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???? ?????? C-106/16,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???  
?????? ?? S?d Najwy?szego (???????, ????????, ????????) ?? ??????? ??? 22?? ??????????  
2015, ? ?????? ??????? ??? ?????????? ??? 22 ?????????? 2016, ??? ??????? ??? ???  
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Polbud – Wykonawstwo sp. z o.o., ??? ??????????,

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

????????? ??? ??? K. Lenaerts, ???????, A. Tizzano, ??????????, T. von Danwitz, J. L. da  
Cruz Vilaça, A. Rosas, J. Malenovský, ??? E. Levits, ?????????? ????????, E. Juhász, A. Borg  
Barthet, D. Šváby, M. Berger, K. Jürimäe (?????????), ??? ?. ??????, ????????,

????? ??????????: J. Kokott

?????????: K. Malacek, ?????????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???  
6?? ?????? 2017,

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? Polbud – Wykonawstwo sp. z o.o., ?????????? ??? A. Gorzka Augustynowicz, radca  
prawny,

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? ??????? ????????, ?????????? ??? B. Majczyna,

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? ??????? ????????, ?????????? ??? T. Henze ??? M. Hellmann,

–

? ?????????? ????????, ?????????????? ??? ??? C. Pesendorfer ??? B. Trefil,

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? ?????????? ????????, ?????????????? ??? ??? L. Inez Fernandes ??? M. Figueiredo,  
????? ??? ??? ??? F. de Figueiroa Quelhas,

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? ?????????? ????????, ?????????????? ??? ??? W. Mölls ??? L. Malferrari ?????? ??? ???  
??? J. Hottiaux,

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2

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o.o. (??? ????: Polbud) ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
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3

?? ????? 270 ??? Kodeks spó?ek handlowych (?????? ?????????? ???????), ??? 15??  
?????????? 2000, ??? ??? ?????????????? (Dz. U. ??? 2013, ????. 1030, ??? ????: ???????  
????????? ???????), ??????:

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

[...]».

4

?? ????? 272 ??? ?????? ?????????? ?????????? ??????:

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

5

?? ?????? 288 ??? ?? ??? ?????? ?????????? ??????????:

«§ 1. ????? ???? ??????????, ??? ?? ??????????? ??? ???????, ??? ??????? ?????????????? ??? ??????  
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6

?? ?????? 551 ?? 568 ??? ?????? ?????????? ?????????? ?????????? ?? ?????????? ??? ??????????.  
????? ?? ?????? 562, ?????????? 1, ??? ?????? ?????:

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7

?? ?? 19, ?? Ustawa – Prawo prywatne mi?zynarodowe (????? ??? ?? ?? ??????? ?????? ??????), ??? 4?? ??????????? 2011 (Dz. U. 80, ??? 432), ????:

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

8

? Polbud ?????? ??????? ?????????????? ??????? ?????????? ????????, ? ?????? ??????? ??  
??ck (??????). ?? ??????? ??? 30?? ?????????? 2011, ? ??????? ??????? ??????? ??  
?????? ?? ??????? ???????, ???' ??????? ??? ?????? 270, ?????? 2, ???  
?????? ???????, ?? ??????? ??? ???????, ?? ??????? ??????? ??? ?????? ??????? ??  
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9

???' ?????????? ??? ?????? ??????????, ? Polbud ??????, ??? 19 ??????? 2011, ???  
?????? ??? ??? ?????? ??? ?????? ?????????? ?????? (??? ????: ?????? ??? ?? ??????  
?????????) ??????? ??? ?????????? ???????????. ??? 26 ??????? 2011  
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10

??? 28 ??? 2013, ? ?????????? ??? ?????? ??? Consoil Geotechnik Sàrl, ? ??? ??  
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????????? ??? 30?? ?????????? 2011 ??? ??? ?????? ??? ?????????? ??? Polbud ???  
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??? ?????????? «Consoil Geotechnik».

11

??? 24 ??????? 2013, ? Polbud ?????? ??? ?????? ??? ?? ?????? ?????????? ???  
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?????????, ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
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2011, ??? 30 ?????????? ??? 31 ??????? 2011, ??? 1?? ?????????? ??? 31 ??????????  
2012 ??? ??? 1?? ?????????? ??? 28 ??? 2013, ?????????? ??? ??? ??? ?????????? ???  
??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ???, ???,  
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12

? Polbud ?????? ??? ??? ?????? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?  
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2013, ?? ?????? ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
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13

? Polbud ?????? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? S?d Rejonowy w  
Bydgoszczy (????????? ?????????? ??? Bydgoszcz, ??????), ?? ??? ?????? ?????????? ???  
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?? S?d Okr?gowy w Bydgoszczy (????????? ?????????? ??? Bydgoszcz, ??????), ??  
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14

?????? ???? ?????????? ??????, ? Polbud ?????????? ???, ??? ???? ?????????? ???  
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15

? ? ?????? ?????????? ???????????, ?? ??? ???? ???? ?????? ???????????, ??????, ??? ?  
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16

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

??????, ?? ?????? ?????????? ?????????? ???, ??? ???? ???? ?????????? ??? ???????????,  
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18

??? ??? ??????? ????, ?? S?d Najwy?szy (?????? ??????????, ??????), ?????????? ??  
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????????????? ??? ?????????? ??? ?????????? ???????????, ??? ?????????? ??? ???????????,  
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????? ?? ?????????? ??? ?????? 49 ??? 54 ??? ??? ?????? ??? ?????????? ??????????  
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19

? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? 28 ?????? 2017, ?  
Polbud ?????? ?? ?????????? ? ?????????? ??? ?????????? ??????????????, ???' ?????????? ???  
?????? 83 ??? ?????????? ?????????? ??? ??????????.

20

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????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??,  
???? ??????? ??? ??? ?????? ??? 28? ??? 2013. ???????, ? Polbud ??????? ??? ??  
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Polbud ??? ??' ?????????? ???????, ?????????? ?????? ??? ?????????? ??? ????????  
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21

???? ?? ??? 83 ??? ??????? ??? ?????????? ???, ?? ???????, ???????, ???????????,  
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22

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23

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

24

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??????????, ??? ?????????? ??? ??? ?????????? ??? ??????, ??????? ??? ??? ?????????? ???  
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25

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26

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27

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???? ??????? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????????????? ??? ???????????  
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??? 16?? ?????? 2015, Gauweiler ?.??., C-62/14, EU:C:2015:400, ??? 15).

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

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29

? ? ? ?????? ???????, ?? ?????? ?????? ?? ?????????? ??????, ?? ?????? ?????????? ?????,  
??' ??????, ??? ?? ????? 49 ??? 54 ??? ?????? ??? ?????? ??? ?????????? ??? ? ?????????? ??????????????  
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??? ??????? ?? ??? ?????? ??? ??????, ??? ?? ?????? ?????? ?????, ?? ?????? ?? ?????????? ??? ??  
?????? ?? ??? ??????? ?? ??? ?? ?????? ??? ?????? ?????? ?????, ?????? ?????????? ????.  
????????? ??? ?????? ??? ?? ?????? ???????.

30

? ??????? ??? ? ?????????? ?????????? ?????????? ??? ?? ?????? 49 ??? 54 ??? ??? ??  
????? ??????? ?? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ????. ??? ??

? ?????????? ??????????, ??? ?????? ?? ????? ?????????? ??? ?????????????? ?????????????? ???  
? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??????????????  
????????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ??????????. ? ??????????  
????????? ??????????, ?????? ???, ??? ?????????? ??? 27?? ?????????? 1988, Daily  
Mail and General Trust (81/87, EU:C:1988:456), ??? ??? 16?? ?????????? 2008, Cartesio (C-  
210/06, EU:C:2008:723), ?????????? ?? ?????????????? ?? ?????????? ??? ??? ???? ? ??????  
????? ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? 49 ???  
54 ???.

31

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

32

? ???????????, ?????? ?? ??????? ??? ?? ?????? 49 ???, ?? ?????????? ?? ?? ??? ?????? 54  
????, ?????? ??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ??????  
?? ?? ?????????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ???, ???  
????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???.  
????????, ?????? ??? Polbud, ? ????? ?????????? ?????? ?? ?? ?????????? ??????  
??????, ?? ???????????, ?????? ?? ??? ?????? ?????????, ??????, ???' ????, ??  
????????? ??? ?????????? ???.

33

? ?????? ??? ?????? 49, ?????? ??????, ???, ?? ?????????? ?? ?? ??? 54 ???, ?  
????????? ?????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??  
?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?? ?????????? ??? ?? ??? ??????  
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????????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? (??., ??  
??? ?????? ???, ?????? ??? 27?? ?????????? 1988, Daily Mail and General Trust, 81/87,  
EU:C:1988:456, ??? 17), ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ?????? ???, ??????????, ?????? ?????????? ?? ?????? ?????????? ???  
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34

? ??????, ?????? ?? ?????????? ???, ?????? ?????? ?????????????? ??? ?????? ??? ??????, ?  
????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????????????? ?? ?????? ??? ??????  
??????, ??? ?? ?????? 54 ???, ??? ?????????? ??? ?????? ??????, ?????????? ???  
?? ?? ??? ?????? ?????? ???, ?? ?????????? ??????, ? ?????????? ???, ? ??????????  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? (??., ?? ??? ??? ?????? ???,  
????????? ??? 27?? ?????????? 1988, Daily Mail and General Trust, 81/87, EU:C:1988:456,  
?????? 19 ??? 21).

35

? ??????, ?? ??????????, ? ?????? ?????? ?????????????? ??? ?????? ??? Polbud, ??????  
????????? ??????, ?? ?????? ?? ?????????? ?? ?????? ?????????????? ??????,  
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36

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37

??????, ?? ?????????? ??? ?????????? ?????????????? ??????? ?? ?? ?? ?????? ??????????????  
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38

?????????, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????????????? ??  
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?? ?????????? ??? ???????, ??? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?? ??? ?? ??????  
??? ?????????? ?????????????? ??? (??., ??? ??? ?????? ???, ?????? ??? 9?? ??????  
1999, Centros, C-212/97, EU:C:1999:126, ??? 17). ??? ?????? ?????? ?????, ? ?????????? ???  
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????? ??? ???, ?????? ?????? ?????? ?????? ??????????????, ??? ??? ?? ? ?????? ?????? ??? ??  
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39

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????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? (????????? ??? 9?? ?????? 1999,  
Centros, C-212/97, EU:C:1999:126, ??? 18 ??? 24, ??? 30?? ??? 30?? ?????????? 2003,  
Inspire Art, C?167/01, EU:C:2003:512, ??? 98).

40

??????, ?????? ?? ???????? ???, ??? ?????? ?????? ?? ??????????, ??? ??? ?????? ??  
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????????? ?????? (??., ??? ??? ?????? ???, ?????????? ??? 9?? ?????? 1999, Centros, C-  
212/97, EU:C:1999:126, ??? 27, ??? 30?? ??? 2003, Inspire Art, C?167/01,  
EU:C:2003:512, ??? 96).

41

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????????? ? ??????? ??? ?? ??? ?????? ??? ?????? ?????? ??? ?????? 49 ??? 54 ???.

42

?????????, ??? ???? ??? ?????????? ??? 27?? ?????????? 1988, Daily Mail and General  
Trust (81/87, EU:C:1988:456), ??? ??? 16?? ?????????? 2008, Cartesio (C-210/06,  
EU:C:2008:723), ??? ?????? ??? ????????, ?????????? ??? ??? ?????????? ? ???????  
??????????, ???, ??? ?? ?????????? ? ?????????? ??? ?????????????? ?????? ??? ?????????? ???  
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43

?????????, ??? ??? ?????????? ???, ????? ??? ??? ??? ?????? ??? 12?? ?????? 2012,  
VALE (C-378/10, EU:C:2012:440), ?????????? ???, ??? ?????? ?????? ?????????? ??? ??????  
??? ??????, ??? ?????? ??? ??? ?????? ?? ?????????? ?? ?????????????? ?? ?????????? ??????????  
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????????? ??? ?????? 19 ??? 21? ??? 16?? ?????????? 2008, Cartesio, C-210/06,  
EU:C:2008:723, ?????? 109 ??? 112, ?????? ??? 12?? ?????? 2012, VALE, C-378/10,  
EU:C:2012:440, ????? 32).

44

?????? ??? ??????, ??? ??? ?????? ?????? ??? ?? ?????? ? ?????????? ??? ?? ?????? 49 ???  
54 ??? ?????? ??? ?????? ??? ? ?????????? ?????????????? ??? ?????? ?????? ?? ?????? ??  
????????? ??? ?????????? ??? ?????? ????????, ?????????? ??? ?????? ??? ?????? ??? ??????  
??????, ??? ??? ?????? ???, ?? ?????? ?? ?????????? ???, ?????????? ?? ??? ??? ??????????????  
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45

? ? ???? ??? ?????? ??? ??????, ?? ?????? ?????? ?? ?????????? ??? ??????, ?? ??????  
????????? ???, ???' ??????, ??? ?? ?????? 49 ??? 54 ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ? ?????????? ??? ??????????????  
????? ???????, ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ??? ??? ??????  
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46

????????? 49 ???? ?????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ??????????????  
?????????????. ??? ????? ????? ????????, ?? ?????????????? ??? ?????????????? ??????????????  
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????????? ??? ?????? ??? ?????????????? ?????? (????????? ??? 29?? ?????????? 2011, National  
Grid Indus, C-371/10, EU:C:2011:785, ??? 36 ??? ??? ?????????????? ??????????).

47

?? ???????????, ???? ?????????? ?? ???? ?????? ?????????????????? ???????????, ? ?????????? ??  
????? ???? ?????????? ?????????? ??????? ?? ???? ?????? ?????? ???? ???? ?????????? ??  
????????? ???? ????????????, ???? ?? ?????? 19, ?????????? 1, ??? ?????? ???? ?? ??????????  
????????? ??????, ??? ?????? ??? ?????? ?????????????????? ????. ??? ?????????? ? ??????  
?????????? ?? ?????? 46 ??? ?????????? ???, ?? ?????? ?????? ?????? ?????????? ????, ??  
??????????, ??? ? ?????? ?????????????? ??? Polbud ??????, ???' ?????, ?? ?????????? ????  
??? Consoil Geotechnik.

48

49

?????????, ????????, ??????, ???' ?????, ?? ?????????? ??? ?????????????? ??? ????? ?? ????  
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????????????? ???, ??? ?????? ?????????? ????????, ??? ? Polbud, ? ????? ??????? ??  
????? ??? ??????? ???, ?????? ?? ?????????? ??? ?? ?????????? ?????? ?????? ??????  
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51

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

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????????? ? ?? ?? ?????????? ?? ?????????????? ?????????? ?? ?????? ??????. ??????  
????????? ?????????? ?? ?????????? ?????????????? (??., ?? ? ?? ?????? ???, ??????  
?? 16?? ?????????? 2008, Cartesio, C-210/06, EU:C:2008:723, ?????? 112 ?? 113).

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52

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????????? ?? ?? ?????? ?? ?????? ?????? ?????? (????????? ?? 29?? ?????????? 2011,  
National Grid Indus, C-371/10, EU:C:2011:785, ?????? 42 ?? ?? ?????????????? ??????????).

53

??????, ?? ?????? ?????????? ?? ?????? ?? ? ?????????? ?? ?????? ?? ?????????? ?? ??????????????  
??????????????, ?? ??????????, ?? ?? ?????? ?????????? ?? ???????????, ??  
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54

??????, ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????????????? ?? ?????????????? ?? ?? ??  
????????????? ?? ?????? ?????????????? ?? ?????? ?? ?????????????? ?? ?????? ???????  
????????????? ?? ?????? ?????????????? ?? ?????????? (??., ?? ? ?? ?????? ???, ??????? ???  
13?? ?????????? 2005, SEVIC Systems, C-411/03, EU:C:2005:762, ?????? 28 ?? ??  
????????????? ?????????). ?? ??? ?????? ?? ?????? ?? ?????????? ?? ?????????? (??.,  
?? ?? ?????? ???, ?????? ?? 21?? ?????????? 2016, ???? ??????, C-201/15,  
EU:C:2016:972, ?????? 73 ?? ?? ?????????????? ??????????).

55

??????, ?? ????? 49 ?? 54 ?? ?????? ?? ???????????, ???' ?????, ?? ?????? ?????? ?????? ??  
?? ?????????? ?? ?? ?? ?????? ?????????????? ?? ?????????? ?? ???????????, ??  
????????????? ?? ?????? ?? ?????? ?????????????? ?? ?????????, ? ?????? ?????????? ?????????? ?? ??  
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56

??????, ?????? ?? ?? ?????? ?????????? ?? ?????????????? ?? ?????? 52 ?? ???????  
??????????, ?????? ?????? ?? ?????????????? ?? ?????????? ?? ?????? ?????? ?????? ??????????????  
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57

?? ???????????, ? ??????? ?????????? ?????????? ?????????? ?????????????? ??? ?????????? ???  
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58

?????? ?? ?????????? ??? ? ??????? ????? ???????????, ???????, ?????????? ??????????????,  
????? ?? ??????? ??? ?????? ??? ?????????? ??????? ?? ?????? ?? ?????????? ??? ??????????,  
??? ?????????????? ??? ??????? ??? ?????? ?????????? ??? ?????? ?????????? ??????????  
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????. ??? ?????, ????, ?? ?????????? ??? ?????????, ??? ?????????? ? ?????????? ??? ??????????  
????????, ? ??????? ?????????? ?????????? ? ?????? ?????????? ?????????? ??? ?????????? ??  
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59

???? ???????, ? ??????? ?????????????? ??? ?????????? ? ??????? ??? ?????? ???  
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60

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61

??????, ?? ?????? ??? ?????? ?? ??????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ??????? ?  
?????? ??? ?????? (?????? ?? 9?? ?????? 1999, Centros, C?212/97, EU:C:1999:126, ???  
38).

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??????, ??? ?? ?????????? ??? ?????????? ??? ??????? 40 ??? ??????? ??????????  
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63

?????????, ??? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??  
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????????? ? ?????? (??., ???' ???????, ??????? ?? 29?? ?????????? 2011, National Grid  
Indus, C-371/10, EU:C:2011:785, ????? 84).

64

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65

? ??????? ??? ???????, ??? ????? ??? ??????? ??????? ?? ????? ? ?????? ? ??????? ??? ??  
????? 49 ??? 54 ??? ????? ??? ??????? ??? ??????????? ?? ?????? ??????? ??????? ???  
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66

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1)

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2)

?? ?????? 49 ??? 54 ??? ????? ??? ??????? ??? ??????????? ?? ?????? ??????? ???????  
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?????? ??? ?????? ???????, ??? ????? ?????? ?????, ?? ????? ?? ?????????? ???,  
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(?????????)

( \*1 ) ?????? ??????????: ? ???????.