

?????? C-377/08

EGN BV – Filiale Italiana

????

Agenzia delle Entrate – Ufficio di Roma 2

(?????? ??? Corte suprema di cassazione
??? ??? ?????? ?????????????? ????)

«???? ?????? ??? – ????? 17, ?????????? 3, ??????? ?? – ?????????? ?????????? ???
????????? ??? ?????????????? ??? ??? ??????? ??? – ?????????? ??????????
????????????? – ?????? ?????????? ?? ??????? ?????????????? ?????? ?????? ??????
????? – ????? 9, ?????????? 2, ??????? ?? – ?????????? ??? ?????? ??????»

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

????????????? ?????????? – ?????????? ??? ?????????? – ?????? ?????? ?????????? – ??????
?????? ??? ?????????????? ??? – ?????? ??? ?????? ?????? – ?????? ??? ??????????
??? ?????????????? ??? ??? ?????????????? ??? ?????????? ?????? ?????? ??? ?????? ???
????????? ??? ???

(?????? 77/388 ??? ??????????, ????? 17 § 3, ??????? ??)

?? ????? 17, ?????????? 3, ??????? ??, ??? ?????? ??????? 77/388, ??? ?????????????? ???
????????? ??? ?????? ???, ??? ??????? ?? ??? ?????? ?????? ?????? ???????, ???
????????????? ?? ??? ?????? 95/7, ??? ??? ?????? ??? ??????? ?????? ???????, ???
????????????? ??? ?????? ??????? ?????? ???????, ?????? ??? ?????? ?????? ???????, ???
????????????? ??? ?????? ??????? ?????? ???????, ?????? ??? ??? ?????? ???????, ???
????????????? ??? ??? ?????? ??? ??????? ?? ?????????? ???????????????
????????????? ?? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???????, ?????? ??
????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???????, ???
????? ??? ?????? ???????.

(?. ??? 34 ??? ??????.)

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

??? 2?? ?????? 2009 (*)

«???? ?????? ??? – ????? 17, ?????????? 3, ??????? ?? – ?????????? ?????????? ???
????????? ??? ?????????????? ??? ??? ?????? ??? – ?????????? ?????? ???

????????????????? – ?????? ?????????? ?? ??????? ?????????????? ?????? ?????? ??????
????? – ????? 9, ?????????? 2, ??????? ?? – ?????????? ??? ?????? ??????»

???? ?????? C2377/08,

?? ?????????? ?????? ??????? ?????????????? ?????????? ?????? ??? ?????? 234 ??,
??? ?????? ??????? ?? Corte suprema di cassazione (??????) ?? ??????? ??? 23?? ???????
2008, ? ?????? ??????? ??? ?????????? ??? 18 ??????? 2008, ??? ?????? ??? ????

EGN BV – Filiale Italiana

????

Agenzia delle Entrate – Ufficio di Roma 2,

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

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

?????? ??????????: D. Ruiz-Jarabo Colomer

?????????: R. Grass

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

– ? EGN BV – Filiale Italiana, ?????????????? ??? ??? G. Boniello ??? G. Polacco,
avvocati,

– ? ??????? ??? ?????????? ???????????, ?????????????? ??? ??? Aresu ??? M.
Afonso,

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

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

??????

1 ? ?????? ?????? ?????????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 17,
????????? 3, ??????? ??, ??? ?????? ?????? 77/388/??? ??? ???????????, ??? 17?? ?????
1977, ??? ?????????? ??? ?????????? ??? ???????, ??? ??????? ?? ??? ?????? ??????
?????? ??????? – ????? ?????? ??? ?????????????? ????: ?????????? ??????????
???? (?? ???.. ???. 09/001, ?. 49), ??? ?????????????? ?? ??? ?????? 95/7/?? ???
??????????, ??? 10?? ??????? 1995 (?? L 102, ?. 18, ??? ????: ??? ??????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? EGN BV – Filiale Italiana (???
????: EGN) ??? ??? Agenzia delle Entrate – Ufficio di Roma 2 (?????????? ??? – ??????
?????? ????: Agenzia), ?? ?????????? ?????? ??? ??????? ?? ??????? ??????????
?????? ??? ?????? ?????????????? ??? (?? ????: ???) ??????? ?? ??? ??????????????
?? ??? ?????? ??? ?? ?????????? ??? ?????? 1999 ?????????? ???????????????.

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

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

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

«???????????? ???? ? ?????????????????? ??? ?????? ??? ?????????????????? ??????? ?????? ??????????????
????????????? ?????????????? ?????? ??? ?????? ?????, ?????? ??? ?????? ??? ?????? ??? ??????
?????? ?? ?????????????? ??? ??? ?????? ??????????- ???, ?? ??? ?? ?????? ??????
????????? ?????? ???' ?????? ?? ?????????? ? ?????? ?????? ?????? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????????????????? ?????????????????? ???, ??????????, ? ??????
????? ??????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????, ?????? ??? ?????????? ??????
????????? ?? ?????? ?????????????????? ?????? ??? ?????????????? ??? ?????? ??? ??? ??
????? ?? ?????? ?????????????? ».

4 ?? ?????? 2, ?????? 1, ??? ?????? ??????? ?????????? ????: «[?]??? [??] ?????????? [...]
?? ?????? ?????????? ?? ?????? ?????????? ?????????? ?? ?????? ?????? ?? ??????????
?? ?????? ?? ?????????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ??????».

5 ????? ?? ?????? 4, ??????????? 1 ??? 2, ??? ????? ??????:

«1. ?????????? ?? “?????????? ???? ????” ?????????????? ??????, ??? ?????? ???????????
???? ?? ?????????????? ????, ??? ??? ??? ?????????????? ??? ????? ?????????? 2 ???????????????,
????????????? ??? ?????????????? ?????? ??? ?????????????? ??? ?????????????? ????.

2. ?????????????? ????????????????, ??? ???? ?????? ??? ?????????? 1, ?????? ??? ??
???????????????, ??? ????????????, ??? ?????? ? ??? ?????????? ??????????,
???????????????, ??? ??? ?????????????? ??????????, ??? ?????????? ??????????????
????? ??? ??? ?????????????? ??? ?????????? ?????????????? ??? ??? ?????????????? ???
????. ?? ?????????? ?????????????? ?????????? ?????? ? ?????????????? ?????? ? ??????
?????, ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? »

6 ?? ?????? 9, ??????????? 1 ??? 2, ????????? ??, ??? ?????? ??????? ??????:

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

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

[...]

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

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

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

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

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

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

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

- ??????? ?????????? ?????????????? ?????????????? ??? ?????????????? ??????????, ?? ???
????????? ??' ??????? ??? ??? ?????????? ??????, ??? ?? ?????? ??? ?????????? ???
????????? ?????????? ??? ????? ?????????? ?? ????? ?????????? ??,

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

7 ?? ????? 17 ??? ????? ?????? ??? ?? ???:

«1. ?? ??????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? [?????????] ???
????????? ? ?????????? ???.

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

) ??? ?????????? ? ?????????? ??? ?????? ??? ?????? [??] ??? ?? ?????? ??? ???
????????????? ? ?????????? ?? ??? ?????????? ??? ??? ??? ?????????? ??? ??? ??? ?????????? ???
? ?????????? ?? ??? ?????????? ??? ?????? ?????????? ??? ???.

[...]

3. ?? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????, ??? ?????????? 2, ??????? ? ?????????? ??? [??], ??? ?? ?????? ??? ?? ?????? ???
?? ?????????? ?????????????? ??? ??? ?????????? ???:

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

[...]».

8 ? ??????? 97/207/?? ??? ??????????, ??? 17? ?????? 1997, ?? ??? ???
????????????? ??? ?????? ?????????? ?? ?????????? ?????? ?????????????? ??? ?? ??? ??? 9
?? ?????? ?????? 77/388 (? L 86, ?. 19), ? ?????? ?????? ?????? ?????? ??? ?????? ???
?? ?? ??? ?????? ??????, ??????????:

«????? 1

???? ?????????? ??? ?? ?????? 9, ?????????? 1, ??? [?????] ??????, ?????????? ???
????????? ?????????? ?? ??????????, ??? ?????? ?????? ??? ?????? 9, ?????????? 2,
????????? ?, ??? ??????, ?????????????? ??????. [...]

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

????? 2

? ?????????? ??????? ??????? ?? ?????????? ?? ?????????????????? ?????????? ??? ??? ??????
? ?????????????? ??? ?????? ??? ?????? ?????? ??? ??? 1? ?????????? 1997. [...]

????? 3

? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ??? 31 ?????????? 1999
?, ?? ?????? ?? ??? ????? ?????? ?????? ???? ?? ?????????? ??? ??? ????? ?????????? ???
????????????????? ??? ???????, ?????? ??? ?????????? ?????? ?????? ??? ??? ??????.

????? 4

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

9 ??? ?????? ??? ?????? ??? ?????????? 97/207, ? ?????? 1999/59/?? ??? ??????????, ??? 17??
?????? 1999, ? ?????? ?????????? ??? ?????? 77/388 (?? L 162, ?. 63), ?????????? ??? ???
9, ?????????? 2, ?????????? ?, ??? ?????? ???????, ?? ??? ????? 1?? ?????????? 2000, ???
????? ?????????? ? ?????? ??? ?? ???:

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

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

10 ?? ?????????? ??????? 633, ??? 26?? ?????????? 1972, ??? ?????? ??? ??????????
??? ?????? ?????????? ??? (?????? ?????????? ??? GURI ????. 292, ??? 11??
????????? 1972), ??? ?????? ?????????? ??? (?? ????: ??????? 633/1972),
????????? ??? ?????? ?????? ??? ?????? ??? ??????.

11 ?? ?????? 7, ?????????? 4, ??????? d, ??? ?????????? 633/1972, ?? ?????? ??? ??
????????? ??? ?????, ?????????, ?????? ?????, ??? «????????? ?? ?????????????? ???
????? ?????? ?? ?????????? ?????????????? [...] ?????? ?????????? ?? ?????? ???
????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ?? ?? ?????? ??? ?????????? ??? ?????? ??? ??
????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????? ?????? ??? ?????????? ??? ?????? ??? [?????????]». ? ?????????? 4, ??????? e, ???
????? ?????? ?????? ?????????? ??? «?? ??? ?? ?????? d? ?????????? (?? ??????) ???
????????? ?? ?????? ?????????? ? ?????????? ?????? ?????? ?????? ?????? ???
[?????????] ?????????? ?? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

12 ?? ?????? 19, ?????????? 1, ??? ?????????? 633/1972 ?????????? ?? ??????????
????????? ??? «?? ??? ???? ?? ?? ?????? ??? ?????? ?????????? ?? ?????????? ? ??????????
????? ??? ?????? ?????????????????? ??????????????????, ?????? ? ?????????????? ». ???
????????? 2 ??? ?????? ?????? ?????????????? ??? ? ??? ??? ?????? ?? ?????????? ?????? ?
????? ? ? ?????????? ????? «?????? ?????????????? ? ?? ??? ?????? ?????????? ?? ??????????
????? ???». ??????, ??? ???? ?????????? 3, ??????? b, ??? ?????? ??????, «? ??? ????
????????? 2 ?? ?????????? ?????????? ??? ?????????? ?? ?? ?????????????? ??????
????????????? ?? [...] ?????? ?????????????? ?????? ??? ?????? ?????? ?????? ?? ??????, ??
????? ?????????????? ?????? ??? ?????? ??????, ?? ?????? ?? ?????? ?????? ??????????
??? ?????».

13 ?? ?????? 30, ?????????? 2, ??????? d, ??? ?????????? 633/1972 ?????? ???, ??
????????? ??? ???? ???? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ??????????, ?
????????? ??? ???? ?????? ?????? ?? ?????? ?????? ?? ?????????? ?? ?????????? ?? ??????????
????? ?? ?????????? ??? ?????? ??? ???? ?????? ?????? ?? ?? ?????? ??? ?????? ? ??????
????????? ??? ?????????? ?????????? «????? ?? ?????? ??? ?????????? ?? ?????????? ?? ??????????
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? 7».

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

14 ? EGN ??? ? ?????? ?????????? ?????????? ??? EGN – Equant Global Network BV,
????????? ?????????? ?????? ?????????? ?????????? ??? Société Internationale de
Télécommunications Aéronautiques, ?????????????? ?????? ?????????? ?????????, ??????????
?? 1949 ?? 11 ?????????? ?????? ??? ??? ?????????? ??? ?????????? ?????????? ??????????
????????????? ?????????????? ?????????????? ??? ??? ??????????????.

15 ??? ? ?????? ??? 1999, ? EGN ?????? ?????? ?????????? ?????????????? ???
Ensys Ltd, ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ???
????? ?????? ? Société Internationale de Télécommunications Aéronautiques.

16 ?????????? ??? ?? ?? ?????? ?????????? ??? ?????????? ?? ?? ??? ??? ??????, ??????
?? ?????????? ? ?????????? ??? ?????? 7, ?????????? 4, ??????? e, ??? ??????????
????????? 633/1972 ?????????? ??? ??????????????, ? EGN, ? ?????? ?????? ?????? ??
????????? ?????? ??? ??? ? ?????? ??? ?????????? ??? ??? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?????????????? ??? ??????, ?????? ??? ??? Agenzia,
?? 7 ?????????? 2000, ??? ?????????? ??? 9 400 000 000 ITL ?? ??? ??? ?? ???
1999, ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? 101 968 000 ITL, ?????? ??
????????? ??? ??? ?????????? ???.

17 ?? ?????? ??? 23? 2001, ? Agenzia ?????? ?? ?????????????? ?????? ???
????????? ?? ?? ?????????? ??? ??? ?????????? ?? ?????????? ??? ?? ?????????? ?
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? EGN ??? ??????????.

18 ?????????? ??? ?? ?????????? ??? ??? EGN ??? ?? ?????? ??????????????
????????? ??????????, ?? Commissione tributaria provinciale di Roma ??????, ?? ?????? ???
10? ?????????? 2001, ??? ? ?????????? ??? ?? ??????????, ???' ?????????? ??? ??????
7 ??? ?????????? 633/1972, ?? ?????? ??? ??? ?? ?????????? ??? ?????? ?????????? ??? ??????
????????, ?? ?????? ?? ???, ?????????, ?????????? ?? ?????? ?????????? ??? ??????
????????? ?? ?? ??? 19, ?????????? 3, ??????? b, ??? ?????? ??????????.

19 ?????? ?????? ?????? ??? ??? ?? ??? ?????? ??? Agenzia, ??
Commissione tributaria regionale del Lazio ?????? ??? ?? ?????? ?????? ??? ??????

??? 19?? ??????????? 2003 ??? ??????? ?? ??????? ??? EGN ??? ??? ??????? ??? ???
??? ??? ??????? ??? ??????????? ??? ??????????? ??? ??? ?????? ????. ???????????, ?? ?? ???
?????????? ??? ????? ?? ??? ??????????? ?? ????? 19, ?????????? 3, ??????? b, ???
?????????? 633/1972 ??? ??? ??? ????? ?? ????? «?????? ??????????????? ????? ??
?????? ??????? ?? ?????, ?? ????? ??????????????? ????? ?????, ?? ??????? ??
???????? ??????????? ??? ?????» ????? ??????????? ?????? ??? ??????? ?? ?????
?????????????? ????? ??? ??????. ?? ??????????? ??? ????? 7, ?????????? 4,
????????? e, ??? ?? ????? ??????????? ?????? ?????? ?????? ??? ??????????????? ???
?? ??????? ?? ?????? ????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????????? ??
????????? ??? ?????????? ??? ??????????????? ?? ?????????? ???????????????. ???????
?????, ?? ????? 19, ?????????? 2, ??? ????? ?????????? ?????????? ??? ??????????
????????????? ??? ????? ?????? ? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?? ???
??? ?? ?????????? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????.

20 ?????????? ??????? ?????????? ?? ?????? ??? EGN, ?? ?????? ??????????, ???
?????????? ??? ?? ??????? ?????????? ??? ?????? ?????? ?????????? ???????????
?????????? ??? ??????? ?? ?????? ??? ?????????? ?????? ?????????? ??????????? ?? ?
????????? ??? ?? Commissione tributaria regionale del Lazio ??????? ??????????
????????? ??? ????????????. ????????????, ??' ?? ??????, ??? ??????????? ??
????????? ?????????? ??????????????? ?????????????? ??? ?????? ?????? ???, ? ??????
????????? ??? ??? ????? ?????? ??? ?????? ?????? ??????????????? ? ?????? ??? ?????????? ?,
????????? ?????????? ?????????? ?? ?????? ?? ?????????? ?????????? ?????????? ?????? ???
????????? ??? ????? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ??????????.

21 ??? ?? ?????????? ????, ?? Corte suprema di cassazione ?????????? ?? ??????????
??? ??????? ??? ?????????? ?? ?????????? ?????????? ??????:

«????????? ?? ??? 17, ?????????? 3, ??????? ??, ??? [?????] ?????? [...], ?? ??????????
?????? ?????????? ??????????????? ?????? ??????????? ?? ???, ??????????? ??
????????? ??? ?????? ??? ??????????, ?????? ?? ?????? ?????????????? ?????? ??????? ??
??????, ??? ??????? ?? ?????? ?????? ?????? ?? ??? ?????? ??? ?????????? ???????,
?????????? ?? ?????????? ???????, ??? ??? ??????????, ??? ??? ?????? ??? ??????? ??
????????????? ?????????? ?????????? ?? ?? ????? ?????? ?????????? ?????????? ??????????????
????? ??? ?????;»

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

22 ?? ?? ??????? ??, ?? ?????? ?????????? ?????? ???' ?????? ?? ?? ??? 17,
?????????? 3, ?????????? ??, ??? ?????? ??????? ??? ?? ?????? ??? ?????? ???????????
??????????????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ??
?????????????? ??? ?????? ??????? ???????, ??????????, ??????? ??? ?????? ???????????,
?? ?????????? ?? ?? ?????????? ??? ?????????? ?????? ??? ?? ??? ?????? ??????? ???
????????????? ??? ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??????????????
????????????? ?? ?????????? ?????????????? ??? ?????? ?????? ?????????? ???????.

23 ??????????? ???, ?????? ??? ?????? 17, ?????????? 3, ??????? ??, ??? ???
??????, ? ??? ?????? ??? ?????? ??? ?????? 4, ?????????? 1, ??? ?????? ?????????? ??? ?? ???
????????? ?????????? ? ?????????? ??? ??? ?????? ?????????????? ??? ???????????
????????? ? ?????? ??? ??? ?????? ?????????? ?????????? ??? ?????? ??? ???????????
????????????? ??? ?????? ?????? ?????????? ?? ?????? 4, ?????????? 2, ?????????????? ???
??????, ?? ?????? ?? ?????? ?????? ?????????? ?????????? ?? ?? ??? ?????? ???????
????????? ??? ?????? ??? ?????? ??????.

24 ?? ???????????, ??? ???????????? ??? ? EGN ?????????? ?? ??? ??? ??????, ?????? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 4, ?????? 1 ??? 2, ??? ?????? ??????.

25 ??? ?????????? ?????? ??? ??? ?????? ?????? ?????? ??????????????, ?????? 17, ?????? 2, ?????? ?, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

26 ??? ??? ?????????? ???, ?????????? ?? ??? ?????? ?? ???? ?????? «[????????????? ??? ??????]» ??? ?????? ?????? ??? ?????? 17, ?????? 3, ?????? ?, ??? ?????? ??????.

27 ??????, ?????????? ??? ?? ??? 9 ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? 1 ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 2 ?????? 26?? ?????????? 1996, C?327/94, Dudda, ?????? 1996, ?. I?4595, ?????? 20, ??? 6?? ?????????? 2008, C?291/07, Kollektivavtalsstiftelsen TRR Trygghetsrådet, ?? ?????????? ?????? ??? ??????, ??? 24, ??? ??? 19?? ?????????? 2009, C-1/08, Athesia Druck, ?? ?????????? ??? ?????? ??? ?????? 20).

28 ?????????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 1 ??? 2 ??? ?????? 9 ??? ?????? ?????? , ? ?????? 1 ??? ?????? ?????? ?????? ?????? 2. ?? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? 9, ?????? 2, ?????? . ?? ???, ?????? ??? 1 ??? ?? ??? ?????? [??., ??????, ?????? ??? 6?? ?????? 1997, C?167/95, Linthorst, Pouwels en Scheres, ?????? 1997, ?. I?1195, ??? 11, ??? 12?? ?????? 2005, C?452/03, RAL (Channel Islands) ?.??., ?????? 2005, ?. I?3947, ?????? 24, ??? ??? 9?? ?????? 2006, C?114/05, Gillan Beach, ?????? 2006, ?. I?2427, ??? 15].

29 ??? ?????? ???, ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? 9, ?????? 2, ??? ?????? ?????? ??? ?????? ???, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (????????????? ?????? Dudda, ?????? 22 ??? 23, ??? Gillan Beach, ?????? 16 ??? 17).

30 ?? ??????????, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 9, ?????? 2, ?????? ?, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

31 ????????, ?????? ?? ?????????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

???? ??????? ??????, ? ???????? ?? ?? ??? ??????? ?????????? ?????????????? ????????????, ???
????? ?????????? ?????????? ??????????????????, ?????????? ??? ??? ????? ?????????? ??? ??????
9, ?????????? 2, ????????, ??? ?????? ??????, ??? ??? ?????? ?????????? ?????????? ??? ??
????? ?????????? ??? ??? EGN, ???, ??? ?????? ?????????? ?????????? ? ?????????? ???
????????? ?????????? ??? ??? 1, ??? ?????? ??????, ??? ?????????? 97/207, ? ????,
????? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?? ???
????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?? ??? 9,
????????? 1, ??? ?????? ??????, ??? ?????? ?????????? ??? ?????????? 2, ?????????? ??, ???
????? ??????, ??? 1?? ?????????? 1997 ??? ?? 31 ?????????? 1999 ? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??????. ?? ??? ??
????????? ?????????????? ??? ?????? 9, ?????????? 2, ?????????? ??, ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 1999/59, ? ??????
????????? ?? ?????? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? 1?? ?????????? 2000.

32 ??? ?????????? ??? ?? ??? ?????? ??? ?????? 9, ?????????? 2, ?????????? ??, ???
????? ???????, ?? ?????????? ?? ?? ??? 1, ??? ?????? ??????, ??? ?????????? 97/207, ?????? ???
????? ?????????? ?????????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????????????? ???
??? ??????????, ???' ?????? ??? ?????? ??? ?????????? ??? ??????????, ?????? ? ?????? ????
????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ? ?? ??????
????? ?????????? ??? ??? ?????? ?????????? ?? ?????????? ?, ?????????? ???, ? ?????? ???
????? ?????? ? ??? ?????? ?????? ???.

33 ??????? ??????, ??????, ??? ?????? ??? ?????? ?????? ?????, ? ?????????? ??? ??????????
????????????? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????????
????? ??????? ?????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??, ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????? «[?????????]
????? ??????]» ??? ?? ?????? 17, ?????????? 3, ???????? ??, ??? ?????? ?????? ??,
??????????, ?????? ?? ?????? ???????????, ?????? ?? ?????? ?????? ??? ?????? ???
????????????? ?? ??? ?????? ?????? ??? ?????????, ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? ??? ?????? ??? ??' ?? ?????? ?? ?????? ??? ??????????
????????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ?????? ???.

34 ??? ?? ??? ?? ?????????? ???????, ? ??????? ??? ?????????? ?????? ???
?? ?????? 17, ?????????? 3, ??????? ??, ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??????????????, ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ???, ? ??????
????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
?????????, ?? ?????????? ?? ?? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ???,
??? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???,
????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ???
????? ?????? ??? ?????? ???.

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

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

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

? ? ?????? 17, ?????????? 3, ??????? ??, ??? ?????? ?????? 77/388/??? ???
????????? ??? 17?? ??? 1977, ??? ?????????? ??? ?????? ??? ?????? ???

??????, ??? ?????????? ?? ??? ????? ??????? ??????? - ?????? ??????? ??????
????????????? ????: ?????????? ?????????? ????, ??? ?????????????? ?? ???
?????? 95/7/?? ??? ???????????, ??? 10?? ???????? 1995, ??? ?? ?????? ???
?????? ?????????? ???????????????, ??? ?? ?????????? ??? ??????? ??? ??????
?????, ? ?????? ??? ??????????????? ??? ?????? ??????? ??????? ??????????,
?????? ??? ?????? ???????, ?? ?????????? ? ?? ?????????? ??? ??????????, ???
?? ?? ??? ?????? ???????, ??? ?????????????? ??? ?? ?????? ??????
????????????? ??? ?????? ?????? ?? ?????????? ?????????????? ?????????????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???????, ?????? ?? ??????
?? ?????????? ??? ?????? ?? ?? ??????? ??????? ?????? ?????????? ????
????????? ??????

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

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