

????????????????? ?????????? C-354/03, C-355/03 ??? C-484/03

Optigen Ltd, Fulcrum Electronics Ltd

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Bond House Systems Ltd

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Commissioners of Customs & Excise

[?????? ??? High Court of Justice (England & Wales), Chancery Division, ??? ??? ?????
????????????? ?????????]

«???? ?????? ?? — ????, 2, ?????????? 1, ????, 4, ?????????? 1 ??? 2, ??? ????? 5,
????????? 1 — ??????? ?? ?????????????? ??? ?????? ?????? — ??????????
????????????? — ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? —
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????????? ?????? — “?????? ?????”»

????????? ??? ?????? ?????????? M. Poares Maduro ??? 16?? ?????????? 2005

????????? ??? ?????????? (????? ????) ??? 12?? ?????????? 2006

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(?????? 77/388 ??? ??????????, ????, 2, ?????? 1, ??????? 4 ??? 5, § 1)

????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????????? ?? ?????? ????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ????
?? ?????????? ?????????????? ?? ??? ?????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ??????
???? ??? ??? ?????????????? ???, ?????????? ?????????? ??? ?????? ????
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????, ??? ?????????? ??? ?????????? ???, ??? ?? ?????? ??? ?????? 2, ?????? 1, 4 ??? 5,
????????? 1, ??? ?????? 77/388, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????, ??? ?????????? ?? ??? ?????? ??? ?????? ???, ?????? ?????? ??? ?????? ??? ??????????
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????? ??? ?????? ?????????? ???, ?????????? ???, ?????????? ??? ?????? ??? ?????? ????
????????? ?????????? ???/? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ???, ?????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ??????
????????????? ? ?? ??? ?????? ?????????? ??? ?????? ??? . ?? ?????????? ??? ?????? ??? ??????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

(?? . ??????? 51-52, 55 ??? ??????.)

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

?? 12?? ?????????? 2006 (*)

«???? ?????? ??? – ??? 2, ?????????? 1, ??? 4, ?????????? 1 ??? 2, ??? ????? 5,
????????? 1 – ?????? ??? ?????????????? ??? ??? ?????? – ??????????
????????? – ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? –
????????? ??? – ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? –
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? – “????? ?????”»

???? ?????????????? ?????? C-354/03, C-355/03 ??? C-484/03,

? ? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ?,
?? ?????? ?? High C?urt ?f Justice (????? ??? ??????), Chancery Di?isi?n (?????
?????), ?? ?????? ??? 28? ?????? 2003 (C-354/03 ??? C-355/03) ??? ??? 27?
????????? 2003 (C-484/03), ??? ?????? ??? ?????? ??? 18 ?????????? ??? ??? 19
????????? 2003, ??????????, ??? ?????? ??? ??????????

Optigen Ltd (C-354/03),

Fulcrum Electr?nics Ltd (C-355/03),

B?nd H?use Systems Ltd (C-484/03)

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C?mmissi?ners ?f Cust?ms& Excise,

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

????????? ??? A. R?sas, ?????? ???????, J. Malen?ský, J.-P. Puiss?chet, S. ??n
Bahr (???????) ??? U. Löhmus, ????????,

????????? ??????????: M. P?aires Madur?

?????????: L. Hewlett, ?????? ?????????? ????????????,

????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ???
8? ?????????? 2004,

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

- ? Optigen Ltd, ?????????????? ??? ??? T. Beazley, QC, ??? J. Herberg, barrister,
- ? Fulcrum Electr?nics Ltd, ?????????????? ??? ??? R. Englehart, QC, ??? A. Lewis,

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

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

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

4 ??? ?????? ?? ?? ??? 2, ?????????? 1, ??? ??? ?????? ??????, ?????????? ??? ??? ??
????????? ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????????? ?? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????????? ??? ??????, ??? ?????? ??? ??? ?????????? ???
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5 ??? ?????? ??? ?????? 4, ?????????? 1, ??? ?? ??? ?????? ??????, ?? ?????????? ???
????????? ??? ?????????? ???, ??? ?????? ??????????, ??? ??? ??? ??????????
????????????? ??? ?????????? ??? ?????? ?????? 2 ??? ?????? ????. ? ?????? ???
«????????? ??????????» ?????? ??? ?????? ?????? 2 ?? ?????????????? ???
???? ??? ?????????? ??? ??????????, ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ????, ??? ???
????? ?????????? ?????? ?????? ??????.

6 ??? ?????? ?? ?? ??? 5, ?????????? 1, ??? ??? ?????? ??????, «?? “????????? ????”
????????? ??? ?????????? ??? ?????????? ?? ?????? ?????? ?????? ?? ????.»

7 ?? ????? 17, ?????????? 1 ?? 3, ??? ??? ?????? ?????? ??????:

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

2. ??? ?? ?????? ??? ?? ?????? ? ?? ?????????? ?????????????? ??? ??
????????????? ??? ?????????? ??? ?????????? ???, ? ?????????? ??? ?????? ??? ??????????
????????? ??? ???, ??? ??? ?????? ?????? ??????:

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

?) ??? ?????????? ? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???.

[...]

3. ??? ?? ?????? ??? ?????? ?????? ?? ??? ?????? ?????????? ??? ?????? ??? ??????????
??????, ??? ?????? 2, ?????? ? ?????? ??? ?????? ?????????? ??? ??????, ??? ??
????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???:

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

[...]»

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8 ??? ?????????? ??? ???? ?????????? ??? ???? ??????????, ??? ???? ?????? ??? ???????????
?????????? ??? ???? ?????? ???, ? ?????????? ??? ???? ?????? ?ptigen, Fulcrum ??? B?nd
H?use ?????????? ??? ?????? ??? ????? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ?????????? ??? ???? ?????????? ?????? ?? ??????????
????????????? ??? ???? ?????? ???.

9 ??? ??? ?????? ??? 2002, ? ?ptigen ?????? ??? ?????????? ?????? ?????? ??????????
??? ?? ??? ?????? ?????????? ?? 7 ?????????? ??? ?????? ?????? (GBP). ?? ?????????? ??? 16??
??? ?? 31?? ?????????? 2002 ?? C?mmissi?ners ?????????? ??? ?????? ??? ?? ????
??? ??????? ??? ?????? ?????? ??? 7 ?????????? GBP. ??????, ?? ?????? ??? 30??
????????? 2002, ?? C?mmissi?ners ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? 13 ?????????? GBP ??? ??? ?????? ??? ?????? ???.

10 ??? ??? ?????? ??? 2002, ? Fulcrum ?????? ??? ?????????? ?????? ???
?????????? ??? ??? ?????? ??? 7,2 ?????????? GBP. ?? ?????????? ??? 11??
????????? 2002, ?? C?mmissi?ners ?????????? ??? ?????? ??? ?????? ??? ?????? ??? 2
????????? GBP ??????. ??????, ??? ??? ?????? ??? 2002, ?????????? ??? ?????? ???
????? 1,1 ?????????? GBP ?????? ??? ?????? ?????????? ?????????? ?????? ??????
4 ?????????? GBP. ??????, ??? ?????????? ??? 2003, ?? C?mmissi?ners ??????????
??? Fulcrum ?????? ?????????? ??? ??? 160 000 GBP ??????, ?? ??? ??? ??? ???
??? ??????????, ???' ??????, ?? ??? ?????? ??? ?????? ??? 2002 ?? ??? ??? ???
????????? ??????.

11 ? B?nd H?use ??????, ??? ??? ??? 2002, ?????? ?????????? ??? 16,3
????????? GBP ??????, ??? ??? ??? ?????????? ??? ??? ?????, ?????? ????
????????? ??? ??? C?mmissi?ners. ??? ?????????? ??? 2002, ?? C?mmissi?ners
????????? ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????? ?????? ??? ??? ?????? ??? ?????? ??? 2,7 ?????????? GBP.

12 ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ???, ?????? ?????? ??? ??? ?????? ??? ?????? ? ?????? ??? ??????
????? ??? C?mmissi?ners, ?????????? ??? «????? ???».

13 ?????? ?? ??? ?????????? ??? ?????? ??????????, ??? ?????? C?354/03 ??? C?355/03,
??? ?????? ?? ??? C?mmissi?ners, ??? ?????? C?484/03, ? «????? ???»
????????? ???' ?????? ?? ???:

- ??? ?????? (A) ?????????? ?? ?????? ?????? ?????? ??? ?? ??? ??? ?????? (B)
????????? ?? ??? ?????? ??????.

- ? ?????? B, ??? ?????? ?? ?????? ?????????? ?? ???? ?????? ??? ???? ????
????????? ?? ??? ?????? ?????????? ???, ?????? ?? ???? ?????? ??? ???? ????
????? (?), ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??????
????? ?? ??? ?????? ??? ?????? ?????? ?????? . ?? ?????? B ?????? ??? ?? ??? ??? ???
?? ?? ??? ??????, ??? ?????? ?????? ?????????? ?? ??? ?????? ?????? ??? ??????????
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??????????, ?????????? ?? ??? ?????? ??? ????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?,
???? ???????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

- ? ??????? ? ?????????? ?? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ???
??????? (?) ??? ?????? ??? ?????? ???, ?????????????? ??? ?????? ??? ?????? ??? ?? ??? ??? ??
????? ??? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ???' ???, ??? ???
??? ??????, ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????. ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????? «????? ???».

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

14 ??? ?????????? C-354/03 ??? C-355/03, ?? ?????? ?????????? ?????????? ??? ??
C?mmissi?ners ?????? ??? ?????????? ??? ?????? ???, ???' ????, ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ?????????????? ??? ?????? ??? ?ptigen ??? ??
Fulcrum ?????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????????? ???
??? ?????? ??? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ??? ?? ??? ??? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 1994 (Value Added Tax Act 1994). ???
?????????, ?? ?????? ?? ??? ???, ?? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

15 ? ?ptigen ??? ? Fulcrum ?????????? ??? ?????????? ??? C?mmissi?ners ?????? ???
VAT and Duties Tribunal, ??????. ?? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??
?????????.

16 ?? ?????? ??? 23?? ??? 2003, ?? VAT and Duties Tribunal, ??????, ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? C?mmissi?ners ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? VAT and Duties Tribunal
????????? ??? ? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? «????? ???» ??? ?????????? ??? ??????.

17 ? ?ptigen ??? ? Fulcrum ?????? ??? ?????? ??? ?????? ??? ?????? ??? VAT and Duties Tribunal,
??????, ?????? ??? High C?urt ?f Justice (????? ??? ??????), Chancery Di?isi?n.

18 ??? ?????? C-484/03, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

C?mmiss?ners ?????????? ???, ?????? ?????? ?? ?????????? ?????????? ?????????? ?????? ???? ?????? ??????? ?? ?????? ?? ?????? ??? ?? ?????????? ??????? ?? ?????????? ?????? ?????? ??????? ?? ?????? ??????? ?? ?????? ?? ?????????? ??????? ?? ?????? ?? ?????? ?????? ? B?nd H?use, ??????????? ?? ?????? ?? ?????????? ?????? ?????? ?????? ?????? . ?????? ?????????? , ?????????? ?? ?????? ?? ?????? ?????? ? B?nd H?use ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ? B?nd H?use ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? .

19 ?? ?????????? ?? 2002, ? B?nd H?use ?????? ?????????? ?????????? ?? VAT and Duties Tribunal, ???????????, ???? ?? ?????????? ?? C?mmissi?ners.

20 ?? ?????????? ?? 29?? ?????????? 2003, ???????????????? ?? ?????????? ?? 8?? ???? 2003, ?? VAT and Duties, ???????????, ?????? ?? 26 ??? ?? 27 ?????????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????? ?????????? ?????? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? B?nd H?use ?????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? . ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? B?nd H?use ?????????? ?? ?????? . ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? B?nd H?use ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? B?nd H?use ?????? ?????? ?? ?????? ? B?nd H?use ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? B?nd H?use ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ? B?nd H?use ?????? ?????? ?? ?????? .

21 ? B?nd H?use ?????? ?????? ?? ?????? ?? ?????????? ?????????? ?? High C?urt ?f Justice (?????? ?? ???????), Chancery Di?isi?n.

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

22 ???? ? ???????? C-354/03 ??? C-355/03, ?? ?????? ?????????? ?????????? ?? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????????????? . ?????????? ?? ?????????? ?????? ?????? :

– ????????? «?????? ???».

– ? ?ptigen ??? ? Fulcrum ??? ?????, ??? ?????????????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??

– ? ?ptigen ??? ? Fulcrum ??? ?????? ??? ?????????? ?? ?????? ?????? ?????????? ???? ?????? .

– ? Fulcrum ??? ???????? ?? ?????????? ??? ?? ?????? ?????? ???, ??? ?????? ?????? ?????? ???? ?????? 467 ?????? ??? ?????? ?????? ???? ?? ?????? ?????? ?????? ?????? ?????? .

– ?? ??????? ?????????? ??? ?? ?????? ? ?ptigen ??? ? Fulcrum ???????? ?? ?????? ??? ?????? ?????? ?????? ??? ??? ??? ?????? ???? ?????? ?? ?????? ???? ?????? ???? ?????? ?????? ?????? ?? ?????? ???? .

23 ????? ??????? C?484/03, ?? ?????? ??????????? ??????????? ??? ? B?nd H?use
?????????? ??????? ??? ?? ??????????? ?? ??? ?? ??????????? ??????????? ??? ??
?????????? VAT and Duties Tribunal, ??????????. ?? ??????????? ??????????
?????????? ??????????????? ??????? ??? ?? ????????????:

- ?? C?mmissi?ners ?????????? ?? B?nd H?use ?? ?????? ??????? ??? ?? ??????
?????? ??? ?????? ?? ?? ?????? ??????? ?? ?? ??.
- ? ??????? ??? ?????? ?? ??????? ?? ?? ?????? ??????????????? ??? ??? C?mmissi?ners
?????? ??? ??? ??????? ?? ?????? ???????????.
- ? B?nd H?use ??? ??? ??????????? ?? ??????? ?? ??? ?????? ??????? ?? ??????, ???
??? C?mmissi?ners, ??????? ????
- ????? ?? ??????????? ?? ??????????????? ? B?nd H?use ??? ?? ??????????? ?? ??????
?????? ??? ??? ??? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??
????? ??????????? ??? ????????????: ?? ??? ??????????? ?? ??????????? ??? ?? ??????????? ??? ??
?????????? ?? ??? ???????????.
- ?? ??????????? ?? ??? ?????? ?? VAT and Duties Tribunal, ??????????, ??????? ???
?????????? ??????? ??? ??????????? ??????? ??? ??????????? ??? ?????? ?????? ?????? ???
????? ??????????????? ? B?nd H?use ??? ??? ?????? ?? ?????? ??? ??????????? ??? ??
??????????????, ?????????? ??? ?? ?????? ??????????? ??? ?? ?? ??? ?????? ???????????
?????????????? ?????? «????????? ??????».

24 ? B?nd H?use ?????????? ???' ?????? ???, ?????????? ??? ?? ?????????? ???? ?????? ???
?????? ??? ??????????? ??????? ??? ??????????????? ?????? ?????? ???, ??? ??????? ??
?????????? ??? ?? ?????? «????????? ??????» ? «????????? ?????? ???????????????»,
??? ??? ?????? ??? ??, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? C?mmissi?ners.
?????????, ?????????? ??????? ?????? ??? ?????? ??? ?? ?????? ??? ???????????, ?? ?????? ?????? ???
???? ?? ??????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???????????
????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? VAT and
Duties Tribunal, ??????????, ????? ??????????? ?? ?? ?????? ??? ?????? ??????????? ???
???. ?? ??? ??? ??? ??????????? ??? ??????, ?? ??? ??? ?????? ??? ?????? ??????????? ???
????? ?? ??? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??? ??????
?????????????? ??? ?? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??? ??????
?????????????? ??? ?? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??? ??????.

25 ?? C?mmissi?ners ???????????, ???' ??????, ??? ?? ??????????? ???
?????????????????? ??? ??????? ??? ??????????? ??????? ??? ??????????
?????????????? ??????????????? ??? ????? ??????? ??? ????? ???????.. ?? 26 ??????????? ???
????? ??? ??????????? ??????????? ??? ????? ??????? ??? ????? ??????? ???
????? ??????????? ??? ????? ??????? .. ?? ??????????? ??? ????? ??? ??????????? ???
«?????????? ???????????» ??? ????????? «?????????? ?????» ??? ? ??? ???
?????????. ? ??????? ??? ?? ??????????? ??? B?nd H?use ??? ????????? ??? ????? ???
????? ??? ??? ??????????? ??? ????? ??? ??? ?????????????, ??? ??????????
???????? ? ??????? ??? ????????? ??? ????????????? ???.

26 ??? ??? ???????? ??? High C?urt ?f Justice (?????? ??? ???????), Chancery
Di?isi?n, ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ???
????????? ?? ?????????? ?????????????? ??? ??????:

???? ??????? C?354/03 ??? C?355/03:

«1. ??? ??? ?????? ?????? ??????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? [...], ??????? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ??? ???????
????????? ?? ??????? ??? ??????:

?) ??? ?????????????? ??? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ???????, ??? ???? ??? ???
????????? ??? ??????? ???? ?????? ?????????????? ???, ?

?) ??? ?????? ??? ???????????, ?????????????? ??? ??? ??? ???????????????
??????????, ??? ??????????? ??? ?????? ??? ?????? ?????????? ???, ??? ??? ??? ???????
????????? ? ??????????? ??? ???????, ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ???
????????? ??? ?????? ??? ???????, ??? ?????? ??? ?????? ??? ?????? ???/? ??? ??? ???
????????? ?? ???????, ???/?

?) ??? ?????? ??? ?????? ??? ???????????, ?????????? ??? ?? ?? ??? ?????? ???????????????
? ?????????????? ??? ?????????? ??? ?????????? ???, ??? ?????? ?????? ??? ?????? ??? ??????? ???
????????? ???????, ??? ?????? ?? ??????? ??? ?????? ? ?????? ??? ?????? ??? ?????? ??? ???????
??? ?????????? ??? ??????? ???/? ??? ??? ?????? ?????????? ??? ??????????, ?

?) ??? ?????? ??? ??????? ???, ?? ???, ?? ???;

2. ??? ?????????? ??? ?????? ??? ?????? ??? ???????????????, ??? ??? ?????? ?????????????? ?? ???
????????? ??? ?????? ?? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????? ???
??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ???????????????, ?? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???;»

???? ??????? C-484/03:

«1. ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? (??? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???) ??? ??? ?????? 28 ??? ???????
[??]:

?) ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ? ??????????
“????????? [?] ??? ??? ??? ?????? ??? ??? ?????? [??] ???” ??? ???? ??? ?????? ???
????? 2, ??? ?????? 1, ??? ?????? ?????? ???, ?? ??? 26 ??????????, ?????????? ??? ???
[????????? ?????? ??????] ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?????? ??? ???
????????? ??? ?????? ?????? ???;»

?) ??? ??????? ??? ??????? ??????????? ???????????, ??????? ? ????????"
"????????? ??????????" ??? ???? ?????? ?? ????? 4 ??? ???? ?????? ???, ?? ???
26 ????????, ??????? ??? ??? ?????? ?????? ??? ??????? ??????? ??? ??? ?????? ??
????????? ??? ?????? ??????? ???????;

?) ??? ??????? ??? ??????? ??????????? ???????????, ??????????? ? ?? ?????? ??
????????? ??? ???????, ?? ??? 26 ????????, ??? ??? ??? ?????? ??? ??????? ????????"
"????????? ??????" ??? ??? ??????? ??? ??? ?????? ??? ??????? 5, ??????? 1, ???
????? ??????;

?) ??? ??????? ??? ??????? ??????????? ???????????, ??????????? ? ?? ?????? ??
????????? ??? ???????, ?? ??? 26 ????????, ??? ??? ?? ??????? ?????? ????????"
"????????? ??????" ??? ??? ??????? ??? ??? ?????? ??? ??????? 5,
????????? 1, ??? ??? ?????? ??????;

2. ??? ????? ?? ?????????? ??? ?????? ?????? 1, ??????? ?? ???, ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ?????? (?? ?????????? ???
????? ??? ?????????? ??? ??? ??????? ??????);»

27 ?? ?????? ??? ??????? ??? ?????????? ??? 19?? ?????????? 2003, ??????????
? ?????????? ??? ?????????? C-354/03 ??? C-355/03 ??? ?????????? ??? ?????????? ???
??? ?????????? ??? ?????????? ??? ??? ?????? ?????? ?????? ??????.

28 ??? ???????, ?? ??????? ??? ??????? ??? ???????????, ??? 15?? ??????? 2004,
????????? ? ?????????? ??? ?????????? ??? ?????? ??? ??? ?????? C?484/03 ???
????????? ??? ?????????? ??? ?????????? ??? ??? ?????? ?????? ?????? ??????.

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

29 ?? ?? ?????? ??? ??????? ?? ??????? ??? ??????? ??? ??????? ??? ?????? ???
????????? ??????? ???' ?????? ??, ??????, ??????? ?????? ??? ?????? ?? ??????? ???
????? ???, ?? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????????? ?? ??? ?????? ??? ???????????, ?????????????? ??? ??????????????
?????, ?????? ???????, ?????? ??? ?????????????? ??? ?????????????? ??? ??????
????????? ?? ?? ??????? ? ?? ?????? ?? ??? ?? ???????, ?????????? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????????? ??? ??? ?????? ??? ?????? 2, ?????? 1, 4 ??? 5, ?????????? 1,
??? ??? ?????? ???, ???????, ??, ??? ??? ?????? ?????? ???, ?????? ?? ?????????? ??
????????? ??? ?????????? ?? ?????? ??? ??? ?????? ??? ?????? ??? ??????.

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

30 ? ?ptigen ??? ? Fulcrum ??????? ???, ??? ?????? ??????? ??? ??? ??? ??????????
????? ??? ?????? ??? ??? ?????? ???????, ?? ??????? ??? ?????????????? ??? ??????????
??? ?????? ??? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

31 ??? ? B?nd H?use, ??? ?????? ??????? ??? ???????? C-484/03 ?????? ?? ???
????????? ??????.

32 ? ?????????? ??? ?????????? ?????????? ?????????????? ???, ??? ?????? ?????????? ??? ???
??? ??? ? ???? ??? ?????? ??? ??? ?????? ??????, ?? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????????? ??? ??? ?????????? ?????? ?? ?????????? ?? ??? ???
?? ?????? ??? ??????????, ?????????????? ??? ?????? ?????????? ?????? ?? ?????????? ?? ???
????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??
????????? ?????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ?????? ??? ?????? ?????? ?????/? ??? ?????? ?? ?????? ??? ?????? ?? ??? ?????? ??
? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ??????.

33 ? ?????????? ??? ?????? ?????????? ???, ?????? ? ?????? ??? ?????????? ?? ???
????????? ??? ?????? ??? ?????? ?????????? ???, ?? ?????????? ??? ?????? ?? ???
?? ?????????? ?? ?????????? ?????????????? ???, ??? ??? ?????? ??? ?????? ??? ??????.

34 ??? ? ?????? ?????????, ??????, ?????????? ??? ?????? ?????????????? ??? ???
????????? ??? ??? «????????? ??? ?????» ?? ?????????? ??? ??????????????
????????????? ??? ?????????????? ?? ?????? ?????????? ??? ?????????????? ?? ???
????????? ??? ??????, ???, ??????, ?? ?????????? ??? ?????????????? ?? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ???, ?????????? ??? ? ??????
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

36 ?????????? ??? ?????? ?? ?????? ?? ?????????? ??? ? ??? ?????? ?????? ?????????? ???
????????? ??? ?? ?????? ??????????, ?????? ???, ??? ?????? ?????? ??? ?????????? ???
????????? (??., ?????? ???, ?????? ??? 26?? ?????? 2003, C-305/01, MKG-Kraftfahrzeuge-
Fact?ring, ?????? 2003, ?. I-6729, ??? 38).

37 ??????, ? ??? ?????? ??????, ??? ?????? 2, ?????? ?? ??? ?????????????? ???????,
??? ??? ?????? ?????? ?????????? ??? ??? ??????????????, ?????? ??? ??? ??????????
??????, ??? ?????????? ?????? ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????.

38 ??? ???, ???, ??? ?????? ??? «????????? ???», ?? ??? 5, ?????????? 1,

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

39 ??? ??????????? ??? ?? ?????????? ??? ??????????????, ? ?????? ??? ?????????????? ???
????? ?????????????? ?????????? ??? ?????? ??? ?????????????? ? ?????? ??? ?????????????? ???
????????????? ??? ?? ??????? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?????? (??., ??????
?????, ?????????? ??? 8?? ?????????? 1990, C-320/88, Shipping and F?rwarding Enterprise
Safe, ??????? 1990, ?. I-285, ??? 7, ??? ??? 21?? ??????? 2005, C?25/03, HE, ???????
2005, ?. ?-3123, ??? 64).

40 ??? ???????, ??????? ?? ?? ????? 4, ?????????? 1, ??? ????? ???????, ??
«????????? ???» ?????????? ?????????????? ???, ??? ?????? ???????????, ???
????????? ??????????????, ?????????? ??? ?????????????? ?????? ??? ??
????????? ??? ?????????? ??? ?????????? ???.

41 ? ?????? ??? «????????? ??????????????», ??? ???????? ??? ?????? 4, ???????????
2, ??? ?????? ???????, ?????????? «????» ??? ?????????????? ??? ???????????, ???
????????? ??? ??? ?????? ?????????? ???, ??????? ?? ?? ??????????, ?????????????? ??? ??
????????? ??? ??????????, ??? ?????????? ??? ??? ?????????? ?????????? (??., ?????? ???,
????????? ??? 4?? ?????????? 1990, C-186/89, Van Tiem, ??????? 1990, ?. I-4363, ??? 17,
??? MGK-Kraftfahrzeuge-Fact?ring, ???????????, ??? 42).

42 ?????, ??? ?????? ??? ?????? ??? «????????? ??? ?????? ??? ?????? ??? ??????? ??? ??
????????? ??? ???», ??? ?? ?????????? ?????????? ??? ? ?????????????? ??? ?????? ??? ???????
??? ??? ?????????? ??? ??? ?????? ?????????????? ?????????? ??? ?????? ??? ??????????????
??? ?????????????? (??., ??? ?? ?????? ???, ?????????? ??? 4?? ?????????? 1995, C-
291/92, Armbrecht, ??????? 1995, ?. I-2775, ??? 17, ??? ??? 29?? ??????? 2004, C-77/01,
EDM, ??????? 2004, ?. I-4295, ??? 66).

43 ??? ?????? ?? ?????????? ?? ?? ?????? 26 ??? ?????????? ??? 12?? ?????????? 2000,
C-260/98, ??????? ??? (?????? 2000, ?. I-6537), ? ?????? ??? ??????? ???
????????? ??? ??? ??? ?????????? ?????????????? ?????????? ??? ?????? ??? ???????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ??? ??
????????????? ??? ?????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? (??, ?????? ?????? ??? 26?? ??????
1987, 235/85, ??????? ??? ?????? 1987, ?. 1471, ??? 8, ??? ??? ???, ???
???? ??????????, ?????? ??? ??? ?????????? ??? 14?? ?????????? 1985, 268/83,
R?mpelman, ??????? 1985, ?. 655, ??? 19, ??? ??? 27?? ??????? 2003, C?497/01, Zita
M?des, ??????? 2003, ?. I-14393, ??? 38).

44 ???????, ? ?? ??? ?????? ?????? ??? ? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
?? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?? ?????? ???, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
??????, ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ???

45 ???? ??????? ?? ??????????? ?? ?? ?????? 24 ??? ?????????? ??? ?? 6?? ???????? 1995,
C-4/94, BLP Gr?up (?????? 1995, ?. I-983), ? ?????????? ?? ?????????????? ????? ??
????????? ??????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????????? ??? ??
???? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??, ?????? ??? ??????????
????????? ??????? ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ??
?? ?? ?????????? ???, ??? ?????????? ??????????, ? ?????????????? ??? ??
?????? ??????????.

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

47 ????? ??????? ? ??????? ?????????????? ??? ?????? 27 ??? ?????????????? ???, ????
?????????? ??????? ?? ?????????? ??????? ??? ? ?????????? ??? ?????????????? ?????????????
??? ??????? ??? ?????? ?? ?????????? ??? ?????????????? ??? ?????????????? ??? ??????????.

48 ????? ?????? ?? ?????????? ??? ?????????? ? ?????????? ???? ?????????? ?????????? ??????????
????????? ?? ??? ?????? ? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ?????????? ???
??? ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????????????? ??????????????
????????????? ??? ?????? ?????? ?????????? ??? ??? ?????????????? (??., ?????? ????,
????????? ??? 8?? ??????? 2000, C-400/98, Breits?hl, ??????? 2000, ?. I-4321, ????? 39, ???
??? 21?? ??????? 2000, C-110/98 ??? C-147/98, Gabalfrisa ??., ??????? 2000, ?. I-1577,
????? 46), ????? ? ?????????? ???, ??? ?????? ? ?????? ?????????? ?????????? ??? ?????? 35 ???
????????? ???, ? ?????????? ??? ?????? ?? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
?????????, ?????????? ??????????????, ??? ??? ??? ?????????? ??? ?? ??????????????
???? ?????.

49 ????? ?????? ?? ??????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??????????? ??? ??????????
???? ?? ?????????? ??? ?????????????? ??????? ?? ?? ???? ?????? ??? ?? ?????? ??? ?????? ??? ??????
??????????, ?????????????? ?? ?????????????? ???, ??????, ? ?????????? ??? ?????? ??? ?????? ??????????????
?? ?????, ???? ??? ?????? ???? ??? ?????? ?????? ?????? ?????????????????? ???, ??? ?????? ??? ?????? ??
????????? ??? ?????? ?????? ???? ??? ?????? ?????? ?????? ?????? ?????? ??????. ????????, ???
????? ?????????? ?????????? ???? ???? ?????? ??? ?????? ?????? ?????????????? ?????????????? ??? ?????????? ???
?????????? ?????????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ?????????????? ?? ???
????????? ??? ? ?????????????? ??? ?????? ?????? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????????????? ???
????? ??? ?????????? ???? ??? ?????? ?????? ?????.. ? ?????????? ??? ?????? ?????? ???? ?? ??????
?????????? ????, ???? ??? ?????????? ?????? ?????????????? ?????????? ??? ?????????? ?????????????? ?
????????? ???????, ?????????? ???? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???? ???
????????? ?????????? ???? (??., ?????? ????, ?????????? ??? 29?? ?????? 1999, C-
158/98, C?ffeesh?p «Siberië», ?????? 1999, ?. I-3971, ?????? 14 ??? 21, ??? ??? 29??
?????? 2000, C-455/98, Salumets ???., ?????? 2000, ?. I-4993, ????? 19).

50 ??????, ??? ?????????????? ??? ??? ????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????????????? ??? ?????????? ??? ??????????.

51 ???? ?????????? ??????????? ????? ?? ?????????? ????? ?????? ?????, ??? ??? ????????

????? ?????? ????, ?????????? ?????????? ?????? ??? ?????????????? ????, ???
????? ??? ???? ?????? ????, ??? ?????????? ?????? ?????????????? ??? ???? ?????? ???
????? 2, ?????? 1, 4 ??? 5, ?????????? 1, ??? ?????? ??????, ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???? ?????? ??????, ?????????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????/? ??? ?????????? ?????? ?????? ?????? ???
????? ? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
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52 ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????????? ???
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53 ?????????? ????, ??? ?????? ?????????? ?????? ?? ?????????? ?? ?????????? ??
????????? ??? ?????????? ??? ?? ?????? 17 ?. ??? ?????? ?????? ?????? ?????? ?????? ??????
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????? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????????? ?? ?????? (??., ?????? ????, ?????? ??? 6?? ?????? 1995, C-62/93,
BP S?upergaz, ?????? 1995, ?. I-1883, ????? 18, ??? Gabalfrisa ?.??., ??????????????,
????? 43).

54 ?? ?????? ?? ???? ??? ?????? ?????????? ? ?????????? ?????? ??? ?????????? ??
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????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? (??., ??? ?????????? ????, ?????? ??? 3?? ?????? 2004, C-395/02, Transp?rt
Ser?ice, ?????? 2004, ?. I-1991, ????? 26). ??? ?????? ?????? ??? ?????? ???
????????? ???, ?????? ?? ???? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
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??? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? (????? ??? 8?? ?????? 2000, C-98/98, Midland Bank, ?????? 2000, ?. ?-4177, ???
29, ??? Zita M?des, ?????????? ???, ??? 37).

55 ????????, ??? ??? ?????????????? ??????? ?????? ?? ??? ???? ? ??????? ???
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????????? 1, ??? ?????? ??????, ?????? ?????? ?? ?????????? ?????? ?????? ??? ??????
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56 ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??
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57 ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ???
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?? ?????????????? ????, ??? ?????? ?????? ??? ?????? ?????? ????, ???
????????? ??????????????, ??? ??? ?????? ??? ?????? 2, ?????? 1, 4 ??? 5,
????????? 1, ??? ????? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977,
???? ?????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ???
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??? 10?? ?????? 1995, ?????? ?????? ?? ?????????? ?????? ?????? ??? ?????
????????? ?? ?? ??? ????? ??????, ?????????? ??? ?????????? ?????, ??? ????? ??
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(?????????)

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