

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

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

??? 14?? ??????? 2017 (\*)

«????????????? ?????????? – ????? ?????????????? ????? (???) – ?????????? ??? ??????????????  
????????????? ??? – ?????????? ?????????? ??? ??? – ?????????? ?????? – ????? ??? ???  
????????????? ??? ??? ??? ?????????? ?????????? – ??? ??? ?????????????? –  
????? ?????????? ?????????? ?????????? ??????????»

???? ??????? C-38/16,

? ? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ??  
?????? ?? First-tier Tribunal (Tax Chamber) [????????????? ?????????? (????? ??????????),  
????????? ??????] ?? ?????? ??? 20?? ?????????? 2016, ? ????? ??????  
?? ?????????? ??? 25 ?????????? 2016, ??? ?????? ??? ???

**Compass Contract Services Limited**

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**Commissioners for Her Majesty's Revenue & Customs,**

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

????????? ??? ??? T. von Danwitz, ??????? ????????, E. Juhász, C. Vajda, K. Jürimäe ???  
?. ?????? (??????), ????????,

?????? ??????????: M. Campos Sánchez-Bordona

?????????: L. Hewlett, ????? ?????????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ???  
8?? ?????????? 2016,

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

– ? Compass Contract Services Limited, ?????????????? ??? ??? D. Scorey, QC, ???  
??? ??? ??? O. Jarratt, ??? D. Stephens, conseils,

– ? ?????????? ??? ?????? ??????????, ?????????????? ??? ??? D. Robertson ??? M.  
Holt, ?????????????? ??? A. Macnab, barrister,

– ? ?????????? ??????, ?????????????? ??? ??? M. Owsiany?Hornung ??? M.  
Wasmeier,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ?????? ?? ??????????  
?? 2?? ?????? 2017,

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

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1 H ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????  
?????????????, ??? ?????????? ?????????????? ??? ??? ?????????????????? ???  
????? ??? ?????? ??? ??????.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Compass Contract  
Services Limited (??? ????: Compass) ??? ??? Commissioners for Her Majesty's Revenue &  
Customs (??? ????: Commissioners) ??? ??? ?????????? ??? ?????????? ?? ?????????????? ???  
????????? ?????????? ??? ??? Compass ??? ?????????? ?????? (??? ????: ???).

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

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

3 ??? ??? ??? ????? «?????? ??? ?????? ??? ?????????? ??? ??????????», ?? ?????? 17 ???  
????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????? ???  
????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ???  
????? ??? ????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49,  
??? ????: ??? ?????), ?? ????? ?????????? ??? ??? ?????????? ??? ?????? ??????  
?????????:

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

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

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

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

?) ??? [??] ??? ?????????? ?????? ?? ?? ?????? 5, ?????????? 7, ?????????? ?, ??? ??  
????? 6, ?????????? 3.

[...]»

4 ?? ????? 18 ??? ?????? ??????, ??? ?????????? «?????? ?????????? ??? ??????????  
????? ??????», ????:

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

?) ??? ??? ?????????? ??? ?????? 17, ?????????? 2, ?????????? ?, ??????, ?? ??????  
?????????, ?? ?????? ??? ?????? ??? ?? ?????? 22, ?????????? 3?

?) ??? ??? ??????????? ??? ??? 17, ?????????? 2, ?????????? ?, ??????, ?? ???????  
?????????? ??????, ?? ?? ?????? ?? ?????????? ? ?????????? ??? ?? ?????????????? ?  
????? ?? ?????????? ? ?????????? ?? ?????? ?????? ?????? ??? ?? ?????????? ?? ???  
??? ?????????? ?????? ?? ?????? ?????? ?????? ??? ?????????? ???

?) ??? ??? ??????????? ??? ??? 17, ?????????? 2, ?????????? ?, ??????, ?? ??????  
??? ?????????? ??? ?? ?????? ?????? ?????? ??????????

?) ??? ??????????? ?? ?????????? ??? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ?  
????????? ???' ?????????? ??? ?????? 21, ?????? 1, ?? ?????? ??? ?????????????? ??? ???  
????? ??? ?????? ??????????.

2. ??? ?????? ?????????? ?????????? ??? ??? ?????????? ??? ?????? ???' ?????????? ??? ??  
????? ??? ?????? ??? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????, ?? ???  
????? ?????????? ??? ?????????, ?????? ??? ?????????? 1, ?? ?????????? ??? ?????????, ???  
?? ?????????? ??? ?????? ??????.

[..]

3. ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????????, ?????? ??? ?????? ??????????  
?? ?????????? ??? ?????????????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? 1 ??? 2.

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

[...]»

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

5 ?? ??? 25 ??? Value Added Tax Act 1994 (????? ??? 1994 ??????? ?? ??? ??? ???  
????????????? ???), ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????????????? ?????????????? ???  
????? ??? (??? ????: ??? 1994), ????:

«[...]

2. ??? ??? ?????????? ??? ?????????? ??? ?????? ??????, [? ?????????? ??? ???]  
??????????, ??? ?????? ??? ?????????? ??? ??????, ?? ?????????? ?? ??? ??? ??? ?????? ???  
??? ?????????? ??? ?????? ?? ?????? 26, ??? ?? ?????? ?? ?????? ?? ??? ??? ??? ??? ???  
????? ??? ?????? ??? ?????? ??????.

[..]

6. ??????? ??????? ??? ?????? ?? ??????? ??????????? 2 ??? ?????? ??????? ??????? ???  
?????????? ??? ??????? ?? ??????????????? ??? ?????? ??????? ??????? ??? ?????? ???  
??? ??????????? ??? ??????????? ??? ?????? ??????? ??????????? ???????, ??????????????????  
???, ??? ??????????? ??? ??????????? ?? ?????? ??? ??????? ?? ??????????? ??????? ??? ?????? ???  
?????????? ??? ?????? ?? ??????????? ??? ?????? ??????????? ???????, ? ?????????? ??? ?????? ???  
?????????? ??? ?????? ?? ??????????? ??? ?????? ??????????? (?????? ??????????) ??? ?????? ??  
Commissioners ??????? ??? ?????? ???????????, ?????????????????? ??? ??????????? ???  
?????? ?? ??? ?????????? ?? ??????????? ??????????? »

6 ?? ??? 80 ??? ??? 1994 ????:

«?????? ? ??????? ?????? ??????? ? ?????????? ? ?????????? ???

[...]

4. ?? Commissioners ??? ???????????, ??????? ??????? ?????????????? ???  
????????? ????,

a) ?? ?????????? ?????? ??? ?????? ??? ?????????? 1 ? 1A ???????, ?

b) ?? ?????????? ??? ?????? ??? ?????????? 1B ???????

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

7 ?? 29 ??? Value Added Tax Regulations 1995 (????????????? ?????????? ??? 1995  
??? ??? ??? ?????????????? ???), ??? ?????? ??? ?????? ??? ?????? ??? ??????????????  
????????????? ??? ?????????? ??? ?????? ??? (??? ????: ?????????? ??? 1995),  
????? ?? ?????????? ?? ??? ?????? 25 ??? ?????? ??? 1994. ?? ?????????? 1 ??? 1A ???  
??? ?????? 29 ????:

«1. ?? ??? ?????????? ??? ??????? ?????????? 1A [...], ??? ??? ?????? ????.  
?????? ? ??????? ?????????? ??? ?????? Commissioners, ?? ??????? ??? ?????? ?????????? ???  
??? ??? ??? ??????? ??????? ??? ?????? 25, ?????????? 2, ??? ?????? [??? 1994], ?????? ??  
?? ?????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
?????? ????.

1A. ?? Commissioners ??? ??????? ??? ?? ?????????? ?? ??????? ??? ?????? ??? ??  
?????????? ?? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
?????? ?? ??????? ? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
?????? ?? ??????? ? ??????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????? ????.»

8 ?? 121 ??? Finance Act ??? 2008 (????? ??? ?????? ??????? ?????????????? ???  
2008, ??? ????: ?????? ??? 2008) ????:

«?????? ??????? ????: ?????????????? ???.

1) ? ?????????? ??? ?????? 80, ?????????? 4, ??? ?????? ??? 1994 ??? ???, ??? ??????  
????? ? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
??? ?????? ???????????, ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???  
????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? 4  
????????? 1996, ?????? ? ?????? ??? ?????? ?????? ??? 1? ?????? 2009.

2) ? ?????????? ??? ?? 25, ?????????? 6, ??? [????? ?? 1994], ??? ?? ?????  
????? ?????????? ??? ?? ??? ?? ?????? ?????? ?? ?????????? ?????? ?? ??????????  
??? ?????????? ??? ?? ?????? ?????????? ??????????, ??? ?????????? ??? ?? ??????????  
????? ??? ?? ??? ?? ?????? ?????? ?? ?????? ?????????, ??? ?? ?????? ?? ???  
????? ? ?????? ?????? ?? ?????????? ?????????? ?????????, ??? ??????????  
????? ?????? ?????? ?? 1? ????? 1997, ?????? ? ?????? ??? ??????????  
????? ??? ?? 1? ?????? 2009.

[...]

4) ?? ?????? ??? ?????? ?????????? ??? ?? ??? ?? 19? ?????? 2008.»

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

9 H Compass, ??? ?? ?????? ?????????? ???????, ?????? ???, ?????????? ??????????,  
????? ??? ?????????? ??? ?? ?????? ?????????? ?????????? ?? ??? ?? ???, ???,  
??? ?????????? ?????? (???????) ??? ?????? ??? ?????????? ??? ?? ??? ?????? 1997.

10 ?? 1996, ?? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??????????  
????????? ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ?????????? ???  
????????? ??? ?????????? ??? ?? ?????? ?????????? ??? ?? ??? ?? ??? ?? ??? ?? ??? ??  
????????? ??? ?????????? ??? ?? ?????? ?????????? ??????. ??? ? ?????????? ?????? ??  
????? ?? 4? ?????????? 1996. ?? ?? ?????? ??? 11? ?????? 2002, Marks & Spencer (C-  
62/00, EU:C:2002:435), ?? ?????????? ?????? ??? ?? ?????? ?????????? ?????????? ???  
????? ?? ?????????????????? ??? ?? ?????????????? ?????????????? ?????????????? ???  
????????, ?? ?????????? ??? ?? ?????? ?????????? ?????????, ??? ?????????? ?????? ??  
????? ?????? ?? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ???.

11 ?? Court of Appeal (England and Wales) (Civil Division) [????? (????? ?? ??????)  
(???????, ?????? ??????)] ?????? ?????? ?? ?????????? ?????? ?????? ??????  
????????? ??? ?? ??? ?? ??????, ?????????? ??? ?? ?????? ?????? ?????? ?????? ???  
????????? ??? ?? ??? ?? ??? ?? ??? ?? ??? ?? ?????????? ?????????? ??? ?? ?????? ???  
1?? ?????? 1997. ??? ?????? Michael Fleming (t/a Bodycraft) ??? Commissioners[(2006)  
EWCA Civ 70], ?? ?? ??? ?????? ?????????? ?????? ???, ?????????? ??? ?? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????????? ??? ?? ?????????? ?????? ?????????? ???  
????????? ??? ?????? ?? ?????? ?????? ??? ?? ??? ?? ?????? ?????? ??? ?????????? ???  
??? ?? 1? ?????? 1997 ?? ?????? ?? ?????? ?? ?????????? ??? ?????? ?????? ??? ?? ???  
??? ?????????? ?????? ?? ??? ?????? ?????? ??????. ??? ? ?????? ??? Court of Appeal  
(England and Wales) (Civil Division) [(?????)] (????? ?? ??????) (????? ?? ??????)  
??????????, ??? 23 ?????????? 2008, ?? ?? House of Lords, ?? ?? ?????? ??? Fleming  
??? Condé Nast ??? Commissioners [(2008) UKHL 2].

12 ?????? ??? ?? ??? ?????????? ??? House of Lords, ?? Commissioners ??????????  
????? ?????? [Business Brief 07/08, (2008) STI 311 (Issue 8)], ??? ?????? ??????????  
??? ?? ?????? ??? ?? ?????? ?????????? ??? ?? ?????? ??? ?? ?????? ??????????  
????????? ?????? ?? ?????? «??? ?????????? ?????????? ??? ?? ?????? ??? ?? 4? ?????????? 1996» ???  
??? «??? ?? ??? ?? ?????? ??? ?? ?????? ?? ?????? ??? ?? ?????? ?????? ?????? ??? ?? ???  
????????? ?????? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ???  
????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ???  
????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ??? ??????????  
????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ?????????? ??? ??????????

????? ??? ???? ?????? ???????, ???? ??? 1? ??? 1997. ?? ??????? ?????? ???? ??? ??????  
????? ??? ??????? «????????? Fleming». ?? ?????? 121 ??? ?????? ??? 2008 ??????????????  
????? ??? ?????????? ?????????? ??? ?????? ?? ??? ????? ???????.

13 ??? ??? ?????? ?????????????? ?????????? ???, ??? ?????? 2006, ?? Court  
of Appeal (England and Wales) (Civil Division) [????????? (?????? ??? ??????) (????????? ???),  
?????? ??????] ?????? ??? ?????????? ?????? ?????? ?????? ?????? ? Compass ???  
?????? ??? ?????????? ?????? ??????, ??? ??? ?????? ?????????? ??? ?????? ??? ??,  
??? ?????????? ?? ????. ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????????? ??  
????????? ??? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ?????????? ??? ??  
????? 28, ?????????? 2, ??? ?????? ?????? ??????????.

14 ?? ?? ??????, ?? Commissioners ?????????? ??? ? Compass ??? ??????????  
????????? ????. ??? ?????????? 2008, ? Compass ?????? ?????????? ?????????? ?????????? ??  
????? ?? ??? ?????????? ?????????? ??? ??? ??? ?????? ??? ??? ?????? ??? 1??  
????????? 1973 ??? 2?? ?????????? 2002.

15 ?? Commissioners ?????????? ?? ?????????? ??? ?????????? ?????????????? ??? ??  
Compass ??? ?? ??? ?????????? ?????? 1?? ?????????? 1973 ??? 31?? ?????????? 1996.  
?????????, ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????????? ??? ??  
????????? ??? ?? ??? ?? ?????????? ?????????? ???, ??? ??? ??? ?? ?????????? ??? ??  
????? ?????????? ?? ??????????. ?????????? ???, ?????????? ??? ? ?????????? ??????????  
????????? ??? ?????? ?? ?????????? ??? ??? 4 ?????????? 1996 ??? ??? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ??? ?????????? ??? ??  
????????? ??? ?????????? ??? ?? ??? ?????? ?????????? ??? ??? ? Compass. ??? ?????????? ??  
????? ??????????, ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ??  
?????????????, ?? ?? ??????, ??? ??? ?????????? ?????????? ??? ??? ?????? ??? ?? 4?  
????????? 1996 ??? ??? ??? 1? ??? 1997, ?????????? ??? ? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ??? ?????????? ???  
?????????.

16 ?????? ????, ? Compass ?????? ?????? ?????? ??? First-tier Tribunal (Tax  
Chamber) [????????????? ?????????? (????? ?????????? ??????????), ?????? ??????]  
????? ??? ?????? ??? Commissioners ?? ??? ?????????? ??? ?????????? ?????????? ???  
?? ??? ?????? ??? ?????? ?????????? ??????. ??? ?????? ??? ?????????? ??? ?????????? ???  
? ?????????? ?????????? ?????? ??? ?????? ?????? ?????????? ??? ??? ??? ??? ??????,  
????? ?????? ??? ?????? ??????, ??? ??? ?????? ?????????? ??? ?????? ??? ??? ??? ??????  
????????? ??? ??? ?????? ?????????? ??????, ??? ??? ? Compass, ???  
?????????????, ??? ?????? ??? ?????? ??? ?????????? ??? ??????, ?????????? ??? ??  
????? ?? ?????? ??? ?????? ?????????? ??? ???, ??? ??? ?????? ?????????? ??? ??  
????????? ?????????? ????. ? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??? ??  
????????? ?????????? ?? ??? ??? ?????? ?????????? ??? ??? ?????? ?????????? ?? ??? ??  
????????? ??????????, ? ?????? ?????? ?????????? ?????????? ?????????? ??? ?? ??? ??  
????? ?????????? ??? ?????????? ?? ??? ?????? ?????????? ?????????? ??? ?? ??? ??  
????? ?????????? ?? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?? ??? ??  
????? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?? ??? ??  
????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??

17 ??? ??? ?????? ????, ?? First-tier Tribunal (Tax Chamber) [?????????????  
????????? ?????? (????????? ???)] ?????????? ?? ?????????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ??????????:

«1) ?????? ? ?????????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ???  
????????? ?????????? ??? ??? ??? ?????? ?????? Fleming (?? ?????? ?????? ??

???????????? ???? ?????????? ???? ?????? ????? ???? 4 ????????????? 1996) ???? ???? ??????????  
???????????? ???? ????? ???? ?????? ?????? Fleming (??. ???? ?????? ?????????? ?? ????????????? ???  
???????????? ???? ?????? ????? ???? ???? 1? ?????? 1997, ???? ?????????? ??? ???? ??????????  
???????????? ???? ????? ???? ?????? ?????? Fleming):

?) ?????????? ??? ?????? ??? ????? ?????????????????? ??? ?????? ??? ?????? ??? ?????? ???/?  
?) ?????????? ??? ?????? ??? ?????????????? ?????????????????? ??? ?????? ??? ?????? ??? ?????? ???/?  
?) ?????????? ??? ?????? ??? ?????????????????????? ??? ?????? ??? ?????? ??? ?????? ???/?  
?) ?????????? ?????????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????;  
2) ??? ? ?????????? ??? ??????? 1, ?????????? ?? ??? ??, ????? ??????????, ??? ??????  
?? ?????????????? ?? ??????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??  
?????? ?????? ??? 4 ?????????? 1996 ??? 30 ?????????? 1997;»

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

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

18    ?? ?? ?????? ??????? ??, ?? ?????? ??????????? ??, ???', ??????, ?? ???? ???????  
????? ?????? ??, ??????????????? ???????????????, ??? ?????? ??????????????? ?? ??  
?????????????????? ??, ??? ??????, ??? ? ?????? ??, ??? ?????? ??, ??, ? ?????, ??  
?????? ??, ??? ??????????? ??, ??? ?????? ???????????, ??????, ?? ? ?????? ??????????? ??  
?????????? ??, ??? ??????, ?? ? ?????? ??, ??? ?????? ??????????? ??, ??? ?????? ??, ??  
??????, ??, ??? ?????? ??????????? ??, ??? ?????? ???????????, ?? ? ?????? ??????? ??, ??  
?????? ??, ??, ??? ??????????? ??, ??? ?????? ???????????, ?? ? ?????? ??????? ??, ??  
?????????? ??, ??? ??????, ?? ? ?????? ??, ??? ?????? ??, ??? ?????? ??, ?? ? ?????? ??, ??  
?????????? ??, ??? ?????? ??.

19      ????? ?????????? ??? ???? ??????? ????? ???????????, ?????????? ??? ?????? 80,  
????????? 4, ??? ??? ?? ????? 25, ?????????? 6, ??? ??? ?? 1994, ?? ??? ?????? ??  
????????? ?? ?? ??? ????? 29, ?????????? 1A, ??? ?????????? ?????? ?????? 1995 ?? ??  
????????? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ??  
????????? ??? ?????? ???, ??? ?????? ?????????? ?? ?????? 121 ??? ?????? ??? 2008, ??  
????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?? ?????????? ???  
????????? ??? ??? ??? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ?????????? ??  
?????????. ????????, ? ?????????? ??? ??? ?????? ?????????? ?????? ?????? ??  
????????? , ??? ?????????? ??? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??  
????? 121 ??? ?????? ??? 2008, ??? ?????????? ??? ?????? ??? Commissioners,  
????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ???  
????? , ??? ?????? ?????? ??? ?????? 10 ??? 12 ??? ?????? ?????????? , ?????? ??????????  
??? ?????? ??? ?????? ?????? ?????????? . ??????, ??? ?? ?????? 121, ?????????? 1, ??? ???  
??? 2008, ??? ? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ??????????  
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?? ??????  
????????? ? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ???? 4? ??????????  
1996, ?????? ? ?????? ??? ?????????? ?????? ??? ???? 1? ?????? 2009. ???????, ?  
????????? 2 ??? ?????? 121 ?????? ??? ? ?? ??? ?????? ?????????? ?????????? ??? ??????????  
?? ?????? ?????????? ??? ??? ??? ?????? , ??? ?????? ?????????? ??? ??????????  
????????? ?????? ??? ?????? ?????? ??? ???? 1? ?????? 1997, ??? ? ?????? ???  
????????? ??? ??? 1? ?????? 2009.

20      ??? ??? ?????? ?????? ??? ??????????? ?????????? ??? ? ?????? ??? Compass ????  
?????????? ??? ??????????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? 121,  
?????????? 1, ??? ?????? ??? 2008 ??? ??? ?????? ??? ?????????? ?????????? ??? ??????  
??? ??? ?????????? ??? ?????? ??? ?????? ??? 4? ?????????? 1996 ??? ???  
?????????. ??? ?? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ??? ??????  
?????? ?????????? ??? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?????? ??? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? 1? ?????? 1997.

21      ??????, ??? ?? ?????????? ???, ??? ?????? ??????????, ? ??? ??? ??????????  
????????????? ??? ??????????, ???, ?? ?????????? ?????????????? ?????????????? ???  
?????? ??? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?? ???  
????????? ??? ?????? ??? (????????? ??? 3? ??? 2001, ?????????? ??? ??????, C-  
481/98, EU:C:2001:237, ??? 22, ??? 10? ?????? 2011, The Rank Group, C-  
259/10 ??? C-260/10, EU:C:2011:719, ??? 32).

22      ??????, ??? ?????? ?????? ??? ?????????????? ??? ?? ?????? ?????????? ???  
????????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????? ???, ??? ?????? ???, ?? ??????  
????????? ??? ?????? Compass ?????? ?????????? ?????????????? ??? ??????  
??? ?????? ?????? ?????? ??? ?????? ?????? ??????.

23      ??????, ??? ?????? ? ?????? ?????????? ??? ?????? 54 ??? ?????????? ???, ??  
Commissioners ??????? ?? ??? ?????? ??? ?????? ?????, ?????????????? ??? ??? Compass,  
??? ?????? ??? ?????? ??? ?????? ?????, ?????? ??? ?????? ??? ?????? ???  
????????? ???, ?? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????????  
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24      ??????, ??? ?????? ??? ?????? ??? ?????? ??????????????, ?? ?????????? ?????? ???,  
??? ? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???,  
??? ? ???, ??? ?????? ??? ?????? ?????????? ???, ?????? ?? ?????? ??? ?????? ???  
????????? ?????? ??? ?????????? ???, ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?? ???????, ??? ?????? ???, ?? ?????? ??? ?????? ?????? ??? ?????? ???  
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?? ?????? ?????? ??? ?????? ??? ?????? (??., ??? ??? ?????, ??? 10?  
????? 2008, Marks & Spencer, C-309/06, EU:C:2008:211, ??? 49).

25      ??? ?????? ??????????, ? ?????????? ??? ?????? ??? ?????? ?????????????? ???  
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????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? (?????)  
?? 16?? ?????? 2008, Arcelor Atlantique et Lorraine ??., C?127/07, EU:C:2008:728,  
????? 25). ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ???, ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
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????? ?????? ??? ?????? ??? (??., ??? ??? ?????, ??? 16?? 2008,  
Arcelor Atlantique ?? Lorraine ??., C-127/07, EU:C:2008:728, ??? 26, ??? ???  
??? 7?? 2017, RPO, C-390/15, EU:C:2017:174, ??? 42).

26      ??????, ??? ?? ?????? ???, ??? ?? ?????? ??? ?????????? ??? ?????????? ???  
????????? ?? 121 ??? 2008, ? ?????????? ??? ?????????????? ??? ?????? ???  
? Compass, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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27 ??????, ? Compass ?????? ?? ? ?????????? ?????????????? ? ?????? ?????? ??  
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????????? ???, ??? ?????????? ??? ?? ?????? ??? ?????? ??? 10?? ?????? 2008, Marks & Spencer  
(C-309/06, EU:C:2008:211), ?????? ?? ???? ?????????? ?????????? ?????????? ??? ??  
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28 ?????????? ?? ?????????? ??? ?? ?????? ?????????? ?????? ? ??? ??????????,,  
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????????? ??? ?? ?????????? ??? (??., ??? ??? ?????? ???, ??? 19?? ?????????? 2000, Schmeink & Cofreth ??? Strobel, C-454/98, EU:C:2000:469, ?????? 48 ?? 49, ?????? ???  
????? ??? 11?? ?????? 2013, Rusedespred, C-138/12, EU:C:2013:233, ?????? 25).

29 ??? ?????? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ???  
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????????? (??., ???, ???, ???, ??? 9?? ?????? 1983, San Giorgio, 199/82,  
EU:C:1983:318, ??? 12? ?? 8?? ?????? 2001, Metallgesellschaft ???., C-397/98 ?? C-  
410/98, EU:C:2001:134, ??? 84, ??? 19?? ?????? 2012, Littlewoods Retail ???.,  
C-591/10, EU:C:2012:478, ??? 24). ?? ?????? ??? ?????? ??? ?????? ???' ??????,, ?? ??????????  
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????????? ??? 14?? ?????? 1997, Comateb ???., C-192/95 ?? C-218/95, EU:C:1997:12,  
????? 20, ??? 19?? ?????? 2012, Littlewoods Retail ???., C-591/10,  
EU:C:2012:478, ??? 24).

30 ?? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??  
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????? ??? 20?? ?????? 2011, Danfoss ??? Sauer-Danfoss, C-94/10, EU:C:2011:674,  
????? 23).

31 ?? ?? ??????, ?????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ??  
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32 ??? ??????, ???????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???

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?? ?????, ??? ???? ???? ???? ?????? ?????????? ?? ???? 59 ??? ??????? ?? ?? ???? ??  
????????? ?? ???? 29 ??? 30 ??? ?????? ???????, ?? ??????? ??????? ?? ??  
?? ???? ?? ???? ?????? ?????????? ?? ???? 17 ?. ?? ???? ???????.

33 ?? ?????????? ?? ?????????? ?? ???? ??????? ?? ???? ?????????? ?? ?? ???? ??  
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?????? ?? ?????????? (??., ?????? ??, ?????????? ?? 6?? ?????????? 2012, Bonik, C-  
285/11, EU:C:2012:774, ?????? 25 ?? 26, ????? ?? ?? 22?? ?????? 2016, Gemeente  
Woerden, C-267/15, EU:C:2016:466, ?????? 30 ?? 31).

34 ?????? ?? ?????????? ?? ?????????? ?? ???? ?????? ?? ???? ?????????? ?? ?? ???? ??????????  
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?? ?? ?????????????? ?? ???? ??????????, ??' ?????, ?? ???? ?? (????????? ?? 14??  
????????? 1985, Rompelman, 268/83, EU:C:1985:74, ?? 19? ?? 6?? ?????? 2006, Kittel  
?? Recolta Recycling, C-439/04 ?? C-440/04, EU:C:2006:446, ?? 48, ?? 26??  
????????? 2017, Farkas, C-564/15, EU:C:2017:302, ?? 43).

35 ???, ?? ?????????? ?? ?????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????????? ??  
?? ?????????? ?? ?????????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ??  
?? ???? ?????? ?????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????????? ?? ????  
(????????? ?? 15?? ?????? 2007, Reemtsma Cigarettenfabriken, C-35/05, EU:C:2007:167,  
?????? 23 ?? 27, ????? ?? ?? 26?? ?????? 2017, Farkas, C-564/15, EU:C:2017:302,  
????? 47).

36 ??????, ?? ?????????? ?? ????? ?? ?????????? ?? ???? ?????????? ?? ???? ??????? ??  
????????? ?? ???? ?????????? ?? ???? ?????????? ??, ?? ?????????? ?? ???? ??, ???????  
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37 ??? ?? ??????? ?? ??????? ??, ??? ?? ??????? ?? ???? ??????? ?? ???? ?????????? ??  
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38 ??? ?????? ?? ??????? ?? ?????????? ?? ???? ??????? ?? ???? ??????? ??, ??? ??  
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??????????, ??????? ???, ?? ???????, ? ?????????? ???. ?????????????? ?????? ?????????????? ?????? ?????????????? ?????? ??????????, ?? ??? ? ?? ?????, ?? ?????????? ?????? ?????????? ?????? (??., ??) ???  
??????, ?????????? ???. 17?? ??????? 1997, Haahr Petroleum, C-90/94, EU:C:1997:368, ???  
48, ??? ???. 8?? ?????????? 2011, Q-Beef ??? Bosschaert, C-89/10 ??? C-96/10,  
EU:C:2011:555, ??? 36). ???????, ??????? ?????????? ?????????? ?????????? ?????????? ???  
????????? ?????? ?????? (??., ??) ??? ?????, ???????, ??? 11?? ???  
2002, Marks & Spencer, C-62/00, EU:C:2002:435, ??? 35, ??? 35, ??? 15?? ???  
2010, Barth, C-542/08, EU:C:2010:193, ??? 28).

43    ???????, ?? ?????????? ????. ??????????, ??? ?????? 38 ??? ?????????? ??? 11??  
2002, Marks & Spencer (C-62/00, EU:C:2002:435), ??? ??? ?????????? ??? ?????? ???  
????????????????? ?????? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
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??????, ??? ?????? ??? ? ??? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ???  
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??? ?????? ??? ?????????? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???  
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44    ?? ?? ?????, ?????????? ? ?????????? ???, ??? ?????? ?? ?????? ?????????? ??  
??? ?????? ?????????? ???, ?????? ??? ?????? ??? ?????? ??? 121 ??? ?????? ???  
2008, ??? ?????????? ?????????? ?????????? ?????????? ??? ??? ?????? ??? ?????? ???  
????????????? ?????????? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ???  
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2002, Marks & Spencer (C-62/00, EU:C:2002:435).

45    ?? ??????? ???. ?? ?????????? ?????? ???. ?????? ???. ?????? ?????????? ???  
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??? ?? ?????? ???. ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
??????, ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???, ???  
??? ?????? ???, ?? ?? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
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??????. ?????????? ???, ??? ?????? ?????? ??? ?????? ?????, ? ?????? ??? ?????? ???  
????????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? 4 ?????????? 1996 ??? ???  
????? ??? ??? ??? 1? ????? 1997 ??? ??? ??????, ??? ?????????????? ??? ?????? 12 ???  
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
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Compass, ?? ?????? ?????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ???  
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1? ????? 1997 ??? ??? ??????, ??? ?????? ???????. ?? ?? ??????, ?????????? ???  
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46    ??? ?? ??????? ?????????? ??? ? ?????????? ??? ?????? ?????? ??? ?????? ?????? ???  
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47    ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????, ?????????? ?  
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48    ?????????? ??? ? ?????? ?????????? ??? ???? ?????? ?????? ?????????? ??? ?????? ??? ?????? ????  
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????????? , ?' ????  
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(?????????)

\*    ?????? ??????????: ? ??????.