

# 貨 法的 側面 金融去來

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- . 通貨單一化 法的 根據
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- 3. EU 規程 域外適用
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- 2. 契約 繼續性
- 3. 準據法
- 4. 金融去來慣行
- . 貨 金融去來

1999 1 1 聯合(European Union; EU) 11 1) 3 經濟通貨同盟(Economic and Monetary Union; EMU) , (the euro)<sup>2)</sup>貨 . 域內 單一通貨 美 貨 基軸通貨(key currency) , 가 1998 6 1 中央銀行(European Central Bank; ECB) . (Economic Community) (single currency for Europe)가 . 1980 (Werner Report)

1986 單一 法(Single European Act) (European Monetary System; EMS) (Exchange Rate Mechanism; ERM)가 가 換率 . 1989 3 (Delors Report) , 1992 2 (Maastricht Treaty)

1) EU 15 , , , 11 가 (“In Countries”) . EU (Council) 1998 5 3 EU (Commission) (European Monetary Institute; EMI) 議會(European Parliament) , , , 가

2) ‘ , 不加入 (opt-out) 가 2001 1 가 1995 12 3 EMU , 가

EMU 3) EMU (legal framework), 가 가 , 未 가 域外 4)

## · 通貨 單一化 法的 根據

(Treaty of Rome, 1957)  
 國民投票 EMU 가 1993 11  
 1 . EU ‘  
 , (economic convergence)  
 가 , 가 , 가  
 1996 , , ,  
 4 , ,  
 1999 1 1  
 (single currency)  
 가 (participating Member States; “ 가 ” “Euroland”, “Euro-Zone” )  
 (conversion rate) 1998 12 5) ,  
 . 1999  
 1 1 가 가  
 . 2001 (Transitional Period)  
 2001 12 31 가  
 가 , 2002 1 가 .

3) EMU 3 1999 1 1 3 가 . 2002 1 1

4) 가 1997 11 “ (Legal framework for the use of the euro) ”  
 <<http://www.euro.fee.be/library/be/ecc031811.html>> 가 EMU  
 <[http://www.cliffordchance.com/library/publications/emu\\_legal](http://www.cliffordchance.com/library/publications/emu_legal)>

5) 1998 12 31 12 30 (CET; ) EU 11 가 ( )  
 <<http://europa.eu.int/eurobirth>>

2002 7 1

EU

1995

1996

EU 規程(Regulations)<sup>6)</sup>

235

EU

7)

EU

ECU(European Currency Unit)<sup>8)</sup>

1997 6 17

6 20

9)

10) 109 1(4)

EU

11)

가 1998 5 3

1999 1 1

EMU

가

235

109 1(4)

6)

189

EU

“EU

規程(regulation)

, 指針(directive)

, 決定(decision)

, (recommendation)

(opinion)

, 規程

(direct applicability) 가

, 指針

國內立法

. 決定

가 .

, 3

7) Council Regulation (EC) No.1103/97.

8) ECU 109 g EU (EC No.3320/94)

對美

平價切下

EU

1995

ECU

(generic term)

1 1

가

. ECU

ECU

EU

(235

2 2 ).

9) 235 前文(Whereas ) (7)

. “... in order to reinforce legal certainty and clarity, its is appropriate explicitly to confirm that the principle of continuity of contracts and other legal instruments shall apply between the former national currencies and the euro and between the ECU ... and the euro; ...”

10) EU 가 1992 1993 11 1

## 單一通貨

	條約 235 規程	條約 109 1 (4) 規程
	1997. 6. 17	1998. 5. 3
		가
	<ul style="list-style-type: none"> <li>- ECU</li> <li>- (continuity of contract)</li> <li>- (conversion)</li> <li>- (rounding)</li> </ul>	<ul style="list-style-type: none"> <li>- 가</li> <li>- :</li> <li>- (No compulsion, no prohibition)</li> <li>-</li> <li>-</li> </ul>

: Clifford Chance, "A Tale of Two Regulations", *European Monetary Union Publications*, 1998.

## . 單一通貨

### 1. 經濟通貨同盟(EMU)

EMU (Federal Reserve System) <sup>12)</sup> (EMI) (ECB) (European System of Central Banks; ESCB)

가. (EMI)

EMI 1994 1 1

EMU 가 (ECB)

가 EU

. EMI ECB ESCB

12) 1913 (Federal Reserve Act)

12

12

(Federal Reserve Banks)

全國

30

(Board of Governors of the

Federal Reserve System)가

中央銀行



(regulation) EU 規程 가

ECB 가

ESCB ,

ECB 가

Repo 가

(security interests)

EU (minimum reserve) ECB

ECB 가 가

EU ,

.13)

ECB가

(prudential supervision)

ECB ,

EU ,

## 2. 貨 EU 規程

1999 1 1 가 가

(denomination) .14) , 2001

, 가 . 가 ,

3 가, 가, 가

EU 109 1 (4)

13) 救濟金融 (No Bail-out) 가 가 國債

14) 109 1 (4) 2 . “As from 1 January 1999 the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cents.” 6 1 . “The euro shall also be divided into the national currency units according to the conversion rates

가. 109 1 (4)

가

109 1 (4) 9

가 “

1998 12 31 法貨(legal tender) ”

가

金員

同 가

. 109

1 (4)

1999 1 1

EMU 가

109 1 (4) 8 가

가

가

15)

109 1 (4) 規程 8

(1) 가

(2) 1 가

(3) 1 가

가

가

< >

가

가

(fungibility of

payment)

가

貨





가

(six significant figures)

1998 12 31

가 . 235

가

가 . ,

逆數

1 1.23456

가 1 0.81005(

) 가 , 1

8,100,050 가

8,100,051.80 가

235

3

(triangulation)

A B

1 A

( 3 ) , 2

B , 3

가

( : ) . 235

가

(dual pricing system)

3

. 235

(cross-rates)

가.

235

(to be paid or accounted for)

EMU 가

1 가

가

가

가

가

(reconversion)

가

가

가

對查.

### 3. EU 規程 域外適用

가  
가. 準據法(governing law)

“  
”(lex monetae; theory of money)<sup>18)</sup>

가  
109 1 (4)  
州法 州  
가 EU

### . 去來上 法律問題

가 가  
가, 가  
不可抗力(force majeure, impossibility)  
가, 가 가 가  
(material change of circumstances)

### 1. ECU

(lex monetae)

EU

18)

自國 舊 新 가  
主權 가 가  
가 가  
FII 가

가 ECU<sup>19)</sup> 가

ECU 가

ECU 가 ,

가 1999 1 1 ECU “

가 가 ”<sup>20)</sup> , EU “

EU ECU 1 1 ”<sup>21)</sup> , 235

EU “EC 3320/94 ECU

ECU 1 1 ”

ECU가 EC 3320/94 ECU

가 ECU 22)( “closed basket contract”

, 가 1999 1 1

가 )

## 2. 契約 繼續性

(

frustration)

EMU 가 ( : US\$/DM, DM/FFr)

1999 1 1

19) GDP, ECU (EMS) 가 가 가

EMS 가 가

ECU .

20) The ECU becomes a currency in its own right on 1 January 1999.

21) In the case of contracts denominated by reference to the official ECU basket of the European Community ... substitution by the euro will be at the rate of 1:1, unless otherwise specified in the contract.

22) ECU 가 EMS 가

ECU 가 ECU가 가

ECU 가 ECU 가 ECU 가 ECU

年金(annuity) 純額 (net payment)  
가 .  
235 “  
, ,  
가 ”23)  
特約 24)  
가  
EU  
가 가  
ECU “ECU가  
가 ECU  
235 ECU  
EMU 가 (reserve  
requirements) 가(increased costs)가  
가 .

### 3. 準據法

EU  
EU  
EU 235  
ECU EU  
EU  
가 가  
가 , EU

23) *The Article 235 Regulation Article 3.* The introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or terminate such an instrument. This provision is subject to anything which parties may have agreed.

24) 235 前文 (7) “... the principle of continuity should be compatible with anything which parties might have agreed with reference to the introduction of the euro.”

法源

ECU, DM

가 .25)

가

EU

.26)

, “

”

ECU

가. 가

ECU

EU 235

27)

가

3

EU

가

가

(International Swaps and Derivatives Association, Inc.;

ISDA)

1998 5 6 ISDA EMU

ISDA

EMU

(Protocal Exhibit 1)

, EMU

ISDA

.28)

25) Niall Lenihan, "The Legal Implications of the European Monetary Union under U.S. and New York Law" <<http://www.euro.fee.be/Library/BE/BEC03A2102a.htm>>

26) (General Obligations Law) Title 16. Continuity of Contract (§5- 1601 ) Euro Conversion Act 1997 7

27) **The Article 235 Regulation** (8) Whereas the introduction of the euro constitutes a change in the monetary law of each participating Member State; whereas the recognition of the monetary law of a State is a universally accepted principle; whereas the explicit confirmation of the principle of continuity should lead to the recognition of continuity of contracts and other legal instruments in the jurisdictions of third countries;

28) ISDA EMU EMU 가 (bilateral) 多者間 議定書(multilateral protocol) 가 . ISDA (i) , (ii) ECU (price sources), (iii) . (iv) EMU (definitions), (v) (bond options) 特約 (annex) , 가 ISDA 1998 9 30 同意書(Adherence Letter) . ISDA EMU 特約 (agent) (US\$500) ISDA

4. 金融去來慣行

가. 利率 數

EMU 가

가 FIBOR, LIBOR

1999 1 가 域內

EURIBOR(European Interbank Offered Rate)

市場慣行(market convention)

數 360 (actual/360) (spot/two day)

(business days) TARGET 가 가

(actual/ actual), 3

1 2 , TARGET

TARGET 'Trans-European Automated Real-time Gross Settlement Express Transfer System'

RTGS(Real-time Gross Settlement)

ECB( )

TARGET EU

(cross-border) 가 가 ,

營業日

TARGET 新正 平日 가

RTGS CHAPS Euro

가 가 TARGET 가

가

EU

가 가

29) , ,

가

(netting) (set-off)

29)

가 가 “ EMU 가  
 EMU 가  
 ”  
 가 (close-out  
 netting)  
 (enforceable) (payment netting) ISDA EMU  
 가  
 30)  
 [ISDA ] ,  
 (a) 가 1999 1 1 가 ,  
 (b) ISDA 2 (c) ,  
 (c) ISDA 2 (c)(i) “ [ ( 가  
 가 ) ”

貨 金融去來

公定 ,  
 가 1998 EMU  
 가 ,  
 (i)  
 ISDA가 標準約定  
 , (ii) 類推  
 (iii) EMU 가 가

30) ISDA EMU 가  
 ISDA 4 同意書(Adherence Letter)

(解止; early termination)

31)

域

外

가  
 가 EMU ISDA 同意書 가,  
 特約 (schedule) . 가  
 . ISDA EMU  
 , 5 (Part 5) 가 .

**EMU:**

- (a) (b) , .
- 가 ,
- 가 .
- (
- )
- (i) ,
- (ii)
- (iii) ECU
- (iv)
- (v) 法貨
- (vi) ECU 가 가 , , ,
- (sponsor) 가 , , ,

- (b) , , 9 (b)

가  
 (lex monetae), 涉外私法上

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31)  
 解止

가  
 가 , 가



32)

ECU가

EU

EMU

ISDA

EMU

特約

EMU

가 가

가

### Legal Aspects of the Euro and Its Implications on the Financial Transactions

: , , EMU, ECU, EU , , , EMU