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Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

EXPLANATORY MEMORANDUM

The problem of applying the ECU in the customs sphere arises whenever there are major fluctuations in the values of the Community currencies, given that certain customs duties are expressed in terms of the ECU.

In order to ensure that customs legislation should continue to reflect financial reality as closely as possible, but with the stability necessary for administrative purposes, the Council adopted in the 1978 Regulation (EEC) No 2779/78 of 23 November 1978 (OJ No L 333, 30.11.1978), which provides for the annual revision of the rates of the ECU (EUA at that time) used in the legal acts adopted in the customs sphere and particularly in connection with General Rule C 3 relating to the application of the Common Customs Tariff.

As the aim of the CCT is to ensure a uniform level of protection in all Member States, it is inadmissible that, in the event of one or more European currencies being devalued or revalued, without a subsequent rapid realignment of the equivalent values of the ECU in national currencies, the customs duty charged on goods imported into a Member State whose currency had been strengthened should be appreciably higher than that charged on goods imported into a Member State whose currency had weakened.

By fixing as a reference value the value of the ECU (the unit which has replaced the EUA in Community legislation) obtaining on the first working day of October, with effect from 1 January of the following year, Council Regulation (EEC) No 2779/78 does not entirely eliminate the danger of a major divergence between the ECU/national currency exchange rates. This has unfavourable repercussions in the customs field and produces a situation that undermines the basic principles of the CCT.

Clearly, the common market cannot be guaranteed to function smoothly unless the legal system and administrative practice in the Member States are such that deflection of trade and shifts in the location of activity can be avoided.

Consequently, as long as the differences between Member States are fairly small, the objectives laid down by the Treaty are complied with; however, if differences in customs duties at Community frontiers, due to any changes in currency parities were to widen, these differences would be incompatible with the basic philosophy of the customs union.

Since 1 October 1981, there have been three readjustments of currency parities : on 5 October 1981, 21 February 1982 and 13 June 1982.

.../...

As a result, the ECU rates currently in force in the customs field no longer correspond to economic reality and therefore new parities must be established which more closely reflect current economic conditions in the Community.

In view of the particularities of the European Monetary System, the Commission's staff, in seeking the right answer to the problem, have opted for a solution which in principle maintains the status quo as regards existing legislation (the first working day in October remaining the reference date) but which provides for an automatic realignment whenever there is a new currency parity in relation to the ECU (revaluation or devaluation) for the purposes of determining the classification of goods, or the customs duty applicable under the Common Customs Tariff, or the anti-dumping duty.

This system has the advantage that it can be incorporated easily into Regulation (EEC) No 1779/78, while at the same time reflecting economic and monetary circumstances in the Member States.

As there have been three readjustments of parities within the EMS since 1 October 1981, the Commission considers that this Regulation should come into force fairly soon.

Proposal for Council Regulation (EEC)

for applying the ECU to legal acts adopted in
the customs sphere

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Having regard to the opinion of the Court of Auditors has been obtained,

Whereas Council Regulation (EEC) No 2779/78⁽³⁾, in conjunction with Council Regulation (EEC, Euratom) No 3308/80⁽⁴⁾, lays down the detailed rules for applying the ECU to legal acts adopted in the customs sphere;

Whereas Article 2 of Regulation (EEC) No 2779/78 provides that the value of the ECU in national currencies to be applied to legal acts adopted in the customs sphere shall be fixed once a year; whereas the rates to be applied are those obtaining on the first working day of October, with effect from 1 January of the following calendar year ;

Whereas this annual system of converting the ECU into national currencies is designed to maintain the stability necessary in the customs field; whereas, however, it is necessary, when there is an adjustment in the

.../...

(1)

(2)

(3) OJ No L 333, 30.11.1978, p.5

(4) OJ No L 345, 20.12.1980, p.1

parity of one or more Community currencies during the course of the year, to change the rate to be used for converting the ECU into national currencies in such a way as to obviate too marked a departure from economic reality and the risks of disruption of trade-flows;

Whereas by application of Council Regulation (EEC) No 1167/76 of 17 May 1976 amending Annex IV to Regulation (EEC) No 816/70 laying down additional provisions for the common organisation of the market in wine and the Common Customs Tariff as regards the exchange rates applicable to customs duties on certain wines (1), the rate to be used for converting the ECU, in which the customs duty applicable to the products falling under subheading 22.05 C of the Common Customs Tariff is expressed, into national currencies, is the representative rate if such a rate is laid down under the common agricultural policy; whereas it is therefore necessary to provide for an adequate solution for this eventuality,

HAS ADOPTED THIS REGULATION :

Article 1

Paragraphs 2, 3 and 4 of Article 2 of Regulation (EEC) No 2779/78 are hereby replaced by the following:

- "2. The value of the ECU in national currencies to be applied to legal acts adopted in the customs sphere shall be fixed once a year. The rates to be applied shall be those obtaining on the first working day of October, with effect from 1 January of the following calendar year. If a rate is not available for a particular national currency, the rate to be applied for that currency shall be that obtaining on the last day for which a rate was published in the Official Journal of the European Communities.

The rates to be used for each calendar year are set out in the preliminary provisions of the annex to the annual regulation amending Regulation (EEC) No 950/68 on the Common Customs Tariff.

.../ ...

(1) OJ No L 135 of 24.5.1976, page 42

3. However, where a change in the parity of one or more national currencies occurs during a calendar year, the rates to be used for converting the ECU into national currencies, for the purposes of determining the tariff classification of the goods, the customs duty applicable under the Common Customs Tariff or the anti-dumping duty shall be those obtaining on the first day following the date of that change on which such rates are available for all the Community currencies, with effect from the third day after the date on which these rates are available.

If a change in parities occurs after the first working day of October, by way of derogation from the provisions of paragraph 2 the rates to be used for converting the ECU into national currencies with effect from 1 January of the following calendar year for the purposes of determining the tariff classification of goods, the customs duty applicable under the Common Customs Tariff or the anti-dumping duty, shall be those resulting from that change of parities.

The rates resulting from the application of this paragraph shall be published in the C series of the Official Journal of the European Communities.

4. The provisions of paragraph 2 do not derogate from the rules laid down for the conversion of the ECU into national currencies within the framework of the documentary evidence specified in certain preferential arrangements or in the agreements concluded with certain third countries.
5. By way of derogation from the provisions of paragraphs 2 and 3, the rate to be used for the conversion into national currencies of the ECU in which the customs duty applicable to products falling under sub-heading 22.05 C of the Common Customs Tariff is expressed, shall be the representative rate where such a rate is laid down under the common agricultural policy."

Article 2

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

for the Council.

The President