta*, 2007, p 16

81 COM (2008) 204

82 Ibid.

the banks undertook to exchange Maltese lira free of charge, and the Cash Registration Scheme was introduced, all to tackle the excessive cash from circulation.

There is quite an interesting difference between the participation of the local authority bodies in the preparatory work for the euro introduction. In Slovakia, these are included in legal preparations, in their competence (reviewing, reporting and amending regulations according to the schedules prepared by ministries and other central government bodies).⁸³ On the other hand, due to Malta's small area Maltese local authority bodies are not included in the legal process of the euro introduction, as they do not have competence to issue any legal regulations.

There was quite a difference in the process of meeting the criteria to adopt the euro, especially concerning ERM II. Since Maltese lira was never a floating currency but was pegged to a currency basket (right before the euro adoption, the basket consisted of the euro by 70 percent, the British Pound by 20 percent and the American dollar by 10 percent).

Even as early as pre-accession economic program, Malta committed itself to join Exchange Rate Mechanism (ERM) II and adopt the euro as soon as economic convergence allowed it. Furthermore, it felt that the Maltese lira should not remain in ERM II for more than two years, and that in this time it should fluctuate within a narrow band.⁸⁴ The Maltese Government eventually decided to enter ERM II on 2 May 2005, under conditions that allow the lira to fluctuate within the wide band of +/- 15% . Nevertheless, the Government and CBM unilaterally committed themselves to maintaining a 100% hard peg to the euro (1€=Lm 0.429300) from the date of ERM II entry and until the date that the decision for Malta's derogation was lifted in order to retain the stability and other benefits of a fixed exchange rate regime. Thus the situation was much simpler in case of Malta, as unilateral hard peg set by Maltese authorities meant that the Maltese lira did not fluctuate, but remained at the ERM II central parity rate as was set. Re-shuffling in the pegging system from three currency basket to a single currency caused even stronger incentive to adopt euro for Malta. The ECOFIN Council subsequently determined that such rate becomes the official fixed and irreversible

83 SLOVAK GOVERNMENT, *National Euro Changeover Plan for the Slovak Republic*, 2008, p 44

84 EUROPEAN COMMISSION, Enlargement Papers No. 20, *Pre-accession economic programmes of acceding and other candidate countries: overview and assessment*, November 2003

conversion rate to the euro.⁸⁵ In connection, when Maltese law⁸⁶ made a legal requirement to implement mandatory dual display once the irrevocably fixed conversion rate was set, it could be followed a day after such rate was fixed⁸⁷.

In contrast to Slovakia, where conversion rate could not be anticipated with such an ease, as its currency was always a floating one, even within the ERM II (in wide band of +/- 15%). Actually the revaluation in the setting of the central parity took place not once, but twice during the participation of Slovak crown in the ERM II. Due to this uncertainty on the conversion rate, the the mandatory dual display of prices started with time shift after fixing the conversion rate⁸⁸.

○ Slovakia

Since the 1990s Slovakia perused reforms to open up its economy. As a post socialist country its reforms were inevitable although the decision to adopt euro helped to speed up the process. Introduction of flat tax system, Second and third pillar pension funds, price deregulation, restructuring, privatization, and other reforms enabled the fulfilment of 'Maastricht criteria', which in the end were met with sufficient margins.

Slovakia has one of the fastest growing economies (having the strong car industry) which together with the growing productivity of work and competitiveness on the market allows real convergence with European level. Due to Slovak population composition, a special attention had to be taken regarding minorities (Hungarian, Romany) when drafting law, although there is just one official language. When compared to Malta having two official languages (Maltese, English). Special care to vulnerable groups was a commonplace in both MSs.

The preparations for euro changeover in Slovakia started very early, just as was the case with Malta. On 16 July 2003 the Government of the SR approved the Strategy for Adopting the Euro in the Slovak Republic aiming to adopt the euro in 2008, in 2004 the date was specified to 2009 after the Government and the NBS joint declaration stating that the benefits

85 BONNICL, *The law of the Euro: Constitutive, Institutional and external aspects*, Central bank of Malta, Valletta, 2008, p.15

86 L.N. 4 of 2007 adopted under Maltese 'umbrella law'

87 Council Regulation (EC) No 1134/2007 of 10 July 2007 amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Malta

88 Council Regulation (EC) No 694/2008 of 8 July 2008 amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Slovakia

of introducing the euro in Slovakia clearly outweigh the disadvantages. And the soonest possible date was endeavoured after.

When compared to Malta, where the only currency changeover in recent history that is comparable with the changeover to the euro is the one in 1971, in Slovak modern monetary history the succession happened twice, under democratic circumstances. But while the change from the British to Maltese Pound happened gradually, with many years of overlapping coinage or legal tender status, In Slovakia the first monetary separation of Czechoslovak crown from Austro – Hungarian crown in 1919 happened very suddenly and under strict rules, and second monetary separation of Slovak crown from Czechoslovak crown in 1993 was also exercised under precise rules without any overlapping usage as was the case in Malta. It can be deduced that in Slovakia the experience of recent changeover in 1993 helped public bodies, retailers and broad public to cope easier with the euro changeover.

○ **5.3. Legal Challenges in the process of introducing of the euro**

The data from Table 2 in Annex to this thesis illustrate in an organised matter the simple comparison of the steps taken by both MSs. Relevant details there-from are elaborated in this paper on the appropriate place.

The euro was introduced in Malta and Slovakia by a decision of the EU Council.⁸⁹ Thereby the Council Regulations on the introduction of the euro, on certain provisions concerning the introduction of the euro and on conversion rates became effective without need of transposing these regulations into the national legal systems. Nevertheless, it will be necessary to harmonize existing regulations with these and other legal acts of the EC and regulate the fields not addressed by the Community laws.

The first task for every MS in the process of introduction of the euro is to identify those legal elements of euro changeover that are already in place through a screening of European legislation. The European body of law is quite exhaustive with regards to the adoption of the euro. Besides directly applicable European law, there are also other instruments ensuring a

⁸⁹ Council Decision of 10 July 2007 in accordance with Article 122(2) of the Treaty on the adoption by Malta of the single currency on 1 January 2008 (2007/504/EC)
Council Decision of 8 July 2008 in accordance with Article 122(2) of the Treaty on the adoption by Slovakia

harmonised approach across the euro area.

Secondly, every MS identifies the aspects not covered by European legislation which have to be provided for through local regulation, as a complement to European law (some are even encouraged by European law) or for individual MS' reasons. Moreover, each of the joining States had to have its laws analysed and deemed compatible with EMU law as a prerequisite for entry, achieving a legal convergence. Therefore, there remains less to be done than in the case of the first – wave countries, although some amendments are necessary (e.g. the central bank legislation).

After a review of its own legislation, and familiarization with the experience gained by euro area countries as well as by the 'pre-ins' (on how to deal with these legal problems) MS decides for a legal strategy in the euro adoption process. A detailed schedule of legal steps on the path towards the euro should be adopted as early as possible (at least one year in advance⁹⁰) to assure the legal certainty. Besides that, it also helps to avoid the challenge of not having the legal preparations completed in time, as was faced by Cyprus and Slovenia.

Both, Malta and Slovakia, have favoured the enactment of enabling legislation that fulfils the function of an 'umbrella law' to regulate all aspects related to the euro changeover (just as was the case also with other NMS adopting euro). Relevant bodies in cooperation (including NCB) draft a bill, the Euro Adoption Act, which is submitted to the ECB, requiring its opinion (as it is an obligatory to do under the EC law). Eventual amendments are carried out accordingly. After approval by national authorities, the law is brought into force in advance before the actual euro introduction.

● 5.3.1. 'Umbrella laws'

The purpose of the 'umbrella law' is also to support an orderly transition in the currency changeover, ensuring legal clarity and legal certainty. The currency transition should be homogeneous, transparent, and the necessary information thereon should be easily obtainable. The Euro Adoption Act underpins the framework necessary for the preparatory phase of the euro changeover and the needed legal support for when the euro is adopted.

of the single currency on 1 January 2009 (2008/608/EC)

90 SCERRI, *A comparative analysis of the euro changeover process in the new Member states Best Practices in implementing a smooth Euro changeover process*, Master of Arts in European studies, European Centre of

The approach of particular states as to what should be the content of such law is different though. In Slovakia, it covers a number of areas related to the euro changeover process and it is quite detailed compared to very brief Maltese version.

Interestingly, that both MSs, Malta and Slovakia, (as also other Cyprus, Slovenia) did repeat in their 'umbrella laws' some provisions and definitions from European law although it is considered inappropriate in case of regulations and primary law (details below). The national law should include only those issues relating to the introduction of the euro that are not regulated by Community legislation.⁹¹ Such a repetition is in a benefit of general public, as all the basic information/provisions are spelled out in one source making the comprehension easier.

○ Slovakia

In Slovakia, the legal problems related to euro adoption were divided into three main categories.⁹² This enabled a very efficient and organised legal preparations.

Legislative problems of general nature are solved by the 'umbrella law'⁹³, containing the first (most important) category of legal issues. It contains provisions on monetary succession of Slovak crown with euro, sets up integral, structured and transparent process of introduction of euro, with details on rules for conversion, rounding, dual pricing. Its authorizing provisions secure proper supervision and inspection through monitoring and checks. In addition, the 'umbrella law' contains further articles regulating other laws belonging to the first group of laws (of general nature).

Second category of needed legislative changes is not of such a generic nature and so closely connected with euro adoption process on its own but still this narrower group of laws had to be amended prior to the euro introduction date with coming into force from the day of entry into euro zone as it deeply affects by the euro changeover, or ensures legal certainty and the smooth changeover. This category includes acts and other legal regulation, the major part of which comprises amounts stated in Slovak crowns, a significant part of these regulations

Documentation and Research, University of Malta, 2008, p.72

91 And if, in spite it is still intended to reproduce such primary and secondary Community law provisions, they should be reproduced precisely without modifying their wording.

92 BALKO, *Než k nám príde euro*, EPOS, Bratislava, 2006, p.152-157

93 Act No. 659/2007 of 28 November 2007 on the introduction of the euro currency in the Slovak Republic

are from the field of financial law, though also codices such as the Criminal Code with regard to the imposition of financial fines, or the Commercial Code. Amendments were also important in regulations governing social and labour relations, the Labour Code or the Act on Travel Fares. All such legal regulations need to be identified and then according to pre-set time schedule amended or adopted. Subordinate legislation ensuring legal certainty and a smooth transition to the euro was also amended in this group of laws. Legal regulations from this group was submitted in groups of acts regulating the individual fields. It was expected that in some cases second and third group of legal regulations can amalgamate.

Euro changeover will have a large impact on many legal regulations, but some of them will be affected only marginally thus it is not essential to amend them immediately. These regulations are forming the third category of regulations. A large group of these laws (including secondary legislation (regulations or decrees issued by the government, central government, local government units) contain only a small part of provisions with references to former national currency. It was not be necessary, nor possible, to amend all these regulations prior to the date of euro introduction. Thus the issues brought up by these regulations were solved by the general provisions of the umbrella law. Regulations in the third group are to be amended gradually, on an ongoing basis from the date of introduction of the euro onwards, within the scope of their amendments as their need arises independently of euro adoption. This group of regulations will include also legal regulations of lower power (government regulation, decrees, edicts and measures of ministries and other central government bodies and NBS, and legal regulations issued at the local level).

A Timetable of Legislative Steps for euro introduction in the Slovak Republic⁹⁴ was approved by Resolution of the Government of the Slovak Republic No 1040/2005 and these legislative steps were further specified in the Plan of Legislative Tasks of the Government of the Slovak Republic for the year 2008⁹⁵.

It is in place here to give a short overview of the structure of the act ('umbrella law'):

Act No. 659/2007 Coll. of 28 November 2007 on the introduction of the euro currency in

94 SLOVAK GOVERNMENT, *National Euro Changeover Plan for the Slovak Republic*, 2008, p 19-20, 60-63

95 according to Resolution of the Government of the Slovak Republic No 6 of 9 January 2008.

the Slovak Republic:⁹⁶

- Section I:
 - 1 Introductory provisions
 - 2 giving legal interpretations of certain terms related to the euro adoption, stating applicable principles and rules for the whole process of changeover (e.g. a provision on the replacement of the Slovak currency by the euro)
 - 3 Cash circulation
 - 4 regulates dual cash circulation, the exchange, use and protection of Slovak banknotes and coins.
 - 5 Non-cash transactions and payment system,
 - 6 including conversion and transfers of funds.
 - 7 Procedure for the re-denomination of asset values and monetary amounts and the continuity of legal relations,
 - 8 including re-denomination of the nominal value of share capital and of securities, and conversion of monetary data for special purposes.
 - 9 Reference interest rates, exchange rates and indexes
 - 10 Dual display
 - 11 Supervision of compliance with rules and obligations concerning the preparations for the changeover and the changeover to the euro,
 - 12 determining supervisory authorities, corrective measures and sanctions applied by them, cooperation provided to supervisory authorities and procedural measures.
 - 13 Common, transitional and final provisions,
 - 14 including repealing provisions
- The following sections (II to XXX) contain the amendments of legislation (29 acts) most relevant to euro introduction:

the NBS Act,⁹⁷ Act on the Supreme Audit Office of the Slovak Republic,⁹⁸ the Commercial Code,⁹⁹ Act on financial market supervision, the Securities Act, Act on bonds, Act on bills of exchange and cheques, Act . 191/1950 Coll. on bills of exchange and cheques, Act on building savings, Act on deposit, Act on the payment

96 as amended by section IX of Act No. 70/2008 Coll., section IV of Act No. 270/2008 Coll. and section IV of Act No. 397/2008 Coll. and section II of Act No. 421/2008 Coll

97 Act of the National Council of the Slovak Republic No. 566/1992 Coll. on the National Bank of Slovakia

98 Act of the National Council of the Slovak Republic No. 39/1993 Coll. on the Supreme Audit Office of the Slovak Republic

99 Act No. 513/1991 Coll., the Commercial Code

system, the Foreign Exchange Act on misdemeanours, Act on retirement pension saving, Act on supplementary pension saving, Act on social insurance, Act on income compensation during temporary work incapability of the employee, Act on gambling games, Act on the Commercial Register, Act on prices, Act on consumer credit, Act on the Slovak Trade Inspectorate, Act on state symbols of the Slovak Republic and on their use, Act on state aid, Act on state material reserves, Act on Export-Import Bank of the Slovak Republic, Act on postal services, Act on the State Treasury, Act on regulation of property relationships and settlement of possessory interests in cooperatives.

- The last section XXXI specifies that the Act enters into force on 1 January 08, except for some enumerated articles which come into force on the date of the introduction of the euro.

As regards amendments to 26 other laws to prepare for the introduction of the euro in Slovakia, it was mostly the issue of denomination of amounts in legal instruments. Since the MS retains national currency until the entry into force of the Council decision abrogating the derogation under Article 122(2) of the Treaty, accordingly the entry into force of national law provisions introducing amounts in euro that replace the national currency should not take place prior to it¹⁰⁰.

The Slovak Euro Adoption Act makes euro the legal tender based on EU decisions, sets rules for accounting and rounding, dual display, dual circulation, states the conversion principles in all areas, regulates consumer protection with highlighting price neutrality and includes also supervision and sanctions.

The ECB¹⁰¹ found a number of problems with the bill of this Act.

There were provisions repeating some provisions of Community regulations in the draft law on the introduction of the euro. In the light of the Treaty (Article 249) and case law¹⁰², a Community regulation nor primary Community law does not need to be transposed into the domestic law of a MS.

As regards the draft law amending Law No 566/1992 on NBS, besides the proper integration of NBS into the Eurosystem, it was also the Article 17a of the draft amendments to the NBS Law (general provision on legal tender, as remaining in force after the introduction of

100 Saving some exemptions

101 Opinion of the ECB of 19 December 2007 at the request of the Slovak Ministry of Finance on a draft law on the introduction of the euro in Slovakia and on amendments to certain laws, CON/2007/43

102 Case 34/73 *Fratelli Variola S.p.A v Amministrazione italiana delle Finanze* [1973] ECR 981

the euro), as not only it deals with the status of euro banknotes as legal tender¹⁰³ which in the light of directly applicable Article 10 of Regulation (EC) No 974/98 is unnecessary¹⁰⁴, but is also extends the scope of the entities to accept euro coins without restrictions to a scale that is questionable in the ECB's opinion and above that actually limited by virtue of the direct application of Article 11 of the Regulation (EC) No 974/98.

For comparison, it is in place here to give a short view on the Maltese and European law concerning these matters:

The euro is also defined in Maltese law.¹⁰⁵ However, since Regulation 1103/97 (containing the definition of the 'euro') is directly effective in all MSs, any definition within Maltese law is redundant and without legal effect and has been such since the date of Malta's EU accession.

Maltese law does not define legal tender, although prior to euro adoption, the CBM was given the sole right to issue it.¹⁰⁶ The notion of legal tender is always subordinate to freedom of contract, which clearly includes usages of trade¹⁰⁷ therefore, Maltese law leaves it up to such evolving usage or express agreement to govern this manner. Legal tender in Article 106 of TEC: "The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community". Coins are made legal tender by virtue of Article 11 of Regulation 974/98. The governance of what is legal tender is passed over to Community law, which allows a period of dual circulation. The only limitation for the tender of cash is contained in above mentioned Article 11, limiting under certain conditions acceptance of more than 50 coins in any single payment. Above this, it is up to MS to set further rules for the acceptance or otherwise of amounts or payment methods. Thus in Malta other payments than the case limited by Community law (as the creditor is given a right to refuse such payment by EU law) continue to be subject to Articles 1173 and 1174 of the Civil Code.

103 Several EU MSs which have introduced the euro currency have an umbrella (general) law on measures relating to the introduction of the euro as the legal tender in these MSs, while some other EU MSs do not.

104 If the Slovak authorities still intend to refer to the euro banknotes, a clear reference should be made to Article 10 of the Regulation No 974/98

105 Amongst others in the Companies Act, Cap. 386 of the Laws of Malta

106 Central Bank of Malta Act, supra note 26, as in force before January 2008, articles 42 and 43

107 MANN, SMITHS

○ **Malta**

The Euro Adoption Act, to provide for measures connected with and ancillary to the adoption of the euro as the currency unit of Malta, Act X of 29 September 2006¹⁰⁸, Chapter 485 of Laws of Malta.

- Part I: Preliminary,
giving legal interpretations of certain terms related to the euro adoption but when compared to Slovak equivalent of explanatory provisions here it is much more brief, stating just very few necessary concepts.
- Part II: Powers of the Minister (details below).

Malta chose to adopt a different approach than Slovakia or even Slovenia and Cyprus (from NMS), as all these have favoured more detailed regulation in their Euro Adoption Acts. Although some states decided to exclude certain aspects from the 'umbrella law' and regulate them through a separate act, e.g. dual display in Slovenia.

Maltese 'umbrella law' is a very short one (in contrast with Maltese changeover plan being very detailed). The Act focused on underpinning only the necessary framework for the adoption of euro, allowing the Minister to prescribe by means of secondary legislation, a whole range of measures considered fundamental for the changeover. The Act vests power in the Minister responsible for Finance to make regulations (some of which involve the transposition of guidelines established by NECC) for facilitating the adoption of the euro, namely:

- to prescribe periods of compulsory dual pricing,
- to regulate conversion of amounts before euro adoption and the display of prices in that period,
- to limit or prohibit the imposition of charges for converting Maltese lira into euro,
- to prescribe methodologies for the smoothing of converted amounts,
- to provide for conversion of value of shares and equity securities in companies and other legal persons into euro,
- to comply with various acts of the European Union in respect of the euro currency,
- to implement international obligations arising out of adoption,
- to prescribe sanctions of an administrative nature of up to a maximum (minimum

108 as amended by Legal Notice 427 of 2007

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amount being also set) of Lm 10 000 (in the Act, the amount is stated in euro) and/or revocation of a trading licence for up to 15 days for violations of the Act or legislation under it,

- or to provide any other matter related to the implementation, regulation or supervision of euro adoption.

Of note are also delegated powers of the Minister of Finance to amend legislation where monetary amounts are involved and to delegate authority on enforcement of the Act. Moreover, the Prime Minister is empowered to prescribe that any other law is amended to properly reflect the adoption of the euro and Malta's European and international obligations.

The ECB¹⁰⁹ found a number of problems with the bill of this Act. As the bill defined the euro and repeated certain provisions of the EU law which were directly applicable (including giving the Minister delegated power to prescribe when the euro became the currency and legal tender of Malta), the ECB felt that in light of jurisprudence of the ECJ¹¹⁰, such reproduction, especially but not only when it varied from EU law, could lead to confusion, doubts as to hierarchy of sources, or obfuscation of the nature of the provision. In the opinion, concern was also raised on the use of the term 'currency unit'. As defined in Regulation 974/98 concerning the transitional phase for the Euro-12, the 'euro' as currency of the MS and the 'euro unit' as one of the denominations of the euro along with 'national currency units'. While the term 'currency unit' has always been used in Maltese law to define Malta's currency¹¹¹, this nomenclature caused legal problems here. However, rather than following EU nomenclature, as the ECB insists, the euro should not be defined at all in Maltese law. The ECB also noted that the bill did not directly grant some of the powers it would be desirable for the Minister to have, in particular the power to demonetise the lira (which would be necessary if the dual-circulation period was shortened) or to make provisions relating to the logistics of the changeover.

The purpose of the delegation to the Minister of Finance of the power to issue regulations

109 Opinion of the ECB of 23 February 2006 at the request of the CBM on a draft law on the adoption of the euro, CON/2006/10

110 Case 34/73 [1973] ECR 981 and Case 50/76 [1977] ECR 137 are referred to in the ECB's opinion, but also see case 39/72 [1973] ECR 101 (non-identical reproduction) and Case 272/83 [1985] ECR 1057 (incorporation for the sake of coherence)

111 BONNICL, *Joining the euro: legal implications of Malta's adoption of the European Single currency*,

in this field is to shorten the procedure for the adoption of the euro and increased flexibility in updating the same regulations.¹¹² Subsidiary legislation had, in fact, been enacted under the Maltese Euro Adoption Act to regulate dual display, smoothing and cash changeover.¹¹³ Thus all the details are regulated by means other than the 'umbrella law'.

Such an approach taken by Malta stems from the Maltese legal traditions. Maltese Legal Notices, have a different role in a legal practice than Slovak secondary legislation. Moreover, the process of the euro introduction in Malta was also governed by a set of guidelines which served an important role as well. Throughout 2006 the NECC, after extensive consultation with all stakeholders (the NECC sub-committees and task forces, government and the general public), has published ten guidelines dealing with different areas of the euro changeover. Much of their content has been eventually incorporated into law. Including:

Guideline: NECC/0001/06 :Guidelines on the optional display of a price in euro,

Guideline: NECC/0001/06:*Linji Gwida dwar il-wiri mhux obbligatorju ta' prezzijiet bl-ewro,*

Guideline: NECC/0002/06:Guidelines for the conversion of past data related to the euro changeover process,

Guideline: NECC/0002/06:*Linji Gwida sabiex tigi konvertita informazzjoni ta' limghoddi li ghandha x'taqsam mal-process tal-bdil ghall-ewro,*

Guideline: NECC/0003/06:Guidelines on the usage of the term euro in the Maltese language,

Guideline: NECC/0004/06:Guidelines on the rounding and smoothing of Maltese lira amounts converted into euro,

Guideline: NECC/0004/06:*Linji gwida fuq il-bdil ta' ammonti f'liri Maltin ghall-ewro permezz ta' 'rounding' u 'smoothing',*

Guideline: NECC/0005/06:Dual Display Guidelines (Version 3),

Guideline: NECC/0006/06:Guidelines on the conversion of company share capital from Maltese lira into euro,

Guideline: NECC/0007/06:Guidelines on the redenomination and renominalisation of Maltese lira denominated listed financial instruments converted into euro.

Guideline: NECC/0008/06:Fair-pricing Agreements In Retailing (FAIR),

Guideline: NECC/0009/06:Guidelines for the filing of statutory financial returns and/or declarations,

Doctor of Laws LL.D. Faculty of laws at University of Malta, 2006, p. 62-63

112 ECB Opinion CON/2006/10

113 Euro Adoption (Dual Display and Euro Pricing) Regulations, 2007 (L.N. 4 of 2007), Malta, 9 January 2007,

Smoothing of Monetary Amounts Regulations, 2007 (L.N. 369 of 2007), Malta, 13 November 2007,

Cash Changeover Regulations, 2007 (L.N. 441 Of 2007), Malta 28 December 2007

Guideline: NECC/0010/06:Guidelines for the usage and validity of Maltese lira denominated stored value documents (including stamps),

Moreover, in 2007 the NECC published these further guidelines:

Guideline: NECC/0001/07:Guidelines on the undertaking of specific amendments to legislation and on the process of smoothing applicable to the Public Sector in view of the adoption of the euro,

Guidelines for Accountants: Tech/0002/07.

● 5.3.2. Some of subsidiary legislation under 'umbrella laws'

○ Malta

As the Euro Adoption Act in Malta is very brief, the secondary legislation was a “real” source of regulating rules.

The first subsidiary legislations enacted under the Euro Adoption Act was the L.N. 4 of 2007 regulating the dual display of prices, values and monetary amounts offered to a consumer and ensures fair practices in euro pricing and thus is mentioned in detail in chapter6.

L.N. 369 of 2007 is very concise. It regulates the conversion of values and monetary amounts of goods and services and states that smoothing is only permitted when such smoothing results in a monetary amount that is less than the equivalent monetary amount in Maltese lira prior to conversion. The Euro Observer (as established by L.N. 4 of 2007) may grant a concession, under certain terms and conditions, in case of exceptional circumstances motivated by technical constraints.

L.N. 441 of 2007 has its objective the provision of measures which ensure a smooth changeover of Maltese lira to the euro and the regulation of the services of credit institutions during the changeover period. It establishes the duration of the dual circulation period. L.N. 441 of 2007 makes it obligatory to give change in euro banknotes and coins only, when a person pays with Maltese lira notes and coins during the dual circulation period. In such case, the amount received inn Maltese cash is to be converted into euro and the amount in euro is to be deducted from this amount. L.N. 441 of 2007 also obliges credit institutions to exchange Maltese cash and convert account balances from Maltese lira into euro without charging fees. Other provisions on continuity of contracts and account balances are also included.

Government has also launched the Currency and Bank Deposits Registration Scheme (by

L.N. 112 of 2007). It provided individuals residing in Malta with a one-time opportunity to regularise their position in respect of their holdings of eligible assets in those cases where the associated income had not been declared for the purposes of the Income Tax Act. It facilitated also a gradual and orderly surrender of undeclared hoarded cash and its integration into the formal economy through the financial system. Eligible assets were currency notes denominated in Maltese lira and euro, and deposits in Maltese lira and euro, held with local banks where such assets represented income which was not declared for the purposes of the Income Tax Act.

Registration is possible through Appointed Registration Agents, which include banks, stockbrokers and investment services licence holders, as well as foreign exchange bureaux and other licensed financial institutions. In response to requests, it has been decided that registration of eligible assets may also be effected through the CBM. This Registration Scheme came into effect on 23 April 2007. A last-minute rush for registering with the CBM led the Finance Ministry to extend the registration scheme until 31 August (one month extension).

○ Slovakia

Despite the fact that Slovak 'umbrella law' is quite detailed and regulates all aspects relevant to the introduction of the euro. Despite, secondary legislation was still needed to support the legal framework of the Euro Adoption Act. Such as:

Decree on the details of the dual display in the field of consumer protection¹¹⁴,

Decree laying down rules for reporting, conversion and rounding amounts of money in connection with the changeover to the euro for accounting, tax and customs purposes¹¹⁵,

Decree establishing a range of prices, payments and other amounts subject to dual display in the area of gambling¹¹⁶,

Decree Slovakia laying down some rules for dual display of certain prices, payments and other assets for the financial services market and financial institutions in the field of banking, capital

114 Decree 97/2008 of Ministry of Economy of the Slovak Republic of 12 March 2008 on the details of the dual display in the field of consumer protection

115 Decree 75/2008 Ministry of Finance of the Slovak Republic of 27 February 2008 laying down rules for reporting, conversion and rounding amounts of money in connection with the changeover to the euro for accounting, tax and customs purposes

116 Decree 220/2008 of Ministry of Finance of the Slovak Republic of 21 May 2008 establishing a range of prices, payments and other amounts subject to dual display in the area of gambling

markets, insurance and pensions¹¹⁷,

Decree on rules and procedures for the conversion of the nominal value of paid in capital and nominal capital of the Slovak currency to euro¹¹⁸,

Decree which determines the number of decimal places for rounding in the conversion of nominal value of certain securities from the Slovak currency to euro¹¹⁹,

Decree revising the procedures, methods and more detailed rules for dual display and calculations, rounding and reporting of financial data in the transition to the euro in the field of public health¹²⁰,

Decree laying down further detailed rules for dual display and calculations and rounding of prices, unit prices, payments and other values in the transition from the Slovak currency to the euro for the wages, salaries and other remuneration for the work area travel expenses, service sector employment, the area of social insurance and retirement retirement savings, social benefits, social assistance benefits, assistance in material need and other social support and social services¹²¹,

Decree laying down further detailed rules for dual display, calculations and rounding of payments and other values in the transition from the Slovak currency to the euro in the field of social security of officers and professional soldiers¹²²,

As a lot of these secondary acts have connection with the consumer protection, thus some of their content is mentioned in chapter 6.

● 5.3.3. Other legislation to facilitate for the euro changeover

○ Malta

The Income Tax Act¹²³, including subsidiary legislation¹²⁴ enacted under it, allows certain persons (who carry out a trade, business, profession or vocation and is registered under the

117 Decree 221 of NBS of 10 June 2008 laying down some rules for dual display of certain prices, payments and other assets for the financial services market and financial institutions in the field of banking, capital markets, insurance and pensions

118 Decree 246/2008 of Ministry of Justice of the Slovak Republic of 18 June 2008 on rules and procedures for the conversion of the nominal value of paid in capital and nominal capital of the Slovak currency to euro.

119 Decree 240/2008 of NBS of 24 June 2008 which determines the number of decimal places for rounding in the conversion of nominal value of certain securities from the Slovak currency to euro

120 Decree 247 of Ministry of Health of the Slovak Republic of 25 June 2008 revising the procedures, methods and more detailed rules for dual display and calculations, rounding and reporting of financial data in the transition to the euro in the field of public health

121 Decree 251/2008 of Ministry of Labor, Social Affairs and Family of the Slovak Republic of 14 May 2008 laying down further detailed rules for dual display and calculations and rounding of prices, unit prices, payments and other values in the transition from the Slovak currency to the euro for the wages, salaries and other remuneration for the work area, travel expenses, service sector employment, the area of social insurance and retirement retirement savings, social benefits, social assistance benefits, assistance in material need and other social support and social services

122 Decree 265/2008 of Ministry of Interior of the Slovak Republic of 11 June 2008 laying down further detailed rules for dual display, calculations and rounding of payments and other values in the transition from the Slovak currency to the euro in the field of social security of officers and professional soldiers

123 Income Tax Act (CAP. 123), Malta, 1 January 1949

124 Deductions (Euro Related Expenditure) Rules, 2007 (L.N. 93 of 2007), Malta, 5 April 2007

5 Legal path towards the euro - Malta and Slovakia

Value Added Tax Act, if his economic activity requires that he is registered) who incur expenditure (in purchasing, installing, modifying or enhancing any equipment between the 1st January 2006 and the 31 December 2007) to enable the proper discharge of the business in euro currency as from the date of the introduction of the euro, to deduct costs (an equivalent of two hundred % of the cost, excluding VAT) against the said person's income chargeable to tax. (Such expenditure may include the purchase of a new cash register, weighing scales, and indeed any purchases or modification costs associated with any device that store monetary values electronically, which however shall be notified to the commissioner of VAT in order to be eligible for the deduction.)

In short, it is a 200% tax deduction on electronic means purchased or modified due to euro changeover, thus establishing a special tax incentive in connection with the euro introduction.

○ Slovakia

In Slovakia, the legal regulation of costs of the euro introduction is similar. Since not only that legal persons and entrepreneurs are to prepare and implement the measures, rules and procedures securing the smooth changeover to the euro as regards their activities (though public support is given), but each person responsible for its organizational preparation for the euro changeover and bear its own costs and expenses related to the introduction of the euro. (e.g. Germany made legal provisions for the compensation to the banks for the conversion costs they encountered when exchanging for free.) Above that, these costs and expenses may not constitute a reason for raising prices or for requiring special fees and charges. This applies unless otherwise provided by a separate act, which in Slovakia is Income Tax Act¹²⁵ stating that the costs incurred because of the changeover are tax deductible items in accordance with the accounting for purposes of quantifying tax base and are subject to generally applicable provisions of the tax costs. (As tax costs in general, a sufficient causal connection with taxable earnings needs to be shown.) Such regulation includes also the limitation, that if the costs of euro introduction were associated with activities that are generally limited to tax, as costs for equipment to meet the needs of employees (corporate chalet, sauna, etc.) then the cost of introducing the euro should also be fiscally limited.

Thus when compared to Maltese regulation, in Slovakia persons having costs associated

125 Act No 595/2003 as amended by Act No. 465/2008

with the euro introduction are not awarded such special care.

● 5.3.4. Denomination of amounts in legal instruments

Each NMS has to decide on whether to rely on EC law for those pieces of legislation with monetary amounts or amend some or all legislation (e.g. Slovenia, or Cyprus reviewed just some major Acts containing references to former national currency and regarding the rest of the acts with such amounts they relied on Council Regulation (EC) 974/98) which automatically converts monetary amounts in the national legal acts at the rates fixed by the EC law.

○ Malta

Unlike Slovenia, Cyprus or Slovakia, Malta decided to carry out the necessary legal work to ensure that amendments to all legislation where references to Maltese lira (including those not falling within the remit of specific government organisations) were reviewed accordingly. Malta's approach is more user-friendly but requires more time and resources.

A procedural framework for the undertaking of the legal amendments required was established and structured¹²⁶:

- 1 guidelines on the undertaking of specific amendments to legislation and on the process of smoothing applicable to the public sector in view of the adoption of the euro were published in April 2007¹²⁷;
- 2 ministries/entities that required some element of smoothing of amounts (always in favour of the consumer) were requested to submit applications for the purpose to Ministry of Finance to seek approval or otherwise which is to be communicated to them by end of July 2007;
- 3 the Translations and Law Drafting Unit within the Ministry of Justice and Home Affairs reviewed and identified all provisions in legislation that needed to be amended. The conversion of Maltese lira amounts into euro was done at the exact conversion rate unless requests for smoothing had been approved; and
- 4 once data had been converted and verified, the amendments were published in batches of legal notices throughout December 2007 and the legal texts on the on-line

126 NECC, *Final master plan for the euro changeover in Malta*, 2007, p.49

127 NECC Guideline NECC/0001/07

legislation Website were amended on 1 January 2008.

Consequently, a series of legal notices have been enacted under the Euro Adoption Act with the aim of amending the Chapters of the Laws of Malta which made reference to the Maltese lira.¹²⁸

In comparison, when implementing the euro changeover, all the first wave countries included in their national laws a delegated power, usually to a Minister (or drafting committee or other council) to re-denominate all amounts in primary and secondary legislation by a simplified procedure, involving simply the publication of documents legally akin to the Maltese Legal Notice.

○ Slovakia

As in Slovakia, the legal problems related to euro adoption were divided into three main categories,¹²⁹ by their importance, such a schedule also determined if and when the amounts expressed in the former national currency will be denominated into the amounts in euro.

Laws from the first category had the priority with changing their content, although they contained only the minimum provisions in the Slovak crowns, as the main reason to amend these laws was different. Second category laws came into force from the day of entry into euro zone as well but their amendments were of lower-class urgency. This category includes acts and other legal regulation containing many provisions with the amounts are expressed in Slovak crowns (mostly financial law, but also criminal, commercial, employment law etc.) were to be amended.

The third category of laws which include a variety of different instruments, were to be amended as the need arises independently of the euro introduction, and until then the provisions of the umbrella law relate to this group of laws, also in terms of references to the amounts stated in Slovak crowns.

In the case of Slovakia, when compared to Maltese legal solution, it was not possible to identify and amend all the laws with the amounts expressed in Slovak crown. That is why the laws were divided into three categories, so that legal problems could be solved in the organised manner according to their importance and workload of the amendments of laws

¹²⁸ Each 50 chapters of Laws of Malta (having 492 chapters) were amended by one legal notice, namely L.N. 407-411, and L.N. 423-427

containing the amounts expressed in former national currency could be distributed even in the terms of time.

In comparison, the Austrians did not provide any rounding rules further to EU legislation, and relied completely on those in the euro Regulations until laws were individually changed. Greece, before the cash changeover date, converted all legal penalties and fines with heavier rounding to smooth amounts.

● **5.3.5. Harmonisation of National Legislation regarding the NCB**

In order to ensure the harmonisation with the ECB, Malta and Slovakia (as also other NMS adopting the euro) had to amend the legislation governing their central banks. As already mentioned, in Slovakia it was the 'umbrella law' that provided for such changes. In Malta, on the other hand, the separate act was adopted.¹³⁰

In the beginning of their path towards the euro, Malta and Slovakia similarly were not meeting legal (incompatible with Article 109 of the Treaty and the ESCB/ECB Statute above other issues) nor nominal convergence criteria. Both addressed all the incompatibilities highlighted in convergence reports in their amendments to the acts regulating central banks but also other legislation. Both MSs needed to make adaptations for proper integration into the ESCB (including the objectives of central banks and their independence, the confidentiality and their obligation to act in accordance with ECB's legal acts and instruments.), to recognise exclusive power of ECB to authorise issuance of banknotes and approve the volume of issuance of coins and its powers in the field monetary policy, foreign reserves management, exchange rate policy, etc. Also the provisions on financial reporting of CB and on operations in international cooperation (as NCB representation roles in international monetary institutions).

○ **Malta**

Since Maltese lira was never a floating currency but was always pegged, the original aim of CBM was to peg currency (to cushion between imports and exports with reserves). But in

129 BALKO, *Než k nám príde euro*, EPOS, Bratislava, 2006, p.152-157

130 An Act to amend the Central Bank of Malta Act, Cap. 204 and the External Transactions Act. Cap. 233: ACT No.1 of 2007 Malta, 2007

order to achieve legal convergence in the process of the introduction of the euro, this was changed in accordance with requirements of the ECB for every central bank to have its primary objective of price stability. The other requirement of the institutional independence of the central bank had to be met by amendments of The Public Contracts Regulations (subsidiary legislation) as it was incompatible with requirements on institutional and financial independence of the central bank stating that it must seek approval from Ministry of Finance even when issues related ESCB tasks. Thus L.N. 177 of 2005 has now exempted the CBM from the scope of the application of the Public Contracts Regulations.¹³¹

In order to assure the personal independence of the central bank, the old grounds for the dismissal of the Board members were repealed, excluding the governor and the deputy governor from being subject to the grounds for disqualification and resignation.

But directly prior to the euro changeover is the change of the Central bank of Malta Act (Cap 204) as amended by Act 1 of 2007 in order to integrate the CBM into the Euro system. All the issues raised in 2004 Convergence Report of the ECB and of the European Commission have been addressed. Amendments also reflect the recommendations laid down in the ECB Opinions and Council Decision 98/415/EC.

The price stability has remained the primary objective of CBM but the more evident distinction between the principal objective and the ECB tasks was drawn as upon joining the Euro system the competence for monetary policy formulation is transferred to Community level and CBM is just to implement such policy as directed. Thus obligation imposed by the TEC and the Statute of the ESCB and of the ECB have been incorporated in more detail. The amendments not only conform with various ECB Governing Council's Guidance Notes but also reflect the competence of the ECB in the appointment of external auditors. The appointment of auditors was amended, from Malta's Board of Directors with the Minister's approval, to recommendation by the ECB and approval by the EU Council.

The amended Act reflects the exclusive competence of the ECB to authorise the issue of the banknotes in the euro area. In addition, although the issue of the coins is not an ESCB competence, the right of the ECB to authorise the volume thereof is.

The Act no longer makes reference to the CBM prohibited activities, but such former

131 ECB, The Convergence Reports

provisions prohibiting to purchase, acquire or lease immovable property has been relocated to the CBM principal business and powers, in order to protect against external pressure on the CBM to invest in immovable property, thus safeguarding the CBM independence. And for where other laws make references to the Bank's discount and/or official interest rates, the Act, as amended, provides for the replacement of such rates by the Euro system's key reference rates.

The Act, in transitional provisions, caters for the procedure concerning the calling in and redemption of Maltese lira notes and coins. In addition, offences relating to the forgery, mutilation and defacement of the euro will also apply to the Maltese lira during the post euro adoption period.

○ Slovakia

There were similar legal problems that Slovakia was facing when harmonising its legislation, such as requirements on the central bank (independence, its aim or integration into ESCB, etc.). The Euro adoption Act amended Act No. 566/1992 on NBS in its Section II and modified in particular the provisions related to monetary policy, monetary policy instruments and issuance of banknotes and coins, and also to the regulations of provisions on transactions, financial management, accounting and other activities of NBS in a manner ensuring the compliance of the Act on NBS with the European Commission legislation on the legal framework for the single European currency and for central banks in the euro area.¹³²

The Convergence Report in 2004 required, in particular, the adaptation of Slovakia's Constitution, the Act on NBS, the Banking Act. Besides the need to integrate NBS into ESCB and other recognising the ECB power in relevant fields, it was also the amendment of provisions on appointment of auditors as by then it was the Supreme Control Office who appoints external auditors. Above that Slovakia was also incompatible with respect to the prohibition of monetary financing as regulated in the Act 118/1996 on the Protection of Bank Deposits. NBS should not be allowed (as stated in Article 101 of the TEC) to grant credit to the public sector (in particular Deposit Protection Fund) or banks to ensure not to bear financial costs to be born by state and which could put NBS financial independence at risk. Thus now only short-term loans and only in certain cases which comply with the Treaty and

132 NATIONAL BANK OF SLOVAKIA, *Annual report, 2007*, chapter 10

when it is secured by adequate collateral. Confusing provision on which entities are covered by the monetary financing prohibition was amended to cover also "bodies governed by public law".

In the Convergence report of a year prior to adoption of the euro in both MSs the national legislation was assessed as compatible (as provisions particularly on roles of NCB have been amended (on the monetary functions, operations and instruments of the ESCB, on the holding and managing of foreign reserves and in the right to authorise the issue of banknotes and the volume of coins). In this report the high degree of sustainable convergence was considered to be achieved as well as the convergence criteria fulfilment. With some provisions coming into force on the date the euro was introduced and some before this date.

○ 5.4. Commission Recommendation on the Organisation of the Euro Changeover

The general framework for the adoption of the single European currency is provided by European law which does not leave large scope for the MS to decide on key aspects of the changeover (such as choosing the scenario out of three options). And it is not a coincidence that application rules are drafted in the form of (directly applicable) regulations rather than in the form of directives. Their legal enforcement should then not be problematic within MS.¹³³

But there are certain sectors directly influencing the euro introduction in particular MSs where European law gives freedom to MS on how to regulate these issues. Thus, there are several legal problems that each MS has to deal with in order to facilitate for the smooth and quick changeover. As for every MS a different approach might be appropriate. Nevertheless, the instrument of a recommendation is used often by the EU to give a guideline on how to cope with such legal challenges. First three specialized texts were adopted in 1998 (on banking charges for the conversion, dual display of prices, dialogue and information). Eventually, one overarching recommendation on "measures to facilitate the preparation of economic operators for the changeover to the euro" was adopted in 2000¹³⁴, focused at the transitional period as it was inevitable step in the changeover process. However, there are currently other ('more appropriate') scenarios for NMS without such transitional period. Therefore, a need to address this new context persuaded the European Commission to issue a

¹³³ BROKELIND, *Discussion of some legal issues raised by the introduction of the euro*, CFE Working paper series no. 25, 1999, p. 6, from www.cfe.lu.se

new recommendation on the Organisation of the Euro Changeover.¹³⁵ It draws also from the experience acquired under the first-wave changeover in 2002, the Slovenian changeover in 2007 and the Cypriot and Maltese changeovers in 2008. It is addressed not only to MSs with a derogation, but even banks, enterprises, trade associations and consumers' organisations in these MSs.

The main novelties, compared to the previous recommendation from 2000, are:

- Clear indication of the duration of the dual display (from 6 months to 1 year after the introduction of the euro) and of the need to remove the dual display at the end of this period
- A significant frontloading of the banks and sub-frontloading of the retail sector with euro cash and of the citizens (for coins). Banks and shops should notably be encouraged to participate through financially attractive deferred debiting conditions.
- A delivery of small denomination banknotes for the cash withdrawals made at bank counters in the two weeks before and after the changeover.
- Opening of the main bank offices during the first days of the changeover and extended working hours during the changeover period in order to facilitate the exchange.
- A package of measures to prevent abuses and misperceptions about the evolution of prices (fair pricing agreements, close monitoring of prices, name and shame or fines in case of abuses ...).

This recommendation was adopted on 10 January 2008. Despite the absence of this recommendation in the time of the euro adoption in Malta, these matters are dealt with even in Maltese legislation, as the need to solve these problems was felt resulting from experience with passed changeovers (and previous recommendation).

As the recommendation is closely linked to the matter of consumer protection, the particular Articles of this recommendation (on facilitating the preparation of the citizens for the euro, ensuring a quick introduction of euro cash, preventing abusive practices and a wrong perception of the evolution of prices by the citizens) are elaborated in connection to this issue (in Chapter 6) respectively and together with actual measures taken by Malta (without having support of this recommendation) and Slovakia (taking the recommendation into the account).

134 Recommendation 2000/C 303/05 OJ C 303

135 Commission Recommendation on the Organisation of the Euro Changeover (2008/78/EC)

● 6 Protection of customers

Although euro changeover is not directly connected to price increases (as all amounts are converted in pre-set conversion rate and according to converting and rounding rules), both Member States, Malta and Slovakia, considered the protection of consumers to be a major aspect in the process of introducing euro as the most important concern of people is its possible inflationary impact (as results from Eurobarometer surveys).

For the smooth changeover process the general support to euro is needed. But there are few reasons for discontent with euro, from the view of general public. In is the issue of “felt” inflation. Despite the estimation of the statistics office of the European Union – Eurostat, that the cash conversion added between 0.12% and 0.29% to the inflation rate in the euro area in 2002, which was overall small in 2002 and negligible over the ten years of the euro.¹³⁶ The discrepancy between the “felt” inflation and the actual, statistically measured inflation, cannot be attributed to a measuring error in the consumer price statistics.

There are several explanations. Consumers pay more attention to price increase than decrease. And then they generalise the increase from just on sector to the whole economy. Some consumers compare euro prices with prices in the national currencies before the changeover, forgetting that prices tend to increase over longer period of time. This “frozen price memory” leads to distorted comparisons. It also needs to be taken into account that price increases may be caused by external factors (such as energy and food prices and indirect taxes) which are not at all related to the euro.

Although, in fact, some price increase is possible as result of implementation costs, menu costs etc. Some rises, due to rounding up to “psychological prices”, are offset with rounding down, in the same manner. And according to past experience with euro changeover other

136 Speech by JEAN-CLAUDE TRICHET, President of the ECB, on 12 February 2009, *Ten years of the euro: successes and challenges*, from <http://www.ecb.int/press/>

possible increases are suppressed by hardened competition. On the other hand, if general public misinterprets reasons for the euro changeover and thus is not supportive of euro, it might result in inflationary expectations which indeed may cause pressures to inflation (and even income rate) in the future.

To prevent this from happening, to build up trust and confidence among people, a strong consumer protection framework was introduced. Here, NMB have advantage, as they can learn from experience from passed changeovers. Governments should ensure the least possible disruption to prices caused by the euro adoption, thus concrete measures need to be taken¹³⁷ possibly after the consultation with consumer associations.

There are measures protecting consumers on European level, as detailed rules regarding conversion and rounding set by the Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro, which are of hard law nature. But other issues to protect consumers, such as the dual display of prices, monitoring of price development and observance of labelling, price stability agreements, so called 'Blacklist' of all operators insubstantially rising prices, informative campaign including information to public on process in case of incorrect approach and 'price watch' website so that total transparency is assured, etc. are not regulated by EU, and if so only by recommendations.¹³⁸ Thus MS should solve these problems with adopting such measures that smooth changeover is ensured. The detailed assessment of needed regulation must take place (as every MS has its own particularities). Proper implementation (supervision of obeying these rules including sanctions) depends not only on actual enforcements, but largely rest on complete legal solutions.

○ 6.1. Facilitating the preparation of the citizens for the euro

137 DĚDEK: *Přijetí eura neznamení automaticky zvýšení cen*, in *Budoucnost Evropy je v dialogu, Participative European citizenship*, Asociace pro mezinárodní otázky, Praha, 2008

138 e.g. Recommendation 98/288/EC of 23 April 1998 on dialogue, monitoring and information to facilitate the transition to the euro, OJ (1998) L 130, Commission Recommendation (EC) No. 98/287 of April 1998 concerning dual-display of prices and other monetary amounts, OJ (1998) L 130, Commission Recommendation on the Organisation of the Euro Changeover (2008/78/EC)

○ **Dual display of prices (dual pricing)**

Dual pricing means parallel display of amounts in national currency and euro, according to exact conversion rate. It helps customers to see clearly the value of particular good or service and get them used to amounts in euro. In connection with people's way of thinking in new currency, it is not only prices, as expenditures, but even income side (wages, subsidies etc.) that need to be expressed in both currencies.

Before the introduction of euro the amount displayed in euro is just an informative data. On the other hand, after the introduction, the amount in national currency is only informative. This helps quick and effective monitoring of prices thus controls and prevents possible misuses.

In order to enable monitoring with possible remedies and sanctions in cases of abuse, the law must empower certain bodies to have competence to do so, set obligations for businesses and other organisations to give access to relevant information, and give a right to consumer to file a proposal to investigation of potential abusive conduct.

The dual pricing system is an important aspect of preparation and information of general public for the smooth introduction of the euro (in opinions of some¹³⁹ is one of the most effective ways of combating inflationary pressures connected with currency changeover). Thus despite not being regulated by European hard law, the Commission has issued a Recommendation on dual- display of prices,¹⁴⁰ which envisages dual display occurring during a transitional period, as was the case with the Euro-12, thus being insufficient for NMS. Although some (Italy, France) of the Euro-12 did not legislate at all on dual-display.¹⁴¹

New recommendation¹⁴² states that the national law should impose a compulsory dual display of prices and other monetary amounts to be paid, credited or debited starting from the official adoption of the conversion rate. And it should remain mandatory for a period of a minimum of six months and a maximum of one year after the introduction of the euro. After that only the euro should be displayed to allow the citizens to get fully accustomed to

139 ALLIX, *Consumers and the single currency: legal problems*, 1996

140 Commission Recommendation (EC) No. 98/287 of April 1998 concerning dual-display of prices and other monetary amounts, OJ (1998) L 130

141 BONNICL, *Joining the euro: legal implications of Malta's adoption of the European Single currency*, Doctor of Laws LL.D. Faculty of laws at University of Malta, 2006, p.69

142 Commission Recommendation on the Organisation of the Euro Changeover (2008/78/EC)

the new currency. On the other hand, before the conversion rate is irrevocably fixed, it is recommended for MS to discourage voluntary dual display. A separate display of any charges imposed by businesses for accepting payments in euro between the fixing of the conversion rate and the introduction of the euro should be made mandatory. And using a conversion rate other than the official conversion rate adopted by the Council should be prohibited.

Conversion rules (in Malta) became law on 1 January 2008, since individuals and traders may have to had to re-denominate contracts or display prices in euro before this day, to cover this period the NECC issued a recommendation¹⁴³ mirroring the provisions in EU law. But it was deemed necessary¹⁴⁴ to clearly indicate from when retailers shall accept payments in euro, clear distinctions between the currency unit a price is set in and the unit displayed only for information purposes, as well as agreements on possible standard formats for displays. For this purpose secondary legislation was adopted.

The aim of L.N. 4 of 2007 is to regulate the dual display of prices, values and monetary amounts offered to a consumer and to ensure fair practices in euro pricing. It establishes the euro observatory and lists out its functions, which include the administration of the FAIR initiative - 'Fair-pricing Agreements in Retailing' (also established by this legal notice). Both, the voluntary and mandatory dual display, are regulated here. The requirements of correct dual display lists out the cases which are exempted from mandatory dual display (such as transactions or services made between or rendered to organisations, interactive voice response systems, EPOS provided by commercial banks, and where the cost of modification is disproportionate to the benefits). It also states that concessions can be granted by the Euro Observatory in exceptional circumstances. Fiscal receipts generated by cash registers are also exempted, but if a tax incentive is offered for replacing the cash registers, such replaced cash registers should produce fiscal receipts with dual display. In most of the cases which are exempt, conversion tables are to be made available and prominently displayed to the consumer. L.N. 4 of 2007 includes also provisions (still in the context of the dual display) on the: conversion and rounding, FAIR initiative, vending machines, hand-written invoicing, banking services, insurance policies, mail order catalogues, public transport, taxis, gaming

143 NECC, Guidelines on the rounding and smoothing of Maltese lilla amounts converted into euro, Guideline:NECC/0004/06, 2006

144 BONNICL, *The law of the Euro: Constitutive, Institutional and external aspects*, Central bank of Malta, Valletta, 2008, p.17

services, fuel stations and financial statements. It also obliges those persons accepting payment in euro, both during the voluntary and mandatory dual display period, to apply the central parity rate without the addition of any charges.

In Slovakia, dual pricing was regulated by the 'umbrella law' and stated for mandatory display to begin at most one month after deciding on irrevocably fixed exchange rate. Dual pricing on voluntary basis took place even before, as part of transparency policy to assure correct approach to consumers, but not sooner as the date of fixing of the conversion rate. Slovak law regulates explicitly all means of dual display in peculiar sectors, in others the form is just suggested by the Euro Adoption Act. Other details on dual pricing, in particular on exemptions are stated in secondary legislation. Not only a decree of general nature¹⁴⁵, but also decrees on dual display for specific sectors (banking, social, gambling, insurance, health, certain securities, wages and salaries) were adopted by relevant Ministries, including a set of guidelines, to provide for details. Such a complex regulation provides for correct implementation of dual pricing.

Above this detailed information given on how to display (including guidelines and decrees for conversion and rounding), trainings, seminars and other assistance was given by MS.

Retailers selling a very large number of small items - grocers, for example, for who it would be very costly to comply with dual pricing obligation, were supplied conversion tables and calculators to be able to display conversion tables, as during the period of dual pricing the amounts must match exactly. Malta and Slovakia, both, supported retail sector by this means.

In Malta, the three-month "cooling-off" period to facilitate the phased dismantling of dual display, with eventual mono-display to enable consumers to fully accustom to new currency. In Slovakia, however, no deadline has been set for the end of voluntary dual display of prices of goods and services, despite the new European recommendation mentioning it. Although in Slovakia it is still time to adopt such regulation, as the mandatory display is still imposed at the time, and display on the voluntary bases is suggested to be kept till the end of June 2010. France, interestingly, did not set a cut off date for dual display as it did not legislate at

¹⁴⁵ Decree of Ministry of Economy of the Slovak Republic of 12 March 2008 on details of dual display in the field of consumer protection

all on dual-display. In fact, prices can and are still displayed in former national currency¹⁴⁶.

According to Article 3(2) of the Slovak 'umbrella law', during the dual circulation period entrepreneurs, legal persons, and public authorities were allowed to give change (when receiving payment in Slovak banknotes and coins) only in euro banknotes and coins, unless otherwise agreed with the recipient of the change. However, the abnormally large number of retailers giving the change in Slovak crowns on 1 and 2 January, also without an explicit consent of a customer. Thus the Slovak authorities and the Commission urged the retail sector to give the change exclusively in euro (controls of STI helped to improve the imposition). The proportion of cash transactions with change given in Slovak crown was close to zero on 7 January.¹⁴⁷

Malta, similarly to Slovakia, decided that any change given in transactions in sales outlets was mandatory in the euro only, as it should not cause any problems, provided that there is enough of cash in circulation. It is recommended for future changeovers to introduce a legal prohibition on the use of the legacy currency for giving change (with an exception for cases where it is materially impossible to use the euro) as it speeds up the changeover and thus reduce the burden put on retailers who have to handle two currencies simultaneously. Although, to avoid cash shortages in shops, the salaries and pensions are to be distributed primarily in small denomination banknotes (when paid in cash).

Rules on smoothing (and rounding) of the prices is another measure used by the legislator to protect consumers and are closely linked to the dual display.

Rounding (as conversion) rules for conversion from the national currency into the euro are set in minimum standard set by Regulation 1103/97 in order to ensure the continuity of contracts the neutral impact of the changeover. The rest is left for the national legislation to regulate the best way to achieve this aim.

Smoothing happens within the normal confines of law, as there is not EU legislation regulating it, nonetheless Maltese NECC recommendation suggested that smoothing should always favour the consumer and also stated that the Government would always follow this practice to set a good example. But law in Malta is restrictive in this manner, as the

146 BONNICL, *Joining the euro: legal implications of Malta's adoption of the European Single currency*, Doctor of Laws LL.D. Faculty of laws at University of Malta, 2006, p.69

147 COM(2009) 178 final

Smoothing of Monetary Amounts Regulations¹⁴⁸ lays down stricter rules for smoothing, generally disallowing smoothing disadvantageous to the consumer. Malta was the first country where smoothing up of prices upon conversion to the euro has been prohibited by law¹⁴⁹. Each consumer report of rounding of prices was immediately investigated. Shop owners and other operators (including many doctors and some car park owners) revised prices downwards following a NECC warning that they had unfairly hiked up fees or prices because of the euro. Few fines for unjustified price increases were imposed on businesses while most of the complaints proved to be unjustified. And as to 'Intermediate computations' though small possible differences, Maltese NECC published guidelines suggesting that not the individual amount but the sum that should be rounded.

Slovak law ('umbrella law' and decree 75/2008) does not oblige to round up the amounts after conversion but enables entrepreneurs to round up amounts differently than as according to conversion rate, if it is beneficial for consumers. Although the general 'umbrella' law provides for an exception in rounding of certain assets, setting it mandatory for the nominal values of certain equity shares, securities, deposits into equity or other assets to whole numbers or their multiples. The rounding of prices of goods and services are imposed to be made to the nearest eurocent, e.g. to two decimal digits. Under special circumstances determined by the Euro Adoption Act, rounding was made with even greater precision. Similarly to Malta, and according to European case law¹⁵⁰ it is the final amount that should be rounded, not the intermediate computation to provide for the most accurate final amount. The exemption in Slovakia is set for the retirement pensions and social benefits that are to be rounded up to nearest 10 cents. Such regulation is a part of Slovakia's 'no harm to the citizen' initiative.

A good practice was considered necessary also in the first wave countries, and in some

148 Smoothing of Monetary Amounts Regulations, 2007, L.N. 369 of 2007 under the Euro Adoption Act, Cap.485 of the Laws of Malta

149 According to the Maltese Euro Adoption Act (CAP.485), the smoothing of monetary amounts is only permitted when it results in a monetary amount in euro which is less than the equivalent monetary amount in Maltese lira prior to conversion. In the case of monetary amounts forming part of a continuum for the purpose of establishing threshold values, the conversion of such amounts into euro may, provided this is necessary, be smoothed to ensure continuity in the threshold values of neighbouring brackets to distinctly delimit the bracket in a threshold. Where exceptional circumstances motivated by technical constraints so dictate, and after an application is made to the Euro Observatory, a concession may be granted by the Euro Observatory allowing smoothing to take place in other manner, under such terms and conditions as the Euro Observatory may determine.

countries, as Belgium, they have decided to introduce double pricing and rounding the final price not to upside but to the low side of the figure.

In comparison, Finland legislated that (subject to agreement contrary by the parties) all payments were to be rounded to the closest multiple of 5 cents. It did not even issue any such coins although allowing for the legal tender status of 1 and 2 cent coins. Pricing displays were still allowed to be accurate to the cent.

In order to ease the burden on retail sector but also on consumers, Slovakia has been considering adoption of similar legislation on rounding and limiting the usage of 1 and 2 euro coins (even 5 cent have been proposed).

○ **Information**

Only a well informed consumer can be protected adequately. Thus campaign informing consumers of their benefits: more competitive market (due to price transparency), stable prices, easier, safer and cheaper borrowing, lower travel costs, more growth and jobs, more public investments, etc. Thus achieving public support for the euro. Both, private and public sector, must be aware of euro introduction process to make the necessary preparations and are able to carry out all their transactions in euro as from the date of its introduction.

Information on the changeover is the key to the success of the smooth changeover. Thus it should be given free of charge.

MS should monitor the preparation for the changeover to the euro, notably through regular surveys. Next to informative campaign and support on European level,¹⁵¹ MS should issue guidelines for relevant subjects. Training sessions should be organised by MS, credit institutions and enterprises, in order to familiarise the personnel working regularly with cash and those who have key role in the process of introduction itself, such as inspectors. State should established phone line and web page providing information and where public can citizens are well informed of the arrangements for the changeover to the euro, of the provisions for the protection of the euro banknotes and coins and of the security features of euro cash, and they should help citizens to learn the new scale of value. Member States should

150 C-19/03 *Verbraucher-Zentrale hamburg eV v O2 (Germany) GmbH & Co. OHG*, (2004) ECR I-8183
151 e.g. A guide for small and medium sized enterprises by the European Commission

set a means for public to address its complaints and queries.¹⁵²

The information drive should be maintained for some time after the euro introduction. In particular for vulnerable persons.

Slovakia achieved a very high level of public awareness (93 % informed). A separate body was established especially for the function of accepting complaints from public and giving advice and information regarding consumer protection in the field of euro introduction as regulated in The Euro Adoption Act. And possible disputes could be solved by several means, through mediation, or using intervention of consumer agencies, via court, or even extra-judicially.

○ 6.2. Ensuring a quick introduction of euro cash

Credit institutions and sales outlets should make use of the frontloading and sub-frontloading of euro banknotes and coins in the months before the changeover as foreseen by the European Central Bank.¹⁵³ The recommendation¹⁵⁴ gives guidelines to MS on technical and logistical support of the introduction of euro cash. Including even opening hours and the compulsory use of the euro as change in transactions in sales outlets from the first day of the changeover. MS should encourage certain behaviour on its territory and some should be made mandatory.

Slovak banks did not use the new simplified ECB rules for sub-frontloading adopted in June 2008¹⁵⁵. According to the NBS and the commercial banks, the new Guidelines came too late to be used in Slovakia since a large number of sub-frontloading contracts were already concluded by May 2008. Changing the rules during the process could have put enterprises on an unequal footing and it would have required substantial changes in the cash distribution plans.

In total, 27.8% of the value of frontloaded cash was distributed to businesses before the

152 Commission Recommendation on the Organisation of the Euro Changeover (2008/78/EC)

153 See Guideline of the European Central Bank of 14 July 2006 on certain preparations for the euro cash changeover and on frontloading and sub-frontloading of euro banknotes and coins outside the euro area (ECB/2006/9, OJ L 207, 28.7.2006, p. 39).

154 Commission Recommendation on the Organisation of the Euro Changeover (2008/78/EC)

155 ECB Guideline (ECB/2008/4) of 19 June 2008 amending Guideline ECB/2006/9 on certain preparations for the euro cash changeover and on frontloading and sub-frontloading of euro banknotes and coins outside the euro area.

date of the euro adoption.¹⁵⁶ When compared to Slovenia it was only 2.4% of the value of frontloaded cash while in both Cyprus and Malta it was only around 1%. Thus in Slovakia sub-frontloading process was more than satisfactory.

With a view not to spreading the exchanges of hoarded cash over a longer period of time, some commercial banks provided for exchanges of Slovak crowns cash against euro at the official conversion rate free of charge in the last weeks of 2008. Many banks also offered special products to attract new customers or to push their current clients to deposit the cash on a bank account.

As there was enough cash (sub)frontloaded on time, no problems with cash demand occurred in Slovakia. Although withdrawal of Slovak cash took a slightly slower pace than in Malta. Malta's commercial banks have committed themselves to accepting Euro notes deposited by business clients at the irrevocably fixed exchange rate without applying the foreign exchange charges as from 1 July 2007. For personal clients, the banks exchanged Maltese lira for Euro free of exchange charges from 1 December 2007 (not meaning that all charges were suspended at that point: transfer fees, for example, continued to be charged). Considering that Malta has a particularly high amount of cash in circulation, the CBM launched a TV and press advertising campaign, encouraging the public to deposit excess cash with banks, besides other measures taken in this regard (such as Cash registration Scheme) . And although sub-frontloading did not take place on such a large scale as in Slovakia but nevertheless Malta did not experience problems with the euro cash introduction.

○ **6.3. Preventing abusive practices and a wrong perception of the evolution of prices by the citizens**

The Recommendation¹⁵⁷ encourages retailers not to increase prices because of the changeover and trying to minimize price changes when setting the prices in euro after the conversion. Above that, in order to ensure a neutral impact of the euro introduction on prices, the agreements should be negotiated with the retail and services sector and their participation should be indicated by a visible, easily recognisable and much publicly advertised logo. Eventual close monitoring of the retailers' compliance with the commitments undertaken

156 COM(2009) 178 final

157 Commission Recommendation on the Organisation of the Euro Changeover (2008/78/EC)

under the agreements should be put in place (in cooperation with consumer associations) including dissuasive measures for cases of non-compliance, ranging from public disclosure of enterprise's name to possible fines for the most serious cases.

Close and frequent monitoring of the prices during the weeks following the adoption of the conversion rate until the end of the period of dual display of prices, together with weekly information on the evolution of prices, in particular, in time immediately before and after the changeover should be implemented by MS. And the same bank charges applicable to payment transactions in euro should be the same, after conversion.

○ Slovakia

The Slovak authorities have adopted a set of measures ranging from voluntary schemes to thorough price monitoring.

The logo of the 'Ethical Code' project binding its adherents to respect the rules of the changeover and not to abuse it for their own profit was used even by local and regional administrative bodies. Citizens could complain about incorrect behaviour of the Code's signatories in the Office of the Government Plenipotentiary for the euro, which investigated the complaints. The signatories breaching the Code would lose the sticker and be displayed on the 'Black list' of the Association of Slovak Consumers.

The implementation of obligatory dual display of prices is carefully monitored by the Slovak Trade Inspection (STI). Compared to the other countries that have recently adopted the euro, the Slovak respondents were among the most satisfied with the dual display.

The results by STI of the controls improved significantly over time. If, at the second round control, the STI identifies that there was no correction, the next step is to issue a warning and, eventually, to open an infringement procedure. In January and February 2009, 14 infringement procedures were opened and fines for 3 cases were imposed. Fines up to € 60 000 can be imposed for some serious breaches of the changeover rules (including obstructing the process of controls).

Apart from controls on its own initiative, the STI also made 'targeted' controls following complaints from citizens on an incorrect application of the rules of dual display or unusual increase of prices. In examination, the price changes were compared with long term trends,

prices of the same product in other shops and considered within the broader context (e.g. applicable prices of inputs, developments on world markets). In January and February 2009, the STI received 607 complaints (on the price increases only one proved to be justified).

Following the suggestions of the Commission, the STI regularly controlled prices in sectors where problems were identified during the previous changeovers (e.g. restaurants, hairdressers, cafes and car parks).

The controls of the STI are complemented by a price monitoring scheme („Blame and Shame”) by the Association of Slovak Consumers, which published a 'Black list' with retailers who increased their prices in the changeover period and could not provide a relevant explanation of the price change. Until mid-February, 12 businesses have been black listed (all of them are under scrutiny of the Trade Inspection).

Moreover, the developments of prices in all sectors of the economy were regularly examined by a special body created by the government- the Price Council. If this body reaches a conclusion that there was a 'speculative' increase of prices in some sector, it can propose to the government to regulate the price of a particular good or service.

Citizens are regularly informed about the results of the controls through media and are encouraged to contact the Trade Inspection or other consumer protection bodies if they observe irregularities.

As it comes to supervision, the development of price level begun to be published regularly from the beginning of 2008 until the end of mandatory dual pricing. The results of investigations were to be presented to relevant authorities including the government and eventually made public.

All the issues relevant to consumer protection in connection to euro changeover are regulated in the 'umbrella law', thus amendments of special laws were not necessary, which eased the burden on legal work and this way effective and clear legal solution was given. Such complex regulation also made it easier for the retail sector as it provided clear information and enough time to do all the preparations.

Some Slovak banks voluntarily backed off from imposing charges for deposits of cash, but after complaints from retailers on excessive banking charges for cash handling (thus storing

large amounts of the cash¹⁵⁸), the Act on Banks¹⁵⁹ was amended that the commercial banks have to accept euro cash for free if deposited on a bank account from 1 March until 31 August 2009 (the estimated time needed for retrieving the excessive euro cash from circulation, as was learnt in previous changeovers). It was a temporary solution, after dropping the proposal to legislate on the limits of the amounts of notes and coins to be deposited free of charge or limiting such deposits only to checking accounts. Adoption of such law was criticised by Slovak Banking Association, the NBS and even Ministry of Finance as it could attract higher flow of euro coins into Slovak market (and excessive cost connected to it) and that there should be free competition of tenders as regulated by law.

Above all these measures (and the recommendation that cases of non-compliance with the rules on the changeover should vary from public disclosure of enterprise's name to possible fines for the most serious cases), in Slovakia the Government decided to link the introduction of the euro with the criminal law not only as to protect from counterfeiting, but also to deter from unjustified price rises. In Cyprus, the criminal law was also amended (in connection to the euro changeover) making it a criminal offence to impede the entry of an inspector from the Euro Observatory to enter premises and inspect papers.¹⁶⁰ Such an offence, however, was only of administrative nature in Malta and Slovakia, with the possibility of imposition of fines (which in fact were in few cases imposed.)

From explanatory report to the bill:

“Amendment of the Criminal Code enhances the legal regulations of the Slovak Republic aimed at protecting consumers, while responding to possible, and in some cases already seen, impact of introduction of the euro in Slovakia in the increase of prices for goods and services. However, it is not criminal price regulation because it is embedded within the framework of existing legislation and the criminal penalty provision only ensures the obligations arising therefrom, preventively and punitively. It is not about extending the scope of the prohibitions and limitations imposed by the generally binding regulations or decisions issued on their basis, but the addition of a criminal form to patchwork of legal recourse. Such an approach, generally and in specific historical situation of introducing the euro with the knowledge of potential risks of its impact on consumer realm, appears in the market but also socially

158 Also due to very large amounts of cash that was subfrontloaded to retail sector, which in the end was proven to be overestimated. This shows how important it is to make accurate estimation on how much cash should be (sub)frontloaded

159 Act 483/2001

160 L.77(I)/2007(amending law of the adoption of the euro law of 2007)O.G. App. I(I)

oriented economy as appropriate.“

Criminal Code extended the penalty proceedings (came into force on 20 December 2008), to such a conduct causing harm to consumer by selling goods or providing services at a price exceeding the limit, the maximum permissible amount of the price, if such price limit is established by generally binding legal regulations or decisions issued pursuant thereto. Penalty for such conduct can go as high as three years imprisonment.

In short, this criminal regulation only applies to unjustified profiteering from the conversion of the Slovak crown to the euro but only to prices and services which are currently regulated, such as electricity, water, gas and for example, lawyers' services. Other increases can not be classified as an offence because of the free market principle of contract prices (restrictions on negotiating prices are laid down only in law¹⁶¹).

In addition to such criminal regulation the law¹⁶², granting the government the power to regulate prices if it detects signs of unjustified price hikes and speculation was adopted. In fact, the government can even choose to regulate prices that have climbed above what it considers optimal, and even in cases when price stability was threatened by weak competition. This law states the 'transitional period' (1 November to 31 December 2008) when the regulative competences (price monitoring, including analysing of reasons of rises) were be executed by relevant authorities. The so-called price council was created in early July 2008, with the ministers of education, finance, transport, economy, agriculture and health watching prices in their own area. In case of executing such powers the prices would be determined as well as the possible adjustment of such price level or process of determining the price. The government was convinced that it needed the new powers for maximum flexibility during the euro switch, making it the last resort action and only after thorough scrutiny of what pushed the prices up, thus functioning as prevention. The NBS, the National Association of Employers, the business sector and opposition objected to the law, claiming that there was no need for such legislation, as its effect are debatable due to the difficulty of proving whether a retailer hiked prices unjustifiably or due to the euro switch and since there were other ways to keep prices under control. Such law might have even postponed an eventual increase till the

161 Act on prices 18/1996

162 Act on prices 18/1996

end of the regulation or according to some threatened the competition settings.¹⁶³ In the end this power was not executed at all, as no such rises of prices occurred, in fact, some prices even decreased (as were rounded down).

However it is questionable, on provability and practical enforceability of these laws, as there are difficulties with exact specification of unaccountability of prices rises. To be able to distinguish reasonable price hikes from those not 'natural' ones, a regulatory body must analyse closely the development of price level, and take into account all aspects that might influence such rise, and even then it is questionable whether the result falls in line with suspicion. Although being an instrument of a last resort, there are doubts that such regulation of prices and criminalisation of such price rises were not needed and that their adoption was more of political character.

○ **Malta**

In Malta similar steps were undertaken¹⁶⁴. From January 2007 businesses were invited to participate in the FAIR initiative, whereby such businesses voluntarily committed to implement dual display correctly during the voluntary period, implement a pricing strategy not to increase prices due to the changeover process, abide by the guidelines issued by the NECC, provide staff awareness of the euro changeover, distribute NECC promotional material in their outlets and advertise their FAIR participation on a regular basis. In return, they were given free publicity by the NECC, free support, free price-guns, tools and training. A further legal notice (L.N. 4 of 2007) puts into law the enforcement of the FAIR initiative, establishing mainly the commitments required to join FAIR, the warning system and, eventually, administrative fines that will be imposed in the case of offences.

Euro Observatory Unit, established by the Ministry of Finance, as an independent entity with an aim to ensure price stability during euro changeover, was responsible for the ongoing management and coordination of the FAIR Initiative, but also monitored pricing trends during the changeover period. The Euro Observatory awarded the FAIR trust mark, a logo that will indicate the company's observation of the stipulated commitments. The NECC assists the Euro Observatory by promoting the FAIR participating organisations within its communications

163 BALOGOVA, *Price regulation gets goahead*, from <http://www.spectator.sk/articles/view/32990/3/>

164 SEC(2007) 1574 Annex to the COM(2007) 756 final

campaign. The Euro Observatory was assisted by a team of seventy Euro Assistants responsible, amongst others, for supporting the business sector in their commitments to the FAIR initiative (including correct dual display) and euro preparations in general. All Maltese retail outlets were assigned a Euro Assistant who gave them one-to-one support and euro changeover training. Thus retail supportive campaign was of quite personal character as it was possible under Maltese conditions.

This was complemented by 'Price Stability Agreements' which were concluded with major importers and manufacturers of fast moving consumer goods. By signing they voluntarily agreed to stabilise prices between October 2007 and March 2008 (inclusive) on a wide range of their products or services. (In comparison, France concluded agreements on voluntary price freezing before and after the changeover with the consumer organisations and distributors.)

Another initiative 'Price Watch' (in twinning agreement with the former Austrian Price Commission) meant that 400 frequently purchased products and services were monthly monitored.

Above all these also a series of anonymous 'mystery shopping' exercises were conducted by an external association with consumer interests (Union), with results being analysed and published. And cases of unexplainable high price increases were investigated through a protocol signed between the Union and the association representing retailers.

In both, Malta and Slovakia, inflation perceptions have continued to decrease¹⁶⁵ although inflationary pressures have been present due to other reasons than changeover. Seeing from such results, measures taken by both MS did (and still does in the case of Slovakia) watch over prices and thus strengthening the consumer confidence in the euro.

For Malta, it is also very likely that this is linked to the prohibition on smoothing up of prices and rigorous enforcement thereof, together with number of initiatives and schemes, as early dual display of prices, the FAIR initiative scheme for retailers, the price stability agreements with importers, the mystery shopper initiative and 'price watch' as well as the strong legal framework. As in Malta the initial support for the euro was low such measures were needed and actually this trend was reversed by a successful very well organised multiphase campaign. Although revision of prices (insubstantially increased), despite these

165 COM (2009) 178 final

initiatives, had actually occurred.

○ 6.4. Conclusion

In both MSs, Malta and Slovakia, a strong legal framework that was put in place to avoid and combat abuse of the changeover for increasing prices. The price developments were monitored and rules for the recalculation and publication of prices were enforced. Although the necessary steps taken diverged in both MSs, the inflationary effects of the euro changeover, including any unreasonable public inflationary perceptions were in deed prevented.

But in the end, concerns about price increase due to higher prices in other euro area markets, when compared to markets in non euro zone MSs, are to some extend just. This stems from simple functioning of competition rules in the common market. But on the other hand, regional divergences should help to maintain differences in price level throughout euro zone.

And in the long run, possible rise of prices will be offset by rise of living standard, as economies converge.

● 7 Consequences of successful introduction of the euro

By adopting the euro, the MS becomes a full member of EMU. Such a fact carries with vast and far stretching legal repercussions.

While the most European legislation does not need to be implemented in local provisions, the coming into force of a large body of law, which furthermore has primacy over the national law, is certainly not without effect. Quite the contrary, fundamental change of the legal regimes underpinning the monetary system of both MSs, Malta and Slovakia, takes place. The status of the National Banks changes substantially as the national competence in the conduct of monetary policy diminishes, as MSs inherit new obligations under European and national law.

And at the same time the participation in the governance of EMU and the ECB increased correspondingly and MS acquires also rights (e.g. the NCB of such state acquires the right under Article 106 TEC to issue euro banknotes (being legal tender within the entire euro area) and the MS itself acquires the right under Article 11 of Regulation 974/98 to issue coins with a national face. These rights are, however, subject to the authority of the ECB to authorise such issues. Denominations and specifications of coins are provided for by Regulation 975/98, and the ECB governs the issue¹⁶⁶ and technical qualities¹⁶⁷ of banknotes.)

NCB through the Governor's participation in the Governing Council of ECB becomes a key actor in forming and executing the policy of the ECB. It also retains responsibilities for safeguarding financial stability, regulating payment and securities settlement system, managing of the foreign reserve assets transferred to the ECB and its own assets within the

166 ECB Decision of 6 December 2001 on the issue of euro banknotes, OJ (2001) L 337 as amended

167 ECB Decision of 20 March 2003 on denominations, specifications, reproduction, exchange and withdrawal of euro banknotes (ECB/2003/4), OJ (2003) L 78

ESCB framework. It still issues currency, though clearly in concert with the Euro system

The move to a single currency is the result of a series of efforts to coordinate the MS' economic policies and to pool monetary sovereignty at the European level. The loss of the monetary policy on a national level, as is connected to the adoption of the euro, is considered to be one of main disadvantages. But in the conditions of liberalised capital markets, the monetary policy can not be conducted without taking other economies into consideration anyway. There are concerns about the single monetary policy as conducted by ECB not to be able to react adequately to the needs of whole euro area (mostly for the new full members of the EMU as their economies might still be asymmetric to the rest) but according to experience the membership itself speeds up the process of synchronisation. And for such reason there is also a set of criteria to be met (assessing the degree of sustainable convergence) in order to be allowed to abrogate the derogation.

Euro adoption is not about meeting the criteria at one point in time, but the authorities must now remain committed to implementing the same sound policies which were needed to join the euro as it is needed to fully exploit the benefits of the euro. Fiscal policy is actually the only instrument that, after becoming the full member of EMU, can be used in economic policy implementation to maintain a macroeconomic equilibrium, as the monetary policy is completely shifted to European level and conducted by the ECB uniformly for the whole euro area.

Also for the reasons of stability in the euro area (also smooth functioning of the internal market and deepening of economic integration of the MS, etc.) and common interest of all MSs, the European law protects the soundness of fiscal policies before and even after the euro introduction.

Stability and Growth Pact (SGP) ensures effective application of the excessive deficit procedure as set in the primary legislation. SGP legally consists of European Council Resolution and two Council Regulations – 14666/97 and 1467/97 form a system of surveillance, early warning, peer pressure and sanction, aimed at ensuring long-term macroeconomic stability within the EU.¹⁶⁸ SGP applies to all MSs but only euro area members are subject to sanctions under it, although it addresses even pre-ins (e.g. requiring of

168 BONNICL, *The law of the Euro: Constitutive, Institutional and external aspects*, Central bank of Malta,

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yearly convergence ('pre-ins') programmes). As the Maastricht criteria are to be complied with only before the entry to euro zone, SGP ensures the maintenance of sustainable public finances even after the entry so that disruptions from excessive national deficits in the euro zone are prevented, mostly long -term price stability as is the main aim of the ECB. Although there is one big difference between 'pre-ins' and euro area MSs. The former have no real sanction for not complying with the obligations set by SGP, except for not being allowed to adopt the euro. For the latter, in case of non compliance sanctions can be imposed, including pecuniary ones.

● 8 Conclusion

The introduction of the euro is broader concept than just a substitution of the euro for the national currencies, as it also comprises direct effects of the introduction of the euro, e.g. as the replacement of references to the ECU by references to the euro.¹⁶⁹

From a law perspective, the introduction of the euro is particularly exciting because it is underpinned by an interlinking combination of private, public, national, European and international laws and concepts, and also because it combines hard and soft law and also political will¹⁷⁰, while allowing the existence of a two-speed Europe as it suits better today's Europe circumstances of quite economically different developed countries.

The prerequisites and procedures to join the euro are complex and exacting. While most laws governing EMU and the euro stem from directly enforceable regulations (together with variety of legal instruments that have been created to regulate on the matter), the changeover, to some extent, still has to be implemented in the national law. Furthermore, a vast quantity of national legislation has to be amended to make adjustments for the EMU participation.

This thesis on the one hand analyses a complex changeover involving various laws at diverse levels; on the other, it examines differences in the monetary law of Malta and Slovakia as these stand under the newly effective regime. The spotlight remains on the legal challenges relative to the introduction of euro that the national legislator (in Malta and Slovakia) faced on the path towards the full membership of EMU.

When accessing the EU, NMS have committed to joining the euro area as soon as they fulfil the entry conditions. It is not the question on weather to join the euro zone but only the question when to do so (except for some members as UK, Denmark wish can join later if they

169 EUROPEAN COMMISSION, DG ECFIN, Occasional Papers, SCHÄFER, *The Legal Framework for the Enlargement of the Euro Area*, No 23, 2006, p.10

170 BONNICKL, *The law of the Euro: Constitutive, Institutional and external aspects*, Central bank of Malta,

wish to). By adopting the euro (shifting its monetary sovereignty) MS becomes a full member of EMU (by lifting up the derogation).

Thus for Malta and Slovakia it was deemed to be advantageous as both countries have small and very open economies, with the EU as their biggest trading partner. The single currency brings also protection from external sector specific shocks. Taking this into account, both MS decide to join the EMU as soon as possible and very early commenced their preparations for the adoption of the euro, including the legal aspect of such a major transition.

Since European law (as main regulator of the euro and having primacy over national law) leaves some scope for MS to adjust the euro adoption process to national particularities, paths towards the full membership of the EMU do differ as every country has different background, customs and traditions, economic, political and social conditions and thus the different approach might suit them better. There is no one strategy that fits all. There is no one model which can be simply copied. Despite, it is still useful to look at experiences of previous entrants in order to prepare better for the changeover (rather than re-inventing the wheel). They serve as a good example of measures which can be taken. NMS should explore how they could potentially apply and customise to their own needs the initiatives that were identified as best practices. Learning from mistakes of others speeds up the preparations by shortening their learning curve in preparing for the euro changeover but it also increases their chances of ensuring a smooth and timely changeover whilst avoiding pitfalls along the way to the introduction of the euro. Experience of NMS is more valid for other NMS (as to fulfilment of convergence criteria, choosing the scenario from new options, etc.).

Important lessons, also from a legal point of view, can be learned ¹⁷¹, as that starting preparations well in advance pays off as legislative process (amendments, modifications, exceptions) might take a slower pace sometimes (looking for the consensus on main legal provisions, thinking of crises scenarios), realistic and detailed changeover (e.g. in Cyprus a separate cash changeover plan was drafted) and clear structure of responsibility should be drafted, communication (home/outside) should be permanent. Of course, the best is to have regulated all aspects in detail, so no legal gaps are present thus the legal certainty is assured.

Valletta, 2008, p.1

171 Speech by IGOR BARAT, Plenipotentiary of the Government of the Slovak Republic for the introduction of the euro, *The euro changeover in Slovakia: General Overview and lessons*, Bucharest, 23

And it was also proven to be worth to listen to recommendations (the EU, IMF).

While the basic laws relating to euro adoption were the same in both countries, some divergences do stand out, as Malta and Slovakia are, in deed, distinct.

Not all legal aspects of the euro changeover were elaborated on in this paper. The focus remained on the most important aspects of the euro introduction with the special attention for the consumer protection as regulated by law since, so far all NMS adopting euro felt that the protection of the consumer is essential to be backed up by legislation. The smoothness of the changeover, the speed by which the population adapts to the new currency, the extent of potential abuses with inflationary or perceived inflationary effect depends mainly on the quality of legislation including proper timing of its adoption and its consequential enforcement and information in these matters. As consumer protection laws vary widely from country to country, even within the EU, each country must tailor its approach to this matter. Overall successful changeover in both countries, including decreasing inflation perception showed that legal protection was strong, with implementation and measures taken being sufficient.

○ **In summary:**

Despite the seemingly uniformity required by one monetary regime of community competence, in practice, the changeover strategies diverse as MS adjust the euro introduction process to national particularities. The strategies, decided on in Malta and Slovakia, were proven to be successful as the euro changeover in Malta and Slovakia progressed smoothly and quickly. National legislation (complementing European law) was adopted in a timely manner and backed up all important areas.

As elaborated in this paper, the legal problems of the euro introduction process were solved appropriately by both MSs although their legal approach diverged. This confirms the concept that different legal regulation on national level is not only allowed but also advisable in order to facilitate for the unchallenged introduction of the euro.

The success of Malta and Slovakia will encourage other 'pre ins' and will also help them on their own path towards the euro, thus achieving prosperity and stability in individual member

states and of the EU as a whole.

● Resumé v českém jazyce

ZAVEDENÍ EURA V NOVÝCH ČLENSKÝCH STÁTECH EU: SROVNÁNÍ PRÁVNÍCH PROBLÉMŮ MEZI MALTOU A SLOVENSKEM

Cílem této práce je přiblížit právní úpravu eura ve všeobecnosti, a následně porovnat odlišnosti v právní úpravě dané problematiky mezi Maltskou a Slovenskou legislativou. Tato práce na jedné straně komplexně analyzuje právo různých úrovní týkající se přechodu na euro, na druhé straně zkoumá rozdíly měnových předpisů Malty a Slovenska jak nově stojí. Hlavním zaměřením zůstávají ale právní problémy ve vztahu k zavedení eura, kterým vnitrostátní zákonodárce (na Maltě i na Slovensku) musí čelí na cestě k plnému členství v Hospodářské a měnové unie (HMU).

Úvod

Zásadní změny, ke kterým v poslední době dochází, přinášejí také nárůst zájmu o měnovou problematiku. Náročnost je zde podmíněna tím, že problematika přesahuje rámec jednoho státu. Měna je osobitným ukazatelem stavu hospodářství na určitém území a v určitém čase.

Zavedení eura je širší pojem než jen nahrazení národních měn eurem, protože také zahrnuje přímé dopady zavedení eura, tj. ku příkladu nahrazení odkazů na ECU. Euro je jednotná měna sdílená (v současnosti) 16 členskými státy EU, které společně tvoří eurozónu.

Přes některé kritiky, pochyby a obavy na začátku procesu zavedení eura, se po 10 letech svého hladkého fungování, se zdá, že tyto obavy byly neopodstatněné. Právě naopak, euro - tento unikátní experiment prokázal pozoruhodný úspěch. Vytvoření Hospodářské a měnové unie (HMU) přináší řadu výhod, mezi zúčastněnými státy. Nedávné turbulence na finančním trhu nám ukázali důležitou výhodu eura: 'v bouřlivých mořích je lepší být na velké lodi, než v malém člunu. Účast v HMU a přijetí eura má ještě více výhod pro malé státy. Maltu a

Slovensko, obě země mají velmi malé a otevřené ekonomiky a s EU obchodují jako s největším obchodním partnerem. Jednotná měna přináší také ochranu před vnějšími šoky. Proto se oba členské státy usoudili, že je pro ně výhodné co nejrychlejší přijetí eura a velmi brzy zahájily přípravy na přijetí eura, včetně právních aspektů těchto významných kroků. Slovensku, kde k zavedení eura došlo v lednu 2009, ale i Maltě, která cestu k euru podstoupila o rok dříve, tento přechod pomohl vyhnout se některým zásadním ekonomickým problémům (např. oslabení měn jak se nastalo v regionu střední a východní Evropy).

Přistoupením do EU, se nové členské státy zavázali k připojení se k eurozóně, jakmile splní podmínky vstupu. Tedy nevystává otázka zda vstoupit do eurozóny, ale jen otázka, kdy tak učinit. Tyto členské státy mají udělenou výjimku, jejich status je definován v článku 122 Smlouvy o založení Evropského společenství jako 'členské státy s výjimkou' a státy jsou povinny přijmout euro co nejdříve. Proces zavedení eura je vlastně procesem k zrušení této výjimky. Některé členské státy (Velká Británie, Dánsko) mají na vybranou zda se později připojí, pokud chtějí. Přijetím eura (přesunem své měnové suverenity) se členský stát stane plnoprávným členem hospodářské a měnové unie. Důvody pro neudělení plného členství již vstupem do EU jsou především ekonomické povahy. V době vstupu do EU nové členské státy nebyli připravené být členy HMU. V zájmu zachování makro-ekonomické stability v HMU, ekonomiky všech jejich členů musí být dostatečně sblížené, protože Evropská centrální banka (ECB) provádí jednotnou měnovou politiku pro celou eurozónu a pouze fiskální politika zůstane v rukou jednotlivých členských států. Hospodářskou konvergenci se měří prostřednictvím naplňování tzv. 'maastrichtská kritéria' ve smyslu Smlouvy o ES a Protokolu o kritériích konvergence uvedených v článku 121 Smlouvy a zahrnuje posouzení cenové stability, zdravých veřejných financí (veřejného deficitu a dluhu), stability směnných kurzů (prostřednictvím Mechanismu směnných kurzů) a dlouhodobých úrokových sazeb. Tato kritéria jsou navržena tak, aby zajistily, že ekonomika členských států ekonomika je dostatečně připravena na přijetí jednotné měny a jako člen bez výjimky nezpůsobí narušení eurozóny. Kromě toho členské státy musí dosáhnout také reálnou a právní konvergenci (vnitrostátní právní předpisy musí být v souladu s evropským měnovým právem, nezávislost národních centrálních bank musí být zajištěna, atd.). Každý členský stát usilující o zavedení eura je pečlivě sledován a hodnocen až do konečného rozhodnutí o vstupu státu do eurozóny. Komise a ECB vydávají pravidelné konvergenční zprávy pro ty členské státy, které dosud

nezavedly euro, aby přezkoumali, zda země splňují podmínky pro přijetí jednotné měny. Na základě návrhu Komise, Rada, po konzultaci s Evropským parlamentem, jednáním na úrovni hlav států a vlád schvaluje vstup do eurozóny. Neodvolatelný přepočítací koeficient mezi národní měnou a eurem je nastaven nařízením. Když členský stát vstoupí do eurozóny, jeho centrální banka se stane součástí evropského systému centrálních bank a ECB začne pro něj provádět měnovou politiku. Fiskální politika zůstává v rukou členských států, ale její výkon je omezen (i Pakt stability a růstu). Tím je zajištěn zdravý a udržitelný stav veřejných financí, a to i po přijetí eura, jelikož fiskální disciplína je důležitým faktorem ekonomické stability.

Historie

● Hospodářská a měnová unie

Současná podoba Evropské měnové unie je výsledkem dlouhého vývoje, který započal již před druhou světovou válkou. V počátcích se jednalo spíše o motivaci bezpečnostní, ale v dnešní sjednocené Evropě je integrovaná měnová otázka samozřejmostí. Po druhé světové válce se začalo jednat konkrétněji, také z důvodu že k původnímu motivu politickému se přidružil také motiv ekonomický.

Až v druhé polovici 60. let se začalo uvažovat o vzniku HMU, jelikož oslabila důvěra v americký dolar, který mal dominantní postavení v rámci Bretton-Woodskeho systému. Tento systém, usměrňující evropské měny od roku 1945, turbulence..V roce 1970 přijata Wernerova zpráva, která vymezila hlavní črty HMU a stanovila jejich dosažení na období do 10 let.

Po zkolabování Bretton-Woodskeho systému v roce 1971 se krajiny ES dohodli na systému tzv. „měnového hada“. Jednalo se o tzv. Společný floating vůči evropskému dolaru ve vymezeném rozpětí, jehož dodržování bylo zabezpečeno vzájemnými měnovými intervencemi. Ale ropní krize v roce 1973 znemožnila dodržování systému „měnového hada“. Začal se používat pohyblivý kurz. Nutnost společné ochrany vůči destabilizačnímu působení amerického dolaru vedla ke vzniku EMS, založeném na třech pilířích: ECU, mechanismus kurzové regulace ERM, úvěrový mechanismus. EMS měl vytvořit podmínky (např. udržení vzájemných kurzů měn členských států)pro následné dosažení HMU.

V roce 1989 byla vydaná Delorsová zpráva obsahující podněty na vytvoření EMU a pak v 1991 v Maastrichtu byla podepsaná smlouva o společné strategii přístupu k měnové unii, s již

konkretizovanými etapami. Tato Maastrichtská smlouva o Evropské politické, hospodářské a měnové unii vstoupila v platnost až v roce 1993. Proces byl rozvržen do tří etap. První byla zaměřená na vzájemné sblížení hospodářských politik jednotlivých členských států EU a odstraňování bariér volného pohybu kapitálu. Ve druhé byl založený Evropský měnový institut, předchůdce ECB, který se staral o upevnění koordinace měnových politik členských zemí. Cílem druhé fáze bylo snižování deficitů veřejných financí a další liberalizaci pohybu kapitálu vůči nečlenským státům. Třetí etapa byla podmíněna splněním maastrichtských konvergenčních kritérií. Následně pak šlo o nástup na jednotní měnové politiky, výkonem které je pověřený ESCB. Užším jádrem ESCB je Eurosystem, Eurozóna, jelikož 1. ledna 1999 přestali právně existovat národní měny některých členských států a zavedla se společná měna euro, do 1. ledna 2002 jenom pro bezhotovostní platby. Bankovky a mince národních měn se považovali jenom za odvozené od eura a vzájemně byly vyměnitelné přes euro dle zafixovaných koeficientů stanovených 1. ledna 1999. Po tomto přechodném období byly představené dne 1. ledna 2002 euro mince a bankovky. Od července 2002 zůstalo v oběhu už jenom toto platidlo.

Euro, EUR, je tedy jednotní měnovou jednotkou států eurozóny, který se člení na 100 centů. V eurozóně nejsou všechny státy EU. Dne 1. ledna 1999 měla jedenáct členů, 1. ledna 2002 se přidalo také Řecko, 1. ledna 2007 Slovinsko, 1. ledna 2008 Kypr a Malta a posledním přírůstek je Slovenská Republika a to 1. lednem 2009.

● **Maltské a Slovenské měnové právo**

Na Maltě, jediná srovnatelná událost měnové sukcese v nedávné historii, která je srovnatelná s přechodem na euro, se stala v roce 1971 (ačkoliv zákon, na základě kterého tato měnová reforma proběhla, je nápadně podobný zákonům v jiných zemích britského Společenství, a rovněž i nařízení 974/98, stanoví, že všechny reference v staré měně, respektive v národních měnách, se budou nadále interpretovat jako reference k nové měně, respektive k euru, v poměru určeném). V Slovenské moderní měnové historii došlo k měnové sukcesi dvakrát, v demokratických podmínkách. Ale zatímco změna na Maltě z britské libry na maltskou liru se odehrala postupně, s mnohaletým překrýváním používání obou platidel, na Slovensku v obou případech došlo naopak k rychlému a striktnímu oddělení od původní měny. Prvním případem byla peněžní odluka česk-oslovenské koruny od rakousko - maďarské koruny v roce 1919. Druhým pak měnová odluka slovenské koruny od česko-slovenské

koruny v roce 1993, která rovněž proběhla podle přesných pravidel a v ve velice krátkém časovém horizontu, aby se vyšlo současně s používání obou měn, jak tomu nebylo zabráněno v případě Malty. Z toho se dá odvodit, že Slovensko mělo daleko větší zkušenosti v měnové oblasti což určitě pomohlo jak zákonodárci, tak i orgánům veřejné správy, ale i obchodnímu sektoru a též veřejnosti snáze se vyrovnat s přechodem na euro.

Právo upravující euro

● Evropské právo

Právo regulující euro je obzvláště zajímavé, protože se opírá o propojení institutů a práva soukromého, veřejného, národního, evropského a mezinárodního, a také proto, že kombinuje závazné jakož i nezávazné právní předpisy a taky politické rozhodnutí, zatímco umožňuje existenci dvou-rychlostní Evropy, jak to vyhovuje lépe dnešní Evropě zcela odlišně ekonomicky rozvinutých zemí.

Z primárního práva je to Smlouvy o ES, jako právní základ, se svou Hlava VII - Hospodářská a měnová politika, obsahující články 98 do 124 rozdělené do čtyř kapitol, které jsou relevantní pro hospodářské a měnové unie.

Právní rámec pro zavedení a používání eura je založen na třech Nařízeních Rady. A to: Nařízení (ES) č. 1103/97 ze dne 17. června 1997 o některých ustanoveních týkajících se zavedení eura, Nařízení Rady (ES) č. 974/98 ze dne 3. května 1998 o zavedení eura, Nařízení Rady (ES) č. 2866/98 o přepočítacích koeficientech mezi eurem a měnami členských států přijímajících euro.

Nařízení (ES) č. 1103/97 ze dne 17. června 1997 o některých ustanoveních týkajících se zavedení eura se týká minulých a budoucích členů eurozóny (a platí pro všechny členské státy). Obsahuje také pravidla pro nahrazení ECU eurem, kontinuitu smluv (článek 3), pro přepočet a pravidla pro zaokrouhlování. Tak zajišťuje právní jistotu pro zavedení eura v celém území EU. Všechny konverze (ode dne přijetí eura) mezi eurem a národní měnou a naopak a mezi národní měnové jednotky se mají provádět podle přepočítacích koeficientů. Peněžní částky, které mají být přepočteny z některé národní měnové jednotky na jinou národní měnové jednotky, budou nejprve přepočteny na peněžní částku vyjádřenou v jednotce euro. Inverzní koeficienty odvozené z přepočítacích koeficientů, nejsou dovoleny.

Nařízení Rady (ES) č. 974/98 ze dne 3. května 1998 o zavedení eura se vztahuje pouze na členské státy v eurozóně. Je hlavním zdrojem měnového práva pro eurozónu, neboť zavádí euro jako měnu zúčastněných členských států. Také je obsahuje soubor pravidel použitelných během přechodného období (pro případ, Malta a Slovensko to není relevantní, protože přechodné období chybí). Zavedení eurobankovek a euromincí je také obsahem tohoto nařízení. Umožňuje, aby si národní měny, jako denominace eura (článek 15) udrželi své postavení zákonného platidla po maximálně dobu šesti měsíců po zavedení eura (tak-zvané období duální cirkulace). Přesto, členské státy vydaly společné prohlášení, v listopadu 1999, a souhlasili, že omezí tuto dobu na jeden až dva měsíce. Proto ve většině zemí eurozóny bylo 28. února 2002 po dvou měsících ukončeno období dualního oběhu. Doporučuje se ale ještě kratší dobu než šest měsíců. To umožňuje, aby členské státy definovat pravidla pro toto období duálního oběhu pro používání národních bankovek a mincí, a přijmout veškerá opatření, která mohou být nezbytná k usnadnění jejich stažení (článek 15). Nařízení stanoví povinnost bank v nových členských státech přijímat euro a vyměňovat bankovky a mince zdarma během období dvojího oběhu. Vnitrostátní právní předpisy mohou stanovit omezení pro tuto povinnost. A v článku 12 nařízení se stanoví povinnost, aby zúčastněné členské státy zajistily přiměřené sankce proti padělání a napodobování eurobankovek a euromincí. Pokaždé, když MS je vstup do eurozóny se mění toto nařízení tak, že se určí scénář, který je relevantní pro konkrétní zemi. V příloze k nařízení je stanoveno konkrétní datum pro zavedení eura pro každý nový členský stát. Toto nařízení, ve znění pozdějších předpisů, uznává také statut zákonného platidla euro mince vydané některých nečlenských zemích EU-(Monako, San Marino, Vatikánský městský stát).

Nařízení Rady (ES) č. 2866/98 o přepočítacích koeficientech mezi eurem a měnami členských států přijímajících euro určuje přepočítávací koeficienty. Především dvě nařízení doplňují pravidla o tom, jak se tyto přepočítací koeficienty uplatní. Pokaždé, když je do eurozóny přijat nový členský stát, se zúčastnění aktéři dohodnou na přepočítacím koeficientu, který musí být přidán do seznamu přepočítacích koeficientů v nařízení, což znamená, že nařízení je třeba změnit a tato změna vstoupí v platnost dnem přijetí eura v konkrétním členském státu.

Krom těchto základních právních předpisů je na evropské úrovni mnoho dalších právních nástrojů/předpisů, které závazně i nezávazně upravují proces zavádění eura i euro samotné.

Od dalších nařízeních, směrnic a rozhodnutí, přes nezávazné doporučení, stanoviska evropských institucí až k různým aktům ECB, je vytvářena složitá struktura právní úpravy eura.

Právo hospodářské a měnové unie, je poměrně nové odvětví práva, a proto judikatura Evropského soudního dvora (ESD) zatím není bohatá, co se týče problematiky zavedení eura. Nicméně, některé z těchto rozsudků mají podstatní vliv, zejména pro provádění a uplatňování evropských právních předpisů ve vnitrostátních právních předpisech. Jde hlavně o rozsudky: C-34/73 *Fratelli Variola S.p.A. v Amministrazione italiana delle Finanze*, [1973] ECR 981, Case-272/83 *Commission of the European Communities v Italian Republic*. [1985] ECR 1057, C-19/03 *Verbraucher-Zentrale Hamburg eV v O2 (Germany) GmbH & Co. OHG*, (2004) ECR I-8183, C-359/05 *Estager SA v Receveur principal de la recette des douanes de Brive* [2007] ECR I-00581, C-454/06 *pressetext Nachrichtenagentur GmbH v Republik Österreich (Bund) and Others* of 19 June 2008; OJ C 209; 15 August 2008; ECR. 2008.

● Národní právo

Zatímco hlavním zdrojem práva, jimž se řídí měnová unie a euro, jsou přímo vynutitelné nařízení, přechod k euru, do jisté míry, musí být ještě proveden vnitrostátním právem. Navíc velké množství vnitrostátních právních předpisů, musí být změněno, aby se úprava přizpůsobila plnému zapojení do HMU. (např. I když oficiální transpozice nařízení není třeba protože oboje se stali součástí národních právních řádů přímo, přesto nařízení ES 974/98 ukládá členským státům přijmout opatření směřující k redenominaci. Proto je nutné na národní úrovni přepočítat veškeré údaje v zákonech a ostatních právních předpisech z národní měny na eura. Nejen je přepsat ale je i zaokrouhlit, dle zásad stanovených evropským právem.)

Každý národní zákonodárce musí brát v úvahu při přípravě právních předpisů závazky vyplývající z evropského práva. Role vnitrostátního práva v procesu zavedení eura je tedy pouze doplňující. Jelikož euro se řídí zejména předpisy, které jsou ve své podstatě přímo použitelné, nemusí být proto transponována do vnitrostátní úrovně, pouze se zabezpečí jejich provedení. V některých případech je nutné přijmout vnitrostátní právní předpisy, v ostatních případech je to jen doporučením. Obecně platí, že existují dva případy. Za prvé, pokud právní předpisy Společenství výslovně ukládají přijetí vnitrostátních právních předpisů. V druhém případě přijetí takového předpisu vychází z jiných pohnutek samotného členského státu,

přičemž u jednotlivých států se názory na potřebu legislativní úpravy mohou lišit.

Národní zákonodárce je povinen vzít v úvahu a respektovat evropské právo (týkající se eura) při přípravě (a provádění) vnitrostátních právních předpisů. Proto je také důležité pečlivě zvážit časový harmonogram pro přijímání takových právních předpisů.

Na cestě k euru

Proces vedoucí k přijetí eura není snadný. Vyžaduje důkladné a dobře načasované přípravy v různých oblastech, jako jsou technické, logistické, sociální, právní. První vlna zavedení eura bylo velkým úspěchem díky kvalitě přípravy ze strany všech zúčastněných aktérů a na všech úrovních.

Tento proces lze rozdělit do čtyř fází:

1. Od prvních kroků k přijetí eura, až do vstupu do ERM II
2. Od účasti v ERM II, do rozhodnutí o zrušení výjimky
3. Od rozhodnutí o přijetí eura až do zavedení eura
4. Po vstupu do eurozóny

● Kritéria vstupu

Stručně řečeno, vstupní kritéria mají zajistit konvergenci členských států.

Nominální konvergence je posuzována pomocí nominálních 'kritérií konvergence' nebo 'maastrichtských kritérií', které byly schváleny členskými státy EU v roce 1991 v Madridu, jako součást příprav na zavedení eura. Jsou navrženy tak, aby zajistily, že ekonomika je MS je dostatečná pro hladkou integraci do eurozóny, bez rizika, že dojde k narušení ekonomiky členského státu nebo eurozóny jako celku. Často jsou tato kritéria kritizována. Nicméně, stále zůstávají právními podmínkami a musí být dodržována, pokud nebudou změněna (tato práce se proto nezaobírá ani vhodností těchto kritérií pro nové členské státy ani případnými návrhy změn, jejich kritikou a problémy jejich aplikace). Pro nové členské státy platí tak, jak platili pro státy z první vlny zavádění eura.

Kromě těchto kritérií musí kandidátská země eurozóny změnit vnitrostátní zákony a předpisy, zejména ohledně národní centrální banky a ostatních měnových otázek, aby byly v souladu se Smlouvou. Zejména musí národní centrální banky být samostatné.

Vstup do měnové unie je kromě nominální konvergence, v souladu v oblasti legislativy a institucionálního zabezpečení podmíněn také dosažením určitého stupně reálného přiblížení ekonomické výkonnosti vstupujících zemí stávajícím členům eurozóny. Reálná konvergence vyžaduje rovněž srovnání ekonomické úrovně členského státu usilující o zavedení eura s ekonomickou úrovní členů eurozóny. To se děje prostřednictvím posouzení hrubého domácího produktu na obyvatele, cenové a mzdové úrovně, strukturální charakteristiky ekonomiky. Klíčovou roli zde hrají legislativní reformy.

● Scénáře pro přechod na euro

Malta a Slovensko, spolu se svými protějšky z pátého rozšíření EU, budou při přijetí eura v jiné právní pozici než jejichž předchůdci. Tyto členské státy si mohou vybrat scénář přechodu ze tří možností, na rozdíl od první vlny zemí, které neměli žádný výběr. Členský stát se může rozhodnout, který scénář mu vyhovuje nejlépe a informuje o takovém rozhodnutí Evropskou komisí.

První vlna 12 zemí, zavedla eura s přechodným obdobím (nazývané také "madridský scénář", neboť tento právní rámec byl stanoven na zasedání Evropské rady v Madridu v roce 1995), což znamená, že hotovostní euro by byl přijato až po uplynutí přechodného období, kdy již existovalo a používalo se bezhotovostní euro. V prosinci 2005 Rada upravila nařízení Rady (ES) č. 974/98 ze dne 3. května 1998 o zavedení eura, čímž umožnila alternativní dva scénáře přechodu na euro, takže rychlejší přechod na euro, je možný, jelikož nyní euro bankovky a euromince jsou již široce dostupné. I když tento způsob je ještě náročnější na načasování a přípravu. Tak-zvaný 'big bang' scénář je z právního hlediska, sub-kategorií tradičního scénáře přechodného období, kdy se zahájení přechodného období a jeho konec časově shodují. Jinou možností pro MS je mít 'big bang' scénář v kombinaci s obdobím umožňujícím opožděný používání národních měn v některých sektorech.

Malta, stejně jako Slovensko, si zvolili 'big bang' scénář (stejně jako ostatní nové členské státy Kypr a Slovinsko).

Právní problémy v procesu zavádění eura

Zavedení eura na Maltě a na Slovensku proběhlo na základě rozhodnutí Rady. Tím nařízením Rady o zavedení eura, o některých ustanoveních týkajících se zavedení eura a přepočítacích

koeficientech, které nabylo účinnosti bez nutnosti provedení těchto předpisů do vnitrostátních právních systémů. Nicméně, bude třeba harmonizovat stávající předpisy s těmito a dalšími právními akty ES a regulovat oblastech, které nejsou řešeny v souladu s právem Společenství.

Prvním úkolem pro všechny členské státy v procesu zavedení eura je identifikace těchto právních aspektů eura, které jsou již upraveny evropskou legislativou. Soubor evropských právních předpisů s ohledem na euro je poměrně vyčerpávající.

Za druhé, každý členský stát identifikuje oblasti, která nejsou zahrnuta do evropské legislativy, a která musí být upřesněna v rámci lokální regulace, jako doplněk k evropskému právu (někdy dokonce uloženo evropským právem), nebo z důvodů důležitých pro jednotlivé členské státy.

Po přezkoumání svých vlastních právních předpisů, a seznámení se se zkušenostmi ostatních zemí eurozóny, jakož i ostatních států usilujících se o zavedení eura (o tom, jak se vypořádat s těmito právními problémy), se členský stát rozhodne pro právní strategii přijetí eura procesu. Podrobný harmonogram právních kroků na cestě k euru by měl být přijat co nejdříve (alespoň jeden rok v předem), aby byla zajištěna právní jistota.

● Generální zákon

Malta i Slovensko dali přednost přijetí generálního zákona regulující všechny aspekty týkající se přechodu na euro (stejně jako tomu bylo i s ostatními novými členskými státy).

Účelem tohoto zákona je také podpořit řádný přechod na měnu euro, zajistit právní jasnost a právní jistotu. Měnový přechod by měl být homogenní, transparentní a potřebné informace o nich by měly být snadno dostupné. Přístup jednotlivých států, jak na to, co by mělo být obsahem tohoto zákona se však liší. Na Slovensku, pokrývá celou oblast týkající se procesu přechodu na euro, a je docela podrobný ve srovnání s velmi krátkým Maltským zněním.

Slovensko

Na Slovensku, byly právní problémy související s přijetím eura rozděleny do tří hlavních kategorií. To umožnilo velmi efektivní organizování právní přípravy.

Legislativní problémy obecné povahy, jsou řešeny v generálním zákonu, obsahující první (nejdůležitější) kategorie právních otázek. Obsahuje ustanovení o měnové sukcesi slovenské koruny s eurem, zřizuje strukturovaný a transparentní proces zavedení eura, s podrobnostmi o

pravidlech pro konverzi, zaokrouhlování, duální oceňování. Zajišťuje též jejich řádný dozor a kontrol. Kromě toho, obsahuje další články reformující další zákony, které patří do první skupiny zákonů (obecné povahy). Druhá kategorie potřebných legislativních změn není natolik obecné povahy, a tak úzce v souvisle s procesem přijetí eura. Ale pořád tyto zákony vstoupili v platnost dnem vstupu do eurozóny, neboť zajišťují právní jistotu a hladký přechod na euro. Tato kategorie zahrnuje zákony a jiné právní předpisy, z nichž velká část se skládá ze zákonů obsahující odkazy na slovenskou měnu (značnou část těchto předpisů jsou z oblasti finančního práva, ale také kodexy, jako je trestní zákoník, pokud jde o zavedení peněžitých pokut, nebo také obchodní zákoník). Změny byly také důležité v předpisech upravujících sociální a pracovní vztahy, zákoník práce atd. Všechny tyto právní předpisy musí být označeny a potom podle předem-nastaveném časového harmonogramu reformovány.

Přechodu na euro bude mít velký dopad na mnoho právních předpisů, ale některé z nich bude dotčena pouze okrajově a proto je není nutné změnit okamžitě. Tyto předpisy, které jsou třetí kategorie předpisů. Velká skupina těchto zákonů (včetně sekundárních právních předpisů) obsahují jen malou část ustanovení s odkazy na původní národní měnu. Tyto zákony se reformují tehdy, kdy vznikne potřeba nezávisle na přijetí eura s účinností po vstupu do eurozóny.

Malta

Na Maltě se rozhodli přijmout jiný přístup, než Slovensko nebo dokonce ve Slovinsku a na Kypru, protože dává přednost méně podrobné regulaci v generálním zákoně.

Zákon se zaměřuje jen na nezbytný rámec pro přijetí eura, ostatní aspekty jsou dány do kompetence ministra financí přes stanovení pomocí sekundárního práva. A tak byla přijata celá rada takové sekundární legislativy, rovněž i změna veškeré legislativy odkazující se na národní měnu.

Cílem delegace pravomoc vydávat předpisy v této oblasti je zkrátit postup pro přijetí eura a zvýšení flexibility při aktualizaci právních předpisů.

● Sekundární legislativa

Oba členské státy přijali rozsáhlou sekundární legislativu podporující zavádění eura. Ačkoliv Malta z důvodu stručného generálního zákona měla mnohem rozsáhlejší a důležitější práci s podzákonými předpisy.

Kromě této závazné právní úpravy, byla v obou státech přijata řada doporučení pro veřejný i soukromý sektor.

● Ochrana spotřebitelů

Přestože euro není přímo spojováno se zvyšováním cen (všechny částky jsou přepočteny dle přepočítacích koeficientů, a podle pravidel přepočtu a zaokrouhlení), členské státy, i Malta a Slovensko, považují ochranu spotřebitelů za jeden z hlavních aspektů pro úspěšný proces zavedení eura jelikož jeho možný vliv na inflaci je nejvážnější obavou občanů (jak vyplývá z průzkumů Eurobarometru). A pro hladký přechod na euro je všeobecná podpora nutná.

Problematika tzv. vnímané inflace, která často provází proces zavádění eura. Důvodů pro takovéto vnímání je mnoho (spotřebitelé věnují větší pozornost nárůstu cen než poklesu a i když ceny rostou jen v určitém odvětví mají tendenci zobecnit na celou ekonomiku, navíc porovnávají cenovou hladinu s cenami v národních měnách před přistoupením, zapomínají že v delším čas horizontu by ceny rostly). Proto konkrétní opatření proti nárůstu cen po přijetí eura jsou nutností.

Existují opatření na ochranu spotřebitele na evropské úrovni jako podrobná pravidla pro přepočet a zaokrouhlování stanovená nařízením (ES) č. 1103/97 ze dne 17. června 1997 o některých ustanoveních týkajících se zavedení eura, které jsou závazné povahy. Ale jiné problémy ochrany spotřebitele, jako je například uvádění dvojích cen, sledování vývoje cen a dodržování označování, dohody o cenové stabilitě, informační kampaň, včetně informování veřejnosti o postupu v případě nesprávného přístupu a poskytování informací, tak, aby celková transparentnost byla zajištěna, atd. nejsou upraveny evropským právem, resp. pouze jsou pouze doporučeny. Členské státy by měly řešit tyto problémy přijetím takových opatření, která zajišťují hladký přechod na euro. Účinnost těchto opatření závisí nejen na samotném provedení právních předpisů, ale do značné míry se musí opírat o komplexní právní řešení.

V obou členských státech, na Maltě i na Slovensku, byla zavedená obsáhlá právní úprava, aby se zabránilo zneužívání přechodu na euro vedoucí ke zvýšení cen. Vývoje cen byly sledovány a dodržování pravidel pro přepočet a zveřejňování cen bylo monitorováno. Opatření přijatá těmito členskými státy rozcházelí, ale inflačním dopadům přechodu na euro, včetně problému vnímané inflace bylo v obou případech zabráněno.

Nutno ale uvést, že, obavy z růstu cen jsou opodstaněné, do určité míry. Toto vyplývá z

prostého fungování pravidel hospodářské soutěže na společném trhu. Ale na druhou stranu by měli regionální rozdíly pomáhat udržovat rozdíly v cenové úrovni v celé eurozóně. A v dlouhodobém horizontu, možný růst cen bude kompenzován růstem životní úrovně.

Závěr

Přesto že je to hlavně evropské právo, které upravuje postavení eura (a má přednost před vnitrostátním právem) ponechává určitý prostor členským státům přizpůsobit proces přijetí eura národním specifickým. Proto se strategie přijímání eura u jednotlivých členských států liší. Jelikož každá země má jiné tradice, hospodářské, politické a sociální podmínky, a tím i rozdílný přístup v této otázce může vyhovovat lépe. Není žádná strategie, která by vyhovovala všem. Neexistuje jeden model, který lze jednoduše okopírovat. I přesto je užitečné podívat se na zkušenosti u států, které již přijali euro, aby se ostatní členské státy ucházející se o přijetí eura mohli lépe připravit na přechod na euro. Poučit se z chyb druhých zrychlí přípravu, ale také zvyšuje šanci na zajištění hladkého a včasného přechodu a vyhnutí se nástrahám na cestě k zavedení eura.

Důležitým je začít přípravy s dostatečným předstihem. Samozřejmě, nejlepší je mít regulované všechny aspekty podrobně, takže žádné právní mezery nejsou přítomné a právní jistota je zajištěna.

Ne všechny právní aspekty přechodu na euro jsou v této práci rozebrány. Zaměření zůstalo na nejdůležitější aspekty zavedení eura se zvláštním důrazem na ochranu spotřebitele upraveno zákonem, protože zatím všechny nové členské státy přijímající euro zastávají názor, že ochrana spotřebitele je důležitým aspektem a musí být náležitě upravena právními předpisy. Hladkost přechodu a rychlost, kterou se populace přispůsobuje nové měně, rozsah potenciálního zneužívání přechodu na euro, intenzita vnímané inflace nebo též inflační účinek závisí hlavně na kvalitě právních předpisů, včetně správného načasování jejich přijetí a následného prosazování a poskytování informací. Zákony na ochranu spotřebitelů v různých zemích se velmi liší, a to i v rámci EU, proto i při přijímání eura se bude postup států náležitě různit. Celkově úspěšný přechod na euro v obou zemích, včetně snížení inflace vnímání vplynulo, že právní ochrana byla silná, a provedení přijatých opatření byly dostatečné.

Závěrem lze ještě zhrnout, že přes zdánlivou jednotnost měnové úpravy poskytnuté právem Společenství, v praxi je přechod na euro rozmanitý tak jak si to národní specifika daných

členských států vyžadují. Strategie přijetí eura pro které se Malta a Slovensko rozhodli se ukázali být úspěšné. Vnitrostátní právní předpisy, jako doplnění evropského práva, byli přijati včas a vhodně upravili všechny důležité oblasti.

Jak je podrobně uvedeno v této práci, právní problémy zavedení eura řešili oba členské státy vhodným způsobem i když se jejich právní přístup rozcházel. To potvrzuje, že různá právní úprava na národní úrovni je jenom možná, ale také vhodná, aby se zabezpečilo bezproblémové zavedení eura.

Tento úspěch Malty a Slovenska pomůže i ostatním členským státům na jejich vlastní cestě k euru, aby jako členové HMU dosáhli prosperity a stability nejen v rámci svých hranic ale EU jako celku.

● Annexes

● Table 1

The five convergence criteria

What is measured:	Price stability	Sound public finances	Sustainable public finances	Durability of convergence	Exchange rate stability
How it is measured:	Consumer price inflation rate	Government deficit as % of GDP	Government debt as % of GDP	Long-term interest rate	Deviation from a central rate
Convergence criteria:	Not more than 1.5 percentage points above the rate of the three best performing Member States	Reference value: not more than 3%	Reference value: not more than 60%	Not more than 2 percentage points above the rate of the three best performing Member States in terms of price stability	Participation in ERM II for at least 2 years without severe tensions

Table 2

Changeover overview (Malta and Slovakia)

	● Malta	● Slovakia
National coordinating institution	Two Committees appointed on 13 June 2005: a Steering Committee and a National Euro Changeover Committee (NECC) reporting to it	The National Coordinating Committee, as supreme body, chaired by the Minister of Finance (the National Coordinator) and the Governor of the NBS
(Approved) National Changeover Plan	The 'Final (fourth) Masterplan' was published by the NECC on 11 July 2007	Third version approved by the Government on 16 April 2008
Consumer confidence building	The FAIR initiative became	In 2008 and 2009 process

measures	effective in January 2007 (including the possibility to impose administrative fines), The Euro Observatory established in 2006 to coordinate the FAIR initiative and monitor pricing trends, 70 Euro Assistants to support and train the retail sector , A 'Price Watch' Initiative to monitor prices monthly (twinning agreements with Austria), 'mystery shopping' exercises (by external association with consumer interests), 'Price Stability Agreements' initiative to voluntarily agree to stabilise prices between October 2007 and march 2008 (inclusive)	closely monitored and results published, complaints from public to supervisory bodies (the Slovak Trade Inspection, the Ministry of Economy and the consumer associations), voluntary 'Ethical Code' launched by the Government Plenipotentiary, reports on prices and price perceptions by the Slovak Statistical Office published every 10 days as of June 2008
National euro helpline	Linja Ewro:154 e-mail: euro@gov.mt website: www.euro.gov.mt/	Euro info linka: 0800 103 104 email: euro@finance.gov.sk website: www.euromena.sk
Adaptation of national law	The Euro Adoption Act 2006 entered into force on 29 September 2006, Legal Notices following (e.g. L.N. 4 of 2007, mainly on the mandatory dual display of prices)	The Euro Adoption Act 2007 entered into force on 1 January 2008, necessary amendments to legislation identified by January 2006 and adopted in 2008
Partnership agreement	Signed on 5 May 2006	Signed in December 2007
Twinning Agreement	With Austria ¹⁷² , Cyprus, Ireland, France ¹⁷³	With Austria, Belgium
Design of the national side of euro coins	Three designs were published on 13 October 2006 following the public consultation	Three designs were chosen by public tender followed by an opinion poll
Coin supplier	Following a public call for	National Mint of Kremnica

172 Setting up the legal framework and price monitoring process

173 Capacity building through study visits and training

	tenders – the Monnaie de Paris ¹⁷⁴	
Participation in ERM II from	2 May 2005	28 November 2005
Central parity rate	€1=0.429300MLT	€1=38.4550 SKK
Revalued central parity rate		€1=35.4424 SKK €1=30,1260 SKK
Irrevocably fixed conversion rate	€1=0.429300MLT	€1=30.1260 SKK
Council's Decision allowing euro adoption	10 July 2007	8 July 2008
Changeover scenario	"big-bang"	"big-bang"
Estimation on the need for banknotes and coins	72 million banknotes (borrowed from Italy), 200 million coins	188 million banknotes (borrowed from Austria), 500 million coins ¹⁷⁵
Frontloading¹⁷⁶: coins banknotes	15 September 2007	6 September 2008
	15 September 2007	October 2008
Sub-frontloading¹⁷⁷: coins banknotes	1 December 2007	November 2008
	1 December 2007	November 2008
Sale of euro coin starter kits to companies	From 1 December 2007	December 2008
Sale of coin mini kits to the public	From 10 December 2007	December 2008
Account conversion and introduction of euro	1 January 2008	1 January 2009
ATMs issuing euro only	60 % from 1 January 2008 at 00:00h and the rest gradually by 16:00h (based on the study on historic data of ATM's withdrawals)	As of the introduction of the euro
Change in euro only	From 1 January 2008	From 1 January 2008
dual circulation period	From 1 January 2008 until 31 January 2008	From 1 January 2009 until 16 January 2009
Dual display of prices and other monetary amounts – mandatory	from 11 July 2007 until 30 June 2008	from 24 August 2008 until 1 January 2010

174 As Malta does not have a national mint

175 Among the new Member States introducing the euro, Slovakia was the first one to mint the euro coins with its own production facilities.

176 The pre-distribution of euro banknotes and coins is governed in case of Malta by Guideline ECB/2006/9, in case of Slovakia by Guideline ECB/2006/9 as amended by Guideline ECB/2008/4

177 As from 1 December 2007 credit institutions will exchange Maltese lira into euro, and *vice versa*, at the irrevocably fixed exchange rate without exchange charges and by the same date commercial banks will offer low denomination euro notes to the business community (with exchange charges waived), subject to availability.

Dual display of prices and other monetary amounts – voluntary ¹⁷⁸	From 1 January 2007 until 11 July 2007, then 'cooling-off' period from 1 July to end of September	until 30 June 2010 No deadline has been set for the end of voluntary dual display of prices of goods and services.
Exchange of former national currency: At credit institutions ¹⁷⁹ : coins banknotes At the national central bank coins banknotes		
	From 2 January 2008 until the end of March 2008	until 30 June 2009
	From 2 January 2008 until the end of March 2008	until 31 December 2009
	until 31 January 2010	until 31 December 2013
	until 31 January 2018	unlimited
Campaign for rapid withdrawal of national banknotes and coins	Included The Currency and Bank Deposit Registration Scheme Regulations (Legal Notice 126 of 2007) which provided an opportunity for the general public and businesses to register undeclared income until the end of July 2007, later extended until the end of August 2007.	

¹⁷⁸ Government departments and agencies have been fully dual display compliant since April 2007.

¹⁷⁹ In Malta, free of charge for their clients and up to a MTL 250 for non-customers. In case of bank clients, exchange of amounts over MTL 250 may be subject to a '2 day' notice period.

In Slovakia, after 19 January 2009 amounts exceeding 100 notes or coins could be subject to charges.

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