

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

M. POIARES MADURO

??? 13?? ?????????? 2006 1(1)

?????? C-277/05

## Société thermale d'Eugénie-Les-Bains

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Ministère de l'Économie, des Finances et de l'Industrie

[?????? ?? Conseil d'Etat (?????) ?? ?? ?????? ?????????????? ??????????]

«???? – ?????? ?????????? – ?????????? ??? ?????????????? ??? ?????? ?????? ?????????? ?????? ??????  
????????? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ?????????????? ??? ?????  
????????? ??? ?????????? ?? ?????????? ?????????? – ??????????????»

1. ? ??? ?????? ?????? ??? Conseil d'État (???????) ??? ??? ?????? ?????????????????  
????????? ????, ???' ??????, ??? ?????????? ??? ?????? 2, ?????? 1, ??? ?????? ??????  
77/388/??? (2). ??????????????, ??????? ?? ?????? ??? ?????? ? ?????????????? ??? ??? ??????  
????????????? ????, ??? ?????? ? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ??????????  
????????? ??? ?????????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????? ??? ??????????  
????????? ??? ?????????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????? ??? ??????????,  
????????? ??? ?????? ?????????????? ??? (?? ?????: ???).

| – ?? ?????????? ???????????, ?? ?????? ??????? ??? ?? ?????????? ??  
?????????? ??????????? ???????

2. ?? ??????????????? ?? société thermale d'Eugénie-les-Bains (???: ????: société thermale ?? ??????????? ?? ?? ?????? ????, ? ?????? ???? ??? ?????? ??? ?????? ?????? ?????? (??????), ??????????? ?? ?? ??????????? ?????????????? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????????????? ?? ?????? ?????????????? ?????????? ??? ?????????? ???????????. ? société thermale ?????????? ?????????? ?? ?? ?????????? ??? ?????????? ??? ?????????????? ?? ?????????????? ?? ??????????????.

3. ???? ?? ????? L 114?1 ??? ?????? ????????????, ?? ?????? ??????????? ?? ?? ?????  
3?1 ??? ????? 92?60, ??? 18?? ?????????? 1992, ??? ?????????? ??? ?????????? ???  
????????????? (3), «??? ?? ?????????? ?????????? ?????? ??? ?? ?????????? , ?  
????????? ?????? ???????, ????? ?????? ??? ????? ?????????????? ??????? ?? ???  
????????? ??? ?????? ???, ? ??? ?????????? ?????? ??? ?????? ??? ?????????? , ? ??  
????????????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ». ??????? ??????, ??  
????????? ??? ?? ?????? ? société thermale ?????????? ?? ?????????? ??? ?????????? ???  
?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???

?????????? ??? ?????????? ????.

4. ?? 1992, ? société thermale ??????????? ?? ?????????? ?????? ??? ?? ??????? ???????  
??? 1?? ??????????? 1989 ??? 30 ??????? 1992. ??????? ??? ??????????????? ???????, ?  
?????????? ??? ??????? ??? ?? ??? ?? ?????? ? société thermale ??????????? ?? ???????  
???? ?? ??????????????? ??? ?????????? ??? ?????????????? ??? ?? ??????? ???  
?????????? ??? ???. ???????, ??? 8 ?????????? 1994, ?????????? ??? ??????? ???  
?????????? ??? ?? 84 054 FRF (12 814 ????) ??? ??? ??????? ??????? ????????. ?  
société thermale, ?? ??????????? ??? ?????? ???, ??????? ??????? ??? ??????????  
????? ???????, ? ??? ?????????????? ??? 14 ?????????? 1995.

5. ? société thermale ??????? ??????? ?? tribunal administratif de Pau [????????????? ??????????? ?? Pau] ???????, ? ????? ??????????? ?? ??? ?????? ?? 18?? ??????? 1999. ?? ???????, ? société thermale ??????? ????? ??????? ??? cour administrative d'appel de Bordeaux [?????????? ??????? ??? Bordeaux], ?? ????? ??? ??????? ?? ??? ??????? ??? ??? 18?? ??????? 2003. ?? ??? ??? ??????????? ??????? ???, ?????? ? ??????? ??????????? ??? ??????????? ?? ??????????? ??????????? ??? ??????????? ??????? ??? ???????, ? ??????????? ??????? ??????????? ??? ??????? ??? ??????? ??????????? ??? ??????? ???????, ? ??????????? ??? ??????????? ??????? ??? ??????? ??????? ??? ??????? ??????????? ???????, ? ???????????, ? ??????? ?? ??????????? ??????????? ??? ??????? ??? ??????? ??????????? ??? ??????? ?? société thermale, ??????? ??? ???.

6. ? société thermale, ? ?????? ????????????, ??????????, ??? ? ?????????? ?????? ??  
????????? ?? ?????????? ?????????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ??????????  
????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ??, ???????, ?? ?  
????????????? ??, ?????? ??, ?????? ??????? ??????? ?? Conseil d'État, ?? ?????? ?????????? ??  
?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ??  
?????????? ?? ??????:

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

8.     ?? ?????? 6, ?????????? 1, ??? ????? ??????? ?????? ?? «?????? ?????????» ????  
????? ??? ???? ??????? ??????? ?????? ??? ?????? ??? ?????? ??? ?????? 5 ??? ????? ??????  
??? ??????? ??? ???? ?????? ??????? «?????? ???? ?????????? ?????? ??? [...] ??  
????????? ??? ?????????? ? ??? ?????? ?????? ? ?????????? ».

9. ????? ??????? ??????? ?????? ?????? ?????? ??????? ?? ????? 10, ?????? 2, ??? ??????  
?????, ?? ?????? ?????? ??? «[?] ?????????????? ?????? ?????????? ??? ? ?????? ??????????  
?????????, ???? ??? ?????? ?????????????????? ??? ?????????? ??? ?????? ? ??? ??????  
??? ??????????. ?? ?????????? ??????, ?????? ??? ?????????????? ??? ????? 5, ?????? 4,

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

10. ?????, ?????? ?? ?????????????? ???, ??? ???? ?? ?????? 11, ?, ?????? 1, ?????????? ??, ???  
????? ???????, ??? ?????????? ??? ?????, ??? ??? ?????? ??????????, ????? «?????????  
????????? ??? ??????????, ??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ?????? ???  
[...] ? ?????? ??? ?????????? ??? ??? [...] ?????? ? ?????? ??????».

## II – ??????

11. ??? ?????? ??? ??? ?????? ??????????, ??????????????, ???' ??????, ??? ??????????  
?????? ??? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ???  
????????????? ??? ?? société thermale ?????? ??? ?????????????? ????. ? société thermale  
????????????? ??? ?? ??? ?????? ??? ?????????????? ?? ?????????? ??? ?????? ??????????  
????????????? ?? ?????????? ??? ?????? ?????????? ????. ?????? ??? ?????????????? ???  
????????? ?????????????? ??? ?????? ?????? ?????????? ??? ? ?????????? ??? ??????????  
????????? ?????????? ??? ?????? ??????. ??????????????, ? ???????, ? ?????????? ??? ?  
????????????? ?????????? ??? ? ?????????? ?????? ?????????????? ??? ? ?????????????, ??? ??????  
? société thermale ?????????? ??? ?????????? ?????? ?????? ??? ?????????????? ??? ??????  
??, ??????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ????. ?????? ? société thermale  
????????? ??? ? ?????????????? ??? ?????? ?????? ?????????? ??? ??????  
????????????? ??? ?????????? ??? ?????? ?????, ?????? ?????, ?????? ?????? ???.

12. ??? ?????? ??? ?????????? ??? ??????????????, ??? ?????? ??? ??????  
????????? ???, ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????  
??? ?????????? ???, ??????, ???' ????, ?? ?????????? ? ?????????? ??? ?????????? ???  
????? ??? ?????????? ??? ?????? «?? ?????????? ?????? ??? [...] ? ?????? ?????? ?????????, ???  
????????????? ??? ?????????? ??? [...] ??? ?????????? ?????? ???, ??? ?????? ???  
??? ?????????? ??? ?????», ???? ??? ?????? ??? ?????? 2, ?????? 1, ??? ?????? ??????.

13. ? ?????? ?????? ?????? ?????????????? ?? ?????? ??? ?????????? ?????? ???  
????????? ??? ?????? Tolsma (4), ? ?????? ?????? ?? ?????????????? ??? R. Tolsma  
??? ?????? ?????? ?? ?????? ???, ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??  
????? ??? ?????? ?? ?????????? ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??????  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? R. Tolsma ??? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???, ??????????????, ???' ????, ???, ???  
????? ?????? ???, ?? ?????????? ??? ?????? ?????????? ???, ??? ?????? ??? ?????? ??????  
??, ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ??? ??????  
????????? (5). ?????? ? ?????????? ??? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???, ??? ?????? ???  
??? ?????? ?????? ???, ?????? ?????? ??? ?????, ??? ?????? ?????? ??? ?????? ???, ???  
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???, ???  
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??? ?????? ???,  
????????? ?????? ??? ?????? (6). ??? ??? ?????? ???, ??? ?????? ?????? ???  
[...] ???? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???

????? ??? ?? ??????? ?? ?????? ?????????????????? ?????????? ???????, ? ?? ?????? ???  
????????? ? ??????? ?? ?????? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????????? ???  
????????? ??? ?????» (7).

14. ??? ??????? ??? ????? ???????????????, ?? ?????????? ??????, ?? ??? ??? ??????????  
??????? ??? Kennemer Golf (8), ??? ?????????? ?????? ?????????? ?????? ??? ???' ???????  
????????? ??????? ?? ????? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????  
??????????, ?? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??????, ???? ??? ?????? ???,  
????????? ?????????????? ??? ?????? ?????????? ?????????? (9). ??????? ??????, ?? ??????????  
????????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????????  
??? ?????????? ?????????? ??? ?????? ??????, ?????????? ?????? ??? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ???  
(10). ? ?????????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????? ?????????????? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????, ??? ?? ??????????, ??? ?????? ?????????? ??? ?????? ??????, ??? ?????? ?????? ???  
?????? 2, ??? 1, ??? ?????? ??????.

15. ?? ??????????, ?? ?????????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ???,  
????? ??? ??????? ??? ?????? ??? ? ?????? ?????????????? ?? ???????, ? société thermale  
?????????? ?????? ?????????? ?????????? ????????. ??????, ? ?????? ?????????? ?? ???????,  
????? ?????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ???????. ? ?????? ??? ?????? ?????? ?????????? ??????, ????, ??? ?????????? ???,  
?????, ?? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ???,  
??????, ?? ?????? ??? ?????? ?????????? ?????????? ??? ??????. ???????, ? société  
thermale ??? ?????????? ??? ?????? ?? ?????????? ?????? ?????? ?????? ??? ??? ?? ?????  
????????? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?? ?????? ?????? ?????? ???  
????????, ? ?????? ????, ?????????? ?? ?????? ??? ?????????? ?? ?????????? ???, ??? ??????  
????????? ????, ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ??? ?????????? ???  
?????. ?????? ?????????? ??? ?????????? ?????????? ?????? ???, ??? ??? ?????? ???  
????????????? ??? ??????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
??????.

16. ??????? ???, ?? ??????????, ? société thermale ?????????? ??? ?? ??????  
????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????  
?? ?????????? ??? ?????????? ???, ? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??  
????????? ???, ??? ?????? ?????????? ??? ?????? ?????????? ???, ?? ?????????????? ????  
????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? 2, ?????? 1, ??? 6, ?????? 1, ??? ??????  
??????. ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???, ???  
????????????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ?????????? ??? ???, ??? ???  
????? ???, ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? (11).

17. ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???,  
????????? ??? ?????? ???????. ??????, ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??  
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ? ?????????? ??? ?????? ??  
????????? ??? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?? ??????  
????????? ?? ??? ?????? ??? ?????? ???????. ??????, ?????????? ??? ?????? ??? ?????? ?? ??????  
????????? ?????? ?????? ??? ?????? ?????? ???, ?? ?????? ??? ?????? ???, ??? ?????????? ???  
????????? ???' ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???  
??? ?????????? ??? ?????? ??? ?????????? ???.

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

18. ??????, ? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ??????????, ??? ?? ??????, ???  
????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????????? ?? ??? ?? ??????????  
??? ?????? ??? ?????? ?????????????? ??????????. ????????, ??? ?????? ?? ?????????? ???  
??? ?????? ????????, ?? ??? ?????? ?????????? ?????????? ??????. ????????, ??  
????????? ?? ?????????? ??? ?????????? ??? ??? ??????, ?? ?????? ??? ?????????????? ???  
????????? ?????????????? ??? ???, ?????? ?????????????? ??? ?????? ???, ??????,  
??? ?????? ?? ?????????? ??? ??????, ?????? ?????? ??? ?????????? ??? ?????? ???, ??????.  
??? ??? ?????????? ???, ? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???  
????????? ?? ?????????? «????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ???  
?????????», ??? ??? ?????? ??? ?????? 10, ?????? 2, ?????? ??????, ??? ?????? ??????.  
????? ?? ?? ?????? ???, ? ?????? ?????????? ?????????? ??? ??? ?????? ???  
?????????, ?????? ??? ?????? ??? ?????????????? ???.

19. ????????, ??? ?????????? ??????????, ?? ?????? ??? ?????????????? ??? ??  
société thermale ??? ?? ?????????? ??? ?????? ?? ?????????? ??? ?????? ???, ?? ???  
??? ??? ?????????????? ??? ?? société thermale ?? ?????????? ?????? ?????????????? ???  
??? ?????? ??? ?????? ??????????, ?????? ? ?????? ??? ?????? ??? ?????? ?????????? ??  
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ????. ?? ???  
?????????, ?????? ?? ?????????????? ??? ?? società thermale ?????? ?????? ???  
????????????? ??? ??????. ??????????????, ??? ?????????? ??? ?????? ??? ?????? ??  
????????? ?? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???  
?????????????, ?????? ?? ?????????????? ??? ?? ?????????? ?????? ??? ?????? ???  
????????????? ??? ??????. ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ??????. ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
société thermale ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ??? ?????? ??? ?????? ??? ??????, ??? ?? ?????? 2, ?????? 1, ??? 6, ?????? 1, ???  
????? ??????.

20. ???' ????, ?????? ?? ?????????? ??? ? ?????? ? ?????? ?????????? ?? ?????????? ??  
????????? ??? ?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??  
?? ??????. ? ?????????????? ??? ?????????? ???, ?? ??? ?????? ??????, ??????????????  
??? ??? ????. ?? ?????????? ??? ??? ??????????????, ?????? ??? ?????? ??????????????, ??  
????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????? ?? ??????.

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

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

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

23. ??????? ???? ?????????? ??????, ???? ????? ?????????? ?????? ?????? ??????? ??????????, ?????  
????????? ?????? ??????? ???????, ??????? ?????? ?????? ?????? ??' ?????? ?????? ??? ?????? ??????  
????? ?????????? ?? ?????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ?????? ??????????  
??? ?????????? ?????????? (12). ???????, ?? ?????????? ?????????????? ??? ??????, ?  
?????? ?????? ?????????? ?????????? ?????????????? ??? ?????????? ?? ?????? ?? ??? ?????  
????????? ? ?????? ??? ?????????? ,????? ??????, ??? ??? ??????????. ? ??????????  
????????? ??? ?????????? ?? ?????? ?? ??? ?????? ?????? ?????????? ,?? ??? ?????  
????????? ?????????????? , ?????????? ??? ? ?????? ?????? ?? ??????, ??? ??????????  
??????, ??? ?????? ?????????????? ?? ??????. ???????, ?????????? ??? ?????? ?????????? ???  
?? ?? ?????? ??? ??? ?????? ???????.

24. ????????, ??? ?????????? ? ????????, ?? ?????? ??? ? ??????? ?????????? ??  
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????  
???. ? ??????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ??????????, ?? ?????? ?????? ??? ??????  
??? ??? ??????? ??? ??????????, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??????????  
?????????????, ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ? société thermale. ?  
??? ?????? ??????, ??? ?????? ??? ? ?????????????? ?????? Kennemer Golf, ???  
????? ?????????? ? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??????????  
?????, ?????????? ??? ?????? ??? ?? ?????? ??? ?????????????? ??? ??? ?????????? ??? ??????  
?????? ?????????? ??? ??????, ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ????  
????????? ??? ?????????? ???.

25. ??????????, ? ??????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ?? ??  
????????? ??? ?????????? ?? ?????????? Landboden?Agrardienste (13) ??? Mohr (14), ???  
?????? ?????????? ?? ?????????? ??? ?????? ??????. ?? ??? ?????????? ??? ????, ??  
????????? ?????? ??? ?????? ?? ?????? ?? ?????????? ?? ?????????? ??? ??????????, ???  
?????? ??? ?????? 6, ?????? 1, ??? ????? ??????, ? ?????????? ??? ?????????? ?? ???  
????????? ??????????, ??? ?????? ?????? ? ?????????? ?? ?????????? ?????????? ??????????, ??  
????????? ?? ?????????? ??? ?????????? ??? (15). ??????????, ?? ??? ??????????  
?????? Mohr, ?? ?????????? ????????, «?? ?? ?? ?????????? ?? ?????? ???????  
????????? ?????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ??  
????????? ???, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ???  
????, ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????? ?? ?? ?????????? ?  
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? » (16). ?? ?????????? ??????????  
?? ?????????? ??? ?? ??? ?????? Landboden?Agrardienste, ?????????? ??? ? ?????????? ???  
????????? ?????? ?????????? ??? ??? ?????? ?????????? ? ??? ?????? ?????????? ?????????? ?? ???  
?????? ??? ?????????? ?????????? ??? ?????? ??? 20 % ??? ?????????? ??  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????????, ???  
?????? ? ?????????? ?? ?????? ?? ?????????? ???, ?????????? ?????? ?????????? ???  
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? (17).

26. ????? ???. ?????? ??????? ?????????? ?????? ?????????? ??? ? ?????????? ?? ??????? ??? société  
thermale ??? ?????????? ?? ?????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ? ??????  
?????? ??????? ?? ?????? ??????, ??? ?????? ?????? ?????????? ?????????? ?????????? ? ?????????? ???,  
????????? ??? ?????? ?????????? ?????????? ?????????? ??? ?????????? ?????? ??? ?? ??????????  
?????????, ??? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??  
??? ?????????? ??? ?????? ?????? ? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ??  
????????? ??? ?????????? ??????. ???????, ? ?????? ??? ??????, ??????? ?????? ?????? ?????????? ??  
????????? ??? ?? société thermale ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ??????

????? ??? ??????????????? ??, ?? ?????????????? ??????????????? ?? ?????? ??????????,  
????? ??? ?????? ?? ?????? 6, ?????? 1, ??? ?????? ??????.

? – ? ?????????????? ?????????? ?????????????? ??? ?????? ??? ?????????????? ??? ??  
????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???.

27. ? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??  
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????????, ??? ??  
????????? ?? ???????. ? ?????????????? ??? ?????? ?????? ?????????????? ???, ??? ??  
????????? ?????? ???, ? ?????????? ??? ?????????? ?????????????? ?. ? ??????????  
????????? ?? ?? ?????? ??? ?????????? ? société thermale, ??? ?? ?????????? ??? ??  
??? ?? ?????????? ??? ?????? ???, ??? ??, ???????, ?????????? ???' ??????????  
????????? ??? ?????????? ??? ?????? ??? (18).

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

29. ?????? ?? ?????????? ???, ??? ?? ?????????? ??? ?????? ???????????, ?? ?????????? ???  
?? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

30. ??? ?????? ?????????? ?? Conseil d'État ?? ??? ?????? ??? ?? ??????????,  
?????? ?? ?????????? ??, ??? ?? ???????, ? ?????????? ???????, ?????? ?? ??????????,  
?? ?????? ?? ?????? ???. ???????, ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????????? ?? ?????? ??, ???????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????????? ?? ?????? ?? ?????? ?? (20).

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

???????????, ?? ??????? ?? ?????????? ???, ?? ?????????? ??? ??? ?????? ?????? ??????, ???  
????? ? ??????? ?????????????? ??? ?????????????? ??? ?????????? ??? ??? ??????????????  
??? ??? ?? ??????? ??????. ? ?????????? ??? ??? ?????? ?????? ???????????.  
?????????, ?? ??? ?????? ?????? ?????????? ??? ??????????, ??? ??? ?????? ?????????? ??????????  
??? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??????????  
????? ?????????? ??? ?????? ?????????? ??? ??????, ??? ?? ?????? ?????? ?????? ??  
????????????? ?? ?????? ?????????? ?????????? (21).

32. ??? ????????, ?? ??????? ???, ??? ?? ?????? ?????? ??????, ?? ??? ??  
????????????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?  
???????????, ??? ??? ? société thermale ?????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??  
????????? ?????????? ??? ?????? ???, ??? ?????????? ??? ??? ?. ???????, ??????????  
??, ??? ??? ?????? ?????????? ??? ?????????? ???, ?????? ?? ?????????? ??? ??? ??? ??????  
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????  
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????, ?  
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????  
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????, ??? ?????????? ??? ?????? ??? ??????  
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ??????, ??? ?????, ?? ?? ??? ?????? ??? ?????? ?? ??????. ???????, ?  
????? ??? ?????? ??? ?????? ??? ?? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ??????, ? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????? ??? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???  
????? ??? (22).

33. ????????, ??? ?????????? ? ??????? ?? ??? ?????????? ???, ? ???????????  
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ? ?????? ?????????? ??? ???  
????????????? ??? ?? ?????? ??? ?????? ??? (23) ?????? ??? ?????????? ???, ??? ??????  
?? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?? ???  
?? ? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????  
????????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ??????????.

34. ? «?????? ?????????? ?? ??????? ??????» ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??????  
?? ?????????? ?? ?????????? ??? ?????????? ???, ?????????? ??? ?????? ??? ?????????? ??????  
????? ??? ?????? ?????? (24). ??? ?? ?????? ???, ?????? ?? ?????????? ???, ??? ??????  
????? ???, ??? ?? ?????? ??? ?????????? ??? ?????? 13 ??.. ??? ?????????? ???  
????? ?????????? ??? ?????????? ???, ? ?????????? ??? ?????? ??? ?????????? ??? ??????  
????????????? ??? ?????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?  
????? ??? ?????? ??? ?????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?  
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ???, ??? ??????  
??? ?????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?  
????? ?????? ???, ?? ?????????? ??? ??? ?????????? ??? ?????, ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

35. ??????? ??? ??????? ???????, ??? ?? ?????????? ??????? ?? ?????????? ???  
?????? ??? ??????? ?? Conseil d'Etat ?? ???:

«?? ??? 2, ??? 1, ??? 6, ??? 1, ??? ??? ?????? 77/388/???, ??? ?? ??????????, ???  
17?? ??? 1977, ??? ??????????? ??? ?????????? ??? ??????? ???, ??? ?????????? ??  
???? ?????? ?????? - ??? ?????? ?????? ????? ?????????????? ?????: ??????????  
????????? ???, ?????? ?? ?????????? ??? ?? ?????? ??? ?? ??? ?? ???? ??  
????????????? ?? ?????? ??? ?????? ?????? ?????????? ???????, ?? ?????? ??????  
????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ???????, ?????? ??  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ?? ???  
????????? ?????? ??? ?? ?????? ?? ?????? ?????? ?????? ?????? ???, ???????,  
????????? ??? ?????? ?????? ?????? ?????..»

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

2 – ??? ?????? 77/388/???, ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ???  
????????? ??? ?????? ?????, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? – ???  
????? ?????? ?????????? ?????: ?????????? ?????????? ????? (?? ????. ???.. 09/001, ?. 49),  
???? ?????????? ?? ??? ?????? 91/680/???, ??? ??????????, ??? 16?? ??????????  
1991 (?? L 376, ?. 19, ??? ?: ??? ??????).

3 JORF ??? 21?? ?????????? 1992, ?. 968.

4 – ?????? ??? 3?? ?????? 1994, C?16/93, Tolsma (?????? 1994, ?. I?743).

5 ??., ??? 12. ??., ?????, ??? ?????? ??? 1?? ?????? 1982, 89/81, HongKong Trade  
Development Council (?????? 1982, ?. 1277, ?????? 9 ??? 10).

6 – ?????????? Tolsma, ??? 13 ??? ?????????? ??????.

7 – ?????????? ?????? Tolsma, ??? 14. ??., ??? ??? ?????? ??????????, ???  
????????? ??? 14?? ?????? 1998, C-172/96, First National Bank of Chicago (?????? 1998, ?. 4387, ??? 26),  
??? 14?? ?????? 2005, C-435/03, British American Tobacco International  
??? Newman Shipping (?????? 2005, ?. I?7077, ??? 32), ??? ??? 23?? ?????? 2006, C-  
210/04, FCE Bank (?????? 2006, ?. I?2803, ??? 34).

8 – ?????? ??? 21?? ?????? 2002, C?174/00 (?????? 2002, ?. I?3293, ??? 39).

9 – ??., ??? 40.

10 – ??., ??? 42.

11 – ???. ??????? ??? 26?? ?????? 1987, 235/85, ??????? ??? ?????? (??????  
1987, ?. 1471, ??? 6), ??? ??? 15?? ?????? 1989, 348/87, Stichting Uitvoering Financiële  
Acties (?????? 1989, ?. 1737, ??? 10).

12 – ?????? ??? 22?? ?????? 1998, C-308/96 ??? C-94/97, Madgett ??? Baldwin  
(?????? 1998, ?. 6229, ??? 24), ??? ??? 25?? ?????????? 1999, C-349/96, CPP  
(?????? 1999, ?. I?973, ??? 30).

13 – ?????? ??? 18?? ?????? 1997, C?384/95 (?????? 1997, ?. I?7387).

14 – ??????? ??? 29?? ?????????? 1996, C?215/94 (?????? 1996, ?. I?959).

15 ?????????????? Mohr, ???? 22, ??? Landboden?Agrardienste, ?????? 24  
??? 25.

16 – ?????????????? Mohr, ???? 21.

17 – ?????????????? Landboden?Agrardienste, ???? 24.

18 – ??????, ? ?????????????? ??? ?????? ?????? ?????? ???, ??? ?? ?????? ??????  
??????, ? ?????????? ?????? ?????????? ??? ?? ?????????? ???????, ?? ??????????  
????????? ??? ???????, ??? ?? ?????? ?????? ??? ??????? ???? ?????????? ? ?????????? ???  
??? ?????????? ??? ???????, ???, ?? ?????? ?????????? ?????????? ??? ???????,  
????????? ??? ??? ?????? ??? ?????????? ??? ?? ??????? ??? ?????? ??? ???????.

19 – ?. ?????? ??? 1?? ?????? 1982, 222/81, BAZ Bausystem (?????? 1982, ?. 2527,  
????? 1), ?? ??? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ?? ??????? ?? ?????? ???  
????????? ?? ?????????? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??????? ?? ?????? ???  
????????? ??? ?? ?????? ?????????? ??., ??????, ??' ??? ?? ???????, ??? ??????? ?? ???????.  
27?? ??????? 1993, C-281/91, Muys' en De Winter's Bouw (?????? 1993, ?. I?5405, ??????  
18 ??? 19), ?? ??? ??? ?? ?????????? ???, ???????, ??? ?????????? ??? ??????? ?? ??????? ??  
????? ??? ?????? ?????????? ? ?????????? ??? ?? ??????? ??? ?? ?????????? ??? ?? ?????????? ???  
????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?? ??????? ??? ??????? ?? ???????.

20 – ??????? ??? 26?? ?????? 2003, C-305/01, MKG?Kraftfahrzeuge?Factoring (??????  
2003, ?. I?6729, ????? 38), ??? ??? 21?? ?????? 2005, C-25/03, HE (?????? 2005, ?.  
I?3123, ????? 36).

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

22 – ??????? ??? 8?? ?????????? 1990, C-320/88, Shipping ??? Forwarding Enterprise Safe  
(?????? 1990, ?. I?285, ?????? 7 ??? 8), ??? 4?? ??????? 1995, C-291/92, Armbrecht  
(?????? 1995, ?. I?2775, ?????? 13 ??? 14), ??? 6?? ??????? 2003, C-185/01, Auto  
Lease Holland (?????? 2003, ?. I?1317, ?????? 32 ??? 33), ????? ??? ??? ??????????????  
?????? HE, ????? 64..

23 – ???????, ?? ??? L 114-1 ??? ?????? ?????????? ?????????? ??? «??? ??? ????????

24 – ?, ??' ??? ??? ??????, ??? ?????????? ??? 6?? ??????? 1995, C?4/94, BLP Group  
(?????? 1995, ?. I?983, ????? 24), ??? 12?? ?????????? 2006, C?354/03, C-355/03 ??? C-  
484/03, Optigen ??. (?????? 2006, ?. ?-483, ????? 45), ??? 21?? ?????????? 2006, C-  
255/02, Halifax (?????? 2006, ?. ?-1609, ?????? 57 ??? 58), ??? ??? 6?? ?????? 2006, C-  
439/04 ??? C-440/04, Kittel ??? Recolta Recycling (?????? 2006, ?. ?-6161, ????? 43).