OPINION OF ADVOCATE GENERAL POIARES MADURO
delivered on 25 March 2004 [1]

1. The *Landgericht München* (Regional Court, Munich) seeks guidance on the interpretation of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro [2] (hereinafter 'Regulation No 1103/97'). The advent of the euro has had a particular impact on the daily life of all economic agents in the eurozone. In substance, the *Landgericht München* wishes to know whether monetary amounts corresponding to price-per-minute telephone tariffs, when converted into euro, may or must be rounded to the nearest cent, or whether the figure resulting on conversion must be shown with a degree of accuracy higher than to the nearest cent. The answer to these questions may affect a large number of contracts, particularly in Member States participating in the single currency, in which the value of the smallest sub-unit of the national currency — frequently used in the display of price-per-unit tariffs in contracts for the supply of goods or services such as electricity, telecommunications or fuel — is lower than the value of the smallest sub-unit of the euro (the cent). Moreover, it is important to point out that the problems addressed in this case will be likely to recur whenever a Member State joins the single currency.

I — Facts in the main proceedings and questions referred to the Court

2. The defendant in the main proceedings, O2 (Germany) GmbH & Co. OHG (hereinafter 'O2'), which until April 2002 was VIAG INTERCOM GmbH & Co., is a company established in Munich (Federal Republic of Germany) which operates a mobile telephone network. In the summer of 2001, O2 converted its mobile telephone contracts from German marks (DEM) into euro. The tariffs in those contracts were shown on a per-minute price basis quoted in German marks. The contracts also stipulated that the individual amount invoiced for each telephone call was to be calculated on the basis of 10-second units.

1 — Original language: Portuguese.
2 — OJ 1997 L 162, p. 1.

3. O2 converted the various per-minute prices in accordance with the conversion rate established by Article 1 of Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro, [3] which provided that one euro corresponded to 1.95583 German marks. It then rounded them to the nearest cent pursuant to the first sentence of Article 5 of Regulation No 1103/97, according to which monetary amounts to be paid or accounted for are to be rounded up or down to the nearest cent after conversion into the euro unit.

4. According to the example given by the Landgericht München, for calls made after 9 p.m. to the fixed-line network on the 'Genion Home' tariff, the defendant converted the per-minute price from DEM 0.05 to EUR 0.02556, employing the fixed conversion rate, and then rounded it up to EUR 0.03 (the nearest cent) pursuant to Article 5 of Regulation No 1103/97. On that basis, a 10-minute telephone conversation then cost EUR 0.30 (corresponding to DEM 0.59), instead of the previous amount of DEM 0.50 (corresponding to EUR 0.26).

5. Having established that customers using this per-minute price for calls made after 9 p.m. to the fixed-line network would be subject to such a price increase, Verbraucher-Zentrale Hamburg e.V. (hereinafter 'Verbraucher-Zentrale') — a consumer association competent to take legal action with regard to breaches of consumer protection laws — brought an action before the Landgericht, claiming, in substance, that the defendant's unilateral decision to adopt the conversion and rounding method concerned contravened the principles of contractual continuity and the highest possible degree of accuracy in conversion underlying the relevant regulations concerning the introduction of the euro.

6. The Landgericht considers that if it is to determine whether or not the defendant's conversion and rounding practice is compatible with Regulation No 1103/97, it is essential that the Court answer the following two questions:

'1. Is the first sentence of Article 5 of Regulation No 1103/97 to be understood as meaning that, in a private-law contractual relationship, only the final amount of the invoice, or an individual amount detailed on the invoice, may or must be rounded, or does a contractually agreed unit price/tariff (in this case a per-minute price) constitute a monetary amount to be paid or accounted for within the meaning of that provision? In determining whether a tariff is a monetary amount to be paid or accounted for within the meaning of Article 5 of Regulation No 1103/97, is it

3 — OJ 1998 L 359, p. 1.

decisive whether the tariff relates to a particular multiple (in this case six) of a unit on the basis of which the final amount of the invoice is ascertained (in this case a 10-second unit), or whether it is the tariff as perceived by consumers that is the decisive unit for the purposes of the invoice?

2. Is Regulation No 1103/97 (and in particular Article 5) to be understood as constituting an exhaustive rule whereby sums other than monetary amounts to be paid or accounted for (if any) may not be rounded in the manner described in Article 5, in other words, must they either continue to be displayed in the former national currency, or be quoted in the exact amount produced on conversion?'

7. In order to answer these questions, in particular, an interpretation of the following provisions of Community law is necessary.

8. Article 3 of Regulation No 1103/97 provides that:

'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.'

9. Article 1 states that for the purposes of that regulation,

'— "legal instruments" shall mean legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect;'.

10. According to Article 4 of Regulation No 1103/97:

'1. The conversion rates shall be adopted as one euro expressed in terms of each of the national currencies of the participating Member States. They shall be adopted with six significant figures.

2. The conversion rates shall not be rounded or truncated when making conversions.

3. The conversion rates shall be used for conversions either way between the euro unit and the national currency units. Inverse rates derived from the conversion rates shall not be used.

4. Monetary amounts to be converted from one national currency unit into another shall first be converted into a monetary amount expressed in the euro unit, which amount may be rounded to not less than three decimals and shall then be converted into the other national currency unit. No alternative method of calculation may be used unless it produces the same results.'

11. Finally, Article 5 of the regulation provides that:

'Monetary amounts to be paid or accounted for when a rounding takes place after a conversion into the euro unit pursuant to Article 4 shall be rounded up or down to the nearest cent. Monetary amounts to be paid or accounted for which are converted into a national currency unit shall be rounded up or down 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 of the national currency unit. If the application of the conversion rate gives a result which is exactly half-way, the sum shall be rounded up'.

12. Written and oral observations have been submitted by O2 and the Commission. They will be referred to in the context of the assessment of the legal issues raised by the national court.

II — Assessment

A — *Preliminary observations*

13. The Court is called upon to give a preliminary ruling in this case in view of the fact that the mere conversion and rounding up of a contractually agreed per-minute price of DEM 0.05 for certain calls into EUR 0.03 resulted in even a two-minute telephone call of that type costing the consumer opting for that specific per-minute price one pfennig (DEM 0.01) more than before the conversion. The longer the telephone call on that particular rate, the greater the increase in the amount to pay. A 10-minute call, for example, costs nine pfennig more than it did before the introduction of the single currency. Converted into euro, this DEM 0.09 represents EUR 0.05. Since telecommunications rates and other prices in long-term contracts increase from time to time this increase would not be particularly surprising, if it did not result exclusively from the conversion into euro of a monetary amount previously expressed in German marks. In other words, the problem arises because the increase in the amount to be

paid is not presented as the result of an explicit price rise but is instead hidden in the conversion operation that is supposed to be neutral as regards the prices contractually agreed.

14. As a preliminary remark, it is important to point out that the conversion of monetary amounts, such as contractually agreed per-minute prices, was to take place at the latest by the end of the 'transitional period', which, pursuant to Article 1 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro [4] (hereinafter 'Regulation No 974/98'), 'shall mean the period beginning on 1 January 1999 and ending on 31 December 2001.'

15. The conversion of such monetary amounts had to occur, first, on account of the principle of legal equivalence between the euro and national currency units enshrined, in particular, in Article 14 of Regulation No 974/98. This provision states that 'where in legal instruments existing at the end of the transitional period reference is made to the national currency units, these references shall be read as references to the euro unit according to the respective conversion rates.' [5] Second, the need to convert amounts such as per-minute prices which have been contractually agreed is also a consequence of the principle that, once the transitional period had ended, the euro was to be used as the sole legal tender. [6]

16. This answers by implication the last part of the second question posed by the Landgericht. Once the transitional period had ended, continuing to operate by reference to the various per-minute prices in German marks as prior to the changeover was no longer a valid alternative for O2. Both the Commission and O2 agree on this point.

17. What remains to be determined, and this is the basic issue on which the Landgericht seeks guidance from the Court, is whether Regulation No 1103/97 permits increases in amounts ultimately to be paid for by consumers using a certain rate, in so far as such increases result purely from converting the contractually agreed per-minute prices previously expressed in a national currency into euro and subsequently rounding them to the nearest cent.

4 — OJ 1998 L 139, p. 1.

5 — Article 13 of the same Regulation determines that Article 14 'shall apply as from the end of the transitional period'.

6 — See Article 15(1) specifically stating that '[b]anknotes and coins denominated in a national currency unit as referred to in Article 6(1) shall remain legal tender within their territorial limits until six months after the end of the transitional period at the latest; this period may be shortened by national law.'

18. If we conclude that Article 5 of Regulation No 1103/97 requires per-minute prices to be rounded in accordance with the rules which it lays down, O2's conversion and rounding practice is permissible, despite its adverse effects on those consumers opting for particular rates such as the DEM 0.05 per-minute price for calls after 9 p.m. to the fixed-line network. If, on the other hand, we consider that such amounts are not among those referred to in Article 5, that provision will not require them to be rounded to the nearest cent; however, the question will remain whether O2 can none the less carry out such rounding unilaterally. There are three possible answers: first, as O2 argues in the alternative, that Regulation No 1103/97 does not expressly prohibit the rounding of amounts other than those covered by Article 5 and that the rounding practice adopted is therefore compatible with the regulation; second, as argued by Verbraucher-Zentrale, that Regulation No 1103/97 requires the highest degree of precision in the conversion of monetary amounts falling outside the scope of Article 5 and that, as a consequence, O2's rounding practice is incompatible with the regulation; third, that Regulation No 1103/97, although not precluding the rounding of monetary amounts other than those referred to in Article 5, subjects such rounding to certain limitations.

19. In order to address these central questions it is necessary to reflect upon the objectives pursued by Regulation No 1103/97 and upon the context in which it was adopted. I shall subsequently analyse the basic rule of continuity of legal instruments set out in Article 3 of Regulation No 1103/97. I shall argue that that rule constitutes a provision central to any assessment of the impact of the introduction of the euro on existing contracts. The specific questions posed by the Landgericht will then be addressed in the following order: Is a per-minute price, as described in the main proceedings, an amount to be paid or accounted for? If it is not, may an amount of this kind be rounded following its conversion into euro? If rounding is permissible for amounts other than amounts to be paid or accounted for, what are the limits, if any, deriving from Regulation No 1103/97 where one party to the contract unilaterally decides that such amounts are to be rounded?

B — *Objectives pursued by Regulation No 1103/97*

20. The guarantee of legal certainty recognised by the Court as a general principle of Community law[7] is the basic principle underlying Regulation No 1103/97.

7 — See, for example, Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraphs 7 to 11, Case C-110/94 *Inzo* v *Belgian State* [1996] ECR I-857, paragraph 21, and Case C-24/95 *Land Rheinland-Pfalz* v *Alcan Deutschland* [1997] ECR I-1591, paragraphs 29 to 37.

21. It must be recalled that Regulation No 1103/97 entered into force in all Member States on 20 June 1997, well before the entry into force of Regulation No 974/98 on the introduction of the euro and of Regulation No 2866/98 adopting the irrevocably fixed conversion rates between the euro and the currencies of the participating Member States. This fact constitutes, in itself, evidence of the importance of ensuring legal certainty for all economic agents in the Community, through the adoption of the rules laid down in Regulation No 1103/97, in particular the rules relating to the continuity of legal instruments and to the conversion and rounding of monetary amounts.

22. It was vital to ensure that the transition to the new currency did not promote instability in contractual relations and uncertainty among economic agents as to the consequences of introducing the euro. Continuity, in euros, of the value of amounts expressed in national currency units had to be uniformly guaranteed as soon as and as clearly as possible, since without such continuity — in the case, for example, of a low level of accuracy on conversion operations — dangerous price instability to the detriment of consumers might ensue.[8] In that context, the rules laid down by Regulation No 1103/97 provide a uniform framework for preventing uncertainty among economic agents.

C — *The rule of continuity of legal instruments in Article 3 of Regulation No 1103/97*

23. Article 3 of Regulation No 1103/97 establishes the fundamental rule of continuity of legal instruments, which is a guiding principle of the whole process of the introduction of the single currency.

24. The principle of continuity of contracts, '*pacta sunt servanda*', constitutes a general principle of law, which the Court has expressly characterised as 'a recognised principle of every legal order'.[9] Article 3 has, however, a broader scope than the mere assertion of this principle to the extent that it ensures that all terms in legal instruments will remain unaffected by the introduction of the new currency. Legal instruments, according to Article 1, include, inter alia and in addition to contracts, legislative and statutory provisions and acts of administration. Article 3 cannot therefore be regarded simply as a rule designed to draw attention to the fact that rules exist in the legislation of the Member States which affirm the general principle of continuity of contracts in the context of the introduction of a new currency. This point is made particularly clear when we consider some of the specific reasons for Article 3's inclusion in Regulation No 1103/97.

8 — Recitals 5 and 7 in the preamble to Regulation No 1103/97 expressly mention the need to take into account the position of consumers in the changeover to the euro.

9 — See Case C-162/96 *Racke* v *Hauptzollamt Mainz* [1998] ECR I-3655, paragraph 49.

25. The euro regulations, including Regulation No 1103/97, are designed 'to ensure a balanced changeover, in particular for consumers'. [10] In other words, as the Landgericht points out, such a changeover must not wrongly burden the consumer. Moreover, these concerns for consumer protection are one reason why Article 3 was included in Regulation No 1103/97. [11]

26. In the specific context of the preparation for the changeover to the single currency, it is understandable that consumers had to be sure that contractual terms, and in particular those terms establishing prices expressed in national currency units, would not change merely because those monetary amounts were converted into euro.

27. Article 3 of Regulation No 1103/97, as well as concerning consumer protection, also dealt with a related issue in that it responded to legitimate concerns about possible negative consequences for price stability in the eurozone resulting from the introduction of the single currency. In the context of the changeover to the euro the prevention of possible price rises resulting purely from the introduction of the euro could not simply be left to the national laws of the various Member States and to their mechanisms for preventing price variations. Therefore, Article 3 also represents an important provision for the purpose of ensuring uniformity in the attainment of the objective of maintaining price stability during the process of transition to the new currency. The introduction of the euro constitutes a central event in the conduct of the European single monetary policy, and the maintenance of price stability is, it must be recalled, the primary objective of the definition and conduct of that policy, as is expressly stated in Article 4(2) EC. [12]

28. Article 3 of Regulation No 1103/97 is a provision central to the whole process of the introduction of the euro. It is possible to derive from the rule of continuity of legal instruments stated in Article 3 and from the principle of legal equivalence between the euro and the national currency units a principle of neutrality, which underlies the euro regulations. [13] According to this principle of neutrality, the conversion of national monetary units into euro cannot alter the value of any debts or credits arising by virtue

10 — See Recital 5 of Regulation No 1103/97.

11 — Recital 7 affirms that 'the provisions on continuity can fulfil their objective to provide legal certainty and transparency to economic agents, *in particular for consumers*, only if they enter into force as soon as possible' (emphasis added).

12 — Article 4(2) EC determines that '[c]oncurrently with the foregoing, and as provided in this Treaty and in accordance with the timetable and the procedures set out therein, these activities [of the Member States and the Community] shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU, *and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability*' (emphasis added).

13 — Some national legislation designed to ensure that national legal and monetary systems are compatible with the euro regulations expressly affirms this principle of neutrality with respect to existing legal instruments. That is the case, for example, with Article 6 of the Spanish Law No 46/98 of 17 December 1998 on the introduction of the euro, which states that 'the substitution of the euro for the peseta shall not alter the value of credits or debts, whatever their nature, their value remaining identical to the value they had at the moment of the changeover, without interruption' (unofficial translation).

of a legal instrument. Their value must remain equal to the value of those debts or credits prior to the redenomination of the monetary unit. The introduction of the euro is to be regarded as a neutral occurrence with respect to legal instruments existing at the time of its introduction, including the value of any monetary amounts referred to in those instruments. This is consistent with the purpose of Regulation No 1103/97, which is to ensure that changes required by the introduction of the euro are kept to a minimum, in the interests of the consumers concerned and in order to avoid an inflationary trend.

29. Even if Article 3 had been designed simply to confirm a general principle of law, [14] which is also recognised in the various national legal systems, the wording of this provision and the objectives of Regulation No 1103/97 make clear that it has legal consequences of its own. [15] In fact, even if under national provisions in certain Member States one economic actor were permitted to vary unilaterally legal instruments, or more specifically any contractual term, to the detriment of consumers, purely because of the changeover to the euro, the application of such national provisions would be precluded by Article 3. [16]

30. In so far as Article 3 of Regulation No 1103/97 is a relevant rule concerning protection and use of the euro in the course of its introduction, it is part of the single unified monetary law of the Community, as far as the participating Member States are concerned. [17] In this respect, Article 3 constitutes a private-law corollary of the euro regulations which prevails over any conflicting national provisions of the law applicable to the contract, the *lex contractus*. This is perfectly understandable if we recall that Article 3 was included in Regulation No 1103/97 in order to ensure that a uniform degree of protection of the single currency was attained as well as a high standard of legal certainty and transparency throughout the process of its introduction.

31. The framework for the euro established by Regulations Nos 1103/97 and 974/98 therefore brings to the fore the following principles and rules: (1) the principle that the euro should be used as the sole legal tender, replacing national currencies; (2) legal equivalence between the euro and national currency units; (3) the rule of continuity of

14 — To which Recital 7 of Regulation No 1103/97 expressly refers.

15 — There is a significant debate in German legal circles over this issue. See Ritter, Jan Wilhelm, *Euro-Einführung und IPR unter besonderer Berücksichtigung nachehelicher Unterhaltsverträge*, Lang, Frankfurt a.M., 2003, pp. 91 to 117, spec. p. 117, and Hahn, Marie-Therese, *Europäische Währungsumstellung und Vertragskontinuität: eine Rechtsvergleichende Analyse aus der Perspektive Deutschlands, Frankreichs und Großbritanniens unter Berücksichtigung der Verordnung (EG) Nr. 1103/97*, Lang, Frankfurt a.M., 1999, pp. 101 to 114.

16 — With the obvious exception expressly stated in Article 3 of possible agreement to the contrary by the parties involved.

17 — See Recital 8 of Regulation No 1103/97, which recognises that the introduction of the euro constitutes a change in the monetary law of Member States.

legal instruments and neutrality as regards the value of monetary amounts referred to in those legal instruments; and (4) the principle of contractual freedom. They all assume particular importance for the purpose of determining if, under the euro regulations, and in particular under Regulation No 1103/97, one contractual party can unilaterally decide to round up per-unit prices to the nearest cent, when that rounding directly causes a significant variation in other economic agents' final monetary obligations. [18]

D — *Is a price of the kind described by the Landgericht München an amount to be paid or accounted for?*

32. The fact that Article 3 of Regulation No 1103/97 provides that the introduction of the euro is not to have the effect of altering any term of a legal instrument or of discharging performance under any legal instrument, nor give a party the right unilaterally to alter a term in a legal instrument, might suggest that all prices expressed in a national currency, as essential contractual terms, must be converted into euro with the highest degree of precision possible. The fact is, however, that, in the process of changeover from one currency to another, practical reasons may, in some cases, require rounding to take place. [19] It is not surprising, therefore, that Regulation No 1103/97 provides for and regulates rounding in respect of certain monetary amounts.

33. Article 5 provides that rounding to the nearest cent is applied, first of all, to monetary amounts to be paid. Despite the fact that no definition of monetary amounts to be paid can be found in the euro regulations, O2 and the Commission agree that 'monetary amounts to be paid' covers all forms of debts of money. [20]

34. Contrary, however, to the understanding of O2, a per-minute price cannot be regarded per se as an amount to be paid, because it does not constitute, in itself, a debt of money. Only when it is known how many minutes a telephone call has lasted are the indispensable data available to ascertain the amount to be paid for a particular call. It is at that precise moment that a customer becomes a debtor of the telephone operator in respect of a specific monetary amount. If the

18 — This variation is due to an arithmetical effect of multiplication, by virtue of which a small variation resulting from the conversion and rounding of a per-unit price is amplified in the final amount owed, depending upon how many units have been purchased.

19 — Martin Mélendez, Maria Teresa, *El Euro — Paridad, continuidad, conversión y redondeo*, La Ley, Madrid, 2001, pp. 234 to 238, provides examples of previous rounding regulations adopted in Spain in the nineteenth century and in the twentieth century in the United Kingdom.

20 — See also *The Introduction of the euro and the rounding of currency amounts*, DGII/C4-SP(99), Update February 1999, p. 10.

customer does not make any telephone calls in a given period of time, there is obviously no debt of money even though the per-minute price agreed upon remains perfectly valid.

35. The reason for rounding the amounts expressly mentioned in Article 5 of Regulation No 1103/97 to the nearest cent is a practical one, as the Commission points out, and a direct consequence of the fact that the euro is divided into one hundred cent and there is no legal tender for sub-units of the cent. [21] The monetary amounts referred to in Article 5 are therefore those which, after conversion, do not, for practical reasons, allow a higher degree of accuracy than to the nearest cent. These practical reasons do not justify, in turn, the rounding to the nearest cent of a per-minute price because such a price does not in itself represent a debt of money.

36. Article 5 applies the same rounding rule to the nearest cent to amounts to be accounted for. Again, the euro regulations do not provide a definition of these amounts. As the Commission points out in its written observations, this category includes amounts used for accounting purposes, in statements of account or on balance sheets. Even if such amounts may not be the final amounts to be paid, they ultimately represent debts of money. Clearly a per-minute price is not in itself an amount in respect of which an entry must be made in the accounting books of telephone operators. The per-minute price is simply used for the intermediate computations [22] necessary to establish the amounts to be paid (such as the final amount of the invoice) and accounted for (as may be the case as regards the cost of each telephone call).

37. Moreover, the practical reasons which justify the rounding to the nearest cent of final amounts to be paid for or entered in books of accounts do not justify the rounding to the nearest cent of a per-minute price which is merely used in the course of calculating such amounts.

38. The fact that, according to the information provided by the Landgericht, the calculation of the cost of each telephone call is ultimately based, not even on the per-minute price, but on a sixth part of that amount, corresponding to a per-unit price of 10 seconds, makes it inconceivable that the per-minute price should be regarded as an amount to be accounted for, which must be

21 — Article 2 of Regulation No 974/98 provides that '[a]s 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 cent.' Article 3 of the same Regulation provides that '[t]he euro shall be substituted for the currency of each participating Member State at the conversion rate'.

22 — The notion of 'intermediate computations' is expressly mentioned in Recital 11 of Regulation No 1103/97.

rounded to the nearest cent after conversion into euro. In fact, in this particular case, the per-minute price is not even an amount directly used in calculating the cost to be invoiced for each telephone call.

39. I am therefore unable to agree with O2's assertion that the expression 'monetary amounts to be paid or accounted for' in Article 5 of Regulation No 1103/97 covers all monetary amounts. This provision does not provide that '*all monetary amounts*' are to be rounded to the nearest cent. It provides that '*monetary amounts to be paid or accounted for* when a rounding takes place after a conversion into the euro unit pursuant to Article 4 shall be rounded up or down to the nearest cent'. [23]

40. The fact that all monetary amounts expressed in the national currency of a participating Member State have to be converted into euro does not mean that they have to be rounded to the nearest cent. O2 has argued that whenever there is a conversion of a monetary amount, there must be a rounding to the nearest cent, but has put forward no arguments in support of that conclusion.

41. Article 5 of Regulation No 1103/97 clearly admits, *a contrario*, that a conversion may not necessarily require a rounding. In fact, this provision establishes the rounding to the nearest cent of 'monetary amounts to be paid or accounted for *when a rounding takes place* after a conversion into the euro pursuant to Article 4'. [24] I disagree, therefore, with O2 when it argues that Article 4 makes conversion and rounding possible, whereas Article 5 merely deals with the modalities of rounding. Conversion and subsequent rounding are two completely different operations. Article 4 establishes the terms on which the conversion of monetary amounts expressed in national currency units into euro takes place. [25] It does not deal with the rounding of the monetary amounts converted. [26] This issue is dealt with by Article 5 with respect to monetary amounts to be paid or accounted for.

42. In my view the answer to the first question should therefore be that an amount such as a per-minute price is not an amount

23 — Emphasis added.

24 — Emphasis added.

25 — Article 4(4) also determines how the conversion of one national currency unit into another must take place. This is clearly a problem of no interest for the present case.

26 — Article 4 refers to rounding only in two circumstances, both of which are outside the scope of the analysis of the present case. First, Article 4(2) prohibits the rounding or truncation of conversion rates which, under Article 4(1), had to be adopted with six significant figures. This reference obviously does not concern the rounding of monetary amounts after a conversion into euro has occurred. Secondly, Article 4(4) establishes the precise rules, including a rule on rounding, for converting monetary amounts of one national currency into another, which is again an issue outside the scope of the analysis of the present case.

to be paid or accounted for within the meaning of Article 5 of Regulation No 1103/97. Amounts such as a per-minute price are monetary amounts used in the intermediate computations undertaken for the purpose of determining the amounts to be paid or accounted for.

43. Since the monetary amounts referred to in Article 5 are those which, after a conversion, do not, for practical reasons, allow a degree of accuracy higher than to the nearest cent, in a telecommunications invoice only the final amount of the invoice will necessarily be subject to rounding to the nearest cent.

44. As regards individual amounts corresponding to the cost of each telephone call, a rounding to the nearest cent may be permissible if the cost of each telephone call (for practical reasons concerning bookkeeping or in the light of the specific contractual terms agreed by the parties) has to be accounted for individually. If rounding takes place in those circumstances, it will tend to have, as a matter of fact, a neutral impact on the final amount of the invoice to be paid. As the individual cost of each telephone call depends on the duration of that call and this element is variable, rounding, either up or down, will take place at random, thus rendering the final amount of the invoice practically the same as if there had been a higher degree of accuracy in respect of the individual amounts of the invoice. [27]

E — *May an amount such as a per-minute price used in intermediate calculations be rounded after conversion into euro?*

45. As mentioned above, Article 5 makes provision for amounts to be paid or accounted for to be rounded to the nearest cent, and no provision in Regulation No 1103/97 supports the conclusion that amounts used in intermediate computations should also be rounded to the nearest cent. As the Commission points out, no practical reasons justify prohibiting the preservation of a degree of accuracy in conversion higher than to the nearest cent for an intermediate amount, which is simply not subject to the rounding rules set out in Article 5.

27 — The fact that Regulation No 1103/97 provides for a rounding up when the conversion gives a result that is exactly halfway means that there is a greater probability of rounding up than rounding down. In other words, the number of telephone calls whose individual cost, as an amount to be accounted for, may result in a rounding up will tend to be higher than those rounded down. This effect will, however, be negligible, and, most importantly, is a consequence of the fact that Article 5 of the regulation itself provides for rounding up where the conversion of amounts to be paid or accounted for gives a result which is exactly halfway.

46. Conversely, the rounding of amounts, such as per-minute prices, used in intermediate calculations, even if it is a rounding to the nearest cent, will not be precluded by Regulation No 1103/97, provided that the economic agents involved, namely the contracting parties, agree on that rounding. The principle of contractual freedom is expressly recognised in Article 3 and there is no reason whatsoever to restrict that freedom when the rounding up or down to the nearest cent of amounts used in intermediate computations is involved. The fact that Article 5 of the regulation does not provide for the rounding of those amounts cannot be understood, *a contrario*, as prohibiting such rounding.

47. We must, however, be aware that where a monetary amount is rounded, whatever is gained by one party is lost by the other, i.e. the sum of what is gained and lost is zero. Therefore, an agreement that there is to be rounding will be most unusual, because it is highly unlikely that one party to the contract will be willing to accept the losses which will necessarily result from the rounding of price-per-unit amounts used in intermediate calculations, exclusively to the benefit of the other party to the contract.

48. It follows from the foregoing considerations that a rounding to the nearest cent of a per-unit price used in intermediate calculations is compatible with Regulation No 1103/97, provided that it has been agreed between the parties involved. In the present case, however, the rounding of per-minute prices used in intermediate computations was unilaterally decided by O2.

49. Nowhere in Regulation No 1103/97 is there any provision expressly prohibiting the rounding, unilaterally decided by one contractual party, of the figure resulting from the conversion into euro of a per-unit price used in intermediate calculations for the purpose of determining amounts to be paid or accounted for by the other party. In its written observations, the Commission rightly draws attention to this when it affirms that Article 5 does not prohibit the rounding of monetary amounts other than those expressly mentioned in this provision. First, such a prohibition would have to be clearly stated. Second, Article 5 would necessarily have had to specify the requisite number of decimal places. Contrary to Verbraucher Zentrale's argument in the main proceedings, it will not be necessary for an economic actor, such as O2, to show the converted per-minute prices with the highest possible degree of precision. Moreover, it must also be recalled that Recital 11 in Regulation No 1103/97 makes clear that the rounding rules set out in the Regulation 'do not affect any rounding practice, convention or national provisions providing a higher degree of accuracy for intermediate computations'. This recital is clearly inconsistent with the argument that the default regime must always be the one entailing the highest degree of accuracy.

50. The fact, however, that unilateral rounding of a monetary amount used for the purpose of calculating an amount to be paid or accounted for may, in principle, take place does not mean that such rounding is not subject to any limits directly imposed by Regulation No 1103/97. Article 3 of Regulation No 1103/97 establishes the fundamental rule of the continuity of contractual terms. To the extent that per-minute prices constitute essential terms of the contract, a unilateral decision to round those prices must inevitably be assessed in the light of this rule. Accordingly, and contrary to the understanding of O2, there is a Community-law provision capable of imposing restrictions on the unilateral rounding of price-per-minute tariffs contractually agreed with its customers.

F — *Restrictions imposed by Regulation No 1103/97 where one contractual party unilaterally decides to round the per-unit prices used in intermediate computations*

51. There is a clear difference between amounts to be paid or accounted for, on the one hand, and amounts used in intermediate calculations, on the other hand. We cannot, however, completely separate these two types of monetary amounts and ignore the fact that amounts used in intermediate calculations play a major role in the determination of the amounts to be paid or accounted for. There is no doubt that unilateral rounding by an economic actor of an amount used in calculating a sum to be paid or accounted for can have a material impact on the quantification of that sum, to the detriment of other economic actors. [28]

52. This is precisely what happens when a telephone operator like O2 decides to round to the nearest cent its various price-per-minute rates after converting them into euro. In so far as that rounding leads to an increase in the amount to be paid or accounted for in respect of telephone calls made by customers using a particular per-minute price (such as the DEM 0.05 rate for calls made after 9 p.m. to the fixed-line network), it directly infringes the rule of continuity of contractual terms stated in Article 3 of Regulation No 1103/97.

53. That rounding entails a unilateral variation of a particular contractually-agreed term, by virtue of which a particular per-

28 — The risk of unilateral rounding to the nearest cent of per-unit prices, particularly in the telecommunications domain, having significant consequences for the final amounts to be paid by consumers was correctly assessed by some Member States. It constitutes moreover the justification for existing provisions in national legislation designed to prepare national legal systems for the introduction of the euro. A good example may be found in Article 11(2) of the Spanish Law No 46/1998 of 17 December, modified by Law No 9/2001 of 4 June 2001, which provides that, after conversion, per-unit prices, including telecommunications prices, are to be expressed to six decimal places.

minute price for calls made after a particular time and within a particular tariff was agreed between the parties. Neither of the parties to the contract agreed to a particular per-minute price expecting to make only telephone calls lasting one minute. Instead, that rate enabled parties to calculate the likely cost of each telephone call, however long it lasted, and the total cost of all telephone calls made. As a consequence, the impact of rounding the per-minute price has to be assessed in the light of its impact on the cost of each telephone call or the total cost of all telephone calls made (which are the 'amounts to be paid or accounted for').

54. I am, therefore, unable to agree with the Commission when it expressly asserts that precision in conversion is quite distinct from continuity of contracts, stating that the case in hand is not concerned with the issue of continuity of contractual terms, but merely with the degree of accuracy of the conversion into euro. To my mind, there is a close connection between accuracy in conversion of per-minute prices and continuity of contractual terms because a contractually agreed per-minute price is, indeed, a term of the contract. In general, where a certain per-unit price has been contractually agreed, the preservation of a degree of precision higher than to the nearest cent may be indispensable to ensure the continuity of the contractual term establishing the price. This is particularly clear if we bear in mind that it was certainly not intended that Regulation No 1103/97 should allow price increases to take place as a mere consequence of the conversion of national monetary units into euro. In order to avoid such incremental variations it is essential that Article 3 of Regulation No 1103/97 is interpreted as meaning that in some circumstances a degree of accuracy in conversion higher than to the nearest cent must be preserved for monetary amounts used in intermediate computations.

55. In my view Regulation No 1103/97 (and in particular Article 3) does not allow a contractual term to be varied in such a way by means of a rounding practice such as that unilaterally adopted by O2. To the extent to which there is, in substance, an actual increase in the amount to be paid for calls made after 9 p.m. by all consumers choosing the 'Genion Home' tariff, the contractually agreed per-minute price is subject to modification. In essence, it was contractually agreed between O2 and its customers that an amount of DEM 0.50 would be paid for each 10-minute call made after 9 p.m. The per-minute price representing the cost, for consumers, of telephone calls made after 9 p.m. was not the *only* term of the contract but it was, certainly, *one* contractual term agreed upon between O2 and each customer. There is no doubt that a rounding practice such as the one adopted by O2 varies, and consequently breaches the continuity of, this particular contractual term to the detriment of every customer making a telephone call after 9 p.m.

56. In so far as this increase is presented as the mere result of converting amounts previously expressed in German marks into euro, it is in breach of Article 3 of Regulation No 1103/97.

57. To rebut this analysis, O2 contends that the rounding to the nearest cent which it adopted is a neutral practice regarding price increases detrimental to its customers. In support of this conclusion, it argues that rounding to the nearest cent all the contractually agreed per-minute prices did not ultimately prejudice customers considered as a whole because, although converting the 14 per-minute prices resulted, in seven cases, in price increases, in the other seven cases the prices converted were rounded down, thus benefiting consumers.

58. This statement ignores, however, in the first place, that what is relevant, as regards the rule of contractual continuity, is the impact on each contractual term agreed with each individual consumer and not the overall impact on customer contracts as a whole. To appreciate this, it is sufficient to note that some consumers may have contracted with O2 to make use of only certain specific price-per-minute rates. But even O2's assertion that the rounding would be neutral for a consumer using all rates equally does not appear to bear closer scrutiny. In fact, the seven per-minute prices rounded up resulted in an increase which was greater than the reduction in the prices rounded down. In other words, even if we (incorrectly) do not consider each of the individual per-minute prices as a contractual term, but take instead the aggregate of the 14 per-minute prices within the 'Genion Home' tariff, the rounding practice unilaterally adopted by O2 is not neutral. It also results in a price increase for consumers considered as a whole. [29]

59. These considerations lead me to stress that the unilateral decision as to whether or not to round the per-minute prices for the 'Genion Home' tariff takes place in a classic situation of informational asymmetry (where one party possesses knowledge that the other does not). This entails a real risk of opportunistic behaviour by the contracting party holding detailed information about its customers' preferences, the most frequently used per-minute prices and the average

29 — This can be illustrated with the example of O2's customer X who makes monthly telephone calls totalling 420 minutes on the 'Genion Home' tariff (on average 14 minutes per day). In order to consider all the 14 per-minute prices equally, following O2's reasoning we must assume that those 420 minutes are equally distributed between the 14 different per-minute prices, which gives 30 minutes for each per-minute price during that month. After the necessary calculations, it can be seen that, as a consequence of the conversion and subsequent rounding to the nearest cent of the various prices unilaterally adopted by O2, customer X will have to pay DEM 0.22 more (corresponding on conversion to EUR 0.11) for the telephone calls made than before the conversion to the euro. It seems almost superfluous to point out the scale of the figures involved once this apparently insignificant increase in what customer X has to pay is multiplied by the total number of O2's customers calling on the 'Genion Home' tariff.

duration of telephone calls on each rate, namely all the information about the costs and benefits likely to flow from a decision to round such prices to the nearest cent.

60. From the point of view of Regulation No 1103/97, the fact that there is a risk of opportunistic behaviour constitutes a valid reason for preventing O2 from taking a decision *unilaterally and without restrictions* to round the various per-minute prices previously agreed with its customers, even if the rounding applies without distinction to all the per-minute prices within the same tariff. Firstly, the rounding to the nearest cent of such per-minute prices may lead to an increase in the aggregate of amounts to be paid or accounted for in respect of telephone calls, which without the conversion would not have increased. Secondly, owing to the informational asymmetry mentioned above, the true scale of that increase cannot be assessed with any accuracy by an outsider.

61. If, in this context of informational asymmetry, an economic actor such as O2 discovers that rounding to the nearest cent is beneficial, it will probably decide to carry out such rounding. If, on the contrary, it discovers that as a consequence of the rounding it will lose money, it will then opt to maintain a higher degree of accuracy on conversion in order to avoid losses. In any case, the economic agent benefiting from the informational asymmetry is in a privileged position to decide unilaterally to increase the prices agreed with its customers, using a supposedly neutral event such as the changeover from a national currency to the euro to disguise the increase.

62. Article 3 of Regulation No 1103/97 must be interpreted, therefore, as meaning that it does not preclude the unilateral rounding of monetary amounts such as per-unit prices used in intermediate calculations of amounts to be paid or accounted for, in so far as the rounding does not entail, for the other economic agents involved, an increase in the amounts to be paid or accounted for, which, without the conversion into euro, would have remained unchanged.

63. Under Regulation No 1103/97 per-unit prices used in intermediate calculations of monetary amounts to be paid or accounted for may be rounded by one party unilaterally but the regulation places a limitation on such rounding: it must not lead to a systematic increase in those amounts. Whether or not unilateral rounding breaches Article 3 must be assessed on a case-by-case basis. This assessment will depend on variables which will differ from one Member State to another. Those variables include, for example, the value of the smallest sub-unit of the national currency in which per-unit prices were previously shown.

64. I shall try to make this issue clearer by giving an example, based on the figures provided by the Landgericht München in the present case, of a rounding which could have been undertaken unilaterally without infringing Article 3 of Regulation No 1103/97.

65. Before the conversion of German marks into euro, a 10-minute telephone call, for example at the DEM 0.05 per-minute price for calls made after 9 p.m. to the fixed-line network, cost the consumer DEM 0.50. After the conversion into euro and subsequent rounding by O2, the call cost DEM 0.586749, which, when rounded to the nearest pfennig, results in a 9-pfennig price increase, by comparison with the amount contractually agreed with the customer for a 10-minute call on that particular rate. If there were no rounding after the conversion into euro of that specific per-minute price, the price would be EUR 0.0255645, representing the highest degree of accuracy. If this amount were rounded to the fourth decimal place, the per-minute price would be EUR 0.0256. If this per-minute price were used in the relevant calculations, the consumer would have to pay EUR 0.256 for that 10-minute call. Rounding this amount to the nearest cent in accordance with Article 5 of Regulation No 1103/97 gives EUR 0.26. This amount corresponds to DEM 0.5085158, which, when rounded up to the nearest pfennig, corresponds to DEM 0.51, instead of the DEM 0.50 to be paid before conversion and rounding.

66. Rounding to the fourth decimal place does not appear to ensure that customers opting for that particular rate are not subject to an increase in the amounts to be paid or accounted for, which, without the conversion into euro, would not have increased. Nevertheless, if the customer, instead of a 10-minute telephone call, makes a 15-minute call at that same rate, he/she will have to pay EUR 0.384 (EUR 0.0256 x 15), which, when rounded down to the nearest cent, gives EUR 0.38. This amount corresponds to DEM 0.74, instead of the DEM 0.75 which would have had to be paid for the same telephone call before the conversion into euro (a reduction of DEM 0.01). Moreover, if we take, for example, a 5-minute telephone call at that specific rate, the customer, with rounding to the fourth decimal place, would have to pay EUR 0.13, which corresponds precisely to the 0.25 DEM he/she would have had to pay for a 5-minute call made on the same rate before the conversion.

67. From the example given above, it can be seen that rounding to the fourth decimal place may entail some variations, either up or down, on the amounts to be paid for each telephone call made at a certain per-minute price. It is important to note, however, on the one hand, that if such a variation ever occurred, it would not exceed an amount in euros corresponding to DEM 0.01, and, above all, that the variation would operate at random, depending solely on the exact length of the telephone call. In other words, the final outcome would be neutral as regards what was contractually agreed

between the parties. Although each customer can control how long a telephone call lasts, it is not realistic to assume that customers will decide (and be able) to time telephone calls so as to ensure that they last a specific number of minutes (for example 15 minutes instead of 14) on specific rates, in order to obtain gains which in any event would never exceed, on each telephone call made, DEM 0.01.

68. Thus, unilateral rounding to the fourth decimal place in the circumstances described, although it does not represent the highest degree of precision possible, would not affect the contractual terms agreed upon by the parties and would, therefore, be acceptable under Regulation No 1103/97. The same is not true, however, of a rounding to the nearest cent such as that undertaken unilaterally by O2 in the present case. What is presented as (and ought to be) a neutral conversion and rounding operation in effect hides a price increase.

69. Under Article 3 of Regulation No 1103/97, it would have been possible unilaterally to round the various per-minute prices of a tariff such as the 'Genion Home' tariff to the fourth decimal place, but not to the nearest cent or even to the third decimal place, in so far as the last two rounding practices are incompatible with the rule of continuity of contractual terms and the neutrality of the conversion operation with respect to the value of monetary amounts referred to in those contractual terms. This means, in other words, that the various per-minute prices could be rounded, in so far as the rounding provides a degree of equivalence between the per-unit price expressed in euros and that price expressed in the national currency, which is adequate to ensure that systematic increases in the amounts to be paid or accounted for are prevented.

70. The foregoing point is illustrated by the fact that certain German telephone operators converted their per-minute prices and rounded them to the fourth decimal place. [30] Other operators rounded such prices to the third decimal place, but always rounded them down, and thus always to their customers' advantage.

71. In the situation referred to in point 70, or in any other case of rounding down which benefits the other economic agents involved (namely consumers), the rounding practice does not entail any violation of Article 3 of Regulation No 1103/97. Such a case actually entails a tacit acceptance by every customer of a reduction in prices.

30 — Had O2 followed the same path, its expressly declared concern with safeguarding consumers' ability to compare the per-minute prices offered by the different telephone operators would be redundant.

72. Finally, limitations on the unilateral rounding of per-unit prices, which are consistent with the abovementioned criteria, are also essential in order to avoid a significant departure from the highest rounding inaccuracy permitted by the euro regulations in the conversion of amounts to be paid. The maximum rounding inaccuracy tolerated by Article 5 of Regulation No 1103/97 in the conversion into euro of an amount to be paid or accounted for is EUR 0.005. It would be inconsistent with the objective, expressed in Article 5, of securing a high standard of accuracy in the conversion of amounts to be paid to allow a contracting party to decide unilaterally to round an amount used for the purposes of calculating such amounts in such a way as to result, de facto, in a much lower standard of accuracy in the amounts to be paid.

III — Conclusion

73. Accordingly, the questions referred by the national jurisdiction should, in my opinion, be answered as follows:

(1) An amount such as a per-minute price is not an amount to be paid or accounted for within the meaning of Article 5 of Regulation No 1103/97. It is a monetary amount used in the intermediate computations undertaken for the purpose of determining the amounts to be paid or accounted for.

(2) Regulation No 1103/97 must be interpreted as meaning that it does not preclude the unilateral rounding of monetary amounts such as per-minute prices used in intermediate calculations of amounts to be paid or accounted for, as contractually agreed, provided that, in view of Article 3 of Regulation No 1103/97, such rounding does not entail a systematic increase in the monetary amounts to be paid or accounted for.