

Conclusions

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

CHRISTINE STIX-HACKL

??? 16?? ?????????? 2003(1)

?????? C-152/02

Terra Baubedarf-Handel GmbH

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Finanzamt Osterholz-Scharmbeck

[?????? ??? Bundesfinanzhof (?????????)?? ?? ?????? ??????????????? ???????????]

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

I – ???????

1. ? ??????? ??????????? ??? ?????? ?? ??????? ?????? ?????? ?? ?????? ?? ?????
?????????????? ????. ??????? ?? ??????????????? ?? ?? ??????????? ?????? ?? ?????
?? ?? ??????? ?? ?????? ?? ??????????? ?? ?? ??????? ?? ?????? ?? ??????? ?? ?????
?????????? ?? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????? ?? ?????
?????????? ?? ???????.

II – ?????? ???????

? – ? – ?????????? ???????

2. ??? ??? ??????????? ??? ?????????? ?? ?????? 77/388/?? ?? ???????????, ??? 17??
????? 1977, ??? ?????????????? ??? ??????????? ?? ?????????? ???, ??? ?????????? ?? ???
????? ??????? ????????? – ????? ?????? ?????? ????? ?????????????? ?????: ??????????
????????? ??? (2) (?? ?????: ??? ?????).

3. ? ?????????????? ??? ?? ??????? ?? ?????? ?????? ?????????????? ??? ????? VII ???
????? ??????. ?? ?????? 10, ?????????? 2, ????? ??????, ??? ?????? ?????? ???:
«? ?????????????? ??? ????? ?????????? ?? ?????? ?????????? ??????????, ??? ??? ?????
????????????? ??? ?????? ?????? ?????????? ?? ?????? ?????? ??? ?????????? ??
????????? ???, ?????? ??? ?????????? ?? ?????? 5 ?????????? 4 ?????????? ??,
????? ??? ?? ??????? ??????????, ?? ?????? ?????????? ?? ?????????? ?????????? ??
????????? ??? ?????????? ?????????, ?????????? ??? ?????????????? ??? ?????? ??? ??? ??
????????? ???, ?????? ??? ?????? ?????????? ?? ?????????? ?????????? ??? ???????
????????? ???, ?????? ??? ?????? ?????????? ?? ?????????? ?????????? ???.

4. ?? ????? 17 ??????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ????. ???
??? ?????????? 1 ??? 2, ??????? ??, ??? ?? ????? ??????:
«1. ?? ??????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ???????.

2. ??? ?? ?????? ??? ?? ?????? ?? ?????? ?????????????? ??? ??? ??

? ?????????????? ??? ?????????????? ??????? ???, ? ?????????????? ???? ???? ?????????????? ??
????????? ??? ??? ???, ??? ??? ?????? ???? ?????? ??????????:
?)??? ?????????? ? ?????????????? ??? ?????????????? ?????? ??? ?????? ???? ?????, ??? ???
????????????? ? ?????????? ?? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ???? ???
????????????? ? ?????????? ?? ??? ?????????? ?????? ??? ?????? ?????? ?????? ????.»
5. ?? ?????? 18 ?????????? ??? ?????? ?????????? ??? ?????????? ???? ?????????? ???? ?????? ????. ????
????????????? 1 ??? 2 ??????????, ?????? ????, ????:
«1. ??? ?? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ???? ?????????? ???? ?????? ????.
????? ???? ??????:
?)??? ??? ?????????? ??? ?????? 17 ?????????? 2 ?????????? ? ???????, ?? ??????
?????????, ?? ?????? ???? ?????? ???? ?? ?????? 22 ?????????? 3.
[...]

2. ? ??????? ?????????? ?????????? ???? ??? ?????????? ???? ???' ?????????? ???? ??
????? ??? ?????? ??? ?????????? ???? ??? ?????? ??????????, ??? ?????? ???? ?????, ??? ???
????? ?????????? ??? ??????????, ?????? ??? ?????????? 1, ?? ?????? ???? ?????? ?????, ????
??? ?????????? ??? ?????? ?????????.
?????????, ?? ?????? ???? ?????????? ?? ?????????? ???? ?????????????? ???? ????, ??
????? ?????????????? ?????? ???' ??????????, ???? ??? ?????? ???? ?????? 4 ?????????? 3,
?? ?????? ?? ?????????? ???? ?????? ???? ???? ???? ???? ?????? ???? ??????????»
6. ?? ?????? 22 ??????????, ?????? ????, ?? ????:
«3.) ??? ?????????? ???? ??? ?????? ?? ?????? ???? ?????????? ? ?????? ???? ??????
????? ??????????, ???? ??? ?????????? ???? ???? ?????? ???? ?????? ??????????, ???? ??????
????????????? ???? ???? ?????? ?????????? ???? ????, ?? ?????? ?? ?????????? ???? ?????? ??????????
?????????
????? ???? ?????????? ???? ???? ?????? ?? ?????? ???? ?????? ???? ???? ??????????
?? ?????????? ?? ???? ???? ?????? ???? ?????? ???? ???? ???? ???? ??????????????
?? ?????????? ? ???? ???? ?????? ???? ?????? ???? ?????? ???? ??????????
[...]

)? ?? ???? ???? ?????????? ?? ???????, ?????? ?? ?? ???? ???? ?????? ???? ?????? ???
????????? ???? ?????? ???? ??????????»
4. ??? ?????????? ???? ??? ?????? ?? ?????????? ???? ?????? ???? ?????? ??????????
????????????? ???? ?? ???? ????. ? ?????????? ???? ??? ?????? ???? ?????? ???? ?????????? ????
????? ???? ???? ???? ?????? ??????????. ? ?????????? ???? ?????? ?????? ???? ????
????? ?? ???????, ?????? ? ??????. ??????????, ?? ?????? ???? ?????? ???? ??????
????????????? ?????????? ???? ???? ???????, ??????, ?? ?????????? ???? ????.
? ?????? ???? ?? ?????????????? ???? ?? ?????????? ???? ???? ?????????? ???? ???? ????
?? ?????????? ???? ???? ?????? ???? ??????????, ??????????????????, ???? ???? ????
?? ?????? ?? ?????? ???? ?????? ?????????? ???? ?? ?????????? ???? ?????? ???? ???? ????
?? ?????????? ???? ???? ?????? ???? ?????????? ???? ?? ?????? ???? ???? ???? ????
????? ???? ???? ???? ?????????????? ???? ????.

5. ??? ?????????? ???? ???? ?????????? ?? ?????????? ?? ?????? ???? ???? ????
????????????? ???? ???? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ????
????? ???? ???? ???? ?????? ???? ?????? ?????? ???? ?????? ???? ???? ???? ????
?????????.

6. ?? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
????????, ? ???? ?? ?????????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ????
????????? 4 ?? ?? ???? ?? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ?????? ???? ????
????????? ????. ? ?????? ???? ?????? ?????? ???? ?????? ???? ?????? ???? ????
????????, ???? ???? ?????????? ???? ?????? ????.»

? - ? - ?????? ????????

7. ??? ??? ?????????? ???? ?????? ???? ?????? ???? ???? ???? Umsatzsteuergesetz 1999

(?????????? ?????? ?????? ?????? ?????? ?????? 1999, ??? ????: UStG). ?? ?????? 15,
?????????? 1, ?????? 1, ??? UStG, ??? ??? ????? «????????? ?????» ?????? ?? ??????????
«?? ?????????????? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ???? ??????
1. ??? ?????????????? ?????? ??? ?????????? ??????, ??? ??? ?????? ??? ?????? 14,
??? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ??????????
????? ??? ?????????? ????. ?? ?? ??? ?????? ?????? ?????????????? ?????? ??? ?????? ??????
????????? ??? ?????? ??? ??????, ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?????????»
8. ?? ?????? 16, ?????????? 1, ??????? ??? ?????? ??????, ??? UStG ?????? ??
????????:
«?? ?????????? ??? ?????? ?????? ?? ?? ?????????? ????. ? ??? ?????? ?????????? ????
????????? ??? ?????? ?????? ?????? ?? ?? 1, ?????????? 1, ?????? 1 ??? 3, ??? 5,
????? ??? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????
?????????»
9. ??? ?? ?????? 16, ?????????? 2, ?????? ??????, ??? UStG:
«?? ?????????? ?? ?????? ?????? ??? ?????? 15 ?????, ??? ?????? ?? ?????????? ???,
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ????.»
10. ??? ?? ?????? 192, ?????????? 2, ?????? ??????, ??? Umsatzsteuer-Richtlinien 2000
(????????????? ?????? ??? 2000 ??? ?????? ?????? ?????? ??????):
«[...] ??? ?? ?????? ??? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??
????????? ????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? [...]»
11. ??? ?? ?????????? ??? Bundesfinanzhof, ?? ?????? ?????????? ??? ?????? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? 15, ?????????? 1, ?????? 1, ??? UStG. ????
??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??????. ??? ???????, ? Terra Baubedarf-Handel GmbH ??? ?????? ??
????? (?????????) ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 1999, ?????? ??? ??????
????? ?????? ?' ??? ?????? ?? ?????? ??? ??????.

III – ?? ?????????? ??????????, ? ?????????? ??? ?????? ?????? ??? ??
????????? ????

12. ? Terra Baubedarf-Handel GmbH (??? ????: Terra) ??? ?? ?????????? ??? ??????
????? ??? ?????? ?????? ??? ?? ?? 1999 (????????? ???), ??? ?? ?????? ??
????? ?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? 3 248,10 ?????????? ???
(DEM). ?? ?????? ?????? ??? ?????? ??? ?????? ??? Terra ??? ?? 1999. ??
????? ?????? ??? ?????? ??? ?????? ??? 1999, ?????? ??? Terra ??? ??????
2000.

13. ?? Finanzamt Osterholz-Scharmbeck ??? ?????? ?????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?? ?????? ????. ??????????, ???????, ?? ?????? ??? ??????
15, ?????????? 1, ?????? 1, ??? UStG. ??? ?? ?????? ??? ?????????? ?????????? ??? ?????? ???
??? ???????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
Finanzamt, ?? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?? ??? ?????? ??????????, ?????? ?? ?? 192, ?????????? 2, ??????
?????????, ??? Umsatzsteuer-Richtlinien 2000, ??????, ?? ??????????, ??? ?? ??????????
????? 2000, ?????? ?? ?????? ?????? ??? Terra ??? ?? ?????? ??? ?????? ???
14. ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???.
Finanzgericht ?????? ??? ?????? ??? Finanzamt. ?? ?? ?????????? ??????????, ??? ??????
??? ?????? ?????? ?? Finanzgericht ??? ?? ?????? ??? ??????????, ? Terra
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????

????????? ?? ??????? ?????????? ??? ?????? ??? ?????? ??????. ?????? ?????????? ?????? ???
????? ??????. ? Terra ????, ??? ???????, ??? ??????? ??? ?????? ?????? ?????????????? ??????????????
????????? ??? ??? ??????? ?????????? ?????? ?????? ?????? ?????? ??? ?? ??? 1999 ??? ??
????? ??? ?????????? ?????????? ?????????? ?????? ??? ??? ?????? ?????? ?????? 3 248,10 DEM.
15. ?? Bundesfinanzhof ??? ?????????? ?? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??????
????????? ?? ?? ?????????? ?????? ??? ?? ?? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ??? ??????.

16. ??????, ?? ?????????? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ??????, ? ??????????
????? ??? ?? «????????? ?????? ??????» ??? ?????? ??? ??? ??????. ???????, ??
????? 17 ?????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ??????, ??? ?? ??? 18
????????? ??? ?????????? ??? ?????? ???.

17. ?? Bundesfinanzhof ??? ????????, ???, ?? ??????????, ???, ?? ??????????, ?? ????????
????????? ??? ?????? ??? ?????????? ??? 1999 ?????? ?? ?? ?????? 17 ??? ??
?????? ??? ???, ??????? ?? ?? ?????? 18 ?????? ?? ?????? ??? ?? 2000 ??????
????????? ??? ?????????? ???????, ?????? ?? ?????? ?? ?????? ?????? ?????????? ??????? ??
????????? ??? ??? ?????????? ?????? 1999. ?? ?????? 18, ?????????? 1, ???????? ??, ???
????? ?????? ?????? ?? ?????????? ??? ??? ?????? ??? ? ?????? ?????? ?????? ?????? ??????
??? ?????????? ?????? ??? ?????????? ?????? ??????????, ??? ?????? ?? ???.
????????? ??? ??? ?? ?????? ??? ?????? ?? ?????????? ?? ?????????? ???.

18. ????, ?? Bundesfinanzhof, ?? ?????? ??? 21?? ?????? 2002, ?????????? ??
????????? ??? ?????? ??? ?????????? ?? ?????????? ?????????????? ??????:
«????????? ?? ?????????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ???
????????? ??? ??? ?? ?????????? ??? ?????? ?? ??????, ?????? ?? ??? ?????? 18,
????????? 1, ??????? ??, ??? ?????? 77/388/?? ?????????? ?' ?????? ?? ??????
????????? ?? ?????? ?? ?????????? ??? ?????? ?????? ?? ?????????? ?????? ???
????????????? ?????? (????? ??????????) ??? ?? ?????????? ??? ?????? ?????? ?????????? ??
????????? ??? ?????? ?? ??? 17, ?????????? 1 ??? ?????? 77/388/??;»

IV – ??? ??? ?????????? ??????????

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

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

20. ???, ?? Terra, ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ??? ??
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ??
????? ?????? ?? ?? ?????? ??? ?????????? ??? ?????? ?????? ?? ?????? ??? ?????? ??
?? ??? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??
??? ?? ??? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ???, ??? ?? ?????? ??? Terra,
????????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ??????????.

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

22. ???, ?? Terra, ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ??
??????, ?????????? ?????? ??????.

23. ?? ?????? ??? ?????????? ??? ??????, ???, ??? ?? ??? ?????? ??? ??
?????. ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? ??????????

? ??????????. ????. ??? ??????? ?? ?????????????? ??????????????, ????????, ??????, ??? ????
?????? ????????, ??????????, ???' ????, ??? ??????? ????. ??????????, ? ???? ???
????????????? ????. ??? ?????? ??? ?????? ?????????? ?????????????? ??????????, ??? ????
????? ??????. ??????, ?? ?????? ???? ?????? ?????????? ?????????? ?? ? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ? ??????????
????????? ?????? ?????????????? ????.
45. ?? ? ?????????? ????. ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ??????????, ??????????
??? ?????? ?????? ??? ??????. ?? ?????????? ? ?????????? ?????????? ?????????? ??????????
??? ???? ?????? ?? ?????????? ??? ?????? ??? ??????????. ?????? ?? ?????? ???, ?? ?????? ???
????? ??? ??????????????, ? ???? ?????? ?????? ?????????? ??? ?????? ?????? ??? ??????????
????? ????.
46. ??? ?????? ?? ???? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ??????????
?????????, ??? ?????? ?????????? ? ?????????? ??????????, ?????????? ?? ?????????? ??? ??????????
????? ?????? ?????????? ? Terra, ??? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??????????
????? ??? ?????? ?????????? ??? ?????? ?????????? ??????. ?? ???? ?????? ?????????? ?????? ???
?? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ??????????
??? ???? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ??????, ?? ?????????? ?????? ?????? ?????????? ??? ??????
????????? ?????? ????.
47. ??? ?????? ?? ???? ?????? ??? ?????????? ?????????????? ?? ? ?????????? ??? ??
????? ?????? ?? ?????????? ??? ?????? ??????, ?????? ?? ?????????? ??? ?? ???? ??????????
????? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????????????? ?????????? ??? ??
????????? ??? ??????????????. ??????, ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
??? ?????? ??? ?????????????? ??? ??????????, ???, ??? ??? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ????.
48. ??????, ? ?????????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??????????, ???' ??????, ??? ??????
??????.
49. ??????, ? ?????? Gabalfrisa ?.?. ?????? ?????? ?????? ?????????? ?????? ??? ??
????? ? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??
????? ??? ?????? ?????????? ??????, ?????? ??? ?????? ?????? ?????????? ?? ? ?? ??????????
????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (10)
. ?????????? ??????, ??? ?????? ??????, ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ??????
50. ????????, ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???
????? ??? ??? ?????????? ?????? ?????? ?????????? ??????. ??????????, ??? ?????? ?????????? ???
????????? ??? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ????
??????????.
51. ?? ?????????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ?? ?????? ?????????? ?? ?????? ??????, ?????? ?? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????????
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????.
52. ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
?????????, ??????, ??? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ????. ??
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ????. ??
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ??? ??????.

53. ???????, ??? ? ?????????? ??? ?????????????? ?????????????? ?????????????? ?????? ??
?????????? ??? ? ?????????? ?????????????? ?????????? ?? ?????? ?? ?????????? ??????,
????? ???????.

54. ??? ???? ???????, ?? ??? ???? ?????? ???, ??? ?????? 18 ??? ?????? ???????, ??????
?? ?????? ?????? ???? ???? ??? ?????????? ?????????????? ??? ? ?????????? ?????? ?????
????????? ??? ?????? ?????????? ???????, ? ?????? ??? ?????????? ?????????? ?????? ???
????? ??? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??
????????? ??? ???????, ?????? ??? ?????? ?????? ?????????????? ?? ?????????? ?????????? ??????????.

V – ???????

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

«?? ??? 18 ??? ?????? ??????? 77/388/???, ??? ???????????, ??? 17?? ?????? 1977, ???
????????????? ??? ??????????? ??? ??????? ?????, ??? ?????????? ?? ??? ?????? ?????? ??????
????????? – ??? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ?????, ???
??? ?????? ??? ? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ???, ??????? ??
?? ????? 17, ?????????? 1, ??? ?????? ??????»

1 – ?????? ??? ??????????: ? ??????????.

2 – ?? ????. ??? 09/001, ?. 49, ?????????????? ?????? ??????????????.

3 – ??????? ??? 8?? ?????????? 2001, C?338/98, ??????? ??? ?????? (?????? 2001, ?.
??8265, ??? 71).

4 – ?? ????. ??? 09/001, ?. 5.

5 – ??????? ??? ?????????? ??? 8?? ?????? 2000, C?400/98, Breitsohl (?????? 2001, ?.
??4321, ??? 36).

6 – ??????? ??? ???????????, ??? 14?? ?????? 1988, Rechtssachen, 123/87 ??? 330/87,
Jeunehomme ?. ??? État belge (?????? 1988, ?. 4517, ??? 14), ??? ??? 5?? ??????????
1996, C?85/95, Reisdorf (?????? 1996, ?. I?6257, ??? 22).

7 – ?????? Reisdorf, ?????????????? ??? ?????????????? 6, ??? 22.

8 – ??????? ??? 11?? ?????? 1991 ??? ?????? C?97/90, Lennartz (?????? 1991, ?.
I?3795, ??? 27), ??? 6?? ?????? 1995 ??? ?????? C?62/93, BP Souergaz (??????
1995, ?. I?1883, ??? 18), ??? 21?? ?????? 2000 ??? ?????????????? ???
C?110/98 ??? C?147/98, Gabalfrisa ?. (?????? 2000, ?. I?1577, ??? 47), ??? ???
?????? C?400/98, ?????????????? ??? ?????????? 5, ??? 34.

9 – ??., ???????, ??????? ??? ?????????? ??? 14?? ?????????? 1985 ??? ??????
268/83, Rompelman (?????? 1985, ?. 655, ??? 23), ??? 29?? ?????????? 1996 ???
?????? C?110/94, INZO (?????? 1996, ?. I?857, ??? 16), ??? ??????????????

?????? C?110/98 ??? C?147/98 (????????????? ??? ?????????? 8), ??? 45, ???
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10 – ??????? ??? ?????????????? C?110/98 ??? C?147/98, ??????????????
??? ?????????? 8, ?????? 53 ??.