

????????????????? ?????????? C-155/08 ??? C-157/08

X

???

E. H. A. Passenheim-van Schoot

????

Staatssecretaris van Financiën

(????????? ??? Hoge Raad der Nederlanden
??? ??? ?????? ?????????????? ??????????)

«????????? ?????? ?????????? – ?????????? ?????????? ??? ?????????? – ?????? ?????????? –
????? ?????????? – ?????????? ?????? ?????????? ?????????? ??? ?????????? ?? ??? ?????? ??????
????? ?????? ??? ?? ?????? ?????????? – ?????????? ?????????? – ?????????? ??????????
????????????? ?????????? ?????? – ?????????? ??? ?????????? ?????????? ?????????? ??????????
????????? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ??
????????? ?????????? ?????? – ?????? 77/799/?? – ?????????? ?????? ??? ?????????? ?????? ??
????????? ?????? ??? ?????? ?????? ??? ?????????? ?????? – ?????????? ?????? ?????????? ??????»

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

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

(????? 49 E? ??? 56 ??- ?????? 77/799 ??? ??????????)

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

(????? 49 E? ??? 56 E?)

1. ?? ???? 49 ?? ??? 56 ?? ?????? ?? ?????????? ??? ??? ?????? ??? ??
????????? ?? ?????? ???, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ?? ?? ?? ?????? ?????????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ?????? ???, ??? ?? ?????? ??? ?????? ?????? ?? ?????? ??? ??????, ?? ??????????
????????? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ?????? ??? ??
????????? ??? ?????? ?????? ?????????? ?? ??? ?????? ?????? ?????? ??' ?? ?? ??? ??????????
?? ??? ?????? ?????? ????. ?? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??
????????? ?????????? ??? ?????? ?????? ??????.

??????, ??????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????????
?????? ?????????? ??? ??? ?????????? ?????????? ??? ??????????, ??????????????, ???
????, ??? ?? ?????? 49 ?? ??? 56 ??, ??????????, ?????? ? ?????????? ?????????? ???
????? ?????????? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????????? ??????????
?? ?????? ?????? ?????? ???, ??? ?????? ?? ?????????? ?????? ??? ?????? ??????????
????? ??? ?????? ?????? ???, ??? ?????? ?? ?????????? ?????? ??? ?????? ?????? ???

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

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

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

? ? ? ?????????? ?? ? ??????? ???? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????????? , ? ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
????????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ??
????????? ?????? ??? ?????? 77/799, ??? ???? ?????? ?????? ?????? ??? ?????? ?????? ??????
??? ?????? ?????? ??? ?????? ?????? ?????? , ? ??? ?????????? ??? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? . ?????? , ??? ?????? ???' ??' ??? ??, ?????? , ??
????????? ??? ?????? ?????? ?????? ??? ???? ?????? ??? ?????? ?? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? . ?????? , ??
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?? ?????????? ?' ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????? ?? ?????? ???.

? ? ?????????? ??? ???? ?????? ?????? ??? ?????? ?????? ?????? ?' ??? ?????? ?????? ???
????????? ?? ???? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??????
????? ?? ???? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????

??????????, ??? ???? ?????????????? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????, ???
??? ?????? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?? ?????? 77/799 ? ?????? ?????????? , ??? ?? ?????? ??? ?????? ??????
????? ?? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ??? ?????? ??? ?????? ?? ?????? , ?? ?????? ??? ?????? ??? ?? ?????? ??????????????
????????? ?????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????????? ?? ??????
????????? ?????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ? ????
????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ??????
????? ??? ?????? ??? ?????????? ??????.

(??, ??????? 39-40, 45, 47, 49-52, 59-61, 63, 67-70, 73, 75-76, ???????, 1)

2. ?? ?????? 49 ?? ??? 56 ?? ??????? ?? ?????????????? ?? ???? ?? ?????? ?? ????
?????????????, ???? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ??? ??? ?????
????????????? ?????????? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ??? ??????????
?? ???? ?????? ???' ??, ?? ??? ?????? ?????????? ??? ?????? ?????? ??????, ??? ??
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ?? ????
????????????????? ?????????? ?????????? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????
????????? ????, ?? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????, ?? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????????? ??????, ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ??????????????
??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ???

?????????

??????????????, ? ?????????? ?? ?????????? ?? ??????????????? ??????? ?????????? ?????????? ?????????? ??
????? ?? ?? ?????????????? ?? ??? ?????? ?????? ?????? ?????????????? ?????????? ??? ?????????????? ??'
?,? ??? ????? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???
???????????, ????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????????????? ?????? ?????????? ?????? ?????? ???, ??????, ???, ??? ?? ??? ???
????????? ?????? ?? ?????? ?????????????? ??? ?????? ?????????? ?????? ?????????? ?????????? ???
????????????? ?????????????? ??? ?????? ???' ?,? ??? ??? ?????????????? ??? ?????? ??????,
????????? ? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?????????? ?????? ??? ???
?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? . ?????? ?? ??? 49
?? ??? 56 ?? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ?? ?????????? ?????? ?????????? ??????????
??? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????
??? ?????????? ?? ??? ?????? ???' ?,? ??? ??? ?????????? ??? ?????? ?????? ?????? ??????
???? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ??? ??????????
????? ??? ?????? ?????? ??????, ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ???
????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ??????, ??? ??? ?????? ?????? ?????? ?????? ??? ???
????? ??????, ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ?????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

(??, ??????? 84-86, ???????, 2)

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

?? 11?? ?????? 2009 (*)

«????????? ?????? ?????????? – ?????????? ?????????? ??? ?????????? – ?????? ?????????? –
????? ?????????? – ?????????? ?????? ?????????? ?????????? ??? ?????????? ?? ?????? ??????
????? ?????? ??? ?? ?????? ?????????? – ?????? ?????? – ?????????? ?????? ??????????
????????? ?????? ?????? ??? ?????????? ?????? – ?????????? ??? ?????????? ?????????? ??????????
????????? ?????? ?????? ?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ???
????????? ?????? ?????? – ?????? 77/799/?? – ?????????? ?????? ??? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? – ?????????? ??????»

???? ?????????????? C-155/08 ??? C-157/08,

? ?????????? ?????? ?????? ?????????? ?????????? ?????? ?????? ?? ?????? 234 ??,
?? ?????? ?? Hoge Raad der Nederlanden (????? ????) ?? ?????? ?? 21?? ?????? 2008,
? ?????? ?????? ??? ?????????? ??? 16 ?????? 2008, ??? ?????? ??? ??????

X (C-155/08),

E. H. A. Passenheim-van Schoot (C-157/08)

????

Staatssecretaris van Financiën,

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

?????????? ??? ??? K. Lenaerts (????????), ?????? ????????, T. von Danwitz, E. Juhász, ?.
????? ??? J. Malenovský, ???????,

????????? ??????????????: Y. Bot

?????????: R. ?ere?, ??????? ??????????,

????????? ?????? ??? ??????? ???????????? ??? ?????? ??? ??' ?????????????? ???????????? ???
11?? ??????? 2009,

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

- ? X, ??????????????? ??? ??? J. J. Feenstra ??? L. C. A. Wijsman, advocaten,
 - ? . . . Passenheim-van Schoot, ?????????????? ??? ??? J. Hamer, advocaat, ??? ??? J. A. R. van Eijnsden ??? E. C. C. M. Kemmeren, belastingadviseurs,
 - ? ?????????? ????????, ?????????????? ??? ?? C. Wissels ??? M. de Grave,
 - ? ??????? ????????, ?????????????? ??? ??? J.-C. Halleux,
 - ? ??????? ????????, ?????????????? ??? ??? I. Bruni, ???????????? ??? ??? S. Fiorentino, avvocato dello Stato,
 - ? ??????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? W. Roels,

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

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

????????

1 ?? ??????? ?? ?????? ?????????????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??????? ?? ?? ?????
49 ?? ?? 56 ??.

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

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

3 ?? ?????? 1, ??????????? 1, ??? ??????? 77/799/??? ??? ??????????, ??? 19??

?????????? 1977, ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ?????? (?? ??. ???. 09/001, ?. 86), ??? ?????????????? ?? ??? ?????? ???
??? ??? ?????????????? ??? ?????????????? ??? ??????????, ??? ?????????????? ??? ??????????
??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????? ? ?????????? ?????? (?? 1994, C 241, ?. 21, ?? ??. 1995, L 1, ?. 1, ??? ????: ????
77/799), ??????:

«?? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ?????? ?? ??? ?????? ?????? ???
????????? ??? ?????? ?? ??? ?????? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ??????????
??? ?????????? [...]».

4 ?? ?????? 2, ?????????? 1, ??? ?????? 77/799 ??????:

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

5 ?? ?????? 3 ?? ?????? 77/799 ??????:

«?? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ???
????? 1, ?????????? 1, ?????? ?????????? ?????? ??? ?????? ?????? ?????? ???, ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? 9.»

6 ?? ?????? 8, ?????????? 1, ??? ?????? 77/799, ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? C-155/08, ??????:

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

7 ?? ?????? 2003/48/? ?? ??????????, ??? 3?? ?????? 2003, ??? ?? ?????????? ???
?? ?????? ??? ?????? ?????????? ??? ?????????? (?? L 157, ?. 38), ??? ??????, ?????? ???
?? ?????? ??? 1, ?????????? 1, ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??????????
?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

8 ??? ?????? ?? «????????? ??????????», ? ?????? 2003/48 ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? (????? 8) ?????? ??? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? (????? 9).

9 ??????? ?? ?? ?? ?????? 9:

«1. ? ??????? ???. ???? ?????? ?????? ??? ?????? ?????????? ?????????????? ??? ??????????????
??? ?????????????? ??? ?????? 8 ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ????.

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

3. ?? ?????????? ?? [77/799] ?????????????? ?? ?? ?????????? ?? ?????????? ??
????????? ? ??????? ??, ?????? ?? ?????????? ?? ?????????? ?? ?????? ??
????????????? .. ??????????, ?? ????? 8 ??? ?????? [77/799] ??? ?????????? ??
????????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ???.»

10 ?? ?????? 10, ?????????? 1, ??? ?????? 2003/48, ??? ??????????????? ??? ??????????
??? ??? ??????, ?? ??? «????????????? ??????????», ?????????? ???, ??? ?? ??????
????????????? ?????????, ?? ??????, ?? ?????????????? ??? ? ?????????? ??? ?????????????? ??
????????????? ??? ?????????? ??? ?????????? || ??? ?????? ??????.

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

11 ?? ????? 16 ??? ??????????? ?????? (Algemene Wet inzake Rijksbelastingen, ??? ????: AWR) ?????:

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

[...]

3. ? ??????? ??????? ?????????? ?????? ?????? ?????? ?? ?????????? ?? ??
????????? ?? ?????? ??? ?? ?? ?????? ?????? ?????? ?????? ?? ?????????? ?? ??????. [...]

4. ????? ???? ?????????? ?????????? ?????? ?? ?????????? ?????????? ???
????????????? ?????????????? ??????, ?? ????? ?????????? ? ?????????? ??? ?????????? ,?
????????? ?????????? ?????????? ??????, ????? ?????????? ??? ??? ?????????? 3,
????? ????????, ?????? ?? ?????????? ?? ??? ?????????? ?????? ??? ?? ?????? ?????? ??????
????????? ??? ?????????? ??????»

12 ?? ?????? 67e, ??????????? 1 ??? 2, ??? AWR ?????????:

«1. ?????, ????. ?????? ?????? ?????????????????? ?????? ??? ?????????? ??????????????????, ?? ???
????? ?????????? ?????? ?????????????? ?????????? ?????? ?????? ?, ???' ???? ?????,
?????????? ?????????? ?????????? ??????, ?????????? ?????? ?? ?????????? ? ????? ??????
????????? ??? ?????????? ?????? ???, ?? ?????? ????? ?????? ?????? ?????? ?????? ??? ??
????? ? ?????????? ?????? ?? ?? ?????????? ?????? ??????, ?? ?????????? ?? ?????? ???
????????? ?????? ???, ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? 100 % ???
????????? ?????? ??? ??????????, ??? ? ??? ?????? ?????? ?????? ?????? ??? 2.

2. ? ?????????? ??? ???? ???? ?????? ?????? [...] ??? ?? ??? ???? ???? ?????????? ????
????? [...]».

13 ? ??????? ??? ?????????? ?????? ?????? CPP2001/3595, V?N 2002/29.4, ??? ??
????? ?????? ?????? ?????? ?? ???? ?????? ?????? ?????? ?? ???? ?????? ?????? ??????
????? (besluit van de Staatssecretaris van Financiën nr. CPP2001/3595, V?N 2002/29.4, inzake
het voorschrift internationale wederzijdse bijstand bij de heffing van belastingen), ??? 24? ???
2002 (??? ????: ?????? ??? Staatssecretaris van Financiën), ?????????? ?????????? ??????
????? ??? ?? ??? ???? ?????? ??? ?????? 77/799.

14 ?????? ?? ?? ?????? 4.1 ??? ??????? ????, ?? ??? «????????????? ?????? ??????
????? ??? ?????? ??? ??????»:

«????? ?????? ?????? ?????????? ?????? ?? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??
????????? ?????? ?? ?????????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????? ??? ?????????? ?????? (????? 1 ??? ?????? [77/799]) ? ?? ?? ??????????
????????? ??? ?? ??? ???? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????
???/ ?? ?????? ?????? ??? ?????????? ?????????? ?????????? (?. ?????? ????
????? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??????). ?
????? ?????? ?? ?????? ?????? ?????? ???????. ??? ?????? ?? ?????????? ?????????? ??????
????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????????? (????? ??? ?????? ????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ??????).

15 ?? ?????? 5.2 ??? ?????? Staatssecretaris van Financiën ??? ????? «?????????
????? ??? ??????». ?? ?????? 5.2.1, ?? ??? «????? ???», ??????:

«??? ??? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? 3 ??? ??????
[77/799] ??? ??? ?????? 6 ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????? ?????? [????????? ??? ?????? ?????? ??? 25 ?????????? 1988]. ??? ???
????????? ??? ?????? ?????? ??? [????????? ?????? ?????? ??? ?????? ???
????????? (????)], ??? 1977, ?????? ??? ?? ?????? ?????? ?????? ?? ??? ??????????
????????? ??????, ?????? ?????, ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????.

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

?? ?????? ??? ?? ?????? ?????? ?????? ?????? (? ?????? ?????? ??????).
????? ???, ?? ?????? ?????? ?????? ?????? ??? Staatscourant [...]

?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????
????? [...]»

16 ??? 16 ?????????? 1997, ?? ??????? ??? ??? ?????? ??? ? ?????????????? ???????????
????????? ?????? ??????? ?????? ??? ?????????? ?????? ??? ?????????? ?? ??????????
????????? (??' ????. AFZ97/3934 M, Stcr. 1997, ???. 235). ? ?????????? ??? ?? ??????????
????????? ? ??????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ? ?? ??????????
????????? ??? ?????????? ??? ???????????. ?? ?????????? ??? ??? ?????? ??? ??? ??????
????? ??????? ??? ?????????? ?????? ?????????? ?? ?????????? ?????????? ?? ?? ??????
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? ? ? ? ? ? ? C-155/08

17 ?? ?? ?? 27 ?????????? 2000 ??????, ? ?????? ?????? ?????????? ?????????? ??
????????? ??? ?????? ?????????? ?? ??? ?? ?????????? ?????????? ?????????? ??
????????? ??? ??? ??? ?????????????????? ?????????????? ??? ?????? ?????? ???
Kredietbank Luxembourg (??? ????: KB-Lux), ?????? ?? ??? ?? ???????????, ??' ??????
????????? ??? ??? ???.

18 ?????? ?? ?? ?????? ?? ?????????? ?? ?????????? ?????? ?????????? ?? ? X ???
????????? ?????? ???????????, ? inspecteur van de Belastingdienst (????????????? ??
????????? ???????????, ??? ????: ???????????) ??? ?????? ???????
??????????. ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?? ??
????????? ??? X, ?? ??????, ?? ?? ??? 8 ?????? 2002 ??????, ??? ??? ??????
????????? ?????????? ??? KB-Lux ??? ?? 1993. ?? ?? ?? 23 ?????????? 2002 ??????, ?
X ?????????? ?????????????????? ???????????, ?????? ???, ??? ??? ?????????? ??
????????? ??? ??? ??? ??????.

19 ??? 12 ?????????? 2002, ?????????????? ??? ? ?????????? ?????????? ??
????????? ??? ?? ?????????? ??? 1998, ?? ?????????? ???????, ??????, ??? ???
????????? ??? ?? ?????????? ?????????? ?????????? ??? ?? ?????????? ??? ?? ?? 1993
?? ?? 2000 ??, ???????, ??? ??? ?????????? ??? ?? ?????????? ??? ?? ?? 1994 ?? ??
2001. ?????? ??? ?????????? 50 % ??? ??? ?????? ??? ?????????? ?? ??
????????? ???.

20 ?????? ?????????? ? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ???????, ??
????? ?????? ??? Gerechtshof te Amsterdam (????????? ??? ??????????) ???????
??????????, ?????? ???, ??? ? ?????????? ?????????? ??? ?? ?????????? ??????????
????? ??? ?????? 16, ?????????? 4, ??? AWR, ??? ?????? ?? ?????????? ??????????
????????? ??? ?????????? ??? ???????, ?????????? ??? ?????????? ???????.

21 ?? ??? ??? 18 ?????????? 2006 ??????, ?? ?????????? ??? ?????? ?????? ???
???????, ???, ?????? ?????????? ?????????? ??? ?????? ?????????? ???, ?????? ???
??????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???.

22 ? X ?????? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? Hoge Raad der
Nederlanden (????????? ?????????? ??? ??? ???), ?? ?????? ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??????????
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«1) ??? ?? ??? 49 ?? 56 ?? ??? ?????? ??? ?????? ?????? ?????? ???, ??
????????? ??? ?????? (????? ???) ?????????????? ??? ?????? ?????? ??????????
?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????????? ??????????

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

2) ?? ??????? ? ???????? ??? ?????? ?????? ?? ??? ?????? ?? ?????? ?????????????? ?? ??????
????? ??? ?????????? ?? ?????????? ??????????;

3) ?? ?????????? ?????????????? ?????????? ??? ?????? ???????, ??? ?????????? ???
????????? ?? ??? 49 ?? ??? 56 ?? ?? ?????????? ?????? ??? ??? ?????????? ???
????????? ??? ??? ?????????? ??? ?????????? ?? ?????????? ?????????? ?????????? ???
????, ???' ??????? ??? ?????? ?? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?? ??????????
????? ?????? ??????»

? ?????? C-157/08

23 ??? ??? ?????? ??? ?????? ???, ? . . . Passenheim-van Schoot, ??? 10
????????? 2003, ?? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ???
????? ??? ?????????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???
???. ?????? ???, ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ???, ???
????? ??????????.

24 ?????? ?????? ??? . . . Passenheim-van Schoot, ? ?????????? ??? ?????????? ??
????????? ???, ??? ?????????? «????????? ??????????», ??? ?????? ??? ?????? ??????
????? ?????? . ??????, ??? 13 ??? 2005, ??? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??????, ???, ?? ??? ?????? ?????????? ??? ??? ?????? ?????????? ???
????????? ??? ?? ?????????? ??? 1993 ??? 1996, ???, ??????, ?? ??? ?????? ??????????
?? ?? ?????????? ??? 1994 ??? 1997, ?????? ??? ?????? ?????????? ??? ?????? ???
????? ??? ??? ??????.

25 ? . . . Passenheim-van Schoot ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? Rechtbank te Arnhem (????????? ??? Arnhem), ??????????,,
????? ???, ??? ? ?????????? ?????? ??? ?? ?????????? ?????? ?????? ??? ??????
16, ?????????? 4, ??? AWR, ??? ?????? ?? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???.

26 ?????? ?????????? ??? ?????????? ???, ? . . . Passenheim-van Schoot ??????
????????? ?????? ??? Hoge Raad der Nederlanden, ?? ?????? ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ?????????? ?????? ???
????????? ?? ?? ?????? ?????????? ??? ?????? ?????? C-155/08 ??????.

27 ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? 26?? ??? 2008, ?? ?????? C-
155/08 ??? C-157/08 ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????? ?????? ??????.

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????? C-157/08

28 ?? ?? ?????? ?? ??????? ??????? ?? ?????????? ?? ?????? ??????? C-155/08 ?? ??
????????? ?? ?? C-157/08 ??????, ?? ?????? ?????????? ??, ???' ??????, ?? ??
????? 49 ?? ?? 56 ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ??
????? ?????? ?? ?????? ?? ??, ?? ?????? ?????? ?????????? ?? ?????? ??
????????? ?????? ?? ?????? ?????????? ?? ?????? ?????? ?? ?????? ??
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????? ?????????? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ??
????? ?????? ??, ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ??
????? ?????? ?? ?????? ?? ?????? ??????. ?????? ?? ?????? ?? ?????? ??
????? ?? ? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
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?? ?? ?????? ?? ?????? ?? ?????? ??

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

30 ???????, ? ??????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?? ? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?? ?????? ??, ?? ?????? 16, ?????? 4, ??? AWR
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
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????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ??, ?? ?????? ?? ?????? ??, ?? ?? ?????? ?? ?????? ??
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31 ? ?????????? ?????????? ?????????? ??? ? ?????????? ?????????? ?????????? ?????????? ?????????
????? ?????? ?????????? ?????????? ??? ? ?????????? ??? ? ?????????? ?????????? ?????????? ??????
????? ?????? ?? ?????????? ?????????? ??? ? ?????????? ??? ? ?????????? ?? ?????? ?? ??
????? ?????? ?????? ?????? ?????? ??? ? ?????? ?? ?????????? ?????? ?????? ?? ?????????? ?? ??
????? ?????? ?????? ?????? ?????? ??? ? ?????? ?? ?????????? ?????? ?????? ?? ?????????? ?? ??
????? ?????? ?????? ?????? ?????? ??? ? ?????? ?? ?????????? ?????? ?????? ?? ?????????? ?? ??
16, ?????????? 4, ??? AWR ?????????? ?????????? ??????????, ??? ??? ?????? ??? ??
????? ?????? ?????? ??? ? ?????????? ?????? ?????? ?? ?????????? ?? ?????????? ?????????? ??? ??
????? ?????? ?????? ??? ? ?????????? ?????? ?????? ?? ?????????? ?? ?????????? ?????????? ??? ??
????? ??? ?????? ??? ? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????????? ??? ??
?? ??? ?????????? ?????? ??? ? ?????????? ?????? ?????? ?????? ?? ?????????? ??? ?? ?????????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??? ?? ?????????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

32 ??????, ?????????? ??? ???? 49 ?? ?????????? ??? ?????????? ?????????? ?????????? ??????????
????? ?????? ??? ???? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ?????????? ??????
????? ?????? ?????? ??' ??? ? ?????? ?????????? ??? ? ?????????? ?????????? ??? ? ?????????? ??????
????? ?????? ??? ? ?????????? ??? ? ?????? ?????? (??., ?????? ???, ?????????? ???
28?? ?????? 1998, C-118/96 , Safir, ?????? 1998, ?. I-1897, ??? 23? ??? 4?? ??????
2004, C-334/02 , ?????? ??? ?????? 2004, ?. I-2229, ??? 23, ?????? ??? ??
11?? ?????? 2007, C-318/05, ?????? ??? ?????? 2007, ?, I?6957, ???
81).

33 ??????, ?????????? ??? ???? ?????? ??? ?????????? ??? ???? 56,
????? 1, ??, ?????? ??? ?????? ?????? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? ??
????? ?????? ??? ???? ?????? ??? ???? ?? ???? ?????? ??? ???? ???? ?????? ?? ??????????
?? ??? ?????? ??? (??., ?????? ???, ?????? ??? 26? ?????????? 2000, C-478/98,
????? ??? ?????? ???, ?????? 2000, ?. I-7587, ??? 18).

34 E? ??????, ??? ???? 16, ?????? 3 ??? 4, ??? AWR ?????? ???, ???
?? ??? ?????? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?? ?????? ?? ??????????
????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

35 ?? ? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

36 ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?? ??? ?????? ?????? ?? ?????? ??
????? ? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ?????? ?? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ??? ?? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

37 ?????? ??????, ??? ???? ?? ?????? ?????? ???, ??? ?????? ?? ?????? ?????? ?????? ?????? ??
????? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??

??" ??????????? ????????, ? ?????????? ??? ?? ?????? ?????????????? ??????????? ?????? ???
????????????? ?? ??????? ?????????????? ?????????? ??? ?? ??????. ?? ??? ?????? ???
??? ?????? ??????? ??? ?????? ?????????????? ?????????? ? ?????????? ?????????? ???
???????, ?? ?????? ??? ?????????????? ?? ?????????? ?????????? ? ??? ?????????? ???
?????? ?????????? ??? ?? ?????????? ??????, ?? ?????????? ?????? ?????? ?????????? ???
??????. ????????, ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ?????? ?????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ???, ??
????????? ??? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ???
??? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?? ?????????? ??? ?????? ???.

38 ???????, ??? ?? ?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????????? ?????????? ??? ?????? ??? ?????????? ?????? ???, ???????,
????????? ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?? ??????
????????? ???, ?? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????? ??????
????????????? ?????????? ??? ?????? ??? 16, ?????????? 4, ??? ?WR, ? ??????????????
????????? ??? ?????? ?? ??? ?????????? ?????????? ?????????? ?????? ?????? ?????? ??????
????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ???
????????? ??? ?? ?????????????? ????????, ?? ?????? ?????????? ?? ?????????? ???
????????? ?????????? ????????, ?????????? ??? ?????? ???.

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

40 ???????, ??????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???
?????? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ?????????? ???, ?????????? ???,
????? ??? ?? ??? 49 ?? ??? 56 ??, ??????????.

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

41 ??????? ?? ??? ?????????? ????????, ?? ?????? ??? ?? ?????? ?????????? ???
????? 16, ?????????? 4, ??? ?WR ?????????? ??? ?????? ?????? ?????????? ???
????????????? ??? ?????????? ?????? ???, ?????? ?? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ???.

42 ?? ?????????? ?????? ?????????? ???????, ??????, ??? ? ?????????? ?????????? ??????????
?? ?????? ?????????? ?????????? ??????, ??? ?????? ?? ?????????? ?????? ???
????????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?? ???
????????????? ????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ?? ??? ?????? ?????????? ?????? ??? ?????? 2003/48, ?
????????? ?????? ?????? ?????? ???, «????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????».

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

44 ????????, ?? ?????? ?? ????????, ??? ? ??????????? ??????????? ??? ?? ?????
?????????? ??????????? ??? ?? ?????? ????? ??????????? ??? ?? ?????? ??? ??????????????? ???
?????????????. ???????, ? ?????????? ?????????? ?????????????? ??? ?? ?????? 16, ??????????
4, ??? ?WR ?????????? ????? ?? ?? ?????????? ????? ?????????? ????? ?????????? ?????????? ?????
????????????? ????? ?? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ????? ?????????? ?????? ???
????????????? ??????? ?? ?????? ??? ?? ?????????? ??????? ???????, ?????? ???????????
???? ?? ?????????? ??????????? ??? ??????????.

45 ???????, ?? ?????????? ????? ?????? ??? ?????????? ?????????????? ?????? ?????? ?????
??????????, ?????????? ?? ?????????????? ?????? ?????????? ?????? ?????? ??? ??????????
?????????? ?? ?????????? ? ??????? ??, ? ?????? ?????????? ??? ?????????????????? ???
??? ?????????? ?????? (??., ?????? ????, ?????? ??? 18?? ?????????? 2007, C-101/05,
A, ?????? 2007, ?. I-11531, ????? 55) ????? ??? ? ?????????????? ??? ?????????????? (??.,
????? ????, ?????? ??? 11?? ?????????? 2007, C-451/05, ELISA, ?????? 2007, ?. I-8251,
????? 81).

46 ????? ?????? ??? ??????????? ??? ??????????, ?? ?????? 58, ?????????? 1, ???????? ??,
 ?? ?????????? ??? ?? ?????? 56 ?? ??? ?????? ?? ?????????? ??? ?????? ?????? ?? ??????????
 ??? ?? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????????? ???
 ?????????? ??? ??????????, ?????? ??? ?????? ??? ??????????.

47. ??????, ??? ?? ??????????????? ??? ?????????????? ?????, ?????? ?? ?????????? ? ???
 ??? ???????????????, ??? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ???
 ??? ??????? ?? ??????????????? ?????? ??? ?? ??? ??????????? ?? ?????????? ??? ?? ???
 ?????? ??? ?????? ?????? (????????????????? ?????? ?????????? ?????? ???????, ?????
 28).

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

49 ???????, ?????????????? ???, ??????? ? ??????? ??? ?????????? ??? ??????? ??? ???

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

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

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

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

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

50 ??? ?????????????? ??? ?? ?????????? ?????????????? ??? ?????? ?????? ?????? ??????
C?155/08, ?? ??? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?????????????? ??
????? ?????????? ?????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?? ?????????? ??
????? ?????? ??????.

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

52 ??????, ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?? ?????? 16, ?????????? 4, ??
AWR ?????????? ?? ?????????? ??? ?????????????? ??? ?????????????? ?? ?????????? ?????? ??
????? ?????????? ??? ??????????.

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

54 ??????????, ?????? ?? ??? ?????????????? ??? ?????? ?????, ?? ?????? 16,
????????? 4, ?? AWR ?? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ?? ?????? ???,
????? ??? ?????? 1 ??? 3 ??? ?????? 77/799, ?? ?????????? ??? ?????? ?????? ?????? ???,
????????? ??? ?????? ?????????? ??? ??? ?????? ?????????????? ??? ??????. ???????,
??????, ?? ?????????? ??? ?????? 3 ??? ??? ?????? ?????????? ?????????? ?????????? ???
????????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????????? ?????????? ???.

55 ??????, ? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ???
????????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?? ?????????? ???
????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 16, ?????????? 4, ?? AWR.
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

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

57 ??? ???, ??????????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ?? ??????????

????? ??????????? ??? ??? ?????? ?????? ?????? ?? ??????? ??? ?????? ?????????????? ?????? ???
??? ?????? 2 ??? ?????? 77/799 ??? ?????? ?????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ???
????? ?????????? ??? ?? ?????? ?????? ??????. ??????, ??? ?? ?????? ?????? ?????? ?????? ?????? ???
????????? ???????, ?? ????? 8 ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????????? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?????????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?? ?????? 3 ??? ?????? ?????.

58 ???????, ??????????? ???, ??????? ?? ?? ??? 16, ?????????? 4, ??? AWR, ?
????????? ??? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ??, ?? ?????????? ?????? ?????????? ??????????, ?? ?????????? ???
????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??????????, ??? ?????? ???
????????? ?????? ??? ?????? 77/799 ??? ?? ?????? ?????? ?????????? ?????????? ?????????? ???
????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ???, ??? ??? ?? ??? ?????? ?????o? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???
??? ?????? ?? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ??????.

59 ??? ???????, ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????, ? ???????
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ?????? ???
??? ?????????? ? ?????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?? ??? ?????? ?????? ?????, ??? ??? ?????? ?????? ?????? ??? ?????? 77/799 ?
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

60 ??????, ??? ?????????? ???' ??' ??? ??, ??????, ? ?????????? ??? ?????????? ??????????
???? ?? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ?????????? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ??????.

61 ??????, ????????, ???, ??? ??? ?????????? ??? ?????? ?????????? ?????????? ??????????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?' ?? ?????? ?????? ???
????????? ?? ?????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

62 ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?? ???
????????? ??? ?????? ?????? ??????.

63 ? ?????? ?????????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?' ?? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????? ???, ?????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ???.
????????? ???, ?? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??? ?????? ???
??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ??? ?????? ?????? ??? ?????? ???.

64 ?????? ?? ?????? 2 ??? ?????? 77/799 ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??

? ?????????? ?????? ??????????? ?? ???? ?????? ??? ?????????????????? ?????????????? ?????????? ?????
?? ?????????? ?? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ?????????????? ?????????????? ?????????????? ??? ?????? ?????? ??? ?????????? ??????
????? ?? ???? ?????? ?????? ???, ?????? ?????, ?????????? ?????? ?????? ?????? ?????? ??????
?????????? ?? ???? ?????????? ?? ???? ?????? 9 ??? ?????? 2003/48 ??? ???? ???? ???? ????
?? ?????????? ??? ???? ???? ?????.

65 ?????????? ??? ?????????? ? . . . Passenheim-van Schoot, ?? ?????? ???
????? ???, ??? ?? ?????? ?? ?????????? ?????????? ??? ?????? ?????? ?????????????? ???,
??? ?????? ??? ???? ?????????????? ?? ?????????? ??? ?????? ?????? ?????????? ??????????
????????? ??? ?????? 3 ??? ?????? 77/799 ??? ?????? ??? ???? ?????? ?????? ??? ?????? ??????
?? ?????????? ?? ???? ?????? ?? ?????? ?????????????? ?????????? ?????????? ??? ?????? ???
????? ?????????? ?????? ?????????? ??????, ?????????? ??? ???? ?????????? ??? ?????? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ? ?? ?????? ?????? ??????. ??????????,,
????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? 9 ??? ?????? ?????? ?????, ?? ?????? 3
????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?? ?????????? ?????? ?????? ??????
????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

66 ??? ? ?????????? ?????? ?????????? ?????? ?????? ??? ?????????? ?? ???? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ? ? ?????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ??? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
?????????, ??????, ?????? ??? ???? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

68 ????????, ?????? ? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ??? ?????? ?????? ?????, ??? ?? ?????? ?? ?????? ?????? ?????? ???
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

69 ??? ?????? ?? ?????????? ??? ???? ?????? ??? ?????? ?????? ?????? ?????? ??????.

? ????? ? ?? ?????? 16, ??????????? 4, ??? AWR ?????????????? ??????????? ?? ?????? ???,
????????????? ? ?????????? ???, ?????? ? ?????????? ??? ?????????????? ?? ?????????? ?? ??????????
????????????? ?????? ??? ?????? ?????????????? ?????????????? ?????????????? ??????????, ? ??????
???? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ??????.

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

71 ?????, ?? ??? ?????? ???? ?????????? ?????????????? ?????????? ???? ??? ??????
????????? ?????? ?????????? ?????? ??? ?????????? ?????????????? ?????????????? ??????????
????????? ??? ?????? ?????? ???, ?? ?????? ??? ?????????? ?? ?????????? ?????? ???
????? ?????? ??????, ??? ?????? ?? ?????????? ???, ?? ?????????? ??????????
????????????? ?????????????? ??????????, ?? ?????? ?????? ?????????????? ???? ??? ???
?????, ??? ?????????? ??? ?????? ??? ?????? ?????? ???, ??? ?????????? ??? ? ??????
??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?? ?? ?????? ?????? ?????? ??? ??????
????????? ?????? ???.

72 ???????????, ????? ?? ?? ??? ????? ?????????????? ?????? ??? ????? ??????????
????????? ??? ?????????????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ?????? ??? ?????????? ???, ??????, ??? ?????? ?? ?????????? ??? ?????????? ???
????????? ??? ?? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ?,
????????? ??? ?????????? ? ?????????? ?????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ??? ?????? ?????? ?????? ???' ?? ?????? ?????????? ??? ?????????? ??????????
??? ?????????? ??? ?????????? ??? ?????? ??????.

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

74 ? ?????? ?????????? ?????????? ?? ?????????? ???? ?? ?????????? ?????? ??? ??????????
????????? ?????? ?????????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????????? ???
????????? ?? ??? ?????? ???, ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??????. ???
????????? ???, ??? ?????? ?? ?????????? ???? ?????????? ??? ?????? ??? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ???, ? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?
????????? ?????? ?????????? ?????????????? ??? ?????????? ?????????? ?????? ?????? ??????
?????, ? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??????
????????? ??? ?????? ?????? ??????.

75 ???????????, ??? ?????????? ?? ?????????? ??? ?????? ???, ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????????? ???????, ??? ?????? ??? ?????? ??????
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????, ??? ?????? ??? ?????? ?????? ???
?????? 77/799 ? ?????? ???????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ???
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ???

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

76 ??? ?? ?????????????? ?????????? ??? ?? ????? 49 ?? ??? 56 ?? ?????? ?? ???????????
?? ?? ?????? ??? ?? ?????????????? ?? ?????? ?????, ??? ?? ?????????????? ???
????????????? ?????????????? ?????????? ??? ?? ?????? ?????????????????? ??????????????
????????????? ?????? ??? ?????????????? ?????? ?????? ??? ?????? ?????????? ?????? ??? ?? ??????
????? ??? ?????????? ?????? ?????????? ??? ?? ?????? ?????, ?????? ??? ?????? ?????? ?????? ??
????? ??? ??????, ?? ?????????? ?????????? ?????????? ??? ?? ?????? ?????? ?????????? ??????????
????????? ??? ?? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??????
??' ??? ??? ??? ?????????????? ??? ?????? ?????? ??????. ?? ?????????? ??? ?? ?????? ?????? ??????
????? ?????????? ?? ?????????? ??? ?????? ?????? ?????????? ??????.

??? ??? ?????? ?????????? ??? ?????? C-155/08

77 ?? ?? ?????? ?????? ??? ?????? C-155/08, ?? ?????? ?????????? ?????, ???
????????? ?? ?? ?????? 49 ?? ??? 56 ?? ??? ?????????? ?? ?????? ?????? ?? ??????????,
?? ?? ?????????? ??? ?????????? ?? ?????? ?????? ?????? ??? ?? ?????? ??? ?? ??????
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ??????????????
????????? ?????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????? ?????? ??? ?? ?????? ???
????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ?????? ???, ?????? ?????????? ??????.

78 ?? ??? ?????? ??????????, ?? ?????? ?????????? ?????????????? ???, ??????????????
????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? 67e ??? AWR ?? ?????????? ???
?????????????, ? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????????? ??????????
????? ??? ?????, ?????? ?????? ?????? ??? 100 % ??? ?????? ??? ?????? ??? ?????? ??
????????????? ???, ? ?????? ??? ?????????? ??? ?????????? ??? ??? ?????? ?????????? ??????????
????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

79 ?????? ?? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? C-155/08, ?????? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????? 16, ??????????
4, ??? AWR, ?? ?????? 56 ?? ??????????, ?????????, ??? ?????? ?????? ?????? ?????? ?? ???
????, ??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??????????
????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ???
????????, ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?????? ??? ?????? ??? ??????.

80 ???????, ? ???????, ? ?????? ??? ? ?????? ?????? ?????? ?????? ??? ??
????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ??????????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

81 ? ?????? ?????? ?????? ???, ?????? ? ?????? ?????? ??? ?? ??? ?????????? ??????????

??? ??? ?????????? ??????? ?? ?????? ?? ?????????? ?? ???? 49 ?? ??? 56 ??, ?? ???
?????? ?? ?? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ??????????
????????????? ?????????? ?? ?????????? ?? ?? ?????? ?????????? ?????????? ?? ??????????
????????? ?? ?????? ?? ?? ?????? ?????? ??????.

82 ???????, ???????????, ???' ????, ??? ?? ??? 67e, ?????????? 1, ??? AWR
????????? ???, ??? ?????????? ?????????? ?????? ?????? ?????? ?? ?????????? ?? ??
????????? ??????? ?? ?????????????, ?????? ?? ?????????? ?????? ?????? 100 % ??
????? ??? ?????????? ?????? ??????, ?????????? ??? ?? ?? ?????????? ??????????
??? ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????? ????.

83 ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? C-
155/08, ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?? ??? ??????
??? ?? ?????? ?????? ??????, ??????????, ??? ?????????? ?? ?????????? ??? ?????? ???
????????? ??? 25?? ?????????? 1988, 299/86, Drexl (?????? 1988, ?, 1213), ??? ??? 2??
????????? 1993, C-276/91, ??????? ??? ?????? (?????? 1993, ?, I-4413), ?? ??????
????????? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????? ?????? ?????? ??? ??????
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????
??? ??? ?????? ???' ??, ?? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ??????
????????????? ?????? ??? ?????? ??????.

84 ???????????, ??? ?????????? ?? ?????????? ?? ?????? ???, ? ?????????? ??
????????? ?? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ?? ?????? ?? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??' ?, ?? ???
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ??????
????? ??? ?????? ?????? ?????? ???, ??????, ??? ?? ??? ?????? ??? ??????????
????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
????????? ??? ?????? ??' ?, ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? 16,
????????? 4, ??? AWR ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????
??? ??????.

85 ????, ??? ??????? ?? ?????? 60 ??? 73 ??? ?????? ?????????, ?? ???
49 ?? ??? 56 ?? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?? ?????? ??????????
????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ??' ?, ?? ??? ?????? ?????????? ??
????? ??? ?????? ??????, ??? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

86 ???????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ?? ?????? ??? ?? ??? 49 ?? ??? 56
?? ?????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??
????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??
????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??' ?, ?? ???
????????? ??? ?????? ?????? ??????, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ??????
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????

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

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87 ?????????? ??? ? ??????? ?????????? ????? ?? ??? ????? ?????? ?????????? ??? ?????? ?????? ?????? ?????
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? , ?' ???
????????????? ?? ?????????? ??? ??? ?????????? ?????? . ?? ?????? ??? ?????? ?????? ??????????????
????? ?????????? ?????????????? ??? ?????????? , ??? ??? ?? ??? ?????? , ??? ?????????? , ??? ?????????? .

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

1) ?? ????? 49 ?? ??? 56 ?? ?????? ?? ?????????? ??? ??? ?????? ?????? ??? ???
????????????? ?? ?????? ?????? , ??? ?? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????????? ??????
????????? ??? ?? ?? ?????? ?????????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ?????? ?????? , ?????? ??? ?????? ?????? ?????? ?????? ??
????????? ?????? , ?? ?????????? ?????????? ?????????? ??? ??? ?????? ?????? ?????????? ??????????
????????? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ??????
????? ??' ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? . ?? ?????? ??? ?? ???
????? ?????? ?????? ?????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .

2) ?? ????? 49 ?? ??? 56 ?? ?????? ?? ?????????? ??? ??? ?????? ?????? ??? ???
????????? , ??? ?? ?????? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ??? ???
????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ??????
??? ?????????? ?? ?????? ?????? ?????? ??' ?? ?????? ?????????? ?????? ?????? ?????? ??????
????? , ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?? ?? ?????? ?????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? , ?? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? , ??
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? .

(?????????)

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