

1975 to express the amount of the aid agreed under the Lomé Convention and then also used in the ECSC budget. With the establishment of the System the ECU replaced the European Monetary Unit of Account (EMUA), originally defined in terms of gold by Article 5 of the Statutes of the EMCF.

The functions of the ECU are laid down at section 2.2 of the Resolution: "The ECU will be used: (a) as the denominator (numéraire) for the exchange rate mechanism; (b) as the basis for a divergence indicator; (c) as the denominator for operations in both the intervention and the credit mechanisms; (d) as a means of settlement between monetary authorities of the European Community".

An analysis of this provision shows that — apart from the function indicated under (b), which concerns the special mechanism for the determination of the "threshold of divergence" and the related "presumption" of intervention (sections 3.5 and 3.6) — the other three functions are of a typically monetary nature. In fact, the functions listed under (a) and (c) can be classified as those of a measure of value and under (d) as that of a means of payment.

As the doctrine of monetary law has already demonstrated, the economic concept of money is not necessarily the same as the legal one: the first is based on the realities of trade and exchange, the second must be qualified by a rule. Hence, from a legal point of view money can only be so defined in relation to a given body of law, containing a rule that establishes a unit of measurement of value and gives it the function of means of payment.

Given the above, an examination of the two Community regulations which establish the EMS points to the conclusion that the ECU has the characteristics of money from the legal point of view as well. Indeed, Regulation No. 3180/78 gives the ECU the function of a unit of account; Regulation No. 3181/78, and specifically Article 2, gives the ECU the function of a means of payment. The two regulations mentioned, therefore, provide the rule qualifying the ECU as money in Community legislation.

The recognition of the legal nature of the ECU as money is not invalidated by the existence of limits on the present extent of its function as such. These limits are specified in Article 16 of the Agreement among the Central Banks, according to which a central bank shall not be obliged to accept settlement by means of ECUs of an amount more than 50% of its claim. However, article 18, sub-section 2, provides that "the central banks may transfer ECUs to one another against dollars, EEC currencies, Special Drawing Rights or gold" ¹⁸. Finally, it should be noted that although the ECU does not perform the function of money in the true sense of the word in commercial relations, it may be (and indeed already has been) chosen as a monetary parameter for the indexation of financial claims.

IV. So far we have examined the legal framework relating to the initial and transitional phase of the EMS. The Annex to the Communiqué of the Bremen summit meeting provides (point 4) that "not later than two years after the start