

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

PAOLO MENGONZI

??? 25?? ??????? 2015 (1)

?????? C?332/14

Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR

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Finanzamt Krefeld

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

«????????????? ?????????? — ?????????? — ????? ?????????????? ????? — ?????????? ???
?????? ??? ?????????????? ????? ??? ??? ?????? — ????? ??? ?????????? ???
????????????? ?????? ?????????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? —
????????? ?????? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? — ??????????
??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???
????????? ?????? — ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? —
????????? ?? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? —
????????? ??? — ?????? ?????? — ?????????????? ?????? ?????? ?????? ??? ??????»

I – ????????

1. ? ??? ??? ?????? ?????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 17, 19
??? 20 ??? ?????? ??????? 77/388/??? ??? ??????????, ??? 17?? ??? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
— ?????? ?????? ?????? ?????????????? ?????: ?????? ?????????? ??? (2), ???
????????????? ?? ??? ?????? 95/7/?? ??? ??????????, ??? 10?? ?????? 1995 (3) (???
????: ??? ??????), ??? ??? ??? ?????? ??? ?????????? ?????? ??? ??? ?????????? ???
????????????? ??????.

2. ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? Wolfgang und
Dr. Wilfried Rey Grundstücksgemeinschaft GbR ??? ??? Finanzamt Krefeld (?????????)
????????? ??? Krefeld), ??????? ?? ??? ?????? ?????????? ??? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????????????
????? (???) ??? ?? ??? 2004, ????? ??? ??? ?????????? ??? ??? ?????? ??? ??????
?????, ??? ?????? ??? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ???, ???
????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ??? ?????????? ??? ??????.

3. ??? ?????? ??? ??? ?????? ??????????, ?? ?????????? ???????, ??????????, ??

????????? ?????????? ??????????????? ??? ??? ?????????????? ??? ??? ?????????? BLC Baumarkt
(C-511/10, EU:C:2012:689) ???? ??? ??? ??? ?????????????? ??????? ??? ??????? ?? ????????,
?????? ?????????????? ???????????????, ?????????????? ??? ??????? ?????????? ??? ??? ??? ??
?? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????????????? ?????, ?????????????????????? ???
????????? ??? ??????? ? ??? ?????? ??? ?????? ??? ?????????? ??? ??????? ?????????? ?????.

|| - ?? ?????? ????????

? — ?? ?????? ??? ?????

5. ?? ?????? 17 ??? ????? ????????, ??? ??? ????? «?????? ?????? ??? ??????? ??? ?????????????? ??? ???????», ?????????? ?? ????:

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

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

?) ??? ???????????? ? ?????????????? ??? ?????????? ??? ?????? ??? ?????????????? ???
??? ?? ?????? ??? ?? ?????????? ? ?????????? ?? ??? ?????????? ??? ?? ?????? ??? ??????????
??? ?? ?????????? ? ?????????? ?? ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?? ??????

[...]

5. ?????????? ?? ?????? ??? ?????????????? ??? ?????????????????????? ??? ?????????????? ???
????? ??? ?????????????? ?????????????????? ??? ?????????? ?????????????????? ??? ?????????????? 2
??? 3, ?? ?????? ?????????? ?????????? ??? ??????, ??? ??? ?????????? ?? ?????? ???
????????? ?????????? ??? ??????, ? ?????????? ?????????? ??? ??? ?? ?????? ??? ??????
????????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ???
????? ??????????.

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

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

[...]

?) ?? ??????????? ? ?? ??????????? ? ?? ??????????? ? ?? ??????????? ? ?? ??????????? ? ?? ???????????

[...]».

6. ?? ?????? 19 ??? ????? ????????, ??? ??? ????? «????????????? ??? ??????????? ??? ??????????», ????, ??? 1:

«? ?????????? ?????????? ??? ?????????? ??? ?? ?????? 17, ?????????? 5, ?????? ??????,
????????? ??? ?? ?????? ??? ??????????:

– ????? ?????????? ?? ?????????? ????? ??? ?????????? ??????? ??????????, ????? ?????
????????????? ?????, ??? ?????????? ????? ?????????? ?? ?????????? ?????????? ?????????? ?????
??????, ??????? ?? ?? ?????? 17, ?????????? 2 ??? 3?

– ???? ?????????????? ?? ?????????? ??? ????? ?????????? ?????? ??????????, ??? ?????
????????????? ?????, ??? ?????????? ??? ????? ?????????? ??? ?????????????????? ??? ????? ??????????,
????? ??? ??? ????? ?????? ??? ??? ?????????? ?????? ?????? ??????????. [...]

[...]»

7. ?? ?????? 20, ??????????? 1 ??? 2, ??? ????? ???????, ??? ??? ????? «????????????? ???? ???????», ??? ?? ???:

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

?) ???? ? ??????? ?????? ??????? ? ?????????? ??? ?????? ??? ?????? ?????????????? ??
????????? ? ?????????????? ????

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

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

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

????? ?????????????? ?? ?????????????? ?????? ?? ?????????????? ?????? ?? 20 ???,»

? = ?? ?????????? ??????

9. ?? ???? 4 ??? ???? ??? ???? ?????? ????????, ?? ???? ????????????
«????????? ??? ?????????? ??? ?????? ??????», ??????:

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

[...]

12. a) ? ?????????? ??? ??????? ??? ?????????? ??????????, [...].».

10. ?? ????? 15 ??? ????? ??? ????? ?????????? ?????????? ?????????? ??????????:

«(1) ? ?????????????? ??? ?????? ?? ??????? ?? ?????????? ??? ?????? ??? ??? ??????:

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

[...]

(2) ??? ??????? ? ??? ?????? ??????? ??? ??? ??????????, ??? ??????? ??? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ??? ?????? ?????? ???:

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

[...]

(4) ??? ? ?????????????? ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ???????, ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

11. ? ??? ??? ?????? ?????????? ??? ?????????? ?????????? ??? 2003

(Steueränderungsgesetz 2003, *BGBI.* 2003 I, ?, 2645), ? ?????? ?????? ?? ??? 1?
????????? 2004, ?????????? ??? ?????????? ?????? ?????? ??????, ? ?????? ?????????? ??
?????:

«? ?????????? ??? ?? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????.

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

«? ?????? ??? ?????? ??? ?????? ??????????, ??? ?????????? ??? ?????? ? ?????? ??? ??????, ???
????? ??? ?????????? ??? ?????? ??? ??????. ?? ?? ??? ??? ?????? ?????? ?????????? ???
????????? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????????? ?? ?????????? ???
????????? . ?? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? , ???, ?? ??? ?????? ??? ??? 17?? ?????? 2001 [...], ?? Bundesfinanzhof
[(????????? ?????? ??????)] ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 15, ?????????? 4, ???

????? ???? ??? ????? ?????? ????????. ??????, ? ??????? ??? ?????? ?????????? ?? ???
??? ?????? ??????? ?? ?????? ?????? ?????? ?????? ?????? ?? ???????, ?????? ???
????????? ??? ?????????? ?????? ?????? ??????, ?? ?????????? ?????? ?????????? [...]? ??
???? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??????
????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?? ?????????? ?????? ???
“?????????” [...] ??? ?????? ?????????? ??? ?? ?????? ???, ?????????? ??? ??? ?????? ???,
????? ?? ?????? 17, ?????????? 5, ?????? ???, ?? ?????????? ?????? ?????????? ???
????????? ??? ?? ?? ??? ?????? ??????. ??? ??? ?????? ?????? ??????, ?????????? ?? ???
????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? [...].».

13. ?? ??? 15a, ?????????? 1 ??? 2, ??? ?????? ??? ?????? ??? ?????? ????????,
????????? «????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????», ????:

«(1) ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? [...]».

(2) ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 1 ???????????, ??????????
?????, ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???
??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? [...]»

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

14. ?????? ??? ??? 1999 ?? 2004, ? ?????? ?????? ?????? Wolfgang und Dr. Wilfried
Rey Grundstücksgemeinschaft GbR ??????, ??? ?????? ?????? ?????? ???, ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???.
????? ?????? ?? 2004 ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ??? ?????? ??? 2002.

15. ??? ??? ?????????? ??? 1999 ?? 2003, ? Wolfgang und Dr. Wilfried
Rey Grundstücksgemeinschaft GbR ?????? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(????????? ???) ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
(????????? ???) ?????? ??? ?????? ??? (??? ????: ?????? ?????? ??? ?????? ???
????? ??????). ?????? ?? ??? ??? ?????? ?????? ???, ?? ?????? ??? ?????? ???
????????? ?? 78,15 %. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??
??? ?????? ??? ?????? ??? ??? ??? ?????? 2001 ?? 2002, ? ?????? ??? ??????
????????? ??? Krefeld ?????? ?????? ??? ?? ?????? ?????? ??????.

16. ?? 2004, ?????? ??? ?????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??

?????????? ??? ???? ?????????? ???, ??????????? ?? ??????? ??? ???.
?????? ??? ?????????? ??? ???? ?????? ??? ?????? ??????, ? Wolfgang und Dr. Wilfried
Rey Grundstücksgemeinschaft GbR, ??? ?????? ??? ?? ?? 2004, ?????????? ???
????????????? ??? ?????????? ??? ?????? ?????? ?????? ?? ??? ??? ?????? ??????.
?? ?????????? ??? Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR ???
??? ?????? ??? 3 500 ??? ?????.

17. ? ??????? ?????????? ??? Krefeld ??????? ??? ?? ?????? ??????????
??? ??? ???, ??????? ??? ?????? ?? ??? ?????? ??? ?????? 15, ?????????? 4, ???
??????, ??? ??? ??? ??? ?????? ?????? ???????, ? ??????? ??? ?????? ??????????
?? ??? ??? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??????? ?? ??????????
????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??????? ?? ??????????
????????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????? ??
??? ?????????? ? ??? ?????????? ?????? ??? ?????, ??? ?????? ???????????, ??
????? ??? ?????? ??? ?????? ??? ?????? (????????? ???) ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? (??? ????: ?????? ?????????? ?? ??? ?? ??????), ?
?????? ?????????? ??? Krefeld ??????? ??? Wolfgang und Dr. Wilfried Rey
Grundstücksgemeinschaft GbR ?????? ?? ??? ?????? ??????? ??? ?????? ???
?????????. ??? ???????, ???' ??????? ??? ?????? ?????????? ?? ??? ?? ???????, ??
???? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?? 1999 ?? 2004 ??? ?? ??? ??
??? ?????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? .
?????? ?????????? ??? Krefeld ??????? ?? ?????? ?????????? ?? 38,74 %, ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
????????? ?? ??????????, ??? ?????? ?? ?????????? ??? Wolfgang und Dr. Wilfried Rey
Grundstücksgemeinschaft GbR ??? ??? ?? ??? 2004 ?? 950 ???.

18. ?? Finanzgericht Düsseldorf (????????? ?????????? ??? ??????????) ??????? ??
????? ??? ??????? ??? ?????????? ?????????? ?????????? ??? ?? ??? ?? ??? ??
????????? ?? ??? ?? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?? ??? ??
????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
??? ?? 2004 ?? ??????. ??? ??????, ??? ?????? ?? ?????????? ??? Wolfgang und Dr.
Wilfried Rey Grundstücksgemeinschaft GbR ??? ?? ??? ?? ??? 2004 ?? ??? ??
????????? ??? 1 700 ???.

19. ??????? ?? ??????? ??? ?????? ?????? ?????? ?????? ?????????? (Revision)
????? ??? ?????????? ?????? ??? Bundesfinanzhof.

20. ??? ?? ?????? ??????????, ? ?????? ??? ?????? ?????, ??????, ?????????? ??????? ??
??? ??????? ??? ?????? 17, ?????????? 5, ??? ?????? ?????? ??? ?? ?????????? ???
?????? BLC Baumarkt (C?511/10, EU:C:2012:689).

21. ?? ?????? ?????????? ?????????? ???, ??? ?????? ?????? ??? ?? ??? ??
????????? ? ?????? Armbrecht (C?291/92, EU:C:1995:304), ?? ?????????? ??????, ??? ??
21 ??? ??????? ???, ??? «? ?????? [?? ?????? ??????] ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?? ??? ?????? ??? ??
????????????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?? ?????? ??? ??
??? ?????????? ??? ?????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ??

22. ?????????????? ?? ?? ??? ???, ?? Bundesfinanzhof ??????, ?? ??????? ?? 17??
????????? 2001, ???, «[?] ?????? [...] ?????????? ? ?????????? ?????? [...] ???

?????????? ?? ?????????? ?????????? “??????” ??????, [?] ?????????????? ??? ?????? ???
????? ??? ?? ??????? ?? ?????? ?? ?????? ??? ?????? ?????? ?? ??? “?????? ?????????? ??
????? ??? ???????” [...], ??? ??????? ?? ?????? ?????? (“????????????”) ??????????
?????????, ?????? ?? ?????????? ??? “?????????” ?????????? ??? ?????? ??? ???
????????? ??? ?????????????? ??? ?? ?????????????? ??? ?????? ?????? [...]».

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

24. ??? ?????? ???, ?? ?????? ?????????? ?????? ?????? ? ?????? BLC Baumarkt
(C?511/10, EU:C:2012:689) ?????? ?? ?????????? ??? ?? ??? ?????????????? ??????????
?????????.

25. ??????, ?? ?????? ?????????? ?????????? ???, ??? ?????? ?????, ?? ??????????
????? ??? ? ?????? ?????? ???????, ??? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????? ???????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ??? ?????????? ??? ?????? ???????, ?????????? ??? ?????? ??? ? ?? ???
????????? ??? ?????? ??? ?????????? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
?????????, ?? ?????????? ??? ?? ??? 15, ?????????? 4, ????? ???????, ???
????? ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ??? ?????? ?? ?????? ?????? ???????, ?????? ?????????? ??? ?????????? ???
????? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
?????????, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????, ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? Armbrecht (C?291/92, EU:C:1995:304), ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

26. ??????, ?? ?????? ?????????? ?????????? ???, ??? ?????? BLC Baumarkt
(C?511/10, EU:C:2012:689, ??? 19), ?? ?????????? ?????????? ??? ? ??????????
????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
??? «????????????? ???, ??? ? ?????? ?????? ?????? ?????? ?????? ??????». ??? ???????, ??
?????? ?????????? ?? ?????? ?????? ??? ? ??? ??????, ?????? ??? ?????? ??? ?????? ???
??????, ?????? ?? ?????????? ??? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ?????? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

27. ????????, ?? ?????? ?????????????? ?????????????? ??? ?? ????????????, ??? ??? ?????? ??????
??? ??? ??? ?????????? ?????????????? ?????? ?????? ?? ????????????, ??? ??????????
????????????? ?????????? ?????????? ??? ???, ????? ?????? ?????? ??? ?????????? ?????? ??? ???? ???
??? ?????????? ??? ?????????????? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????????? ?????????? ?????????? ??????, ?????????? ?????????? ?????? ??? ?????? ??? ???? 20 ???
????? ?????????? ?????????? ?? ?????? ?????? ?? ?????? ??? ?????? ??? ?????????? ?????? ??? ???? ?? ??????
?? ?????????? ??? ??? ??? ?????? ?????????????? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ???
????????????? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??????
????????????? ??? ?????????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ???
????????????? ?????????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

28. ??????, ?? ?????? ?????????? ?????????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????, ? ?????????? ?????????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ?????????????? ??? ??? ?????????? ?????? ??????????, ?? ?? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? 15, ?????????? 4, ????? ?????? ???
????? ??? ??? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ???
????????? ?????????? ??? ??? ?????? ?????? ?????? 17, ?????????? 5, ??? ??????
????????? ??? ??? ??? ?????????? ?????? ?????? ??????. ??? ?????????? ?????? ?????? ??? ?
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?
Wolfgang und Dr. Wilfried Rey Grundstücksgemeinschaft GbR ??? ?????????? ??? ??????
???, ??? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ?????? ?????? ??? ?????? 15, ?????????? 4, ????? ?????? ??? ??????
????? ??? ??? ?????? ?????? ?????????? ?? ??? ??? ?? ?????? ?????????? ?????????? ??? ???,
????? ??? ??? ?????? ?????? ?????? ??????. ????, ?????? ??? ??? ? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??? ??????????
?????????, ?????? ??? ?????? ?????????? ?? ??? ??? ?????? ?????? ?????????? ?????????? ???
????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 15, ?????????? 4, ???
????? ??? ??? ??? ?????? ?????? ??????, ??? ?? ?????? ???, ??? 1? ?????????? 2004, ?
????? ??? ?????? ?????????? ??????????.

29. ??? ??? ?????????? ????, ?? Bundesfinanzhof ?????????? ?? ?????????? ??? ??????
??? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??????:

«1) ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 17, ??????????
5, ??? ?????? ???, ??? [????? ??????] ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? 1, ??? ?????? ???, ??? ?? ?????????? ??? ???? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? (?????? BLC
Baumarkt, C?511/10, EU:C:2012:689).

) ?????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????????? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

? ??????? ???? (????????????? ? ?? ?? ???) ??????? ??????? ??? ??????? ??? ?????? ??
????????????? ?? ??????? ?????? ?????????????? ????? ?????? ?????? ?????? ??????
????????????? ?? ??????? ? ?? ????? ?????? ?????;;

?) ??????? ?? ????? ??? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ???????
BLC Baumarkt (C?511/10, EU:C:2012:689) ????? ?? ? ?????????? ??? ?? ??????????????
?????????? ?? ?? ????? ?? ????? ?????? ??? ?? ?????, ?? ?????????? ?? ??
????????? ??? ?????? ?????? ?????? ??????;;

2) ??? ?? ????? 20 ??? [????? ??????] ??? ?????? ??? ? ?????????????? ??? ???????
???? ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ??????????
?????? ?????? ?????? ?????? ??? ?????????????? ??? ?????? 19, ?????????? 1, ??? ?????
?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ? ????? ??????????
???? ?????? ???????, ?? ??? ?????? ?? ??? ?????? ?????? ?????? ?????????? ????? ?? ?????????? ???
????????? ??? ?????????????? ??? ?????? ?????????????? ?????? ?????? ?????? ?????????? ?????;

3) ?? ?????????? ?????????? ??? ?????????? ??? ??????? ??????: ?????????? ?? ?????
?? ?????????? ?????? ??? ??? ?????????? ??? ?????????????? ?????????????? ???
????????? ??? ?????? 20 ??? [????? ??????], ??? ? ?????? ?????? ??? ?????? ?????????? ???
?? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?? ?????????????? ???
????????? ?????????? ???????, ??? ??? ??? ?????? ?????? ?????? ?????? ?????????? ???
???? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
???? ?????????? ??? ?? Bundesfinanzhof ?? ?????? ?? ??????????;»

30. ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ? ?????????? ??????????
?? ? ?????????? ??? ???????, ?????? ??? ? ?????????? ??????????. ?? ?? ???
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ???
??' ?????????? ??? 9?? ?????? 2015.

IV – ??????

? — ?????????????? ????????????

31. ?? ?? ?????? ?? ??????, ?? ?????? ?????????? ???, ???' ??????, ??????????????
?? ???? ?? ?????????? ??? ?????????? BLC Baumarkt (C?511/10, EU:C:2012:689) ?????? ??
?? ?????? ?????????? ??? ?????????? ??? ??? ?????, ??????, ??? ?????? ??????????
?? ?????????? ??? ?????? «????? ??????», ?????? ?????? ???
????????? ??? ?????? ??? ?????????? ?????? ?????? (????? ?? ??????????) ??? ?? ?????? ???
????????? ??? ?????? ?????? (????? ?? ?????????? ??????????) (????? ??????, ??? ?), ???,
????????, ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? (????? ??????, ???
?). ?? ?????? ??? ?????? ???' ?????? ??? ?????????? ??? ?????? 17, ?????????? 5, ???
????? ??????.

33. ?????????? ?? ?????????? ????? ?????????? ?????? ??? ?????????? ?????????????
????????? ??????? ???????, ??? ???? ?????? ????? ?????????? ??? ???????, ??????
????????? ?? ????????????, ???, ??? ?????????? ??? ???? ???????, ??? ??????????
????????????? ?????????? ??? ??? ??? ?????????????? ??? ?????????? ??? ?????????? , ?
??? ?????? ??????? ??????? ??? ????? ?????????????? ??? ?? ?????? ??? ??????????
????????? ???????, ??? ?????? ?? ?????? 15, ?????????? 4, ????? ???????, ??? ?????? ???
??? ?????? ?????? ???????, ?? ?????? ?????? ??? 1?? ?????????? 2004, ??? ?????? ??
????? 17, ?????????? 5, ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????????? ??????
??? ??? ?????????? ??? ?????????????? ??????????????.

34. ?????????????????? ?????? ??????, ?? ?????????? ??????????????????, ?????????????? ??
????????? ??? ??????? ?????? ??? ?????? ??? ???? ?????? ?????????? ? ??????? BLC Baumarkt
(C?511/10, EU:C:2012:689), ? ?????? ??? ?????????????? ?????? ??? ?? Bundesfinanzhof ???
??? ?????????? ????????. ??????????, ??? ? ?????? ???, ? ?????? ?????? ?????????? ??????????
??? ?????? ?????????? ??? ?????????? ??? ???? ??? ?????? ?????????? ?????????? ??????
????? ??????, ??? ?????? ?????? ?????? ?????? ??? ?????????? ?????????? ?????????? ???
????? ?? ??? 15, ?????????? 4, ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????????? ?? ??? ???? ?????? ??? ?????? ?????????? ?????? ?????? ??????
????????? ??? ?????????? ???, ?????????????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ?? «?????? ?????????? ???» (4), ???, ??? ???? ?????????? ??? ??? ?????? ???
????? ???????, ??? ?????? ?????? ?????????? ?????? ?????????? ??? ?????????? ???
??????????????, ??? ?? ?????? ?????????? ??? ?????? ???.

35. ????? ??????? BLC Baumarkt (C?511/10, EU:C:2012:689, ??????? 17 ??? 18), ??
?????????? ?????? ??????? ??? «?? ? ? ??????????? ?? ?????? ?? ??????? ?? ???????
?????????? ??? ? ??????????????? ??? ?? ?????? ???????????, ? ?????? ??????? ??????
?????????? ??? ??? ??????? ??? ?????? 17, ??????????? 5, ?????? ??? ??????? ???????, ???
19, ?????????? 1, ??? ??? ?????? ??????? ??????????? ??? ?? ??? ?????», ??????????????
??? ? «????????? ??? ?????? ??????? ??????? ?? ??? ?????? ??? ?????? 17, ??????????? 5,
????? ??????, ??? ?????? ???????, ??? ?????? ?? ??????? ?????? ?????? ??????? ??
?????????? ?????????? [...]».

36. ??????, ??? ? ?????????? ?????????? ???, ????? ????????, ?? Bundesfinanzhof
?????? ?????? ??? ??????? ??????????, ? ????? ??????? ?????? ?? ??????? ??? ??
?????? ??????? ??? ?????? 15, ?????????? 4, ????? ???????, ??? ????? ??? ?????
????? ???????, ? ??????? ??? ????? ??????? ?? ??? ?? ?????????? ??? ??????
?????.

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

? — ??????, ??? ??? ?????????? ??? ?????? 17, ?????????? 5, ??? 19, ?????????? 1, ???
????? ??????? ??? ??? ?? ?????????????? ??? ?????? 15, ?????????? 4, ???
???????, ??? ?????? ??? ??? ?????? ?????? ???????

38. ??????????????? ???, ?? ?, ?? ???? ?????? ??????????????? ?? ???? ??????? ? ???????
??????????????, ?????? ? ??????????????? ??? ? ???? ???? ?????? ??????????? ??? ??????????? ????
?????. ?????? ??? ?????? ???????????, ?? ?????????????? ?????? ??? ???? ?????? ??????????? ???
????????????? ??????????? ??? ??????????? ??? ?????? ?????? ??????????? ??? ??????????? ??? ????
??? ??? ??? ????? ?????? ?????? ?????? ?????? (???? ??? ??? ?????), ??????? ??????????
??? ?????? ??? ??? ????? ?????? ?????? ?????? ?????? ??????????? ??? (???? ??? ??? ??????).

39. ?? ???? ?? ?????? 17, ??????????? 2, ??? ????? ???????, ??? ????? ??????????? ???.
????? ?????? ?????? ? ?????? ?????? ??? ???? ?????????? ?????? ?????????? ?????? ??????,
???? ?????????? ?????????? ??? ?????? ??? ???? ?????? ?????? ?????? ?????? ??? ?????? ?
???? ?????????? ??????. ??? ????? ?????????? ??????????????? ?? ???????????, ?? ??????
???? ???????, ?? ????? ?????????? ?????? ??? ?? ?????? ??? ??? ??? ?????????? ???
????????????????? ?????????????? ?????? ??????, ?????????? ?????????? ?????? ???
????????????? ??? ??? ??? ??? ?????? ?????????? ?? ?????????? (5).

40. ?????????? ?????????? ?? ?????????? ?????????????? ??? ?????????? ??? ?????????? ?
????????? «?????? ??????», ??? ?????? ??? ?????????????? ??? ????, ? ?????? ???
????????? ????, ? ?????????? ??? ?????? ??? ?????????? ??? ??????????????????,
????????????? ?? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????????
??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

41. ????? ???? ??? ?? ???? ??????? ?? ????????, ? ??? ?????? ?????? ??????????? ?? ??? ?????????? ??????????? ?? ??? ?????????? ?????????? ?? ??????? ?? ??? ?????? ?????? ?? ??? ?????? ?????? (6).

42. ? ??? ?????? ??????? ?????? ??? ?? ???? ????? ?????????? ??????????. ?????????? ??? ??
????????? ?????????? ??? ?? ???? ????? ?? ????? 17, ?????????? 5, ??? ?????? ?????? (7).

43. ?????????????? ??? ?? ??????? ???? ?????????? ????? ?????? ??? ?? ???? ?????? ?
?????? ??????? ?? ??????? ??? ??????? ????? ?????????? ?????????????? ?? ?????????????? ??????
??????, ?? ??? ?????? ?????????? ?????????? ?????????? ?????????? ????? ?????????? ??? ??????, ??????
???????????????????, ??? (8). ?????? ?????? ? ??????????, ??? ??? ????? ?????? ?????? ???
?????? ????, ??? ??????? ??? ?????????? ?? ?????????? ?? ?????????? ?????????? ?????? ???
????????? ??? (?????????? ?? ???) ??? ??? ??? ?? ?????? ??? ?? ??????????
(??????????????????).

44. ????????????????, ??????????? 17, ?????????????? 5, ??????????????, ???
????? ?????????, ?????????????? ? ?????????? ?????? ??? ?????? ?????? ?????? ?????
????????????? ?????? (9).

45. ?? ??????? ?? ??????? ?? ???????????, ??????? ?? ?? ?????? 17, ??????????? 5, ??????? ?? ??????, ??? ?? ??? ???????, ?????? ?????????? ?????????????? ??????? ?? ??? ????? 19, ?????????? 1, ??? ?? ??? ??????? (10), ?????? ?????? ?????? ?????????? ?????????? ?????? ?????? ??????.

46. ??????, ??? ??????????? ?? ???????????, ?? ?????? 17, ?????????? 5, ????? ??????,

???? ?????? ????????, ??? ??????? ?? ?? ??? «??????????», ?????????? ??????????? ??? ???
?????? ??? ?????????????? ??? ????? ??? ??? ????? ?????? ??? ??? ??? ????? (11).

47. ???????????, ?? ????? ???? ??????????? ??? ?????? ??? ???? ?????????? ?????? ??? ???
 ????? ??????? ?????????? ??? ?????????? ?????? ?????????? ?? ?????? ?????????????? ???
 ????? ?????? ???, ?????? ?????? ??? ?????? «?? ?????????? ? ? ? ?????????? ???
 ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?? ?????? ?? ? ?????????????? ??? ?????? ???
 ?????? ??? ?????? ??? ??????» (????? 17, ?????????? 5, ????? ??????, ?????????? ?),
 ??? ?? ?????? ???????????????, ??? ?? ???????????, ??? ?????? ?????????? ?? ??? ??
 ?????? ??? ?????????? ??? ?????? ?????? ?????? (12).

48. ???????, ?????? ?? ??????????? ??? ?? ?????? 17, ??????????? 5, ????? ??????, ??? ?????? ??????? ?????? ?????? ??? ?????? (13).

49. ????? ???. ??????? ??????? ???. ??????????? ???. ????? ???. ????????, ???. ???????, ???.
 ??????? ???. ??????????? ???. ????? ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???.
 17, ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???.
 5, ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???.
 ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???.
 ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???.
 ???????, ???. ???????, ???. ???????, ???. ???????, ???. ???????, ???. (14).

50. ???????, ? ?????????? ??? ?????? ?????? ?? ?????????? ?????? ?????????????? ???
????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
?????????????.

51. ??????????????, ?????? ????, ??? ??? ?????????? BLC Baumarkt (C?511/10, EU:C:2012:689) ??? Banco Mais (C?183/13, EU:C:2014:2056), ????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????.

52. ??????, ?? ?????? ?????? ?????? ?? ??? ??????????? ??? ??? ?? ??????????
??????????? ? ?????? ?? ?????????? ??? ?? ?????? ? ?????? ?????????? ??? ??? ?????? ??????
??? «????????????? ???» (15) ?, ????, ??? «????????????? ???» (16) ?
????????? ?? ??? ?????? «?? ?????? ?????? ?????????????? ??? ?????? ??????????»
(17). ?? ??? ?????? ?????? ??? ?? ?????? ???????????, ? ?????????????? ?????? ?????? ?????????? ???
????? ?? ?????? ?? ?????? ?????? ?????? ?????????? ??? ?? ?????? ?????? ?????? ??????????
????? ?????? ?????? (18).

53. ????????, ? ?????????? ?????????????? ?????????? ?????? ?? ??????? «????????????»
????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? (19) ??? ?????? ??? ??
????????? ??? ??? ?????? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????? (20).

54. ??? ??????? ??? ?????????????? ??? ?????????????? ??? ?????????? BLC Baumarkt
(C-511/10, EU:C:2012:689), ?? ??? ??????? ?????????????? ??? ?????????? ??????? ??? ???
????????? ??? ???????????, ??? ??????? ??? ??? ?????? ??? ?????? ?????? ??????. ???????????,
????????? ??????? ?? ??????????? ??? ?????????? ??? ??????? ??? ?????? ??? ?????????????? ??? ???
????????? ??????????? ??? ?????????? ??? ??????? ??? ?????????? ??? ??????? ??? ?????????? ???
????????? ??? ?????? ?????? ???????????????, ?????? ?? ??????????? ? ?????? ?????? ??? ??? ??????????
?????????? ??? ?????????? ??? ???, ?? ????? ?????????? ??? ?????? ?????? ?????????? ??????????????
??? ??????? ?????????? ?? ??? ??? ??? ?????? ?????? (21).

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

?????????, ??? ? ?????????????? ??? ??? 17, ?????????? 5, ??? ????, ?????? ?, ??? ????.

56. ?? ??????? ???????????, ?? ?????????? ??????? ??????? ??????? ?? ?? ?? ?? ????
??????????, ?? ?? ?????? ?? ??????? ?? ??????????? ??????? ?? ?? ??????????? ?? ?? ????
????????? ?? ?? ??????? ?? ??????????? ??????? ?? ?? ??????????? ??????????? ?? ?? ????
??????????, ?? ??????? ?? ??????? ?? ??????????? ??????????????? ?? ?? ??????? 17 ?? 19 ??
?????????? BLC Baumarkt (C?511/10, EU:C:2012:689).

57. ???????????, ??????, ?? ?????? ?????????????? ?????????????? ?????? ??? ?? ?????? ???
????????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????????? ???
????????????? ??????? ??????? ???????, ??? ?? ?????????? ??? ?????????? ?? ??? ?????? ?????????? ???
?????? ?? ??????????? ??????? ?????????????? ??? ?????????? ??? ??? ?????????????? ??? ???
?????? ??????????? ?? ??? ?? ?????? ??? ?????? ???????, ??? ?? ?????????? ??? ??? ?????? ?????????? ??? ???
?????? ??????????? ??? ?????????????????? ???????, ? ??? ?????? ?????????????????? ??? ??? ???????
BLC Baumarkt (C?511/10, EU:C:2012:689), ??? ?????? ??? ?????????? ??? ?????? ?????????????? ??
?????????? ??? ??????????? ? ?????????? ??? ?????????? ?? ??? «????????????? ???».

58. ????????, ????????, ?????? ?????? ?????? ??? ?? ?????? ????????????, ??? ?????? ???
?????? ??????????? ?? ?????? ??????? ??? ???????????, ?????? ??????????? ?? ???????????
?????? ??????????? ?? ?????? 15, ??????????? 4, ?????? ???????, ??? ?????? ??? ?? ?????
?????? ????????, ?? ????????, ?? ?????? ??????????? ??????? ?????? ??????????? ?????? ???
?????? ??? ?????? ??? ??????????? ??????? ?????? ?????? ?????? ??? ?????? ? ?? ???
?????? ????????????, ??????? ??? ??????????? ??????? ?????? ??????????? ?????? ???????????
????????? ??? ??? ??? ??? ??????????? ????.

59. ??????????, ?? ?????? ??????????? ??? ????? ????? ?????????????? ?????? ?? ??
????????? ??? ? ?????????????? ??????????? ??? ??????????, ??? ?????? ?????? ??? ??????????
BLC Baumarkt (C?511/10, EU:C:2012:689), ?????????? ?? ?????? ??? ?????????? ??? ?????? 15,
?????????? 4, ????? ???????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ???? ??? ?????? ??????.

60. ?? ???? ??????, ?? ?????? ??????????? ?????????? ?? ?????????? ?? ?????????? ?? ????????? BLC
Baumarkt (C-511/10, EU:C:2012:689) ?????? ?? ?????????? ?????? ?? ?????? ?? ?????????? ?????????? ??
?????? 15, ?????????? 4, ????? ???????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???????,
«????» ?? ?????????? ?? ??? ????? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ??
????????????? ?????????????? ??? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ??
???? ?????????? ??? ??? ?? ?????????? ?????????? ?? ??? ?????????? ?? ?????????????? ??????????????
????????? ??????????.

61. ????? ??????? ??? ? ?????? BLC Baumarkt (C:511/10, EU:C:2012:689)
??????????????? ??? ?????????? ??????????

62. ??? ?? ??????? ??? ?? ?????????? ??? ?? ??????????, ??? ?? ?????????? ??
???????????? ???, ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??????????
??? ?? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
????????? «??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
????????? ??? [...] ?????????? ??????????», ??? ?? 19 ?????????? ??? ?? ??????????
???? ?????? «???[?????] ?[?] ???[?] ??? ?? ?????????? ?? ??? ?? ?????? ?????????? ??? ??».

63. ?????????????? ??? ??????????? ?? ??????????, ?????????????? ?????? ??? ?????? 16 ???

18 ??????????????, ??? ??????? ??? ??????? ?????? ??? ?????????????? ?????????????? ???
????????? ???, ?? ????? ?????????? ??? ?????? ?????? ?????????????? ??? ?????? ?????????? ??????????
?? ??? ???? ??? ????? ?????????? ??? ?????? ??? ?????????????? ?????? ?????? ?, ?? ???
????????? ???, ??? ?????????? ??? ?????? ?????????? ?????? ??? ?? ??? ?????? ??????
????????? ??? ????? ?????????? ?????? 15, ?????????? 4, ?????? ??????,
??? ?????? ??? ?????? ?????? ?????? ??????.

64. ? ?????????????? ??? ?????????? ??? ?????? ?????????, ??? ?????? ??? ?????? ??????????????
? ?????????? ??????????, ?? «????????? ?????????????? ?????????» (22), ??? ?????? ??????????????
????? ?? ?????? ?????????? ??????????????, ?????? ?? ?????????????? ?????? ?? ??????
????? ???????, ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? 17, ?????????? 5,
????? ??????, ??? ?????? ?????? «??? ?????? ??? [?????????], ??? ??????
????????? ??? ?????????? ?????????? ?????? ???, ??? ?????? ??? ?????? ? ?????????? ???
????????? ?????????? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ???» (23).

65. ??????, ?? ??? 17, ?????????? 5, ?????? ??????, ?????????? ??, ??? ?????? ??????
????? ??? ?? ?????? ?????? «?? ?????????? ??? ?????????? ??? ?????? ??? ? ?? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ? ?????? ???
????? ??? ??????».

66. ??????, ? ?????????? ??? ?????????? ?????? ?????? ??? ?????????????? ??? ? ?????????????? ???
????????? ??? ?????? ??? ?????? ?? ?????????????? ?????? ?? ??? ?????????? ??? ?????? ????
????? ??? ?????????? ?????? ???, ?? ?????? ?????? ?? ?????? 17, ?????????? 5,
????? ??????, ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????????????? ???
????? 17, ?????????? 5, ?????? ??????, ?????????? ??, ??? ?????? ?????? ?????? ?????, ???
????????? ???' ?????? ? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??????????????
??, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????,
?? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????.

67. ? ?????????? ??? ??????? ?? ??? 17, ?????????? 5, ?????? ??????, ?????????? ??,
?? ?????? ?????? ?????????? ???????, ??? ?? ?????? ???, ?????????? ??? ?????? ??
????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ??????. ??????????, ?? ??????
15, ?????????? 4, ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??????????
????????? ?? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????
????? ??? ? ?????? ?????????? ?? ??? ?????? ?????? ?????? «????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????»,
????? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ? ??????.

68. ??? ? ?????????? ???????, ??? ?????? ?????????? ??? ?? ?????? ??? 7? ??? 2014,
?? Bundesfinanzhof ?????????? ?? ??????? ?? ??? ?????? ?????? ?????? ??? ?????? 15,
????????? 4, ?????? ??????, ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
?? ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

69. ??? ? ?????? ??? ? ?????? ??? ?????? ?????? ?????????? ?? ?????? ??? ??????????
????? ?????? ?????????? ??? ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
?????.

70. ??????, ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? BLC Baumarkt (C?511/10, EU:C:2012:689). ???????,

???? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????
?????????, ??? ????? ?????? ??????? ?? ???? 15, ?????????? 4, ????? ??????, ??? ?????
???? ??? ?????? ?????? ??????? . ? ?????????? ?????? ?????? ?????????? ?????????? ??????????
???? ??? ?????? ?????????? ??? ?????????? ?? ??? ?????? ?????? ?????? ?? ??? ?????? ???
????????????? ?????? ???????, ??? ??? ?????????? ?????? ?????????? ?????????? ???
????????????? ???????, ?? ?????? ??? ?????? ?????, ????? ?????? ?????? ?????????? ???
????????? ??? ?????? 17, ?????????? 5, ????? ??????, ??? ?????? ??????.

71. ??? ?????? ??? ? ?????????? ??? ?????? 17, ?????????? 5, ????? ??????, ??? ?????
????????? ??? ??? ?????? 15, ?????????? 4, ????? ??????, ??? ?????? ??? ??? ?????
????????? ??????? ?? ???? ?????? ??? ?????? ?? ?????? ?????? ?????????? ??????????
????????? ???????, ??? ??? ?? ?????? ?? ?????? ?????? ?????????? ?????? ?????????? ??
????????? (24), ?????????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ?????
????????????????? ??? ?????? ?? ??? ?????? ?????? ?????????? ?????????? ??????????????
????????? ?? ?????? ?????? (25).

72. ?? ?????? ?????? ???, ?????? ??? ? ?????? ?????? ?????????? ?????????????? ???
????????? ??? ?????????? ??? ?????? ? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ? ?????? ?????? ???
????????? ???????, ? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???????, ???
????? ?????? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 17, ?????????? 5, ????? ??????, ??? 19, ?????????? 1, ??? ?????
??????, ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ???.

73. ?? ??? ?????, ?????????? ??? ?????? ??? ?????????? ??? ?????? 15, ?????????? 4,
????? ???????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????, ???
??? ?????? ? ?????? ??? ?????? ??? ? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?? ?????? 17, ?????????? 5, ????? ??????, ??? ?????
????????? ???????, ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???
????????? ?????? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????.

74. ??? ??? ?????? ???, ?? ?????????? ?? ?????? ?????????? ??? ?? ?????? ???
????????? ??? ?????? ?? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ?????????? ???, ?????? ? ?????????? ?????? ??? ?????? ???
?? ??? ?????????? ??? ?????? ?????? ??? ?????? ?? ??? ?????? ?? ?????????? ?????? ???
????????? ??????. ???????, ????? ?????? ??? ?????? ?????? ?????????? ?????????? ???
??? ??? ??? ?????? ??? ?????? ?? ??? ?????? ?? ??? ?????? 15, ?????????? 4, ???
????????, ??? ?????? ??? ?????? ?????? ?????? ?????????, ?????????? ??? ? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ???.

75. ?????? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?? ?????? 17, ?????????? 5,
????? ??????, ??? 19, ?????????? 1, ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
?? ?????? ?????? ?? ??????????, ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?, ?????? ?? ??? ?????? ?????????? ?????? ???
????? ?????? ??? ?????? ?????? ?????? . ?? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ?????? ?????? ?????? ?????? ? ?????? ?? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??????, ?????????? ???, ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???

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

?— ????????????, ??? ??? ?????? ?????????????? ??????????

78. ?? ??????? ??????????? ??????????? ??????????? ?? ??????? ?? ??????? ?? ???? ?? ????
?????? ?? ??????? ???????, ??????, ?? ?????? ??????????? ?? ??????????? ?? ???? ??????? ?? ????
?????? ?? ?????? [?? ?????? ??????? ?? ?????? ?? ??????? ?? ?????? ?? ?????? ?? ??????? ?? ???? BLC
Baumarkt (C?511/10, EU:C:2012:689)] ???, ???????, ?? ?????? ??????????? ?? ???? ?? ????
?????? (?? ?????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ???? ??????????? ?? ???? ??????????? ??
?? Bundesfinanzhof ??? ??????????? ?? ???? ???????).

79. ?????????? ????? ??????? ?? ?? ?????? ??? ?????????? ??? ?????????????????????? ??
????????? ??? ??????? ??????????, ???? ??? ?????????? ??? ?????????? ??????????????, ??
????????? ??? ??? ?????????? ??? ??????? 21 ??? ?????????? Armbrecht (C-291/92,
EU:C:1995:304) ??? ????? ?????????? ?? ?????????? ?????????????? ?????? ??? ?? ??????????
????????? ??????????. ???? ??? ??????? ???, ?? ?????? ?????????? ? ?????????? ?? ??????????
????????? ?????? ??????? ??????? ?? ?????????????? ??? ?? ???? ??? ??????? ??????? ???
????????? ??? ??? ??????? ?????????????? ?? ??? ?????????????? ?????? ??? ??? ?? ??? ??
????????? ?????????? ??? ??????? ???, ??? ??? ?????? ??? ?????? ??? ??????? ?????????? ???
????????, ?? ?????????? ?????? ?????????? ?????????? ?? ??? ?????? ?????????? ?????????? ??
????????? ?????????? ??? ??????? ??? ?? ??? ?????? ?????????? ??? ?????????? ???
????? ?? ??? ?? ??????????.

80. ??? ?? ??????? ?? ?????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ???????, ? ???????????
????? ??????? ?? ???????????, ??? ?????????? ?? ?????????? BLC Baumarkt (C?511/10,
EU:C:2012:689).

81. ???????????, ??? ??? ?????? 24 ??? 26 ????? ??? ??? ??????????? ??? ??????????
????? ???????????, ???' ??????, ??? ? ?????? ?????????????? ??? ?????? ???
?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? 17, ??? ????????
5, ????? ????, ??? ????? ?????? ?????? ?? ?????? «?????????» ?????????? ???
????????? ?????????? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????, ??? ?????? 23 ???
????? ?????? ?????? ?????????? ??? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
«??? ???? ?????? ??????????».

82. ??????? ?? ???? ?????????? ?????????? ?? ???? ?????? ?????????????? ??????????,
??? ?? ???? ?????? ?? ???? ?????? ?????????? ?????????? ?? ???? ?? ???? ?????? ???
????????????? ??????????????, ?????? ? ?????? ?????? ?????? ?????????? ?? ???? ?? ???? 17,
????????? 5, ?????? ? ?????? ??????, ??? ?????? ?????? ?????? ?? ???? ?? ???? ?????? ??? ??????

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

83. ?????? ?????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????, ??? ?????? ???
????????? ??? ??? ?????????? ?? ?????? 17, ?????????? 5, ??? ?????? ???, ??? ?????? ??????,
????????? ?? ?????????? ??? ?????????????? ?????? ?????? ?????????????? ? ?????? ?? ?????? ???
????????? ?????????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? (26).

84. ? ???????? ??? ?????????? ?????????????? ?????????? ??? ?????? ??????.

85. ??????, ??? ?????? ??? ? ?????????? ??? ?????? ?????? ?????????? ?? ?????? ?????????????? ???
????? ?????????? ??? ?????? ?????? Armbrecht (C?291/92, EU:C:1995:304) ???
????? ?? ?????? ??? ?????? ??? ?????? 17, ?????????? 5, ??? ?????? ???, ?? ??????,
?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????????? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????????? ??????.

86. ????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????? ?????????? ???
????????? ?????????????? ???, ? ?????? Armbrecht (C?291/92, EU:C:1995:304) ?????????? ??
????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????????????? ???
????????? ??? ?????????? ??? ??? ?????????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ???
??? ?? ?????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? . ??? ??
????????? ??? ?? ?????? ??? ?????????? ???, ?? ?????????? ?????????? ???, ??? ?????? 21 ??? ??
???? ??????????, ??? «? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ??????.

87. ? ????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 21 ??? ??????????
Armbrecht (C?291/92, EU:C:1995:304) ??? ?????? 50 ??? ?????? ??? ?????? ??? ??????????
F. G. Jacobs ??? ?????? (C?291/92, EU:C:1995:99), ?????????, ?? ?????? ??
????????? ?? ?????? ?????????????? ??? ??? ?????? ?????????? ?? ?????????? ???
????????? ?? ?????? ?????????? ??? ?? ?????????? «? ?????? ??? ?????????? ?????? ??
[?????] ??? ?????? ?????????? ??? ?????? ?? ?????????? ?????? », ? ?????? ??????
??? ?? ?????????? ??? ?????????????? ???, ?? ?????????? ?????????????? ?????? ???
????????? ??? ??????, ?? ?????????? ??? ?????????? ?????????????? ??? ?????? 20, ??????????
2, ??? ?????? ??????.

88. ??????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? Breitsohl (C?400/98,
EU:C:2000:304, ?????? 54), ?? ?????????? ?????? ??? ?????? ?? ?????? 21 ??? ??????????
Armbrecht (C?291/92, EU:C:1995:304) ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? «????????????? ???
????????????? ??? », ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ??? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????.

89. ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 21 ??? ??????????
Armbrecht (C?291/92, EU:C:1995:304) ?????? ?????? ?????? ?????? ?? ?????? ???

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

90. ????????, ? ????????, ??? ?????????? ?? ?????????????? ??? ?? ?????????? ??? ??????? 23 ???
????????? BLC Baumarkt (C?511/10, EU:C:2012:689) ?????? ?? ?????????????? ??????? ??
???? ??????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????? ??????? ??????? ??
????????? ?? . ??? ????? ?? ???? ??????, ??????????, ? ?????? ?????????? ?????????? ??
????????? ?? ??? ??? ????? ?????????? ?? ?????? ?????? ??? ?????????????? ??????, ?? ???
??? ??????? ?? ???? ?????? ?? ?????? 17, ?????????? 5, ????? ??????, ??? ???
??????, ?????????? ?? ?????????? ????? ?????????????? ?????????? ??? ?????? ??? ??
????????? ?? ??? ??? ?????????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??????????, ??? ???
?? ?????????? ?????? ???????.

91. ??? ?? ?????? ?? ???? ??????? ?? ?????????? ?? ???? ?????? ?????????? ?? ???? ??
???? ??????? ?? ???? ?????? ?? ???? ?????? ?????????? ?? ???? ?????????? ?? ???? ?? 17,
????????? 5, ????? ??????, ??? ????? ??????, ??? ?????? ?? ???? ?????????? ?? ???? ??
????????? ?? ???? ?????? ?? ????? ?????? ??? ?????????????? ?????? ??????????, ?????? ??
????????? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????????????? ?? ???? ??
??????, ?? ?????? ????? ?????? ??? ?????? ????? ?????????? ?????????? ??? ?????? ???
????????? ?????????? ??????????.

92. ????????, ??? ?????? ?? ???? ?????????? ?? ???? ?????? ?????????? ?? ???? ?????????? ??????
?????? ?????????? ?? ???? ?????? ?????? ?????????? ?????????? ?? ???? ?? ???? ?????? ?????????? ??????????
?? ?????????? ?? ???? ?????? ?? ???? ?????? ?????? ?????? ?????? ?????????? ?? ???? ??????
????????? ?? (27), ? ?????? ?? ???? ?????????? ?????????? ?????????? ?????????? ?????? ??
?????? ?? ?????? ?? ???? ?????? ?? ???? ??????, ?? ?????? ?????? ?????? ?? ???? ?????? ??
?? ??????? ?? ???? ?????? ?? ???? ?????????????? ?? ???? ?????????? ?????? ?????????? ??
????????? ?? ?????? ?? ???? ?????? ?? ???? ?????????? ?????? ?????????? ?????? ?????????? ??
????, ???????????, ?? ?????? ?? ???? ?????????? ?? ???? ?????? ?????? ?????????? ??
????????????? ?? ???? ?????? ?????????? ??.

93. ?? ?? ???????, ?? ???? ???????, ?? ???? ?????????? ?? ???? ???? ??????? ?? ???? ?? ???? ??????? ??
????????? ???????, ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????? ?? ???? ??????
????????? ?? ???? ?? ???? (?????????? ??) ?? ???? ?????? ?? ???? ?????? ?? ???? ??????
?????? ??????? ?, ?? ???? ???????, ?? ???? ??????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????????
?????? ?? ???? ???????, ?? ???? ??????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ??
????????? ???????.

94. ??? ???????, ?? ???? ??????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ??????????
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ??????
?????? ?? ???? ?????? (?????? ??) ?? ???? ?????? ?? ???? ?????? «?????? ?? ????»
????????????? ?? ???? ?? ???? 17, ?????????? 5, ????? ??????, ?? ???? ?????? ?? ???? ??
????????????? ?? ???? ?????? BLC Baumarkt (C?511/10, EU:C:2012:689), ?? ???? ?? ???? ??,
???? ?????????? ??, ?? ???? ?????? ?? ???? ?? ???? 17, ?????????? 2, ?? ???? ?????? ??,
????????? ?? ???? ?????????? 5 ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????????
?? ?????????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ??????????
?????.

95. ??? ?? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????
?? ??????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ??
????????? ?? ???? ?? ???? 17, ?????????? 5, ????? ??????, ?????????? ??, ?? ???? ?????? ??
?????? ?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????
???? ?? ???? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ??????

? ??????? ???? ?? ???? ?????? . ???????, ??? ? ? ?????????????? ??? ? ? ??????????
?????????, ? ??????? ?? ???? ????? ?????????? ??? ?????? ??? ?????? ??? ??????
?????? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?? ????? 17, ?????????? 5, ?????? ?????, ??? ?????? ??????.

96. ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? «?????????????»
????? » ??? ?????? ??? ?????? BLC Baumarkt (C?511/10, EU:C:2012:689).

97. ??? ?????? 19 ??? 26 ?????? ??? ??? ?????????? ??? ?????????? ???, ??
????????? ?????????? «? ??????? ?????? ?????? ?????? ??????» ?????? ?????? ????.
??????, ??? ?????????? ?????? ?????? ?????? ???????, ??? ??? ?????? ??? ? ?????, ?
????????? ??? ? ?????????? ?????? ?????? ?????????? ??? ??? ?????? ??? ??????????
??? ?????????? ??? ?????? ?????? ??? ?????? 17, ?????????? 5, ?????? ?????, ??? ??????
??????. ??????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ??
?????? ??? ?????? ?? ?????? ?? ?????????? ??? ??? ?????????? ??? ??? ?? ?????? 17,
????????? 5, ??? ?????? ?????? ??? ??? ?? ?????????? ??? ??????????.

98. ??? ?????????????? ??? ??? ??? ??? ?????? ?? ?????? ?? ?????????? ??
??????, ?? ?????? ??? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???
????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ??????.

99. ??? ?? ?????? ???, ?????? ?????????? ??? ?????? ?????? ??? ?????????? ???
??? ?????? ?????????? ?? ??? ??? ??? ?????? ?????? ?????? ?????? ??? ???, ? ?????????? ???
?????? ?? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?????? ?? ?????? ??? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ??????.

100. ???????, ?? ??? ?????? ?????? ?????? ??? ??? ?????? ?????? ??? ?????? ???
??????, ?????????? ??? ?????????? ?????? ?????? ?????? ???, ??? ??? ???, ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ??? ??
?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ???
??????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? 5, ??? ?????? ??? ?????? ??? ??????.

101. ???????, ??? ?? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ?????????? ?? ??? ?????? ?????? ??? ???, ?????????? ??? ?????? ???
?? ?????????? ??? ?????, ??? ??? ?????????? ??? ?????? ?????? ??? ??? ??? ??? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

? — ?????????? , ??? ?? ?????? ??? ?????? ?????? ?????????? ??????????

102. ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ???, ???' ??????, ??
????????? ??? ?? ?????????? ?? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ???
??????, ?? ??? ?? ??? 20 ?? ??? ?????? ?????, ?? ?????????? ??? ?????? ??? ?????? ???
?? ???, ??? ?????? ??? ?? ??? ?????? ?????? ???, ??? ?? ?????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ?????? ?????? ??? ??? ??? ?????? ??? ???
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ??? ??? ??? ?????? ??? ???

?????? ??????????) ??? ???? ?????????? ??? ???? ?????? ??? ?????????? ??????????.

103. ????? ?????????? ??? ?? ?????????? ??? ?????????? ?????????????????? ????????????, ??
????????? ??? ?????????? ?????????????? ?????????????? ?? ?????????? ??? ? ?????????? ??? ??????
???? ?????????????????? ?????? ? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ???
(????, 1999 ??? 2003) ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???
?? ?????? 15, ?????????? 4, ?????? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
(????, 1 ? ?????????? 2004) ??? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??????????
?????? ??? ?????????? ???, ??? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ?????????????? ???
??? ? ?????????????? ???, ??? ??????????.

105. ?????????? ?? ? ? ?????? ?? ?????????????? ?????????? ?? ??????????????, ?
????????? ?????????? ?? ? ?????????? ?? ?????????? ?????????? ?????????? ?? ? ????
????? ??????? ?? ? ?????????? ?????????????? ?????? ?????????????? ?????????????? ?? ? ????
?? ? ???? ?????????? ?? ? ?????????? ?? ?????????? ?????? ?????? ?? ? ???? ?? ? ????
?????. ? ?????????? ?????????????? ?? ??????????, ??? ?????? ?? ? ???? ??????????
????????????? ?????????????? ?? ? ?????????? ?????? ?????? ?? ? ?????????????? ? ??????????????
?? ??.

106. ?????????? ?? ?????????? ????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ??? ??? ?????? ?????????? ?? ?????????????? (28), ?
????? ?????? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ?????????? ??? ?????????? ???, ??
????? ?????????? ?????? ?????????????? ??? ??? ?????????? ?????????? ??? ??? ?? ???
????????? ? ?????? ??? (29).

107. ?? ?????? 20, ??????????? 1, ??? ?????? ??????? ?????????? ?????????? ?????????? ??? ? ??????
????????? ?????? ??????? ?? ?????????????? ??? ?????? ?????? ?????????? ??? ????
????, ??? ?????? ??? ? ??????? ?????? ?????? ??????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????
?? ?????????? ? ??????????? ??? ?????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????.

108. ?? ?????? 20, ??????????? 2, ??? ?????? ??????? ?????????????? ???, ??? ?????? ?? ????
??????????, ? ?????????????? ?????????????? ?????? ??????? ?????? ???,
????????????????? ??? ?????? ??? ?????? ?? ??????? ?????? ?????????? ? ??????????????
?? ??????. ??? ?????? ? ?????????????? ?????? ??? ?? ?????? ??? ?????? ? ??????
????????? ?? ?????? ??????????. ? ?????????????? ?????? ?????????????????? ?????? ?? ???
????????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?? ?????????? ??
????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ? ?????????? ??
????? ?????? ??????.

109. ? ???? ??????? ??????? ?? ???? ?? ???????????, ??? ????? ?? ??????? ???????????, ?? ??????????? ?? 20 ??? ?? ??????? ??? ?????????? ??????????? (30).

????? ??? ? ?? ?????????????? ?? ?????????????? ??? ??, ?????? ??? ?????????? ??? ??????? ???? ???????
????????????? ??? ?????????????? ??? ?????? ?????????? ?????? ?? ?????? ?????? ?????????? ?????????? ???
??? ?????? ??? ?????????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
?????????, ?? ??? ?????? ??????, ?? ?? ??? ?????? ?????? ??? ?????? ??? ?? ?????????????? ???
??? ?????? ?????? ?????? ??? ?????????????? ?????????? ??? ?????????????? ??? ??? ??? ???
????????? ??? ??? ?????????? ??? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? (31).

111. ?? ?????????? ?????????????? ????, ???? ?????? ?????? ?? ??? ?????? ???????????, ?? ????
????????????????? ??? ?????? ??? ?????? ?????? ???, ???? ?? ?????? ??? ?????? ??? ?????? ???
????????????? ? ?????? ??? ?????? ???, ???? ?????? ?????? ?????????????? ??? ?????????? ???
????????? ?? ?????????? ?? ?????????????? ?? ?????????????? ??? ?????? ??? ?????????? ???
????????????? ?? ?????????????? ?????????????? ??? ?????????????? ??? ?????? ??? ??????????
????? ????, ????, ????, ???? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ??????
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
(32).

112. ???? ?? ??? 20, ?????????? 1, ????????, ??? ?????? ??????, ? ??????
????????????? ??? ?????? ?????????? ?? ?????????????? ??? ?????? ?????? ??? ?????????? ???
????? ??? ?????? ?????????? ?? ?????????? ? ?????????? ??? ?????? ?, ???? ???
????????? 2, ? ?????? ??? ?????????? ??? ??? ?????? ???, ?????? ?? ??? ?????? ?????????? ???
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????.

113. ?? ????, ????, ????, ?? ??? 20, ?????????? 2, ??? ?????? ??????, ?? ??????????
???????, ???? ?????? Gemeente Leusden ??? Holin Groep (C?487/01 ??? C?7/02,
EU:C:2004:263, ??? 53), ??? ? ?????????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
?????????.

114. ??? ?????????? ???, ? ?????? ?????? ???????????, ???' ??????, ??? ? ??????????????
????? ?????? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???.

115. ? ?????????? ???, ?? ??? ?????? ?????????? ?????????????? ?? ??? ?????? ?? ???
??? ?????????? ???, ?????? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???.

116. ?????? ?????? ???, ?? ??? ?????? ?????????? ??? ?????? ??????, ???? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (33).

117. ??????, ?? ??? 20 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

? ???????, ????????????, ??????? ?? ?? ???? 17, ?????????? 5, ?????? ??????, ??? ????
?????? ??? ??????? ?? ??? ????? ?? ?????? ?????? ?????????? ??? ???, ?????? ? ????
????????? ?????????? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ??? ?????? ???
?????? ?????? ??? ?????? ??? ?????? ??????.

118. ???????, ?? ??? ?????? ????????, ? ?????????????? ??????? ?????????????? ???
????????? ??? ?????????? ?? ?????????????? ??? ??????? ??? ?????? ??? ?????? ???
?????? ?????????? ??? ?????? (34).

119. ???????, ??? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??'
???????????, ?? ?? ??????????? ?? ?????????? ??? ?????????? ??? ???????, ??? ?????????????? ?
?????????, ?? ??????????? ?? ?????????? ??? ?????????? ?????????? ?? ??? ??? ??? ?????? ??????????
???' ??? ??? ?????? ?????????????? ??? ???????, ??? ?? ?????? ?????? ?????? ????
??????????, ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???
??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??? ?????? ?????? ???
????????????? ??? ?????? ?????????????? ??? ?????????? ??? ???????, ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????????? ??? ?????????? (??? 5 ??? 20 ???, ??????? ??? ??
????? ???), ?? ??? ?? ?????? ??? ?????? ??? ?????????????? ?????????? ??? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????
?????????.

120. ???????, ??? ?? ?? ?????? 20 ??? ?????? ?????? ??? ?????????? ?? ??????? ?????? ??
?????? ??? ?????????? ??? ?????? ?? ?????? ?? ?????????? ??? ??????? ?????? ?????????? ???
??? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ?????????? ???, ??? ??????????
??? ?? ??? ?????? ?????? ???, ??? ?? ?????? ??? ?????????? ??? ?????????? ?????????? ???, ??? ??????
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????????? ?????????? ??? ??? ??
????????? ??? ??? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ??
????????? ??? ??? ?????? ??? ??????????.

121. ??????, ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ??
????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (35).

122. ? ?????? ??? ?? ?????? ?????? ???????????, ??????, ?? ?????? ?? ?????? ?????? ?????? ???
??? ??????? ???, ??????, ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ???
?? ?????? (36).

123. ???????, ? ??? ?? ?????????? ?????? ??? ?????? ?? ?????????? ?? ??????????
??????????, ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?? ?????? ??? ??????????
?????????, ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????????? (37).

124. ???????, ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ?????? ???
????????? ??? ?????? ?????? ??????, ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ?????? ???
????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
(38).

125. ?? ???????????, ?? ?????? ??????????? ?????????????? ?? ?????? ?????? ?????????? ?? ?????? ??
?????????? ??????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????.

127. ???????????, ??? ??????????? ?? ?????? ???????????, ? ?????? ??? ?????
 ?????????? ?? ????? 15a ??? ?????? ??? ?????? ?????? ??????? ???????, ?? ?????? ??????
 ??? ?????? ??????? ?? ?????? 20 ??? ?????? ?????? ??? ??????? ?????? (39).

128. ???????, ??? ?????? ??? ? ???????????????? ??? ?????? ?????????? ?? ?????????????? ???
???' ?????????? ??? ?????? 15, ?????????? 4, ?????? ????????, ??? ?????? ??? ?????? ???
?????? ????????, ??? ?????????? ??? ?????? 20 ??? ?????? ??????, ? ?????????? ???
????? ??? ??????? ??????? ?? ??????? ??? ?????????? ?????????????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????????? ??????????.

129. ????????, ??? ?????? ?? ?????????????? ?????? ??? ?? ?????????? ?????????? ??? ?
?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ?
????? Gemeente Leusden ??? Holin Groep (C?487/01 ??? C?7/02, EU:C:2004:263).

130. ???????????, ??? ???? ??????? ??? ? ?? ?????????? ?????????? ??? ? ???????
????????? ??? ???? ?????? ??? ?? ? ???? ?????? ?? ? ? ?????????????? ?? ? ?????????? ??? ????
???? ???? ??? ??????? ??? ???? ?????? ??? ?????? ??? ?????????????? ??? ? ?????????? ??? ????
??????????, ??????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? (40),
????? ?????? ??? ???? ?????? ??? ?????????? ??? ???? ?????????? ??? ???? ??????????, ??? ???? ?? ??????
????????? ???????????, ???????, ??? ???? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ????.

131. ??????, ??? ?????? ?? ???? ??????????? ?????? ????????????, ?? ????????????, ??
?????????? ?????????? ??? ????? ?? ????? 15, ?????????? 4, ????? ???????, ??? ????? ???
??? ????? ?????? ??????? ??? ????? ?? ?????????????? ??? ??? ??? ??? ???????, ?????
????????? ?? ?????????? ??? ? ?????????? ?????? ?????? ??????? ?? ?????????? ?? ??? ??? ???
????????? ?????? ??? ?????? ?????????? ???????????, ??? ? ?????? ?????????????? ??? ?????
????????????? (41) ? ?????????? ??? ?????? ?????????? ?????? ?????????? ??????????????
????????????? (42). ?? ??????????, ??? ? ?????? ?????????? ?????? ??? ? ?????????? ??????????
????????? ??? ? ?????? ??? ?????? 15, ?????????? 4, ????? ???????, ??? ????? ??? ???
????? ?????? ?????? ?????????? ?????????????? ??? ??? ?????? ?????? ??? ? ?????????????? ??????
??????.

133. ??? ?????????????? ??? ?????? ??? ?????? ????, ?????? ?????????? ?? ?????????? ?? ??
????????? ??? ?????????????? ??? ?????? ?????????????? ?????????????? ?????????????? ?? ??????????
??? ?????????????? ?????????????? ???, ?? ?????? ??????, ?? ?????????????? ? ?????????????? ??????????
????????? ??? ?????? ??? ?????????? (44).

134. ???????, ??? ??? ?????????????? ??? ?????????? ?? ??? ?????? ?????? ?????? ??????????
????????? ??? ? ?????? ?????????? ??? ?????? ?????? ? ?????????? ??? ?????? ?????? ??????
????? ??? ??? ?????????? ?????, ??? ?? ?????? ?????? ?????????? ?????? ???
Finanzgericht Düsseldorf, ??? ??? ?????????? ?????? ??? ??? 2001 ??? 2002.

135. ?? ?????? ?????????? ??????? ?????????? ?? ?????? ?????? ?? ?????? ?????? ???
??????????, ?? ?????????? ? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
?????, ??? ??? ?? ??? ??? ???, ??? ?????? ?????? ??? ?? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? 15, ?????????? 4, ????? ???????, ??? ?????? ??? ??
????? ?????? ?????? ???????, ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????? (45). ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
??? 2000. ????, ??? ??? ?? ?????????? ??? ? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ?????? ?? ?????? a fortiori ??? ??? ?????? ?????????? ????

136. ?????????? ?????????? ??? ? ?????? ?????? ?????? ?????? ?????????? ?? ?? ??????????
??????????, ?? ?????? ?????? ???, ??? ?????? ?????? ?? ?????? 15, ?????????? 4, ??????
??????????, ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ?? ?????????? ???
??????????, ?? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?? ?????? 17,
????????? 5, ??? 19, ?????????? 1, ??? ?????? ??????.

V – ???????

137. ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???
??? ?????????? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???
??? ?? Bundesfinanzhof ?? ???:

?? ?????? 17, ?????????? 5, ??? ???? ?, ?? 19, ?????????? 1, ??? ???? ??????
77/388/??? ??? ??????????, ?? 17?? ??? 1977, ??? ?????????? ??? ?????????? ???
?????? ?????? ?????? ?? ??? ?????? ?????? ?????? — ?????? ?????? ??????
????????????? ?????: ?????? ?????????? ???, ??? ?????????? ?? ?? 95/7/??
?? ??????????, ?? 10?? ?????? 1995, ??? ??? ?????? ??? ?????????? ?? ??????
????? ?? ????????, ?????????? ??? ?????????? ??? ?? ?????? ?????? ?????? ??
????????? «????? ??????», ?????????? ?????? ?????????? ??? ?????? ???
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????????? ??? ??? (????????? ??? ?????? ?????? ?????????? ?????) ?????????? ??? ??????????
????? ??? ?????? ??? ??? ?????? (????????? ?????? ??? ?????? ?????????? ?????)
????? ??????????. ?? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??? ??????
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??????, ???????????, ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
??????.

1 — ?????? ??? ??????????: ? ??????.

2 — ?? ??. ???. 09/001, ?. 49.

3 — ?? L 102, ?. 18.

4 — ??? ?? ??????? ?? ?????? ?? ?????????? ? ?????? ?????????? ?. Cruz
Villalón ??? ?????? 44 ??? ??????? ?? ??? ?????? BLC Baumarkt (C?511/10,
EU:C:2012:245).

5 — ??., ?????? ????, ?????????? Securenta (C?437/06, EU:C:2008:166, ??? 25) ????
?? Larentia + Minerva ??? Marenave Schiffahrt (C?108/14 ??? C?109/14, EU:C:2015:496,
????? 22).

6 — ???. ?????????? ??? ??? ?????? Vereniging Noordelijke Land- en Tuinbouw Organisatie
(C?515/07, EU:C:2008:769, ?????? 23 ??? 30).

7 — ? ?????? ????????, ? ?????? ??? ?????? ?????????? ?????????? ??? ??? ?????? ??????????,
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ???
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????????? ??? ??? ???.

8 — ???. ??? ??? ?????? ???, ?????? ???, ?????????? Securenta (C?437/06,
EU:C:2008:166, ??? 33) ??? Larentia + Minerva ??? Marenave Schiffahrt (C?108/14 ???
C?109/14, EU:C:2015:496, ?????? 26 ??? 27).

9 — ??., ??????????, ?????????? Centralan Property (C?63/04, EU:C:2005:773, ??? 53),
Royal Bank of Scotland (C?488/07, EU:C:2008:750, ??? 17), BLC Baumarkt (C?511/10,
EU:C:2012:689, ??? 13) ??? Le Crédit Lyonnais (C?388/11, EU:C:2013:541, ??? 28).

10 — ???????? Royal Bank of Scotland (C?488/07, EU:C:2008:750, ??? 18), BLC
Baumarkt (C?511/10, EU:C:2012:689, ??? 14) ??? Le Crédit Lyonnais (C?388/11,
EU:C:2013:541, ??? 29).

11 — ???. ?????????? Royal Bank of Scotland (C?488/07, EU:C:2008:750, ??? 19) ??? BLC

Baumarkt (C?511/10, EU:C:2012:689, ????? 15).

12 — ???. ??????? BLC Baumarkt (C?511/10, EU:C:2012:689, ????? 24).

13 — ?????????? BLC Baumarkt (C?511/10, EU:C:2012:689, ????? 16) ??? Banco Mais (C?183/13, EU:C:2014:2056, ????? 18).

14 — ?. ?????????? BLC Baumarkt (C?511/10, EU:C:2012:689, ??????? 16 ??? 22), Le Crédit Lyonnais (C?388/11, EU:C:2013:541, ????? 52) ????? ??? Banco Mais (C?183/13, EU:C:2014:2056, ????? 27).

15 — ??????? BLC Baumarkt (C?511/10, EU:C:2012:689, ??????? 19 ??? 24).

16 — ???. (?????? 18 ??? 20).

17 — Banco Mais (C?183/13, EU:C:2014:2056, ????? 29).

18 — ??????? BLC Baumarkt (C?511/10, EU:C:2012:689, ????? 17).

19 — ??????? BLC Baumarkt (C?511/10, EU:C:2012:689, ??????? 18, 24 ??? 26 ????? ??? ?????????? ??? ??????????).

20 — ??., ??????, ??????? Banco Mais (C?183/13, EU:C:2014:2056, ????? 32).

21 — ??., ??? ??? ?????? ????, ?????????? ??? ???????? ?????????? ?. Cruz Villalón ??? ??????? BLC Baumarkt (C?511/10, EU:C:2012:245, ????? 44).

22 — ??? ??? ?????? ??? ??????? ?????????? ?. Cruz Villalón ??? ?????? BLC Baumarkt (C?511/10, EU:C:2012:245, ????? 52).

23 — ??????? BLC Baumarkt (C?511/10, EU:C:2012:689, ????? 17).

24 — ?????????? ??? ? ?????????? ???????? ?? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????, ???, ?? ?????????? ?????? ??? contra legem ??????? ??? ?????? ??????: ??., ?????? ????, ?????????? Lopes Da Silva Jorge (C?42/11, EU:C:2012:517, ????? 55) ??? Association de médiation sociale (C?176/12, EU:C:2014:2, ????? 39).

25 — ??., ??? ??? ?????? ????, ??????? Taricco ??. (C?105/14, EU:C:2015:555, ????? 49 ??? ??? ?????????????? ??????????).

26 — ??? ??? ??? ?????? ??? ?????? ?????????? ??? ??? ?? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????.

27 — ??., ??? ??? ?????? ????, ?????????? ??? ??????? ?????????? ?. Cruz Villalón ??? ??????? BLC Baumarkt (C?511/10, EU:C:2012:245, ????? 33).

28 — ??., ?????? ????, ??????? Enel Maritsa Iztok 3 (C?107/10, EU:C:2011:298, ????? 32 ??? ??? ?????????????? ??????????).

29 — ??., ?????? ????, ??????? Centralan Property (C?63/04, EU:C:2005:773, ????? 50) ??? Pactor Vastgoed (C?622/11, EU:C:2013:649, ????? 33).

30 — ??? ???? 15a ??? ?????? ??? ?????? ??? ?????? ?????? ???????, ? ??????????????

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

31 — ??., ????, ????, ?????? Centralan Property (C?63/04, EU:C:2005:773, ??? 57) ??? Pactor Vastgoed (C?622/11, EU:C:2013:649, ??? 34) (? ??????????? ???).

32 — ??., ??? ??? ?????? ???, ?????? Uudenkaupungin kaupunki (C?184/04, EU:C:2006:214, ??? 25) ??? ?????? Gmina Mi?dzyzdroje (C?500/13, EU:C:2014:1750, ??? 20) (? ??????????? ???).

33 — ??., ??? ??? ?????? ???, ?????? Uudenkaupungin kaupunki (C?184/04, EU:C:2006:214, ??? 30) ??? ?????? Gmina Mi?dzyzdroje (C?500/13, EU:C:2014:1750, ??? 23).

34 — ?????????????? ??? ?????????????? ?????? ??? ?????? ?????????? ?????????????? ?????????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????? Centralan Property (C?63/04, EU:C:2005:773, ??? 55) ??? ?????? ?????????????? ??????????).

35 — ??., ??? ??? ?????? ???, ?????? Gemeente Leusden ??? Holin Groep (C?487/01 ??? C?7/02, EU:C:2004:263, ??? 57), «Goed Wonen» (C?376/02, EU:C:2005:251, ??? 32), ??? ??? Salomie ??? Oltean (C?183/14, EU:C:2015:454, ??? 30).

36 — ?????? Traum (C?492/13, EU:C:2014:2267, ??? 28).

37 — ???. (????? 29 ??? ??? ?????????? ??????????).

38 — ??., ??? ??? ?????? ???, ?????? «Goed Wonen» (C?376/02, EU:C:2005:251, ??? 33 ??? 34).

39 — ?? ????? 15a ??? ?????? ??? ?????? ??? ?????? 20, ?????? 1, ??? ?????? ?????? ??? ??? ???? 20, ?????? 2, ???.

40 — ?????? Gemeente Leusden ??? Holin Groep (C?487/01 ??? C?7/02, EU:C:2004:263, ??? 81).

41 — ???. (????? 71 ??? 77).

42 — ?????? «Goed Wonen» (C?376/02, EU:C:2005:251, ??? 38 ??? 39).

43 — ??., ??????, ?????? ?????? ?????? Salomie ??? Oltean (C?183/14, EU:C:2015:454, ??? 44 ??? ??? ?????????? ??????????).

44 — ???. (????? 45 ??? ??? ?????????? ??????????).

45 — ??., ??? ??? ?????? ???, ?????? Enel Maritsa Iztok 3 (C?107/10, EU:C:2011:298, ??? 39 ??? ??? ?????????? ??????????).