

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

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

??? 28?? ??????????? 2019 (*)

«????????????? ?????????? – ????? ?????????????? ????? (???) – ??? ?????? 77/388/??? –
????????? – ??? 13, B, ?????????? ??– ?????????? ??? ?????? ?????????? – ??? –
????????? ??? ??? ?????????? ??? ?????????? ?????????????? ?????????? ?????????? ???
????????????? ??? ??????»

???? ??????? C-278/18,

? ? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ???
?????? ?? Supremo Tribunal Administrativo (?????? ?????????? ???????????, ???????????)
?? ??????? ??? 14?? ??????? 2018, ? ????? ?????? ??? ?????????? ??? 24 ???????
2018, ??? ??????? ??? ??????

Manuel Jorge Sequeira Mesquita

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Fazenda Pública,

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

?????????? ??? ??? F. Biltgen (????????), ??????? ??????????, C. G. Fernlund ??? L. S. Rossi,
????????,

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

?????????: A. Calot Escobar

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

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

– ? ?????????? ??????????, ?????????????? ??? ??? L. Inez Fernandes, M. Figueiredo
??? R. Campos Laires, ??? ??? P. Barros da Costa ??? M. J. Marques,

– ? ?????????? ??????????, ?????????????? ??? ??? G. Hesse,

– ? ?????????? ??????????, ?????????????? ??? ??? P. Costa de Oliveira ??? L. Lozano
Palacios,

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

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

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1 ? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 13, ?, ???????
??, ??? ?????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ??????????????
??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ????
?????? ?????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?.
49, ??? ????: ???? ?????).

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ??????? ??? Manuel Jorge
Sequeira Mesquita ??? ??? Fazenda Pública (????????????? ???o????) ?? ??????????
?????? ?????????? ?????????????? ??? ????? ?????????? ????? (???) ??? ?? ??? 2002
??? ?????????? ??????? ?????????? ?? ?? Sociedade Agrícola e Comercial dos Vinhos Vale da
Corça Lda ??? ??? ?????????? ??? ?????????? ?????????????? ?????????? ??????????
????????????? ??? ???????.

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

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

3 ?? ?????? 2 ??? ????? ??????, ?? ????? ?????????? ??? ?????????????? «?????
?????????» ????. || ????, ????. ?? ????:

«???? [??] ??????????:

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

[...]».

4 ?? ?????? 5, ?????????? 8, ??? ????? ??????? ????:

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

5 ?? ?????? 13 ??? ????? ??????, ?? ????? ?????? ??? ????? «????????? ??? ??????????
??? ??????», ?????????, ??? ?????????????? «????? ??????» ????. B, ?? ????:

«?? ??? ?????????? ?????? ?????????? ?????????, ?? ????? ?????? ??? ?????????? ??? ??
????????????? ??? ???????, ??? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ??????? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ?????????? ???,
????????????? ??? ??????????:

[...]

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

1. ??? ??????? ??????? ??????????????, ???? ??????????? ?? ???? ?????????? ??? ???????
?????, ??? ?????????????????? ??? ??????? ??? ?????????????? ?????? ? ?????? ????
????????????? ??????????, ?????????????????? ??? ???? ?????????? ?????????????? ?????????? ?
????????, ?????????????????? ?????????? ??? ??????????
2. ??? ?????????? ???? ??? ?????????? ??????????????
3. ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??????????????????
4. ??? ?????????? ??????????????.
?? ?????? ??? ?????????? ?? ??????? ?????????? ?????????? ??? ???? ?????? ?????????? ??? ??
????? ??????????.

[...]»

6 ? ????? ??????? ?????????????? ??? ??????????????????, ??? 1?? ????????????? 2007, ??? ??? ?????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ?????????? ?????? ?????? ?????????? ?????? (?? 2006, L 347, ?. 1). ?? ?????????? ??? ?????? 13, ?, ??????? ??, ??? ????? ?????? ??????? ???????????????, ?????? ?????????, ??? ?????? 135, ?????????? 1, ??????? ???, ??? ?????????? 2, ??? ?????? 2006/112.

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

7 ?? ?????? 9 ??? Código do Imposto sobre o Valor Acrescentado (?????? ???)
????????????? ??????, ??? ????: CIVA), ??? ?????? ??? ?????? ??? ?????? ??? ??????????????
????????????? ??? ?????? ????:

«???? ??? ?????? ???????????????????:

[...]

30) ? ??????? ????????, ? ???????, ??? ???

a) ??? ?????????? ??????? ?????????????? ??? ?????? ?????????? ?????????????? ??????????????
????????????????? ? ?????? ?????????? ??????????????, ?????????????????? ??? ???
?????????????????

b) ?? ??????? ?? ???? ?? ?? ?????????????? ?? ?? ??????? ??????????? ???????????

c) ?? ??????? ??????????? ?? ?????? ??????????? ??????? ???????????????, ?????? ??????
?????????? ?? ?????? ??????? ??????????? ?? ??????????? ?? ??????????? ?? ?????? ???????
??? ??????????????? ?? ??????????? ? ??????????? ??????????????? ???????????????

d) ?? ??????? ??????????????????

e) ?? ??????? ?????????? ? ?????????????? ??????

[]»

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

8 ? ?????????? ??? ?????? ?????? ?????? ? ?????????????? ??? ?????????? ??? Adelino Goncalves Mesquita. ? ?????????? ??? ?????? ?????? ?????? ?? ? Sociedade Agrícola e

Comercial dos Vinhos Vale da Corça, ????????? ?????????????????????? ??? ?????? ???
?????????????. ?? ?? ??????? ????, ? A. Gonçalves Mesquita ??? ????????????, ??????
????? ??? ????????????????, ?? ??????? ?????????????? ?????????? ?????????? ?? ?????? ???
????? ??? ????????????. ?? ??????. ? ?? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ??? ??????????.

9 ???? ??? ??????? ?????????????? ?????????? ??? ?? ??? 2002, ? ? ? ???? ????
????????????? ?????????? ????. ?? ?????????? ??? ???? ?????? ?????????? ??????????
????????????? ????. ??? ?????????????? ?????? ?????????? ?????????? ?? 107 527,10 ????, ????.
????????????? ????.

10 ? ?????????????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??????
?????????? ?????????????? ?????? ?????? ?????? ??? Tribunal Administrativo e Fiscal de Mirandela
(?????????? ??? ?????????? ?????? ?????????? Mirandela, ??????????), ?????????????? ???
????????????? ??? ????? 9, ?????? 30, ??? CIVA ???????? ??? ??? ?. ?????? ???
????????? ??? ?????????? ??????, ? ?????????? ??? ?????? ?????? ?????? ?????? ??????
????? ??? Tribunal Central Administrativo Norte (????????? ?????????? ?????????? ???
????? ???, ??????????), ?? ??? ?????? ?????? ?????? ??? ?????????????? ???
????????? ??? ?????? ??? Supremo Tribunal Administrativo (????? ??????????
????????? ???, ??????????).

12 ?????????????? ?????? ??? ??????? ???????????, ?? ?????? ??????????? ??????????
?????????? ?? ???? ?? ???? ?????? ??? ?? ?????????? ?? ?????????????? ?????????? ??
????????? ???? ?????? ?? ??????????? ?????????? ??????????? ?????????? ?????????? ?
????????? ???????, ??? ?? ?????? ??? ??????????? ?????????? ???????.

13 ???, ?? Supremo Tribunal Administrativo (????????? ???????????
???????????) ?????????? ?? ??????????? ?????????? ?? ?????????? ?? ?????????? ??
?????????? ?? ?????????? ??????????? ??????????:

«[?] ??? ? ? ???? 135, ?????????? 1, ??????? ???, ??? ??????? 2006/112 ??????? ?? ???
????????? ??? ??? ??? ?????????? ?????????????? ??? ?????????? ?????????? ??? ??????? ???
? ??????? ??? ??? ?????????? ?? ??????? ??? ??? ?????????? ??? ?????????? ??? ??????????
????????????? ?????????? ?????????? ?????????? ??????????, ? ?????? ??????? ??
?????? ??? ?????? ? ?????????? ?????? ?????????? ?????????? ?????????? ??????????
????????????? ??? ?????????? ??? ?????? ?? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??????????, ?????? ?????????? ?????????? ?????????? ??? ??? ??? ??? ??????????
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??? ??? ?????????????? ??????????

14 ????????????????, ?????? ?? ??????????? ?? ???? 135, ?????????? 1, ?????????
???, ??? ?????? 2006/112, ? ??????? ?? ?????? ?????? ?? ???? ?????? ?????????? ??????????
??????, ??? ??? ?????? ?? ??? ?????? ?? ?????? ?? ?????? ?????? ?????????? ?????????? ???
?????? ??????. ??' ?????? ?? ?????????? ?? ?????????? ?? ???? ?????? ?????? ?????????? ???
?????? ???????????, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ???? ?????? ??? ?????????? ???
????????? ??? ?????? ??????.

15 ????????, ?????? ?? ??????? ??, ?? ???? ?????? ??, ?? ?????? ?????????? ?????,
??' ??????, ?? ?????????????? ?? ?? ?????? 13, B, ??????? ??, ??? ?????? ?????? ?????? ???
?????? ??? ? ?????????????? ??? ?????? ?????? ??? ?????? ??? ??? ??? ??? ??????????????
??? ??? ?????????? ?????? ?????? ?? ?????? ??? ?????? ??? ??? ?????? ??? ??????????
????????????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????????? ?????? ?????? ??? ?????? ?????????? ?????????? ?????? ?????? ??? ??????
????????????? ?????? ?????? ??? ?????? ?????????? ?????????? ?????? ?????? ??? ??????
?????, ?? ?????????? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ?????????? ???
????? ??? ?????? ??????.

16 ??? ?????? ??????????, ?? ?????????????? ?? ?????? 13 ??? ?????? ?????????? ??????????
????????? ?????????? ?????????? ??? ?????? ??? ?????? (????????? ??? 4?? ??????????
2001, «Goed Wonen», C-326/99, EU:C:2001:506, ??? 47, ??? 15?? ?????????? 2012,
Leichenich, C-532/11, EU:C:2012:720, ??? 17).

17 ????????, ?????? ?? ?????????????? ?????????? ?????????? ?????????????? ??? ??
????? ??? ?? ?????? 2 ??? ?????? ???????, ??????? ?? ??? ?????? ??? ?????? ??? ?????????????? ???
????? ?????? ?????????? ??? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????????
????, ??? ??????, ?? ?? ??????, ?? ?????????????? ?????, ? ?????? ??? ?????? ??? ??????????
????????? ?????? 13, ?, ??????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ?????? ?????? (????? ??? 4?? ?????????? 2001, «Goed
Wonen», C-326/99, EU:C:2001:506, ??? 46 ??? 49 ??? 55 ??? 6?? ?????????? ??? ?????? ??????????).

18 ?? ??????? ??????????, ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ??????????, ??? ??
????? ??? ?????? ??????????, ?? ?? ?????????? ??? ?????? ??? ?????? ?????????? ???
??????, ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ?? ?????? ???, ?? ?? ??? ???? ???? ???, ??? ?? ?????????? ??? ?????? ??? ??????
??? ??? ?????? ??? ?????????? ??? (????. ?????????? ??? 4?? ?????????? 2001, «Goed
Wonen», C-326/99, EU:C:2001:506, ??? 55, ??? 6?? ?????????? 2007, Walderdorff, C-
451/06, EU:C:2007:761, ??? 17 ??? 52 ??? 53, ??? 18?? ??????????).

19 ?? ?????????? ??? ?????? ?????? ?????????????? ??? ? ?????????????? ??? ?????? 13, ?,
????????? ??, ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?? ??? ? ?????? ??????????
????? ?????? ?????? ?????????? ?????????????? ?????, ??????? ?? ?????? ??? ?????? ??? ??????
????????????? ??? ??? ?????? ?????? ?????????? ?????????? ????. ??? ?????? ??????????
????????????? ??? ?????? ?????? ?????????? ?????, ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? 1 ??? 4 ??? ?????? ???, ??? ?????? ?????????? ??? ?????? ??? ??????????
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?, ???, ?? ?????? ?????? ?????????? ?????????? ?????? ?????? ?????? ??????
????? ?????? ??? (????. ?????????? ??? 4?? ?????????? 2001, «Goed Wonen», C-
326/99, EU:C:2001:506, ??? 52 ??? 53, ??? 18?? ?????????? 2004, Temco

Europe, C-284/03, EU:C:2004:730, ???? 20).

20 ?? ??? ?????????? ?????????? ??? ? ?????????? ?????????? ??? ?????????????? ??? ?????????????? ??? ????
????????? ?????????, ??? ?????????? ??? ???? ?????????? ?????????? ?????????? ?????????? ??? ??? ??? ??? ???
??? ?????? 13, ?, ??????? ???, ??? ?????? ???????, ?????????? ?? ? ? ??? ??? ??? ?????? ???.
????????? ??? ??? ?? ??? ???? ???? ?????????? ?????????????? ?? ??? ?????? ???????.

21 ??????????, ??? ?????? ??????? ?? ???????????, ??? ??? ?????????? ??? ?????????????? ???
????????????? ? ??? ?????? ??????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ???,
??????, ??????? ?????? ?????? ?????????? ???????????????, ??? ??? ?????????? ?? ??????????
??? ?? ?????? ?????????? ?? ?????? ??? ?????, ????? ??? ?? ?????? ??? ?????? ???
?????????????, ?? ??????????, ??????? ????? ?????????? ???????????, ? ?????????? ???
?????? ??????? ?? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? (????. ??????? ??? 18??
????????? 2001, Stockholm Lindöpark, C-150/99, EU:C:2001:34, ??? 26).

22 ???????????, ?? ??????? ??? ? ?????????? ??? ?????????? ?? ??????????????????
????????????????? ?? ?? ?????????????? ???????, ??????? ?? ?? ????? ?????? ?? ??????????
?????????, ?? ?? ????? ??, ???????, ?? ?????????? ?? ??????? ?? ?????? ?? ?????????? ??
?? ??????????? ?? ?? 13, B, ??????? ??, ?? ????? ?????? ?????? ?????????? ?? ??
????????? ?? ?? ?? (????. ??????? ?? 15?? ??????? 2012, Leichenich, C-532/11,
EU:C:2012:720, ?? 29).

23 ????? ?????? ??? ??????? ??? ?????? ??????, ?????????????????? ??? ??? ??????????????
??? ?? ?????????????? ??? ??????? ?????????? ????????, ??? ?????? ? ???????
????????????? ?????????? ?? ?????????????? ??? ?????????? ????? ?????????? ??? ?????? ?????? ???
????????? ??????????????, ?????????? ??????, ??? ??? ?????? ??? ?????? 13, ?, ???????
??, ??? ?????? ??????. ?????? ?? ?????????? ??' ?????? ???, ??? ?????? ?????????? ??
????????? ??? ?? ??? ?????????? ??????, ? ?? ??? ?????? ??? «????????» ??? ??????????
??? ?? ?????? ?????????? ?????? ?? ?????? ?????? ?????? ?????????????? ?? ?? ??????. ?????? ??
??? ?????? ?????? ?? ?? ??? ?????? ?? ?????????????? ?????? (????. ?????????? ??? 16??
????????? 2003, Maierhofer, C-315/00, EU:C:2003:23, ?????? 32 ??? 33, ?????? ??? ???
15?? ?????????? 2012, Leichenich, C-532/11, EU:C:2012:720, ?????? 23). ?????? ?????????? ??
????????? ?? ??? ?? ??? ?????? ??????, ?????? ?? ?????? ?????????? ?????? ??? ??????
????????? ?? ??????????.

24 ?????? ?????? ?? ??? ???? ?????? ??? ???? ?????????? ??? ???? ?????????????? ??????????
???????????????, ??? ???? ?????? ??? ???? ?????? ???, ?????? ?????????????? ? ??????
????????? ??? ??? ?????? ??? ?????????????? ??????????, ??? ??? ?????? ?????????? ???
????????? 18 ??? 20 ??? ?????? ??????????. ????????, ??????, ?????????? ??? ??????????
??? ????????, ?????????? ????????, ??? ??? ?????? ??? ?????????????? ??? ??????????
????????? ??? ?????, ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ??????????
?????????. ????????, ?????? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ???,
??? ?????????? ???, ? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?? ?????? ??????,
?? ?????? ?????? ?? ??? ?????? ?????????? ??????????????.

25 ????? ??????, ???????????, ??? ?????????????? ??? ?????????? ?????????????? ?????????? ??
?? ??????? ?? ???? ??????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????????? ???????????, ??????
???? ?? ??? ?????? ?????? ??????????? ???, ?????????????? ??? ? ?????????? ??? ?????? ???
????????? ??? ???????, ??? ???????, ?? ?????????? ?????????? ??? ??????? ??? ??????? ???
?????????? ??? ?????? ??? ??????? ?? ?????????? ???????, ??? ??? ?????? ??? ?????? 13, B,
???????? ??, ??? ?????? ???????, ??? ??? ?????????? ?????????????? ?????????? (????.
???????? ?? 18?? ??????? 2004, Temco Europe, C-284/03, EU:C:2004:730, ??? 21 ???
???? ?????????????? ??????????). ?? ??? ???????????, ? ?????????????? ?????????? ??? ??

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

26 ?? ?????????? ???. ?????????? ???. ?????? 24 ??? ?????????? ?????????? ???. ?????????? ???.
?? ?????????? ???. ?????? ???. ? ?????????? ???. ?????????? ???. ???. ???. ?????? ???. ?????????? ???.

27 ???????, ?? ??????? ?? ? ?????????????????? ??? ?????????? ??? ?????? ??? ??????
????? ??????? ?? ???? ?? ?????? ?????????? ?? ??? ?????, ??? ?????? ?????? ??? ??
?????????? ?? ?????????????? ?? ??????? ?? ??? ?????? ???????????, ??? ?????? ??
????????? ?? ?????????????? ?? ?????????????? ?? ?????? ?????? ??? ?????????? ??????????????,
??? ?????????? ?? ?????????? ?? ??? ?????? ?????? ?? ?????? ?????????? ??? ??????????????
????????? ?? ?????? 13, ?, ????????, ??, ??? ?????? ??????. ????????, ??? ?????? ??? ??
????????? ?? ?????????????? ?? ?????? 18 ??? ??????? ??????????, ?? ?????? ???
????????? ?? ?????? ?? ???? ?????? ??, ??????????????, ?????? ?????, ??? ?????? ?????? ??? ??
??? ?????? ?? ?????? ???, ??????????????, ?????? ?????, ??? ?????? ?????? ??? ?? ?????? ???
????????????? ????. ?? ?? ??? ?????? ?????? ??? ?????????????? ??? ?????? ?????? ??? ??
????????????? ??? ?????? ??? ?? ??? ?????? ?????? ??? ?????????????? ??? ?????? ???.

28 ??????????, ??? ????? ??????? ?? ??? ?????? ?????? ?? ?????????????? ??? ?? ?????????????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ?????????????? ??? ?????? ?????????? ???
??, ?? ?????????????? ??????, ??????? ?????????????? ??? ?????????????? ??? ?????? ?????????? ???
????? ??? ??? ?????????????? ??? ?????????????? ?????????????? ?????????????? ?????????????? , ? ?????? ???
??? ?????????? ??????????????. ??? ??????? ???, ? ?????????????? ?????????? ?????????? ??????????????
??? ? ??????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ???
?????????? ??? ?????? ??????, ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????????
????????????? ??? ??? ?????? ??????, ??? ?????????? ??? ?????? ??? ?????? ?????? ??????????
????????????? ?? ?????????? ???, ?????? ??? ??? ?????????? ??? ?????? ?????? ?????????? ??????
????????????? ?????? ??????????????.

29 ????????, ??????????????, ??????, ???, ??? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ??????????????
????????????? ?????? ?????????? ?????? ?????????????? ?????? ?????????? ??? ?? ?????? ??????????????
????????????? ??????????, ? ?????????? ??? ?????? ?????? ?????????? ?????????? ?????? ??????, ???
??? ?????? ??? ?????? 5, ?????????? 8, ??? ?????? ?????? (????. ?????? ??? 19??
????????? 2018, Mailat, C-17/18, EU:C:2018:1038, ?????? 22 ??? 23).

30 ????????, ?? ?????????? ??? ?????? ??? ??? ?????? ?????? ?? ?????????? ?? ??????
????? ??? ? ?????????? ??? ?????? ??? ?????? ? ?????????? ??? ?????? ??? ? ??? ?
????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ???? ,
????????????? , ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? , ??? ?????? ?
????????? ?? ??? ?????? (????????? ??? 19?? ?????????? 2018, Mailat, C-17/18,
EU:C:2018:1038, ????? 33 ??? ????? ?????????? ??????).

31 ??? ?????? ???, ??? ?????????????? ? ?????????????? ???????????, ? ?????????? ??? ??????????
??? ?????? ?????? ?????? ?????????? ?????????????? ??? ?????????? ?????? ?? ?????????????? ??????,
????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ?????????? ??? ??????????
??? ?????? ??????, ?? ?????????? ?? ?????? ?? ?????????? ?????? ??? ?????????? ??? ?? ?????????? ??? ??
????? ???????, ??? ?????????? ?????????? ?????? ???, ?? ?????????? ? ?????????? ??? ??????????
????????? ?????????????? ?? ??????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?? ?????? ??????. ??? ??? ?????????? ??????, ? ??????? ??? ??????????
????? ?????????? ??? ?????? ?????????? ??? ?????? 13, B, ?????????? ??, ??? ?????? ??????
(??., ???' ??????????, ?????? ?? 19?? ?????????? 2018, Mailat, C-17/18, EU:C:2018:1038,
?????? 39 ??? 41).

32 ??????????????, ??? ???? ?? ?? ?????????? ??????? ??? ?????????? ?????? ???
????????? ??? ?? ?????????????? ??? ?????? 13, ?, ??????? ??, ??? ?????? ??????
????????? ??? ?? ??? ??, ?? ?????? ?????????????? ??? ??????? ?????? ??? ?? ??????
???????????, ??????, ??? ?????????? ??? ?????? 135, ?????????? 2, ??? ??????
2006/112, ??????????, ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ??????????, ?
????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? ??????
?? ?????? ??? ??? ?????????? ???.

33 ???????????, ? ?????????? ??? ?????? 13, ?, ????????? ??, ?????? ??????, ?????? 3,
??? ?????? ?????? ?????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ???
??????????, ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ??????
????????????? ??????????, ??? ??? ? ?????????? ?????????? ??? ?????? ?????? ??????????????
??, ??? ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ??? ?????????? ?????????? ???
????? ??????. ???????, ??????, ?? ?????? ??? ?????? ?? ?????????? ?? ?????????????? ?? ?????????? ?
?? ??????????. ???????, ??? ?? ?????????? ??? ??? ??? ?????? ??? ?? ?????????? ?? ?????????? ???
????????? ??? ??? ?????? ?????????? ???????, ? ?????????? ?????????? ??? ?????? ??????
?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??????????????, ??????????????
??????, ?????????? ? ??? ?????? ? ?????? ?????? ? ?????????? ??????. ???????, ?? ??????
????????? ?????????????? ??? ??? ?????????? ?????? ??? ?????????????? ??? ?????? ??????,
????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??????, ??? ?????????????? ??? ??????
?? ??????????.

34 ????????, ??????? ? ?????????? ?????? ?????????? ?????????? ?? ??? 13, ?, ???????
??, ??????? ??????, ??? ?????? ??????, ??????? ??? ?????? ?? ?????? ??? ?????? ?????? ??
?????? ?????????? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ?????? ?? ?????????? ??
????? 13, ?, ??????? ??, ???????, ? ?????????? ??? ?? ?????????? ?????? ?? ?????????? ??
??? ?????????? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?? ??????????
???? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????.

35 ?????????????? ?????? ??? ?????????????? ????????, ??? ?????????? ????????, ?????? ??
????? ? ????????, ??? ?? ?????? 13, B, ????????, ??, ??? ????? ?????? ?????? ??? ?????? ???
? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????????? ?? ????????, ??? ?????? ??? ?????????? ??? ??????????
????????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ??????
????????????????? ??? ?????? ??? ??????????????, ? ?????? ????????, ??? ?????? ???
?????, ?? ?????????? ?????????? ??????????, ??? ?????? ?????????? ?????????? ??? ??
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36 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ?????????? ??? ?????????? ??????????????, ?' ???
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
????? ?????????? ?????????????? ??? ???????????, ??? ??? ?? ??? ??????????, ??? ??????????.

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

?? ????? 13, B, ??????? ??, ??? ????? ??????? 77/388/??? ??? ???????????, ??? 17??
????? 1977, ??? ?????????????? ??? ?????????? ??? ?????? ???, ??? ?????????? ??
????? ?????? ?????? ?????? – ??? ?????? ?????? ??? ?????????????? ????:
?????????? ?????????? ????, ??? ???? ?????? ??? ? ?????????????? ??? ??????
????? ??????? ??? ???? ?????????????? ?????? ??? ???? ?????????????? ??? ??
????????? ??????? ??? ?????? ??? ?????????? ?? ?????? ??? ???? ?????????????? ??? ??????
????????????? ?????????? ????? ?????????? ?? ?????? ??? ???? ?????????????? ??? ??????

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

(?????????)

* ???? ???? ??????????: ? ????????????