

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

??? 16?? ?????????? 2014 (*)

«????????????? ?????????? — ????? ?????? ????? ?????????????? ????? — ??????
2006/112/?? — ?????? 44 — ?????? ??? “????????? ??????????????” ??? ?????? ?????????? —
????? ???? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ???
— ?????????????? ???»

???? ?????? C?605/12,

? ? ?????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? 267 ????, ???
?????? ?? Naczeln? S?d Administracyjny (???????) ?? ?????? ??? 25?? ?????????? 2012, ?
????? ??????? ??? ?????????? ??? 24 ?????????? 2012, ??? ?????? ??? ????

Welmory sp. z o.o.

????

Dyrektor Izby Skarbowej w Gda?sku,

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

????????? ??? ??? M. Illeši?, ?????? ????????, A. Ó Caoimh, C. Toader, E. Jaraši?nas ???
C. G. Fernlund (???????), ????????,

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

?????????: M. Aleksejew, ??????? ????????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
6?? ?????? 2014,

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

- ? Welmory sp. z o.o., ?????????? ??? M. Gorazda, adwokat,
- ? Dyrektor Izby Skarbowej w Gda?sku, ?????????? ??? T. Tratkiewicz ??? J. Kaute,
- ? ?????? ????????, ?????????? ??? B. Majczyna ??? A. Kramarczyk,
- ? ?????? ????????, ?????????? ??? K. ?????? ??? E. ????????,
- ? ?????? ??? ????????, ?????????? ??? L. Christie,
????????? ??? O. Thomas, barrister,
- ? ?????? ??? ????????, ?????????? ??? K. Herrmann ??? L. Lozano Palacios
????? ??? R. Lyal,

???? ?????? ?? ?????? ??????????? ??? ???????? ??? ?????? ?? ???????????
?? 15?? ??? 2014,

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

??????

1 ? ?????? ?????????????? ?????? ??? ?????? ??? ?????? 44 ??? ??????
2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006, ?????? ?? ???? ?????? ??????
????????????? ??? (?? L 347, ?. 1), ??? ?????????? ?? ??? ?????? 2008/8/E? ???
?????????, ??? 12?? ?????????? 2008 (?? L 44, ?. 11, ??? ?: ?????? ???).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Welmary sp. z
o.o., ? ?????? ?????? ??? ?????? (?? ?: ?????? ??????) ??? ??? Dyrektor Izby
Skarbowej w Gd?sku (????????? ??? ?????????? ?????? ??? Gd?sk, ??? ?:
Dyrektor), ?? ?????????? ??? ??? ?????? ??? ?????? ?????????????? ??? (?? ?:
??) ??? ?????????? ?????????? ??? ??? ?????? ??? ?? ?????? ?????? ??? ???
????????? ?????????? ??? ??? ?????? ???.

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

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

3 ? ?????? ???, ??? ?????? ??? 411 ??? 413, ?????????? ??? ???????????,
?? 1?? ?????????? 2007, ?? ?????????? ??? ?????????? ?????? ??? ???, ???
????? ?????????? ??? ?????? ??? ???? 77/388/?? ??? ??????????, ?? 17??
????? 1977, ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ?? ???
????? ?????? — ??? ?????? ??? ?????? ?????? ?????????? ????: ??????????
????????? ??? (?? ??. ??. 09/001, ?. 49, ??? ?: ??? ??????). ?? ????? 9, ??????????
1, ??? ?????? ??????, ?? ????? «????? ??????», ?????? ?? ???:

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

4 ??? ?? 31 ?????????? 2009, ?? ????? 43 ??? ?????? 2006/11, ?? ???
????????????? ??? ?????? 3 ??? ?????? ??? ?????? «????? ?????? ??????»,
????????? ?? ???:

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

5 ? ?????? 2008/8 ???????????, ?? 1?? ?????????? 2010, ?? ????? 43 ??? 59, ??
????????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? 2006/112.

6 ?? ????? 44 ??? ?????? ??? ?????? ?? ???:

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

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

7 ? ?????????????? ??? 4 ??? ?????????? ?????? (??) 282/2011 ??? ??????????,
??? 15?? ?????? 2011, ??? ? ?????? ?????? ?????? ?????? 2006/112 (?? L 77, ?. 1, ??? ?: ?????? ?????? ??????), ? ?????? ?????? ??? 1?? ?????? 2011, ?????? ??
????:

«????? ??? ?????? ?????? ?????????? ?????? ? ?????????? ?????????? ?????????? ???
????????? ?????????? ??? ? ?????? ?????? ?????? ?????? ?????? 2006/112/??,
????????? ??? ?????? ?????? ?????? ?????????? ???, ??? ?????? ?????? ??? ???? ??? ??????
?????????, ??? ???? ??? ???? ??? ?????????? ?????? [...]»

8 ? ?????????? ??? 14 ??? ?????????? ?????? ??? ?????? ?? ????:

«??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?? ??? ?????????? ???
????? ??? ?????????? ???, ?? ?????? ?? ?????????? ?????? ?????? ??? ???? ???
????????? ??? ?????????? ???, ? ?????? ?????? ??????, ? ?????? ??? ???? ??? ?????? ???.
????????? ??? ???? ?? ?????? ??? ?????? [?? ?????????? ???], ? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???? ??? ??????
????????? ??? ???? ??? ?????? ??? ?????? ??? ?????? ??? ???? ??? ?????? ???.

9 ?? ??? 11, ?????? 1, ??? ?????? ??? ?????? ??? ?????? ?? ????:

«??? ?? ?????? ??? 44 ??? ?????? [??? ???], ?? “????? ??????????” ??????
???? ??????????, ??? ??? ?????? ??? ?????????? ?????????? [...] ? ???
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
??? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

10 ? ?????? ??? ?????? ?????? ?????????? ??? (Ustawa o podatku od towarów i usług), ???
11?? ?????? 2004 (Dz. U. n° 54, ?????? 535), ??? ?????? ??? 1? ?????? 2010 ???
??? 30 ?????? 2011 (??? ?: ?????? ???), ?????? ?????? ??? ?????? ??? ?????? ???
????? ???.

11 ?? ??? 19, ?????? 1 ??? 4, ??? ?????? ??? ?????? ?? ????:

«1. ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????? 2 ??? 21, ??? ??? ?????? 14,
????? 6, 20 ??? 21, ?????? 1.

[...]

4. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? 7 ?????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????..»

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

19 ?????????? ??? ?? ?? ??? ?????????? ?????? ?????????????? ??? ?????????? ??? ??
????????? ??????? ?? ?? ??? ??????, ???????, ?? ?????????? ?? ?? ??? ?????? ???, ? ???????
?????? ?? ?? ??????????? ??, ?????????????? ??? ? ?????? ?????? ?????? ?? ?????????? ??
?? ?????? ?? ?? ??? ??????????.

20 ? Dyrektor ??????, ??????????, ?? ?????????? ??? ?????? ?????????? ?? ??????
????????? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ??? ??????, ??????, ??
????????? ??? ?????? ?? ?? ?????? ?????????? ??? ?????? ??? 22 %, ??? ??
????? 28b, ?????????? 2, ??? ?????? ????.

21 ? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? Dyrektor ??????
??? Wojewódzki S?d Administracyjny w Gda?sku (????????? ??????????? ??? ??????????
??? Gdansk) ?????????? ??? ??? ?????????? ?????? , ? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????? ?? ??????
????? ?????????? ??? ?????? ?????????? ???.

22 ?? Wojewódzki S?d Administracyjny w Gdasku ?????????? ??? ?????????? ???,
????????????? ??? ?????? ??? ?????????????? ??? ?????????????? ??? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??????. ?? ?????????? ??? ?????? ??? ? ?? ???
????????? ??? ?????????? , ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? ???
????????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ?????? ???, ?? ??? ??????
????????? ??? ???, ??? ?? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
?? ?????????? ?' ??? ??????????.

23 ?? Wojewódzki S?d Administracyjny w Gdasku ?????? ??? ?? ?????????????? ???
??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???, ??? ?????????? ???, ??? ?
????????? ??? ?? ?? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ?? ??????????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????.

24 ??? ?????? ??? ?????????? ???, ?? Wojewódzki S?d Administracyjny w Gdasku
????? ??? ? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? , ??? ? ?????? ?? ?????? ?? ?????? ?? ?????????? ??
????? ?????????? ??? ?????? ?????? ?????? ??? ?????? . ?????????? , ?????? , ??? ??
????????? ??? ?????? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? , ?????????? ??? ?????? ??? ??????
?? ??? ?????? ???.

25 ? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? Wojewódzki S?d
Administracyjny w Gdasku ?????? ??? Naczelný S?d Administracyjny (????????? ??????????
?????????).

26 ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ???,
?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?? ?????? 44 ??? ??????
????? ??? ??? ?????? ??? ?????? ??? ? ?????? ?????????? ??? ?????????? ??? ?????????? ?? ???
????????? ??? ?????? , ??? ? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? , ?????? ?? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ? ?????? ??? ? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

27 ?? ?????? ?????????? ?????????? ??? ? ?????? ?? ??? ?????? ??? ?????? ??? ??????

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

28 ? ?? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?? ?? ??? ?????????? ???
????????????? ? ?? ??? ??? ??? ??? ??? ??? ??? ?????? ??? ?????????? ??????????????.

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

29 ??? ??? ??????? ????, ?? Naczelnego S?d Administracyjnego ?????????? ?? ??????????
??? ??????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ??????????????
?????:

«???? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? [?????????] ???????, ?
????? ??????? ??? ???????, ??? [?????????] ??????? ??? ??????? ?? ?????? ??????? ?????
?? ???????, ??????? ? ?????? ??? ?????? ?????? ?????????? ? ??? ??? [?????????] ??????? ??
“?????? ??????????”, ??? ??? ?????? ??? ?????? 44 ??? ?????? [????? ???], ??? ?
[?????????] ??????? ??? ?????? ?????????? ?????????????? ?????????????? ??? ??????? ???
[?????????] ???????;»

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

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

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

31 ? ??????? ?????????? ???????????, ???????, ??? ?????????? ?? ?? ??? ?????? ??????????
????? ? ?????????? ??? ?????? ??? ?????? ??? ? ?????????? ?????? ??? ?????????? ???
????????? ?????????? ?????? ??? ?????? ??? ?????????? ?????? . ? ?????????? ??? ??????? ??
????? ???, ?????? ??? ?????? 73 ??? ?????? ???, ? ?????????? ??? ?????? ??? ??????? ??
????? ? ?????????? ?????? ??? ?????? ??? ?????????? ??????, ??????, ??? ??? ??? ??? ??????????
?? ?????????? ???, ??????, ??? ??? ?????? ??? ?????????? ? ?????????? ???????, ?
????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

32 ??????, ???????, ?? ?????????????? ??? ?????????? ??? ?????????? ??? ??????????????
????????? ???, ???' ??????, ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????? ???, ???????, ??? ?????????? ??? ?????? 44 ???
????????? ??? ???, ??? ??? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???.

33 ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 267 ???,
????????? ??? ??? ?????? ?????? ???, ? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ?????? ??? ???

34 ???????, ?????????? ?????????? ?????????????? ??? ?????????????? ?????????????? ? ?????????? ??
????????????? ?????????? ??? ?????? ?? ?????????? ?? ?????? ?????????? ??? ?????? ??? ??????????
??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ?? ?????????? ?????????? ??????, ?????????? ??? ?????? ???
????????? ???, ?????? ??? ?????????? ???, ?????? ?? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ?????????????? (??., ??????, ?????? Danske Svineproducenter,
EU:C:2011:863, ??? 33 ??? ?????? ?????????? ??? ??????????).

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

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

36 ?? ?? ??????? ???, ?? ?????? ??????????? ???, ??', ???, ?? ???????????, ??
????? ??????????? ???, ?? ??????????? ???, ??, ? ?????? ???, ?? ??????????? ??,
?? ??????????? ??, ?? ??????????? ???, ?? ?? ??????? ???, ???, ?? ??????????? ??,
?? ?????? ??, ?? ??????? ???, ?? ?? ?????? ???, ?? ?????? «?????? ??????????» ??,
????? ??, ?? ?????? 44 ?? ?????? ???, ??, ?? ?????? ???, ?? ?????? ???, ?? ??????
?? ???????.

37 ? ??????? ???, ??? ???? ???? ?????? ??? ?????? ??????????????, ??????????????
???? ????? V, ??? ???? ?????? ??? ?????????????? ??????. ?? ??????? 3 ??? ?????? ???
????? ??? ?????? ???????, ?? ?? ??????? 2 ??? 3 ?????? ??????? ?????????? ??????
???? ??????? ??????? ??? ??? ?????????? ??? ?????? ?????????????? ??? ?????????? ???
???? ?????????? ??????? ??????? ?????????? ??????? ?? ??? ?????? ?????? ??????????.

39 ??????????, ? ??????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? 44 ???
?????? ???, ???, ??? ?? ?????? ? ?????? ?????? ?????????? ?????????? ?? ?????????????? ??? ?????? ???
?????????? ??, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
?????????? ??, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

40 ???????, ???????, ?? ?????? ??? ? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? 9, ?????????? 1, ??? ?????? ?????? ?????????? ??????????,
????????????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?? ? ????? 44 ??? ??????
???? ???.

?????? ?????? ?? ??????????? ?????? ??? ?????? ?? ?????? ???, ??? ?????? ?? ?????????? ??
????? ??????????? ??? ???? ?????? ??? ?????????????? ?? ?? ?????? ??? ?????? ??? ?????????? ??
????? (?????? ADV Allround, C?218/10, EU:C:2012:35, ??? 26 ??? ????? ?????????????? ??
?????????).

42 ????? ???? ?????? ?????????? ??? ??????????????, ?????? ??? ?????????? ??? ?????????? ???
????? ?????????????? ??? ?????? ?????????? ?????? ? ??????, ?????, ??????????
????????????? ??? ?????? ?? ?????????? ?? ?????? ?????????? ???, ???????, ??? ??
????????????? ?????? (??., ???????, ??????? ADV Allround, EU:C:2012:35, ????? 27 ??? ???
????????????? ??????????).

43 ??????? ?? ???????????? ??? ?? ?????? ??? ?????? 44 ??? ??????? ??? ?? ?????
?????? ?? ?????? ??? ?????? 9, ?????????? 1, ??? ????? ??????. ????????????, ??? ??
????? 44 ??? ?????? ??? ?? ??? ?? ?? ?????? 9, ?????????? 1, ??? ????? ?????? ???
????????? ??? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
??? ????, ??? ? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 9,
????????? 1, ??? ????? ??????? ?? ??????, ???' ????, ?? ?????????? mutatis mutandis ???
??? ??????? ??? ?????? 44 ??? ?????? ??? ??.

44 ? ?????????? ????, ????????????????, ???, ???, ????????????, ??????????, ? ?????? ???, ??
?????, ???, ??, ???, ???, ???, ????????????, ???????, ???, 4, ??, ????????????, ???, ???,
???????????, ??????????, ???, ????????????, ???, ??, ??, ???????, ????????????, ????????????, ???, ???,
????, ???, ????????????, ???, ???, ???, ?????, ????????????, ???, ???, ???, ???, ???, ???, ???, ???,
??? ?????? ??????????, ???, ???, ???, ???, ???, ????????????, ???????.

45 ??? ??? ?????????????? ??? 14 ??? ?????????????? ??? ??? ?????????????? ??? ? ?????????? ???
????????? ??? ?????? ??? ?? ?????????????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ???
??? ?????????? ??? ?????????? ?? ??? ??? ??? ??? ?????????????? ?????????? ?????????? ??????????,
????????????? ??? ??? ??? ?????????? ?????????????? ??? ??????????.

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

47 ?? ??? ??????? ?????????? ???, ??????????? ?? ??? ????? ??????? ??? ??????? ??
?????? ?? ??? ????? ??????????, ? ?????????? ??? ??????????? ??? ????? ?? ???
????????? 1, ??? ??? ????? ??????? ??? ????? ?? ??????????? ?????????? ??????????
?????? ???????.

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

49 ????? ?? ?????? 44 ??? ??????? ????? ??, ? ?????? ??????? ?????????? ?? ?????????? ?? ???????????
????? ????, ? ??????? ??????? ?? ???? ??????? ?????, ?????? ? ?????? ?????? ?? ?? ????
?????? ?? ???? ?? ???? ?? ???? ?? ??????????? ??????????????? ???. ??????, ??? ?? ??????????
????? ??????????? ?? ??????? ??????????? ?? ???? ?????? ??????????? ?? ???? ?????? ?? ??????????? ??
????? ??????????? ?? ???? ?? ???? ?? ???? ?? ???? ?? ???? ?????? ??????????? ?? ???? ??????????? ??,
? ?????? ??????? ?? ???? ??????? ?? ???? ?? ???? ?? ???? ?????? ?????? ?????? ??????????? ?? ? ?? ???? ??????
???????????. ??????? ?? ?????? ?????? ?????? ? ?????? ??????? ???????????????, ? ?????? ???????
?????????? ?? ???? ?? ???? ?? ???? ?????? ?????????? ? ??? ?????? ????????? ?? ????
?????????? ?? ???? ?? ???? ?? ???? ??????? ?? ???? ?? ???? ???????????.

50 ???? ??????? ????? ?????? ?? ????????????, ???? ??????????? ?????? ?? ?????? 42 ???
????????? ??????????, ??? ??????? ?????? ?? ?????? 44 ??? ??????? ?????? ?? ?????????? ??????
??? ?????????? ??? ????? ?????????????? ??? ??????? ??????????, ?????????????????? ??
?????? ?????? ??? ????? ?????? ??????? ???, ???????, ?????????????? ??? ?????????????? ???
?????? ?????.

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

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

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

53 ????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?? ?????? 9 ??? ?????? ?????? ??????????
?????????? ??? ?? ?????????????? ?????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??????????
??????????, ??? ?????????????? ????????, ???, ???????, ??? ????????????????, ????? ? ?????
????? ?????? ? ????????????, ???? ?????? ???? ?????? ?????? ?????????????? ??? ?????? ??? ????????????
?????????????? ??? . ?????? ???? ?????????????? ?????? ?? ??????????? ?????? ??? ?????? ??? ?????
????????? ???? ??? ?????? ? ??????? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??????????
????????? ??????????? ?? ??? ?????? ?????? ?????? (??., ?????? ????, ?????????? Berkholz,
168/84, EU:C:1985:299, ??? 17, Faaborg-Gelting Linien, C?231/94, EU:C:1996:184, ??? 16,
??? ARO Lease, C?190/95, EU:C:1997:374, ??? 15).

54 ? ?????????? ???? ?????? ??? ???? ?????? ??? ???? 44 ??? ?????? ????.

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

56 ??????????, ??? ?????? ?????? ?????? ?????????????????? ?????????????????? ?????????? ?????? ??????

? ??????? ??? ??????? 44 ??? ??????? ????, ??? ??? ?? ??????? ?????????????? ???????
????? ??? ?? ??????? ??????? . ? ??????? ???, ? ?????? ??????? ?? ?? ???????
«?????», ?????? ?? ??????? ?????? ?? ?????????????? ?????????? ??? ??? ?????? ?????? ???
????????????? ???????.

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

57 ?????? ?? ????????, ??? ??????? ??? ?? ?????? 39 ??? ??????? ????????, ???
??? ??????? ??? ?????? 44 ??? ??????? ????, ? ?????? ??????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ??????, ??????, ??
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ??? ?????????? ??? ???
????? ??? ???????.

58 ??? ?? ?????? ?????????? ??? ?????????? (??., ?????? ????, ?????? Planzer
Luxembourg, C?73/06, EU:C:2007:397, ??? 54 ??? ??? ?????????? ????, ??? ??
????? ??????? ??? ?? ?????? ??? ?????? 11 ??? ?????????? ????, ??? ??
????????? ??? ?? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?? ?????????? ???
????????? ?? ?????? ?????? ??? ??? ?????????? ?????? ??? ?????????? ??? ?? ?????????? ???
????? ??? ?? ??? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
????????? ??? ?? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??

59 ??????, ?????????? ?? ??? ?????? ????, ??? ?????????? ??? ?? ???????
??? ?????? ????, ??? ?? ?????? ??? ?????? ????, ??? ?? ?????????? ???, ??? ??
??? ?????? 44 ??? ?????? ????, ??? ?? ?????? ??? ?????? ??? ?????? ????, ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????, ??? ??
?? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????? ??? ?? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???,
????? ??? ?? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ?? ?????? ??? ?????? ??? ??????.

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

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

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

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

64 ?? ?????? ??? ?? ?????????? ?????????? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??
????????? ?????????? ?????????? ?????????? ?????????? ??? ?? ?????? ??? ?????????? ?????????? ??
????????? ???' ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??
????????? ??? ? ?????????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ??????. ???
????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? 44 ?? ?????? ?????? ???, ?????????? ??? ?????????? ????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? «????? ??????» ??? ??
????? ??? ?????? 44 ?? ?????? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ??????.

65 ?????? ??? ?????? ??? ?????????? ??? ?????????? ???, ??? ?????????? ?????? ?????? ?? ??????
? ?????? ??? ?????????? ??? ?????? ???, ? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????? «????? ??????» ??? ??
????? ??? ?????? 44 ?? ?????? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??????.

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

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

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

????????? ????, ? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? «????? ??????» ???
?? ?????? ??? ?????? 44 ?? ?????? 2006/112/?? ??? ?????? ????, ??? 28??
????????? 2006, ?????? ?? ? ?????? ?????? ?????? ?????? ?????? ?????? ????, ???
????????? ?? ??? ?????? 2008/8/E? ??? ?????? ????, ??? 12?? ?????? ???
2008, ?????? ?? ? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ????, ???
? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

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

(?????????)

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