Downloaded via the EU tax law app / web

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

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

MICHAL BOBEK

??? 7?? ??????????? 2017(1)

??????? C?**251/16**

Edward Cussens,

John Jennings,

Vincent Kingston

????

T**.** G**.** Brosnan

[?????? ??? Supreme Court (??????? ??????????, ????????)??? ??? ?????? ????????????? ?????????]

«??? – ??????????? – ????? ???????? ??? ????? ??? ??????????? ??? ??????????? ??????????? ??? ??????????? ???? ??????? Halifax ?.??. (C?255/02)»

I. **????????**

1. ?? ??????????? ????? ???? ??????? «???????????». ???????, (?, ???????????, ?? ???????? ??????? ?? ???????? ??? ???????), ??? ??????????? ???????? ?’ ????? ??? ??????: ? ??????? Halifax ??? 2006 (2), ???? ????? ?? ?????????? ??????????? ??? ???????? ??? ????? ??? ??????????? ???????????? ????????? ???? ????? ??? ????????? ???? ??? ????? ???????????? ????? (???). ???????? ??? ??? ?? ???? ??????? ????????? ?? ????? ?? ??????????? ????? ??? ?????? ?????.

2. ??????, ???? ????? ?????????, ????? ?????? ? ???????? ?????????? ??? ??????????? ???? ????????? ?????????????? ?????? ?? ????????? ????? ??????????? ??? ???????????? ??? ?????? ??????? ???????? (3). ?? ???? ?????? ??? ???? ????? ??? ????????? ??? ????????????? ?????????, ??? ??????? ??? ?????????? ??? ?????????? ??????, ???? ????? ??? ???. ???????? ? ?? ???? ???? ?????????? ????? ??? ????????? ??? ????? ??? ?????? ???? ?????????? ?? ?????????? ???????? ?????????? ?????????? ??? ?????????, ?????? ?? ??????????? ??? ??? ????? ????? ????????? ?? ????? ?? ??????????? ??? ?????? ?????????? ???, ?????????????????? ??? ???????????? ????????? ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ??????????.

3. ?? ??? ??????? ??????????? ????????? ?? ?????????? ???????? ?? ???????? ??? ??????????? ????????? ??? ?? ???????? ??????????? ??? ?? ???? ????? ??? ??????? ??? ???????? ??? Supreme Court (???????? ??????????, ????????) ??? ??? ?????? ???????????? ?????????.

4. ?? Edward Cussens, John Jennings ??? Vincent Kingston (??? ????: ??????????????) ??????????? 15 ???????? ????????? ?? ??? ?????? ??? Cork ??? ?????????. ?? ????????????? ???????? ?? ?????????? ?????????? ?? ?? ???? ??????? ??? ??????? ???????? 20 ???? ??? ???? ?????. ????? ??? ?????????? ???????, ? ?????????? ??????? ??????????????? ?? ????? ?????????? ???????? ?????????. ?????????? ??? ??? ??? ????????????????? ????? ??? ?????????. ???? ???? ???????? ? ?? ???? ??????? ?????? ??? ?? ??????? ????????? ??? ???? ????????????? ?? ???????. ??????? ?? ?? ????????? ?????? ??? ?????? ?? ?????????? ??? ??? ??? ?? ???? ????????, ????? ??? ????????? ???? ??? ??? ?????? ????? ??????????, ???? ?? ?????????? ???????. ?? ?? ??????, ? ????????? ?????????? ???? ?????? ??? ? ????? ??????????, ? ?????????? ???????, ???? ????? ??? ??????? ????????? ??? ?????????? ????????? ??????????. ???? ????????, ? ?? ???? ??????? ??? ?????? ?? ?????? ????? ???? ????? ??? ???, ? ?? ??? ?????? ?? ????????? ??? ???????????? ??????? ???????? ???? ???????, ?? ??? ???? ???? ? ????? ??????????. ????? ?? ??????? ??? ?? ????????????? ?? ?????? ?? ?????????? ???? ???? ?????????? ???? ???.

5. ???? ??? ????????? ??? ?????????? ????? ???????? ???????? ??? ? ??????? ?????? ??????? ??????? ??? Supreme Court (???????? ??????????) ??? ?????????. ?? Supreme Court (??????? ??????????) ????????? ??? ?????????? ???? ??????????? ?????????. ?? ????? ??? ?? ??????? ??????????? ??????? ??????? ?? ?? ? ???? ??? ??????? ??? ?????? ???? ??????????? ??? ?????????? ?????????? ???? ????? ?????????? ??? ????????? ??? ????? ??? ????????? ??????? ??? ??? ?????????????? ???????????. ?? ????? ????? ??? ? ???? ??? ??????????? ??? ?????????? ?????????? ???? ????? ??????????, ?? ?? ??????? ??? ?? ?????? ??????????? ??????? ???????? ? ?????? ???????????? ??????? ?? ??? ??????????? ????????? ???. ?? ?? ?? ???? ??????????? ?????????? ???? ??? ????? ???????, ?? ?? ????? ??????????? ??????? ???????? ??? ?????? ?? ?????????? ??? ?? ?????????? ?? ???? ?? ??????? ??? ??????? ???. ?? ?? ??????, ?? ???? ??? ?? ????? ??????????? ??????? ????????? ?? ?????? ??? ????????? ??? ???????????? ???????????? ????????? ??? ??????? ??????? ?? ??? ???? ?????? ??? 77/388/??? (4).

II. ?? ?????? ???????

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

1. *? ?????? 77/388 (??? ????: ???? ?????? ???)*

6. ???? ?? ????? 2, ?????????? 1, ??? ????? ??????? ??? (5), «?? ?????????? ??????? ?? ??????? ?????????, ??? ?????????????????? ?? ???????? ?????? ??? ????????? ??? ????? ??? ??????????? ??? ????, ??? ??????? ??? ??? ???????? ??? ?????» ?????????? ???? ???.

7. ?? ????? 4, ?????????? 3, ?????? ???:

«?? ????? ???? ????? ??? ???????? ?? ??????? ?????? ?? ?????????? ???? ???? ??????????? ???????????? ??’ ???????? ????? ????????? ???? ???????????? ???? ????????? 2 ??????????????, ??? ????? ??? ??? ??? ???????? ???????:

?) ???????? ??????? ? ???????? ??????? ??? ??? ??????????? ???????, ??? ??????????????? ??? ??? ?????? ???????????? ?? ????? ?? ????? ???? ???????? ?? ????????? ??? ??????????? ????????? ????? ??? ????????? ??? ??? ????????? ???????? ????? ??? ??? ?????? ??? ??????????? ???????.

?? ????? ???? ????? ??? ???????? ?? ?????????? ???? ????????, ????? ??? ????????? ??? ?????? ????????????, ???? ?? ???????? ??? ???????????? ???????? ??????????? ?????? ??? ?????? ???????????? ??? ???????? ??? ??? ?????? ??? ?????? ?????????? ? ?? ???????? ??? ???????????? ???????? ??????????? ?????? ??? ?????? ??? ?????? ???????????? ??? ??? ?????? ??? ????????????? ??????????, ??’ ???? ?? ??????? ???? ?????????? ??? ??????????? ?? ????? ? ?? ??? ??? ???????????.

?? “??????? ??????? ???? ????????? ??? ????????? ???????? ?? ?? ??????.

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

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

8. ?? ????? 5 ??? ??????????? «???????? ??????» ?????? ???:

«1. ?? “???????? ??????” ????????? ? ?????????? ??? ???????? ?? ???????? ?????? ???????? ????? ?? ??????.

[…]

3. ?? ????? ???? ???????? ?? ??????? ?? ???????? ?????:

?) ???????? ?????????? ??? ????????·

?) ?? ?????????? ??????????, ?? ????? ???????? ???? ????????? ??????? ??????? ??? ????????·

?) ?? ??????? ??? ??? ???????, ??? ?????? ? ?????? ??????????? ?????? ? ??????????, ??? ?????????? ???? ????????? ? ???’ ?????????, ???????? ? ???????? ????????.»

9. ?? ????? 13 ??? ????? ??????? ???, ?? ????? «????????? ??? ????????? ??? ?????», ?????? ?? ????:

«[…]

B. ?????? ?????????

?? ??? ????????? ????? ?????????? ?????????, ?? ????? ???? ??????????, ??? ??? ??????????? ??? ???????, ???? ?? ????????????? ? ???? ??? ???? ???????? ??? ???????????? ???????? ????????? ??? ?? ?????????? ???? ?????????? ??????????, ?????????? ??? ?????????:

[…]

?) ??? ?????????? ??????? ? ?????? ??????? ??? ??? ??????????? ?? ???? ???????, ???? ??? ???????????? ??? ????? 4, ?????????? 3, [????????] ??».

2. **?? ????????? ??????**

10. ???? ?? ????? 4 ??? VAT Act 1972 (????? ??? 1972 ???? ???), ???? ????? ???? ??? ??????? ?????:

«1) a) ?? ????? ????? ??????????? ??? ????????–

i) ?? ????? ?????????????? ??? ?? ??????? ? ??? ?????????? ??? ???????? ??? ???????????? ??? ???????? ???? […]

b) ??? ????? ?????, ?? “?????????, ?? ????? ?? ???????, ??????? ??????? ????????? ? ???????? ??? ???????? ?? ?????, ???? ?? ??????? ???, ???????? ??????? ???????? ???? ??????????? ???? […], ? ?? ??????? ??? ??????? ??????????? ??????????? ??? ??????? ??? ??????? ??????????? […]

2) […] ??? ???? ??????? ??? ???????? ?????, ????????? ??? ?????????????????? ???????? ???????? ???????????? ???? ??????? ??? ???? ???????? ??? ???????? ??? ????? ??????????? ?? ????? ????? ???????? (????? ??? ???? ??????????? ? ??????????), ???? ????? ?? ?????? ? ????? ??? ?? ???? ????????, ?? ?? ???? ???????? ? ???????? ??? ???????? ??? ????.

[…]

4) ???? ??????? ??? ???? ???????? ??? ???????? ??? ????? ??????????? ?? ????? ????? ????????, ???? ????? ?? ?????? ? ????? ??? ?? ???? ????????, ???????? ?? ????? ???????? ??? ?? ?? ???? ????????, ??????????? ???????? ???????????? ??? ?? ???????, ????????, ???? ????? ?? ?? ???? ???????? ????????????, ??? ???? ??????? ??? ?????? 3, ?????????? 1, ???????? f, ??? ???? ????????? ??? ????????? ??? ???????? ? ??? ?????? ?????, ???? ????????, ??? ??????? ??? ??? ??????????? ??? ??????? ??? ?????????????? ??? ?????????????.

[…]

6) ???? ?????????? ??? ????????? ??? ???????? ?????? ? ??? ?????? 2 ??? ??????????? ????? ??? ??? ?????????? ???????? –

a) ?? ????? ?? ?? ????? ??? ???????? ???????? ????????, ????? ??? ?????? 12, ???? ??? ???????? ??? ???????????? ??? ????????, ???? ????? ??????????? ???? ??????????? ? ??????????? ??? ??? ?????????? ? ??? ??????????? ??? ????????, ???? ??? ????????? ?? ???????? ?????? ????????, ??? ??? ????????? ??? ?????? 3, ?????????? 5, ???????? b, ?????? iii), ?

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

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

[…]

9) ???? ? ??????? ??????????? ??? ???????? ????????? ?? ???? ??? ?????? ?? ??????? ???? ??? ???? ?????????? ??????????? ??????????? ??? ??? ??????????? ??? ????????? ??? ?? ???? ??????????? (??? ????, ???? ??????? ?????????: ??????????? ????????), ???? ??????? ??????????? ??? ??? ???????? ????? ???? ??? ?? ???? ?????????? ??? ??????? ??????????? ??? ?? ??????? ??? ???????? ?? ??????????? ????????, ??? ???? ??????? ??? ???????? _____, ????????? ?? ???????? ???????? ??? ??? ?????? ??????????? ? ?????????? 6.»

11. ??????? ??? ?????? 10, ?????????? 9, ??? ????? (???? ????? ?? ???? 2002):

«a) ???? ???????? ???????? ??? ???? ?????? ????????? ??? ??????????? ???? ?????????? ????????, ? ?????????? ??????????? ??? ???? ??? ??????????? ??? ??????????? ?? ????? ?? ??? ?? ???? ???????? ??? ??????.

b) ? ???? ???? ??????????? ??? ???????? ?????????? ???? ??????? ???? ??? ?? ???? ???????????. ????? ??? ??? ?????????? ???, ???? ? ????????? ??? ???????? ??? ???????? ? ? ???????? ??? ??????????? ????? ???????? ???????? ???????? ?????????? ?? ????, ? ???????? ??????? ???? ??? ?? ???? ??????????? ??????????? ?? ??? ?? ??????? ??? ??????????? ??? ?? ???????? ? ?? ???????? ??????? ???????? ??? ??? ?? ???? ???????? ???????? ??? ?? ????, ??? ?? ??????? ???????? ?????? ??? ??????????? ??? ??????????? ? ??? ?????????? ??? ??? ??????????? ???? ??? ????? ?? ???????? ??? ?? ????? ??????? ????????? ? ?? ????? ?????????? ?? ?????, ?? ??? ???? ??????? ? ????????? ? ? ????????.»

12. ????????? ??????? ??????? ?? ??? ?????????? ??? ??????????? _____, ??? ???? ??????? ??? ???, ??? ??????? ?? ??????????? ??????? ?????????????? ??? ????? 19 ??? Value Added Tax Regulations 1979 (???????????? ????????? ??? 1979 ??? ??? ???? ???????????? _____) (S.I. ????. 63 ??? 1979), ???? ????????????, ??????? ?? ?? _____:

«2) ???? ??????? ??? ???? ???????? ??? ???????? (??? ????, ??? ????? _____: ????????) ????????, ?? ????? ?? ?? ?????? ? ??????????? ????? ??? ?? ???? ????????, ???????? ?? ????? ???????? ??? ?? ?? ???? ???????? ???, ??????????? ???????? ???????????? ??? ?? ??????? (??? ????, ??? ????? _____: ???????? ??????????), ???????????? ?? ????????? _____:

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

b) ??, ??????? ??? ???? ??? ?????????, ? ???????? ??? ????????? ??? ??????????? _____ ? ????????? ?? ??????????? ??????????, ? ???? ??? ??????????? ?????????? ??? ?????????? _____.»

III. **?? ?????????? ??????????, ? ?????????? ??? ?? ??????????? ????????**

13. ?? ????????????? ???? ???????????? ???????? ???????? ???? ??????? ??? Cork ??? ??? ?????? ????????? ????????? ???????? ????????? (??? ????: ???????). ????

???????? ?? ?????? ??????????, ??????????? ?? ???????? ?? ???? ??? ??? ??? ?? ?????? ?? ?????????? ??? ??? ???????? ??? ????????, ??????????? ????????? ?????????????? ?????????? ?? ??????????? ???????, ?? Shamrock Estates Limited (??? ????: SEL) (??? ????: ??? ??? ???????? ???????).

14. ???? 8 ??????? 2002, ?? ?????????????? ??????? ?? ?? SEL ??????????? ??????? ??? ????????, ????????? ?????? ???? ??? ???? ????? (??? ????: ??????????? ???????). ?? ??????? ?????????????? ????? ?????????????? ??? ??? ??? (??? ????: ??????? ?????? ?????????).

15. ???? 3 ???????? 2002, ????????? ?? ????????? ????????? ??????? ?? ???????? ????????? ??? ???? ?????????????, ????? ?? ?????????????? ????????? ??? ????? ????????? ??? ?? ???? ????????. ??? ???? ??? 2002, ?? ?????????????? ??????? ?? ??????? ?? ??????? ?????????.

16. ? ??????? ??????? ????? ??? ?? ?????? ?????????? ???????? ???? ???????? ?????????? ?? ???. ?? ???????? ?????????? ????????????. ?? ????????? ?????????? ??? ????? ??????????? ??? ??????????, ? ??? ??????????? ??? ??? ????????? ??? ????????. ?? ????????? ????????? ??? ??? ?????? ???? ???? ???????? ?????????? ?? ?????????? ???????? (6). ???? ??????????? ?????, ? ??? ??????????? ??? ??? ?????????????????? ????? ????.

17. ?? ?? ??????? ????? ??????? ?????? ??? ???? ?????????????? (???? ????? ??? ??? ??? ???????? ???????) ?? ????????? ??? ????? 125 746 ???? ??? ??? ?? ???? ??????. ????????, ?? ?????????????? ??????? ??? ????? 40 000 ???? ??? ?? ??????????? ???????, ? ????? ?????????? ??? ????? ???????? ??? ????????, ????? ? ??????? ?????? ????????, ? ???????? ??? ???????? ??????? ??? ??????????? ??? ??? ????????? ????????? ??? ? ???????????? ?????? ??? ???????? ??? ???? ??? 2002 ???????????? ??? ???.

18. ? ????????? ?????????? ???? ?????? ??? ?? ??? ??? ???????? ??????? ???? ????? ??????? ????????? ??? ?? ?????? ?? ?? ??????? ????? ??? ???? ??????? ??? ???????? ??? ???. ????????, ? ??????????? ??? ??? ??? ?????? ??? ???????? ????????? ??? ???? ??? 125 746 ???? (????? ?? ??? ?????????? ???? ??? 40 000 ????).

19. ?? ?????????????? ??????? ???????? ???? ??? ?? ???? ??????? ???????? ??? ??? ??????? ? ??????? ?????? ??????? ??? Supreme Court (???????? ??????????) ??? ????????, ?? ????? ????????? ?? ?????????? ??? ??????? ??? ?????????? ??? ?? ???????? ??? ?????????? ?? ???????? ??????????? ????????:

«1) ???? ? ???? ??? ??????????? ???????????, ???? ???????????? ?? ??? ??????? Halifax ??? ??????????? ?? ?????????? ???? ????? ??? ???, ????? ?????????? ?????? ??????, ???????? ??????? ??????, ??????????? ? ??????????, ?? ????? ??????? ???????? ??? ?? ???? ?????, ?? ????????? ???, ???? ?? ??????????, ? ?????????????????? ??? ??? ??? ???????? ??????? ??? ??? ???????? ????? ???????? ????????? (??? ????, ??? ??????: ??????? ??? ?????????????), ???? ???????????? ??? ???? Commissioners (?????????? ????), ?? ??????????? ?? ?????? ??? ??????????? ??? ?????????????? ?? ?????????? ???, ???, ??? ??? ???? ???????? ??? ????????? ??? ????????? ??????? ?????????? ???? ??? ??????? ????? ??? ??????? ??? ?????????????, ??? ???????? ? ?? ???? ????????;

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

????? ? ???? ???? ????????? ????? ??? ??????? ???? ?? ?????????? ??? ??? ??????? ??? ??????????????, ?? ?????? ???????????? ???? ??? ??? ?????? ??? ????????? ??? ??????????? ???? ??????? Halifax, ???, ??????????, ??????????? ????? ??? ????? ??? ????????? ??????? ??? ??? ?????????? ??? ??????????????? ??????????? ??? ??????????????;

3) ??? ? ???? ??? ?????????? ?????????? ???? ???????? ??? ??? ??????? ??? ????????????? ?? ?????????? ????? ?? ?????? ?? ???????????????? —

?) ????? ????? ? ??????? ?????????? ????? ??? ?????? ?????? ?? ?????????? ??? ?? ?????????? ? ?????????? ???? ??? ??????? ??? ????????????? ???, ????????? ??? ??? ????????? ??? ? ?????? ????? ??????? ?? ?????????? ??? ?? ?????????? ??????? ?? ??? ?????? ?????????, ???

?) ??? ?? ????????? ?? ?????? ?????????? ?? ????????? ??? ????????? ????;

4) ?????????? ?? ????????? ??? ? ??????? ?????? ??? ??????? ??? ????????????? ????????? ???? ????????? ?????????? ?????????????, ?????? ?? ?????? ?????????? ?? ???????? ??? ??? ??? ???????? ??????? (?? ?????? ??????????? ??? ???????????????? ??????????? ??? ??????????? ???????) ????????? ? ?????? ? ?????? ??? ??????? ??? ????????????? ?? ?????? ????? ??? ?????? ???;

5) ?????? ?? ????? 4, ?????????? 9, ??? VAT Act (????? ???? ???) ?? ???????? ?? ?????? ????????? ??? ????????? ??? ????????? ?????? ??? ???? ??????, ???? ?? ??? ????? ???????? ???? ?? ??????? ??? ?????? 4, ?????????? 3, ??? ????? ???????, ???’ ???? ???????? ??? ?????? ?? ????????????? ???????????????, ???? ????? ??? ???????? ??? ?? ???? ???????? ???? ??? ??? ????? ?????????? ?? ????, ?? ?????????? ???? ????, ???????? ?????????? ?????????? ??? ?? ???? ???????? ? ????? ???? ??????????;

6) ?? ????????? ??? ?? ????? 4, ?????????? 9, ????? ???????? ???? ??? ???? ??????, ????????? ?? ?????????????, ???????????? ??? ?? ???? ???????, ????????? ?????????? ???????? ???? ??? ????? ??? ????????????? ?? ??? ??????? Halifax ??? ??????????;

7) ??????????, ?? ????????? ??? ?? ????? 4, ?????????? 9, ????? ??????? ???? ??? ???? ??????, ?????????? ?? ????????????? ?????????? ?????????? ???????? ???? ??? ????? ??? ??????? ???/? ??? ?????? 4;

8) ????? ??? ?? ???????? ??? ?? ????? 4, ?????????? 9, ??? ????????? ??? ???? ?????? ???? ????????? ?????? ????, ???? ????????? ? ???? ??? ?????????? ??????????, ???? ?????????? ???? ??????? Halifax ??? ??????????, ???????? ??? ??? ???????? ??????? ?? ???? ?? ???????? ??? ????? ?? ?????????? ???? ?? ???? ???????;»

20. ??????? ??????????? ????????? ?? ?????????????, ? ????????? ????????? ??? ?????? ?? ??? ????????? ??? ?????????? ?????????? ????? (? ???????? ?????????? ??? ????: ?????????????), ? ??????? ????????? ??? ? ????????. ?? ???????????? ???? ??? ?????? ????? ???? ??????? ??????????, ??????????? ??? ???????? ??????????, ????????? ?????????? ??????????? ???? ??? ??’ ?????????? ???????? ??? 27?? ???????? 2017.

IV. **???????**

21. ?? ???? ????????? ??? ????????? ?? ?????? ?????????? ??????? ?? ?????????? ??

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

– ?? ? ???? ??? ??????????? ??? ??????????? ??????????? ???? ???????? ???? ??? ????? ??????? (????? ??? ??????? ??????????? ???????) (??. ???????? ??????? ?)·

– ?? ??????????? ????????? ??? ?????, ????: ??? ???????????? ? ??????? ?????? ??? ??????? (??????? ??????????? ???????) ??? ? ?????? ??? ????? ??????? ??? ??? ??? ??????? ????? ???? ????????? ??? ??????? ???? ????????? ?????? ???? (?????? ??????????? ???????) (??. ???????? ??????? ?)·

– ?? ????????? ??? ??????????? ??? ??????? ??????????????? ??? ????????????? ??? ??????? (????? ??????????? ???????) (??. ???????? ??????? ?)·

– ?? ????????? ??? ??????????? ??? ????????????? ??? ?????? 4, ?????????? 9, ??? VAT Act ???? ??? ?????? ? ??? ?? ????????? ??? ?????????? ???? ????????? ?????? ???? (??????, ???? ??? ????? ??????????? ???????) (??. ???????? ??????? ?).

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

1. **?????????? ??????? ?? ??? ????????**

23. ??? ??????? ??? ???? ??????????, ?? ?????? ?????????? ??????????? ??? ??? «????????? ??????????». ? ?? ???? ???? ??????????????? ???????? ????? ??? ?? ??????????, ???? ???? ????? ??? ??? ??? ??? ?? ?????? ??????????? ??????. ??????, ??????????, ?? ?????????? ??????????? ?? ???? ???????? ??? ????????? ??? ??? ???? ????? ????????? ??? ?? ???????? ???????? ? ??????????? ????????. ???? ????????? ????? ??????????????? ???????? ???? «???? ??? ??????????? ??? ???????????? ????????» (7), ??? ??? «??? ?????? ?? ??????? ???????? ??? ??????? ??? ?????? ?????? ? ????????????», ? ??? ??? «? ???????? ??????????? ????????? ??? ?????? ??? ?????? ?? ?????????? ????? ??????? ??? ?? ???????? ??? ??????????? ????????» (8). ??????????????? ????? ??? ??????????? ????????, ??? ????? ??????????????? ??? ??????????? ?? ???? «???????????????» (9), «???????» (10), «?????? ??????? ???????» (11).

24. ???? ??? ????? ???, ? ???? «????????? ??????????» ??????????? ??????????? ?? ??????????? ??? ??????? ??????? ?????? ???????, ???? ?? ??? ????? ????????? ??? ?????, ??? ???????????, ?????????? ??????????? ?????????? ? ?????????? ??? ????????? ??? ???????, ???? ????? *????????, ???????????? ? ????????*. ???????? ??? ??????? ????????? ??? ?? ??????? ????? ?????? ??? ?? ???? ??????????? (?? ??? ????? ??? ?? ??? ????? ???????????)· ???? ??? ????????? ?? ????? ??????????? ????? ? ?????? ?? ??? ????? ?? ??????? ???? ????? ?? ?? ???? ??????????.

25. ? ?? ???? ????????? ??????????????? ??? ?? ????? ??? ???????????? ??????????? ??? ????????? ??? ??????? ??? ??? ????? ????????, ???? ???? ????????????? ??????? ?????? ???? *??? ?????? ????????* ??????? ????????? ??? ??????, ??? ??? ?????? ?? ????? ???????? ???? ?? «???????» ?????, ? ?????? ??? ?????????? ??? ????? ??? ????? (12).

26. ?? ???? ?????, ???? ????? ??? ???????? ???????, ? ???????????? ?????? ??? ?? ?????????? ?????? ??? ??????? ???? ??? ????? ??????? ????????? ????? ???? ??? «???????????????» ??? ??? ? ?????? ??? «??????????? ???????????», ? ????? ???? ???? ?????? ??? ???????? ??????. ????????, ?????? ? ???? «????????» ??????????????? ??? ?????? ??? ????????? ??? ?? ?????? ????????? ??? ??????, ?? ??? ????????? ?? ???.

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

27. ?? ????????, ? ??????? ???????????? ????????? ??????????? ??? ?????? ???? ????????? ??????????? ???? ?????????? ??? ???? ???????? ??? ??????????? ??? ??????????? ??? ????????? ??? ??????????. ??????????? ??????? ??? ??? ???????? ???????: ??????? ??? ?????? ???? ??????????? ??? ??????????? ??????? ? ???????? ??????????? ????? ??????? ?? ??? ???????? ?????;

28. ??? ??????????, ???? ????? ??? ???, ? «????????» ?????????? ??? ??????? ??????? ?????? ??????????. ????????, ? ?????? ???? ??? ????????? ???? ??????? ??????? –???????? ?????????? ?? ?????? ????????????? ?????– ????? ???? ???? ?? ??????? ??? ? ???????? ?????????? ??? ??????? ?????????? ?? ????????? ?? ?????? ?? ?????? ??? ??????????? ????????? ???. ?????????, ??? ??????????, ???? ????? ??? ????????? ??????????, ? ???????? ?????????? ??? ???? ???? ??????? (?????? ?? ?????? ???????) (13).

29. ????? ??? ?????? ?? ??????????? ? ?????? ??? ?? ???? ??????????? ??? ?? ??? ???????????? ??? ??????? ??? ??????????? ???? ??? ?????? ???? ??????????? ??? ??????????? ??????? (14). ???????? ????? ???? ??? ??????????? ?? ??????? ??? ???? ??? ??????????? ??? ??????????? ??????? ??? ??????????? ?? ??????????? ????? ????? ???????????? ??????; ? ????? ???????? ??? ??????? ??????? ????? ??????? ?? ??? ???????? ?????;

30. ??? ?????????? ?? ?? ????? ?? ?? ???? ???????, ????? ??? ??? ????? ???????? ?? ???????? ????????? ???? ???????? ?????????. ? ???????? ??? ??????? ??????? ???????? ???? ????? ?????? ??????? ??? ??? ??????????? ?????? ?????????????? ??? ?? ???????? ??? ??? ?? ???? ?????. ?? ????????? ?????? ?????? ??????????????, ?? ???????? ????? ?? ??????? ???, ???????? ?????????? ???? ??? ????? ??? ???????????, ? ???? ??? ?????? ??????????? ???? ????? ??? ??????????? ???????? ??? ???????. ??, ????, ??????? ????????? ?? ????????? ??? ??????????? ?????? ??? ???????? ??????? ??? ????????? ??????????? ??? ??????????? ????? ????????????? ?????? ??? ???????, ???? ?????????? ??????? ? ?????? ?????????? ?????? ???????????.

31. ??? ???? ?????? ??????, ???? ???????? ????????, ?? ?????? ??? ??????????? ?? ?? ??????? ???? ??????? ????? ???? ?? ???? ???????? ????????? ???????????, ?? ???????? ???? «???? ??? ??????????? ??? ??????????? ??????? ???? ????? ??? ???», ?????????? ??? ??????????? ??? ??? ???????? ???? ???? ??????????? ????? ??? ???.

2. **??? ??? ?????? ??? ??? ???????? ??????????: ?????????? ????????? ??? ????? ??? ??????????? ??? ??????????? ??????? ???? ????? ??? ???**

32. ?? ????? ??? ?? ??????? ??????? ??? ????????? ??????????? ??????? ???’ ?????? *??? ????? ????????* ??? ????? ??? ??????? ??? ?????? ???? ??????????? ??? ??????????? ??????? ???? ????? ??? ??? ????? ??? ??? *?????????? ????????* ???. ????, ???? ??? ????? ??? ??????????? ??????????? ??? ???????? ??? ?????? ?????, ? ???? ???? ??? ?? ??????????? ????????? ??? ????????? ???????? ???? ?? ????? ????????? ??????? ?? ??????????? ???? ??? ????? ???????;

33. ????????? ??? ???????? ?????? ???????, ????????? ????? ??? ? ??????? ??? ??? ????????? Halifax, ? ????? ??? ????? ???? ??????????? ??? ??????????? ??? ???????? ??? ???? ??? ??????????? ??? ??????????? ??????? ???? ????? ??? ???, ?????

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

34. ? ??????? ??????? ???????????? ?? ????: ?????? ?? ???????, ???????, ?? ???? ??? ??? ??????? (??????????) ????????? ???? ????????? ?????? ???? ??? ?????????? ??? ??????????? ??? ??? ??????? ????? ??? ??????? ??? ?????? ??? ???????????? ?? ????? (?????? 1)· ????????, ?? ?????????? ???????? ????????? ???????????? ??? ????????? ??? ??????????? (?????? 2)· ?????, ?? ???????? ??? ??? ????? ?????? ??? ????????? ??? ?? ??? ???????? ???? ??? ????? ??????? (?????? 3).

1. *???????? ???? ????????? ?????? ???? ??? ?????????? ???????????? ??? ?????????? ??? ??? ??????? ?????*

35. ??????, ???? ????? ?? ?????????? ???????? ??? ?????????? ??? ??????????, ?????? ? ??????? ??????? ??? *?????????????? ??????????????*: ?? ?????????? ??????? ???????? ??? ????????? ??? ??????? ??? ?????? ex tunc, ? ????? ?????????? ????? ?????????? ?? ???? ??? ????????? (???’ ???????? ?? ??? ???? ??????????? (15)) ????????? ???? ?????? ??????? ?? ????? ?????????. ? ????????? ??????????? ??? ????????? ??? ?????? ??? ?? ????? ????????? ??? ??????? ??? ??????? ??? ??????, ???? ?????? ? ?? ?????? ?? ?????????? ??? ?? ??????????? ?????? ?????? ?? ????. ????????, ?? ?? ???? ??????? ???? ????? ?????????? ??????? ?? ??????????? ????? ??? ??? ??????? ??????? ??? ?????????? ??? ??????????? ???? ??? ??? ?????? ??? ???????? ????????? ? ??? ???????? ????????? ??? ??????????? (16).

36. ???? ????? ??? ?????????? ???????? ??? ?????????? ??? ??????????? ???? ?????? ?????? ????, ?? ??????????? ??? ?? ????????? ??? ??????????? ????????? ??? ??????? ????????? «??????????» ??? ?? ???? ?????????. ??????? ?? ?? ???????? (17) ? ??? «????????? ? ?????? ????????» ??? ???????? (18), ???????? ??? ??????????? ????? ? ????????? ??? ??????? ??? ??? ? ?????????? ??? (19).

37. ??? ???? ?????? ??????, ??? ?????????? ?? ????????? «????????» ??? ?????????? ??? ?????? ??? ????????? ?????? ??????????? ???? ?? ???? ???????????. ??????, ? ????????? ????????? ?? ????????????? (???????). ?? ????? ???????????, ? ????????? ?? ?????????? ????? ???? ???????? ?? ???? ???? ???????? ??? ??????? ?????????? ? ???????? ???????????? ???. ??? ?? ??????? ????? ??????? ?? ???????, ???? ?????????? ??? ????????? ??????????? ??? ?? ?????????? ????????? ??? ??????????. ??? ?????????? ?? ????????? ??????????? ???????? ??? ?????????? ??????????? ???? ?? ??????? ?? ??????.

38. ????????, ???? ????? ??? ??????? ?????, ?? ???????? ??????? ?? ???????????? ???, ?????? ????? ????? *??????? ??? ????? ??? ?????,* ???????????? ????? ????????? ??????????? ??? ?? ?????? ??? «????????????» ? ?????? ????. ?? ??????? ?????, ????? ??????????? ??? ??????????? ????????? ? ????? ??? ??????????? ? ????? ??? ??????????? ?? ??????????? ????, ????? ??? ??? ???? ????????? ??????????? ??? ?? ???? ??????????.

39. ?????????, ????? ??? ??? ?????? ???????? ??????? ???????? ??????????? ????

????? ??? ???????? ??? ??????? ????? ??? ???????? ????? ?????? ???????, ?? ??????? ???????. ????? ??? ?? ????????? ??? ?????????? ????????, ??????? ??? ??? ????? ????????? ?????????????. ????? ????????? ????: ?? ? ?????? ??????? ????? ??? ??????? ??? ?????? ?????? ?? ??????????? ???? ????? ?????????? ???? ?? ??????? ??? ??????????, ??? ?????? ?? ?????????? ??????????? ????? ???????????, ?????? ? ?? ???? ?????? ???? ???? ???’ ?????, ? ????? ??????????? ?? ??? ?? ???? ???????, ??? ????? ?? ???? ??? ???? *????????????? ?????????????,* ???? ???’ ?????? *????? ????????? ???????? ???’* ???????? ??? ??????? ??? ??????? ??????? ??? ????????? ??? ??????????;

40. ????????, ??? ????????? ???????, ??? ?????? ???? ??? ??????? ??? ??????, ??? ?????? ? ?????? ???? ??????????? ?? ??????? ??? ??????????, ?? *????,* ???? ????? ?? ??? ?????? ???????? ??? ?????????? ?? ??????????, ?? ???? ????????????? ?? ?? ????????? ??? ??????????: ?? ?????????? ?? ?????? ???? ????????? ????????? ??? ??? ?? ?????????? ? ??????????? ???????? ??? ???? ????????? ?????? ???? ?????????? ?? ????? ?? ????.

41. ??? ???? ????????????? ??????, ?? «????? ??????????» ??? ? ??????????? ???????? ???? ????????? ?????? ???? ??? ????????? ??????????? ??? ????????? ??? ??????? ????? ??? ??????? ??? ?????? (20). ???? ??? ???????? ??? ???????, ?? ??????? ??? ?????? ???? ??? ??? ????? ??? ?? ??????? ??????? ?? ???? ??????? ??????? ? ???????? ??? ?????? ???? ????????? ?????? ???? ?????? ?? ??????????? ??? ?? ?????? ??? ??????? ?? ??? ?? ???? ??????? ????? ??? ???????????? ??? ?? ?????????, ?????????????????? ??? ????? ??? ??????????? ??? ?????????? ??????? ???? ????? ??? ???. ???? ??????, ????????, ???? ????? ??? ??????? ??? ???????????? ???? ??? ??? ??????? Halifax, ???? ? ???????? ??? ?????? ?????????? ????? ???? ??? ????? ???????? ??? ?? ???? ?????????.

2. *?? ???????? ??????????*

42. ?? ??????????, ?? ????????? ??????????, ???? ?????????? ???????? ?? ??????????? ??? ????????? ???. ?? ?? ???? ?????????? ????? ?????????? ????????? (21).?? ?????????? ????? ???????? ??????????? ????? ???? ???? ?????????? ??? ??????????? ?????? ????????? ??????? (22), ??? ??? ??? ???????????, ??????????? «??? ????? ??????? ??? ????????????? ?????? ??? ??? ???????? ?????????? ?????????? [???????? ??? ?????????]» (23). ?????????, ?? ??? ??????? ????????? ??? ??? ?????????, ???? ?? ?????????? ??? ?? ???????? ???? ?? ???? ??????????? (24).

43. ??????? ??? ????? ???????? ?? ???? ????? ??? ??????????? ??? ??? ????????? ????: ? ?????????????. ????? ????? ??????? ??? ? ????? ??? ?? ??????????, ??? ???????????, ?????? ???’ ???????? ?? ???????? ????????? ??????????? ???? ???? ????? ??????? ?? ??? ????? ??????? ???????? ???????? ??? ???????, ???? ??? ???? ????????????? ????????? ??? ???????????? ??? ???? ??????????. ??? ??? ???? ??????, ?????? ?????? ?? ??????????? ??? ???????, ??? ?????????? ?? ?????????? ?????????? ?? ?????? ????? ??? ???????????? ????????? ??? ???????????? ?????????, ???? ??????????? ?????????? ? ????????? ??? ?????? ??? ??????? ex tunc ????????? ??? ?? ???? ?????????? ??????? (25).

3. *????????????????????????*

44. ?? ??????? ?????? ??? ??????????? ???? ???????? 1 ??? 2 ?????????? ?? ???? ??? ??? ???????? ??? ????? ??? ??? ??????? ??????? ??? ????????? ??????????.

45. ??? ??? ?????? ??? ????????? Halifax, ? ???? ??? ??????????? ??? ??????????? ??????? ???? ????? ??? ??? (??? ??? ????????? ??? ????????? ??? «????????????» ??? ??? «??????????????» ???????????) ??????? ?????????? ?? ???? ??? ????????? ????????? ?? ?????? ????????? ??? ???? ????, ????? ?? ?????????? ? ???? ??????? ?????? ??? ??? ???????? ??? ?? ???? ????? ??? ?? ????? ????.

46. ???????????, ??? ??? ???????? ??? ???????, ?? ??????????? ????? ??? ?????? ????? ?????? ?? ?????????? ??? ?? ?????????? ??? ???? ?????? ??? ??? ?? ?????? ????? ????????? ??? ?? ???? ??????? ???? ????????? ?????? ???? ??? ?? ?????? ??? ?? ???? ?????. ?? ???? ?????? ??? ???? ????? ??? ????????? ???? ??? ????? ???????? ??? ????????? Halifax ??? ??????????? ??????????, ??? ???? ????????? ??????? ???????????? ??? ?? ???? ?????????.

47. ?????????????? ??? ???????????? ??? ????????? ??????????? ??? ??? ?????? ??????????, ????? ??? ?? ???????? ?????? ?? ???? ???????? ??????? ??? ?? ????????????? ?????????? ??????????? ??? ?????????? ??? ??????????, ?? ???????? ?? ??????? ???????? ????????? ???????. ??????, ???? ??? ????? ???, ????? ??? ???????? ?????????? ????????? ??? ??????????? ?? ???????????? ??? ?????????? ??? ??????????? ???????????? ??? ????????? Halifax. ??? ??????? ???? ?????????? ????? ????? ??????.

48. ??????, ? ?????????? ??? «????????????? ?????????» ? ??? «??????????? ??????????» ??????????? ??? ?? ?????????? ??? ??? ?? ???????? ??? 1970 ?? ??? ???? ????? ?????? ??? ??????????? ??????? ??? ?? ????? ??? ??? ????????? ?????? ??? ???????? ????? (26). ? ?? ???? ???????? ????? ??? ??????? ?????????? ???? ??????????? ??? «??????? [???] ????????? ??? ????? ?? ?????? ??????? ?? ??? ??????? ????? ??? ???????» (27).

49. ????????, ??????? ????????? ??? ????? ??????? ???, ?????????????????? ??? ?????? 13?, ????????? ????? ???????? ???? ???????? ??? ??????????? ??? ??? ?? 1977 (28). ????????, ??? ??? ???????? ??? ???? ??? ????????? ??? ????? ??????? ???, ????????? ??????? ???, ??? ??????? ??? ?? ???? ???????, ????? ??????? ? ?????????? ??? ??????????? ??? ??? ???????????. ??????????, ? ?????????? ??? ??????????? ??????? ???? ?????? ?????????? ????? ??? ??? ???????? ??????????? ??? ??? ?????????, ???? ????????? 2988/95, ?? ???????? ??? ????????? ???? ????????? ??? ??????????? ??????????? ??? ?????? (29).

50. ??????, ? ?????????? ??? ??????????? ???? ????????????? ????????? ????????? ??? ??????????? ??? ?? ?????????? ??? ???????????: ??? ???????????? ?????????? (?? ?? ??????????? ? ?????? ??? ?????) ??? ??? ??????????? ?????????? (??? ??????? ????????? ??? ???????) (30). ?? ???? 2000 (?????? ???? ??? ?? ?????????? ???????? ??? ????????? ??? ?????? ?????) ?? ?????????? ???? ??????? ??? Emsland-Stärke ???? ??? ??????????? ??????? ??? ????? ??????????? ?? ??????? ??? ??????? ?? ?????? ?????????? ??? ??????????? ???????. ????, ?? 2006 ???? ??????? Halifax, ?? ?????????? ??????????? ??? ?? ?? ???? ??????????? ?????? ??? ???? ????? ??? ???, ??? ?????? ?? ??????????? ???? (31).

51. ???? ???? ??? ????? ????? (32), ? ??????????? ???????? ??? ????? ??? ??????????? ??? ??????????? ??????? ??????????? ???????? ??????? ?? ??? ???????? ?????. ? ??????? Halifax ??? ??????????? ????? ????????? ??? ????? ???? ??????????? ??? ??????????? ??? ??? ????????? ??? ????? ???? ????? ??? ???. ????????, ?????????? ????? ??? ?? ????????????? ????????, ??? ????????? ?? ??????????? ?

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

52. ????????, ? ???????? ??????????? ??? ????????????? ??? ?????????? ????????? ??? ??????? ???????? ??? ??????? ?????????????????? ??? ??????? (33). ????????, ? ????? ??????????? ??? ??????????? ????????????? ???? ?????????? ????????? ?? ?????? ?? ??????????? ??????????? ???? ???? ?? ????????? ???????. ?????? ???? ???? ??? ??????? Halifax ??? ?????????? ??????? ??????????, ??? ????? ??? ????, ????? ?? ?????????? ?????????? ??????????? ???????????, ?? ?????? ? ??????????? ????? ?? ????????? ??? ???????? ???????? ??? ?? ????? ?? ??????????? ???????.

53. ???????, ???? ??????????? (34), ??? ??? ??? ??????????? ??? ??????????? ??? ??????????? ????????????? ???? ????????? ????? ??? ?? ???? ??? ?????????? ?? ????????? ??? ??? ?? ???? ?????????? ????????? ?????????. ????? ?????? ??? ? «???? ?????» ??? ???????? ???????? ?????????? ??? ?? ?????????? ??? ??????????? (??? ????? ??? ???? ????????? ? ??????? ??? ?? ????????????? ????????? ?????????). ??????, ???? ????? ??? ????????? ???? ? ????????????? ??? ??? ? ??????????? ?????????? ??? ?? ?????????? ??? ???????????, ?? ???? ?????? ?????????? ?? ?????????? ???, ???? ?????, ? ????????????? ???????? ??????? ?????????, ???? ?? ????????????? ? ???’ ???????? ??????? ??????????? ??? ??????????? ????????????? ???? ?????????? ????????.

54. *?????*, ???? ???? ??? ??????????? ?? ??????????, ???? ?????????? ?? ??????????? ??? ???????????, ? ????????????? ??? ?????? ?? ??????????? ??? ???????? ??????? ? ?? ????????????? ??????????? ??? ?? ????????????? ???? ??????? ????? ??? ?? ???? ????????? (35).

55. ?? ?? ?????? ??? ????? ??? ???? ?? ??????????? ?? ?????????? ??????????? ??? ????????? Halifax ?? ????? ?? ??? ??? ????? ???????.

4. *???????*

56. ??????? ??? ????????????, ???????? ??? ?????????? ?? ????????? ??? ????? ??? ??? ??????? ??????????? ??????? ?? ????:

?? ????????? ??? ????? ??????? ??? ??? ?? ?????? ????? ??? ?? ???????? ??? ?? ???? ??????? ???? ????????? ?????? ???? ?????? ?? ??????????? ?? ??????? ?? ?????? ???? ??? ??????? ?? ?????? ???? ??????????? ??? ??????????? ??????? ??? ????? ??? ???. ???? ????????? ??????:

– ???????? ??????? ??????, ??????????? ? ??????????, ?? ?? ????? ? ?? ???? ???? «??????? ?? ????????»·

– ?? ????????? ???? ? ???????? ??????? ??? ????????? ???????????, ???? ?????? ?? ??????? ??????? ????? ??????????? ???? ??? ??? ?????? ??? ????????? ??? ??????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C?255/02, EU:C:2006:121).

3. **??? ??? ???????? ??? ??? ??????? ???????????? ??????????: ?? ??????????? ????????? ??? ????? ??? ??????????? ??????? ??? ????? ??? ???**

57. ?? ?? ??????? ??? ?? ?????? ??????????? ??? ???????, ?? ?????? ?????????? ????? ??? ?????? ???????????? ??????? ?? ??? ??????????? ??? ??????????? ???

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

1. *?? ??? ??????????? ??? ??????????? ?????????? ??????? ???? ????????? ?? ?????????? ??? ???*

58. ?????????? ?? ?????????? ??? ????????? ??????????? ????????, ? ?????????? ???? ??????? ?????? ????? ?? ????? ?????????? ??? ????????? ??? ???????????.

59. ??????, ?????? ?? ????????? ??? «?? ???????? ???????, ???? ??? ?????? ???????? ??? ??????????? ??? ?????????? ?? ???????? ????????? ??? ????? ??????? ??? ??? ??????? ?????????? ??? ????????? ??? ?????? ???? ??? ????????? ??????, ????? ?? ?????????? ??? ???????? ?????????? ????????????? ??? ?????? ? ???????? ?? ????????? ???? ??????????? ??? ??? ????????? ????? ?????» (*????????????? ??????????*). ????????, «?????? ?????? ?? ????????? ??? ??? ?????? ????????????? ????????? ??? ? ?????? ?????? ??? ???????? ??????? ????? ? ???????? ?????????? ??????????????» (*??????????? ??????????*) (37).

60. ?? ?? ???? ??? ??????????? ????? ???????????, ?????????? ??? ?????? ?? ?????????? ????????. ????? ??? ????? ????? ???????? ???? ??? ?????? ???? ??? ????? ?????????? ???? ?????? ??? ????????? ??? ?????????? ??? ??????????? ?? ????? ?? ???????????? ?????????? ??????????. ? «?????????????» ?????????? ????? ??? ?????? ????? ??? ???????? ??? ?? ???? ????? ? ?????? ????? ???? ??????????. ? «????????????» ?????????? ????? ??? ???????? ????? ??? ?????????????? ???????. ??????? ???? ??????? ??? ?? ???? ??? ??????????? ????????.

2. *? ???????????? ??????????: ?????????? ?? ?????????? ?????????? ???? ??? ????? ??? «???????? ????????»;*

61. ?? ?? ?????? ??????? ???????? ?? ?? ?????????????? ?????????? ?????????? ?????????? ??? ?????????? ???? ??? ????? ??? ??????? ?????????? ??? ??? ???????. ?? ?????????? ????? ??????? ?? ????????? ??? ??????? ???? ???? ??????? ????? ??? ????? ??? ???????.

62. ?? ???????????? ??????????, ?????????? ??? ?? ?????????? ????? ?? ????????? ?? ??????????? ??? ?????? ??? ????? ??????? ??? ????? ? ???????? ???????? ??? ???? ?????????????? ??? ??????. ?? ?? ??????, ? ????? ?????? ??? ?????????? ?????? ???, ???? ????????, ? ????? «?????????? ??????????????» ?? ?????????? ???? ?? ???? ?????? ????? ??? ?????????? ??????????.

63. ? ?? ???? ???? ????? ????? ????????. ?? ?????????? ???? ????????????? ??????????? ??? «? ??????? ???? ????? ????????? ? ????????????? ?????? ????????????? ??????? ??? ????????????? ??????? ????????? ?? ????????? ?? ??? ?????? ????????, ????? ?? ?? ?????????? ?????????? ?????? ?????????? ??? ???????????? ??????? ??? ??? [...] ? ?????????? ???? ???? ?????????? ?? ???????? ?? ?????????? ?? ???????????? ??? ???? ???? ?? ??????? ?? ?????????? ?????? ???» (38).

64. ?? ???? ?????, ??? ??????? ?????? ????????? ??? ???????? ??? ?????????? ??????? ?????. ?? ?? ??????, ? «??????» ??? ?????????? ?? ??? ??????????? ?????????? ??? ????????? ??? ?????????? ?? ??? ??????? Halifax ??? ?????? ?? ????? ????? ??? ????? ? ??????? ?????? ??? ??????? ??? ?????????? ??????????: ? ????????

?????. ?????, ????????, ?? ???????? ?? ????? ? *???????* «??????» ??? ????? ???????;

1) *? ??????? ?? ??? ????? ??? «???????? ?????????» ?????????*

65. ?? ????? ???’ ????? ?? ??? ?????? ?????????? ??? ????? ?? ??????????? ??? ??????????, ? ????? ????? ?????????? ??? ??? ??????? ??? ?????????, ????: ? ????????? ??? ?????????? ??? ?? ????????? ??? ?????? «??? ???????» ???????, ???? ??? «???????? ?????????» ??? (39). ???? ????????????? ??????? ???? ??? ???????? ???????? ??? ?? ???? ??????????? ??? ?? ?????????? (40). ???? ????????, ??? ?? ?????????? ??? ????????? ??? ????????????? ??????????? ??????????? ???’ ????? i) ? ???????????? ??? «???????? ?????????», ii) ? ???????????? ??? ?????? ????, ??? iii) ? ???????? ??? ? ?? ???? ?????? ??? ??????????? (41).

66. ??? ??? ?????????? ??????? ??? ?????????? ????????? ??? ?? ?? ??? ???????? ??? ?????? ??????????? ?? ??????? ???????????? ???????. ??? ?? ???????? ?? ??????? ???? ???? ??? ??? ?? ??????????? ?? ?????? ??? ??? ???????? ??? ????? ??? ????? ??? ???????? ????????? ??? ??????? ??? ??? ????? ?????????, ???????? ??? ???????? ???? ??????????? ??? ??? ????? ??? ???: ??? ????????? Halifax, Part Service ??? WebMindLicences (42).

67. ???? ??????? Halifax, ? ????????????? ??????? ?? ??? ????????? ???????? ???’ ?????? ??? ?? ?????????? ??? ???????? ??????? ???? ????? ??? ????? ???? ???????? ??? ?????? Halifax ?? ?????????? ?? ????????? ?? ???????? ??? ????????????? ??????? ??????? ?? ??? ???? ??? ??? ?????? ??? ?????????? ?? ????????? ??? ???? ??? ??? ??????? ?? ????? ?? ??? ????? ???????. ?? ????????? ????????? ?? ????? 17, ?????????? 2, 3 ??? 5, ??? ????? ??????? ??? ??? ??? ?????? ??? ?? ???????? ????????? ??? ????? ??? ??? ???????, ??????? ?? ??? ???? ??? ??????????? ????????????, ??????? ??? ?????? ??????? ?????? ???? ???????????? ??? ???? ????????????? ??????? (43). ?? ????????? ???? ??? ????? ??? ?? ???? ????????? ?? ?? ????????? ?? ?????????? ???? ???? ??? ??????? *???* ????????? ?? ??????? ???????? ???? ??? ????????? ??? ?????????? ????????? ?? ??????? ?? ?????? ??? ???????????? ??? ??? ??? ??????? (44).

68. ???? ??????? Part Service (45), ?? ??????????? ???????? ????? ??????? ??? ????????? ????????????? ????????? ??????????? ?? ???????? ???? (?? ????? ???????????? ??? ????????, ?? ????????????, ?? ???????? ??? ?? ???????). ?? ????????? ????????? ??? ?????? ???, ???? ???????? ??????????? ?????? ???????? ????????, ????? ?????? ????????? ?? ?????????? ????????? ?????? «??????? ???? ????? ????????????? ????????? ???????????? ??? [????????? ??? ?????? ??????]» (46). ???? ?? ???? ??????????, ? ??????? ??????????? ??? ???????, ??? ??????? ???, «[?? ????????] ???? ??? ????? ??? ?????? 11, A, ?????????? 1, [???????? ??,] ??? ????? ???????, ???? ??? ??????? ????? ?? ????????? ???????? ??? ??????????, ??? ????? ????? ? ????????? ?? ????? ? ??????????? ? ? ??????? ????????? ??? ??? ?????» (47).

69. ???? ??????? WebMindLicences (48), ?? ??????????? ???????? ????? ??????? ????? ??????? ???? ?????? ????, ???????????, ?? ???????? ?????? ???????????? ??? ??? ?????????? ??? ??? ??? ??? ???????? (????? ???? ????????? ????? ?????????? ??????????? ??? ??? ??? ??????? ????? ??? ??????????). ???? ??????? ??? ??? ??? ?? ???? ?????????, ?? ?????????? ??????? ???? ????? ??? ???????????? ????????? ??? ??????? 2006/112 ??? ???????????? ??? ???? ??????? ??? ????????? (49). ?? ?????????? ?????? ??? ??? ?? ????????? ????????? ??????????? ?? ?? ????????? ????? ?????????? ??? ??? ??????????. ??????, «? ????????? [?? ?????] ??????????? ?? ?? ????????? ?????????? ???? ????????????? ????? [?????????]».

70. ???? ????????, ?? ???? ??? ??????????????? ??????????, ????? ????? ??? ? ?????? ??? ???????????? ????????? ??? ?????????? ??????? ?????? ????? ??? ????? ?????? ?? ?????????? ????? ?????????? ?? ????? ?????? ?? ?????????? ?? ????????? ? «????????????? ??????????».

2) *? ???????????? ??? ??? ???????? ?????????? ??? ??? ???????????*

71. ?? ?????? ??? ?? ?????? ?????????? ??? ????????? ????? ??? ?? ???????? ????? ????? ?? «???????? ?????????» ??? ?? ?????????? ???? ?????????? ?????????? ??? ??????? ??? ??? ????? ?????????.

72. ???? ??? ??’ ?????????? ????????, ? ???????? ?????????? ??? ????? ? ??? ?????? ????????? ???? ??? ?? ?????? ?????? ??????? ???? ??? ????? ??????? ??? ???????? ?? ????? 2, ?????????? 1, ?? ????? 4, ?????????? 3, ???????? ??, ??? ?? ????? 13?, ???????? ??, ??? ????? ??????? ???. ? ???????? ??????? ????????? ???? ??? ??’ ?????????? ???????? ??? ?????? ??? ?? ???? ????????? ????? ? ?????????? ??? «????? ?????????» ? ??? «????????? ?????????? ????????????» ??? ???????.

73. ??????? ??? ????? ????? ?? ?????????? ????????? (50). ?????, ????, ??? ? ???????? ??? ?????? ??? ????? ????????. ?? ?????????? ??? ????????? ????? ???????.

74. ???????? ????? ????????? ?? ??????????? ????? ???? ?? ????????? ??? ????? ??????? ??? ???? ?????? ???? ?? ??????? ?? ????????? ????????? ?????????? ????????????. ??????, ?? ?????????? ?? ??????? ????? ???????: ???? ????? ? ???? ????????; ???? ??? ????? ???????, ?? ??? ?????? ???????????? ??? ?? ??????? ??? ????????? ???? ???? ????? «??? ???????? ???????» ??????????. ???? ?? ??????????????? ???? ??????? Halifax ?????????, ????? «?????? ???????? ??? ??????????? ??? ?????????? ?? ???????? ????????? ??? ????? ???????» (51) ?? ???? ??? ???????.

75. ?????????? ????????? ???? ??? ??’ ?????????? ???????? ??? ??? ??????? ?????, ? ???????? ?????????? ??? ???? ??? ???????? ???? ??? *?????? ?????????? ????????? ?????? ?????????? ??? ??????????, ?????????? ???????.* ?????? ? ?????????? ??????? ??? ? ??????? ?????? ????????? ??? ???? ??????????, ???? ????????, ?????? ?? ????????.

76. ??? ??? ???????? ?? ??????? ??? ? ????? ??? ????????? ????? ???? ??? ??? ? ?????? ??? ?? ???? ????????? ????? ? ?????????? ??? «??????????, ?????????? ???????». ??? ?????? ????, ????, ???’ ??????, ?? ????? ?????? ??????????? ??? ???????, ??????? ?? ??? «??????? ?????????» ? «????????????», ?????????? ??? ????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ????????? Emsland-Stärke ??? Halifax. ?? ?? ??????, ?? ? ?? ???? ?????????? ????????? ??? ? ????? ????? ????? ??????? (??? ??? «??????????» ? «??????????»), ????, ???? ??????? ????, ? ???????? ??? ??? ??????? ????? ??? ????????? ???? ??? ??? *??? ?????????? ??? ????? ????* (52).

77. ?? ?????? ????? ??????? ????? «??????????» ? «??????????» ??? ?????????????, ????? «????????» ? «?????????» ?????????? ???????? ??????????. ?? ??? ??????????? ?????????? ?? ???????? ???.

78. ? ?????????? ???? ????????, ???? ?? ????? ???, ??? ????? ?????????? ??????????. ?? ????????? ??????? ??? ????.

79. ??????, ???? ????? ???????? ?? ????? ?????? ??? ????????? ??? ????????? Halifax.

????? ??? ???? ??? ????? ? ???? ??????????, ???? ?? ?????, ???? ????? ????????? ?? ??????? ????? ?????. ????, ??? ???????????, ?????????????? ???? ??????? Halifax, «???? ???? ?????????????? ?????????? ?? ??????????, ? ????????? ????????? ?????? ?? ????? ??? ??????, ? ?? ???????? ??? ????????? ??? ???? ??????????? ?’ ???? [...] ???? ? ??????? ??? ????????? ??????? ?????? ?? ???????? ?? ????????? ??????????, ?????? ????????? ??? ????????? ??? ??????? ?? ????? ?????????? ??????????, ???? ?? ??????? ?? ?????????????? ?? ????????? ?? ???????? ??? ?????? ??? ?????????? ??? ???? ??????????» (53).

80. ????? ???????? ??? ? ???? ??? ??????????? ??? ?????????? ??????? ?? ???????? ?? ?????????? ?? ??? ????? ??? ?????????? ??? ??? ????????? ???????. ????? ?? ?? ?????? ????????? ?? ??????????? ????????? ??? ?? ???? ????? ?? ????? ??? ?? ?????? ?????????? (54). ???????? ?????? ??? ? ?????????????? ???????, ??? ?????????? ??? ????? ???????? ??? ?????????? Halifax ?? ????????? ????????, ?????????? ?? ????? ???? ?????????? ??? ?? ??????????? ??? ??????????? ??? ?????????? ????? ???????? ?????? ?????????? ??? ?? 2000, ???? ???????? ??? ????????? Emsland-Stärke (55). ?? ?? ??? ??????????? ??? ??????????? ???? ?? ???? ??????? ?????????? ?? ??????????? ?? ???, ???? ??? ????? ??? ? ?? ???? ?????????? ????? ?? ??????.

81. ????????, ????? ??? ?? ??????????? ??? ?? ??? ??????????? ??????????? ??? ???????? ??????? ?? ????? ???????? (56), ???????? ??????????? ?????????? ????????? ????? ? «???????? ??????????», ????? ??? ? ?? ???? ??????????, ?? ?? ?? ????, ??? ??????? ?? ??? ?????????? ??? ?????????? ? ??????????? ????????, ???? ?? ????????? Halifax, Parts Service ??? WebMindLicences (57), ?? ?????? ??????????? ?? ?????????? ???????? ??? ???????? ????????? ????? ??? ??? ????? ????.

82. ??????, ?? ??? ??????????? ??????????? ?????? ???? ??????? Emsland-Stärke. ???? ?? ???? ???????, ??? ??? ?? ?????????? ???? ????????????? ????????? ????? ????, ?? ??????????? ????? ????????? ???’ ?????? «?????????/??????????» ??? ??????????? ??? ?????????????? ???? ???? ??? ??????????? ??????? ??? ?????????? 2988/95, ??????? ?? ??? ????????? ??? ?????????? ?????????? ??? ?????? (????? 4, ?????????? 3) (58). ????????? ?????????? ??? ???? ???????, ???? ???? ?? ?????? ?? ???????? ??? ? ?? ???? ??????? ?? ???? ???????? ???? ??????? Emsland-Stärke ?? ? ?????????? ???? ???????? ratione temporis (59). ????????, ?????? ?? ?????????? ??????? ??? ??????? ?????????? ????????? ????????????? ?????? ??? ?????? 4, ?????????? 3, ??? ?????????? 2988/95 ??? ??? ??? ??????????? ??? ??????????? ??? ?????????? (60). ?? ???? ??? ?????????? ????????? ?????, ? ??????? ??? ????????? ??? ?? ?????????? ??? ?????????? ???? ?? ?????????? ??? ??? ???????? –?????? ? ?????????? ??? ????????????? ??? ??? ???????????? ????????????– ?? ??????????? ?????????? ?????????? ???? ????? ?? ?????????? ???????????? ??? ?????????? ??? ??? ???????? ?????.

83. ?????, ? ???????? ??? ??????????? ??? ????? ??? ??????????? ??? ??????????? ??????? ???? ????? ??? ??? ??????????? ?????? ?? ???????????? ?? ??????? ????? ????? ???????????? ?????? ????? ??????? ??????????. ??????, ???? ??? ????? ???, ?????????? ????? ???????????? (???? ??? ????????) ? ??????????? ??? ??????? ??? ??????????? ???? ???????? ?? ???? ???? ??? ??????????? ????? (???????? ??? ???????? ????????? ??? ???????) ?? ??? ?????? ??? ??????????? ???? ??????????? ??? ??????? ????? ?????????. ????, ??? ??????? ????????? ??? ??????? ??? ???????? ?????????? ??? ??? ?????????, ?? ?????? ??? ???????? ????????? ??? ????? ???? ???????????? ?????? ?? ?? ??????????, ???? ???? ????? ???? ?????????????? ?? ?? ???? ?????? ????? ??????? (61).

3) *? ???????? ??? ???????? ??? «??????» ???? ??? ????? ???????*

84. ??????? ??? ??????? ???????, ???????? ?? ?? ????? ????? ? ?????????? ??? ????????? ? ????????, ???? ????????? ?? ?????????? ? ?????????? ??? ?????????????? ????????? ??? ????????? ????????? ??? ??????????.

85. ???? ??? ????? ???????, ? ??????????? ????????? ?????????? ???? ??????? ??????? ??? ??????????? ??? i) ?????? ?????????? ??? ????????, ????? ??? ??? ii) ????????? ??? ???????? ?????????? (?? ?????? ????????? ??? ??? ????? ??? ????? ??????????).

86. ???????? ?????? ?? ????????? ? ?????? ??? ???????? ??? ???? ?????????? «??? ??? ?????? ????????????» ??? ??? ?? ???????? ????????? ????, ???? ??????????? ??? ????? 4, ?????????? 3, ???????? ??, ??? ??? ????? 13?, ???????? ??, ??? ????? ??????? ???.

87. ? ?????? ?????????? ??? ???????? ??? ???? ??????????? ???????? ????, ?? ????? ???????, ?? ????: ? ????? ?????? ???????????, ?? ????????? ????????????. ? ?????? ??? ?? ???? ??????????? ????????????? ???? ?????? ??????? ??? ????????? ??? ??? ????????? ??? ??????????.

88. ???? ?????????? ?????? ??? ???????? ??? ?????? ??????? ??? ????????? ????????? «??? ? ????????? ??? ? ??????? ???? ??????? ?????? ?? ????????? ???? ????, ??? ?????????? ???????? ?? ?? ??????? ? ???????. ??? ??? ??????? ??? ?????????? ??? ?????????? ? ???????? ?????? ???? ??? ??????? ???????, ? ?????? ??? ?????? ???????????? ?????????????? ??? ??? ??????????? ??? ???????? ??????? ???? ?? ????? ?? ?????? ????????? ??? ?????????? ????????? ??? ?????????? ?????????? ??????????, ???? ???? ?? ?????? ??????? ?? ?????????????? ??? ??? ????? ??? ? ??????? ???????». ?? ???????? ? ?????????? ?????? ?????????? ??? ??????? ??? «?????????? ?????????? ???????????» ??? ??????? ??? ?????? ???????????? ????? ??? ??? ?????????? ???? ???????? ?? «???????? ?? ???? ??? ???????? ???????» ? ?? «[????????] ?? ???? ??? ???????» (62).

89. ? ?? ???? ????????? ?????????? ??? ? ?????? ??? «?????? ????????????» ??????????? ?? ??? «????? ??? ???????? ??? ?? ?????????? ?????????», ????? «?????????? ?????????? ???????????» ? «?????????? ??? ???????? ???????».

90. ???? ??????? ??? Goed Wonen I, ?? ?????????? ?????????? ???? ???????? ?????????????? ?????????? ?????, ????????????? ??????????? ??? «[?]??? ?? ???????? ???? ???????? *??? ??????? ??? ?????? ?????????? ???? ?????? ??????????, ? ?????* *?????????? ?? ????? ??? ?????????? ?????????, ?* ??????? ???? ???????? ??????,

??????, ???’ ?????, ?? ??????????? ??? ???????? ?????» (? ??????????? ???? ???) (63).

91. ????????, ? ?????? ??? ??????????? ????????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ??? ?????? 13?, ???????? ??, ??? ????? ??????? ??? ?????? ?? ???????????? ?? ? ??????? ??? ???? ? ??????? ????????? ?????????? ??? ????? ???? ??? ???????? ???????.

92. ???? ??? ????? ???, ??? ?????????? ??? ????? ??? ??????????? ??? ??????? ??? ?????? ????? ??? ??????? ?? ??? ?? ???? ?????.

93. ??? ?? ???? ?????????? ?????? ???? ?????????? ?????????, ????? ?? ??? ????????? (????? ??? ???? ????? ?? ???????? ??? ?? ??????? ???? ??????????): i) ?? ??????? ??? ? ??????????? ??????? ??????? ?? ???????? ??? ??????? ??? ??? ?????? ??? ??????????????· ii) ?? ??????? ??? ? ??????????? ??????? ??????, ??????? ??????????, ????? ???? ???????? ???????? ??????????? ??? ?????? ???, ?? ???????? ?? ?? ???????? ??? ????????· ??? iii) ?? ??????? ???, ???? ?? ??????? ???? ??????? ????????, ????? ???? ??????????? ????? ???????? ??????????, ??? ?? ????? ??? ????????? ?????? ????????, ?? ????? ???????? ??? ?? ????????????? ???? ????????????? ??? ??????????? ???? ??? ?????? ??? ??? ????????, ????, ??????????? ????? ??? ??????? ??? ?? ??? ??????????, ???????? ??? ?? ??????? ??? ??????? ??? ??????????? ?????????.

94. ??????? ?? ??? ??????? ??? ???????????, ??? ??? ??? ????????? ??? ?????????? ??? ??????? ??????????, ???? ??????????? ???? ???? ??? ?????? ?????, ? ??????????? ???? ??????????? ????????? ?????? ??????????? ?????, ? ????? ?????? ??????? ????????? ??????????? ????? ??????????? ???????? ??????????? ??? ?? ?????? ??? ??? ????? ?? ???? ????? ????? ??? ????????, ?? «?????????? ??? ??? ?????? ???????????» ?????????? ???? ????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ??? ?????? 13?, ???????? ??, ??? ????? ??????? ???.

3. *? ??????????? ??????????: ???? ? ????????? ??????????? ????????????? ? ??????? ??????;*

95. ???? ????? ??? «???????????? ??????????», ?? ?? ??????? ??????? ??? ????????? ??????????? ????????, ???’ ??????, ??, ???? ??? ??????????? ??? ??????? ??????, ?? ??? ??? ???????? ??????? ?????? ?? ?????????? ??????? ? ?? ????? ??? ??????? «????????».

96. ????? ??????? ???’ ????? ?? ????????? ???????????? ? ?????? ??? «??????? ??????».

97. ?? ??????????? ???????? ???????????? ?? ??????? ???????????? ??????? ??? ?????????. ????? ??? ??? «????? ?????» (64), ??????? ????????? ??????????? ???? «???? ?????» (65) ? ???? «???????? ?????» (66) ??? ?????????? ???? ???????? «[??????????????] ??????????? ??????????????» (67). ????? ??????????? ?? ??? ???? ????????: «? ?????? ?????? […] ??????????? ???? ?????????» ??????????? ??????????????? (68). ????? ???? ????????? ??????????? ???? ????????? ??????? ?? ?? «????????????» (69).

98. ???? ?? ???????? ??????????? ????????? ??? ???????????? ????????? ????? ??? ????? ????????. ?????? ???? ?? ???? ???????: ??????? ??????????? ??????????? ????? ??? ?? ?????????? ??? ???????, ???? ??? ???????? ??? ?????; ? ????? ??????? ?? ??????????? ???.

99. ???? ??????? Part Service, ?? ?????????? ?????? ??? ????????? ??? ????????? ????????? ?? ? ???????? ??????????? ????????????? ???????? ??? «?????» ????? (70). ?

?? ???? ????? ????? ??? ??????????? ?????????? ???? ??????????? ???? ?????? ??? ???????????. ???? ?????????, ???? ????????? Halifax ??? Weald Leasing ??????? ??? ??? ????????? ????????? ??????????? «?????? ?? ???????? ???????????????? ?? ????? ???? ??????????? ???? ??? ????? ?????????? ??????????? ??????????????» (? ??????????? ???? ???) (71). ???? ??????? Malvi, ??? ??? ?????? ??????????? ?????? ?? ??????? ?? «?????????? ???? ??????????? ??? ????????? ??????????????» (72).

100. ??????????? ?? ?????????? ????????, ?? ?????? ?????????? ???’ ?????? ??? ??? ?????????? ???????? ??? ??????? ??? ???????????. ??????, ??????????? ??? ??????????? ???????????????? ????????? «?????? ??????», «????? ??????», ? «?????? ????????» ???????????.

101. ???? ??? ????? ???, ?? ??????????? ???????? ?????? ?? ??????????? ?????????? ??????? ?? ??? ?????????? ??? ??????????? ?? ????????? ???? ? Halifax ??? ? RBS. ?? ?? ???????? ??????? ????????? ?? ????? ???? ?????????? ??????????? ???? ??? ?????????? ??????????? ??????????????, ???? ?? ???????? ??? ?????????. ? ?? ???? ?????????? ??? ????? ?????? ??? ???????? ????????, ???? ??????? ??? ?? ??? ???? ??? ??????????? (73), ? ????? «?????? ?? ???????? ?? ????????? ???????????, ?????? ????????? ??? ????????? ??? ??????? ?? ????? ??????????? ??????????, ???? ?? ??????? ?? ?????????????? ?? ????????? ?? ???????? ??? ?????? ??? ??????????? ??? ???? ??????????» (74).

102. ??????? ???? ??? ??? ?? ???? ?????????? ??? «??????? ??????», ??????? ??? ??????????? ?????? ??? ????????? ?? ?? ??????? ??????? ??? ????????? ???????????, ????: ????? ??????? ??????? ? ??????? ?????? ??????????;

103. ?? ?????? ?????????? ????????? ??? ????????????: ???? i) ??? ??? ??? ???????? ??????? ???? ii) ??? ??? ??? ???????? ??????? ??? ??? ??????? ???????? ??? ??????.

104. ???? ??? ????? ???, ? ????????? ??????????? ???????? ?? ???? ????????? ?? ???? ??????? ????????. ????? ???????? ??? ???? ??? ??????????? ??????????? ?????? (???? ??? ??? ??????????? ?? ??????????), ?? ????? ????? ??? ???? ?????? ??????????, ???? ?? ?????????????? ?? ?????? ??? ??????????? ?????????? ????? ??? ? ????????? ??? ??? ????????, ????? ?? ?????????????? ??????????? ????? ??? ?? ??????? ????? ??? «?????» ?????????? ???? ??????????? ?????????????. ???’ ?????? ? ?? ???? ?????????? ?? ???????? ??? ????????? ??? ???????????? ???????????.

105. ?? ?? ??????, ? ???????, ??? ??????? ??? ??? ????? ?????????, ????? ?????? ?? ????? ??? ? ??????????? ??? ??? ??? ??? ???????? ???????. ????? ??? ??????? ????? ???????????, ????? ??? ??????????? ??????? ??? ?????? ?????????? ?? ??????????? ??? ????? ? ?? ?????? ??????? ?? ????? ?? ?? ????? ?????? ?? ?????????? ? «??????? ??????» ????? ??? ?? ????? ????? ? ??????? ????? ??????.

106. ??????, ???? ??? ?? ???? ??????????? ?? ?????? ?????????? ??????? ?? ????? ????? ??? ?? ????????? ??????????? ??? ??? ??????????? ??? ???????????? ?????????. ?????? ????? ?????? ?? ?????????????? ??????????? ? ?????????????? ??????? (75). ?? ???? ?????, ??????????? ?? ???????? ?????? ?????????? ? «??????? ??????» ??? ??? ??? ???????? ??????? ?????????, ?? ?????? ?????????? ??????? ?? ????????? ???????? ?? ?????????? ??????? ??? ????? ??????????.

107. ????????, ??? ??????? ??? ??? ????? ?????????, ?? ?????? ???????? ??????? ??? ??? ??? ???????? ??????? ??? ?? ???????? ???? ???????, ??? ???? ??? ?? ?????? ?????? ????????? ??????????, ???? ????????? ?? ?????? ????????? ????????? (?????? ??

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

4. *???????*

108. ??????????? ????? ??? ????????????, ???????? ??? ?????????? ?? ????? ??? ??? ???????? ??? ??? ??????? ???????????? ?????????? ??? ???????? ????????:

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

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

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

??? ?????????? ???? ????? ??? ?????? ?????, ????:

– ??????? ?????????? ??????? ?????? ???? ?????????? ???? ???? ??? ???? ????? ?????????? ???? ????, ??????????? ???? ??? ?????·

– ? ?? ???? ??????? ??????, ??????? ??????????, ????? ??????????? ???????? ?????????? ??? ?? ??????, ?? ???????? ?? ?? ???????? ??? ????????· ???

– ???? ?? ??????? ???? ????????, ?? ?????? ????????????? ???? ?????? ????????, ?? ?????????? ? ?????????? ???? ???? ??? ???? ??? ???????? ??? ????????? ??? ?????????? ??????? ?? ??? ??????????? ???? ???? ????????????? ??? ?????? ??? ??? ???????????? ????????·

?? ????????? ???? ????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ??? ?????? 13?, ???????? ??, ??? ????? ??????? ??? ? ??????????? ??? ??????????? ????????? ?? «?????????? ??? ??? ?????? ????????????» ???? ??? ?????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ?? ???? ???????.

4. **??? ??? ?????? ???????????? ??????????: ???????????????? ??? ??????????? ??? ???????**

109. ?? ?? ????? ??? ???????, ?? ?????? ?????????? ???’ ?????? ????? ??? ?????? ?? ????????????????? ?? ??????? ??????? ?? ? ???? ??? ??????????? ??? ?????????? ??????? ???????? ????????? ???? ??? ????? ???????.

110. ?????? ???? ?????????? ????????? ??? ????? ??? ??????????? ??? ?????????? ???????, ?? ??????? ??????? ?????? ?? ????????????????? ?????????? ?? ?????????? ?? ???????? ???? ????????? ??? ?? ?????????? ?? ??? ????? ?????????? ?? ??????? ??? ????????? ??? ?? ???? ????????? (76). ??????, ? ???????????????? ??? ?????? ?? ?????????? ?? ????? ??? ????? ???????? ??? ??? ???? ??????? ??? ??? ??? ??? ???????? ??? ??????????? (77).

111. ???? ??????, ??????????? ?? ?? ?????? ??? ?????? ?????????? ?? ?????????, ????? ??? ????????? ??? ??????????? ??????????? ?? ????? ???????? ??? ?????, ??? ???????, ??? ??????? ??? ??? ?????? ???????, ?? ???????? ???????? ??? ???????? ???? ??????? ??? ?????? ????? ??????? ????????? ??????????? ????????.

112. ???? ????????, ?? ????? ?????????, ??????????? ??? ?????????? ???? ?? ?????? ?? ?????????????? ??? ?? ???? ??????? ??????????? ?? ?????????? ?? ???????? ???? ????????? ??? ?? ??????????? ?? ??? ??????? ?? ???????? ??? ????????? ??? ?? ???? ??????????? ????????.

113. ????????, ?? ?? ?????? ?????????? ??????????, ??? ???????????, ??? ?? ??? ??? ???????? ??????? ????????? ????????? ??? ????? ??? ??????????? ??? ??????????? ???????, ?? ?? ???? ??????? ??? ?? ?????? ?? ??????? ????? ???? ????? ??? ???????? ??? ??????????? ????????? ??? ??? ?????????????.

114. ????? ??? ??????????? ??????????? ??? ?????????? ???? ?????? ???????????? ????????? ??? ????????? ??????????? ??? ?? ??? ????????? ??? ??????? ?????????? ??? ?? ???? ???????????, ? ????????? ?????? ??? ???????? ?? ?????? ?? ???????? ??? ???????? ??? ????? ???????? ????. ? ?? ???? ?????? ?????? ?? ????????? ???? ????? ??? ??? ??????? ?? ???? ????????? ???????? ???????, ?????????????? ??? ?? ?????? ??? ??????? ??? ??????, ????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ??? ?????? 13?, ???????? ??, ??? ????? ??????? ???.

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

116. ??????? ??? ???????, ???????? ??? ?????????? ?? ????????? ??? ????? ??????????? ??????? ?? ?????????:

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

– ??? ???????? ???? ????? ??? ????????? ??? ?????? _____, ???? _____ ??? ?? ??? ??? ???????? ??????? ??? ??????????? _____, ???’ ????????? ??? _____ ??? ??????????? ??? ??????????? ???????, ??? ??? ?? ????????? ???????? ??? ???????? ?? ?? ?????? ?????????? ??? ????????? ??? _____ ???????? ????, ?? ?? ???? ???????? ?????? ?? ?????????? ???? _____ ??? ??? ??????? ?? ???? ????????? ???????? ???????, ????????????? ??? ?? ?????? ??? ??????? ??? ??????, _____ ??? ?????? 4, ?????????? 3, ???????? ??, ??? ??? ?????? 13?, ???????? ??, ??? _____ ??????? ???.

5. **??? ??? ???????, ??? _____ ??? ??? ?????? ??????????: ? ??????????? ??? ?????? 4, ?????????? 9, ??? VAT Act ?? ??? ???? ?????? ???**

117. ?? ??????, ?? ???? ??? ?? ????? ??????? ??? ????????? ??????????? ????????? ?? ???????? ??? ??????? ??? ?? ????? 4, ?????????? 9, ??? VAT Act ??? ??????? ?? ??? ???? ?????? ??? ??? (?? ?? ??????) ??? ???????? ???????? ??? ?? ???? ??????? ???? ????????? ?????? ????.

118. ?????????, ? ???? ??? ????????????? ? ? ???? ??? ??????????? ????????? ??? ??????? ???? ????????? ?????? ???? ??? ????????? ????? ??? ??? ??????? ???? ?????????? ? ??? ?? ??????????? ??? ?????????? ?????? ?????????? ??? ??? ??????? ????? ??????????.

119. ?? ????????? ????????? ??????????? ????????? ??????? ???? ????????? ?????? ????, ? ?????? ????????? ????? ???? ??????? ????? ??????? ?????. ??? ???????? ??????????? ????? ??? ?? ?? ?????? ? ?????? ????????? ????? ???????? ?? ??? ?? ???? ??????. ?????????, ???? ??? ????? ??????? ? ???????? ??????? ????? ??? ??? ???????? ??? ????? ??????? ??? ????????? ??????. ???????? ??? ?????????? ??? ?? ???? ????????? ??????????, ? ???????? ??? ?????? 4, ?????????? 9, ??? VAT Act ??? ??????????? «?? ?????????? ??? ???????????» ?? ??? ?? ???? ?????? (??? ?? ???????????? ??? ???????? ??? ?????? 288 ????). ?? ?? ??????, ??? ?????? ?? ?????????? ?? ?????? ??? ??????????? ?????????? ??? ? (??????) ??????????? ?????? ?? ?????????? ?? ??? ??????? ?????? ??? ?? ???????? ??? ??????? ??? ????????? ??????.

120. ?????????? ??? ????????? ??????? ??? ?? ???? ????????? ?? ????????? ???? ?? ????? ??? ???????? ????????? ??? ?????? ??? ???????????? ???????????? ??? ?????? 4, ?????????? 9, ??? VAT Act.

121. ???? ??? ??’ ??????????? ????????, ?? ?????????????? ????????? ???, ???? ??? ????? ????, ? ????? ??????????? ???????? ??? ?? ????? 4, ?????????? 6, ??? VAT Act. ? ????????? ???? ??????? *?????????? ???? ??? ?????? ?????????? ???????? ???? ??? ?????? ?? ?????????? ????? ??? ??? ???????*. ???? ???? ??????????????, ? ?? ???? ???????? ??? ????? ??????? ?? ?? ????? 4, ?????????? 3, ???????? ??, ??? ?? ????? 13?, ???????? ??, ??? ????? ??????? ???, ???? ????? ??? ?? ?? ???? ????????? ??? ?????? *??????????* ?? ?????????? *????* ??? ?????? ?????????? ????????. ?????????, ?????? ?? ????? 4, ?????????? 9, ??? VAT Act ?????????? ??? ????? 4, ?????????? 6, ??? VAT Act, ? ??????????? ??? ?????????? ?? ??? ???? ?????? ??? ??????? ??? ?? ????? ???????? ?? ??? ?? ???? ??????.

122. ? ?????????????? ??? ? ????????? ????????? ??????????? ??? ?? ???? ???????? ??? ??????????. ??? ?????? ?????????? ???? ???????? ?? ???? ???? ???????? ??? ????????? ??? ???? ?????? ????????? ???.

123. ?? ?? ??????, ???? ????? ?? ??????, ?? ???? ??? ?? ????? ???????, ?? ?????????? ??? ????? ?? ???? ?? ??????????, ??? ?? ??????? ???? ?????????? ??? ??????? ??????????, ?? ?? ??????? ?????????? ? ??????????? ??? ?????? 4, ?????????? 9, ??? VAT Act ?? ??? ???? ?????? ???? ? ????? ????????? ??????????? ???????????? ??????? ??? ??? ????????? ?????????. ????? ??? ?? ????????????? ???????????? ?? ???????????? ???? ??????????? ???????? ??????? ?? ????? ?? ?? ????? 4, ?????????? 9, ????? ??? ?? ??????? ??? ?????????? ??? ????? 4, ?????????? 6, ??? VAT Act. ?????????, ????? ??? ?? ??????? ????? ? ??????? ??? ????????????? ??????? ?? ??? ???????????, ??????????? ?? ???????? ?? ?????????? ??? ?? ???? ??? ??? ????? ???????, ???????, ???? ???????????? ???? ??? ?? ??’ ??????????? ????????, ???? ??????? ???? ???????? ?? ?????????? ????? ??? ??? ???????.

124. ??? ??????????? ??? ?????????? ?? ?????????? ?? ?????? ??????. ???? ??????? ????, ??? ??????????? ??? ?????????? ?? ???????? ?????? ??? ??????????? ????????? ??? ??????? ????? ??? ?????? ????????? ?? ?????????? ??? ??????????, ?? ??????????? ???? ? ?????? ??? ? ???? ??? ???????????? ???????????? ???/? ? ????????? ????????? ??? ????????? ?????? ??? ????? ???????? ??? ????????????? .....

125. ???? ????????, ??? ??????? ??? ???????, ????? ??? ?? ?????????? ??? ???? ??? ??????? ??? ?? ???????? ?????????? ???????? ??? ?? ???????? ??????? ????????, ? ????? ?? ?? ????????? ?? ????????? ??? ????????, ???? ????? ?? ???? ??? ???????????? ???????????? ??? ?????? 4, ?????????? 9, ??? VAT Act ?? ??? ???? ?????? ???.

126. ?? ?? ??????, ???????? ?? ??????????? ?? ??????, ?? ???? ??? ?? ????? ??????????? ??????? ?? ??????????.

V. **???????**

127. ???????????? ????? ??? ???????, ???????? ??? ?????????? ?? ????????? ??? ????????? ??? ??????? ?? Supreme Court (??????? ??????????, ????????) ?? ????:

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

?? ????????? ??? ????? ??????? ??? ??? ?? ?????? ????? ??? ?? ???????? ??? ?? ???? ??????? ???? ????????? ?????? ???? ?????? ?? ???????????? ?? ??????? ?? ?????? ???? ??? ??????? ?? ?????? ???? ???????????? ??? ??????????? ??????? ??? ????? ??? ???. ???? ????????? ??????:

– ???????? ??????? ??????, ??????????? ? ??????????, ?? ?? ????? ? ?? ???? ???? «??????? ?? ????????»·

– ?? ????????? ???? ? ???????? ??????? ??? ????????? ???????????, ???? ?????? ?? ??????? ??????? ????? ?????????? ???? ??? ??? ?????? ??? ????????? ??? ?????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C?255/02, EU:C:2006:121).

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??? ???????? ???? ????? ??? ????????? ??? ?????? ?????, ???? ????? ??? ?? ??? ??? ???????? ??????? ??? ?????????? ?????, ???’ ????????? ??? ????? ??? ???????????? ??? ?????????? ???????, ??? ??? ?? ????????? ???????? ??? ???????? ?? ?? ?????? ?????????? ??? ????????? ??? ????? ???????? ????, ?? ?? ???? ???????? ?????? ?? ?????????? ???? ????? ??? ??? ??????? ?? ???? ????????? ???????? ???????, ????????????? ??? ?? ?????? ??? ??????? ??? ??????, ????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ??? ?????? 13?, ???????? ??, ??? ????? ??????? ???.

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

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

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

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

??? ??????????? ???? ????? ??? ?????? ?????, ????:

– ??????? ??????????? ??????? ?????? ???? ??????????? ???? ???? ??? ???? ????? ??????????? ???? ????, ??????????? ???? ??? ?????·

– ? ?? ???? ??????? ??????, ??????? ??????????, ????? ??????????? ???????? ??????????? ??? ?? ??????, ?? ???????? ?? ?? ???????? ??? ????????· ???

– ???? ?? ??????? ???? ????????, ?? ?????? ????????????? ???? ?????? ?????????, ?? ?????????? ? ??????????? ???? ???? ??? ???? ??? ???????? ??? ????????? ??? ??????????? ??????? ?? ??? ??????????? ???? ???? ????????????? ??? ?????? ??? ??? ???????????? ????????·

?? ????????? ???? ????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ??? ?????? 13?, ???????? ??, ??? ????? ??????? ??? ? ??????????? ??? ??????????? ????????? ?? «?????????? ??? ??? ?????? ????????????» ???? ??? ?????? ??? ?????? 4, ?????????? 3, ???????? ??, ??? ?? ???? ???????.

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

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

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

2 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121).

3 ???? ??????? (? ???? ????????, ??????? ?? ??? ?????? ???????) ?? ????????? ??? ?????? ??????? ?? ????????? ?? ??????? ??? ?? ???????????? ?? ????????? ?? ?????.

4 ???? ?????? ??? ??????????, ??? 17?? ????? 1977, ???? ??????????? ??? ?????????? ??? ?????? ?????, ??? ???????? ?? ???? ?????? ?????? ???????? – ????? ??????? ????? ???????????? ?????: ?????????? ?????????? ???? (?? ???. ???. 09/001, ?. 49).

5 ??? ???????????????? ??? ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ????????? 2006, ??????? ?? ?? ????? ??????? ????? ???????????? ????? (?? 2006, L 347, ?. 1).

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

7 ??????? ??? 17?? ?????????? 2015, WebMindLicenses (C-419/14, EU:C:2015:832, ????? 35).

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13 ??., ??? ??????????, ????????? ??? 23?? ?????????? 2003, Akrich (C-109/01, EU:C:2003:491), ??? ??? 17?? ??????? 2014, Torresi (C-58/13 ??? C-59/13, EU:C:2014:2088). ??? ??? ??????? ?????, ??., ??????, de la Feria, R., «Prohibition of Abuse of (Community) Law: the Creation of a New General Principle of EC law through Tax», ????? 45, *Common Market Law Review,* 2008, ?. 395 ??? ?. 429.

14 ??? ??? ?????????? ??? ?????????? ???????? ??? ???????? ????? ????????? ?????? ??? ??????? ??? ??????, ??., ??? ???????????, de la Feria, R., and Vogenauer, S. (????.), *Prohibition of Abuse of Law:A New General Principle of EU Law?*, Hart Publishing, ???????, 2011.

15 ??., ???????, ??????? ??? 13?? ?????????? 2004, Kühne & Heitz (C-453/00, EU:C:2004:17, ????? 28), ? ???? ??? 18?? ??????? 2007, Lucchini (C-119/05, EU:C:2007:434, ????? 63).

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19 ??? ??? ????? ????, ? ????? ????? ????? ?????????? ?? ??? ???????? ???? ??? ?????????? ??? ????????? ?? ????????? ??? ???????? ?????????? ??? ?????? ????? – ??., ??? ???????????, ??????? ?????????? ???????? ??? MacCormick, D. ?., ??? Summers, R. S. (????.), *Interpreting Precedents:A Comparative Study,* Ashgate Publishing, Dartmouth, 1997. ?????????, ?????????? ???? ??? ??? ????? ?? ?????? ?? ???? ??????, ?? ???????? ???????, ????????? ? ???????? ??? ??????? ??? ???????? ? ?????????? ???. ??? ??? ?? 1934, ? Arthur Goodhart ?????????? ??? ?? ???? ?????? ?? ???????????? ??? ?????????? ???? ??????? ??? ??? ?????????? ?????? ????? ??? ?????? (Goodhart, A. L., *Precedent in English and Continental Law,*

Stevens and Sons, ???????, 1934, ?. 14). ??., ??????, Cross, R., ??? Harris, J. W., *Precedent in English Law,* 4? ???., Clarendon Press, ???????, 1991, ?. 27 ??? 34.

20 ??., ??? ??? ?????? ???? ?? ????? ?? ??? ????????? ??????? ???? ????? ??? ???, ??????? ??? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano Previti ?.??. (C-131/13, C?163/13 ??? C-164/13, EU:C:2014:2455, ??????? 54 ??? 60).

21 ??., ??? ??????????, ????????? ??? 8?? ???????? 1976, Defrenne (43/75, EU:C:1976:56, ????? 72), ??? ??? 28?? ??????????? 1994, Vroege (C-57/93, EU:C:1994:352, ????? 21).

22 ????????? ??? 8?? ???????? 1976, Defrenne (43/75, EU:C:1976:56, ????? 74), ??? ??? 28?? ??????????? 1994, Vroege (C-57/93, EU:C:1994:352, ????? 21).

23 ??????? ??? 28?? ??????????? 1994, Vroege (C-57/93, EU:C:1994:352, ????? 21). ??., ??????, ??????? ??? 12?? ????????? 2000, Cooke (C-372/98, EU:C:2000:558, ????? 42). ???????, ??., ??? ????????????, Düsterhaus, D., «Eppur Si Muove! The Past, Present and (possible) Future of Temporal Limitations in the Preliminary Ruling Procedure», Yearbook of European Law, 2016.

24 ??????? ??? 23?? ????? 2000, Buchner ?.??. (C-104/98, EU:C:2000:276, ????? 40).

25 ?????? ?? ????????? ??? ?? ???????? ??? ????? ????????? ??? ?????????? ??? ??????????? ???? ?????? ???? ??? ??????. ??? ??? ?????????? ??????????, ??., ??? ??????????, Steiner, E., ??.?.,???? ??????????? 17, ? Popelier, P., ?.??., ??.?.,???? ??????????? 17.

26 ??? ???? ???????? ?????????????, ??. ??????????? 41 ??? ????????? ??? ??????? ?????????? ?. Poiares Maduro ??? ??? ????????? Halifax ?.??. (C?255/02, EU:C:2005:200)· ? ?? ???' ????? ??????? ???????? ??? de la Feria, R., ??? Vogenauer, S. (??.?., ???? ??????????? 14). ???? ???????? ? Schammo, P., «? ??????? ?? ??? ????????? ??????????? ????????? ????? ???????? ?? ?????? ??? ???????? ??? ??????? ??? ??????» (Schammo, P, «Arbitrage and Abuse of Rights in EC Legal System», ????? 14*European Law Journal,* 2008, ?. 359). ?, ????? ??? ??????????? ??? ?????????, ???????? ?? ????? ??? ??????? ?????????: «????????? ??????? ?????? ??? ?????? ??? ??????» (Saydé, A., ??.?,.???? ??????????? 12, ?. 13).

27 ??????? ??? 15?? ????????? 2009, Audiolux ?.??. (C-101/08, EU:C:2009:626, ????? 50).

28 ??., ??????, ????? 13?, 14 ??? 15 ??? ????? ??????????? ?? ???? «???????????, ??????????? ??? ?????????». ??? ????? 13, 14, 15 ??? 27, ??? ????? 28? ??? ??? ????? 28?? ??????? ?????? ????? ??? ???? «???????????» (???? ???????? ???? ??? ??????? ????? ??????).

29 ??. ????? 4, ?????????? 3, ??? ?????????? (??, ???????) 2988/95 ??? ??????????, ??? 18?? ?????????? 1995, ??????? ?? ??? ????????? ??? ??????????? ??????????? ??? ?????????? ?????????? (?? 1995, L 312, ?. 1).

30 ?? ????? 4, ?????????? 3, ??? ?????????? 2988/95 ?????? ???: «?? ??????? ?? ?????? ????????????? ?????????? ???? ?????????? ??????? ????????? ???? ???? ??????? ??? ???????? ?????????? ????????? ??? ?????????? ???????, ?? ??? ??????? ?????????? ??? ??????????? ?????? ????? ??? ???????, ????? ?? ????????, ??????? ?? ??? ?????????, ???? ?? ?? ?????????? ???? ??? ???????? ??? ???????».

31 ??????? ??? 14?? ?????????? 2000, Emsland-Stärke(C-110/99, EU:C:2000:695).

32 ??. ?????? 29 ??? ???????? ?????????.

33 ??????? ??? 8?? ???????? 1976, Defrenne (43/75, EU:C:1976:56, ????? 71).

34 ?????? 42 ??? ???????? ?????????.

35 ??. ????????? ??? 8?? ??????? 2000, Breitsohl (C-400/98, EU:C:2000:304, ????? 38), ??? ??? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano Previti ?.??. (C-131/13, C-163/13 ??? C-164/13, EU:C:2014:2455, ????? 60), ??? ??????? ?? ???????? ???? nemo propriam turpitudinem allegare potest.

36 ??????? ??? 14?? ?????????? 2000, Emsland-Stärke (C-110/99, EU:C:2000:695, ????? 54), ??? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 76).

37 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 86).

38 ??., ??? ??????????, ????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C?255/02, EU:C:2006:121, ????? 73), ??? ??? 22?? ?????????? 2010, Weald Leasing (C-103/09, EU:C:2010:804, ????? 27).

39 ??., ??? ??????????, ????????? ??? 21?? ??????????? 2006, Halifax ?.??.(C?255/02, EU:C:2006:121, ????? 74), ????? ??? ??? 22?? ?????????? 2010, Weald Leasing (C-103/09, EU:C:2010:804, ????? 29)· ???????? ???????? ??????? ???????????? ?????????? ?? ?????? ?????? ????????? ??? ????? ??? ??????????? ??? ??????????? ??????? (??., ??? ??????????, ??????? ??? 14?? ???????? 2016, Cervati ??? Malvi, C-131/14, EU:C:2016:255, ????? 33, ???? ??????? ??????? ?? «???????» ??? ??? ?? «???????? ?????????»).

40 ??., ??? ??????????, ?? ????? ?? ??? ???, ????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ??????? 79 ??? 80) (????? 17 ??? ????? ??????? ???? ???)· ??? 21?? ??????????? 2008, Part Service(C-425/06, EU:C:2008:108, ????? 60) (????? 11A, ?????????? 1, ???????? ??, ??? ????? ??????? ???? ???), ??? ??? 17?? ?????????? 2015, WebMindLicenses (C-419/14, EU:C:2015:832, ??????? 38 ??? 41) [????? 43 ??? ????? 56, ?????????? 1, ???????? ???, ??? ??????? 2006/112, ??? ??????????????? ??? ?? ????? 45 ??? ?? ????? 59, ???????? ???, ???? ????????????? ?? ??? ?????? 2008/8/?? ??? ??????????, ??? 12?? ??????????? 2008 (?? 2008, L 44, ?. 11)] (? ?????? 2006/112 ???????????? ??? ???? ?????? ???). ?? ??????? ???? ???????????? ??? ???????? ??? ??????????? ??? «????????????? ????????????», ???? ????? ??? ??????? ?? ??? ??????? ?? ???? ?? ?? ?????????????. ????, ??? ??????? ????????? ??? ??????? ???????????? ????????, ??? ???? ?? ????????? ??? ???????????? ??? ??? ????? ????????? ???? ??????? Emsland-Stärke ???, ????????, ???? ????? ??? ???, ???? ??????? Halifax, ?? ?????????? ??????? ?? ???? ?????????? ? ?????? *???????????? ????????* (??., ??? ??????????, ????????? ??? 12?? ????? 1998, ??????? ?.??., C-367/96, EU:C:1998:222, ????? 23, ??? ??? 23?? ??????? 2000, ?????????, C-373/97, EU:C:2000:150, ??????? 33 ??? 34), ?? ?????? ??????? ????????? ?? ????? 25, ?????????? 1 ??? ???????? ??????? 77/91/??? ???

??????????, ??? 13?? ?????????? 1976, ???? ??????????? ??? ????????? ??? ??????????? ??? ????? ???? ?? ?????? ??? ?????????, ???? ??? ?????? ??? ?????? 58 ??????? ?????????? ??? ????????, ??? ??? ????????? ??? ??????????? ??? ??????? ??? ??? ?????? ?? ????? ?? ????????? ?? ????????? ????? ?????????? ???? ????? ?? ??????? ??? ???????? ????????? ??? ?? ????????? ??? ??? ????????? ??? ????????? ??? (?? ???. ???. 06/001, ?. 230).

41 ?????????? ??? ???? ??????? Emsland-Stärke, ???? ????? ??????????? ? ?? ???? ??????????, ?? ?????????? ??? ??????? ??? ?????????? ????, ???? ????? ??????? ??? «?? Bundesfinanzhof ?????? ??? ??? ??? ??????????? ??? ????????????? ??? ????? ??????????? ??????? ?? ???? ?? ?????????? ??????????? ????????????? ??? ??? ??????????? ? ?????? ??? ?????????? ?????????». ??????? ??? 14?? ?????????? 2000, Emsland-Stärke (C-110/99, EU:C:2000:695, ????? 55).

42 ????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121), ??? 21?? ??????????? 2008, Part Service (C-425/06, EU:C:2008:108), ??? ??? 17?? ?????????? 2015, WebMindLicenses (C-419/14, EU:C:2015:832).

43 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 79).

44 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 80). ??., ??????, ????????? Weald Leasing ??? RBS, ?? ?????? ?????????? ??????????? ???? ??????? ????? ??????????: ????????? ??? 22?? ?????????? 2010, Weald Leasing (C-103/09, EU:C:2010:804), ??? ??? 22?? ?????????? 2010, RBS Deutschland Holdings (C-277/09, EU:C:2010:810, ??????? 44 ??? 45).

45 ??????? ??? 21?? ??????????? 2008, Part Service (C-425/06, EU:C:2008:108).

46 ??????? ??? 21?? ??????????? 2008, Part Service (C-425/06, EU:C:2008:108, ????? 52).

47 ??????? ??? 21?? ??????????? 2008, Part Service(C-425/06, EU:C:2008:108, ????? 60).

48 ??????? ??? 17?? ?????????? 2015, WebMindLicenses (C-419/14, EU:C:2015:832).

49 ??????? ?? ????? 43 ??? ?? ????? 56, ?????????? 1, ???????? ???, ??? ??????? 2006/112 ??? ??? ???????? ?? ????? 45 ??? ?? ????? 59, ???????? ???, ??????? ??? ???????????? ??? ?????? ?? ??? ?????? 2008/8.

50 ?? ??? ?? ????? 2, ?????????? 1, ??? ????????? ????? ???????? ??? ?? ???????? ??????????? ?? ???????? ??? ????? ??????? ?? ???? ??????? ??? ????? ???????? ?????? (?? ????????, ??? ???????????, ?? ???? ????? ???????? ??? ?? ???? ?????? ???? ?????????????? ????????? Halifax ? Part Service, ???? ??? ?????).

51 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 74).

52 ? ?? ???? ???? ??????????? ?????????? ??? ?????????? ??? ??? ???????? ?? ???? ??? ?????? ??? ?????? ??? ??????? ??? ????????? Emsland-Stärke, ? ????? ?????? ??? ??????????? ??? ?? ??????????. ???????????, ? ???????? ???? ????????? ?? ???????????? ????????? ?????? «?? ???????? ????????? ??????? ????? ?? ????? ?? ?????????? ? ????????????? ?????? ??????????? ?? ???? ??????? ??? ??????????? ?????????? ???????, ??????? ?? ??????????? ?????????? ??? ??????? ????? ????? ??????????? ???????» (??. ??????? ??? 14?? ?????????? 2000, Emsland-Stärke, C-110/99, EU:C:2000:695, ????? 43) (? ??????????? ???? ???).

53 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 72).

54 ?? ??? ????????? ????, ?? ???????? ?? ???????????? ???, ???? ????? ?? ???????? ??? ????????????, ? ?????????? ??? ??????????? ??????? ??? ????? ??? ???????? ??????? ??? ??????? ?? ??? ???? ??? ???????????. T? ??????????? ????? ??? ?????????????? ??? ????? ?? ????????? ?? ?? ???????????? ???? ??? ??????????? ??? ??????? ??? ???????? ??????? ???? ??? ?????? ??? ???? ??????? ????????? ?????????? ?? ?? ??????? ????????, ?????????????????? ?????? ??? ??????????? ??????????, ?????? ?? ????? ?? ???? ?? ???????? ?? ??? ????????, ????? ??? ????????? ???????, ?? ?? ????????? ??? ?? ????? ?????????? (???????) ? ?? ?????????? (?????????). ????????, ??? ??????? ??? ?? ???? ??????????, ?,?? ??? ???????????? ?????, ??????????. ?????? ?? ???????????? ??? ???? ??????? ???? ??????????, ? ?????????? ??? ??????????? ???????, ?????????? ?? ???? ?? ???????????? ??? ??? ????? ??????, ????????? ??? ?????, ?????? ????, ? ?????, ??????????, ?????????? ?????? ???????? ?? ???? ???????? ?? ??????????? ??????????? ??????????. ????? ???' ?????? ???????? ??? ??????? ??? ????? ????? ??????? ?? ??????, ???? ?? ??????? ??? ?? ??? ???????? ??????? ???????????, ??? ??????????? ?? ?????????????? ?? ??? ??????? ?? ??????????? ????????. ?? ??????????, ? ????? ?????? ?????? ???? ??? ?????? ?? ???????????? ??? ????? ???????????? ?? ???????? ?? ???????? ?? ??????????? ???????? «?????????? ??? Schrödinger»: ???? ?? ?? ?? ??? ??????? ??????? ??? ??????? ?? ??????????? ?? ? ????? ??? ????????? ???? ?? ???? ???? ?????? ? ???.

55 ?????? 50 ??? ???????? ????????.

56 ?? ?????, ???? ??? ????? ???, ?? ?????????? ?????? «?????????» ????????.

57 ???? ????????? ??? ?????? 66 ??? 69 ??? ???????? ????????.

58 ??. ?????? ?????? 49 ??? 51 ??? ???????? ????????. ?????? ?? ????????? ??? ???? ??????? Emsland-Stärke, ? ??????? ??????????? S. Alber ?????????? ?? ?????? ??? ??? ???? ??? ???, ?????????????? ??? ?? ????? 4, ?????????? 3, «??? ?????????? ??? ?????? ??????, ???? ??????????? ??? ???????? ??? ????????? ?????? ?????? ???? ??? ???????» (????????? ??? ??????? ?????????? S. Alber ??? ??? ????????? Emsland-Stärke,C-110/99, EU:C:2000:252, ?????? 80).

59 ?? ?????????????? ????????, ???? ?????? ????? ???????? ???? ? ???? ??? ??????????? ??????? ??? ??? ?? ????? 4, ?????????? 3 ??? ?????????? 2988/95, ?? ?????????? ???????? ?? ????? ?????? ?? ?????? ???? (??. ??????? ??? 14?? ???????? 2016, Cervati ??? Malvi, C?131/14, EU:C:2016:255).

60 ?? ????? ??????? ?????? ????? ???? ??????? ??? 14?? ???????? 2016, Cervati ??? Malvi(C?131/14, EU:C:2016:255, ????? 52). ??., ??????, ??????? ??? 9?? ??????? 2015, Cimmino ?.??.(C-607/13, EU:C:2015:448).

61 ??. ?????? 28 ??? ???????? ????????.

62 ??????? ????? ??????? ??? ?????????? ???? ??????????? ??? ?????????? ??? ?????? ????? ??? ???????? ?? ???? ?????? ?????? ????????, ????? ??????? ???????????? ?????: ?????????? ?????????? ???? [COM(73) 950, 20 ??????? 1973, *?????? ??? ?????????? ??????????,* ?????????? 11/73, ?. 9].

63 ??????? ??? 4?? ????????? 2001, Goed Wonen (C-326/99, EU:C:2001:506, ????? 52).

??????????? ??? ?? ?????????? ?? ?????????? ??????? ?????????? ??? ??????? ??? «?????? ??????????» ??? ??? «?????? ?????????????». ??., ??????, ??????? ??? 12?? ??????? 2012, J.J. Komen en Zonen Beheer Heerhugowaard (C?326/11, EU:C:2012:461, ????? 21), ???? ??????? ????? ??? ???? «?????? ??????».

64 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ??????? 75 ??? 86).

65 ??????? ??? 17?? ?????????? 2015, WebMindLicenses (C-419/14, EU:C:2015:832, ????? 35).

66 ??????? ??? 21?? ??????????? 2006, University of Huddersfield (C-223/03, EU:C:2006:124, ????? 51).

67 ????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ??????? 69 ??? 70), ????? ??? ??? 22?? ?????????? 2010, Weald Leasing (C?103/09, EU:C:2010:804, ????? 25).

68 ????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 75), ??? ??? 22?? ?????????? 2010, RBS Deutschland Holdings (C?277/09, EU:C:2010:810, ????? 49).

69 ??????? ??? 14?? ???????? 2016, Cervati ??? Malvi (C-131/14, EU:C:2016:255, ????? 32).

70 ??????? ??? 21?? ??????????? 2008, Part Service (C-425/06, EU:C:2008:108, ????? 45).

71 ????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 75), ??? ??? 22?? ?????????? 2010, Weald Leasing (C-103/09, EU:C:2010:804, ????? 30).

72 ??????? ??? 14?? ???????? 2016, Cervati ??? Malvi (C-131/14, EU:C:2016:255, ????? 47).

73 ??? ???? ???????? ????????? ??? ?????? ? ?? ?????? ??? ?? ???? ?????, ??. ??? ???? ??????????? 54 ??? ???????? ?????????.

74 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 72).

75 ??????? ??? 14?? ???????? 2016, Cervati ??? Malvi (C-131/14, EU:C:2016:255, ????? 35).

76 ????????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 98), ??? 20?? ??????? 2013, Newey (C-653/11, EU:C:2013:409, ????? 50), ??? ??? 17?? ?????????? 2015, WebMindLicenses (C-419/14, EU:C:2015:832, ????? 52).

77 ??????? ??? 21?? ??????????? 2006, Halifax ?.??. (C-255/02, EU:C:2006:121, ????? 92).