TO THE PRESIDENT AND MEMBERS OF THE COURT OF JUSTICE

WRITTEN OBSERVATIONS

lodged, pursuant to the second subparagraph of Article 23 of the Protocol on the Statute of the Court of Justice of the European Union by

the EUROPEAN COMMISSION, represented by Jan HRADIL and Magda SALYKOVÁ, Members of its Legal Service, acting as agents, with a postal address for service in Brussels at the Legal Service, Greffe contentieux, BERL 1/169, 1049 Brussels, who consent to service by e-Curia,

in Case C-760/19

a reference for a preliminary ruling submitted by the First-tier Tribunal (Tax Chamber), United Kingdom, in proceedings between:

JMC Europe (UK) Limited, United Kingdom,

appellant in the main proceedings

and

The Commissioners for Her Majesty's Revenue and Customs, United Kingdom,

respondents in the main proceedings


I. FACTS

1. In January 2012, the German customs authority issued a binding tariff information decision ("BTI decision") concerning a “bank note reader” or “bank note receiver” and classified it in HS subheading 8472 90 (see Annex I). That BTI decision states that the product concerned is a “multi-functional machine for the checking, reception, sorting, storing and distribution of bank notes”. The checking of the authenticity of the bank notes and the distribution of bank notes of the correct value is carried out “by means of optical and magnetic sensors”. The machine is equipped with protection against unauthorised manipulation (“anti-stringing technology”). In accordance with the BTI decision issued by the German authorities, the principal function which characterises the machine as a whole is “the payment of cash” (see box 7 “Description of the goods” of the BTI decision in Annex I, translation by the Commission).

2. In February 2012, the Commissioners for Her Majesty's Revenue and Customs ("HMRC" or “the respondents in the main proceedings”), which is the UK customs authority, issued a BTI decision in respect of a similar product described as a “bank note validator and recycler” (paragraph 27 of the order for reference), classifying it under CN subheading 9031 49 90 "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors - other - other" (applicable duty rate: 0 %).

3. As a result of the two contradictory BTI decisions referred to above, Germany brought the matter to the Customs Code Committee referred to in Article 285 of Regulation (EU) No 952/2013 of the European Parliament and of the Council^4 (Union Customs Code). The classification was discussed at the Committee’s Project Group meetings held in June and November 2015 and by the Tariff and Statistical Nomenclature Section of the Customs Code Committee in February 2016. In August 2016, 27 of 28 Member States voted in favour of the draft regulation classifying the product in CN subheading 8472 90 70, with the UK disagreeing with that classification (for the summary of the discussions and the vote in the Committee, see

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4. JCM Europe (UK) Limited ("JCM" or “the appellant in the main proceedings”) is a company established in the United Kingdom, which develops innovative currency and transaction management solutions for a diverse range of industries, including gaming, vending, retail, financial, transportation, security, and custom application (paragraph 1 of the order for reference).

5. On 3 January 2018, following JCM’s application for a BTI decision in respect of one of its products, the iPRO-RC, HMRC issued a BTI decision classifying the product under CN subheading 8472 90 90 as an office machine (applicable duty rate: 2,2 %) in conformity with Implementing Regulation (EU) 2016/1760 (see Annex III).

6. JMC has brought an appeal against HMRC’s ruling before the First-tier Tribunal (“the referring court”) arguing that the imported product ought to be classified under CN subheading 9031 49 90 and that Implementing Regulation (EU) 2016/1760 is invalid.

II. QUESTION REFERRED

7. The referring court has found that Implementing Regulation (EU) 2016/1760 is applicable in the case before it and referred the following question to the Court of Justice for a preliminary ruling pursuant to Article 267 of the Treaty on the functioning of the European Union:

“Is Commission Implementing Regulation (EU) 2016/1760 of 28 September 2016 concerning the classification of certain goods in the Combined Nomenclature (CN) invalid in so far as it classifies the bank note validator and cash boxes specified in the Regulation under CN Code 8472 90 70, rather than CN Code 9031 49 90?

In particular, is Commission Implementing Regulation (EU) 2016/1760 invalid in so far as it:

(1) unduly restricts the scope of heading 9031;
(2) unduly extends the scope of heading 8472;
(3) takes into account impermissible factors;

(4) does not take proper account of the Explanatory Notes, CN headings and/or the General Interpretative Rules when classifying the product as described in that Regulation.”

III. LEGAL FRAMEWORK

III.1 Relevant provisions of international law

III.1.1 Harmonised System

8. The Harmonised Commodity Description and Coding System ("Harmonised System" or "HS") was established by an international convention drawn up under the auspices of the Council for Customs Cooperation, now the World Customs Organisation ("WCO"). That convention and the protocol of amendment thereto of 24 June 1986 were approved on behalf of the Community by Council Decision 87/369/EEC6 ("HS Convention").

9. In order to provide further explanations as to the application of the HS, the WCO regularly approves, under the conditions laid down in Article 8(2) and (3) of the HS Convention, the Harmonised System Explanatory Notes ('HSEN') and WCO classification opinions.

10. The text of the following HSEN is reproduced in Annex IV to these observations: (1) HSEN to Section XVI, (2) HSEN to Chapter 84, (3) HSEN to heading 8472, (4) HSEN to Chapter 90, and (5) HSEN to heading 9031.

III.2 Relevant provisions of Union law

III.2.1 Union Customs Code

11. The applicable provisions of Chapter 1 (Common Customs Tariff and tariff classification of goods) of Title II (Factors on the basis of which import or export duty and other measures in respect of trade in goods are applied) of the Union Customs Code read as follows:

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“Article 57

Tariff classification of goods

1. For the application of the Common Customs Tariff, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the Combined Nomenclature under which those goods are to be classified.

[...]

4. The Commission may adopt measures to determine the tariff classification of goods in accordance with paragraphs 1 and 2.

Article 58

Conferral of implementing powers

[...]

2. The Commission shall adopt, by means of implementing acts, the measures referred to in Article 57(4).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

[...]

III.2.2 Regulation (EEC) No 2658/87 (Combined nomenclature)

12. The CN is established by Regulation (EEC) No 2658/87 on the basis of the HS. The CN reproduces the headings and subheadings of the HS to six digits, with the seventh and eighth digits creating further subheadings being specific to the CN.

13. The relevant provisions of Annex I to Regulation (EEC) No 2658/87, as amended by Implementing Regulation (EU) 2015/1754, applicable at the time of the adoption of the Commission Implementing Regulation (EU) 2016/1760, read as follows:

Part One - Preliminary provisions, Section I - General rules, point A. General rules for the interpretation of the CN:

“Classification of goods in the Combined Nomenclature shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

[...]"
3. When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;

(c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

[...]

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.”

Part Two - Schedule of customs duties:

“Section XVI

Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles

Notes

1. This section does not cover:

[...]

(m) articles of Chapter 90;

[...]

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.
4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, then the whole falls to be classified in the heading appropriate to that function.

[...]

Chapter 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

Notes

[...]

7. A machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose.

Subject to note 2 to this chapter and note 3 to Section XVI, a machine the principal purpose of which is not described in any heading or for which no one purpose is the principal purpose is, unless the context otherwise requires, to be classified in heading 8479. [...]

[...]

<table>
<thead>
<tr>
<th>8472</th>
<th>Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or -wrapping machines, pencil-sharpening machines, perforating or stapling machines)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8472 10 00</td>
<td>Duplicating machines</td>
</tr>
<tr>
<td>8472 30 00</td>
<td>Machines for sorting or folding mail or for inserting mail in envelopes or bands, machines for opening, closing or sealing mail and machines for affixing or cancelling postage stamps</td>
</tr>
<tr>
<td>8472 90</td>
<td>Other</td>
</tr>
<tr>
<td>8472 90 10</td>
<td>Coin-sorting, coin-counting or coin-wrapping machines</td>
</tr>
<tr>
<td>8472 90 30</td>
<td>Automatic teller machines</td>
</tr>
<tr>
<td>8472 90 70</td>
<td>Other</td>
</tr>
</tbody>
</table>

[...]
Section XVIII

Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof

Chapter 90

Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof

Notes

1. This chapter does not cover:

[...]

(g) pumps incorporating measuring devices, of heading 8413; weight-operated counting and checking machinery, or separately presented weights for balances (heading 8423); lifting or handling machinery (headings 8425 to 8428); paper or paperboard cutting machines of all kinds (heading 8441); fittings for adjusting work or tools on machine tools, of heading 8466, including fittings with optical devices for reading the scale (for example, optical dividing heads) but not those which are in themselves essentially optical instruments (for example, alignment telescopes); calculating machines (heading 8470); valves and other appliances of heading 8481; machines and apparatus (including apparatus for the projection or drawing of circuit patterns on sensitised semiconductor materials) of heading 8486;

[...]

3. The provisions of notes 3 and 4 to Section XVI apply also to this chapter.

[...]

<table>
<thead>
<tr>
<th>9031</th>
<th>Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>9031 10 00</td>
<td>Machines for balancing mechanical parts</td>
</tr>
<tr>
<td>9031 20 00</td>
<td>Test benches</td>
</tr>
<tr>
<td></td>
<td>Other optical instruments and appliances</td>
</tr>
<tr>
<td>9031 41 00</td>
<td>—– For inspecting semiconductor wafers or devices or for inspecting photomasks or reticles used in manufacturing semiconductor devices</td>
</tr>
<tr>
<td>9031 49</td>
<td>—– Other</td>
</tr>
<tr>
<td>9031 49 10</td>
<td>—— Profile projectors</td>
</tr>
<tr>
<td>9031 49 90</td>
<td>—— Other</td>
</tr>
</tbody>
</table>

[...]

"
III.2.3 Commission Implementing Regulation (EU) 2016/1760

14. The relevant provisions of Implementing Regulation (EU) 2016/1760 read as follows:

“Article 1
The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

[...]

ANNEX

<table>
<thead>
<tr>
<th>Description of the goods</th>
<th>Classification (CN-code)</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>An apparatus consisting of a bank note validator and cash boxes (so called ‘note float unit’) with total dimensions of approximately 10 × 24 × 44 cm.</td>
<td>8472 90 70</td>
<td>Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8472, 8472 90 and 8472 90 70.</td>
</tr>
<tr>
<td>The bank note validator uses optical scanning technology to check the authenticity of bank notes according to predefined specifications.</td>
<td>8472 90 70</td>
<td>Classification under heading 9031 as a measuring or checking instrument is excluded, because the apparatus is more than a checking instrument covered by that heading. In addition to checking the authenticity of bank notes, it also carries out other functions such as sorting and distributing bank notes between different storage boxes and dispensing bank notes. All the functions carried out by the apparatus are covered by heading 8472.</td>
</tr>
<tr>
<td>Bank notes that are approved by the validator pass to a cash box. When this cash box has reached its capacity (generally 30 bank notes), the bank notes are automatically sorted and distributed towards other cash boxes with a capacity of generally 300 bank notes.</td>
<td>8472 90 70</td>
<td>The apparatus is therefore to be classified under CN code 8472 90 70 as an office machine.</td>
</tr>
<tr>
<td>The apparatus is used, for example, in gaming, vending, parking machines etc. to pay for the service or for the product obtained.</td>
<td>8472 90 70</td>
<td></td>
</tr>
<tr>
<td>The apparatus is also capable of dispensing bank notes.</td>
<td>8472 90 70</td>
<td></td>
</tr>
<tr>
<td>The apparatus is always connected to a so-called ‘host-controller’ (not present upon presentation) which regulates the predefined bank note specifications and the bank note flow to the different cash boxes.</td>
<td>8472 90 70</td>
<td></td>
</tr>
</tbody>
</table>
IV. ANALYSIS

IV.1 Preliminary remarks

15. The question referred concerns the validity of Implementing Regulation (EU) 2016/1760 in light of its conformity with the HS and the CN. However, in order to address the issue of validity of that Implementing Regulation it is necessary to address first the question of the correct classification of the product described in that Implementing Regulation in the CN.

16. It should be pointed out at the outset that it results from paragraphs 5 and 9 of the order for reference that the parties to the main proceedings agree with the referring court’s finding that iPRO-RC, the machine concerned in the main proceedings and described in paragraphs 32 - 52 of the order for reference, is identical or at least sufficiently similar to the goods concerned by Implementing Regulation (EU) 2016/1760 and therefore the Implementing Regulation applies to it.
IV.2 Classification of the articles at issue

Case-law of the Court of Justice on the interpretation of the CN

17. According to the case-law of the Court of Justice concerning the interpretation of the CN, the Council of the European Union has conferred upon the Commission, acting in cooperation with the customs experts of the Member States, a broad discretion to define the subject-matter of tariff headings falling to be considered for the classification of particular goods. However, the Commission’s power to adopt the measures mentioned in Article 9(1) of Regulation (EEC) No 2658/87 and in Articles 57(4) and 58(2) of the Union Customs Code does not authorise it to alter the scope of the tariff headings which have been defined on the basis of the HS Convention the scope of which the Union has undertaken, under Article 3 thereof, not to modify (see, in that sense, inter alia judgments of 14 December 1995, France v Commission, C-267/94, EU:C:1995:453, paragraphs 19 and 20, and of 22 February 2018, Kubota and Barrus, C-545/16, EU:C:2018:101, paragraph 23).

18. The explanatory notes drawn up by the Commission as regards the CN and by the WCO as regards the HS are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (see inter alia judgments of 28 March 2000, Holz Geenen, C-309/98, EU:C:2000:165, paragraph 14, and of 15 May 2014, Data I/O, C-297/13, EU:C:2014:331, paragraph 33).

19. In the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant headings of the CN and in the section or chapter notes (see inter alia judgment of 19 December 2019, Amoena, C-677/18, EU:C:2019:1142, paragraph 40 and the case-law cited).

20. The intended use of a product may constitute an objective criterion for the purposes of classification under the appropriate CN heading if it is inherent to the product on the basis of its objective characteristics and properties (see inter alia judgments of 4 March 2015, Oliver Medical, C-547/13, EU:C:2015:139, paragraph 47, and of 3 March 2016, Customs Support Holland BV, C-144/15, EU:C:2016:133, paragraph 29).
21. The appellant in the main proceedings argues that the machine at issue should be classified in heading 9031 of the CN, which forms part of Section XVIII, Chapter 90 relating *inter alia* to measuring, checking and precision instruments and apparatus. Heading 9031 comprises measuring or checking instruments, appliances and machines, not specified or included elsewhere in Chapter 90 as well as profile projectors.

22. According to HSEN to Chapter 90, General, (I) “General content and arrangement of the Chapter”, that Chapter covers a wide variety of instruments and apparatus which are, as a rule, characterised by their high finish and high precision. Most of them are used mainly for scientific, specialised technical or industrial or medical purposes.

23. The Court of Justice has explicitly recognised that Chapter 90 covers goods of which the essential characteristics are the finish of their manufacture and their high degree of precision which distinguish them from ordinary goods (see, to that effect, judgments of 22 December 2010, *Premis Medical*, C-273/09, EU:C:2010:809, paragraph 48, and of 26 April 2017, *Stryker*, C-51/16, EU:C:2017:298, paragraph 46).

24. The Commission, after consulting the Customs Code Committee, has adopted Implementing Regulation (EU) 2016/1760 classifying a machine similar to that at issue in the main proceedings in heading 8472 of the CN, which forms part of Section XVI, Chapter 84 relating *inter alia* to machinery and mechanical appliances. Heading 8472 comprises office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or -wrapping machines, pencil-sharpening machines, perforating or stapling machines) other than those already covered by other headings of the CN.

25. According to HSEN to Chapter 84, General, (A) “General content of the Chapter”, that Chapter covers all machinery and mechanical appliances, and parts thereof, not more specifically covered by Chapter 85.
Classification of the product at issue in the CN

26. It is apparent from the objective characteristics and properties of the machine at issue, as described in the first column in the Annex to Implementing Regulation (EU) 2016/1760, that it performs several functions which can be summarised as follows: (i) validating and accepting or rejecting bank notes, (ii) sorting and storing bank notes in cash boxes and (iii) dispensing bank notes. With respect to the product at issue in the main proceedings, the referring court provides a detailed description of those functions in paragraphs 32-52 of the order for reference.

27. The function of validating bank notes consists in the checking of the authenticity and denomination of bank notes according to predefined specifications using optical scanning, as referred to in the second paragraph of the first column in the Annex to Implementing Regulation (EU) 2016/1760 (see also a more detailed analysis of this function in paragraphs 35-41 of the order for reference).

28. As a result of the validation process, the machine at issue either accepts a bank note – as payment for goods or services – from the customer and passes it to the cash box, or rejects it and returns it to the customer. The machine also necessarily needs to rely on the validation process when dispensing cash in order to verify that the correct notes are dispensed (see, in the same sense, paragraph 45 of the order for reference).

29. The referring court essentially considers that the product concerned by Implementing Regulation (EU) 2016/1760 is a composite machine and as such its classification should be determined according to the component performing its principal function in accordance with note 3 to Section XVI and note 3 to Chapter 90 (paragraph 76 of the order for reference). For the referring court, the bank note validation component is the component which performs the principal function (paragraph 80 of the order for reference).

30. The Commission contends that the product concerned by Implementing Regulation (EU) 2016/1760 has a number of functions, all of which fall under heading 8472 (see the reasons in the second paragraph of the third column in the Annex to Implementing Regulation (EU) 2016/1760). The discussion whether it is a composite machine for the purposes of note 3 to Section XVI or not is therefore not necessary.
31. Heading 8472 explicitly covers a number of office machines which handle money: automatic banknote dispensers, coin-sorting machines, coin-counting or -wrapping machines. It also explicitly includes automatic teller machines (see HSEN to heading 8472, fifth paragraph, point (6), and the terms of CN subheading 8472 90 30). Considering the functions of the product concerned by Implementing Regulation (EU) 2016/1760, the Commission contends that its characteristics and properties are more similar to those of an automatic teller machine or other types of office machines mentioned in heading 8472, than those of a machine developed for the purpose of measuring and checking.

32. Heading 8472 is worded widely and covers machines that perform 'office' tasks. Considering the examples given in the heading itself (hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or -wrapping machines…) the expression “office” needs to be understood widely – it may include ticket offices, booking offices, administrative offices, payment booths in casinos, etc.

33. The wide nature of heading 8472 is confirmed by the relevant HSEN, which provide that “[t]he term "office machines" is to be taken in a wide general sense to include all machines used in offices, shops, factories, workshops, schools, railway stations, hotels etc. for doing "office work" (i.e. work concerning the writing, recording, sorting filing, etc., of correspondence, documents, forms, records, accounts etc.)” (see HSEN to heading 8472, second paragraph).

34. In this respect, the Commission notes that the Harmonised System Committee, acting in accordance with Article 8(2) of the HS Convention, also considered the following article to fall within heading 8472: “Automatic change dispenser, separately imported, designed for use in conjunction with a cash register which transmits to it, in the form of impulses and by electric cable, data on the amount of change due to the customer” (WCO classification opinion 847290/1, adopted in 1971).

35. The Commission shares the view of HMRC referred to in paragraphs 61-62 of the order for reference that all the functions of the product concerned in the main proceedings consist essentially in the handling of money received as payment for goods or services and are those that were traditionally undertaken manually by staff working in an office such as a booking office, casino, shop or similar environment
where payments for goods and services need to be processed. This includes the inspection of bank notes, verification of their authenticity and their safe storage. The description of the apparatus as an "office machine" is therefore more appropriate than a description as a “measuring or checking instrument” which is confined to the technical functioning of only one element of the machine.

36. The Commission submits that in order for a machine such as that described in Implementing Regulation (EU) 2016/1760 to carry out its function of handling money received as payment for goods or services (which includes a number of different steps such as receiving, checking, sorting, storing and dispensing bank notes), it necessarily needs to be able to recognise the bank notes that it accepts or dispenses (at least as far as their currency and nominal value is concerned). The validation of bank notes is thus only one of the inherent steps in the machine’s ultimate function of handling money received as payment for goods or services.

37. Certain machines explicitly covered by heading 8472, such as coin-sorting, coin-counting machines and automatic teller machines, also necessarily incorporate the function of checking or validation of the coins or bank notes they are supposed to handle, otherwise they would not be able to perform their principal function consisting in the handling of money. This does not remove them from the scope of heading 8472 as is clear from the terms of that heading and its subheadings as well as from the relevant HSEN.

38. Moreover, note 1(g) to Chapter 90 shows that not all products incorporating checking or measuring equipment for the purpose of fulfilling their function, are to be classified in the headings of Chapter 90. That note explicitly excludes from Chapter 90 “pumps incorporating measuring devices” and “fittings for … tools … with optical devices for reading the scale (for example, ‘optical’ dividing heads)” with the exception of “those which are in themselves essentially optical instruments (for example, alignment telescopes)”.

39. For those reasons, the Commission disagrees with the conclusion of the referring court that the product concerned in the main proceedings is a composite machine that should have been classified pursuant to note 3 to Section XVI and note 3 to Chapter 90 according to its principal function.
40. In any event, in such machines, the function of checking or validation cannot be regarded as the principal function because the ultimate aim of employing such machines is not to check the authenticity of coins or bank notes (let alone to measure their dimensions) but rather to handle cash for the purposes of accepting payments for goods or services and return any cash corresponding to the amount paid in excess, as necessary.

41. In this context, the Commission also observes that the machine does not have any display that would allow users to read the results of the measurements carried out by it. If a bank note is rejected by the machine, it is returned to the user without him or her knowing which of the measurements performed led to the rejection of the bank note.

42. Given the large scope of heading 8472 “Office machines” as described above, the Commission was right to consider that that heading covered the functions performed by the product concerned by Implementing Regulation (EU) 2016/1760, including the bank note validation function. Therefore, the Commission did not unduly extend the scope of heading 8472 and did not exceed the limits of its discretion by considering that the product fell in that heading.

43. The Commission would also like to draw the Court’s attention to the fact that note 3 to Section XVI, according to which “composite machines […] are to be classified as if consisting only of that component or as being that machine which performs the principal function”, is to be applied with the reservation “unless the context otherwise requires”.

44. As already pointed out above, in the Commission’s view the product concerned by Implementing Regulation (EU) 2016/1760 serves the purpose of handling money received in payment for goods or services falling as such (along with the purpose of other similar devices expressly referred to under that heading) under “office work” referred to in heading 8472. Even if that purpose may be regarded as consisting or several “functions” (as referred to in the second paragraph of the reasons in the Annex to Implementing Regulation (EU) 2016/1760), all those functions also fall under “office work” referred to in heading 8472, as explained in paragraphs 35-37 above. Consequently, the Commission submits that the context (i.e. the purpose of the product is covered by a specific heading, and in any event all the “functions” fall
within one heading) requires that the article is classified without applying note 3 to Section XVI and note 3 to Chapter 90.

45. This is consistent with HSEN to Section XVI, General, (VI) “Multi-function machines and composite machines”, tenth paragraph (and HSEN to Chapter 90, General, (IV) “Multi-function or composite machines, apparatus, etc.; functional units”, tenth paragraph), according to which "Note 3 to Section XVI need not be invoked when the composite machine is covered as such by a particular heading".

46. As regards the allegation by the applicant in the main proceedings referred to in paragraph 53(5) of the order for reference, and alluded to by the referring court in paragraph 77 and 78 of the order for reference, that note 4 to Section XVI of the CN was not correctly applied by the Commission, the Commission submits that that note does not apply in the present case.

47. Note 4 to Section XVI of the CN provides that “where a machine consists of individual components [...] intended to contribute together to a clearly defined function [...] then the whole falls to be classified in the heading appropriate to that function”. According to HSEN to Section XVI, General, (VII) “Functional units”, that note applies when a machine consists of separate components which are intended to contribute together to a clearly defined function.

48. The Commission submits that the product concerned by Implementing Regulation (EU) 2016/1760 does not consist of separate components but is presented to customs as a whole fitted together in a common housing (see also paragraph 34 of the order for reference) to serve a specific purpose covered by heading 8472. The fact that note 4 to Section XVI is not applicable to the machine concerned by Implementing Regulation (EU) 2016/1760 is confirmed by the nature of the products listed as examples of “functional units” in the third paragraph of HSEN to Section XVI, General, (VII) “Functional units”, which by contrast to the machine concerned by Implementing Regulation (EU) 2016/1760 consist of components in general connected by hoses, pipes or wires and not designed to be permanently attached to a common base, frame or housing.
49. It follows that the Commission was correct in not referring to note 4 to Section XVI of the CN in the first paragraph in the third column of the Annex to Implementing Regulation (EU) 2016/1760, since it is not applicable.

50. For the sake of completeness, as regards the argument of the appellant in the main proceedings that the product cannot be an “office machine” since it cannot be affixed to or placed upon a desk (see paragraph 67 of the order for reference), as allegedly required by the third paragraph of HSEN to heading 8472, the Commission submits that that argument must be rejected.

51. The fact that the HSEN provide in the third paragraph that “Office machines are classified [in heading 8472] only if they have a base for fixing or for placing on a table, desk, etc.” cannot be interpreted strictly. The expression “etc.” means that other ways of fixing or placing the machines are possible, e.g. on the floor in the office or within another device. Moreover, the HSEN provide in the very next sentence that “[t]he heading does not cover the hand tools, not having such a base[…]”, which implies that the requirement of having “a base for fixing or for placing on a table, desk, etc.” is intended as a feature distinguishing the office machines of heading 8472 from hand tools.

52. It should also be noted that a number of products explicitly listed as falling within heading 8472, such as duplicating machines, ticket-issuing machines, automatic teller machines and paper shredders (see HSEN to heading 8472, fifth paragraph, points (1), (3), (6) and (18)), are not necessarily fixed onto a desk or table. An interpretation according to which the HSEN to heading 8472 would strictly require a base for fixing or placing the device on a table or desk would therefore unduly restrict the scope of that heading.

53. The machine concerned by Implementing Regulation (EU) 2016/1760 is to be housed within another machine (the “host-controller”, see the mention to that effect in the sixth paragraph of the first column of the Annex to that Implementing Regulation and in paragraphs 47 and 48 of the order for reference) placed in an “office”. It cannot be considered a hand tool. There are therefore no grounds to exclude it from classification in heading 8472.
54. Finally, the referring court seems to consider that Implementing Regulation (EU) 2016/1760 is invalid insofar as “it is not apparent that consideration was given to classification under Chapter 90 before moving on to Chapter 84”. The referring court bases that conclusion on the fact that no reference was made by the Customs Code Committee to note 1(m) to Section XVI which excludes from Chapters 84 and 85 goods falling within Chapter 90 (paragraphs 73 and 74 of the order for reference).

55. The Commission submits that the note was not deemed relevant since the Commission and the Customs Code Committee were of the view that the concerned goods could be classified neither in heading 9031 as a measuring or checking instrument, nor in any other heading of Chapter 90. Moreover, it is clear from the reasons in the third column of the Annex to Implementing Regulation (EU) 2016/1760 that classification in one of the headings of Chapter 90, namely heading 9031, was explicitly excluded “because the apparatus is more than a checking instrument covered by that heading. In addition to checking the authenticity of bank notes, it also carries out other functions such as sorting and distributing bank notes between different storage boxes and dispensing bank notes. All the functions carried out by the apparatus are covered by heading 8472”. No other headings of Chapter 90 were considered to be potentially applicable by the Commission or the Customs Code Committee; nor has any other heading of that Chapter been alleged as being applicable by the appellant in the main proceedings or the referring court.

56. As the referring court seems to imply that the omission of a reference to note 1(m) to Section XVI amounts to the statement of reasons of the Implementing Regulation being inadequate, the Commission would like to recall the case-law of the Court of Justice regarding the extent of the duty to state reasons.

57. The statement of reasons required by Article 296 TFEU must be appropriate to the nature of the measure in question (see judgment of 14 July 1994, Greece v Council, C-353/92, EU:C:1994:295, paragraph 19). The obligation to give reasons laid down in Article 296 TFEU is intended to enable the Court of Justice to review the legality of the measure and to give the person concerned details sufficient to allow him to ascertain whether the measure is well founded or whether it is vitiated by an error which will allow its legality to be contested (see, in this sense, judgment of 10 May 2005, Italy v Commission, C-400/99, EU:C:2005:275, paragraph 22).
58. The question whether the statement of the grounds for a Union measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, in this sense, judgments of 17 October 1995, Netherlands v Commission, C-478/93, EU:C:1995:324, paragraph 49, and of 6 November 2003, Netherlands v Commission, C-501/01, EU:C:2003:603, paragraph 46). It is therefore not necessary for details of all relevant factual and legal aspects to be given (see, in this sense, Netherlands v Commission, C-478/93, paragraph 49, and Netherlands v Commission, C-501/01, paragraph 45).

59. The Commission submits that, when classifying a product by means of an implementing regulation on the basis of Article 57(4) and 58(2) of the Union Customs Code, the Commission must consider a series of provisions of the CN, including the terms of all potentially applicable headings, to determine whether those provisions apply to a given product or not. Citing all the provisions of the CN that the Commission has considered or has had to consider for the purposes of classifying a given product would render the reasons for the classification lengthy without necessarily adding clarity to the reader about the reasons behind determining the applicable heading.

60. The Commission therefore contends that the statement of reasons in Implementing Regulation (EU) 2016/1760 sets out, in a concise but clear and relevant manner, the principal issues of law and of fact upon which the classification is based and which are necessary in order to understand the Commission's reasoning for the adoption of the Implementing Regulation (see judgment of 4 July 1963, Germany v Commission, 24/62, EU:C:1963:14) in the given context and having regard to all the legal rules governing the matter in question.

61. It was therefore not necessary to refer to note 1(m) to Section XVI in the reasons in the Annex to Implementing Regulation (EU) 2016/1760.

62. It follows from all the foregoing considerations that the Commission was entitled to consider that the product concerned by Implementing Regulation (EU) 2016/1760 is an office machine of heading 8472 to be classified under CN code 8472 90 70 for the reasons set out in that Implementing Regulation. In any case, the Commission has not exceeded the limits of its discretion when classifying the product in that way.
IV.3 Conclusion

63. For the reasons stated above, the articles described in the Annex to Implementing Regulation (EU) 2016/1760 are correctly classified in heading 8472 of the CN.

64. The analysis of the classification of the product at issue in the CN and of the statement of reasons in Implementing Regulation (EU) 2016/1760 did not reveal any elements which would put the validity of that Implementing Regulation into question.

V. CONCLUSION

65. The Commission therefore proposes to the Court of Justice to answer the question of the referring court in the following manner:

The analysis of the classification in the CN of the articles described in Implementing Regulation (EU) 2016/1760 and of the reasons provided for that classification did not reveal any elements capable of affecting the validity of that Implementing Regulation.

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