

?????? C-218/10

ADV Allround Vermittlungs AG, ??? ??????????,

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Finanzamt Hamburg-Bergedorf

(?????? ??? Finanzgericht Hamburg

??? ??? ?????? ?????????????? ??????????)

«??? — ??? ?????? — ??? 9, 17 ??? 18 — ?????????????? ??? ??? ?????? ?????? ?????? — ???
— ??? ?????? ??? “????????? ??????????” — ?????????????? ?????? ?????? — ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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1. ?????????? ?????? — ?????????? ??? ?????????? — ??? ?????? ?????? ?????? —
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????? ??? ?????? ?????? ?????? ??? ?????????? ?????? — ??? ?????? ?????? — ???

(?????? 77/388 ??? ??????????, ??? 9 § 2, ??????? ??, ??? ??????????)

2. ?????????? ?????? — ?????????? ??? ?????????? — ??? ?????? ?????? ?????? —
????? ?????? ?????? ?????? ?????????? ?????? — ??? ?????? ??? ?????? ??????

(?????? 77/388 ??? ??????????)

3. ?????????? ?????? — ?????????? ??? ?????????? — ??? ?????? ?????? ?????? —
????? ?????? ?????? ?????? ?????????? ?????? — ??? ?????? ??? ?????? ??????

(?????? 77/388 ??? ??????????, ??? 17 §§ 1, 2, ??????? ??, 3, ??????? ??, ??? 18 § 1,
?????? ??)

1. ?? ??? 9, ?????????? 2, ??????? ??, ??? ??????????, ??? ?????? ?????? 77/388,
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ?? ??? ?????? ??????
?????????, ??? ??? ?????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? «??????
?????????» ?????????? ??? ?? ?????? ?????????? ?????????? ???????, ?? ??????????
?? ??? ?????? ?????? ?????????? ??????????.

??????????????, ??? ?????? ??? ? ???????? ??? ?????????????? ?? ??? ?????? ??? ?????
????????????? ??? ??????? ??????? ??????????, ?????????????? ?????????????? ?? ??????????
????????? ??? ?????? ?????????????? ??? ?? ??? ?????? ??????? ? ??? ?? ?????????????? ???
????????? ??? ?? ??? ?????? ?????????????? ????. ??? ?????? ?????????? ??????? ?????? ???
????????????? ??? ?????????? ??? ?? ??? ?????? ?????? ?????????????? ??? ??????????????, ??????????
?? ?????????? ??? ?????? ??????????????, ??? ?????? ?????? ??? ??????????, ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??????????????, ?????? ? ?????? ??? ?????????? ???
????????? ?? ?????????????? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?? ?? «?????????» ??? ??????????.

?????????, ? ?????????? ????? ?????? ?????????? ?????? ??? ?????? ??? ?????????????? ??????????, ??????,
????????????? ??? ?????????????? ??? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ??????????
????????????? ??? ??????????, ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????????? ???.

(?. ??????? 29-32, ????????. 1)

????? ?????? ??? ???? ???? ??????????????????????, ?????????? ??????? ?????? ?????? ??? ??????
?????????????? ???????, ?? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ???
????? ??? ?????????? ???, ?? ?????? ?????? ?? ?????????? ?????????? ?????? ?????????????? ???
????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ?????? ?????????? ??????, ?? ?????????? ??? ?????????? ?????
????????? ?????? ??????????????????.

(??, ??????? 35, 37)

3. ?? ?????? 17, ??????????? 1, 2, ????????? ??, ??? 3, ????????? ??, ?????? ??? 18,
?????????? 1, ????????? ??, ??? ?????? ??????? 77/388, ??? ?????????????? ??? ??????????
??? ?????? ??????, ??? ?????????? ?? ?????? ?????? ??????? ???????, ?????? ??? ?????? ???
??? ??????????? ?? ?????? ??? ?? ?????????? ??? ?? ??? ?????????? ??? ?? ?????????? ???
????????? ?????????? ?????? ??? ? ?????????? ?????? ?????????????? ?????? ?????????? ???
????????? ?????? ?????????????? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ???
????????? ?????? ??? ?? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ???
????? ?? ??? ?????? ??? ?? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ??????, ??? ?? ???
??? ?????????? ?????? ??? ?? ?????????? ?????? ?????????????? ?????????????? ??????. ??????, ?? ??????????
????? ?????????? ?? ??? ?????? ??? ?? ?????????? ?? ?????? ??? ?? ?????????? ?????? ??? ?? ?????????? ???
????? ?????????? ??? ?? ??? ?????? ??? ?? ?????????? ?? ?????? ??? ?? ?????????? ??? ?? ?????? ???
????? ?????????? ??? ?? ??? ?????? ??? ?? ?????????? ?? ?????? ??? ?? ?????????? ??? ?? ?????? ???

?????????????, ?????? ?? ???? 17, ?????????? 1, 2, ??????? ??, ?? 3, ??????? ??, ??
?? 18, ?????????? 1, ??????? ??, ?? ?????????? ??, ?? ?????????? ??, ?? ?????????? ??
????????? ?? ?????????????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????????? ??
?? ?????????????? ?? ????? ?????? ?? ????? ?????????????? ?? ????? ?? ? ?????????? ??

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????? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ?????? ??? ??????
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??????, ?? ?????? ?????????????? ???, ?????? ??? ??? ?????? ?????????? ?????????? ??????????
? ?????????? ??? ??????, ? ?????? ?? ?????????? ??? ?? ?????? ?????? ?????? ??????????
????????? ?? ?????????? ??? ?????????? ?????????????? ?????? ??? ?????????? ? ???
????????? ??? ?????? ??? ?????? ??? ??????, ?????????? ?????? ?????????? ?????? ???/?
????????? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ?????????? ?????? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ???
????? ??? ?????????? ??? ??????, ???, ??? ?? ??? ?????? ??? ?????, ??????????, ??
????????? ?? ?????????? ??? ?????? ?????, ???? ?? ??? ?????? ?????? ?????, ?????????, ??
????????? ?? ?????????? ??? ?? ?????? ?????? ??? ?? ??? ?????? ?????? ?????? ?????????? ???
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(?? . ??????? 43-45, ??????. 2)

?????? ??? ?????????? (????? ????)

?? 26?? ?????????? 2012 (*)

«?? — ??? ?????? — ??? 9, 17 ??? 18 — ?????????????? ??? ?????? ?????? ??????????
— ?????? ??? «????????? ??????????» — ?????????????? ?????????? — ??????
????????????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
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? ? ?????????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? 267
????, ??? ?????? ?? Finanzgericht Hamburg (????????) ?? ?????? ??? 20?? ?????? 2010,
? ??? ?????? ??? ?????? ??? ?????? ??? 6 ??? 2010, ??? ?????? ??? ???

ADV Allround Vermittlungs AG, ??? ??????????,

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Finanzamt Hamburg-Bergedorf,

? ? ?????????? (????? ????),

????????? ??? ??? A. Tizzano, ?????? ???????, A. Borg Barthet, M. Ileši?, J.?J. Kasel
(????????) ??? M. Berger, ???????,

???????? ??????????: J. Mazák

?????????: B. Fülöp, ?????????? ??????????,

?????? ????? ?? ?????? ?????????? ?????????? ??? ?????? ??' ?????????? ?????????????? ???
30?? ??????? 2011,

?????????? ????? ?? ?????????? ??? ??????????:

– ? ADV Allround Vermittlungs AG, ??? ??????????, ?????????????? ??? ??? S.
Heinrichshofen ??? B. Burgmaier, Rechtsanwälte,

– ? ?????????? ??????????, ?????????????? ??? ??? T. Henze,

– ? ?????????? ?????????, ?????????????? ??? ??? ?. ??????????????,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ?? ??????????
??? 28?? ??????? 2011,

?????? ??? ????????

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1 ? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 9,
????????? 2, ?????????? ?, 17, ?????????? 1, 2, ?????????? ?, ??? 3, ?????????? ?, ?????? ???
18, ?????????? 1, ?????????? ?, ??? ?????? ?????? 77/388/??? ??? ??????????, ??? 17??
????? 1977, ??? ?????????????? ??? ?????????? ??? ?????????? ??? ??????, ??? ?????????? ?? ???
????? ?????? ?????? – ????? ?????? ??? ?????????????? ????: ??????????
????????? ??? (?? ????. ??? 09/001, ?. 49, ??? ????: ??? ??????).

2 ? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ADV Allround
Vermittlungs AG, ??? ?????????? (???: ADV), ??? ??? Finanzamt Hamburg-Bergedorf (???:
Finanzamt), ?? ?????????? ??? ??????????????, ??? ??? ?????? ?????? ?????? ???
????????????? ??? (???: ???), ??? ??? ?????? ?????? ??????????.

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3 ? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ????:

«[?????????] ??? ? ?????????????? ??? ?????? ??? ?????????????? ?????? ??? ??????????
????????????? ?????????????? ??? ?????? ??? ?????? ?????, ?????? ??? ?????? ??? ??????
????? ?? ?????????????? ??? ??? ?????? ?????????? - ??? ?? ??? ?? ?????? ??????
????????? ?????? ???' ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???
????????????? ??? ??? ?????? ?????????????? ??? ?????? ??? ?????????????? ??? ?????? ???
??????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????????????????? ?????? ??? ?????????????? ??? ?????? ??? ??? ?????? ???
????? ?????????????? ??? ??? ?????? ??? ??????»

4 ? ???? 9, ?????????? 1, ??? ??? ?????? ?????? ????:

«? ???? ?????? ?????? ?????????? ?????????? ? ??? ?????? ??? ?????????? ?????????????? ???
????????? ??? ?????????? ? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????, ??????? ?? ??????, ? ?????? ?? ?????????? ? ?????????? ?????????? ???..»

5 ?? ????? 9, ?????????? 2, ??????? ?, ????? ?? ?????? ????? ?? ????:

«?????????:

[...]

?) ??? ?????? ?????? ?? ?????????? ??????????, ?? ?????? ?????????? ?? ??????
????????????? ?????? ?? ?????????? ?? ?????? ?????????? ?????? ?????? ??????????????
??? ?????? ?? ?????????? ?? ?????? ?????? ?? ?????????? ?????? ??????????, ?????? ?
????? ??? ?????? ?? ?????????? ?????? ?????????? ?????? ?????? ?? ?????? ?????? ??????
????????????? ??? ?????? ?? ?????????? ?????? ?????????? ?????, ?????????? ?? ?????? ?
????? ??? ?????????? ??? ? ??? ?????? ?????? ?????????? ???:

[...]

- ?????? ??????????,

[...]»

6 ?? ????? 17, ?????????? 1, ??? ?????? ?????? ?????? ????:

«?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ? ?????????? ???
????? ????.»

7 ?? ????? 17, ?????????? 2, ??????? ?, ??? ?????? ?????? ????:

«????? ?? ?????? ??? ?? ?????? ?? ?????????? ?????????????????? ??? ?????? ?????????????? ???
????????????? ???, ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???
????, ??? ??? ?????? ?????? ??????:

?) ??? ?????????? ? ?????????? ??? ?????????? ??? ?????? [??] ??? ?????? ??? ???
????????? ? ?????????? ?? ??? ??????????, ?????? ??? ?????? ?????????? ??? ???
????????? ? ?????????? ?? ??? ?????????? ??? ?????? ?????? ?????????? ??? ????.»

8 ??? ?? ????? 17, ?????????? 3, ??????? ?, ??? ?????? ????:

«?? ??? ?? ?????? ?????? ?????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???,
????? ?????????? 2, ?????? ? ?????????? ??? [??], ??? ? ?????? ??? ? ?????? ??? ??
????????? ?????????????? ??? ??? ?????????? ????:

?) ??? ?????? ??? ?? ??????????, ?????????? ??? ?????? ?????????? ?????????????? ???
????????? ??? ?????? 4, ?????????? 2, ?? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????????????? ??? ?????? ??? ?????? ????.»

9 ?? ????? 18, ?????????? 1, ??????? ?, ??? ?????? ?????? ????:

«?? ?? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???, ? ?????????? ???
????? ????:

?) ??? ??? ?????????? ??? ?????? 17, ?????????? 2, ??????? ?, ??????, ?? ??????
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? 22, ?????????? 3.»

?? ?????? ???

10 ?? ?????? 3a, ??????????? 1, ????? ???????, ??? ????? ??? 1999 ??? ????? ?????? ??????
????????? (Umsatzsteuergesetz 1999, *BGBI.* 1999 I, ? 1270), ?? ?????? ??? ??? ???????????
??? 21?? ??????????? 2005 (???, ???: UStG), ?????? ???:

11 ?? ?????? 3a, ?????????? 3, ????? ???????, ??? UStG ?????? ???:

«?????? ? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????????? 4 ??????
???????????????, ? ????? ????????, ??? ?????????????? ??? ?????????? 1, ?????????? ???
????????? ??? ?????? ??? ?????? ?????????????? ?????? ??? ?????????????? ??? ??????????????..»

12 ?? ?????? 3a, ??????????? 4, ??? UStG ?????? ???;

«?????? ?????????? ??? ?? ?????? ??? ?????????? 3 ?????: [...]»

7. ? ??????? ???? ?????? [...]»

13 ?? ?????? 15, ??????????? 1, ?????? ??????????, ??????? 1, ??? UStG ?????? ???;

<? ?????????????????? ??????? ?? ?????????? ?? ?????????????????? ?? ?????????? ?? ??????????;?

1) ??? ?????????? ??? ???. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ????????, ??? ?????????????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ???
????????????? ????. ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 14 ??? 14a.»

14 ?? ???? 18, ?????????? 9, ????? ???????, ??? UStG ?????? ???:

«? ?????? ??????????? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ????, ????, ??? ?????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

? ??????? ???? ?????? ?????? ??? ?? ?????????????? ??????????

15 ? ADV, ??????? ??????????? ???????, ??????????, ?????? ?? ??????? ?????? 2005,
?? ??????? ?????????????????? ?????? ?????? ?????????? ?????????? ?? ??????? ?????????? ???
????????? ??? ?????? ?? ?????? ?????? ?????? ??? ??????? ??????, ?????? ??? ?????? ??????. ??
????????????? ?????????? ?????? ??? ADV ??? ?? ??????, ?????????????? «?????????
????????????», ?????????? ??? ?? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???
ADV. ? ??????? ??? ?????????? ?????? ??? ?????????? ?????????????? ???????????, ??? ???
???????? ???, ??? ?????? ??? ?????????? ?? ?? ??? ????? ?????????? ???????????????,
????????????? ?? ??????? ?????????? ?????? 8 ??? 20 %.

16 ???????, ? ADV ?????????? ?????? ??????? ??????? ?????????? ??? ?????????? ?? ?????? ???
????????????? ??? ??? . ????????, ??????????, ??? ? ?????? ??? ?????????? ??? ?????? ??
????????? ?? «???????, ??????????» ??? ???? ?????? ??? ?????? 3a, ?????????? 4, ??????
7, ??? UStG ??? ??, ?? ?? ??????, ? ????? ?????? ??? ?????????? ?????? ?????????? ???,
?????? ???? ???? ???? ???? ??? ?????????? ?????? ?????? ??????????????.

17 ?? Finanzamt ?????? ??? ? ??????? ?????? ?????????? ??? ?????? ?? ??????? ?? ??????? ??

???' ?????????? ??? ?????? 3a, ??????????? 1, ??? UStG, ??? ????? ?????????????? ???
????????? ??? ??????????. ???????, ? ?? ?????? ?? ?????? ??? ?????? ??? ??????.

18 ??????????, ?? Bundeszentralamt für Steuern, ?? ????? ?????? ?????? ??? ??? ??????
??? ?????? ?????? ?????? ??? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????????, ?????? ??? ?? ?????????????? ??? ??? ADV ??????????
????????? ?????? «????????? ??????» ??? ??? ?????????? ?? ?????? ??? ??????
????????? ?????? ???, ?????? ??? ?????? 3a, ?????????? 3, ?????? ???????, ???
UStG, ?? ?????????? ?????? ?????? ?? ?????????? ??? ??? ????? ?????????? ??? ?????,
????? ??? ?????, ?? ?? ??? ????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????
????????? ??????????.

19 ?????????????? ??? ?????? ??? ?????????? ???, ?? Finanzgericht Hamburg ??????
???' ?????? ???, ??? ?????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?
????????? ??? ?????? 9, ?????????? 2, ??? ?????? ??? ?????????? «????? [...]»
????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??????
??? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? [...]», ? ?????? ??? ??
????????? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ?????????????? ??? ??????
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???.

20 ??????????, ?? Finanzgericht Hamburg ?????????? ?? ??? ??, ??????, ? ?????? ???
??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??
????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ???' ??????, ???
????????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????????? ?????? ?? ?????????? ??? ?????? ??? ??????
????? ??? ??????.

21 ???, ?? Finanzgericht Hamburg ?????????? ?? ? ?????? ?????????? ??? ?????? ???
????????? ??? ? ?????? ??? ?? ?????????? ?????? ??????????, ? ??????, ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????????? ?????? ??? ?? ?????? ?????????? ??
????????? ??? ?????? ?? ?????????????? ?? ?????? ??? ?????????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????.

22 ??? ??? ??????? ????, ?? Finanzgericht Hamburg ?????????? ?? ?????????? ??
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????? ??????????:

«1) ??? ?? ?????? 9, ?????????? 2, ?????? ??, ??? ?????????, ??? ?????? ?????? [...]»,
??? ?????? ??? ? ??? “?????? ??????” ?????????? ??? ?????????????? ??? ?????????????? ??
????????? ??? ??? ?????????? ?????????? ??????????; ???;

2) ??? ?? ?????? 17, [????????? 1, 2, ?????? ??, ???] 3, ?????? ??, [????? ???] 18,
????????? 1, ?????? ??, ??? ?????? ?????? [...] ??? ?????? ??? ?? ?????? ??????
????????????? ??? ?????????? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??????????
????????????? ??? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ??????:

3) ??? ?? ?????? 17, [????????? 1, 2, ?????? ??, ??? 3, ?????? ??, ??? ??????] 18,
????????? 1, ?????? ??, ??? ?????? ?????? [...] ??? ?????? ??? ? ?????????? ??? ?????? ???
????? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???

????? ???????, ??? ?????? ?? ????, ??? ?????? ?? ??????? ?????? ?? ?????? ???
?????????? ?????????? ??? ?? ?????????? ?????? ?? ?????? ?? ??? ??????????
????????? ??????????;»

??? ??? ?????????????? ??????????

??? ??? ?????? ??????????

23 ?? ?? ?????? ??????, ?? ?????? ?????????? ?????? ???' ?????? ?? ?????????????? ?? ??
????? 9, ?????????? 2, ?????????? ??, ??? ??????????, ??? ?????? ?????? ??? ?? ??????
??? ? ??? «?????? ??????????» ?????????????? ?? ?????? ??????????????????
???????, ?? ?????????? ?? ??? ?? ?????????? ?????????? ??????????????.

24 ?????????? ?? ?????????? ? ??????????, ??? ?????? ?????? ?? ?????? ?????????? ??????????
?? ?? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ??, ??
????? ?? ?? ?????? ?? ?????? 9, ?????????? 2, ?????????? ??, ??? ??????????, ??? ??????
????????? ??? ?? ?????????? ?????? ??? ?????? ?????????? ?????????? ?????????? ??
????????? ?????? ?????? ?? ?????????? ?? ?????? ?????? ?? ?????????? ?? ?????????? ??
????????????????? ?????????? «?????????» ??? ?????? ?????? ??? ??????????.

25 ?????, ?????????????? ??, ??? ??? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????????????? ??
????? 26 ??? 27 ??? ?????????? ??, ??? ?????? a priori ?? ?????????? ??, ??? ?????? ??
????????????? ?? ???????????, ?? ??? 9, ?????????? 2, ?????????? ??, ??? ??????????, ??
????? ?????? ?????? ?????????? ?? ?????? ?????? ?? ?????????? ?? ?????????? ??
«?????????????» ??????????.

26 ???, ??? ?????????? ?? ?????? ??????????, ??? ??? ?????? ?????? ?? ?????????? ?????????????? ??
?? ??????, ??? ?? ?????????? ?????? ??? ?????? ?? ?????? ?? ?????? ??, ??? ??? ?? ?????????? ??
????????????? ?? ?? ?????? ?? ?????????? ?? ?????????? ?? ?? ?????? ?? ?????? ?? ??????????
????? (??., ??? ??? ?????, ??? 9?? 2006, C?114/05, Gillan Beach, ??????
2006, ?. I?2427, ??? 21 ??? ????? ?????????? ??????????).

27 ?????????? ?? ?????? ?? ?????? 9 ??? ?????? ?????? ?????????? ?????????????? ??
????????????? ?? ??? ?????? ?????????? ?? ?????? ?????? ?????????? ?????? 1 ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 2 ??? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? (??., ??? ??? ?????, ??? 26?? 1996, C?327/94,
Dudda, ?????? 1996, ?. I?4595, ??? 20- Gillan Beach, ??????????????, ?????? 14, ??? ??
6?? ?????? 2008, C?291/07, Kollektivavtalsstiftelsen TRR Trygghetsrådet, ?????? 2008, ?.
I?8255, ??? 24).

28 ??????, ??? ?????? ?? ?????? 9, ?????????? 2, ?????????? ??, ??? ??????????, ??
????? ??????, ??? ?? ?????? ?? ?????? ?????? ?????? ?????? «?????????» ?????????????? ??
????? ?????? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??????
????????? ?? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ??? ?????? 9 ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

29 ??????????, ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

?????????? ??? ?????? ?????????????? ??? ?? ??? ????? ??????? ? ??? ?? ?????????????? ???
?????? ??? ?? ???.

30 ??? ?????? ??????? ??????? ??????? ?? ?????????????? ??? ?????????? ??? ?? ???
?????? ?????????????? ??? ??????????????, ?????????? ?? ?????????? ?????? ??????????????,
???? ?? ??? ?????? ??? ??????????, ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
?????????????, ?????? ? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? «?????????» ??? ??????????.

31 ??????, ? ??????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?????, ?????????? ??? ?????????????? ??? ?????? ?????????????? ??? ?????? ??? ??????????
????????????? ??? ??????????, ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??? (??., ??? ??
????? ???, ?????? ??? 6?? ?????????? 2011, C?421/10, Stoppelkamp, ??? ??? ???
????????? ??? ??? ??????, ??? 34).

32 ?????? ??? ??????? ??????, ??? ?????? ?????? ??? ?????? ?? ?????? ? ?????????? ??? ??
????? 9, ?????????? 2, ?????????? ?, ??? ??????????, ??? ?????? ?????? ??? ??? ???
??? ? ?????????????? ??? ?????? ??? «????????? ??????????» ?????????????? ??? ??
????????? ?????????????????? ???, ?? ?????????? ??? ??? ?????????? ??? ??? ?????????? ???
?????????????.

??? ??? ??????? ??????????

33 ?? ?? ?????? ??????? ?? ?????? ?????????? ?????? ???' ?????? ?? ?????????????? ??
?? ?????? 17, ?????????? 1, 2, ????????, ??, ?? 3, ????????, ??, ?????? ?? 18, ?????????? 1,
????????? ??, ??? ?????? ??????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ???
????????? ??? ?? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????????? ?????????
????? ? ?????????? ?????????? ?????? ?????? ?????? ??? ? ?????????? ??? ?? ??? ??
????? ??? ?? ?????????? ?????? ?????? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ??
????? ??? ?? ???????, ??? ?? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????????
????????? ???.

34 ??????, ??? ?????????? ??? ?? ?????? ??????????, ?????????? ? ?????????? ???
? ??? ?????? ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ?? ?????? ???
????????? ?? ?????????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????
??????.

35 ??????, ??? ?????? ???????, ?????? ?????? ?????????, ?????? ?????? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??????, ?????? ???, ?? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????? ???
????????? ??? ?????????? ?? ?????? ?? ?????? ?????? ?????? ??? ?? ?????? ??? ??????, ???
??? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ?????? ?????????? ??? ?????? ?????? (????? ??? ??????????) ???
??? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
??? ?????? ? ?????? ??? ?????? (????? ??? ?????????????????) (??., ??? ?? ????,
????????? ??? 17?? ?????????? 1998, C?228/96, Aprile, ?????? 1998, ?. I?7141, ??? 18,
??? ??? 21?? ?????????? 2010, C?472/08, Alstom Power Hydro, ?????? 2010, ?. I?623, ???
17).

36 ?? ??? ??? ?????? ??? ??????????, ?????????????? ???, ?? ??????????, ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????? ??? ??
?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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37 ??????????, ????????????, ?????? ?????, ??? ?? ?????? ??????????? ?? ??? ????? ??????
?????????? ?????????????? ??? ?????????? ??? ?????? ??? ??????????????????????.
???????????, ??????? ?????? ?????? ?????? ??? ?????? ?????????????????? ???????, ??
????????? ??? ?????????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ???????, ??
????? ?????? ?????????? ??? ?? ?????????? ?? ??? ?????? ??? ?????? 13?? ?????????? 1989,
C2342/87, Genius (?????? 1989, ?. I?4227) ??? ?????? ?? ?????????? ?????? ??????????????
??? ??????? ?????????? ?????????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???
??? ?????????? ??? ?????? ???, ?? ?????????? ??? ?????? ?????????? ?????????? ??????????
?????????????????.

38 ?????? ?????????????? ??? ? ???? ??? ?????????????????? ?????? ?? ??????????
?? ?????????????? ??? ?????????????? ??? ? ?????? ?????????? ??? ?????????? ?? ??????
??? ??? ?????? ?????????? ?????????? ? ?????? ?????????? ??????????.

39 ?????, ??? ??????? ??? ?????? ?????? ?? ?????????? ?????? ??? ?????? ??? ??? ?????
????????? ??? ?????? ?????? ?????.

40 ?????, ??? ?????????? ? ?????? ?????????? ??? ?????? 70 ??? ?????????? ???, ?
????????????? ?????? Genius ?????? ?????????????? ??? ?????? ??? ?????????? ???
?????.. ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?? ??????????????, ?? ?????????? ??? ?????? ?? ?????? ?????????????? ??? ???
????????? ?????? ?????????????? ?????????? ???, ? ?????? ???, ??? ?????? ??????
????? ??? ??? ??????????????, ?? ??? ??? ?????? ??? ??? ?????? ?????????? ??? ? ?? ??????????
????? ??????????.

41 ???????, ?????????? ? ?????????? ??? ?????? ? ?????? ??? ?????????? ??? ?????????? ??? ?
????? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ???' ?????, ??? ??? ?????????? ???????, ?????? ??? ?????? ???, ???
????????? ??? ?????? ??????.

42 ???????????, ? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
????????????? ?? ??? ??? ??? ?????????? ?????? ?????????? ?????????????? ?????????? ???
??? ?????? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???' ?????? ??? ??????
267 ???, ?? ?????? ?????????? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ??????
??? ???????????. ??? ???????, ?????, ??? ?? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????.

43 ?? ?????? ?????????????? ???, ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ?
????????? ??? ?????, ? ?????? ?? ?????????? ??? ?? ?????? ?????? ?????????? ??????????
????????? ?? ?????????? ??? ?????????? ?????????????? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????, ?????????? ?????? ?????????? ??? ???/?
????????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ??? ??????
????? ??? ?????????? ??? ???????, ?????, ??? ?? ?????? ??? ?????? ???, ???????, ???
????????? ?? ?????????? ??? ?????? ?????, ? ??? ??? ?????? ?????????? ?????????? ??? ??????
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ???
??? ??? ??????.

44 ????????????, ?????? ?? ???? 17, ?????????? 1, 2, ????????, ??, ??? 3, ????????, ??,
????? ?? 18, ?????????? 1, ????????, ??, ??? ?????? ?????? ?????? ?? ?????? ?????????? ??
????????????? ?? ?????????????? ? ?????? ?????? ?????? ?? ?????? ?? ?????????????? ??????????????
?? ?????????????? ? ??? ?????? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ??????????
?????????????, ?????????? ?????? ?????????? ?? ?????? ?? ?????????? ?????? ?????????? ?? ???
????? ?? ??? ?????? ?????????? ?????, ?????????????? ?????? ?? ?????????? ?????? ?????????? ?? ???
??? ?????????? ??? ?????????????? ?????? ?? ?????? ???.

45 ??? ??? ??????? ??????, ??? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????????? ??
????? 17, ?????????? 1, 2, ????????, ??, ??? 3, ????????, ??, ?????? ?? 18, ?????????? 1,
????????? ??, ??? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????????????? ?? ?????? ??
????????? ?? ?? ??? ?????????? ?????? ?????? ?????????????? ?????????? ?????????? ??????????
????? ? ?????????? ?????????????? ?????? ?????? ?????????? ?? ?????? ?? ?????????? ??? ?? ??? ??
????? ??? ?? ?????????? ?????? ?????? ?????? ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ??
????? ??? ?????? ?????, ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? ??????????
????????????? ??????. ??????, ?? ?????????? ?????? ?????????????? ?? ?????? ?? ?????? ??? ?? ??????????
?? ?????????? ?????? ?? ?????????? ?????? ?????? ?????????? ?? ?????? ?? ??? ?? ?????? ??? ??
????? ??? ?????????? ??????????????.

??? ??? ?????? ??????????

46 ?????????? ?????? ??? ?????????? ??? ?????? ?? ?????? ?? ?????? ?? ???????, ?????????? ??
????? ?????? ??? ?????? ?????? ?? ?????? ?? ?????????? ??????????.

??? ??? ?????????? ??????

47 ?????? ??? ?????? ?????? ?????????? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????? ??
?? ?????????? ?????????????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?? ?????????? ??, ?' ??
????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??????. ?? ?????? ?? ?????? ??????????
????? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ??, ?? ??????????.

??? ??? ?????? ??????, ?? ?????????? (????? ????) ??????????:

1) ?? ??? 9, ?????????? 2, ??????? ??, ??? ??????????, ??? ??? ?????? ??????
77/388/? ?? ??? ??????????, ?? 17? ?? 1977, ??? ?????????? ?? ?????? ?? ??????????
?? ?????? ?????, ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? - ?????? ??????
????? ?????????? ?????: ?????????? ?????? ?????? ??, ??? ??? ?????? ??? ?
????????????? ??? ?????? ?????? «????? ?????? ??????» ?????????? ??? ??
????? ?????????????? ??????, ?? ?????????? ??? ?? ?????????? ??? ?? ??????????.

2) ?? ?????? 17, ?????????? 1, 2, ???????? ?, ??? 3, ???????? ?, ??? 18,
????????? 1, ??????? ?, ??, ??? ????? ?????? 77/388 ????? ?? ?????? ??? ??
????????? ?? ?????? ??? ?????? ?? ?????????? ??? ?? ??? ?????????? ???
????????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????
????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?? ?????? ??? ??
????? ?? ?????? ??????, ?????? ??? ?????? ??? ?????????? ?????? ?????? ???
????????? ?????? ??????. ??????, ?? ?????????? ?????? ?????? ?????????? ??
????? ??? ?? ?????? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ??
????????? ??? ?????? ?????????? ?????? ??? ?? ?????? ?????? ??? ??
????????? ?????? ??????????.

(?????????)

* ?????? ??????????: ? ??????????.