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Information and Notices

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(Continued overleaf)

I

(Information)

COMMISSION

Ecu (1)

21 February 1989

(89/C 43/01)

Currency amount for one ecu:

Belgian and Luxembourg franc con.	43,6960	Spanish peseta	129,942
Belgian and Luxembourg franc fin.	43,8731	Portuguese escudo	171,078
German mark	2,08410	United States dollar	1,12387
Dutch guilder	2,35248	Swiss franc	1,77290
Pound sterling	0,640893	Swedish krona	7,12084
Danish krone	8,10816	Norwegian krone	7,55072
French franc	7,09724	Canadian dollar	1,33740
Italian lira	1525,93	Austrian schilling	14,6586
Irish pound	0,781333	Finnish markka	4,83264
Greek drachma	174,301	Japanese yen	143,125
		Australian dollar	1,38664
		New Zealand dollar	1,82446

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

— type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;

— the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) providing daily data on calculation of monetary compensatory amounts for the purposes of the common agricultural policy.

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(1) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as amended by Regulation (EEC) No 2626/84 (OJ No L 247, 16. 9. 1984, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Recapitulation of current tenders, published in the *Supplement to the Official Journal of the European Communities,* financed by the European Economic Community under the European Development Fund (EDF) or the European Communities budget

(week: 14 to 18 February 1989)

(89/C 43/02)

Invitation to tender No	Number and date of 'S' Journal	Country	Subject	Final date for submission of bids
2924	S 31, 15. 2. 1989	Kenya	KE-Nairobi: laboratory equipment	17. 4. 1989
2923	S 31, 15. 2. 1989	Uganda	UG-Kampala: water supply works	17. 5. 1989
2928	S 31, 15. 2. 1989	Ethiopia	ET-Addis Ababa: vehicles	28. 3. 1989
2926	S 31, 15. 2. 1989	China	B-Bruxelles: technical equipment	14. 4. 1989
2915	S 32, 16. 2. 1989	Bangladesh	BD-Dhaka: vehicles	11. 4. 1989
2920	S 32, 16. 2. 1989	Burkina-Faso	BF-Ouagadougou: drilling work	4. 5. 1989
2911	S 33, 17. 2. 1989	Djibouti	DJ-Djibouti: various supplies	18. 4. 1989
2896	S 33, 17. 2. 1989	Togo	TG-Lomé: equipment and vehicles	17. 4. 1989
2894	S 34, 18. 2. 1989	Togo	TG-Lomé: roadworks	17. 5. 1989
2895	S 34, 18. 2. 1989	Togo	TG-Lomé: roadworks	17. 5. 1989
2925	S 34, 18. 2. 1989	Uganda	UG-Kampala: various supplies	18. 4. 1989

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Fourth Chamber)

of 20 January 1989

in Case 234/87 (reference for a preliminary ruling made by the Bundesfinanzhof): Casio Computer Co. GmbH Deutschland v. Oberfinanzdirektion München (1)

(Common Customs Tariff — Calculating machines — Automatic data-processing machines)

(89/C 43/03)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 234/87: reference to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between Casio Computer Co. GmbH Deutschland whose registered office is in Hamburg and Oberfinanzdirektion München [Principal Revenue Office, Munich] — on the interpretation of the Common Customs Tariff and in particular on the criteria for distinguishing between 'calculating machines' in tariff heading No 84.52 of the Common Customs Tariff and 'automatic data-processing machines' in heading No 84.53 thereof for the purposes of the tariff classification of electronic devices known as 'programmable calculators' — the Court (Fourth Chamber), composed of T. Koopmans, President of the Chamber, C. N. Kakouris and G. C. Rodríguez Iglesias, Judges; M. Darmon, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 20 January 1989, the operative part of which is as follows:

Electronic devices which are essentially designed to carry out calculating, but also other operations which are programmable by a method that is more simple to use than, for example, the programming language 'Basic' and which correspond to the criteria set out in Note 3 (A) (a) to Chapter 84 of the Common Customs Tariff are automatic data-processing machines within the meaning of tariff heading No 84.53 of the Common Customs Tariff.

(1) OJ No C 231, 29. 8. 1987.

Action brought on 10 January 1989 by Ivo-Martin-Henri Van Gerwen against Commission of the European Communities

(Case 7/89)

(89/C 43/04)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 10 January 1989 by Ivo-Martin-Henri Van Gerwen, residing at 17 Piazza Parrocchiale, Angera (Varese), Italy, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 4 Avenue Marie-Thérèse.

The applicant claims that the Court should:

1. annul the fixing of the date of his reinstatement as 1 September 1981;

2. fix the date of his reinstatement as 1 October 1969 or any other date subsequent thereto;

3. order the defendant to pay the applicant the amounts corresponding to the additional steps together with compensation for the difference between the salary the applicant received from his private employers and the salary and other benefits which he would have received from the Commission, that is to say Bfrs 100 000, subject to amendment during the proceedings;

4. in any event, order the defendant to pay the applicant the difference between the salary received from his private employers and the salary and other benefits which he would have received from the Commission for the period from 1 September 1981 to 1 April 1985, that is to say Bfrs 100 000, subject to amendment during the proceedings;

5. declare and order that the defendant should, on correct classification or in any event pursuant to the rule in the second paragraph of Article 98 of the Staff Regulations, promote the applicant to a grade in category A;

6. alternatively, order the defendant to pay the applicant the sum of Bfrs 100 000, subject to amendment during the proceedings, as damages for the distortion of his career;

7. order the defendant to pay interest at 8 % on all sums awarded the applicant as from the date on which those sums fell due;

8. order the defendant to pay the costs.

Contentions and main arguments adduced in support:

The applicant submits that he should have been reinstated before the date fixed by the defendant and that in consequence the defendant should pay him the appropriate damages or in any event give him the relevant additional steps.

The decision to reinstate the applicant was adopted in breach of the last paragraph of Article 24 and the second paragraph of Article 98 of the Staff Regulations leading to a distortion of his career and causing him considerable non-pecuniary loss.

Reference for a preliminary ruling by the Bundesgerichtshof by order of that court of 24 November 1988 in the case of SA CNL — SUCAL NV v. HAG GF Aktiengesellschaft

(Case 10/89)

(89/C 43/05)

Reference has been made to the Court of Justice of the European Communities by order of the First Senate for Civil Matters of the Bundesgerichtshof [Federal Court of Justice] of 24 November 1988, which was received at the Court Registry on 13 January 1989, for a preliminary ruling in the case of SA CNL — SUCAL NV, 45-46 Avenue Georges Truffaut, B-4020 Liège, Belgium v. HAG GF Aktiengesellschaft, Hagstraße, D-2800 Bremen 1, on the following questions:

1. Is it — in the light of Article 222 of the EEC Treaty — compatible with the provisions on the free movement of goods (Articles 30 and 36 of the EEC Treaty) that an undertaking established in Member State (A) should, by virtue of its national rights in trade names and trade marks, oppose the importation of similar goods of an undertaking established in Member State (B) if, in State (B), those goods have legally received a mark which:

   (a) may be confused with the trade name and trade mark reserved in State (A) to the undertaking established there, and

   (b) had originally existed in State (B), albeit registered later than a mark protected in State (A) for the benefit of the undertaking established in State (A), and had been transferred by that undertaking to a subsidiary undertaking set up in State (B) and forming part of the same concern, and

   (c) was, as a consequence of the expropriation in State (B) of that subsidiary, transferred as an asset of the sequestrated subsidiary (together with that undertaking as a whole) to a third party which, in turn, assigned the mark to the legal precursor of the undertaking which now exports the goods bearing that mark to State (A)?

2. Should the answer to the first question be negative:

   Would the answer to the above question be different if the mark protected in State (A) has become a 'leading' brand name in that State and it is probable that, as a result of the exceptional prominence which it enjoys, if the same mark is used by a third-party undertaking, the task of informing the consumer as to the commercial origin of the goods could not be accomplished without adverse repercussions on the free movement of goods?

3. Alternatively, also if the first question is answered in the negative:

   Does the same answer hold good even in the event that consumers in State (A) associate the mark protected in that State not only with a certain commercial origin but also with certain perceptions as to the characteristics, in particular the quality of the marked goods and if the goods imported from State (B) under the same mark do not meet those expectations?

4. If the first, second and third questions are all answered in the negative:

   Would the answer be different if the separate conditions set out in the second and third questions were cumulative and were both satisfied?

Reference for a preliminary ruling by the Bundesfinanzhof by decision of that court of 6 December 1988 in the case of Unifert Handels GmbH v. Hauptzollamt Münster; Intervener: Bundesminister der Finanzen

(Case 11/89)

(89/C 43/06)

Reference has been made to the Court of Justice of the European Communities by decision of the Bundesfinanzhof [Federal Finance Court], (Seventh Senate) of

6 December 1988, which was received at the Court Registry on 13 January 1989, for a preliminary ruling in the case of Unifert Handels GmbH, 22 Rigaer Straße, D-Warendorf 1, v. Hauptzollamt [Principal Costoms Office] Münster; Intervener: Bundesminister der Finanzen [Federal Finance Minister] on the following questions:

1. (a) Can the transaction value within the meaning of Article 3 (1) of Regulation (EEC) No 1224/80 (1) also be the price stipulated in a contract of sale between persons resident in the Community?

   (b) If Question 1 (a) is answered in the affirmative, may the person concerned determine the price to be taken as the basis for customs valuation purposes if prices stipulated in other contracts of sale fulfil the requirements of Article 3 (1) of Regulation (EEC) No 1224/80? Is the person concerned bound by his choice once exercised?

   (c) If Question 1 (a) is answered in the affirmative, does this price also include a so-called purchase commission?

2. Are demurrage charges transport costs within the meaning of Article 8 (1) (e) of Council Regulation (EEC) No 1224/80?

3. Is the fully paid or payable price the transaction value within the meaning of Article 3 of Regulation (EEC) No 1224/80 if before the material time short shipments are found which are within an agreed weight discrepancy allowance and do not lead to a reduction of the purchase price?

(1) OJ No L 134, 31. 5. 1980, p. 1.

Reference for a preliminary ruling by the Bundessozialgericht by order of that court of 22 November 1988 in the case of Antonio Gatto v. Bundesanstalt für Arbeit

(Case 12/89)

(89/C 43/07)

Reference has been made to the Court of Justice of the European Communities by order of the Tenth Senate of the Bundessozialgericht [Federal Social Court] of 22 November 1988, which was received at the Court Registry on 13 January 1989, for a preliminary ruling in the case of Antonio Gatto, 5 Reutesteig, D-Radolfzell, against Bundesanstalt für Arbeit [Federal Employment Office], 104 Regensburger Straße, D-8500 Nuremberg, on the following question:

Does Article 74 (1) of Regulation (EEC) No 1408/71 (1), in addition to laying down a rule of notional residence, also have as a result that the requirement under the law of the country in which the worker was (last) employed that, for the purpose of family benefits, a member of the family be unemployed is to be regarded as fulfilled if the member of the family is at the disposal of the labour exchange in the country in which he resides?

(1) Official Journal, English Special Edition, 1971 (II), p. 416.

Action brought on 18 January 1989 by the Dansk Pelsdyravlerforening against the Commission of the European Communities

(Case 13/89)

(89/C 43/08)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 January 1989 by the Dansk Pelsdyravlerforening [Danish Fur Breeders' Association], also trading under the name Danske Pels Auktioner [Danish Fur Sales], a cooperative association, whose registered office is at 60 Langagervej, DK-2600 Glostrup, represented by the Chairman of the Board of Directors, Anders Kirkegaard, farmer, Members of the Board of Directors Niels Regner Anderson, veterinary surgeon, and Jørgen Pedersen, fur breeder, assisted by Egon Høgh, Landsretssagfører [a lawyer with a right of audience before the Landsret], Lise Høgh, advocate, and, as special adviser, Professor Bernhard Gomard, Doctor of Laws, Copenhagen, with an address for service in Luxembourg at the office of P. Schmaltz-Jørgensen, Director of the Copenhagen Handelsbank International SA, 12 Rue Goethe.

The applicant claims that the Court should:

1. (a) Principally:

   declare the Commission's decision of 28 October 1988 (1) in Case No IV/B-2/31.424 void;

   (b) In the alternative:

   cancel or reduce the fine imposed in the abovementioned decision;

2. Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

1. It is denied that the five clauses which gave rise to the defendant's decision, either individually or taken together, are contrary to Article 85 (1) of the EEC Treaty. Irrespective of the fact that furs are not covered by the rules in Regulation No 26/62 (2) since those rules apply only to products listed in Annex II

(1) Commission Decision of 28 October 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/B-2/31.424, Hudson's Bay-Dansk Pelsdyravlerforening), OJ No L 316, 1988, p. 43.

(2) Official Journal, English Special Edition 1959 to 1962, p. 129.

to the Treaty, in an assessment of the applicant's undertaking and organization the principles and purpose of the common agricultural policy cannot be disregarded. Fur breeding has greatly contributed to ensuring a fair standard of living for a sector of the agricultural community (Article 39 (1) (b) of the Treaty). The association has only been able to achieve that by organizing itself as a cooperative, a form of organization with which the agricultural sector is familiar. If the defendant's decision is allowed to remain in force that will mean that the very principle of cooperatives is regarded as an infringement of Article 85. The applicant's regulations and terms of business are not contrary to Article 85 of the EEC Treaty because they have neither as their object nor as their effect the restriction of competition in the EEC. The adoption of the rules and the detailed elaboration thereof was motivated only by the particular considerations applicable to a cooperative association which is managed by its members, treats all members equally and operates to the advantage of those members. As far as the effect of the rules is concerned, the defendant has produced no evidence that there is any causal connection between the rules in question and the fact that the applicant has a considerable share of the market.

The defendant's decision is based on an inadequate examination and incorrect view of the relevant market. The defendant is mistaken in making a connection between the rules imposing restrictions on the supply of skins on members who wish to obtain an advance in respect of young animals ('a kit advance') and emergency assistance and the fact that a member may not operate a competing business. The prohibition against being a member of the applicant association and at the same time conducting a competing business is the sole rule attached to membership. Membership of the applicant association does not oblige its member to conclude contracts. Access to loans or insurance cover ('kit advances' and emergency assistance) can be obtained by members elsewhere. The economic effect of the clauses in the applicant's regulations and business terms to which the defendant objects, taken either separately or in association, when considered in relation to the decisive factor in respect of competition between auction houses — the price which can be obtained for skin — does not satisfy the requirement which is to be taken into account when assessment is made under Article 85 (1) that such effect be substantial. Even though it must be acknowledged that Regulation No 26/62 is not applicable, it is of considerable significance for the understanding and assessment of the applicant's undertaking that it is organized as a cooperative association and thereby represents a particular enterprise culture. The rules concerning 'kit advances' and emergency assistance and those governing supply which are linked thereto are based on the principles of equal treatment and the concept of mutual assistance, which is natural in a cooperative association.

2. (In the alternative.) The applicant has innocently made a mistake of law. The association thought itself subject to the same rules of law which operate in Denmark in cooperative sectors in agriculture and has always complied with those rules.

Reference for a preliminary ruling by the Bundesfinanzhof by order of 14 December 1988 in the case of Maizena GmbH v. Hauptzollamt Krefeld

(Case 18/89)

(89/C 43/09)

Reference has been made to the Court of Justice of the European Communities by order of the Seventh Senate of the Bundesfinanzhof [Federal Finance Court] of 14 December 1988, which was received at the Court Registry on 23 January 1989, for a preliminary ruling in the case of Maizena GmbH, 210 George C. Marshall Straße, D-Krefeld 12 v. Hauptzollamt [Principal Customs Office] Krefeld, on the following questions:

1. Does Article 5a (1) of Regulation (EEC) No 2742/75 (1), as amended by Regulation (EEC) No 1665/77 (2), prohibit the granting of production refunds even for products which are destined for the manufacture of isoglucose to be used as an intermediate product, not intended for marketing, in the manufacture of sorbitol?

2. If Question 1 is answered in the affirmative: is that provision invalid on the ground that it infringes the prohibition of discrimination under Community law?

(1) OJ No L 281, 1. 11. 1975, p. 57.
(2) OJ No L 186, 26. 7. 1977, p. 15.

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on investment services in the securities field

COM(88) 778 — SYN 176

(Submitted by the Commission on 3 January 1989)

(89/C 43/10)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas this Directive is to constitute an instrument which is essential for achieving the internal market, a course determined by the Single European Act and set out in timetable form in the Commission's White Paper, from the point of view of both the freedom of establishment and the freedom to provide financial services, in the field of investment firms;

Whereas the approach which has been adopted is to achieve only the essential harmonization necessary and sufficient to secure mutual recognition of authorization and of supervisory systems, thus enabling the application of the principle of home country control and the granting of a single authorization recognized throughout the Community;

Whereas it is necessary, for reasons of fair competition, to ensure that non-bank investment firms have similar freedoms to create branches and provide services across frontiers as those envisaged by the proposal for a second Council Directive in the field of credit institutions;

Whereas it is also necessary and appropriate to liberalize access to membership of stock exchange and financial futures and options markets in host Member States for investment firms authorized to carry out the relevant services in their home Member States;

Whereas responsibility for the financial soundness of an investment firm will rest with the competent authorities of its home Member State; whereas to permit this responsibility fully to be assumed by such competent authorities a further directive will be necessary to coordinate rules in the area of market risk;

Whereas it is essential for the creation of the internal market for the home country supervisors to monitor all aspects of the investment firm's activities in host Member States whether such activities are carried on by the provision of services or the creation of branches there;

Whereas the Member States should ensure that there are no obstacles to the activities coming within the scope of this Directive being undertaken using the financial techniques of the home Member State, so long as the latter are not in violation of the legal provisions governing the public good in the host Member State;

Whereas requests for authorization of a subsidiary whose parent is governed by the laws of a third country or the acquisition of a participation by such a parent are subject to a procedure intended to ensure that Community investment firms are granted reciprocal treatment in the third countries in question;

Whereas the smooth running of the internal market in financial services will require, in addition to common legislative standards, close and regular cooperation between the competent authorities of the Member States;

Whereas in the case of problems concerning investment firms a contact committee is the appropriate forum for discussion and consultation;

Whereas it is necessary, in order to facilitate the achievement of the objectives of this Directive and to take account of the rapid development of national and international financial markets, to introduce a procedure for the adaptation of certain technical features; whereas, because of the important and sensitive nature of that

adaptation, procedure III, type (a), as defined in Article 2 of Council Decision 87/373/EEC (1), is the most appropriate,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive:

— *'credit institution'* is defined in accordance with the first indent of Article 1 of Council Directive 77/780/EEC (2),

— *'investment firm'* means any natural or legal person whose business it is to engage in one or more of the activities set out in the Annex to this Directive,

— *'home Member State'* means:

  — where the investment firm is a natural person, the Member State where that person has his residence,

  — where the investment firm is a legal person, the Member State where its registered office is situated or if it has no registered office then the Member State where its head office is situated,

— *'host Member State'* means the Member State where an investment firm has a branch or into which it supplies services,

— *'branch'* means a place of business which forms a legally dependent part of an investment firm and which provides an investment service for which the investment firm has been authorized,

— *'qualified participation'* means a holding, direct or indirect, in an investment firm which represents 10 % or more of the capital or of the voting rights or which enables the exercise of a significant influence over it within the meaning of Article 33 of Council Directive 83/349/EEC (3),

— *'parent undertaking'* is defined in accordance with Articles 1 and 2 of Directive 83/349/EEC,

— *'subsidiary'* means a subsidiary undertaking in accordance with Articles 1 and 2 of Directive 83/349/EEC.

(1) OJ No L 197, 18. 7. 1987, p. 33.
(2) OJ No L 322, 17. 12. 1977, p. 30.
(3) OJ No L 193, 18. 7. 1983, p. 1.

Article 2

This Directive shall apply to all investment firms. However, only Articles 3, 4, 5, 8, 9, 10 and 21 shall apply to investment firms that are credit institutions.

Article 3

Member States must require that investment firms which are legal persons shall have their head office in the same Member State as their registered office.

TITLE II

Harmonization of authorization conditions

Article 4

1. Investment firms wishing to engage in one or more of the activities referred to in the Annex within one or more Member States shall obtain authorization in their home Member State before commencing such activities. Such authorization shall be granted by the home Member State's competent authorities designated in accordance with Article 14. Following the granting of authorization the investment activity in question may be engaged in forthwith by the investment firm together with any activities that are ancillary thereto.

2. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorization unless:

— the investment firm has sufficient initial financial resources having regard to the nature of the activity in question,

— the persons who effectively direct the business of the investment firm are of sufficiently good repute and experience,

— holders of qualified participations in it are suitable persons.

3. Member States shall also require applications for authorization to be accompanied by a programme of operations setting out *inter alia* the types of business envisaged and the structural organization of the investment firm.

4. The applicant shall be notified within three months of submission of a complete application whether or not authorization is granted. Reasons shall be given whenever an authorization is refused. If no decision is notified within six months of submission of the complete application this shall be deemed to be a refusal.

5. The authorization referred to in paragraph 1 shall not be required where the investment firm is a credit institution whose authorization as a credit institution by the competent authorities specified in Article 3 of Directive 77/780/EEC includes authorization of the investment activity concerned.

6. The competent authorities may withdraw the authorization issued to an investment firm subject to this Directive only where the investment firm:

(a) does not make use of the authorization within 12 months, expressly renounces the authorization or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorization to lapse in such cases;

(b) has obtained the authorization through false statements or any other irregular means;

(c) no longer fulfils the conditions under which authorization was granted;

(d) no longer possesses sufficient financial resources or can no longer be relied upon to fulfil its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;

(e) falls within one of the other cases where national law provides for withdrawal of authorization.

Article 5

Member States shall not apply to branches of investment firms having their registered office outside the Community, when commencing or carrying on their business, provisions that result in more favourable treatment than that accorded to branches of investment firms having their registered office in a Member State.

Article 6

1. Requests for authorization of a subsidiary whose parent undertaking is governed by the laws of a third country or the acquisition of a participation as provided for in paragraph 3 shall be subject to the procedure laid down in this Article.

2. The competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission of the request for authorization.

3. In the same manner, when informed, according to the provisions of Article 7, that an undertaking governed by the laws of a third country is considering the acquisition of a participation in a Community investment firm such that the latter would become its subsidiary, the competent authorities of the relevant Member State shall inform the competent authorities of the other Member States and the Commission.

4. The competent authorities of the Member State concerned must suspend their decision regarding requests as referred to in paragraphs 1 and 3 until the procedure provided for in paragraphs 5 and 6 is completed.

5. The Commission shall, within three months of receiving the information provided for in paragraphs 2 and 3, examine whether all Community investment firms enjoy reciprocal treatment, in particular regarding the establishment of subsidiaries or the acquisition of participations in investment firms in the third country in question.

6. If the Commission finds that reciprocity is not ensured it may extend suspension of the decision referred to in paragraph 4, using the procedure provided for in Article 20.

7. The Commission shall present suitable proposals to the Council with a view to achieving reciprocity with the third country in question.

TITLE III

Harmonization of conditions relating to the pursuit of the business of investment firms

Article 7

1. Member States shall require any natural or legal person who is considering the acquisition of a qualified participation in an investment firm to first inform the competent authorities, telling them of the size of the intended participation. The abovementioned persons must similarly inform the competent authorities if they propose to increase their qualified participation such that the investment firm would become a subsidiary. The competent authorities shall assess the suitability of the abovementioned persons.

2. Investment firms shall each year furnish the competent authorities of the home Member State with the names of major shareholders and members as referred to in paragraph 1 and the size of their qualified participations, in accordance with the names registered at the annual general meeting of shareholders and members or in accordance with information received as a result of compliance with the regulations relating to companies quoted on stock exchanges.

3. Member States shall require that in cases where the persons referred to in paragraph 1 exercise their influence in a way which is likely to be to the detriment of the prudent and sound management of the activities of the investment firm, the competent authorities shall take appropriate measures to bring such a situation to an end. Such measures may consist in particular in injunctions, sanctions against directors and managers or the suspension of voting rights in respect of the shares held by the shareholders or members in question.

Article 8

1. The competent authorities of the home Member State shall require continuing compliance by an investment firm authorized by them with the conditions referred to in Article 4 (2). In appropriate circumstances, the competent authorities may allow an investment firm a certain limited period to restore its financial resources to the agreed initial minimum. The competent authorities of the home Member State shall also require that investment firms authorized by them make sufficient provision against market risk in accordance with rules to be prescribed in a further coordinating directive.

2. The supervision of compliance with the conditions referred to in Article 4 (2) shall be within the exclusive regulatory competence of the home Member State's competent authorities irrespective of whether or not the investment firm establishes a branch or provides services in another Member State.

Article 9

1. Member States shall draw up prudential rules to be observed on a continuing basis by investment firms authorized by their competent authorities. Supervision of such prudential rules shall be within the exclusive competence of the home Member State's competent authorities irrespective of whether or not the investment firm establishes a branch or provides services in another Member State. Such rules shall require that the investment firm:

— has sound administrative and accounting procedures and internal control mechanisms,

— arranges for securities belonging to investors to be kept separately from its own securities and for money belonging to investors to be placed in an account or in accounts which are separate and distinct from the firm's own account,

— is either a member of a general compensation scheme designed to protect investors who are prevented from having claims satisfied because of the bankruptcy or default of the investment firm or makes individual arrangements which provide investors with equivalent protection. Pending further harmonization of compensation schemes branches of investment firms shall be subject to the compensation scheme in force in the host Member State provided that payment or contribution to such a compensation scheme shall be calculated by reference to their income in respect of investment activity carried out in that State,

— provides the competent authorities of the home Member State with such information on request and at such intervals as they may determine (but not less than quarterly) in order that they may assess its financial soundness, including the adequacy of its provision in respect of market risk,

— arranges for adequate records to be kept relating to executed transactions which shall be at least sufficient to enable the home Member State's authorities to monitor compliance with prudential rules which they are responsible for applying including rules relating to market risk. Such records shall be retained for periods to be laid down by the competent authorities,

— is organized in such a way that conflicts of interest between the firm and its clients or between one of its clients and another are reduced to a minimum.

2. If the rules contained in paragraph 1 are not appropriate to the nature of the investment service in question, Member States may adapt them or provide that they shall not apply.

3. Member States may provide that the rules set out in the second and third indents of paragraph 1 shall not apply where the service is provided to business or professional investors.

TITLE IV

Provisions relating to freedom of establishment and freedom to provide services

Article 10

1. Host Member States shall ensure that at least the activities set out in the list in the Annex and any activities which are ancillary thereto may be pursued in their territories, in accordance with the provisions of Articles 11, 12 and 13, either by the establishment of a branch or by way of the provision of services, by an investment firm authorized to engage in such activities under this Directive by the competent authorities of its home Member State.

2. Host Member States may not make the establishment of a branch or the provision of services under paragraph 1 subject to an authorization requirement or to a requirement to provide endowment capital or any measure having equivalent effect.

3. Host Member States shall ensure that investment firms which are authorized to provide broking, dealing or market-making services in their home Member States can enjoy the full range of trading privileges normally reserved to members of the stock exchanges and organized securities markets of host Member States where similar services are provided.

4. In order to meet their obligation set out in paragraph 3, host Member States shall ensure that the investment firms referred to in that paragraph have the option to become members of host Member States' stock exchanges or organized securities markets by setting up either a branch or a subsidiary in the host Member State which complies with rules governing the structure and organization of the relevant host stock exchange or organized securities market or by the acquisition of an existing member firm.

5. Pending further harmonization, host Member States which do not accept credit institutions as members of their stock exchanges or organized securities market are not required to accept, as members, branches of those investment firms referred to in paragraph 3 which are credit institutions.

6. Host Member States shall likewise ensure that investment firms which are authorized to deal in financial futures and options in their home Member State can enjoy the full range of trading facilities on financial futures and options exchanges in the host Member State under the same conditions as are set out in paragraphs 3, 4 and 5.

Article 11

1. An investment firm wishing to establish a branch in the territory of another Member State shall give notification thereof to the competent authorities of the home Member State and relevant host Member State. At the same time it must send the latter authorities:

(a) an attestation by the competent authorities of the home Member State to the effect that the investment firm is duly authorized there in respect of the investment service proposed to be provided and that it otherwise fulfils the conditions imposed by this Directive;

(b) a programme of operations setting out *inter alia* the types of business envisaged and the structural organization of the branch;

(c) the names of the managers of the branch;

(d) the address in the host Member State from which documents can be obtained.

2. An investment firm may establish a branch in the other Member State one month after the notification referred to in paragraph 1.

3. An investment firm wishing to change any of the matters notified pursuant to paragraph 1 shall give written notice of the proposed change to the competent authorities in the host Member State at least one month before making the change. If necessary those authorities may decide whether it will not be possible, in the interest of the public good, for the investment firm to engage in any additional activities which it may envisage which are not precluded under the conditions of authorization in its home Member State and which are not contained on the list in the Annex.

Article 12

1. Any investment firm wishing to exercise the freedom to supply services in the territory of another Member State for the first time shall notify the competent authorities of the home and host Member States of the activities included in the list in the Annex which it intends to undertake.

2. The investment firm may begin to provide such services and any activities which are ancillary thereto in the host Member State one month after notification.

Article 13

1. If the competent authorities of the host Member State ascertain that an investment firm having a branch or providing services in the territory of that Member State is not complying with the legal provisions in force therein which are justified on the the grounds of the public good, those authorities shall request the investment firm concerned to put an end to the irregular situation.

2. If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the Member State accordingly. The authorities of the home Member State shall take, in the shortest time possible, all appropriate measures to ensure that the investment firm concerned puts an end to the irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

3. If, despite the measures taken by the home Member State pursuant to paragraph 2, or because such measures prove inadequate or are not taken by the Member State in question, the investment firm persists in violating the legal rules referred to in paragraph 1 in force in the host Member State, the latter State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent further irregularities including, in so far as is necessary, the prevention of the initiation of further transactions by that investment firm within its territory. Member States shall ensure that within their territory it is possible to serve the legal documents necessary for those measures on investment firms.

4. Any measures adopted pursuant to paragraphs 1, 2 and 3 involving penalties or restrictions on the provision of services must be properly justified and communicated to the investment firm concerned. Every such measure shall be subject to a right to apply to the courts in the Member State whose authorities adopted it.

5. Before following the procedure set out in paragraphs 1, 2 and 3 the competent authorities of the host Member State may, in exceptional circumstances, take measures necessary to protect the interests of investors and others to whom services are provided. The Commission and the other Member States shall be informed of such measures in the shortest possible time. In this event the Commission may, after consulting the Member States concerned, decide that the Member State in question shall amend or abolish the measures.

6. In the event of withdrawal of authorization the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the investment firm concerned from undertaking further transactions in the territory of that Member State.

7. Member States shall inform the Commission of the number and type of cases in each Member State in which measures have been taken in accordance with the provisions of paragraph 3. Every two years, the Commission shall submit a report summarizing such cases to the committee set up under Article 20.

TITLE V

Provisions concerning the authorities responsible for authorization and supervision

Article 14

1. The Member States shall designate the authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of duties.

2. The authorities referred to in paragraph 1 must be public authorities or bodies appointed by public authorities.

3. The authorities concerned must be granted all the powers necessary to carry out their task.

Article 15

1. Where there are several competent authorities in the same Member State they shall collaborate closely in order to supervise the activities of investment firms operating there.

2. Member States shall also permit such collaboration to take place between such competent authorities and public authorities responsible for the supervision of credit and other financial institutions and insurance companies as regards the respective entities supervised by them.

3. Where investment services are provided on a services basis across frontiers or by the establishment of branches in one or more Member States other than the home Member State the competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of the investment firms concerned. They shall supply one another on request with all information concerning the management and ownership of such investment firms that is likely to facilitate their supervision and the examination of the conditions for their authorization and all information likely to facilitate the monitoring of such firms.

Article 16

1. Host Member States shall ensure that, where an investment firm authorized in another Member State conducts its business there through a branch, the competent authorities of the home Member State are able, after having first informed the competent authorities of the host Member State, to carry out themselves on-the-spot verification of the information referred to in Article 15 (3).

2. This Article shall not affect the right of the competent authorities of the host Member State to carry out on-the-spot verification of branches established in their territory in the discharge of their responsibilities under this Directive.

Article 17

1. Member States shall ensure that all persons now or in the past employed by the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, are bound by the obligation of professional secrecy. This means that any confidential information which they may receive in the course of their duties may not be divulged to any person or authority, without prejudice to cases covered by criminal law.

2. Notwithstanding paragraph 1, the competent authorities of the various Member States and the public authorities responsible for the supervision of credit and other financial institutions shall be authorized to exchange information in accordance with the provisions of this Directive where appropriate for the efficient discharge of their respective responsibilities. This information shall be subject to the same conditions of professional secrecy as those indicated in paragraph 1.

3. Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information communicated is subject to guarantees of professional secrecy equivalent to those referred to in this Article.

4. The authorities receiving information under paragraphs 1 or 2 shall use it only:

— to examine the conditions for the taking-up of the business of the entities supervised by them and to facilitate monitoring of the pursuit of such business, the administrative and accounting procedures and mechanisms of internal control, or

— when the decisions of the authorities are the subject of an administrative appeal, or

— in court proceedings initiated pursuant to Article 18.

5. Paragraphs 1 and 4 shall not preclude within a Member State or between Member States the exchange of information between the competent authorities and persons responsible for carrying out statutory audits of the accounts of investment firms.

The authorities and institutions to which such information is sent shall use it only in the discharge of their supervisory functions. The information received shall fall within the professional secrecy rules by which those authorities and institutions are bound.

6. Notwithstanding paragraph 1, Member States may authorize, by virtue of provisions laid down by law, the disclosure, when it is necessary for reasons of prudential control, of certain information to other departments of their central government administration. Member States shall ensure that information received in accordance with paragraph 2 is not disclosed in such cases, except where there is the explicit consent of the authorities which have communicated the information.

7. Member States shall ensure that the professional secrecy provisions laid down by this Article shall apply to information given by the competent authorities to persons responsible for carrying out statutory audits of the accounts of investment firms.

Article 18

Member States shall ensure that decisions taken in respect of an investment firm in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts. The same shall apply where an application for authorization is deemed to be refused in accordance with Article 4 (4).

Article 19

Member States shall ensure that their respective competent authorities may adopt, as against investment firms or those who effectively control the business of such firms which breach legislative, regulatory or administrative provisions concerning the control of their businesses or the pursuit of their activities, penalties or measures aimed specifically at ending observed breaches or the causes of such breaches. Those penalties shall include procedures for the suspension or withdrawal of authorizations.

TITLE VI

Final provisions

Article 20

1. Technical amendments to this Directive in the following areas:

— extension of the activities on the list set out in the Annex,

— the fields in which the competent authorities must exchange information, as enumerated in Article 15,

shall be made according to the procedure set out in paragraph 2.

2. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States in the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period to be laid down in each act to be adopted by the Council under this paragraph but which may in no case exceed three months from the day of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 21

1. Investment firms already authorized to provide investment services in their home Member State before the entry into force of the provisions adopted in implementation of this Directive shall be deemed to be authorized for the purposes of this Directive provided that the authorization was given under equivalent conditions to those set out in Article 4 (2).

2. Branches which have commenced their activities, in accordance with the provisions in force in the host Member State, before the entry into force of the provisions adopted in implementation of this Directive are presumed to have been subject to the procedures envisaged in Article 11 (1), (2) and (3). They shall be governed, from the date of entry into force of the provisions adopted in implementation of this Directive, by the provisions of Articles 10, 11 (3) and 13.

3. Article 12 shall not adversely affect rights acquired before the entry into force of the provisions adopted in implementation of this Directive by investment firms operating through the supply of services.

Article 22

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1993. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 23

This Directive is addressed to the Member States.

ANNEX

INVESTMENT ACTIVITIES COMING WITHIN THE SCOPE OF THIS DIRECTIVE

SECTION A

Activities

1. Brokerage, i.e. the acceptance of investors' orders relating to any or all of the instruments referred to in Section B below and/or the execution of such orders on an exchange or market on an agency basis against payment of commission.

2. Dealing as principal, i.e. the purchase and sale of any or all of the instruments referred to in Section B below for own account and at own risk with a view to profiting from the margin between bid and offer prices.

3. Market making, i.e. maintenance of a market in any or all of the instruments referred to in Section B below by dealing in such instruments.

4. Portfolio management, i.e. the management against payment of portfolios composed of any or all of the instruments referred to in Section B below undertaken for investors otherwise than on a collective basis.

5. Arranging or offering underwriting services in respect of issues of the instruments referred to in point 1 of Section B below and distribution of such issues to the public.

6. Professional investment advice given to investors on an individual basis or on the basis of private subscription in connection with any or all of the instruments referred to in Section B below.

7. Safekeeping and administration of any of the instruments referred to in Section B below otherwise than in connection with the management of a clearing system.

SECTION B

Instruments

1. Transferable securities including units in undertakings for collective investment in transferable securities.

2. Money market instruments (including certificates of deposit and Eurocommercial paper).

3. Financial futures and options.

4. Exchange rate and interest rate instruments.

III

(Notices)

COMMISSION

Notice of invitation to tender for the refund for the export of common wheat to the Soviet Union

(89/C 43/11)

I. Subject

1. Tenders are invited for the refund for the export to the Soviet Union of common wheat falling within CN code 1001 90 99.

2. The total quantity in respect of which there may be fixed a maximum export refund as provided in Article 5 (1) of Commission Regulation (EEC) No 279/75 [1], as last amended by Regulation (EEC) No 2788/86 [2], is approximately 900 000 tonnes.

3. The invitation to tender will be conducted in accordance with the provisions of:

   — Council Regulation (EEC) No 2746/75 of 29 October 1975 [3],

   — Commission Regulation (EEC) No 279/75 of 4 February 1975,

   — Commission Regulation (EEC) No 395/89 of 16 February 1989 [4].

II. Time limits

1. The period for the receipt of tenders for the first of the weekly awards will begin on 22 February 1989 and will expire at 10 a.m. on 23 February 1989.

2. For the subsequent weekly awards, the period for the receipt of tenders will expire at 10 a.m. on the Thursday of each week.

   For the second and subsequent weekly awards, the period for the receipt of tenders will begin on the first working day following the expiry of the preceding period.

3. This notice is published only for the purposes of the present invitation to tender. Until such time as it is amended or replaced, its terms will apply to each weekly award held during the period of validity of this invitation.

III. Tenders

1. Tenders must be submitted in writing and may be delivered personally against a receipt or sent by registered post or by telex, telefax or telegram, but must in any event arrive not later than the time and date indicated in heading II above at one of the following addresses:

   — Bundesanstalt für landwirtschaftliche Marktordnung (BALM), D-6000 Frankfurt am Main, Adickesallee 40 (telex 4-11475, 4-16044; telefax 1564-651),

   — Office national interprofessionnel des céréales, 21 avenue Bosquet, F-75007 Paris, (telex Ofice e 200490 F; telefax 45519099),

   — Ministero per il comercio con l'estero, direzionale generale import-export, divisione II, viale Shakespeare, I-00100 Roma (telex Mincomes 61083, 610471; telefax 5926217),

   — Hoofdproduktschap voor Akkerbouwprodukten, Stadthoudersplantsoen 12, NL-2517 JL Den Haag (telex Hovakker 32579; telefax 461400),

   — Office belge de l'économie et de l'agriculture (OBEA) / Belgische Dienst voor Bedrijfsleven en Landbouw (BDBL), rue de Trèves 82 / Trierstraat 82, B-1040 Bruxelles/Brussel (telex Obea 24076; 65567, telefax 2302533),

   — Intervention Board for Agricultural Produce, Fountain House, 2 Queens Walk, UK-Reading RG1 7QW, Berks (telex 848302; telefax 583626),

   — The Department of Agriculture and Fisheries, Cereals Division, Agriculture House, Kildare Street, IRL-Dublin 2 (telex Agri EI 5118; telefax 616263),

   — Direktoratet for Markedsordningerne, Frederiksborggade 18, DK-1360, København K (telex 15138 DK; telefax 926948),

(1) OJ No L 31, 5. 2. 1975, p. 8.
(2) OJ No L 257, 10. 9. 1986, p. 32.
(3) OJ No L 281, 1. 11. 1975, p. 78.
(4) OJ No L 45, 17. 2. 1989, p. 13.

— Service d'économie rurale, office du blé, 113-115 route de Hollerich, L-1741 Luxembourg (telex Agrim Lux 2537; telefax 450178),

— YDAGEP, 241 Acharnon Street, GR-10446 Athens (telex 221734 ITAG GR),

— Servicio Nacional de Productos Agrarios (SENPA) C/Beneficencia 8, Madrid 28004 (telex 41818, 23427 SENPA E; telefax 5219832, 5224387).

Tenders not submitted by telex, telefax or telegram must be enclosed in a sealed envelope marked: 'Tender under invitation to tender for the refund for the export of common wheat to the Soviet Union — Confidential', itself enclosed in a further sealed envelope addressed as above.

Once submitted, no tender may be withdrawn before the Member State concerned has informed the tenderer of the result of the tender.

2. Every tender and the accompanying proof and undertaking mentioned in Article 2 (3) of Regulation (EEC) No 279/75 must be in the official language, or in one of the official languages, of the Member State of the competent authority to which it is submitted.

IV. **Security for tender**

The security for tender must be made out in favour of the competent authority concerned.

V. **Award of contracts**

The award will:

(a) give the party concerned the right to be issued, in the Member State in which the tender was submitted, with an export licence for the quantity in question indicating the export refund specified in the tender;

(b) oblige the party concerned to apply in the Member State mentioned in (a), for an export licence for that quantity.

Amendment to notice of invitation to tender for the refund for the export of common wheat to the countries in zones I, II, III, IV, V, VI, VII, VIII, the German Democratic Republic and the Canary Islands

(89/C 43/12)

(Official Journal of the European Communities No C 205 of 6 August 1988)

The destinations in the title and in point III are to read as follows:

Zones I, II excluding the Soviet Union, III excluding the Soviet Union, IV, V, VI, VII, VIII, the German Democratic Republic and the Canary Islands.
