

?????? C-421/10

Finanzamt Deggendorf

????

Markus Stoppelkamp ??? ??? ???????? ??? ???????? ?????????? ??? ?????????? ???
Harald Raab

(?????? ??? Bundesfinanzhof

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

«??? – ??? ????? – ??? 21, ?????????? 1, ???????? ?? – ?????????? ??? ?????? ???
????????????? ?????? – ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???
????????? ??? ?? ?????? ? ??? ??? ?????? ?????????? ?????????????? ?????????? ?? ???
????? – ?????? ??? “????????????? ??? ?????? ?????? ?????????? ??? ?????”»

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

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

(?????? 77/388 ??? ??????????, ??? 21 § 1, ??????? ??)

?? ??? 21, ?????????? 1, ??????? ??, ??? ?????? ?????? 77/388, ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ???
????????????? ?? ??? ?????? 2000/65, ??? ?????? ???, ?????????? ?? ??? ?????? ???
????????????? ??? ?????? ?????? ?????????????? ??? ?????? ???, ??? ?????? ??? ?????? ???
????????????? ?????????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

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

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

(???. ??????? 28, 34-36 ??? ???????.)

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

?? 6?? ??????? 2011 (*)

«?? – ??? ????? – ??? 21, ?????????? 1, ???????? ?? – ?????????? ??? ????? ??
????????? ????? – ?????? ?????????? ??? ???????? ??? ?????? ?????? ?? ???
????????? ??? ??? ?????? ? ??? ??? ?????????? ?????????????? ?????????? ?? ???
????? – ?????? ??? “????????????? ??? ?????????? ?????????? ??? ???”»

???? ?????? C?421/10,

? ? ?????????? ??? ?????? ?? ?????? ?????????? ?????????? ?????? ??? ?????? 267
????, ??? ?????? ?? Bundesfinanzhof (????????) ?? ?????? ??? 30? ?????? 2010, ?
????? ?????? ??? ?????????? ??? 25 ?????? 2010, ??? ?????? ??? ???

Finanzamt Deggendorf

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Markus Stoppelkamp, ??? ??? ??????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
??? Harald Raab,

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

????????? ??? ??? J.?J. Kasel (????????), ?????? ???????, E. Levits ??? M. Safjan,
???????,

?????? ??????????: J. Mazák

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

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

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

– ? ?????????? ????????, ?????????????? ??? ??? C. Blaschke ??? T. Henze,

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

– ? ?????????? ????????, ?????????????? ??? ??? W. Mölls ??? ??? L. Lozano Palacios,

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

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1 ? ??????? ? ?? ???? ?????? ?????????????? ?????????? ?????? ?? ???? ??????? ? ?? ????
21, ?????????? 1, ??????? ??, ?? ???? ?????? 77/388/???, ?? ???? ???????????, ?? 17??
????? 1977, ??? ?????????????? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ????
????? ?????? ?????? – ??? ?????? ?????? ?????? ?????????????? ?????: ??????????
?????????? ???? (?? ??? . ??? . 09/001, ?. 49), ??? ?????????????? ?? ???? ?????? 2000/65/??
?? ?????, ?? 17?? ?????? 2000 (?? L 269, ?. 44, ??? ?: ??? ??????).

2 ? ??????? ?????????? ?? ???? ?????? ?????????? ?????? ?? Stoppelkamp, ??? ??
????????? ?? ???? ?????? ?????????? ?? ???? Raab, ??? ?? Finanzamt
Deggendorf (?? ?: Finanzamt), ?? ?????????? ?? ?????????????? ?? ???? ?????????? ??
????? ?????????????? ?????? (?? ?: ???), ??? ?????? ?????????????? ??? Raab
?????????.

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

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

3 ?? ?????? 4, ?????????? 1, ??? ?????? ??????? ??????:

«????????? ?? “????????? ???” ?????????? ?????, ??? ?????? ?????????? ??? ??
????????????? ???, ??? ??? ??? ?????????? ?????????????? ??? ?????????? ???
????????? 2, ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ???
????????????? ????.»

4 ?? ?????? 9, ?????????? 1, ??? ?????? ??????? ??????? ????:

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

5 ?? ?????? 9, ?????????? 2, ??????? ?, ??? ?????? ??????? ????????:

«?????????:

[...]

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

[...]

– ?? ?????? ??????????,

[...]»

6 ?? ?????? 21 ??? ?????? ??????? ?????:

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

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

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

?) ??? ??? ?????????? ???? ??? ? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????????? ??? ?? ?????? 9, ?????????? 2, ?????????? ?, ? ??? ??? ?????? ???
????????????? ?? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? 28?, ?????? ?, ?, ? ??? ?, ???
?? ?????????? ?????????? ??? ?????? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
?????.

[...]»

7 ?? ?????? 1 ??? ?????? ?????? 79/1072/???, ??? ??????????, ??? 6?? ??????????
1979, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? – ?????? ?????????? ??? ?????? ?????????? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
(?? ???.. ???.. 09/001, ?. 111, ??? ????: ?????? ??????), ?????? ?? ???:

«??? ??? ?????? ??? ?????? ??????, ?????????? ?? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ? ?????????? ??? ?????????? ??? ?????? 4,
????????? 1, ??? ?????? 77/388/???, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 7, ?????????? 1, ?????? ??????, ?????? ??? ?????? ??????????
??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? :

?) ??? ?????? ?????????? ???? ??? ?????????? ?????? ?????? ?????????? ?????? ???
????? ?????? ?? ?????? ?????????? ??? ?????? ?????? 14, ?????????? 1,
[?????] ?????? ???, ??? ?????? 15 ? ??? ?????? 16, ?????????? 1, ??? ??), ??) ??? ??), ???
????? 77/388/???.

?) ??? ?????? ?????????? ???? ??? ?????????? ???? ??? ?????? ? ??? ?????? ??????
????????? ??? ?????? ?????? ?? ?? ?????? 21, ?????????? 1, ?????????? ??), ???
????? 77/388/???.».

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

8 ??? ?? ?????? 1, ?????????? 1, ???? ??????, ??? ?????? ???? ??? ?????? ???
????? (Umsatzsteuergesetz 1999, *BGBI.* 1999 I, ?. 1270), ?? ??? ?????? ???? ??? ?????? ???
????? ??? ?????? ??? (?? ????: UStG), ?????????? ??? ?????? ??? «????????? ???
????????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ???

????? ??????? ?? ??????? ?????? ??? ??????? ??? ?????????? ??? ?????????????????? ???
?????????????».

9 ?? ???? 3 ??? UStG ??????:

«1. ??? ?????? ?????? ??? ?????????? ?????? ? ?????? ??? ?????? ??? ?????????????? ???
????????????? ???, ??? ??? ?????????? ??? ?????? 3b ??? 3f. ?? ? ?? ??? ?????? ???
????????????? ??? ?????? ?????????? ???, ? ?????????? ??? ?????? ?????? ??? ??????
????????? ??? ??????????.

[...]

3. ?? ?????????? ??? ? ?????? ??? ? ??? ?????????????? ??? ?????????????? 4 ??????
????? ??????????, ?????????? ??? ?????????????? ??? ? ?????????? 1 ??? ? ??????
????????? ??? ?????? ??? ?????? ??? ? ?????? ?????? ?? ?????????????? ??? . ?? ? ??????
????????? ?? ?????? ?????????????? ???????, ?????????? ?????? ?????? ??? ?????? ??? ?
?????????????. ?? ?????????? ??? ? ?????? ?????? ?? ??? ?????????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ? ??? ?????? ??? ?
?????, ?????????????? ??? ? ?????????? ??? ?????????????? ??? ?????? ??? ?
[...]

4. ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? 3 ?????:

[...]

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

[...]»

10 ?? ???? 13, ?????????? 4, ??? UStG ??????:

«????????????? ?????????????? ??? ?????????? ??? ?????? ?????????????? ??? ??? ????
????????, ??? ???, ?? ?????? ??? ?????????? ??? ?????????? ??? ? ?????????? ??? ????
????????? ??? ??? ?????? ?????????? ? ?? ??? ??? ?????? ?????? ??? ?????????? ??? ???? 1,
????????? 3. ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ????
????????????? ??? ? ?????? ?????? ??? ?????????? ??? ?????????? ???, ? ?????? ??? ????
????????? ??? ?????, ??? ? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? Finanzamt ???
????? ?????? ??? ? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

11 ??? ?? ??? 2002 ? Raab ?????? ??? ???? ??? ?????????? ??? ?????????????? ???
??? ?? ?????? ??? ?????? ???, ?????????? ?????? ?? ??? ?????? ??? ?????????? ??? ????
«Überstellungs-, Administrations- und Fahrdienst» (????????? ??????????, ?????????? ???
?????????) ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (?????????) ??? ??? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

12 ??? 1? ?????? 2002 ? Raab ?????? ??? ???? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?????? ???, ? Raab ?????????? ??? ?????? ??? ?????? ???.

13 ? ?????????? ?????????? ??? ?????? ?????? ?????? ?????????????? ??? ??? ???? Raab.
????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ???? ??????????
????????????? ?????????? ?? ??? ?????????? ?????????????? ??? ???? ?????? ??? ?????????? ???
«? ?????? ??? ??? ?????? ??? ?????? 13b ??? UStG».

14 ?? Finanzamt ?????? ??? ?? ?????????????? ??? ??? ?????????? ??? ?????????????? ???
??? ?????? ??? ?? ??? 13b, ?????????? 1, ??? ??????, ??? 1, ??? UStG, ??
????????? ?? ??? ?????????? 4 ??? ?????? ??????, ??? ??????????. ??? ?? Finanzamt ?
Raab ??? ??? ?????????? ??? ??? ?????????????? ?????????????? ??? ??????????
????? ???? ?????? ?????????? ??? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ??????. ??
Finanzamt ?????? ?????????? ??? ?????? ??? ?????? ?? Raab.

15 ????? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ?????? ??????. ?? ??????????
????????? ?????????? ??? ?????? ??? ?? ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ?? ???
2002, ?? ??? ?????? ?????????? ?????????????? ??? Raab ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? 21, ?????????? 1, ?????????? ?, ???
?????, ??? ?????? ??????, ?? ??? 13b ??? UStG ??? ??? ?????? ??? ?????????? ???
????? ???? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????? ???
????? ??? ?????? ??????, ??? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ???, ???
????? ?????? ?? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
?????.

16 ??? ?????? ??? ?????????? (Revision) ??? ?????? ?????? ???
Bundesfinanzhof, ?? Finanzamt ?????? ??? ?? ?????????? ?????????? ?????????? ???
?? ?????? 13b, ?????????? 4, ??? UStG, ??? ?? ??? ?????? ?????????? ??? ?? ??? ??????
????????????? ??? ?????????? ?????????? ?? ???? ?????? ??? ?????????? ??? ?????? ???
?????.

17 ?? Bundesfinanzhof ?????? ?????????? ??? ?????? ??? ?? ?????????? ??? ??????????
????????? ?? ?? ?????? ??? ?????? ??? ???, ??? ?? ?????????? ??? ??????????, ??
????????? ??? «????????????? ??? ?????? ?????????? ??????????????», ??? ?????????? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????? ???? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
?????, ??? ?????????? ??? ?????????? ??? ?????? ????. ??? ?? ?????????? ??? ?????? 21,
????????? 1, ????????, ??? ?????? ???, ??? ?????? ???, ???, ?????????? ??? ?????????? ???
????? ?????? ?? ?????? ???, ?? ?????????? ?? ?????????? ??? «im Ausland ansässigen
Steuerpflichtigen» (????????? ??? ?????? ?????????? ??? ??????). ??????????, ?
????? ?????? ??? ?????????? ??? ?????? 21 ??? ?????? ?????? ??? ?? ??? ?????? ???
????? ??????.

18 ??? ??? ?????? ???, ?? Bundesfinanzhof ?????? ??? ?????? ??? ??????????
??? ?????? ??? ?????????? ?? ?????????? ?????????? ??? ??????:

«????? “????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ??????” ??? ???
????? ??? ?????? 21, ?????????? 1, ????????, ??? ?????? ?????? ?????????? ??? ??????????
????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ??????????, ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;»

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

19 ??????????????, ?????????? ? ?????????? ???, ??? ?? ?????????? ?????????? ???
????? 21, ?????????? 1, ????????, ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ???

?????????? ?? ???? ?????? ??????, ?? ???????????, ??? ?????????? ??????? ?? ???? ???????????
?? ??? «?????????? ?? ???? ?? ?????????????? ?? ??????? ?? ???? ??????? ?? ????». ??? ??
???? ??????? ??????? ??????? ?? ??? «im Ausland ansässigen Steuerpflichtigen», ???
???? ??? ??????? «?????????? ?? ???? ?? ??????????? ?? ???? ???????».

20 ?? ? ? ??????????? ??????? ??????? ???' ?????? ?? ? ???? 21, ??????????? 1,
???????? ??, ??? ????? ??????? ??? ?????? ??? ?????? ??? ?? ??????? ??????? «im Ausland
ansässigen Steuerpflichtigen» (?????????? ??? ????? ?????????????? ??? ???????), ???
??? ??????? ??? ?? ??? ?????????? ??? ?????????? ???????, ????? ? ??? ??? ??????????
????????????? ??? ?? ?????????? ?????? ??? ?????????? ??????? ?????? ?? ???? ?????? ???????
??? ? ??????? ??? ??????? ?? ?????????? ?????? ??? ?????????? ??????? ?????? ?? ???? ???????

21 ??????, ???????????, ??? ?????? ?? ???? ?????? ??????? ???????????, ??? ? ?????
«?????????? ??? ????? ?????????????? ??? ??????» ??? ??????? ??? ?????? ???
???? ??????? ??? ?????????? ?????.

22 ???????, ?????????? ? ?????????? ??? ? ??????? ?????? ??????????????? ???
????????? ?????????????? ??? 2000/65, ????? ?? ???? ??????? ???????, ??????
????? ??? ???????, ???????, ???????, ???????, ???????, ?????????, ??????????? ??? ???????
????????? ??? ?????? 21, ?????????? 1, ??????? ??, ??? ????? ??????. ??? ? ???? ??
????? ??? ?? ??? ?????????? ?????? ?? ?????? ??? ?????????? ?????????? ??????? ?????
????? ??? ?????? «?????????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ???
?????», ??? ? ???? ??????? ???????.

23 ? ??????? ???, ?????????? ??? ?? ??????? ??? ?????????? ??? ??????????????? ???
????? ??????? ??? ?????????? ???, ????? ?? ???? ??????????????? ??? ?? ????
????????? ??? ???????, ????? ?? ?????? ??? 17, ?????????? 4, ????????? ?? ??? ??
????? ??? ?? ??????? ??? ???????.

24 ???????????, ?? ??? 1 ??? ?????? ?????????? ??????????? ??? ?????? ???
«?????????? ??? ?? ?????????? ??? ?????? ??? ??????» (???. ??????? ???
16?? ??????? 2009, C?244/08, ??????? ??? ???????, ????? 26).

25 ??? ?? ???? ???? ???? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ?????????? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????????? ??? ?????????? ???
?? ??? (??., ???' ??? ???? ??? ??????, ??????? ?????????? ??? ???????, ???????????????, ???
27).

26 ?????? ??? ?????????? ??? ????? ?????????? ??? ?????? ?? ???? ?? ???????????
????????????? ??? ? ?????? ??????? ?????????? ??? ?????? ?? ?????? ??????????????????
????? ?? ??????? (???. ???' ??? ???? ??? ??????, ?????????? ?????? ??????? ??????? ???
??????, ????? 28).

27 ??? ??????? ??? ?? ?????? ??? ?????? 1 ??? ?????? ???????, ?? ?????? ???????
????????? ??? ?????????? ??? ?? ???, ??? ? ?????? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ??? ?? ???, ??????? ?? ?????????? ??? ?????? ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ??????? ?????????? ??? ???????.

28 ???????, ?? ?????????? ??? ? ???????, ??? ???????????????, ???????, ??? ?? ???????
??? ? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????? ???

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

29 ?? ?????????? ??? ?????? ???, ???????, ??????? ?? ?? ?????????? ??? ??????????
?????? ?? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????????? ??? ???????, ??? ??????? ??? ?????? ??? ??? ?????? ??? 28?? ??????? 2007,
Planzer Luxembourg (C?73/06, ??????? 2007, ?. I?5655), ??????? ?? ??? ??????? ???
?????? 1 ??? ?????? ?????? ?????? 86/560/???, ??? ?????????? ??? 17?? ?????????? 1986
??? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????
???????? – ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ???
???? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? (?? L 326, ?. 40).

30 ??????????, ??? ?????? ?? ?????????? ??? ?????? 61 ??? ?? ??? ?????? ??????????, ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ??? ?????? ??????
????????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????????
????????? ? ?????????? ???, ? ?????? ??? ?????????? ?????????? ?, ? ?????? ??????????
??? ?????????? ??? ?????? ??? ???????, ?????? ? ???, ??? ?????? ?????????? ?
????? ?????????? ??? ?????? ???.

31 ??? ??????, ??? ? ?????? ??? ?????? ??? ?????? ?????????? ??? ? ??? ?????? ???
????????? ?? ?????? ?????????? ???, ?????? ?? ??? ?????? ?????? ?? ?????? ??? ?????????? ???,
??? ???????, ??? ?????????, ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ???
????????? ?????? ???, ??? ?????? ??? ?????????? ??? ?????? «????????? ???»
(??., ???' ??? ???? ?????, ?????? Planzer Luxembourg, ?????????? 61 ???
62).

32 ? ?????? ??? ?????? ??? ?????, ??? ?????? ?????????? ??? ?????? ??????????????
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ???????, ? ?????? ??? ?????????? ??????????
????? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 4,
????????? 1, ??? ?????? ?????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ???
?????.

33 ?????? ??? ?????? ?? ?????????? ??? ?? ?????? 21, ?????????? 1, ??????? ??, ??? ???
????? ??? ?? ?????? ?? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ???
?? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????? 22 ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

34 ??????, ??? ?????? ?? ?????? ??????????, ? ?????????? ?????????? ??? ??
????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ???????, ?????? ?? ?????????? ??? ??
????????? ?????????? ??? «????????? ??? ?????? ?????? ?????????? ??? ?????? ???
?????», ?????? ? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ???.

35 ????????????, ?? ?????????? ?????? ?????? ?? ?????????? ??? ?????????? ???
????? ?????????????? ?? ?????? ??? ??????, ??? ?????? ?????? ??? ?????? ???, ??? ?
????? ??? ?????????? ?????? ?????????????? ??? ?????????? ?????? ?????? ??? ??????
?????, ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?? ??? ??????????.

36 ?????????? ??? ?????? ??? ?????????? ??? ??????????, ?????? ?? ?????? ??? ??????
? ?????? ??? ?? ????? 21, ?????????? 1, ????????, ??? ?????? ?????? ??? ??????
????? ???, ?????????? ?? ?????? ??? ?????????? ??? ?????? «??? ????
????????????? ??? ?????????? ??? ?????», ?????? ? ??? ?????? ?????????? ??????????????
??? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????.

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37 ?????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???, ?' ???
????????? ?? ?????? ??? ?????? ??? ?????? ??????. ?? ?????? ??? ?????? ??????????
???? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

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

?? ??? 21, ?????????? 1, ????????, ??, ??? ?????? ?????? 77/388/?? ??
?????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?? ??? ?????? ?????? ?????? - ?????? ?????? ????
????????????? ????: ?????????? ?????? ???, ??? ?????????? ?? ??
????? 2000/65/?? ??? ????????, ??? 17?? ?????? 2000, ??? ??? ?????? ???,
????????? ?? ?????? ??? ?????? ?????? ?????? «????? ?????????????? ???
????????? ??? ?????», ?????? ? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ???
????????? ??? ?????? ??? ?????? ??? ??????.

(?????????)

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