



Client Alert

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The End of the Euro? How the Euro's Demise May Affect Your Business

As has been reported in the media, most recently in prominent stories in the *Economist* and the *Financial Times*, the euro is under significant pressure. Some think that the currency could break up while others disagree. Regardless of what happens, now is the time for businesses with euro-denominated contracts to ask what kind of contingency planning they have in place. Risk is generated because no statute in the U.S.—state or federal—speaks to the issue of whether a successor currency to the euro would be considered a commercially reasonable substitute or commercial equivalent for the euro. In other words, could performance of a euro-denominated contract be discharged or excused because of the introduction of successor currencies?

In 1997, New York enacted the Continuity of Contract statute, which is codified at Sections 5-1601 *et seq.* of that state's General Obligations Law. Several other states followed New York's lead (but the comments in this AGG Client Alert are limited to New York). The Continuity Law addressed the legal effect of the introduction of the euro on contracts, securities and other instruments that are governed by New York law and that designate as the subject matter or medium of payment a currency that has been substituted or replaced by the euro.

In relevant part, the Continuity Law provides that "a currency that has been substituted or replaced by the euro, the euro will be a commercially reasonable substitute and substantial equivalent that may be either: (a) used in determining the value of such currency; or (b) tendered, in each case at the conversion rate specified in, and otherwise calculated in accordance with, the regulations adopted by the council of the European Union" (emphasis added).

In addition, under the Continuity Law, "none of: (a) the introduction of the euro; (b) the tendering of euros in connection with any obligation in compliance with paragraph (a) or (b) of subdivision one of this section; (c) the determining of the value of any obligation in compliance with paragraph (a) or (b) of subdivision one of this section; or (d) the calculating or determining of the subject or medium of payment of a contract, security or instrument with reference to interest rate or other basis has been substituted or replaced due to the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent, shall either have the effect of discharging or excusing performance under any contract, security or instrument, or give a party the right to unilaterally alter or terminate any contract, security or instrument" (emphasis added).



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The statute worked well—contracts denominated in national currencies were automatically converted to the euro at the conversion rate specified by the EU. However, as stated above, there is a weakness in the statute (and similar statutes across the United States) in that it works only one way, and is silent on the issue of what happens to euro-denominated contracts under New York law in the event the euro breaks apart. The law does say that its own existence should not drive a negative inference as to its silence on other currency-combination issues, but it is unclear how courts would react to a potential euro breakup.

Now is the time for businesses to review their exposure.

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