JUDGMENT OF THE COURT (Third Chamber)

4 May 2006 *

In Case C-169/04,

REFERENCE for a preliminary ruling under Article 234 EC from the VAT and Duties Tribunal, London (United Kingdom), made by decision of 2 April 2004, received at the Court on 5 April 2004, in the proceedings

Abbey National plc,

Inscape Investment Fund

v

Commissioners of Customs & Excise,

* Language of the case: English.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Malenovský, S. von Bahr (Rapporteur), A. Borg Barthet and U. Lõhmus, Judges,

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 March 2005,

after considering the observations submitted on behalf of:

— Abbey National plc, by J. Woolf, Barrister, and J.-C. Bouchard, avocat, instructed by R. Croker, Solicitor,

— the United Kingdom Government, by K. Manji, E. O'Neill and S. Nwaokolo, acting as Agents, and by R. Hill, Barrister,

— the Luxembourg Government, by S. Schreiner, acting as Agent,

— the Commission of the European Communities, by R. Lyal, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 13B(d)(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; 'the Sixth Directive').

2 The reference was made in the course of two sets of proceedings between Abbey National plc ('Abbey National') and Inscape Investment Fund, on the one hand, and the Commissioners of Customs & Excise ('the Commissioners'), on the other, concerning the taxation of services supplied by the depositaries of a number of authorised unit trusts and of an open-ended investment company ('OEIC'), and administration and accounting services performed by a third company delegated by the management company of an OEIC.

Legal context

Community legislation

3 Article 13B(d) of the Sixth Directive provides as follows:

'Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

...

(d) the following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it;

2. the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

4. transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items; "collectors' items" shall be taken to mean gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

5. transactions, including negotiation, excluding management and safe keeping, in shares, interests in companies or associations, debentures and other securities, excluding:

— documents establishing title to goods,

— the rights or securities referred to in Article 5(3);

6. management of special investment funds as defined by Member States.'

4 Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 1985 L 375, p. 3) defines undertakings for collective investment in transferable securities ('UCITS') as undertakings:

'— the sole object of which is the collective investment in transferable securities of capital raised from the public and which operate on the principle of risk-spreading,

and

— the units of which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. ...'

5 Article 1(3) of the same directive provides that those undertakings may be constituted 'under the law of contract (as common funds managed by management companies) or trust law (as unit trusts) or under statute (as investment companies)'. For the purposes of Directive 85/611, the term 'common funds' includes unit trusts.

6 Pursuant to Article 4(1) of that directive, a UCITS is to be authorised by the authorities of the Member State in which it is situated. Such authorisation is valid for all Member States.

7 According to Article 4(2) of the same directive, for the purposes of authorisation a unit trust must have appointed a management company and a depositary whereas an investment company which is subject to the same requirement as regards a depositary is not required to appoint a management company.

8 Under Articles 7(1) and 14(1) of Directive 85/611, a special investment fund's and an investment company's assets must be entrusted to a depositary for safe keeping.

9 As regards special investment funds, in the terms of Article 7(3) of that directive, a depositary must moreover:

'(a) ensure that the sale, issue, repurchase, redemption and cancellation of units effected on behalf of a unit trust or by a management company are carried out in accordance with the law and the fund rules;

(b) ensure that the value of units is calculated in accordance with the law and the fund rules;

(c) carry out the instructions of the management company, unless they conflict with the law or the fund rules;

(d) ensure that in transactions involving a unit trust's assets any consideration is remitted to it within the usual time-limits;

(e) ensure that a unit trust's income is applied in accordance with the law and the fund rules'.

10 As for investment companies, Article 14(3) of the same directive provides that apart from keeping the assets safe the depositary must:

'(a) ensure that the sale, issue, repurchase, redemption and cancellation of units effected by or on behalf of a company are carried out in accordance with the law and with the company's instruments of incorporation;

(b) ensure that in transactions involving a company's assets any consideration is remitted to it within the usual time-limits;

(c) ensure that a company's income is applied in accordance with the law and its instruments of incorporation'.

11 Under Articles 9 and 16 of Directive 85/611, a depositary is, in accordance with the national law of the State in which the management company's or the investment company's registered office is situated, to be liable to those companies and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them.

12 Under Articles 10(1) and 17(1) of the same directive, no single company may act as both management or investment company and depositary.

13 Directive 85/611 was amended by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002, with a view to regulating management companies and simplified prospectuses (OJ 2002 L 41, p. 20), and by Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002, with regard to investments of UCITS (OJ 2002 L 41, p. 35). The second subparagraph of Article 5(2) of Directive 85/611, as amended, refers to Annex II to that directive which contains a non-exhaustive list of the functions included in the activity of management of special investment funds and of investment companies. That list mentions the following functions:

'— Investment management

— Administration:

(a) legal and fund management accounting services;

(b) customer inquiries;

(c) valuation and pricing (including tax returns);

(d) regulatory compliance monitoring;

(e) maintenance of unit-holder register;

(f) distribution of income;

(g) unit issues and redemptions;

(h) contract settlements (including certificate dispatch);

(i) record keeping.

— Marketing'.

14 Article 5g(1) of Directive 85/611, as amended, which, pursuant to Article 13b of that directive, also applies to investment companies which have not appointed an authorised management company, permits management companies, subject to certain conditions, 'to delegate to third parties for the purpose of a more efficient conduct of the companies' business to carry out on their behalf one or more of their own functions'.

National legislation

15 Pursuant to items 9 and 10 of Group 5 in Schedule 9 of the Value Added Tax Act 1994 ('the VAT Act 1994'), authorised unit trusts (item 9) and OEICs (item 10) are treated in the United Kingdom as 'special investment funds' for the purposes of Article 13B(d)(6) of the Sixth Directive.

16 Directive 85/611 was implemented in the United Kingdom by the Financial Services and Markets Act 2000 ('the FSMA') which is, however, of wider scope than that directive.

17 According to the FSMA, an authorised unit trust is a collective investment scheme under which the property is held on trust for the participants and which is authorised by an authorisation order. Under such a scheme, investors buy or sell units in the trust. Unless the manager buys the units from the investor or sells units to him, new units are created or redeemed each time an investor wants to buy or sell units.

18 According to the rules applicable to collective investment schemes set out in the Financial Services Authority's *Collective Investment Schemes Sourcebook* ('*CIS Sourcebook*'), the manager of an authorised unit trust is under a duty to manage that trust in accordance with the trust deed, the rules in the *CIS Sourcebook* and the most recent prospectus.

19 The decision requesting a preliminary ruling states that an OEIC is a form of collective investment scheme similar to a unit trust except that it has a corporate structure rather than being governed by trust law. In addition to the provisions of

the FSMA, OEICs are regulated inter alia by the Open-Ended Investment Companies Regulations 2001 ('the OEIC Regulations'). An OEIC has a variable share capital so that new shares are created when an investor wants to invest in the company and are redeemed when the investor wants to liquidate his investment.

20 The OEIC Regulations require an OEIC to have at least one Authorised Corporate Director ('ACD'), which must be a body corporate approved and authorised to act as manager.

21 Under the FSMA and *CIS Sourcebook*, the depositary of an authorised unit trust is described as a 'trustee' whereas under the OEIC Regulations, the depositary of an OEIC is referred to as a 'depositary'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

22 Abbey National Unit Trust Managers Limited and Scottish Mutual Investment Managers Limited, members of the Abbey National VAT group, are the managers of 15 and 11 authorised unit trusts respectively.

23 The trustees of those trusts are either Clydesdale Bank plc ('Clydesdale'), Citicorp Trustee Company Limited ('Citicorp') or HSBC Bank plc ('HSBC'). The referring tribunal states that those companies charge a general fee for their trustee functions.

Although Clydesdale and HSBC also act as custodians, the general trustee fees which they charge do not cover global custody services, for which a separate fee is charged, whereas Citicorp, as trustee, does not act as custodian.

24 Inscape Investments Limited was appointed ACD of Inscape Investment Fund and Abbey National Asset Managers Limited was appointed ACD of three other OEICs. Inscape Investments Limited and Inscape Investment Fund are also members of the Abbey National VAT group.

25 Citicorp was appointed depositary of those four OEICs and charges a general fee for its services. However, it does not act as custodian of those OEICs.

26 Towards the end of 2000, Inscape Investments Limited entered into an agreement on Inscape Investment Fund's accounting with Bank of New York Europe Limited and, subsequently, with Bank of New York ('Bank of New York'). Under that agreement, Bank of New York undertook to perform a raft of services delegated by Inscape Investments Limited, in particular computing the amount of income and the price of units or shares, the valuation of assets, accounting, the preparation of statements for the distribution of income, the provision of information and documentation for periodic accounts and tax, statistical and VAT returns, and the preparation of income forecasts.

27 Bank of New York also undertook to provide other services such as data processing, fund reconciliation, calculation and recording of charges and expenses, recording of corporate events, distribution of daily sub-fund prices to the press, production of tax

and VAT returns and returns to the Bank of England, calculation of distribution rates and yields, and answers to enquiries from Inscape Investments Limited and/or the depositary.

28 Abbey National brought an action on the ground that the VAT had been reclaimed by several of the trustees of the authorised unit trusts managed by its subsidiaries, and Inscape Investment Fund brought an action on the ground that its depositary was reclaiming the VAT from it.

29 In addition, Abbey National challenges the charging of VAT by Bank of New York to Inscape Investments Limited on the administration and accounting services that Bank of New York supplied as fund administrator.

30 Abbey National also contends that the services supplied by Bank of New York are exempt from VAT because they constitute 'management of special investment funds' under Article 13B(d)(6) of the Sixth Directive. In that regard, it points out that the administration of a fund clearly forms part of its management and that the subcontracting of all the administrative facets of management or of a large proportion of them, which form a specific and essential part of management, should not be treated differently from the subcontracting of some of the decisions as to the selection of investments.

31 Abbey National and Inscape Investment Fund also contend that the services, other than custody services, supplied by the trustees of an authorised unit trust and by the depositary of an OEIC are also exempt under Article 13B(d)(6) of the Sixth Directive. Verification and decision-making functions performed by the depositary or the trustee are both comprised in management functions.

32 The decision requesting a preliminary ruling states that, according to the Commissioners, the specific and essential function of the management of special investment funds is investment management involving the selection and disposal of the assets under management. They argue that this excludes the services supplied by the trustees and depositaries from the scope of the exemption, since they are not generally directly involved in day-to-day investment management decisions, and their primary role is to protect the consumer and investor. That also excludes the administration services supplied by the fund administrator from the scope of the exemption, since none of those involves the selection and disposal of the assets under management.

33 The referring tribunal does not find the scope of the exemption contained in Article 13B(d)(6) of the Sixth Directive to be clear. It points out, in that regard, that there is a disparity between the practices of the Member States as to the treatment of the transactions at issue in the main proceedings.

34 In those circumstances, the VAT and Duties Tribunal, London, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the exemption for "management of special investment funds as defined by Member States", contained in Article 13B(d)(6) of the Sixth VAT Directive, mean that the Member States have the power to define the activities comprising the "management" of the special investment funds, as well as the power to define the special investment funds which may benefit from the exemption?

(2) If the answer to Question 1 is no and the term "management" in Article 13B(d)(6) of the Sixth VAT Directive is to be given an independent Community law meaning, in the light of ... Directive 85/611 ..., are charges made by a depositary or trustee for the services it provides pursuant to Articles 7 and 14 of ... Directive [85/611], national regulatory provisions and the relevant fund rules, exempt supplies of "management of special investment funds" under Article 13B(d)(6) of the Sixth VAT Directive?

(3) Again, if the answer to Question 1 is no and the term "management" is to be given an independent Community law meaning, does the exemption for the "management of special investment funds" in Article 13B(d)(6) of the Sixth VAT Directive apply to services performed by a third-party manager in respect of the administrative management of the funds?'

The first question

35 By its first question, the referring tribunal is asking, in essence, whether the concept of 'management' of special investment funds in Article 13B(d)(6) of the Sixth Directive has its own independent meaning in Community law whose content the Member States may not alter.

Observations submitted to the Court

36 Abbey National, the Luxembourg Government and the Commission of the European Communities submit that the exemption under Article 13B(d)(6) of the

Sixth Directive for 'the management of special investment funds as defined by Member States' does not confer power on the latter to define the activities covered by the term 'management' of the funds.

37 On the other hand, the United Kingdom Government submits that that exemption confers that power on the Member States, as well as the power to define the special investment funds which may benefit from the exemption.

Findings of the Court

38 According to settled case-law, the exemptions provided for in Article 13 of the Sixth Directive have their own independent meaning in Community law which must be given a Community definition whose purpose is to avoid divergences in the application of the VAT system from one Member State to another (see, particularly, Case C-358/97 *Commission* v *Ireland* [2000] ECR I-6301, paragraph 51; Case C-428/02 *Fonden Marselisborg Lystbådehavn* [2005] ECR I-1527, paragraph 27; and Joined Cases C-394/04 and C-395/04 *Ygeia* [2005] ECR I-10373, paragraph 15).

39 While, consequently, the Member States may not alter their content, in particular in laying down conditions of application, that cannot however be so where the Council has specifically conferred on them the task of defining certain terms of an exemption (see Case C-468/93 *Gemeente Emmen* [1996] ECR I-1721, paragraph 25).

40 It is therefore appropriate to consider whether Article 13B(d)(6) of the Sixth Directive confers on the Member States the task of defining both the meaning of 'special investment funds' and that of 'management' of those funds or whether it covers only the first of those two concepts.

41 In that regard, it must be stated that while the English and Dutch versions of that provision are ambiguous as to its scope, it is clear, particularly from the Danish, German, French and Italian versions, that Article 13B(d)(6) of the Sixth Directive refers to the Member States' definitions only as regards the meaning of 'special investment funds'.

42 The limited scope of that reference to national law, as is clear particularly from the Danish, German, French and Italian versions, is supported by the context in which the expression occurs, by the scheme of the Sixth Directive and by the purpose of avoiding divergences in the application of the VAT system from one Member State to another.

43 Therefore, the reply to the first question must be that the concept of 'management' of special investment funds in Article 13B(d)(6) of the Sixth Directive has its own independent meaning in Community law whose content the Member States may not alter.

The second and third questions

44 By its second and third questions, which it is convenient to consider together, the referring tribunal is asking, in essence, whether Article 13B(d)(6) of the Sixth

Directive is to be interpreted in such a way that the concept of 'management of special investment funds' does or does not cover:

— the services charged for by a depositary pursuant to Articles 7 and 14 of Directive 85/611, national regulatory provisions and the relevant fund rules; and

— the administrative and accounting management services of the funds performed by a third-party manager.

Observations submitted to the Court

45 Abbey National and the Luxembourg Government submit that charges made by a depositary or trustee for the services it supplies pursuant to Articles 7 and 14 of Directive 85/611, national regulatory provisions and the relevant fund rules are exempt supplies under Article 13B(d)(6) of the Sixth Directive.

46 The latter provision also covers the services performed by a third-party manager in respect of the administrative management of the funds.

47 The United Kingdom Government submits that the term 'management' of special investment funds in Article 13B(d)(6) of the Sixth Directive should be understood as referring to the core function of investment management performed by the manager of a special investment fund.

48 That exemption does not extend to the charges made by a depositary or trustee for the safe custody of the assets of the special investment fund or for supervising the manager's activities to ensure that they are carried out in accordance with the law and fund rules.

49 For the same reasons, that exemption does not apply to the supply of purely administrative services to the manager by a subcontracted fund-accounting administrator.

50 The Commission submits that the expression 'management of special investment funds' within the meaning of Article 13B(d)(6) of the Sixth Directive covers all services which are closely linked to the operation of the fund, that is, to determining policies for investment and the acquisition and sale of shares.

51 The services supplied by a depositary pursuant to Articles 7 and 14 of Directive 85/611, national regulatory provisions and the fund rules do not constitute fund management for the purposes of Article 13B(d)(6) of the Sixth Directive.

52 Nor do the services performed by a third-party manager in respect of the administrative management of the funds constitute fund management for the purposes of that provision.

Findings of the Court

53 It must be noted, at the outset, that Article 13B(d)(6) of the Sixth Directive covers special investment funds whatever their legal form. Undertakings for collective investment constituted under the law of contract or trust law, and those constituted under statute both come within the scope of that provision.

54 Neither the context nor the wording of Article 13B(d)(6) of the Sixth Directive indicates that the legislature intended to limit the application of that provision only to undertakings for collective investment constituted under the law of contract or under trust law.

55 In fact, when the Sixth Directive was adopted, the Community terminology in this field was not yet harmonised, since Directive 85/611, Article 1(3) of which gives a Community definition of UCITS, was adopted only in 1985. In addition, while the French and Italian versions of Article 1(3) of Directive 85/611, when they designate undertakings for collective investment constituted under the law of contract, use the same expression as that which appears in Article 13B(d)(6) of the Sixth Directive, such is not the case in other language versions of that provision, particularly the English, German, Danish and Dutch versions.

56 Moreover, as regards the application of Article 13B(d)(6) of the Sixth Directive to transactions effected between undertakings for collective investment and their participants, any other interpretation of that provision, exempting from VAT the management of undertakings for collective investment constituted under the law of contract or under trust law, and not those constituted under statute, would be

contrary to the principle of fiscal neutrality on which, in particular, the common system of VAT established by the Sixth Directive is based, and which precludes economic operators carrying out the same transactions being treated differently in relation to the levying of VAT (see Case C-382/02 *Cimber Air* [2004] ECR I-8379, paragraphs 23 and 24, and Case C-280/04 *Jyske Finans* [2005] ECR I-10683, paragraph 39).

57 Next, the content of the meaning of 'management' of special investment funds must be considered.

58 In that regard, it must be noted that Article 13B(d)(6) of the Sixth Directive contains no definition of that term.

59 That provision must therefore be interpreted in the light of the context in which it is used and of the aims and scheme of that directive, having particular regard to the underlying purpose of the exemption which it establishes (see, to that effect, Case C-284/03 *Temco Europe* [2004] ECR I-11237, paragraph 18, and *Fonden Marselisborg Lystbådehavn*, paragraph 28).

60 First of all, it must be borne in mind that, since the exemptions referred to in Article 13 of the Sixth Directive are exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person, they should be interpreted strictly (see, in particular, Case C-275/01 *Sinclair Collis* [2003] ECR I-5965, paragraph 23, and Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 36).

61 Next, it follows from Article 1(2) of Directive 85/611 that the transactions carried out by UCITS consist in the collective investment in transferable securities of capital raised from the public. With the capital provided by subscribers when they purchase shares, UCITS assemble and manage, on behalf of the subscribers and for a fee, portfolios consisting of transferable securities (see Case C-8/03 *BBL* [2004] ECR I-10157, paragraph 42).

62 As the Advocate General observed in point 68 of her Opinion, the purpose of the exemption, under Article 13B(d)(6) of the Sixth Directive, of transactions connected with the management of special investment funds is, particularly, to facilitate investment in securities for small investors by means of investment undertakings. Point 6 of that provision is intended to ensure that the common system of VAT is fiscally neutral as regards the choice between direct investment in securities and investment through undertakings for collective investment.

63 It follows that the transactions covered by that exemption are those which are specific to the business of undertakings for collective investment.

64 Therefore, apart from tasks of portfolio management, those of administering undertakings for collective investment themselves, such as those set out in Annex II to Directive 85/611, as amended, under the heading 'Administration', which are functions specific to undertakings for collective investment, come within the scope of Article 13B(d)(6) of the Sixth Directive.

65 On the other hand, that provision does not cover the functions of depositary of undertakings for collective investment, such as those set out in Articles 7(1) and (3) and 14(1) and (3) of Directive 85/611. Those functions do not fall under the management of undertakings for collective investment but under the control and supervision of their activities, the aim being to ensure that undertakings for collective investment are managed in accordance with the law.

66 As regards the services performed by a third-party manager in respect of the administrative management of the funds, it should be noted first that, like the transactions exempted under points 3 and 5 of Article 13B(d) of the Sixth Directive (see Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 32), the management of special investment funds referred to in point 6 of that article is defined according to the nature of the services provided and not according to the person supplying or receiving the services.

67 Next, the wording of Article 13B(d)(6) of the Sixth Directive does not in principle preclude the management of special investment funds from being broken down into a number of separate services which may come within the meaning of 'management of special investment funds' in that provision, and which may benefit from the exemption under it, even where they are provided by a third-party manager (see, to that effect, as regards Article 13B(d)(3) of the Sixth Directive, *SDC*, paragraph 64, and, as regards Article 13B(d)(5) of that directive, Case C-235/00 *CSC Financial Services* [2001] ECR I-10237, paragraph 23).

68 In those circumstances, it follows from the principle of fiscal neutrality that operators must be able to choose the form of organisation which, from the strictly commercial point of view, best suits them, without running the risk of having their operations excluded from the exemption under Article 13B(d)(6) of the Sixth Directive.

69 It follows that management services performed by a third-party manager come, generally, within the scope of Article 13B(d)(6) of the Sixth Directive.

70 However, to be regarded as exempt transactions for the purposes of Article 13B(d)(6) of the Sixth Directive, services performed by a third-party manager in respect of the administrative management of the funds must, viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of a service described in that same point 6 (see, to that effect, as regards Article 13B(d)(5) of the Sixth Directive, *SDC*, paragraph 66, and *CSC Financial Services*, paragraph 25).

71 The services supplied must therefore concern specific essential elements of the management of special investment funds. Mere material or technical supplies, such as the making available of a system of information technology, are not covered by Article 13B(d)(6) of the Sixth Directive (see, to that effect, as regards Article 13B(d)(3), *SDC*, paragraph 66).

72 Therefore, it must be held that Article 13B(d)(6) of the Sixth Directive is to be interpreted as meaning that the services performed by a third-party manager in respect of the administrative management of the funds come within the concept of 'management of special investment funds' in that provision if, viewed broadly, they form a distinct whole, and are specific to, and essential for, the management of special investment funds.

73 It is for the referring tribunal to establish whether the services in question in the main proceedings meet those criteria.

74 It follows from the foregoing that the reply to the second and third questions must be that Article 13B(d)(6) of the Sixth Directive is to be interpreted as meaning that the concept of 'management of special investment funds' referred to in that provision covers the services performed by a third-party manager in respect of the administrative management of the funds, if, viewed broadly, they form a distinct whole and are specific to, and essential for, the management of those funds. On the other hand, services corresponding to the functions of a depositary, such as those set out in Articles 7(1) and (3) and 14(1) and (3) of Directive 85/611, are not covered by that concept.

Costs

75 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national tribunal, the decision on costs is a matter for that tribunal. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **The concept of 'management' of special investment funds in Article 13B(d)(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment has its own independent meaning in Community law whose content the Member States may not alter.**

2. **Article 13B(d)(6) of Sixth Directive 77/388 is to be interpreted as meaning that the concept of 'management of special investment funds' referred to in that provision covers the services performed by a third-party manager in respect of the administrative management of the funds, if, viewed broadly, they form a distinct whole, and are specific to, and essential for, the management of those funds.**

On the other hand, services corresponding to the functions of a depositary, such as those set out in Articles 7(1) and (3) and 14(1) and (3) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), are not covered by that concept.

[Signatures]