

???????? C-11/07

# Hans Eckelkamp ???.

???

# Belgische Staat

(?????? ?? hof van beroep te Gent ??? ??? ?????? ?????????????? ??????????)

«????????? ??????????? ??? ????????? – ????. 56 ?? ??? 58 ?? – ????. ????? ?????????? – ????.  
?????? ???. ??? ???. ????? ???????, ??????? ???. ??? ???. ????? ???. ??????? ???. ???? ???.  
?????? ???. ??? ???. ????? ??????? ???. ??? ???. ????? ??????? ???. ????? ???. ??????? ???.  
???? ???. ??? ???. ??? ???. ????? ??????? ???. ????? ???. ??? ???. ????? ???. ??? ???.  
?? ???. ??? ???. ??? – ??????? – ??????? – ??????? – ??????? – ??? ???.»

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

1. ?????????????? ?????????? – ?????????? ??? ?????????? – ??? – ?????????? ???  
?????? ??????

(?????? 234 ??)

2. ?????????????? ?????????? – ?????????? ??? ?????????? – ??? – ??????????  
????????? ?????????? ??? ?????????? ?????????? ??????, ?????????? ?????? ?????? ?????????? ???  
????????? ?????????? ??? ?????? ?????????? ??????????

(????? 234 ??)

3. ?????????? ?????????? ??? ?????????? - ?????????? - ?????? ??????????

(????? 56 ?? ??? 58 ??)

1.     ???? ??????? ???? ?????????????? ??? ?????? 234 ??, ??? ?????????????? ?? ??? ?????? ??????????  
???? ?????????????? ??????? ??? ?????? ?????????????? ??? ??? ??????????????, ??? ?????????????  
???? ?????????? ?????????????? ?????????? ??? ?????????????? ??? ?????????? ??????????????. ??  
????????????? ??? ?????? ?????????? ?????????????? ??? ?????? ?? ?????????????? ??? ??? ?????????? ?  
???? ?????? ?????????? ??????????????, ?????? ?????????? ?????????????? ?????????????? ??? ???  
????????????? ??? ?? ?????? ??????????. ??????????, ??????, ?????????????? ???  
????? ??????????, ??? ?????? ?????????? ??? ?????????? ??? ??????????????, ??? ??????????, ?????????????? ???  
?? ?????? ?????????? ??????????, ?? ??????????, ?????????????? ?????? ??? ?????????? ??? ?????????? ???  
?????????, ??? ?????? ?????????????? ??? ?????? ?????????????? ?????? ?????????????? ??? ?????????? ???  
????? ??? ?????????? ??? ??? ?? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ???  
???????, ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ???  
???????, ?? ?????????? ?????????? ??????????, ???' ??????, ?? ??????????.

(???. ??????? 27, 52)

2.     ?????????? ???. ?????????????? ???. ?????? 234 ?, ???. ?????? ?????? ???. ???????????  
???????. ??????????? ???. ?????????????? ???. ?????? ?????? ?????? ??????????? ???. ?????? ?????? ???.  
???????. ??????????? ???. ? ?????????? ???. ?????? ?????????? ???. ?????? ?????? ???. ?????? ?????? ???.

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

(???. ?????? 28)

3. ?????????????????? ?????????? ??? ?????? 56 ?? ??? 58 ?? ?????? ?? ?????????????? ???  
??? ?????? ??? ?????????? ?????? ???????, ? ?????? ?????? ??? ?????????? ???  
????????? ?????? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ???  
????? ?????? ??? ??? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????????? ??  
????? ???, ??? ? ?????????????? ??? ??????????, ??? ??? ?????? ??? ?????? ???, ???,  
??? ?????? ??? ??? ??? ??? ?????? ???, ?????????? ??? ? ?????????? ??? ??????????  
????????? ??? ?? ?????? ??? ??????????, ??? ??? ?????? ??? ?????????? ???, ???  
????? ??? ?????????? ???.

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

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

(???. ??????? 46, 60, 63, 68, 71 ??? ??????.)

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

?? 11?? ?????????? 2008 (\*)

«????????? ?????????? ?? ????????? – ????? 56 ?? ??? 58 ?? – ????? ?????????? ? ?????  
?????? ??? ????? ????? ?????????? ???????, ??????? ?? ??? ????? ??? ?????????? ??  
?????? ??? ??? ????? ????? ??????? ?? ????? ?? ?????????? ??????? ??? ??????? ?? ??  
???? ??????? ??? ??? ??? ? ?????????????? ?????????? ??? ????? ?? ??????? ??? ??????? ?? ??  
?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??????»

???? ?????? C?11/07,

??. ?????????? ?????? ??????? ?????????????? ?????????? ?????? ??? ?????? 234 ??,  
?? ??????? ?? hof van beroep te Gent (??????) ?? ?????? ??? 11?? ?????????? 2007, ?  
????? ??????? ??? ?????????? ??? 18 ?????????? 2007, ??? ?????? ??? ??????

**Hans H. Eckelkamp,**

**Natalie H. Eckelkamp,**

**Monica H. Eckelkamp,**

**Saskia H. Eckelkamp,**

**Thomas H. Eckelkamp,**

**Jessica H. Eckelkamp,**

**Joris H. Eckelkamp**

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**Belgische Staat,**

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

????????? ??? ??? A. Rosas, ??????? ????????, J. N. Cunha Rodrigues, J. Klu?ka, A. Ó  
Caoimh (?????????) ??? A. Arabadjiev, ????????,

??????? ??????????: J. Mazák

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

????????? ?????? ??? ??????? ???????????? ??? ??????? ??? ??' ???????????? ???????????? ???  
13?? ?????????? 2007,

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

- ?? H. Eckelkamp, N. H. Eckelkamp, M. H. Eckelkamp, S. H. Eckelkamp, T. H. Eckelkamp, J. H. Eckelkamp ??? J. H. Eckelkamp, ?????????????? ??? ??? B. Coopman ??? M. Van Daele, advocaten,
- ? ??????? ??????????, ?????????????? ??? ??? L. Van den Broeck, ?????????????? ??? ??? ??? A. Haelterman, advocaat,
- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal, A. Weimar ??? R. Troosters,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ?? ?????????? ??? 13?? ?????? 2008,

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

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1 ? ?????? ?????? ?????????? ?????????????? ?????? ??? ?????? ??? ?????? 12 ??,  
17 ??, 18 ??, 56 ?? ??? 58 ??.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????  
???? ?????????? ??? H. Eckelkamp, ? ?????? ?????? ??? ?????????? ??? FOD  
Financiën, Administratie van de BTW, registratie en domeinen (????????????? ????)  
????????? ????, ?????????? ???, ?????????? ??? ?????? ??? ?????????? ????) ??  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????? ??? H. Eckelkamp, ?? ?????? ?????????? ???  
??????, ?? ?????????? ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? H. Eckelkamp ??? ?????????? ??? ??????.

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

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

3 ?????? ?? ?? ????? 1 ??? ?????? 88/361/???, ?? 24?? ??????  
1988, ??? ?? ??? ?? ??????? ??? ?????? 67 ??? ?????? [?? ?????? 67 ??? ??????? ??  
(?? ?????? ??????????? ?? ?? ?????? ??? ?????????? ??)] (?? L 178, ?. 5):

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

2. ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????????? ???  
??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ??????????»

4 ?????? ??? ??????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
88/361 ???????????, ??? ??????? ?, ?? «????????? ?????????? ?????????? ??? ??????»,

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

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

5      ?????????? ?? ?????????????? ?????? ?????????? ??? ?? ?????????? ??? ?????????????  
???????????, ??? ?????????????? ???, ??? ?????????????? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??????????????.

6      ?? ?????? 1 ??? ?????????????? ?????? ?????????? ?????????? (?? ?????: ??????)  
?????? ?? ????:

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

1) ????? ?????????????? ??? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????? ???  
????????? ??? ???????, ??? ??? ??????? ??? ??????,

2) ?????? ?????????????? ?????????? ?????? ?????????? ??? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ??????.

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

7      ?????? ??? ??????? 15 ??? ??????, ? ?????? ?????????????? ?????? ??????????????, ????

8      ?? ?????? 18 ??? ????????, ?? ?????? ?????? ??? ?????????????? ??????????????, ??? ???? ?? ?????:.

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

9      ?????? ??? ??????? 29 ??? ??????, ??? ??????, ?????????????? ?? ?????? ?????? ?? ???????  
??? ????????, ??? ??? ???? ??????? ?? ?????????? ??? ?????? ??? ?????? ??? ????????, ???  
????? ??????? ?? ?????????? ?? ?????? ?????? ?????????? ?????? ??? ?????? ??? ????????, ???  
????????? ?????????? ??? ??? ?????????? ?????.

10 ?? ?????? 40 ??? ??????? ?????????? ??? ? ?????? ?????? ?????? ?????????????? ?????? ??  
????????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????, ??? ? ?????? ?????? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????, ??? ?  
??? ?????? ?????? ?? ??? ?????? ?????? ??? ??????

11      ????

«? ?????????? ?????????? ??? ??????? ?????? ?????????????? ?????? ?? ?????????? ?? ??????  
??? ??????? ?????????? ?????????????? ??? ?????????? ??????????.

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

12 ?? ?????? 48, ?????????? 1, ?? ?????? ??????? ??????? ?? ?????? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????  
????? ??????. ? ?????????? 2, ??????, ??? ?????? ?????? ??? ?????? ?? ???:

«?? ??? ?? ?????? ?????? ?????????? ?????? ?????????????? ??? ?? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ?? ?????? 60bis, ?????? ?? ? ?????? ?????????? ??? ??  
????? ?????? ?????? ?????? ??? ?????? ? ??? ?????????? ?????? ??????»

13 ?????? ??? ?????????? ??? ?????? ??? ?? ?????????????? ?????????????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ??  
????? ??? ?????? ??????????.

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

14 ?? ?????????? ??? ?????? ?????? ??? ?? ?????????? ??? H. Eckelkamp, ? ????  
????????? ??? Düsseldorf (????????) ??? 30 ?????????? 2003.

15 ??? 13 ?????????? 2002 ? H. Eckelkamp ?????? ??? ?????? ?? ?????? ??????????  
????????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ???, ??? H.  
Eckelkamp. ?? ?????????????? ??? ?????? ??? 5? ?????? 2003, ? H. Eckelkamp ???  
????????? ?? ?????? ?????? ??? ?????? ?????????? ??? Knokke-Heist (?????) ???  
????????? ??? ?????? ??? ?????? ???.

16 ??? 29 ?????? 2004 ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? H. Eckelkamp, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ???, ??? 200 000 ????. ??? ?????? ??? ?????? ??? «?????».

17 ??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????, ??? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? . ? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? H. Eckelkamp ??? ??????  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ???.

18 ?? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? 29 ?????? 2004.

19 ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???, ?? ??????,  
????? ?? ??? ?????????? ???, ?????? ??? «??? ??? ?????? ??? ?????? ????  
????????? ???», ?????? ??? 31 ?????????? 2004, ?????? ??? rechtbank van eerste  
aanleg te Brugge, ?????? ?? ??? ?????? ?????? ?? ?????????? ?? ??? ??? ? ??????  
????? ???, ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????? ??? H. Eckelkamp.

20 ?? ??????????? ??? ?????????? ??? ?????????? ??? ??????????????? ??? 30 ??? 2005  
?? ?? ?????????? ???, ??? ?????????????? ??????? ???, ??? ?????????? ? ?????????? ???  
????????? ? ??????? ?????????? ?? ??????? ??? ?????? ?? ?????? ?? ?????????? ???  
??? ?????????? ??? ?????? ?????????? ?? ??????????.

21 ?? ??????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??????  
??? ?????????? ??????????, ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ?????? ?????????? ?? ?????????? ??????. ?????????? ??? ?? ??????????  
????? ?????????? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ??????????  
????????? ??? ??????????.

22 ?????? ??? ?????????? ???????????, ?? Belgische Staat (???????)  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ??????????  
???, ?? ?????? ??????????, ??? ?????????? ??? ?? ?????? ?????? ?????? ?????????????? ??  
????????? ??? ?????? ?????????? ??? H. Eckelkamp. ?????? ? ?????????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ?????????? ??? ??????????  
??? ?????????? ?? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? 58 ??  
??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ??? ??????.

23 ?????? ?? ?? ?????? ??????????, ??? ?? ?????? ?????????? ??? 13?? ??????????  
2002 ??? ?? ?????????????? ??? 5?? ?????? 2003 ?????????? ??? ? H.  
Eckelkamp ?????? ??? ?????? ?????????? ?? 220 000 ???.

24 ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??????????  
????????? ?????????? ??? ?????????? ???, ?? hof van beroep te Gent ?????????? ??  
????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ??????????  
?????:

«????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 12 [??], 17 [??] ??? 18 ??, ??????, ???  
?? ?????????? ??? ?????????? ??? ?????? 56 [??] ??? 58 ??, ???????, ??? ?????????? ?????? ??????????  
???? ?????? ????, ??? ?? ??????, ??? ?????????? ?????? ?????? ?????? ?????????? ??????????  
????????? ?????????? ?????????? ?? ?????????? ?????? ?????? (?? ?????? ?????????? ???  
?????????), ?? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????? ?????????? ??? ???????, ?????????? ?????? ?????????? ?????????? ?????????? ??? ?????? ???  
????? ??? ?????????? ?? ?????? ??? (????? ?????? ?? ?????? ?????????? ?????? ??)  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? (????? ?????? ??? ?????? ?????????? ???), ?? ? ??????????????  
?????????, ??? ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ?? ??????, ???  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???  
????? ???, ?? ??? ?????? ??? (?? ?????? ??????);»

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

25 ? ?????? ?????? ?????? ??? ? ?????? ??? ? ?????? ??? ? ?????? ?????????? ??????????  
????? ??????????. ??????????, ??????, ???, ??? ?????? ?? ?????????? ?????? ???  
????????? ?? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ??????  
????????? ??? ??????, ?? ?????? ?????????, ?? ?????? ?? ?????? ??? ?????? ??? ?????????? ???  
????? ?????. ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ???  
????????? ??? ??? ??????. ??????, ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???

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

26    ???????, ?????? ??, ??? ?????? ?? ?????????? ? ??????? ?? ?????? ?????, ??  
????????? ?????? ?????? ?????? ?????? ??????. ??? ?????? ???, ?? ?????? ?????????? ??  
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??  
????????? ??? ?????? ?????? ?????, ?????? ?????, ??? ?????? ?? ?????? ??? ?????? ???  
????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??  
?? ??? ??????. ??????, ? ?????? ?????? ?????? ?????????? ??? ?????? ?? ?' ??????????  
????????? ???, ?? ??????????, ??? ?????? ?????? ??? ?? ?????? ?? ?????? ???, ??  
????? ?????????? ??? ??????, ??? ?????? ?????????? ??? ?????? ?????? ?????? ???  
?????? ? H. Eckelkamp ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ??? ??????????  
????, ?????? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????????  
?? ??? ?? ?????? ??? ?????????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??  
????????? ??? ?????????????????? ?? ??? ??? ??????, ??? ?????? ?????? ?????? ??? ??  
????????? ?? ?? ??? ?????? ??????, ??? ??? ?????? ??? ?????????? ??? ?????????? ???, ??  
?? ?????????? ?????? ?????? ??????.

27    ??????, ?????? ?? ?????????? ???, ??? ?????? ??? ?????????? ??? ?????? 234 ??,  
??? ?????????? ?? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??  
??? ??????????, ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? ??????????  
??? ?????? ??????????. ??????, ?????????? ?????? ?????????? ??? ?????? ??????????  
??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????  
????????? ??????, ?? ??????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????  
????? ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? .  
????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??????????, ???' ????, ?? ?????? (????????? ??? 12? ?????? 2005, C-  
145/03, Keller, ?????? 2005, ?. I-2529, ??? 33, ??? ?? 18? ?????? 2007, C-119/05,  
Lucchini, ?????? 2007, ?. I-6199, ??? 43).

28    ??? ?????? ?????? ?? ?????????? ?????? ?????????? ?? ?????????? ?????? ??????  
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ? ?????? ??? ??????????  
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ?? ?????????? ??  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ??? ?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ? ?????? ?????? ?????? ???  
????????? ?????????? ?? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????????  
(??., ?????? ???, ?????? ??? 13? ?????? 2001, C-379/98, PreussenElektra, ??????  
2001, ?. I-2099, ??? 39, ??? 22? ?????? 2002, C-390/99, Canal Satélite Digital, ??????  
2002, ?. I-607, ??? 19, ??? ?????????? ?????? Lucchini, ??? 44).

29    ?????????????? ??? ?????? ??? ?????????? ?? ??????????.

30    ?? ?????????? ???????, ????, ?? ?????????? ?? ?? ?????? ?????????? ????????,  
????? ??? ?????????? ????, ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? . ??????, ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?? ?? ?????????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ???  
????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ???

31    ??????, ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

??? H. Eckelkamp ??? ???? ?????? ??? ?? ?????????????? ?????????? ??? ?????? ?????? ???  
?? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??????,  
?????????, ???, ??? ???? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????, ????  
????????? ?? ?????????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ??????,  
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????,  
????????? ?????? ?????? ??????.

32    ?????????, ?????????? ? ???????, ???????, ??? ? ?????? ?????????? ??? ??  
????? ?????? ?? ?????????? ??? ?? ?????????? ?? ?????????? ?????????? ??? ?? ??????  
??? ?????? ?????????? ???, ??? ?? ?????????? ??? ?? ?????????? ?? ?????? ??? ??  
(?. ?????? ??? 4?? ????? 1999, C-262/96, Sürül, ?????? 1999, ?. I?2685, ????? 95). ???  
????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????? ?? ??  
????? ???, ?? ?????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??  
????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
????? ?????? ??????.

33    ???????, ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????  
???, ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????  
??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? H. Eckelkamp ??? ??  
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???  
????? ??? H. Eckelkamp ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
???. ??????, ??? ?????? ??? ?? ?????? 19 ?? ?????? ?????? ??? ?????? ?, ?? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ???.

34    ???????, ?????????? ??? ? ?????? ?????? ?????????? ?????????? ??? ?????????? ???  
????? ? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????  
????? ?? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? (?. ?????? ??? 12?? ?????????? 2008, C-2/06, Kempter, ??? ?? ?? ??  
????????? ??? ?????? ??? ?????? ??? 42). ?????? ?? ?????? ?????????? ??????????  
?? ? ?????? ??? ?????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (?. , ???,  
????? ??? 16?? ?????????? 1982, 132/81, Vlaeminck, ?????? 1982, ?. 2953, ?????? 13  
?? 14).

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

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

36    ?? ?? ?????? ???, ?? ?????? ?????????? ???, ???' ??????, ?? ?? ?????????? ???  
????? 12 ??, 17 ?? ?? 18 ??, ??????, ??? ?????? ??? ?????? 56 ?? ?? 58 ??, ???????,  
????? ?? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????  
?????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

37 ?? ?????? 56, ?????????? 1, ?? ?????????? ?????? ?????? ?????????????? ??? ?????? ???  
????????? ?????? ??? ?????? ????? (?????? ?? 6?? ?????????? 2007, C-463/04 ?? C-  
464/04, Federconsumatori ?.??., ?????? 2007, ?. ?-10419, ????? 19 ??? ??? ???  
????????? ??????).

38 ?????????? ??? ? ??????? ?? ??? ?????????? ?????? ??? ?????? «????????? ??????»  
?? ?????? 56, ?????????? 1, ??, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? 88/361, ?????????? ?  
????? ??? ?????? ??? ?????? ?? 69 ??? 70, ?????????? 1, ??? ?????? ??? (??  
????? ?????????? ?? 69 ??? 70, ?????????? 1, ??? ?????? ??, ?? ?????? ?????????? ??  
?? ?? ?????? ??? ??????), ?????????? ???, ?????? ?? ?? ?????????? ??? ??  
?????????????, ??? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??  
????????? (?., ?????? ???, ?????? 23?? ?????????? 2006, C-513/03, van Hilten-  
van der Heijden, ?????? 2006, ?. I-1957, ??? 39, ??? 3?? ?????? 2006, C-452/04, Fidum  
Finanz, ?????? 2006, ?. I-9521, ??? 41, ?????????? ?????? Federconsumatori ?.??.,  
????? 20, ??? ?????? ?? 17?? ?????????? 2008, C-256/06, Jäger, ??? ??? ??? ???  
????????? ??? ??????, ??? 24).

39 ??????, ?? ??????????, ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ??? ?????? ?, ?? ??? ?????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????, ?????????? ?? . ??? ?? ?????? ?????????? ??? ?????? ???, ?????????? ???  
????? ?? «????????? ?????? ?????? ?????? ??? ?????? 88/361, ??? ?????????? ?  
56 ??, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? (?. ?????? ??? 11?? ?????????? 2003, C-364/01,  
Barbier, ?????? 2003, ?. I-15013, ??? 58, ?????????? ?????? van Hilten-van der  
Heijden, ??? 42, ??? ?????????? ?????? Jäger, ??? 25).

40 ? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???.

41 ??????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 56, ?????????? 1, ??.

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

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

?????? ?????????????? ??? ??? ?? ????? ?????????? ?? ?? ??? ????? ?????? (??., ????????,  
????????????? ??? Barbier, ??? 62, ??? Jäger, ??? 30).

44      ????? ?????? ??? ??????????????, ? ?????????? ????? ?????????????? ??? ?? ?????? ???  
????????????? ??? ?? ?????? 56, ?????????? 1, ??, ?????? ?????????? ?????????? ??? ?????????? ???  
????????? ??????????, ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ???  
??? ?????????? ??? ?????????? ? ?????????? ?????????? ?????????? ?????????? ??? ?? ?????? ???  
??? ?????? ?????????? ?? ?????? ?????????? ?????????? ?????????? ??? ?? ?????? ?????????? ???  
????????? ??' ?????? (????????????????? ?????????? van Hilten-van der Heijden, ??? 44,  
??? Jäger, ??? 31).

45    ?? ???????????, ??????? ?? ??????? ?????? ?????????? ?????????? ??? ?????? ???.  
????? ?????????????? ??? ??????? ??? ?????????? ?????? ?????????? ?????????? ??? ??????  
??? ??????? ?? ??????????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??  
????????? ?? ? ???????????????, ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ??  
????? ?????? ????, ?? ?????????? ?????? ?????? ?? ?????????? ??? ?????????? ??? ??????  
?????????, ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

47      ? ?????????? ??? ??????????????? ?????? ??? ?????????????? ??? ?? ?????????????? ???  
????????? ????????????, ??????? ?? ?? ?????? ? ??????? ??? ?????????? ????? ????????????, ???????  
????????? ??????????????? ??????? ??????? ??? ?????????????? ??? ?????????? ????????????, ??? ??  
????????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ??????????????? ??? ?????? ???????, ???  
????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????????? ??? ?????? ??????? ??  
????? ?? ?????? ??????, ???? ??? ?????????? ??? ?????? ??? ????????????, ??? ?? ?????????? ???  
?????????? ?? ??? ?????????? ??? ????????????, ?????? ??? ??????????. ??????????, ??  
?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????????? ??? ??????????? ??? ??  
????????? ??? ??????????? ??? ??????? 43 ??? 44 ??? ?????????? ?????????? (???. ??????,  
???????, ??????????????? ??????? Jäger, ????? 34).

48 ? ??????? ?????????? ?????????????? ?????? ??? ? ??????? ??? ??????? ?????  
????????? ??? ?? ??????? ??? ?????? ??? ?????? ??? ?????????????? ??????????  
Barbier, ?????????????? ??? ?? ??? ??? ?????? ?????? ??? ?????????? ??????????  
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????????? ??? ??????, ??? ??? ?????? ?????? ??? ?? ?? ????????,  
????? ? ?????????????? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ???  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ????.

49 ??????????? ? ??????? ??, ??? ?????????????????? ?????? Barbier, ?? ???????  
?????? ??????? ??, ?????????? ??, ?????????? ??, ?????? ??, ?????????? ??, ?????? ??, ?????????? ??,  
??? ?????????? ??, ?????? ??, ?????????? ??, ?????? ??, ?????? ??, ??????, ?????? ??, ?????? ??, ?????? ??,  
????????? ??, ?????????? ??, ?????? ??, ?????? ??, ??????, ?????? ??, ?????? ??, ?????? ??, ?????? ??,  
????????? ??, ?????????? ??, ?????? ??, ?????? ??, ?????? ??, ?????????????? ??, ?????????????? ??, ??, ?????????????? ??,  
????????? ??, ??, ?????? ??, ??????, ??, ?????? ??, «????????? ??, ??????????» ??, ??, ?????????? ??, ??, ?????? ??,  
?????????. ???????, ??, ?????? ??, ?????? ??, ?????? ??, ?????????????? ??, ??, ?????????? ??, ?????? ??.

50      ???????, ??? ??????? ???? ?????? 49 ?? ?? 50 ??, ?? ??????????? ??????????? ???

?????? ??????? ??? ?? ?????????? ????? ?? ?????????? ????????, ??? ??????? ???  
???????????, ?? ??????? ??????? ??????? ?? ?????????? ????? ?? ?????????? ??????? ??  
?? ?????????????? ?? ?? ?????? ??????? ?? ?????????? ?? ?????????? ????? ?? ?????? ??????  
????, ???, ?????????, ??????? ?? ?????? ??????? ????? ?????? ?????? ???????, ????????  
??? ??????? ?? ?????? ??????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????  
????????? ??? ?? ?????? ??? (??., ???????, ??????? ??? 12?? ??????? 2003, C-234/01,  
Gerritse, ??????? 2003, ?. ?-5933, ??????? 27 ??? 28).

51    ??? ?? ?????? ??? ??????? ??' ?????????? ????????, ??? ??  
????????? ??? ?????? ????? ?? ?? ?????? ?????? ???, ???, ??????? ??  
????????? ?????????? ?????? ?????? ???????, ?????? ??????? ?????? ??????? ??  
????????? ?????? ??? ?? ?????? ?????? ??????. ? ???????, ??????, ?????????? ???, ???  
????? ??? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ?????? ???  
????????? ??? ??????, ??? ?????????? ??? ?????? ???????, ?????? ?? ?????????? ??? ?  
????? ??? ?????? ??? ??? ?????? ???????.

52    ????????, ??????? ?? ?? ??????? ?? ?? ?????????? ??? ??????? ?? ???????  
?????????, ?? ?????? ??? ?????????? ?? ?????????? ??? ?? ??????? ?? ??????? ??  
?????? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ??? ??????? ??? ?????????? ???  
????? 234 ??, ?? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?? ??  
????????? ? ??? ?????? ?????????? ??????????????, ????? ?????????? ?????????????? ???  
?? ?????????????? ??? ?? ?????? ?????????? (??., ???????, ??????? ??? 16?? ???????  
1998, C-235/95, Dumon ??? Froment, ??????? 1998, ?. I?4531, ????? 25).

53    ??? ??????? ?? ?? 32 ??? ??????? ????????, ?????????? ??? ??  
????????? ??? ?? ?? ??????? ?? ?????????? ?? ?????? ??? ?? ???????, ??? ??  
?????? ??????, ??? ?????????? ??? ?????? ???????, ??? ? ??????? ??? ??  
??? ?????? ????, ??? ?? ??????? ?? ?? ??????? ??? ?????? ?????? ?????? ??? ??  
??? ?? ??????? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??  
?????? ??? ?????? ???.

54    ?? ??? ????????, ?????????? ?? ?? ??????? ?? ?? ?????????? ??? ??  
????? ??? ??????? ?? ?? ??????? ?? ?????????? ?? ?? ?? ?????????? ??? ?? ???????, ???  
?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?? ??????? ??? ?? ???????, ???'  
?????, ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ???????, ??????? ?? ??  
????? 56, ??????? 1, ??.

55    ????????, ??????? ?? ??????? ?? ?? ?????????? ??? ?????????? ??? ??  
????????? ??? ?? ??????? ?? ??????? ?? ?????????? ??? ?? ?????????? ??? ?? ???????.

56    ???????, ?????? ?? ?????????? ???, ??? ?? ?????? 58, ?????????? 1, ??????? ??, ??,  
«?? ?????? 56 ??? ?????? ?? ??????? ??? ?????? [...] ?? ?????????? ??? ???????  
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??  
????????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
??? ??? ?????? ?????? ?????????? ??? ?????? ???».

57    ? ??????? ??? ?? ?????? 58 ?? ??????, ?? ?????????? ??? ?? ?????????? ??? ??  
????????? ?????????? ??? ??????????, ?? ?????????? ????. ???????, ??? ?????? ??  
????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? (??.  
????????? ??? Jäger, ??? 40).

58 ??????????, ? ??????? ?? ?????? ?????????? ?? ?????? 58, ?????????? 1, ??????? ?,  
?? ?????????? ?? ?? ??? 58, ?????????? 3, ??, ??? ?????? ??? ?? ?????? ??????????  
???? ?????? ?????????? ? ?????????? 1 ??? ?????? ????? «??? ?????? ?? ?????????? ???  
???? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? ?????  
???? ?????? ??? ??? ?????? ??? ?????? ??? ?????? 56» (?. ?????????? ??? 6?? ??????  
2000, Verkooijen, C-35/98, ?????? 2000, ?. I-4071, ????? 44, ??? 7?? ?????????? 2004, C-  
319/02, Manninen, ?????? 2004, ?. I-7477, ????? 28, ??? ??? ?????????? ?????? Jäger,  
???? 41). ??????, ? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ???  
????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???  
?? ? ?????????? ???, ??? ??? ?????? ??? ?????? ???, ?????? ??? ?? ??? ????  
????? ?????? ? ?????? ?????? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ??? ??????  
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???? ??????  
?????.

59 ??????????, ? ??????????? ?????????????? ? ?????? ?????????????? ?????????? ??? ?????? 58,  
?????????? 1, ?????????? ??, ?? ?????? ?? ?????????????? ??? ??? ?????????????? ?????????? ???  
?????????? ? ??????????? 3 ??? ?????? ??????. ??????, ??? ?? ?????????? ?????????? ??? ??? ??  
????? ?????????? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????, ? ?????, ???  
????????? ??? ?????? ??? ?????? ?????? ???????????, ????? ?????????? ??? ?????? ??? ?????? ??  
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????,  
????????? ??? ?? ? ?????????????? ???, ??? ??? ?????? ??? ?????? ???, ?????????? ???, ?????????? ???  
?? ??? ?????? ??? ? ?????? ?????? ???, ?????? ?? ?????????? ??? ?????????????? ??  
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?  
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??????????????  
? ?????????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? (?. ??????????????)  
????????? Verkooijen, ??? 43, Manninen, ??? 29, ??? Jäger, ??? 43).

60      ???????, ??????????????, ??????, ???, ?????????? ????? ??? ?????????????? ??? ??  
?????? ?????????? ??? ?????????????? ??? ?????? 47 ??? ??????? ??????????, ? ??????  
????????????? ??? ??? ????? ?????????????? ?????????????? ??? ??????? ?? ?????????? ??  
????????????????? ??? ??? ??? ?? ??? ????? ?????????????? ??????????????.

61 ????????, ??? ???. ?????????? ???. ?????????????? ???. ?????????????? ???. ?????????? ???. ?????????? ???. ?????????? ???.  
??????????, ??? ???. ??? ???. ??? ???. ??? ???. ??? ???. ?????????????? ???. ?????????????? ???. ?????????? ???. ?????????? ???.  
????????? ???. ???. ?????????? ???. ??. ?????????? ?????????????? ???. ?????????? ???. ?????????? ???. ?????????? ???.  
????????? ???. ?????????????? ???. ???????, ??? ???. ?????????? ???. ?????????? ???. ?????????? ???. ???. ???????????, ?  
????????????? ???. ??? ???. ?????????????? ???. ?????????????? ???. ???' ?????????? ???. ?????????? ???. ?????????? ???.  
????????????? ???. ???. ??? ???. ??? ???. ?????????? ???. ?????. ??? ???. ?????????? ???. ???, ??? ??????????  
????????????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.  
???. ?????????? ???. ?????????? ???. ?????????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.  
????????????? ???. ???????, ??? ???. ??? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.  
?????? ???. ???, ???????, ??? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.  
?????? ???. ???, ???????, ??? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.  
??? H. Eckelkamp ?????? ???. ?????????? ???. ?????? ???. ?????????????? ???. ?????? ???. ?????????? ???.  
?????????? ???????, ??? ???. ???????, ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.  
????????? ???. ??. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???. (?).., ???????,  
????????????? ???. ?????? Jäger, ??? 44).

62      ????? ?????????????? ?? ?????????????? ??? ?????? ??????, ? ??????? ??????? ???????, ???'  
?????, ???? ???? ?????????????? ??????? ??? ?????? ??? ?????? ??? ??????? ??? ?????? ???

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

63    ?????? ??? ?????? ?????? ??????, ??? ?????? ?? ?????????? ?????????? ??????????  
?? ?????????? ??? ?????????????? ??? ?????? ?????? ?????, ??? ?????? ?????? ??????  
????????? ??? ?????? ?? ??? ?????, ??? ??? ?????? ??? ?????? ???, ??? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ???  
??? ?????? ??? ?????? ??????????, ??? ??????, ??? ?????? ?? ?????? ?????????? ??????????, ??  
????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ?????, ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???  
????. ? ?????? ??????????, ?????????????????? ??? ?????????? ?????? ??? ?????? ???  
????????? ?? ??? ?????, ??? ?????? ??? ?????? ?????? ?????????? ?????, ??? ?????? ???  
??? ?????, ??????? ???' ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????????? ?????? ?????? ??? ?????? ?????????? ?????, ??? ?????? ??????????  
????? ?????? ??? ?????????? ?????? ?????????? ?????? (??., ??' ??????, ??  
????? ??? ?????????? ??? ?????????? ?????, ?????????? ??? 28?? ?????????? 1986, 270/83,  
????????? ??? ?????, ?????? 1986, ?. 273, ??? 20, ??? 14?? ?????????? 2006, C-  
170/05, Denkavit Internationaal ??? Denkavit France, ?????? 2006, ?. I-11949, ??? 35, ???,  
??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????  
????????? ??? ?????? ??? ?????? C-43/07, Arens-Sikken, ??? ??? ?????? ?????? ??????????  
??? ??????, ??? 57).

64    ??????, ????, ?? ?????????? ?? ???? ?????????? ??? ?????????? ?????????? ???  
????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

65    ? ?????? ?????????? ?????????? ???, ?????? ??? ?????????? ?????????? ? ???  
????? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?? ?????? ??? ??????  
????? ?????????? ??? ?????? ?? ?????? ??? ?????????? ???, ???' ??????, ?????????? ???  
????????, ?????? ?? ???, ?????? ?? ??? ?????? ??? ?????? ?????? (????????? ??? 13??  
????????? 2005, C-446/03, Marks & Spencer, ?????? 2005, ?. I?10837), ?????? ??  
?????????.

66    ??????, ??????????, ???' ????, ? ?????? ??? ???? ?????????? , ?? ???? ??????  
?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? , ??????????  
?? ?? ?????????? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ???  
????? ?????? ??? (????????? ?????? Barbier, ?????? 71).

67    ????????, ??? ?????????????? ??? ?????? 13 ??? ?????????? ?????????? , ?????? ??  
????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
?????????.

68    ?? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ?????? ??? ??????,  
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????? ??????????  
?? ?????????? ??? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?? ??????  
????? ??? ?????? ?????????? ? ?????????? ?????? ??? ?????? ??? ?????? ???, ? ????

??. ?????????? ?? ??????????????, ?? ??? ? ??. ?????, ?? ?????? ??? ??????????? ?? ??????????? ?? ????????????  
??? ??? ? ?? ?????????? ???????, ???? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
?????? ?????? ??? ?????? ?????????? ?? ?????????? ???????, ??? ?????? ??? ?????? ??? ?????? ??  
?? ??? ?????? (??., ???????, ?????????? ?????? Arens?Sikken, ??? 65).

69    ????????, ??? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ????????,  
????????? ??? ?????? ???, ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ?? ?????? ??? ?????? ??? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ?????, ?????????? ??? ?????? ??? ?????? ??? ???  
????????? ?????????? ??? ?????? (??., ???????, ??????? ??? 8?? ?????????? 2007, C-  
379/05, Amurta, ?????? 2007, ?. ?-9569, ??? 78).

70    ?????, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???,  
???? ??? ?????????? ??? ?????? ???????????, ? ?????? ?????? ?????? ?????????? ??? ???????,  
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????  
??? ?????? ??? ?????????? ??? ???????, ??? ? ?????????? ??? ?????? ??? ?????????? ???, ??? ???  
????? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ???????, ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ???, ?????? ???, ???, ? ?? ??????  
????????? ??? ?????? ?? ?????? ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?  
????.

71    ?? ?? ??????, ?????? ?? ?????? ??? ?????????? ??? ??????? ? ?????????? ??? ??  
????????????? ?????????? ??? ?????? 56 ?? ?? 58 ?? ?????? ?? ?????????? ??? ??  
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???, ??? ? ?????? ???  
????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ??????????, ??? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????, ?????????? ??? ? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
?????????, ??? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??????.

72    ?????? ??? ?????? ??????, ??? ?????? ?????? ?? ??? ?????? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 12 ??, 17 ?? ??? 18 ??.

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

73    ?????????? ??? ? ?????? ?????????? ??? ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ???  
??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?' ???  
????????? ?? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????  
???? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

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

?? ?????????????? ?????????? ??? ?????? 56 ?? ??? 58 ?? ?????? ?? ?????????? ??  
??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????, ??? ? ??????  
????? ?????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ???  
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ???, ???  
? ?????????????? ??? ??????????, ??? ??? ?????? ??? ?????? ???, ??? ??????  
????? ??? ?? ??? ?????? ???, ?????????? ??? ? ?????????? ??? ??????  
????????? ??? ?? ?????? ??? ?????? ?????? ??????, ??? ??? ?????? ??? ?????? ???,  
?? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ???.

(?????????)

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