

?????? C-49/09

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

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

«????????? ??????? ????? – ????? ?????????????? ????? – ?????? 2006/112/?? –
????????????? ?????????? ?????? ????? – ?????????????? ?????????? – ?????????? ??????????
– ?????????? ?????????? – ?????????? ?????????? ??????????, ?????????? (?????????) ??????????
????????? ??? ?????? ?????????»

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

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

(?????? 2006/112 ??? ??????????, ??? 98, 115 ??? ??????? III)

?????? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
?????? 98 ??? ??? ?????????? III ??? ?????? 2006/112/E? ??????? ?? ?? ?????? ??????
????? ?????????? ?????? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ? ??????
????????? ??? ?????????? ?????????? ?????????? ?????? ?????? ?????????????? ?????? 7 % ??? ???
?????????, ??? ???????? ??? ?? ?????????? ?????? ?????? ?????????? ?????? ??????????,
????????? (?????????) ?????? ?????????? ??? ?????? ?????????? ??????????????, ??????????, ???
??? 1? ?????????? 1991, ??? ?????? ?????? ?????????????? ?????? ??? ??? ?????? ??? ?????? ???
?????? 2006/112 ??? ??? ?????? ?????????????? ?? ?? ?????? ?????????????? ???
????? ?????????????? ???, ??? ???????? ??? ?????????? ?? ?????????? ?? ?????????????? ?????????? ???
?????? 115 ??? ?? ??? ?????.

?????????, ? ??????? ??? ?????????? ?? ?? ?????? 115 ?????????? ?????????? ???
????????? ??????? ??? ???????????. ??? ??? ?????, ?? ?????? ?????? ?????, ??? ???
1? ?????????? 1991, ?????? ?? ?????????? ??? ?????? ??? ??? ?????? ??? ??? ?????? ??? ??????
2006/112 ?, ??????????, ?????? ?????????? ?? ?????????? ?????? ??? ??? ?????? ??? ??? ???
????? ?????????? ????. ??? ?? ??????, ??? ?????? ??? ?? ??? ??????????, ??
????????? ?????? ??? ?????????? ?????????????? ??? ?? ??? ?????? ???, ??? ??? ??????????, ??
????????? 1991, ?? ?????????? ?? ?????????? ??????????.

(?? ?????? 42, 54, 57 ??? ??????.)

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

??? 28?? ?????????? 2010 (*)

«????????? ??????? ?????? – ????? ?????????????? ?????? – ?????? 2006/112/?? –
????????????? ?????????? ?????? ????? – ?????????? ?????? – ?????????? ?????? – ?????????? ??????
– ?????????? ?????????? – ?????????? ?????? ??????, ?????????? (???????) ??????
????????? ??? ?????? ?????? ??????»

???? ??????? C?49/09,

? ? ?????????? ?????? ?? ?????? 226 ?? ??? ???????????, ? ?????? ?????????? ??? 2
????????? 2009,

????????? ???????, ?????????????? ??? ??? ?. ?????????????? ??? ??? K. Herrmann, ??
???? ??????? ??? ???????????,

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

????

????????? ??? ???????, ?????????????? ??? ??? M. Szpunar, M. Dowgielewicz ???
M. Jarosz, ??? ??? ??? A. Rutkowska,

?????,

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

????????? ??? ??? K. Lenaerts, ?????? ???????, R. Silva de Lapuerta, E. Juhász, J.
Malenovský ??? D. Šváby (???????), ????????,

????? ??????????: J. Kokott

?????????: K. Malacek, ??????? ????????????,

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
22?? ??????? 2010,

????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??????????
?? 10?? ??????? 2010,

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

???????

1 ?? ??? ??????? ???, ? ??????? ??? ?????????? ?????? ?????????? ?????? ??? ??
????????? ?? ?????????? ??? ? ?????????? ??? ?????????? ?????, ?????????? ??? ??????????
????????? ?????????? ??? ?????? ?????????? ?????? (?? ????: ???) 7 % ??? ??
????????? ??? ?????? ??? ?? ?????????? ?????? ?????? ?????????? ?????????? ??????????,
????????? (???????) ?????? ?????? ?????? ??? ?????? ?????????? ??????????, ?????? ??
????????? ??? ?????? ??? ?? ?????????? ?????? ?????????? ??? ?????? 98 ??? ??
????????? III ??? ?????? 2006/112/E? ??? ???????, ??? 28?? ??????? 2006,
?????? ?? ?? ?????? ?????? ?????? ?????????? ?????? (?? L 347, ?. 1).

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

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

2 ?? ?????? 2006/112 ???????? ??? ??????????? ??? 1?? ?????????? 2007 ??? ???
?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????? ???
????????? ??? ?????? ???, ??? ?????? ?? ??? ????? ?????? ?????? ?????? – ???
????????? ??? ?????? ?????????????? ????: ?????????? ?????????? ??? (?? L 145, ?. 1, ???
????: ??? ??????).

3 ?? ??? 96 ??? ?????? 2006/112, ??? ?????????? ??? ?????? 12, ?????????? 3,
????????? ?, ??? ??????, ??? ?????? ??????, ??? ?????? ?? ??????:

«?? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ??? ?????????? ??? ???
????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ??? ??? ???
????? ??? ??? ??? ?????? ??????????»

4 ??? ? ? ????? 97, ?????????? 1, ??? ?????? 2006/112:

«?? ?? 1? ?????????? 2006 ?? ?? ?? 31? ?????????? 2010 ? ?????????? ??????????
?? ?????? ?? ?????? ?????????? ?? 15 %.»

5 ?? ????? 98, ?????????? 1 ?? 2, ??? ? ? ?????? ?????? ????:

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

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

6 ?? ?????? ?? ??? ?????? ?? ?????? 99, ?????????? 1, ??? ?????? 2006/112, ??
????????? ?????????? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??
??? ?????? ?? ?????? ?????????? ?? 5 %.

7 ?? ????? 109 ?? . ?? ?????? 2006/112 ?????????? ??? ?????????? ??? ???
?? ?????? ??? ??????, ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? III ??? ?????? 2006/112 ? ?????? ? ?????? ?????? ?????????? ??? ???
????? ?????????? ??? 12 %.

8 ??? ? ? ????? 114, ?????????? 1, ??? ?????? 2006/112:

«?? ????, ?? ?????? ?????????? ??? 1? ?????????? 1993 ?? ?????????? ???
????????? ??? ?????????? ??? 1? ?????????? 1991 ??? ?????????? ??? 2 %, ?????? ??
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? 99 ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ???.

????????, ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? ???????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???
?????????»

9 ??? ? ? ????? 115 ??? ?????? 2006/112:

«?? ????, ?? ?????? ??? 1? ?????????? 1991 ?????????? ?????????? ?????????? ???

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

10 ?? ??????? 5 ??? ????? VIII ??? ?????? 2006/112, ?????????? «??????????
?????????», ???????????, ??? ??? 123 ??? 130, ?????????? ?? ?????? ?????????? ??
????????? ??? ??? ?????????? ??? ?????????? ?????? ??? 12 ???? 2004 ??
????????? ?? ?????????? ?????????? ??? ?????????? ?????????? ?????????????? ??
????????? ??? ??? ??? ?????????? ?????????? ?????? ??? ?? ?????????? ??????????
????????? ??? ?? ?????????? ??????.

11 ??? ?????? ?? ?????????? ??? ???????, ?? ?????? 128 ??? ?????? 2006/112 ??????:

«1. ?? ??????? ?????? ?? ?????????? ???????, ?? ??????? ?????????? ??? ?????? ??
????????? ??? ???????????, ??? ?????????? ???????, ??? ?????????? ?????????? ??????? ??
??????????, ??? ??? 31? ?????????? 2007.

2. ?? ??????? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? 7 %
???? ?????? ?????????? ?????????? ??? ?? 31? ?????????? 2007 ? ??? ??? ?????????? ??
????????? ?????????? ??? ?????? 402, ??? ? ?????????? ??? ?????? ?????? ??????????????.

3. ?? ??????? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? 3 %
???? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????? ???, ??? 1, ??? ?? 30
????????? 2008.

4. ?? ??????? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? 3 %
???? ?????????? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??? ??????
???? ?????????? ???????, ?? ?????????? ?? ?????????? ???????, ??? ?????? ? ??????????,
??? ?????????? ??? ??????? ???, ?????? 11, ??? ?? 30 ?????? 2008.

5. ?? ??????? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? 7 %,
???? ?????? ?????????? ??? ??? ?????????? ??? ?????????? ?????????? ?????????? ???,
??????????, ?????????? ??? ?????????? ?????????? ??? ?????????? ?? ?????????? ???????, ???
???? ???????, ??? ??? ??? ?????? ?????????? ???????, ?????????? ?????????? ? ?????? ???????
??????????, ??????? ?? ?? ??? 12, ?????????? 1, ?????????? ??, ??? ?? 31 ??????????
2007.»

12 ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??????????
??? ?????? ?????? ? ??? ??? ??? ?????????? ??? ?????????? ?????????? ???, ???
????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? (?? 2003, L 236, ?. 33, ??? ????: ?????? ?????????????). ?? ??????????????
????? ?????????????? ??? ?????? 9, ?????? 1, ?????????? ?? ??? ??, ??? ??????????????
XII ??? ?????? ??????????.

13 ?? ????? 24 ??? ?????? ?????????? ?????? ?? ???:

«?? ??? ?????? ??? ?????????? ??? ?????????? V, VI, VII, VIII, IX, X, XI, XII, XIII ??? XIV ???
????????? ??????, ?????? ??? ?? ??? ?????? ???, ??? ??? ?????? ??? ?????? ??? ??????????
??? ?????????? ????.»

14 ?? ?????????? XII ???. ?????? ??????? ?????????????? ?????? ??? ?????? «?????????? ? ??????
?????????? ???. ?????? 24 ??? ?????? ??????????: ???????». ??? ??????? 9 ?????? ???
???????????, ??? ??? ????? «?????????», ?????????????? ?? ?????? 1 ?? ?????? ?????? ???
????????? ??? ??????? ?????? ?????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? :

«31977 L 0388: ????? ??????? 77/388/??? ??? ???????????, ??? 17?? ????? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??????
????????? – ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (?? L
145 [...], ?. 14), ??? ?????????????? ???????? ???:

– 32002 L 0038: ?????? 2002/38/?? ??? ???????????, ??? 7?? ????? 2002 (?? L 128 [...], ?. 41).

?) ???? ?????????? ??? ?????? 12, ?????????? 3, ??????? ??, ??? ?????? 77/388/???,
? ?????? ?????? ?? ?????????? i) ??????? ?? ?????????? ??? ?????? ??? ????? ??????????
???? ??? ?????????? ??? ?????? ??? ??? ?????????? ?????????? ?????????? ??? ??????????????
??????????, ??? ??? 31? ?????????? 2007 ??? ii) ??????? ?????????? ???
????????????? ??? ????? ?????????? 7 % ??? ?????? ?????????? ?????????? ??? 31?
????????? 2007 ? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 28??
?? ???????, ??????? ??? ?????????? ??? ??????????.

) ???? ?????????? ??? ?????? 12, ?????????? 3, ??????? ?, ?? ?????? 77/388/???,
? ?????? ?????? ?? ?????????? i) ?????????? ?????????? ?????? ?????????????? ??????, ??
????????? ??? 3 %, ??? ?????? ?? ?????? (????????????????????? ??? ?????? ???
????????????? ??? ?????????? ?????) ??? ?????????? ?????????? ??? ?????? ?? ??????
?? ?????, ?? ?????? ???, ?????? ???, ??? ?????? ???, ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????????? ?????????, ?? ?????????? ??? ?????????? ?????????????? ??
????????????? ??? ?????????? ???? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??????
?? ?????? ?????? ?????????? ?????????????? ?????????? ??? ?????????? ??????????, ??
????????? ?? ?????????? ?????????? ?????? ??? ?????? ?????? ???? ?????????? ?????????? ???
????? 1 ??? 10 ??? ?????????? ???? ??????, ?????? ??? 30 ?????????? 2008 ??? ii)
????????? ?????????? ?????? ?????????????? ??????, ??? ?????????? ??? 7 %, ??? ??????
?? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ?????????? ???,
?????????, ?????????? ??? ?????????? ?????? ??????????, ?? ?????????? ??? ?????????? ???,
?? ?????????? ?? ?????? ?????????? ???? ?????? ?????????? ??????????, ?? ?????? ??????????
?? ??? ?????? ??? ?????? ??????????, ?????? ??? ?????? 4, ?????????? 3, ?????????? ??, ???
????????, ?????? ??? 31 ?????????? 2007.

?) ??? ??? ?????? ??????? ?? ???? ?????? 28, ?????????? 3, ????????? ??, ???
?????? 77/388/???, ? ?????? ?????? ?? ?????????? ?????????? ??? ??? ???
????????????? ?????? ??? ??? ?????? ?????????? ?????????? ?? ?????? ?????????? ???
????? 17 ??? ?????????? ?? ??? ??????, ?????? ??? ?????? ???? ???? 28,
????????? 4, ??? ?????? ? ??? ??? ?????? ? ??? ?????? ?????? ?????????? ???
????????? ??? ?? ?????? ?????? ???, ?????? ??? ?????? ?????? ??????»

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

15 ??????? ??? ?????? 41 ??? ????? ?? 11?? ??????? 2004 ????. ?????????????????
????? (Dz. U ??? 2004, ?????. 54, ????. 535), ????. ?????????????????? (??? ????: ?????? ????. ???),
????? ?????? ?????? ?????????????? ??? ?????????????? ?? 22 %, ?????????????? ????
?????????????. ?? ?????? 41, ??????????? 2, ??? ???? ?????? ?????? ?????????? ??????????

????????????? 7 % ??? ?? ?????? ??? ????? ?????? ?????? ?????????????? ??? ?????????????? ??? ?????? III.

16 ????????????? III ??? ????? ???? ??? ??????????????????, ??? ??? 45, ?? «?????????
????????? ??????? ??? ?? ?????????? ?????? ??????» ???, ??? ??? 47, ?? «?????????
?????????».

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

17 ? ????????, ?????????? ??? ? ??????? ?????????? ?????????? ??? 7 % ???
??????????, ??? ??????? ??? ?? ?????????????? ?????? ?????????? ?????????? ??????????,
?????????? ?????? ?????????? ?????????? ??? ?????????? ?????????? ?????? ?????????? ???
?????????? ?????? ??? ?????? 98 ??? ??? ?????????? III ??? ?????? 2006/112,
????????? ?? ??????? ??? ??? ?? ?????? 226 ?? ?????????? ??? ??????????. ?? ?? ?? 23
?????? 2007 ?????? ???????, ?????? ??? ?? ?????????? ??? ?????????? ?? ??????? ???
?????????? ???.

18 ??? ??? 22 ?????? 2007 ??????????? ??? ???????, ? ?????????? ??? ???????
?????????? ??? ? ??????? ?????????? ?????????? ??? ??? ?? ??? ????? ??????????????
??? ?????? ?? ????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? «????????? ???
?????????». ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ??? ???
????? ??? ????????, ??? ????????????, ??? ??? ?????? ??????????. ????, ??????????
???, ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????????
??????????, ??? ?????? ?? ?????????? ?????????? ??? ?????????? ??? ??????????????.

19 ? ????????, ??? ?? ??????? ???? ?? ???? ?????????? ???, ??????? ???? ?????????????????
????? ??? 1? ?????????????? 2008, ?? ?? ???? ????? ?????????? ?? ???? ?????????????? ??? ?????????? ??
????? ?? ??????? ???? ?? ?????????????? ?? ???? ????? ?????????????? ??? ?????? ??? ?????? ??? ??
????????? ???.

20 ?? ??????? ?? 31?? ??? 2008, ? ?????????? ?? ?????????? ??????? ???.

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

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

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

22 ? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????
????????? ??? 7 % ??? ????? ??????????, ??? ?????????? ??? ?? ?????????????? ??? ??????????
????????? ?????????? ??????????, ?????????????? ?????????? ?????????? ??? ??????????
?????????, ??? ????? ???????? ??? ?????????????? ?????????? ??? ?????? 98 ??? ???
????????????? III ??? ?????? 2006/112.

23 ? ?????????? ???????????? ??? ?????? ??? ?????? 2006/112 ?????? ? ??????????? ???
???. ?????????? ??? ?? ?????????? ???????????? ??? ?????????? ?????????? ??? ??????, ?
????????? ??? ???????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??????????
????? ?????????????????? ??? ?? ??? ??????.

24 ? ?????????? ??????? ?? ????? 98, ?????????? 2, ??? ?????? 2006/112 ??????
????????? ?? ?? ?????????? ?????????????? ?????????????? ??? ?????????????? ?????
????????? ?????????????? ??? ?????????????? ??? ?????????????? ||| ??? ?? ??? ?????????? ???

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

25 ?? ?????????? ??? ?????????? ?????? ??? ?????????????? ?????????? ?????????? ?????????? ??? ?? ?????????? ?????????? ?????????? ?????? ??? ?? 114 ??? ?? ?? 115 ??? ?? ?????? 2006/112, ?????? ?? ?????????? ??? 1? ?????????? 1991, ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?? ?????????? ?? ?????????? ?????? ??? ?? ?????? ???.

26 ? ?????????? ?????????????? ??? ?????? ??? ?? ratio legis ??? ?????? 115 ??? ?????? 2006/112, ?? ?????? ?????????????? ??? ?????? 28, ?????????? 2, ?????????? ?, ??? ?????? ????????, ??? ?????????????? ?? ??? ?????? 92/77/??? ??? ????????????, ??? 19?? ?????????? 1992 (?? L 316, ?. 1), ?????????? ??? ?????? ?????????? ?????????? ?????????? ?? ??? ?????? ??? ??? ?????????? ?????????? ?????? ??? ?????? 92/77 ??? ?????? ??? ?????????? ??? ?????? ???' ????????, ?????????? ?????????? ?????????? ???, ??? ??? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 1? ?????????? 1991 (??., ??' ??? ??? ??????, ?????? ??? 11?? ?????????? 2001, C?267/99, Adam, ?????? 2001, ?. I?7467, ????? 34).

27 ?????? ??? ? ?????????? ??? ?????????? ??? ?????????? ?????????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? 92/77 ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 114 ??? 115 ??? ?????? 2006/112 (??., ??' ??????, ?????? ??? 2002, C?169/00, ?????? ??? ?????? 2002, ?. I?2433, ????? 30).

28 ??????????, ? ?????? ?????????? ???, ?? ??? ??????????, ??? ?????????? ?? ?????? ??? ?????? 115 ??? ?????? 2006/112.

29 ??????, ??? 1? ?????????? 1991, ? ??? ?????? ?????? ?????????? ? ?????? ??? 16?? ?????????? 1972 ??? ?????? ?????? ?????? (????????????? ?????? Dz. U ??? 1983, ????. 43, ??? 191), ??? ?????????????? (?? ?????: ?????? ??? 16?? ?????????? 1972), ??? ?????????? ??? ??? ??? ?????? ??? ?????? 115 ??? ?????? 2006/112.

30 ??????, ??? 1? ?????????? 1991, ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????????? ?????? ??? ??????.

31 ? ?????????? ??? ?????????? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? 115 ??? ?????? 2006/112, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????.

32 ? ?????????? ??? ?????????? ?????? ???, ?????? ?????? ? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? expressis verbis ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? 115 ??? ?????? 2006/112.

33 ? ?????????? ??? ?????? ?????? ???, ??? 1? ?????????? 1991, ?????? ??? ?????? ??? 16?? ?????? 1972, ?????? ??? ?????? ??????.

? ?????????? ??? ???? ?????? ???????, ?????? ??? ?????? ?? ??????? ?????????? ?????????? ???
?????????. ?? ?????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ??? ??? ??? ??? 8?? ?????????? 1993 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? (Dz. U ????. 11, ??? 50) ??? ??????????, ??? ?????? ?????? ?????? ?? ??? ?????? ??? ??????
????????? ??? ?????????? ?? ??? ?????? ??? ?????? ?????? ?? ?? ??????, ? ?????????? ??? ??????
????????? ?????? ?????? ?????? 7 % ?? ??? ??? ?????? ??????, ????????, ????????, ???
????????? ?????? ?????? 28, ?????????? 2, ?????????? ?, ??? ??? ?????? ??????,
???, ??? ?????? ????, ??? ?????? 115 ??? ?????? 2006/112, ??? ??? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??????.

34 ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????????? ???
????????? ?????????????? ??? ?????????? ??? ?????? 115 ??? ?????? 2006/112 ??? ??
????? ????, ??? ?????????? ?????????????? ??? ?????? ??? ?????? ?????????? ???
????? ??? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??????
????? ?????? ?????????? ?? ?????????? ???, ?? ?????? ??? ?????? ?? ?????? ?????. ??? ??
????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????????? ???, ??? ??????
????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?? ?????? ?????? ?????????? ???
????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???, ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????? ?????? ?? ?????? ??? ?????????? ? ?????????? ?????????? ??? ?????????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

35 ? ?????? ?????? ?????????? ??? «??» ??? ?????? ?? ?????????? ?? ??? 115 ???
????? 2006/112 ?????????? ??? ?????????? ??? ?????????? ??? «?????» ??? ?????? ????.
????????? ??? ?????? ?? ??? ?????? ?????????? -???, ?????? ??? 10 % ??? ??
????????? ???- ?? ?????? ?? ?????????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ???
????? ????, ?????????? ??, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

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

37 ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? 2006/112, ??? ??????????
?? ??? ?????? ?????????? ??? ?????? ??? ?? ??????????, ??? ?????? ?? ?????????? ??? ??
????? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????????? ??? ?????? (??., ??' ??????, ?????????? ??? 6?? ??????
2006, C?251/05, Talacre Beach Caravan Sales, ?????? 2006, ?. I?6269, ?????? 22, ??? ??
10?? ?????? 2008, C?309/06, Marks & Spencer, ?????? 2008, ?. I?2283, ?????? 24).

38 ? ?????????? ??? ?????? ?????????? ??? ?????? ???, ?? ?????? ?? ?????? ???
????????? ?????????? ???, ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?? ??
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???,
????? ?? ??? ?????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????????? ??? ??????.

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

39 ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ?? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? 7 %

??? ??? ??????? ?????? ????? ?? ?????????????????? ??? ?????????????? ?????? ???
?????????? ??? ?????????????? III ??? ?????? 2006/112, ??? ??? ?????? ??? ??? ?????? ???
????????????? ?????????? ??????????????, ??????? ?? ??? ?????? ?? ?????? 98 ??? ??????
?????. ?????? ??? ?????????????? ??? ?????? ?????? ?????????????? ??? ?????????? ??????
?????????.

40 ??????????, ? ?????????? ??? ?????????? ?????????? ??? ? ?? ??? ?????????? ??
????????? ?????????? ?????? ?? ?????? ?????? ?????? ??? ?????? 115 ??? ??????
2006/112. ? ?????? ?????? ?????????? ??? ? ?????? ?????????? ??? ??? ??? ?????? ??? ???
????? ??? ?????????? ??? ??? ?????? ?????????? ??? ?????? 92/77, ?????????? ??
????????? ??? ? ?? ?????????? ?????? 115 ??? ?????????? ?? ??????????.

41 ?????????? ?????????????? ? ?????????? ??? ? ?????? 115 ??? ?????? 2006/112
????????? ?????????? ?????? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? 28,
????????? 2, ??????? ?, ?? ??? ?????? 92/77, ??? ? ?????? ??????, ???' ????????, ??
??? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ???
??? ?????? ??? ?????????? ???, ?? ?????????? ?? ?????????? ??? ?????????? ??????????
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? 1? ?????????? 1991.
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????, ?? ?????? 115
??? ?????? 2006/112 ?????? ?? ?????????? ?????????? (??., ???' ???????, ?????? ??
12? ?????? 2008, C?462/05, ??????? ??? ?????? ?????? 2008, ?. ?-4183, ?????
54).

42 ?????? ??? ?????? ??? ?? ?????????? ??? ? ?????????? ??? ?????????? ?? ?? ???
115 ?????????? ?????? ??? ?????????? ??? ?????????? ?????? ???????????. ??????? ?? ???
?????, ??? ? 1? ?????????? 1991, ??? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????????? ?
????????? ??? ??? ?????? ??? ?????? 2006/112 ?, ??????????, ?????? ??????????
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?? ??????,
??? ?????? ??? ??? ?????????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??????, ??? ??? 1? ?????????? 1991, ?? ?????????? ??
????????? ??????.

43 ??? ?????? ??? ?????? ??????????, ? ?????????? ??? ?????????? ?????????? ??? ??
????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????????? ? ?????? ???
16? ?????????? 1972, ?? ?????? ??? ? 1? ?????????? 1991, ??????, ??????????, ??
????????? ?? ?????? ?????????? ??? ??? ???.

44 ??????????? ??????? ? ??????? ?? ?????? ??????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ??? ??? ?????? ??? ??? ????????, ??? ?? ?????? ??? ??????? ??? ???????, ???????????
?????? ?????? ?????????????? ??????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ??
?????????, ??????? ??? ?????? ??? ??????? ??? ?????????? ??? ?????? ?????????? ??? ??
????????? ??????? ??? ???????, ??? ?? ?????? ??? ??????? ??????? ??? ?????? ??? ??????. ??????, ??
???? ????????, ? ??? ?????????? ??????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ??
????????? ????? ?? ??????? ??? ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ??????? ?? ??????? ??? ??????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ??? ??, ??
????????? ??????, ??? ?? ??????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??
???????????, ?? ??? ??? ??????, ??? ?? ?????????? ??? ?????? ??? ?? ???????, ???????, ???
????????? (??.. ??????? ??? 3?? ??????? 2006, C?475/03, Banca popolare di
Cremona, ?????? 2006, ?. I?9373, ?????? 21 ??? 22).

45 ?? ??????????? ???. ??????????????? ?? ??????? ?? ??????????????? ???. ????. ???. ???.
?????? ??????? ???. ???????????, ??? ?? ??????? ???. ??????? ???. ???. ???. ??????????? ???. ???.
????? ?????? ??????: ? ?????? ??????? ???. ???. ???. ??????????? ???. ?????? ?????? ???.
?????????-? ??????????? ???. ???. ??????? ???. ??????????? ???. ??????????? ???. ??????????? ???.
????????? ????. ????. ????. ???. ??????? ???. ????. ??????????? ???. ??????????. ? ?????????? ???.
????? ??????? ????. ???????????, ??????????? ???. ??????????, ??????????????????? ???. ??????? ???.
????????? ???????, ??????? ???. ??????? ???. ??????????? ???. ??????????? ???. ??????????. ? ??????? ???.
???. ???. ???. ???. ??????? ? ??????? ???. ???. ??????? ???. ??????? ???. ??????????? ???. ???.
?????????? ???. ??????? ???. ???????????, ????. ???. ??????? ???. ??????????? ???. ??????? ???.
?????????? ???. ???. ??????? ???. ??????????? ???. ??????? ???. ??????? ???. ???. ???. ??????? ???.
?????????? ???. ??????????? (?????????????? ???. ??????? Banca popolare di Cremona, ?????? 28,
????? ???. ??????? ???. 11?? ??????? 2007, C?283/06 ??? C?312/06, KÖGÁZ ?.., ???????
2007, ?. I?8463, ?????? 37).

47 ?? ??????????, ????, ???, ???' ????, ?? ?????? ?????? ?????????? ?????????? ???
???, ?????????? ???, ??? ? ??? ?????????? ?? ?????? ?????? ?????? ??? ???? ???? ????
???????, ?? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?
????????? (????????????? ?????? KÖGÁZ ???., ????? 39), ??? ?? ????? 4 ??? 5 ???
????? ??? 16?? ?????????? 1972 ?????????? ??? ? ?????? ??? ??? 1? ?????????? 1991
????????? ????? ?????????? , ???????, ?? ??? ?????? ?????? ?????? ?????? ?????? ???
????????????? ? ?????? ?? ?????? ??????.

48 ?????????? ??? ? ?????????? ?????? ?????????????? ?????? ??? ?????????????? ?????
?????????, ??? ???? ?????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ??? ??????????
????????????? ??? ???? ?????? ?? ?????? ?????? ??????, ?? ?????????? ?? ??? ?????? ?????? ?
????????? ??? ?????????????? ??? ?????? ?????? ?? ?????? ?? ??? ?????? ?? ??? ?????? ???
????????????? ??? ??? ?????? ?????? ??? ?????? (???. ?????????????? ?????? KÖGÁZ ??.,
????? 40).

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

???? ? ?????? ??????????? ?? ??????? ?????? ??? ?????????? ? ??? ????????, ??? ??
????????? ??? ??????? ?? ??????? ?????????? ??? ?????? ?????????? ??? ??? ??????
?? ?????????? ??? ??? ??? ??' ?????????? ??? ?????????? ?????????? ??? ? ?????? ??? 16??
????????? 1972 ??? ?????? ?????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ???????????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ?????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.. ?? ?? ??????, ? ?? ??? ?????
??? ?????????? ??? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ??????????.

50 ??? ????????, ? ?????????? ??? ??????? ?????????? ??? ?? ?? ?????? 9 ??? ???????????
?? ??????? ?????????? ??? 17?? ?????? 1990 (Dz. U ????. 27, ??? 156) ???????????,
???' ????, ??? ??? ??? ?????? ?????? ??? ?????? ?????????? ?????????????? ??? ??????????
??? ?????? ??????????.

51 ??? ????, ??????? ?? ?????????????? ??? ?????? ?????? ?????????? ?? ??? ?? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ?? ?????? ?? ?????? ???, ?????? ?? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????? ??? ?????????? ?? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?? ??? ???, ? ?????????? ??? ?????? ?????? ?????????? ?? ?????? ???
????????? ??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ??????
??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???, ??? ??????
????????? (????????????? ?????? Banca popolare di Cremona, ??? 31).

52 ?? ??????????, ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?
????????? ???, ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????????? ?????? ?????? ??????
????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ?????????? ??? ??
????????? ??? ?????? ???, ??? ?????? ??? ?????? ?? ?????? ?????????? ?? ??? ??????????.

53 ??? ??? ?????? ?????????? ??????? ??? ? ?????? ??? 1? ?????????? 1991 ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ???.

54 ??? ??? ?????? ?????? ?????????? ??? ??????? ??? ??????, ??? ??? 1? ?????????? 1991, ???
??? ??? ?????? ??? ?????? 2006/112 ??? ?????? ??? ?????? ?????????? ??? ?? ??????
????????? ??? ???, ??? ?????????? ?? ?????? ?????? ?????????? ??? ?????? 115 ???
????? 2006/112.

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

56 ????, ??? ?????? ??? ? ?????????? ??? ?????? ?????????? ?? ?????????? ?????????? ???
????? ?????? ??? ? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? 2006/112, ??? ??????, ??????????, ???
????????? ??? ??????, ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? 98, ?????????? 2, ??? ?????? 2006/112 ??? ??? ??
????? ???.

57 ??' ??? ?????? ??? ????????, ?????? ?? ?????????? ??? ? ?????????? ??? ??????????,
????????? ??? ?????? ?????? ?????? ??? 7 % ??? ??? ??????????, ???

? ??????? ? ?? ? ?????????????? ??????? ?????????? ?????????? ??????????, ??????????????
(?????????) ??????? ?????????? ?? ?????????? ??????????, ?????? ?? ?????????????? ??
?????? ?? ?? ?? ?????????????? ?????????? ?? ?????? 98 ?? ?? ?????????????? III ??
?????? 2006/112

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

58 ?? ? ?? ?? 69, ?????????? 2, ?? ?????????? ??????????????, ? ??????? ??????????
????????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??????????
??????. ?????????? ?? ? ?????????? ?????? ?????? ?????? ??? ? ?????????? ??
?????? ??????, ?????? ?? ?????????????? ?? ?????????? ???.

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

1) ? ?????????? ?? ???????, ?????????????? ?? ?????????? ??????????
????????? ?? ?????????????? ?????? 7 % ?? ?? ??????????, ?? ?????????? ??
?? ?????????? ?????? ?????? ?????? ??????, ?????????? (?????????)
????????? ?????????? ?? ? ?????????? ??????????, ?????? ?? ?????????? ??
????? ?? ?? ?????????? ?????? 98 ?? ?? ?????????? III
?? ?????? 2006/112/E? ?? ????????, ?? 28? ?????? 2006, ??????? ?? ??
????? ?????? ?????? ?????????????? ???.

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

(?????????)

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