

@import url(../../../../css/generic.css); EUR-Lex - 61996J0349 - EL

Avis juridique important

1

61996J0349

????????? ??? ??????????? ?? ??????????? 1999 ?????? I-00973

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

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

1 ??????????? ?????????? - ?????????? ??? ?????????? - ????? ?????? ????????? - ?????
??????? ????? ?????????????? ????? - ?????????? ?????????????? ??? ??? ??? ????? -
????????? ??? ?????????????? ??? ?????????????? ????? - ?????? - ??????
????????????? ???????, ?????????????? ?????????????? ?????? ???????, ?? ??????
????????????? ??? ??? ? ?????? ??? ?????? ? ?????? ? ?????? - ??????????????

(?????????? ?? ???? ??????????? 73/239, ??????????, ??? 77/388, ?????? 13, ?, ?????????? ??)

2 ?????????? ??????? - ?????????? ??? ?????????? - ?????? ?????? ?????? - ????
????? ?????? ?????????????? ????? - ?????? ?????? - ?????? ?????????????? ???
????? ?????? - ?????? ? ?????? ?????? ?? ?????? ?? ?????? ?????? ? ?? ??????
????? - ?????? - ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????

(?????? 77/388 ??? ??????????, ??? 2 § 1)

3 ?????????? ??????? - ?????????? ?? ?????????? - ?????? ?????? ?????? - ?????
?????? ?????? ?????????????? ????? - ?????????? ?????????????? ??? ??? ??? ???? -
????????? ??? ?????????? - ?????? - ??????????
????????????? ??? ?????????? - ??? ?????? - ??? ?????? ??? ??? ???? - ???
?????????

(?????? 77/388 ??? ??????????, ????, 13, ?, ??????? ??)

?????????

1 ?? ?????? 13, ?, ??????? ??, ??? ??? ?????????? 77/388, ?? ?????? ?????? ??? ?????????? ??
????????????? ??? ?????????????????? ?????????? ??? ??? ??? ?????????????? ???, ??? ???
????? ??? ?????????? ??? ??? ? ?????? ??? ??? ??? ?????????? ??? ?????????? ??? ?
??????, ??? ?????? ?????????? ?????????? ??????????, ??? ?????? ??? ?
?????????????????, ??? ?????? ??? ?????? ?????? ???, ?? ?????? ??? ?? ??????????????,
????????? ??? ?????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
? ??? «?????????????» ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 73/239,
??? ?????????? ??? ??????????, ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ?????? ?????????? ??? ??????????, ??? ?????? ??? ?????? ??? ?????? ???
???

2 ??? ??? ??????????, ??? ??????? ??? ????? ?????????????????? ????, ??? ?? ??? ?????
????????? ?????????????? ??? ??????? ??????? ??????? ?? ??????? ?????? ?????? ?????? ???? ?
????????????? ?????????? ??????? ??????? ??????? ?? ??????? ?????? ?? ?????????? ??????
?????? ?? ?????????? ?????? ?? ??????? ??? ???????, ??? ??, ??????, ??? ?? ?????? 2,
????????? 1, ??? ??? ?????? 77/388 ??????? ??? ??? ?????? ?????????? ??????
????????? ?? ?????????? ??????? ??? ?????????? ??? ??, ???????, ? ?????? ???
????????? ??? ??? ????? ?????????? ?? ??????? ??????? ?????? ??? ?????? ??
????????????? ??? ??? ????? ?????????? ?? ??????? ?????? ?????????? ??? ?????? ???
????? ?????????????? ????

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

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

3 ?? ???? 13, ?, ??????? ??, ??? ??? ?????? 77/388, ?? ??? ???? ?????? ?? ?????????? ??
????????????? ?? ???? ?????????????? ?????????? ?? ???? ???? ?????????????? ??, ??? ??
????? ?? ???? ?????? ?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????
????????????? ?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ????
????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ????.

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

?????????

???? ?????? C-349/96,

?? ???? ?? ?????????? ?? ???? House of Lords (????????? ?????????) ??? ??
??????????, ???' ?????????? ?? ???? 177 ?? ??????? ??, ?? ???? ?????? ?????????, ???
????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ????.

Card Protection Plan Ltd (CPP)

???

Commissioners of Customs & Excise,

? ?????? ?????????? ?? ???? ?? ???? ?????? ?? ???? 2, ?????????? 1, ??
13, ?, ??????? ??, ??? ?????? 77/388/?? ?? ???? ???????, ?? 17?? ?? 1977, ??
?????????? ?? ???? ??????? ?? ???? ?????? ?? ???? ??????? ?? ???? ?????? ?? ????
????? - ??? ?????? ?? ???? ?????????? ?? : ?????????? ?????????? ?? ???? (??
???. ???. 09/001, ?. 49),

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

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

????????? ?? ???? P. J. G. Kapteyn, ??????? ????????, G. Hirsch (?????????), G. F. Mancini,
H. Ragnemalm ?? R. Schintgen, ????????,

?????? ??????????: N. Fennelly

?????????: H. A. R?hl, ?????? ??????? ??????????,

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

- ? Card Protection Plan Ltd (CPP), ?????????? ?? ???? Roderick Cordara, QC, ?? ????
?? Perdita Cargill-Thompson, barrister, ?????????? ?? Clare Mainprice, solicitor,

- ? ?????????? ?? ???? ???????, ?????????? ?? ???? John E. Collins, Assistant
Treasury Solicitor, ?????????? ?? Stephen Richards ?? Christopher Vajda, barristers,

- ? ?????????? ?? ???? ???????, ?????????? ?? ???? Ernst R?der, Ministerialrat ??
?????????? ?? ???? ???????,

- ? ?????????? ??? ?????????? ???????????, ?????????????? ??? ??? Richard Lyal ??? ???
Enrico Traversa, ??? ??? ?????? ????????,

?????? ??? ?? ?????? ????????,

???? ?????? ??? ?????????? ?????????????? ??? Card Protection Plan Ltd (CPP),
????????????? ??? ??? Clare Mainprice ??? ??? Roderick Cordara, ??? ?????????? ???
?????? ????????, ?????????????? ??? ??? John E. Collins ??? Nicholas Paines, QC,
??? ??? ????????, ?????????????? ??? ??? Richard Lyal, ??? ?? ?????????? ??? 24??
?????? 1998,

???? ?????? ??? ?????? ?????????? ??? ???????? ??? ?????????? ??? ??? ?? ?????? ?? ??????????
?? 11?? ?????? 1998,

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

??????

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

1 ?? ?????? ??? 15?? ??????? 1996, ? ?????? ??????? ??? ?????????? ??? 21
????????? 1996, ?? House of Lords ??????, ?????? ??? ?????? 177 ??? ??????? ?,
?????? ?????????? ?????? ?? ??? ??? ?????? ??? ?????? 2, ?????????? 1, ???
13, ?, ??????? ??, ??? ?????? ?????? 77/388/?? ??? ??????????, ??? 17?? ??? 1977, ???
????????? ??? ?????????? ??? ?????? ?????, ??? ?????? ?? ??? ?????? ?????? ??????
????????? - ????? ?????? ?????? ?????? ?????????? ?????: ?????????? ?????????? ??? (??
???. ??? 09/001, ?. 49, ??? ????: ??? ?????).

2 ?? ?????????? ??? ??????? ??? ?????? ?????????? ??? Card Protection Plan Ltd
(???: CPP) ??? ??? Commissioners of Customs & Excise (???: Commissioners), ??
?????? ?????? ??????? ??? ??? ?????? ??? ?????? ?????????????? ??? (???: ???)
??? ?????? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ??? ??? ???, ? ???
????????? ??? ?????? 17 ??? ??? ?????? «Schedule 6» ??? Value Added Tax Act ???
1983 (????? ???, ??? ?: VAT Act 1983).

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

3 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???, ?? ???
17 ??? ?? ?????? 2 ??? «Schedule 6», ??? VAT Act 1983 ?????????? ??? ??? ???, ??????
?????, ?? ???:

«1. ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?? ?????? ?? ??? ?????? ???
?????, ??? ??? ?????? 2 ??? Insurance Companies Act [????? ??? ??????????]
?????] ??? 1982, ??? ?????? ?????? ?????????? ??????????????.

2. (...)

3. ?? ??? ?????? ??? ?? ??????? ??? ?????? ? ?????? ?????????? ?????????? ?
??????????, ??? ??? ?????????? 1 ??? 2.

4. ?? ?????????????? ?????????? ?????????? ?????????????? ??? ??????????, ??????????????
????????? ??? ??????? ?? ????? ????? ????? ????? ?????? ?????????? ??????????????
??????????????, ??? ?? ?????? ??? ??????o????? ??? ?????????? 1.»

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

4 ??? ? ???? 2 ??? ??? ?????:

«????? ??? ?????????????? ??? ????? ??????????:

1. ?? ?????????? ?????? ??? ?? ?????? ??????????, ??? ?????????????????? ?? ??????
????? ??? ?????????? ??? ????? ??? ?????????? ??? ???, ??? ?????? ??? ??? ??????
??? ????.

(...)»

??. ?????? 13 ??? ?????? ??????, ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???,
????? ?? ????:

«(...)

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

??. ??? ?????????? ?????? ?????????? ??????????, ?? ?????? ??? ??????????, ??? ???
????????????? ??? ??????, ??? ?? ?????????????? ? ??? ??? ??? ?????????? ???
????????????? ?????? ?????????? ??? ?? ?????????? ?????????? ?????????? ??????????,
????????? ??? ??????????:

?) ??? ?????????? ??? ?????????????? ??????????, ?????????????????? ??? ??? ??? ??????
????? ??? ?????? ?????? ??????? ???????, ??? ?????????????????? ??? ??? ??? ??????????
??? ?????????????? ??????????.

(...)»

5 ?? ?????????? ??? ?????? ?????? 73/239/??? ??? ??????????, ??? 24? ?????? 1973,
????? ?????????? ??? ??????????, ?????????? ??? ?????????? ?????????? ?????????? ???
????? ??? ?????? ?????????????? ??????????????, ?????? ??? ?????????? ???, ???
??? ?????? ?????? (?? ????. ????. 06/001, ?. 157), ??? ?????????????? ??? ??? ??????
84/641/??? ??? ??????????, ??? 10? ?????? 1984 (?? L 339, ?. 21), ?????? ?? ????:

«?. ?????????? ??? ?????? ??? ??????

(...)

18. ??????

?????? ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ?? ?????? ?????? ?????????? ?????????? ?
?????? ?? ??? ?????? ? ??? ??? ?????? ?????? ?????? ?????? ?????? ????.»

6 ? ??????? 77/92/??? ??? ??????????, ??? 13?? ?????????? 1976, ??? ?? ??????? ???
?????????? ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ??????????????
??? ?? ?????????? ?????? ?????????? ?????? ?????? ??? ?????????? ?????? ???
????? ?????? (ex ??? 630 ???), ??? ?????? ??? ?????? ??? ?????????? ?????? ???
????? ??? ?????????? ??? (?? ??. ??? 06/001, ?. 243), ?????? ??? ?????? 2 ???
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????.

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

7 ? CPP ?????????? ??? ?????? ?????????? ??????, ??? ?????????? ?????????? ???,
??? ?????????? ?? ??? ?????? ?????? ??? ?????????? ?????????? ??? ?? ??????????????
????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ??????????
?? ?????????? ????

8 ??? ?? ?????? ??? ?? ?????????? ??? ?????? ?????????? ?????? (?? ?: ??????)
????????? ??? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ??????????
????? ??? ?????? ??? ?????? ?? ?????????? ?????????? ??? ??????, ? CPP ??? ??????
????? ??? ?????????? ??? ??????. ? ?????? ?????????? ?????????? ?????????? ???
????? ?????????? ??? CPP. ??? ?? ?????? ??? ?????????? ??? ?????????? ??????????
??? ?????? ??? ?????? ???, ?????????? ??? ? Continental Assurance Company of
London (?: Continental). ??? ?????? ?????????? ?? ?????????? ??? ?????????? ??
????? ??? CPP. ?????? ??? ?????? ?????? ?????? ?????? ??? CPP, ?? ??? ?? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?? ?? ??
??????????. ? CPP ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ??? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???

9 ?? ?????????? ??? ?????? ?????? ? CPP ??? ?? ?????? ?????????? ??? ?????? ??????????
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ? Continental ?????? ??
????????? ?? ?:

- ??????? ?????????? ?? ?????????? ?????? ?????? ?????? [?? ??????????
???? ?????????? ?? 750 ??? ?????? ?????? (UK£) ??? ?????? ??? ?? 24 ?????? ??? ??
????????? ??? ??????. ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ???
CPP].

- ??????? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????????? ? ?????? ???
??? ?? ?????? ??? ?????????, ?????? ? ?????????? ?????????? ??? ?????? ???
????? ??' ?????? ?? ?????? ??? ?????? ? CPP (?? ?????????? ??? ?????? ??? ?? 25
UK£ ??? ???)-.

- ??????? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???
??? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? CPP (?? ?????????? ??? ?????? ?????? ??? ?? 25 UK£ ??? ???)-.

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

- ?????????? ?????????????? ??? ????? ?????????????? ?? ??????? ?? ?????????? ?????????????
??????? ??? ?????????? ?????????????? ??????, ??? ????? ?? ?????? ??? 500 UK£ ??? ??? ?????
????????????? ??? 14 ??????.

- ?????????? ?????????????? ??? ??? ????? ?????????????? ?????????????? ??? ?????????????? ???
????????????? ??? ?????????? ??? ??????, ??? ????? ?????? ??? ?????? ??? ?? ??????????, ???
???? ?????????? ??? ?????????? ??? ?????? ??? ?????? (?) ?????????? ?????????? ??????????
????? ??? ?????? ??? 1 500 UK£ ??? ??? ?????, ?????????????? ??? 14 ??????).

10 ???????, ?? ?????????? ?????????????? ??? ?????? ??????? ??????????, ?? ?????? ?????? ???'
?????? ?? ????????:

- ? CPP ?????? ?? ?????????? ?????????? ?????????? ??? ?????????? ?????? ??? ??????.

- ?????????? ?????????? ?????? ??? ?????????????? ?????? ??? ?? ??????
????????????? ??? ?????? ??????, ??? ?? ?????? ?????? ? ??? ??? ?????????? ?????? ??? ??
????????? ??? ?????????? ?????? ?????? ?????????? ??????, ??? ?????? ?????????? ??????
??? ?????? ?????????? ??? ?????? ??? ?????? ?????.

- ?????????? ?????? ?? ?????????? ?????????? ??? ??? ?????? ??? ?????????????? ??????.

- ?????????? ?????? ?? ?????????? ?????? ?????????? ?????????? ??? ??? ?????????? ??? ??????????
??? ??????? ??? ??????.

- ?????????? ?? ??? ?????????? ?????????? ?????????? ??? ?? ?????? ?????????? ?????????? ??
????????????? ?? ?????????? ??????.

- ?????????? ??? ?????? ?????? ?????? ?????? ??????.

- ?????????? ?????? ?????? ??? ??? ?????? ?????? ?????????? ?????????? ??????????.

- ?????????? ??? ?????????? ??? ??? ?????? ??????.

11 ??? ??? 1983 ?? Commissioners ?????? ??? ?? ?????????????? ??? ?? CPP ??????????
?????????????, ??? ?????? ??? ?? 1990 ?????????? ??? ?????? ?????????? ??? ?? «?????»
????????? ?????? ?????? ?????? ??? CPP ??? ??? ??? ?????? ???,
????????? ??? ??? ??? ??? ?????? ?????? ?????? ?????? ?????? 16 UK£. ? ?????? ???
????????? ?? ??? ?????? ?????? ??????, ???, ?????, ??? ?? ?????????? ?????????????? ???
«????? ??????», ??? ??????????, ?? ?????????? ??? ?? ?????? ??? CPP ??????
????????? ?? ??? ?????? ?????? ??? ??? ?????? ?????? ?????????? ?????????????? ???
????????? ??? ?????? ?????? ?????? ?????????????? ?????? ?????? ?????? ???
????????? ?????? ???, ??????, ??? ??? ?????? ?????? ?????????? ?????? ?????? ???
????????? ?????? ??? ?????? ??? CPP, ?????? ?? ?????????????? ??????????
????????? ?????? ?? ?????? ?? ?? ?????? ?????????? ???, ???????, ??? ??? ??????
????? ?????????? ??????.

12 ? CPP ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????, ?? ??? ?????????? ??? ??????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?? ??????????
????? ? ??? ?????? ??????. ?? ?? ??????, ?????? ?????? ?????? ??? VAT and Duties
Tribunal, London, ?? ??? ?????? ?????? ?? ?????? ????. ??? ?? High Court ?????? ?? ???
????? ??? ?????? ??? ?????? CPP, ?? Court of Appeal, ?? ?????? ??? 23? ??????
1993, ?????? ?????? ?? ?????? ??? CPP ?????????? ??? ?? ?????????? ??????????
????? ?????? «????????? ?????????? ??????» ??? ?? ?? ?????????? ?????????? ???
????? ?????????? ??? ?? ??? ?????? ????. ?? ?? ??????, ? CPP ?????? ?????? ??????
?? House of Lords, ?? ??? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?? ?????? ????

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

«1) ????? ??????, ??? ???? ?????? ?????? ??? ???? ?????????? ????? ?? ?????? 2, ??????????
1, ?????, ?? ??? ???? ??????? ?????? ??? ?????? ???????????, ??? ??? ?????? ??? ??, ?? ???
????? ??????? ??????, ??????? ?????? ?????????? ? ??? ? ??????????? ??????????
?????? ???????;

2) ???????, ??? ?? ?????????? ??? ??, ? ?? ?????? ?????????? ?????????????? ???????
????????? ? ????????, ??? ?? ?????????? ??? ?? Card Protection Plan Limited (CPP) ???
?????? ?? ?????????? ?????????? ?? ?????????? ??????? ??? ???????,
??????, ??????? ?????? ?????????? ??????? ? ??? ? ?????????? ?????? ??????? ???????;
???? ? ??????? ?????? ?????? ?????? ?????????? ???????????????, ?? ?????? ?????????? ??
????????? ?? ?????? ?? ?????? ??? ?????? ??????? ???????, ??? ?????? ?????? ?????????? ???????
????????? ??? ?? ?????? ? ?????????? CPP, ??? Continental Assurance
Company of London plc;

3) ??????? ? ?????????????? ????? ? ?????? ?????????? ? ?????????? "????????????? (...)
????????, ?????????????????? ??? ?? ?????? ????? ?? ?????? ????? ?????? ?????? ??????????
??? ?????????????????? ??? ??? (...) ?????????????? ??????????", ??? ??? ?????? ???
?????? 13, ?, ??????? ?, ??? ??? ?????? ?????? ??? ???; ??????????, ?????????? ?? ???
????????? ??? ?????? ???:

?) ??????????? ? ??? "???????", ??? ??? ?????? ??? ?????? 13, ?, ????????, ??, ???
????? ??????? ????, ??? ?????? ??????????????? ???, ??????????, ??? ????"
"???????" ??? ??????????????? ??? ?????????? ??? ?????????????? ??? ?????? 73/239/???
??? ?????????? (?????? ??????? ??? ?????????? ??? ???????????????, ????? ???
????????? ???), ??? ??? ?????????????? ?? ??? ?????? 84/641/??? ??? ??????????;

?) ?????????? ? ??????????????? ?? "?????[??] (...) ?????[??] ?????????? ??
?????????????????? ?? ??? ??? (...) ?????????????? ??????????", ??? ??? ?????? ??? ??????
13, ?, ??????? ?, ?, ??? ??? ?????????? ??? ??? ?, ??? ?????????????? ??? ??????????????
??? ??? 2 ??? ?????? 77/92/??? ??? ???????????;

4) ??????????? ?? ?? ????? 13, ?, ??????? ??, ??? ????? ?????? ????? ?? ? ?? ??????
?????? ?????? ??????????? ?? ?????? ?????????? ?? ? ?????????? ?? "??????????[?] (...)
??????[?]!" ??? ?? ?? ??? ????? ?????? ?????????? ?? ??????? ?????????? ?? ?????? ?????
????? ?????? ?????????? ?????????????? ?????????????? ??? ?? ?????? ?????? ?????? ??? ??????
????? ??????;»

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

13 ?? ?? ?????? ????????, ?? ?????? ??????? ? ? ?????????? ??????, ?? ?????? ?????????? ??????
???' ?????? ?? ?? ????? 13, ?, ??????? ??, ??? ????? ?????? ??? ?????? ??? ?????? ???
?????? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ?? ?????? ?????????? ?
CPP ????? ?????? ??? ?????????? ? ??? ?????????? ?????? ?????????? ? ?????????? ?????????? ??
?? ?????????? ??????, ?????????? ??? ?????????? ??????.

14 ? CPP ??????????? ?? ???? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ???? ?????? ??
?????? ?? ??????????? ?? ?????????? ?? ??????? ?? ?????????? ?? ???????, ??? ?? ???? ?????? ??
?????? 13, ?, ??????? ??, ??? ????? ??????. ? ?????????? ??????????, ? ?????????? ??
????????? ?????????? ?? ? ?????????? ??????? ??, ?? ??? ??????????, ?? ??????????
????????????? ?????????? ??????? ?????????? ?????????? ??????????. ? ?????????? ?? ??????????
????????? ?????????? ?? ???? ?????? ?????????? ?? ?????????? ?? ?????????? ?? ? CPP
????????? ?? ?????????? ?? ??????????. ??????, ??? ?? ??????, ?????? ?????? ?? ???? ??
?? ?????????? ??????????????? ?? ???? ?????? ?? ?????????? ?????????? ?????????? ??????????

???

15 ???' ?????, ?????????????? ???, ??? ????? ??????????, ?? ?????????????? ??? ?? ??? ?????
13 ??? ????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ??????????
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
??? ??? ??? ?????? ??? (?. ?????? ??? 15?? ?????? 1989, 348/87, Stichting
Uitvoering Financiële Acties, ?????? 1989, ?. 1737, ??? 11).

16 ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? «????????????? ??????» ??? ??
????? ??? «????????????? ??????», ?? ?????? ?????????????? ??? 13, ?,
????? ??, ??? ?????? ???.

17 ??? ?????, ????, ??? ?????? ??? «????????????? ??????», ??????????????
?? ??? ? ?????? 73/239 ??? ?????? ??? ?????? ??? ?????????? ??????????, ??? ??????????
????? ?????????? ??? ?????? 34 ??? ?????? ???, ??? ?????????? ??????
?????????????, ??? ?????? ??????, ??? ?? ??? ?????????? ??????????, ??? ??? ??
????????? ??? ??????????, ?? ??????, ?? ?????????? ?????????? ??? ??????????
????????, ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ???
?????????.

18 ??? ?????? ?????????? ?? ?????????? ?? ?????????? ?????????? ??? ? ?????? ??? ??
????????? ?? ?????? ?? ?????????? ?? ?????????? ???, ?????????? ??? ? ?????? ???
????? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??????????, ??? ?? ?????? ??? ??
????, ??? ?? ?????????? ??? ?????????? ??? ?????? 73/239, ??? ?????????? ??? ??
??? ?????? 84/641. ??????, ??? ?????? ??? ?????????? ?????????? ?????????? ??? ??
«?????» ?????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??
?????.

19 ??????, ??? ?????????? ??? «?????????», ? ?????? ??????????
?? ??? 13, ?, ?????? ??, ?????????? ??? ?????????? ??? ?????????? ??? ? ??????
????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ??????. ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
??? ?????? ?????????? ??? ?????? ?? ?????? CPP ?????? ??????????
?????????.

20 ?????????? ??? CPP ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? CPP ???
????? ?????? ??? ?????? ??? ?????? ???.

21 ??? ??? ?????? ???, ?????????? ??? CPP ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? .? CPP
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? Continental, ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??????, ??? ?????? ??? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ??? Continental ??? ??? CPP ???, ??????, ?????? ??? CPP ??? ??? ?????? ???, ??
?? ?????? ??? ? Continental, ?????? ?? ??? ?????? ??? ?????? ??? CPP
????????, ?????? ??? ?????? ??? ?????? ???' ?????? ??? ?????? ??? CPP ???
????? ?????? ???.

22 ?????????? ??? ??? ? ?????? ?????????? ?? ?????? ??? CPP ?????? ??????????
????? ??? ??? ?????? ??? ?????? 13, ?, ?????? ??, ?????? ??? ?????? ??? ?? ?????????? ???
????????? ??? 13 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (??.
????????? Stichting Uitvoering Financiële Acties, ??? 13). ??????, ? ??????
«????????? ???» ???' ??? ?????? ?????? ??? ?? ?????????? ???

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

23 ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???????, ? ?????? ?????????? ????
????????? ??? ???????, ?????????? ?????????? ??? ?????? ???, ?? ?? ??? 33, ??
????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ??? ?????? ?? ?????????? ??????????.
???? ????????, ??????? ? ?????? «????????????? ??????» ?????? ?????????????? ???
????????? ??? ?????????????? ??? ?????? ?????? ?????? ???????????, ? ??????
????????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?? ??? ?????????? ??? ??????, ???,
????????? ?????? ??????????, ??? ?? ??? ??? . ??? ?????? ?????????? ?? ??????????
???? ?????? ??? ?????????? ??? ?? ??? 13, ?, ??????? ??, ??????????.

24 ?????????????? ?????? ??? ??????, ?????????? ?????? ? ?????? ??? ?????????? ?? ? CPP
????? ??? ??? ?? 13, ?, ??????? ??, ??? ?????? ?????? ?????????? ??????????????
????????? ??????.

25 ??????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ? ?????????? ??? ?? ?????? 13, ?, ????????
??, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ? ??????, ??? ?????? ?????????? ?????????? ?????????? ??????????,
???? ?????? ?????? ? ?????????????????, ?????? ?????? ?????? ?????? ???, ?? ?????? ?????? ???
????????????, ?????????? ?????? ?????????????? ??? ?????? ?????????? ?????????? ???
????????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? . ? ??? «?????????????» ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ?????????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
73/239, ??? ?????????? ??? ?? ??? ?????? 86/641.

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

26 ?? ?? ??? ?????? ??????????, ?? ?????? ?????? ?? ?????????? ??? ??????, ?? ??????
????????? ???' ??????, ?????????? ??? ?????????? ??? ?????? ??? ?? ??????
????????? ? CPP ?????? ?????? ???, ??? ?????? ?? ?????? ?????? ??? ?? ??????????,
??? ?????? ??? ??, ?? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ? ??? ? ?????????? ?????????? ?????? ?????? ??????????
?? ?????? ?????? ??? ?????????? ??????.

27 ???' ?????, ?????????????? ??? ?? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??, ??? ??? ?? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ?????????? ???
????????? ? ??? ?????? ??????, ?????? ?????????? ???, ?????????? ?????? ??? ?????? ???
??? ?????????? ??????????, ??? ?????? ?????? ?? ?????? ?????????? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

28 ??????, ??? ?????? ?? ?????????? ?? ??? ?????? ??? 2? ??? 1996, C-231/94,
Faaborg-Gelting Linien (?????? 1996, ?. ?-2395, ?????? 12 ?? 14), ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????, ?????? ? ?????? ?????????? ??????????
????????? ??? ?????? ?????????? ??? ??????, ?????? ???' ?????? ?? ?????? ??? ?????? ???
?? ?????? ??? ?? ?????? ?????????? ? ??? ?????? ??????????.

29 ??????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??????, ??????, ??? ??
????? 2, ?????????? 1, ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??????
????????? ?? ?????????? ?????????? ??? ?????????? ??? ???, ???????, ???????, ? ?????? ???
????????? ??? ??? ?????? ?????????? ?? ?????????? ?????????? ??? ?????? ??

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

30 ?????????????? ?? ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ? ?????????? ??
????? ?????? ?? ? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??, ?????????? ??, ??? ?
????????? ?????? ?????? ?? ? ?????????? ?? ? ??? ? ?????????? ?????? ?????????? ?? ?????,
?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???? ?
?????. ??? ?????? ?????? ?? ? ?????????? ?? ? ?????????? ?????? ?????? ?????? ?????? ???
????? ??' ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (????????? ??? 22??
????????? 1998, C-308/96 ??? C-94/97, *Madgett ??? Baldwin*, ?? ?????????? ??? ???? ??
????? ???, ??? 24).

31 ??? ??? ?????? ??????, ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???
????????? ??????. ??? ?????? ?????? ???, ?????? ? ?????? ?????? ?????? ?????? ?????? ??
????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?? ? ?????? ?????? ??????, ?? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? 7 ??? 10 ??? ?????? ?????? ?????? ?????? ??? ?? ? ?????? ?????? ?????? ??
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??., ??? ?? ?????? ???,
????????? ?????? *Madgett ??? Baldwin*, ?????? 45 ??? 46).

32 ??????, ??? ??? ?????? ?????????? ?????? ?? ?????? ? ?????? ?????? ?? ? ?????? ??
????????? ?????? ?? ? ?????? ?????? ?? ? ?????? ?????? ?? ? ?????? ?????? ?? ? ?????? ??
????????? ?? ? ?????? ?????? ?? ? ?????? ?????? ?? ? ?????? ?????? CPP ?? ? ?????? ?? ? ?????? ??
????? ?? ? ?????? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ?????? ?????? ?? ? ?????? ??
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ??? ?????? ??????.

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

33 ?? ?????? ?? ? ?????? ?????? ?????? ?????? ?? ? ?????? ?? ? ?????? ?? ? ?????? ?? ? CPP
????? ?? ? ?????? ?????? ?? ? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ??, ??????,,
????? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ??
? ??? ?????? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??,
? ??? ?????? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??,
? ??? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ?????? ?????? ?????? ?? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
(?? . ?????? ?? ? 11?? ?????? 1998, C-283/95, *Fischer*, ?????? 1998, ?. ?-3369, ?????? 22).

34 ??????, ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ? ?????? ?????? ??
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 13, ?, ??? ??????
?????.

35 ???????, ?????????????? ??? ? ??????? ????, ?????? ?? ??? ??? ?????? ??? ??????????????
?????????????, ?????? ???????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ???????
??? ?????? ???????, ?????? ??? ?????? ?????????????? ??? ??? ?????????????? ??? ?????
????????? ?????? ??? ?????? ?????? ??????. ???????, ?? ??? ??? ?????? ??????????
????????????? ?????? ?? ?????????? ??? ?????? ?????? ??????????????.

36 ???????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ?????? ??? ?? ?????? 13, ?, ???????
??, ??? ?????? ??????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ??????????
??? ?????? ??? ?????????? ??? ?????????????? ?????????? ??? ?????? ??? ?????????????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????????? ?? ??????
????????????? ??????????.

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

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

37 ?? ?????? ??? ?????? ?????????????? ? ?????????? ??? ?????????? ?????????? ??? ? ??????????
?????????, ?????? ??? ? ???????, ??? ?????? ?????????????? ??? ??????????, ???
?????????. ?????????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ??????
??????????, ?' ??? ?????????????? ?? ?????????? ??? ??? ?????????? ??? ??????.

??????????

??? ??? ?????? ????,

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

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

????????? ??? ??? ?????????? ??? ?????? ?? House of Lords ?? ??????? ??? 15??
????????? 1996, ??????????:

1) ?? ????? 13, ?, ??????? ??, ??? ?????? ?????? 77/388/???, ??? ??????????, ??? 17??
???? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????, ??? ?????????? ?? ???
????? ?????? ?????? - ????? ?????? ?????? ?????? ?????????????? ????: ??????????
????????? ???, ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ? ?????, ??? ?????? ?????????? ?????????? ??????????,
???? ?????? ?????? ??? ?????????????? ???, ?????? ?????? ???, ?? ?????? ???, ?? ?????? ????
??????????, ?????????? ??? ?????? ?????????????? ??? ?????????? ?????????? ???
?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ????
????????? ????. ? ??? «?????????????» ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
????????? 73/239/???, ??? ??????????, ??? 24?? ?????? 1973, ??? ?????????? ???
??????????, ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????????????? ??????????????, ??? ??? ?????? ??? ?????????? ???, ??? ??? ?????? ???, ???
????????????? ?? ??? ?????? 84/641/???, ??? ??????????, ??? 10?? ?????????? 1984.

2) ??? ?????? ?????????? ?????????? ?? ??????????, ??? ?? ?????? ??? ??????????
????????? ??? ??????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ??

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

3) ?? ??? 13, ?, ??????? ??, ??? ??? ?????? 77/388 ??? ?????? ??? ?????? ??? ??? ??????
????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??????????
????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ??????
????? ?????????? ?? ?????? ?????????????? ??????????.