House Legislative Analysis Section
Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

EURO CONVERSION AND CONTRACT CONTINUITY

House Bill 5800 as passed by the House
Sponsor: Rep. Mark Schauer

House Bill 5835 as passed by the House
Sponsor: Rep. Andrew Richner

Committee: Commerce
Second Analysis (6-25-98)

THE APPARENT PROBLEM:

Eleven member countries of the European Union have adopted a uniform currency called the euro. The countries have decided to provide a three-year period of transition, from January 1, 1999 until 2002, so that this complex and controversial new monetary policy can be put in place. Until 2002, the individual currencies of the countries *and* the euro will be in circulation. The rates of exchange for the various currencies when they are converted to euros will be set by the new central European bank.

During the time of transition from national currencies to a single currency, and continuing after the euro is in place, it will be necessary that parties to international contracts, financial transactions, and all manner of trade negotiations have a clear understanding of the terms and value of their transactions, in order to conduct their business with fairness and certainty. Some have argued that legislation is necessary to ensure recognition of the European Union by American markets, to give credibility to the euro, and to ensure contract continuity.

THE CONTENT OF THE BILLS:

House Bills 5800 and 5835 would amend the Uniform Commercial Code, adding two new sections to enable an orderly transition to euro conversion, and to ensure continuity of contracts despite the change in currency. The bills are tie-barred to each other.

House Bill 5800 (MCL 440.1210) would define the "ECU" or "European currency unit" to mean the currency basket that is from time to time used as the unit of account of the European Union as defined in European Council Regulation No. 3320/94. The bill also would define "introduction of the euro" and "euro." "Euro" would mean the currency of participating member states of the European Union that adopt a single currency in accordance with the treaty of European Union signed February 7, 1992. The bill specifies that member states are those that have decided to adopt the euro, and other member states that may choose to participate.

House Bill 5800 specifies that a euro would be a commercially reasonable substitution and substantial equivalent if the medium of payment of a contract, security, or instrument is a currency that has been substituted or replaced by the euro, and also if a medium of payment of a contract is the ECU. In both instances, the euro could be used in determining the value of that currency, or tendered at the conversion rate specified by the Council of European Union. The tendering of money under that contract could only be made in either euros or the currency originally designated by the contract, if that currency remained legal tender at the time of performance.

House Bill 5835 (MCL 440.1211) states that the right to tender payment in a currency described by the bill would not be affected by the currency having been substituted or replaced by the euro, or if the currency is considered a denomination of the euro and has a fixed conversion rate with respect to the euro. The bill specifies that reference to ECU in a contract, security, or instrument without defining ECU is presumed to be a reference to this currency basket, although under the bill that presumption would be rebuttable by showing that it is contrary to the intention of the parties.

Further, House Bill 5835 specifies conditions that would not excuse performance under a contract or give any party to a contract the right unilaterally to alter or terminate a contract, security, or instrument. When an agreement between parties would conflict with provisions of the bill, the agreement to the contract would control. The bill would apply to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and would not be displaced by any other law of the state. In a circumstance of currency alteration other than the introduction of the euro, the bill would not create a negative inference or negative presumption regarding the validity or enforceability of a contract, security, or instrument.

BACKGROUND INFORMATION:

According to information from the New York Times, The New Yorker magazine, The Economist and other sources, beginning January 1, 1999, eleven of the fifteen nations that form the European Union will adopt a single European currency called the euro, a new currency created four years ago by the twelve founding members of the European Union (EU) who described their intent in a document called the Maastricht Treaty, ratified in 1992. Under the new system and single currency, monetary policy will be set by a central bank located in Frankfurt, Germany. The bank's forerunner, the European Monetary Institute, is already in place and employs about 400 economists, statisticians, and computer experts whose task it is to set up the structure for the new central bank and eventually to monitor the money supply, in a manner similar to the Federal Reserve Board in the United States. The Monetary Institute will be legally converted to a bank in January 1999. The national currencies of the 11 countries will remain in circulation for three more years to allow an orderly transition and rate of exchange, and will be entirely replaced by euros in 2002.

Of the current 15 member nations in the EU, 11 have decided to adopt a unitary currency. Three of the 15--Denmark, Great Britain, and Sweden--are waiting to see whether the euro makes sense for their economies. One member nation, Greece, did not meet all the economic indicators, and will not take part.

The European Union was formally called the European Community, established in 1967 with the merger of three separate trade and energy organizations originally created to rebuild Europe's devastated economies after World War II. Currently there are 15 members of the European Union: Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden. (Norway was offered membership but declined to participate.) Ten other countries have made application to join--Cyprus, Estonia, Hungary, Latvia, Malta, Poland, Romania, Slovakia, Switzerland, and Turkey--and the EU is expected to include at least twenty countries within the coming decade. In fact, six of the 10 applicant countries already are called associate members: Bulgaria, the Czech Republic, Hungary, Poland, Romania, and Slovakia.

Decision-making in the European Union is divided between supranational European institutions (the European Commission and the European Parliament, which are both administered by the EU) and governments of the member states, which send ministers to the Council of Ministers. The Court of Justice serves as the final arbiter in legal matters or disputes among EU institutions or between EU institutions and member states.

Organizationally, the European Union's executive branch is called the European Commission, which makes policy proposals and presents them to the Council of Ministers. The Council of Ministers is the main lawmaking body of the EU, although it cannot draft legislation. Instead it accepts, rejects, or requests proposals from the commission. The European Council referenced in House Bill 5800 became an official part of the European Union in 1987. The council meets in summit meetings at least once every six months, the meetings convened by the country holding the presidency of the Council of Ministers. These summit meetings include the top leaders of the member states, and began in 1975.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills have no fiscal implications. (5-20-98)

ARGUMENTS:

For:

This legislation is necessary and timely. It provides for continuity of contracts and fair exchange rates during currency conversions, as the European Union moves to put its single currency, the euro, in place. Despite opposition to this uncertain economic policy and the likely reversal of some euro proponents' political fortunes, the proposed European monetary union and a single European currency likely is inevitable. The EU movement has been underway for more than three decades, and the European Council has already adopted the European Commission's first euro proposals, which include the eventual conversion of the ECU (the current composite "currency" and accounting unit) to the euro, and provisions for continuity of contracts once euro conversion has occurred. The United States, and individual states, should have laws in place to ensure a smooth transition to the new currency.

Against:

This shift in policy may be ill advised. Europe's controversial monetary union has not been coupled with a political union. Although there will be a central bank, there is no central government. What's more, if the proposal for the central monetary policy were put to a vote today, the proposal likely would be defeated. Because the move for a single currency has been foisted on reluctant citizens by central bankers and global corporations, and does not emerge from popular consensus, there are those who believe the monetary union is likely to create or worsen policy conflicts and economic instability, especially as nations grow to realize they may have relinquished too much of their national sovereignty.

Some highly regarded economists continue to question the wisdom of a single European currency and uniform monetary policy for the nations of Europe. They expect that the move to a uniform currency will eventually fail, pointing out that the shift to a single currency will likely cause higher unemployment in some nations. They observe that high unemployment can now be cushioned by declining national interest rates and exchange rates, and that these national policies will no longer be possible after the European Monetary Union is in place and each nation's interest rate and rate of exchange will be set by the central bank. Although proponents of the single currency suggest that a European Union is needed to serve as an economic counterbalance to the United States, and that employment mobility between EU countries will become increasingly flexible, opponents are less sanguine, arguing that the United States of America and the united nations of Europe are very dissimilar. When unemployment increases in particular states or regions within the United States, the unemployed can move more easily to other states to find work. Europeans, unlike Americans, will not move as easily if at all, because of language and cultural barriers, richer social welfare benefits, and strong unions.

POSITIONS:

The Michigan Bankers Association supports the bills. (6-26-98)

The Kellogg Company supports the bills. (6-25-98)

Analyst: J. Hunault

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.