

## Impact of the Euro on Commercial Strategy

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*On January 1, 1999, the Economic and Monetary Union (the EMU) was born. The Euro became the official currency of the member countries (Belgium, Austria, France, Finland, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain). On this date, the exchange rates of the national currencies were permanently pegged to the Euro. Over the next three years, from 1999 to 2001, the old national currencies will continue to circulate, but as a subdivision of the Euro. Bills and coins in Euros will be put into circulation on January 1, 2002. Governments will then have until July 1, 2002 to withdraw their currencies from the market. During the transitional period, businesses will have to plan the impact of the Euro on their commercial strategy in order to take maximum advantage of the new opportunities that a single currency will offer.*



### Advantages of the Euro for Businesses

The arrival of the Euro will entail costs and constraints. They will be limited in time and the advantages of a single currency will amply compensate for the drawbacks.

A single currency will facilitate the introduction of small businesses in new markets. The costs and risks associated with monetary fluctuations and the manipulation of several

currencies will no longer be cause for angst. Businesses will therefore benefit from a stable monetary zone.

The Euro will impose transparency in prices. As a result, businesses will be able to recruit clients in other markets than those they presently serve, just as they will find suppliers offering better prices and services.

### The Euro, a new European Currency

For the next three years, the national currencies will simply be an expression of the Euro. The conversion of national currencies into the Euro and vice versa is no longer considered a foreign exchange transaction.

During the transitional period from 1999 to 2002, it will neither be possible to impose nor prohibit the use of the Euro on clients or suppliers in drawing up contracts, purchase orders or invoices. This is known as the “neither prohibition nor obligation” principle.



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Some factors could influence a business's decision whether to use the Euro right away: access to financial services in Euros, simplification of trade, investment throughout the Euro zone, simplification of internal accounting, long-term projects, gains in competitiveness, prevention of logistical jams and shortages of specialized personnel due to an excessively rapid changeover. For a supplier or client foreign to the monetary zone, the use of national currencies will be more complicated since the exchange rates are no longer listed and a double conversion is required from the foreign currency into Euros and then from Euros into the national currency.

### **Pricing Policy**

The arrival of the Euro is an opportunity for businesses to revise their commercial strategy. In view of the transparency of prices, businesses can no longer easily justify discrepancies in their prices in different countries.

The Euro will force businesses to convert all their current prices. For businesses selling directly to consumers, one must take into account the fact that the Euro is henceforth a new scale of value. Consumers will slowly adopt new habits since their current price

references will disappear. Businesses should therefore review all their prices and possibly change their “psychological” prices: a price of 199 Francs for a pair of shoes corresponds, for example, to 30.73 Euros, which is not as appealing from a marketing perspective.

Price lists will have to be changed. One must therefore consider whether to change the size, weight or appearance in order to set more suitable prices. Businesses can take advantage of the Euro's arrival to launch advertising campaigns announcing that prices will be rounded off downward or demonstrating that they have truly not increased. Information and assistance to consumers are important considerations for reassuring them.

### **Dual Pricing and Currency Conversion**

To facilitate the transition to a new single currency, during the transitional period, merchants should display prices both in Euros and in the national currency. Dual pricing, although still optional, would have an educational and consumer protection function.

The conversion from a national currency to another national currency requires a switch to an intermediary amount in Euros which cannot be rounded off to less than three decimals points. Consequently, to go from Francs to Deutsche Marks, one must convert the amount from Francs to Euros and then from Euros to Deutsche Marks.

### **Continuity of Contracts**

The monetary union is likely to create certain problems for the continuity of international contracts. The contracts affected are those concluded before 1999 whose performance extends beyond January 1, 1999 (or possibly beyond January 1, 2002), which refer to the ECU or another European currency, and whose applicable law is that of a third country outside the European Union.

For contracts subject to the legislation of a European Union member country, the principle of continuity of contracts is guaranteed by the community law. This law specifically provides that the introduction of the Euro does not modify the terms of a contract or release the debtor from performance. References to national European currencies are simply substituted by references to the Euro. No amendments are necessary to European contracts.

Where the contract is subject to the legislation of a third country such as Canada, the United States or Japan, a different problem arises. According to the principle of *lex monetae* established in international law, a State has full and complete jurisdiction over its currency. Thus, any reference to a European currency incorporates European law and, concomitantly, the principle of continuity of contracts contained in the European regulation.

In addition, the nominalist principle requires the application of a fixed conversion rate to all amounts by which the parties are contractually bound, thereby avoiding a change in the relative values.

It is not certain that the *lex monetae* principle forms part of Canadian law. On the other hand, the common law allows contracts to be called into question under the principle of frustration, where performance becomes difficult or impossible due to an unforeseeable event. Some American states (for example, New York, Illinois and California) have adopted laws to ensure the continuity of contracts upon the introduction of the Euro. In Quebec, one would not speak in terms of the impossibility of performance but of force majeure as contemplated in article 1470 of the Civil Code of Québec. It is difficult to maintain that the advent of a single currency can make performance impossible given the possibility of conversion. Moreover, the first paragraph of article 1564 C.C.Q. states as follows:

**Where the debt consists of a sum of money, the debtor is released by paying the nominal amount due in money which is legal tender at the time of payment.**

Through this article, the legislator seems to have incorporated monetary law into Quebec law.

An information clause should be inserted referring to the transition to the Euro in order to avoid subsequent litigation. The following clause is suggested:

**For information purposes, the parties acknowledge that the (national European currency) is being replaced by the single European currency in accordance with the Community regulations. Pursuant to the general principles of monetary law, references to the (currency) are automatically considered as references to the Euro. This substitution takes effect on the date and in accordance with the conditions defined by Community regulations.**

If the contract provides for an interest rate, this rate will continue to apply as a term of the contract without the necessity of any modification.

Some rates are based on references which might change. Thus, if the rate refers to a national interbank rate, it must be substituted by the Euro Interbank Offered Rate, the EURIBOR. The contract should contain a clause stipulating the automatic substitution of these new rates.

The interdepartmental working group on international contracts of Mission Euro suggests a clause drafted as follows:

**In the event of a change affecting the composition or, where applicable, the definition of the floating rate (or the index) to which this agreement refers, or in case of the disappearance of this rate or**

**index or the substitution of a rate or index of the same kind, and in case of a change affecting the body which publishes such rate or index, or affecting the terms of publication, as a result of the transition to the Euro, the rate or index stemming from this change or substitution shall apply automatically.**

## Practical Advice for Contracts

### For future contracts:

- Choose the law of one of the European Union member States or Quebec law as the law applicable to the contract;
- Designate a jurisdiction or arbitration authority in a member State of the European Union;
- Insert an information clause on the transition to the single currency.

### For Outstanding Contracts:

- Revise outstanding contracts whose applicable law is that of a State that is not a member of the European Union;
- Verify whether it contains ambiguous clauses on “new circumstances” which could require the renegotiation of the contract upon transition to the Euro;
- Insert a clause covering the transition to the single currency.



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### Impact on Computing

The main technical challenge will be the adaptation of computer systems. According to some people, the scope of the problem is comparable to that involved in the transition to the year 2000. Nevertheless, both these events are opportunities for businesses to reorganize their information systems.

Businesses should establish a multicurrency accounting system in order to process transactions in national currencies and in Euros. In addition, they should set up a conversion function for the transitional period.

### Conclusion

The Euro creates possibilities for expansion into new markets. However, the introduction of the Euro is predicated on major technical and commercial work by entrepreneurs. Businesses that will gain most from the introduction of the Euro are those that anticipate the changes occasioned by a single currency.

It is absolutely essential for businesses that export to Europe to review, on the one hand, all their purchase orders, contracts, packaging, confirmations and other documents and, on the other hand, their policy toward risks of monetary fluctuation.

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