

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

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

??? 27?? ?????????? 2022 (*)

«????????????? ?????????? – ?????????? – ????? ?????? ?????? ?????????????????? ?????? (???) –
?????? 2006/112/?? – ????? 44 – ????? ?????????? ??? ?????? ?? ?????????? – ??????????
????????????? ?????????? ?????? ?????????????? – ?????? ? ?????? ?????? ?? ?????? ??? ?????? ???
??? ??? ?????? ?????? ?????? – ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ??????»

???? ?????? C?641/21,

?? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Bundesfinanzgericht (????????????? ?????????? ???????????, ???????) ??
?????? ??? 11?? ?????????? 2021, ? ????? ?????? ??? ?????????? ??? 20 ??????????
2021, ??? ?????? ??? ??????

Climate Corporation Emissions Trading GmbH

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Finanzamt Österreich,

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

????????? ??? ??? K. Jürimäe (?????????), ?????? ??? ?????? ???????,
???????????, N. Jääskinen ??? M. Gavalec, ????????,

?????? ??????????: M. Szpunar

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

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

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

– ? Climate Corporation Emissions Trading GmbH, ?????????????? ??? ??? W. Standfest,
Rechtsanwalt,

– ? ?????????? ???????, ?????????????? ??? ??? A. Armenia ??? ??? B. Killmann,

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

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

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1 ? ?????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ?????? ?????????? ???

????????????? ??? (?? 2006, L 347, ?. 1), ??? ?????????????? ?? ??? ?????? 2008/8/E?
??? ??????????, ??? 12?? ?????????? 2008 (?? 2008, L 44, ?. 11, ??? ????: ?????? ???
???).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Climate
Corporation Emissions Trading GmbH (???: Climate Corporation) ??? ??? Finanzamt
Österreich (???????????, ??????), ?? ?????????? ??? ?????? ??? ?????
????????????? ??? (???) ?????? ?????????? ?????????? ?????? ???
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?? ?????? ??????

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

3 ??? ?? ??? 2, ?????????? 1, ??? ?????? ????:

«????? ??? ?????????? ?? ?????????? ??????:

[...]

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

[...]

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

[...]».

4 ?? ??????? 3 ??? ?????????? «????? ??? ?????????? ??????» ?????? V ??? ??
????? ?????? ?????????? «????? ??? ?????? ??????» ??? ?????????? ?? ??? 44 ???
???????, ?? ?????? ?????? ?? ????:

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

5 ?? ????? 44 ?????????? ?? ??? ?? ??? ?????? 2008/8, ? ?????? ?????????? ???
?????? 2006/112 ??? ?????? ??? ?????? ?????? ??? ???????. ?? ?????????? ??? 3
??? 4 ??? ?????? 2008/8 ?????? ?? ????:

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

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

6 ?? ???????? 1 ??? ?????????????? «?????????» ?????? ?? ??? ?????? ??? ??
????????? «????????? ??????» ??? ?????? ?? ????? 131 ??? ??????, ?? ??????
????????? ?? ??????:

«?? ???????? ??? ?????????? ??? ?????????? 2 ??? 9 ?????????? ?? ??? ??????????
????? ?????????? ?????????? ??? ?? ??? ?????????? ??? ?????????? ?? ?????? ????
?? ?????????? ??? ??? ??? ????? ?????? ??? ?? ??? ????? ?????????? ??? ?? ??????????
????? ?????????? ??????????, ?????????? ??? ??????????»

7 ?? ?????? IX ?????????? ??? ?????? ?? ?????? 4 ?? ????? «????????? ?????????? ??
?? ?????????? ??????». ?? ????? 138, ?????????? 1, ?? ?????? 4, ?? ??????
????? ??? ?????? ?? ???:

«?? ??? ?????? ??? ?????????? ??? ??? ??? ?????? ??? ?????????? ?????? ?? ?????? ??????????????
????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? [?????????] ???
????????? ??? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ???, ?????? ?? ?????????? ?????? ?????????????????? ??? ?????? ?????? ??????????
????? ??? ? ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??????»

8 ?? ????? 196 ??? ?????? ?????? ?????? ?? ??????:

«? ??? ???????? ??? ??? ?????????? ??? ?????? ?? ??? ?? ?????????? ??? ??? ??????
?????? ??? ???????? ?????? ???, ??? ?????? ?????? ?????????? ?? ?????????? ???
????????? ??? ?? ??? 44, ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????? ?? ?????????? ??? ?????????? ??? ?? ??? ?????? ??????»

9 ?? ????? 273, ????, ????, ??? ?? ??? ?????? ?????????? ?? ????:

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

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

10 ??? ?? ??? 3 bis, ?????????? 6, ??? Umsatzsteuergesetz (????? ??? ?????? ??? ??
????? ??????), ??? 23? ?????? 1994 (BGBl. 663/1994), ?? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? (BGBl. I 52/2009):

«??? ??? ?????? ??? ?????? 8 ??? 16 ??? ??? ?????? 3 bis, ?? ?????? ??????
????????? ?? ???????????, ??? ?????? ?????? ??? ?????????? 5, ?????? 1 ??? 2,
????????????? ??? ?????? ??? ? ?????? ?????? ??? ?????? ??? ?????????????? ???
??????????. ?? ?? ?????? ?????? ?????? ?????????? ?????????????? ?? ??????
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????»

11 ????????, ??? ??? ?????? ?????????????????? ?????????????? ?????????????? ??? ??
????????????????????? ??? ?????????? ?????? ?????? ??? «?????????????» ??? ??? «?????????
????? ??????» ??? ?????????? ??? ?????? ??? «????????????? ??? ???» ??? ???
«????????? ??????» ??? ?????????????????? ??? ?????? ??? ?????? ??? ??????.

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

12 ?????? 1?? ??? 20?? ??????? 2010, ? Climate Corporation, ? ?????? ??????? ??? Baden
(??????), ??????????? ?? ??????? ?????? ?????????? ??????? ??????? ?????? ??????????? ???
Bauduin Handelsgesellschaft mbH (??? ????: Bauduin), ??? ?????? ? ??? ?????????? ???
?????? (??????).

13 ?? ?????? ?????????? ?????? ??? ?? ?????? ?????????? ?????? ?? ???? 2010, ? ??????
????????? ??? 27 ?????????? 2012, ? Finanzamt Baden Mödling (???????????) ??? Baden
Mödling, ???????) ?????????? ??? ?? ??? ?????????????? ?????????? ?????????? ???????
????????? ?? ?????????? «????????? ??????» ?? ?????????? ??? ?????????? ??? ??
????????????? ??????????. ??? ?? ?????????? ???, ? Bauduin ???????, ?? *missing trader*,
?? «?????????» ??? ?? ??? ?? ??? ? Climate Corporation ??????? ? ??????? ?? ???????
?? ?? ?????????? ??? ?? ?????????????????? ??? ??????? ?????????? ?? ??? ?? ??? ?? ???.

14 ????. 27 ??????????? 2012, ? Climate Corporation ?????? ?????????? ????. ??? ??????
?????? ??????? ??? ?????????? ????????????, ????. ??? Bundesfinanzgericht (?????????????
???????????. ????????????. ???????).

15 ?? ?? ??? ????? ?????????? ?????????? ???, ??? ?????????? ??? ?? ?????? ??? 8??
????????? 2016, A ?? B (C?453/15, EU:C:2016:933), ?? ?????????? ??????????
????????? ?? ????? ?????????? ??? ?? ?????????? ?? «????????? ?????????» ??? ??
?? «????????? ???».

16 ?? ??????? ??????????? ?????????????? ???, ??? ???. ?????????????? ?????, ??????? ??
??? ?????????? ??? ?????? 44 ??? ??????? ???, ??? ?????? 3 bis, ?????????? 6, ???
????? ??? ?????? ??? ??? ?????? ??????? ??? ??? ?????????? ???????, ? ??? ?????? ??????
????????? ??? ??? Climate Corporation ??? Bauduin ?????????? ??? ????????. ?? ?? ??? ??,
?? ?? ??? ?????? ??? ?????????????? ??? ??????????, ??? ??? ???????, ? ?? Bauduin
????? ??????? ??? ?????????? ??? ??? ?????????? ??? ?????????? ????? ?????? ?????.

17 ??????? ?? ???? ?????????????? ?? ???? ?????????? ??????????????, ? Climate Corporation
?????? ?? ?????????? ?? ???? ?? ?????????? ?? Bauduin ?????????? ?? ?????????????????? ??
????? ?? ?????? ?? ?? ?? ?????????????? ?? ??? ?? ??? ?? ???.

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

19 ?? ?????? ?????????? ?????????? ?? ? ?????? ?????????? ?????? ???' ??????????
????????? ?? ?????????????? ?????? ?????????? ?????????? . ?????? ?????????? ?????????? ????. ??

?????????? ????? ???? ????? ?? ?????????? ??? ?????? ??????, ? ?????? ?????????? ?????????? ??????
?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????????, ?????? ?? ?????? ?? ??????
?????? ??? ?????? 44 ??? ?????? ???, ?????? ??? ?????????????? ??????
?????????.

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

21 ??? ???. ?????????? ??????, ?? Bundesfinanzgericht (????????????? ????????????)
?????????) ?????????? ?? ?????????? ?????? ?????? ?????????? ?? ?????????? ?? ???? ?????? ??
????????? ?? ?????????? ?????????? ??????:

«????? ? ??????? [????? ???] ??? ?????? ??? ?? ??????? ?????? ??? ?? ?????? ?????????????
?????? ?? ??????? ??? ? ?????? ?????? ???????, ? ?????? ??????, ?? ??? ???? ????
??????, ?????????? ?? ??? ???? ?????? ?????? ??? ?????? ?????? ?????? ?????????????? ? ???
??? ???????, ?????????? ??? ???????, ??? ? ??????? ?????????????? ??? ??? ??? ??? ??????
??? ?????????? ??? ??? ???? ???, ??? ??? ?????? ??? ??????????, ?????? ??;
?????????? ?? ??? ??? ??? ??? ?????? ?????????? ??????;»

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

22 ? Climate Corporation ??????????? ?? ?????????? ??? ?????????? ??????????????????
?????????. ??????, ??? ???? ????? ??, ?? ?????????????? ?????? ?????? ??????????????
?????????. ?????????? ??? ? ??????? ?????? ??? ?????? ?????? ??? ?????????????? ???
????????? ??? ?????? ??????????, ??? ?????????? ?? ?????????? ?????????????? ?? ?????????? ???
????????? ?????? ?????????????? ?? ?????????????? ?? ?????????????? ?????????????? ?????
????????? ?????? ?????????????? ?? ?????? ??? ?????? ?????? ??????. ??????????, ?? ??????
????????? ?? ???' ?????????? ?????????????? ?????????? ??? ??? ?????? ??? 18??
????????? 2014, Schoenimport «Italmoda» Mariano Previti ??. (C?131/13, C?163/13 ??
C?164/13, EU:C:2014:2455), ? ?????, ?????????????? ?????? ??? ?????????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ?????
????????? ? ?? ??? ??????, ??? ?? ?????????? ?? ??????????.

23 ???????, ?????????????? ???, ??? ????? ?????????? ??? ??????????????, ??? ??
????????? ??? ?????????? ?????? ?????????? ?????????? ??? ??? ?????????? ??? ?????????? ???
??????, ????, ??? ?????????????? ??? ?????????????? ?????????? ?? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????? ?????? ?????????? ??????????????. ?? ?????????? ?????????? ?? ?????????? ?? ?????????? ???
????????? ??? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? ?????????? ??? ???? ?
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ?????????? ??
????????????? ??? ?????????? ??? ?????? ??? ?????, ??? ?? ?????? ?????? ?????? ?????????? ?????? ?
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano Previti ??.,
C?131/13, C?163/13 ??? C?164/13, EU:C:2014:2455, ??? 31 ??? ??? ??????????????
?????????, ??? ??? 21?? ?????????? 2018, Kreuzmayr, C?628/16, EU:C:2018:84, ??? 23
??? ??? ?????????? ??????????).

24 ?? ???????????, ??? ??? ?????? ??????????????? ?????????? ?????????? ?????? ??? ??
?????? ?????????? ??? ?????????? ?? ?????????? ?? ?????? ??? ?????? ?????????????? ???
????????? ??? ??? ??? ?? ?????? ?????? ?????????? ?? ?????? ??? ?????? ??? ??????????
??????????. ????????, ?????? ???' ?????? ?? ?????????????? ??, ??????? ?????? ??? ?????????? ???

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

25 ???????, ??? ?????? ??? ? Climate Corporation ?????? ?? ??????? ?? ??????????? ??
?????????? ???' ???????, ?? ??????? ??? ?????? ??? ?????? ??? ?????, ?? ??????????? ??
?????????? ??? ??? ??????? ??? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano
Previti ??. (C?131/13, C?163/13 ?? C?164/13, EU:C:2014:2455), ?????? ? ??????????? ??? ?
?? ??? ?????????????????? ?????? ??? ??? ????? ?????? ?????? ??? ?????????? ?????? ?????????? ??????.

26 ???????, ? ?????? ?????????????? ?????????? ?????? ??????????.

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

27 ?? ?? ??????????? ???????, ?? ?????? ??????????? ?????? ???' ?????? ??
?????????? ?? ?? ??????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ???????????,
?? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ?????? ??? ?????????????? ?? ??? ???????
????? ?? ?????????? ??? ?????? ??? ?????????????? ?? ?????? ??? ?????? ??? ?????, ?? ?????? ??? ??
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????, ? ??????,
????????? ?? ?? ?????? 44 ??? ???????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ???
?????????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

28 ???????????????, ??????????????? ???, ??? ?????????? ?? ?????? ???????????,
????????? ??????????? ?? ?? ??????? ??? ?????? ?????????? ??????????? ?????????? ???????
?????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????????????? ??
????????? ?????? (???. ?????? ??? 8?? ?????????? 2016, A ??? B, C?453/15,
EU:C:2016:933, ?????? 30).

29 ? ?????? ?????? ?????????? ??????? ?? ??????????? ?????? ?? ??? ??????????? ???
????????? 3, ??? ?????? V, ??? ?????? ????. ??????, ?? ?????? 2 ??? 3 ??? ?? ???
????????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ???
????????? ?????? ?????? (???. ?????? ??? 16?? ?????????? 2014, Welmory, C?605/12,
EU:C:2014:2298, ?????? 37).

30 ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ?????????? ?????? ?? ???????????, ??????, ???????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ??????, ? ??
????????? ??? (????? ?????? ??? 16?? ?????????? 2014, Welmory, C?605/12,
EU:C:2014:2298, ?????? 42 ??? ?????? ?????????? ?????? ???, ??? ??? 7?? ?????? 2020,
Dong Yang Electronics, C?547/18, EU:C:2020:350, ?????? 25).

31 ???????, ??????????? ?? ?????????? ?????? ??? ?????? ??????????? ??? ??????
?????????, ?? ?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ???
????? ??? ??? (???. ?????? ??? 16?? ?????????? 2014, Welmory, C?605/12,
EU:C:2014:2298, ?????? 50 ??? 51).

32 ??? ?????? ???, ?? ?????? 44 ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???

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

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

34 ??? ?????? 44 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????????? ?????? ?????? ?? ??? ?????????????? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ?????? ??????????, ??? ?? ??? ?????? ?????? ?????????? ??????????????,
?????????, ??? ?????????? ??? ?????????? (????. ?????? ??? 16?? ?????????? 2014,
Welmory, C?605/12, EU:C:2014:2298, ?????? 53 ??? 56).

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

36 ???????, ??????? ?? ?? 44 ??? ?????? ??? ??, ? ?????? ??? ??????
????????????? ?????? ?????????? ?? ?? ?????????? ?????? ?????????? ??????????????
????????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ?? ?? ??????
????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ??? ?????? ??????.

37 ?? ????????, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????????
??, ?????? ??? 44 ??? ?????? ??? ??, ? ?????? ?????????? ??? ?????? ?????????? ???
????? ?????? ???, ? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????, ??? ??
?????????, ??? ??, ?????? ?? ?? 196 ??? ?????? ??? ?????? ??? ?? ?????? ?????? ?????? ??????????
????????? ??? ?????? ??????, ?????? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ??????????
??? ?? ?????? ? ??????. ? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???
????????? ?????? ??? ?? ??????.

38 ??? ?? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??, ???
?? ?????? ??? 44 ??? ?????? ??? ??, ? ?????? ?????????? ??? ?????? ?????????? ???
????????? ?? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??????????
??? ?????????? ??? ?????? ?????? ?????????? ?? ?? ?????? ?????? ?? ?????????? ?????? ???
????????? ?? ?? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???.

39 ??????, ??? ?? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? ???
????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
(????????? ??? 6?? ?????? 2006, Kittel ??? Recolta Recycling, C?439/04 ??? C?440/04,
EU:C:2006:446, ??? 54, ??? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano Previti
??., C?131/13, C?163/13 ??? C?164/13, EU:C:2014:2455, ??? 43, ??? ?? 15??
????????? 2022, HA.EN., C?227/21, EU:C:2022:687, ??? 27).

40 ??? ?????? ???, ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ??
????????? ???, ? ??? ??????, ?? ?????????? ???' ?????? ??? ??????????

????????????? ?????????????? ??? ??? ?????? ????, ??? ???? ?????????????? ?????????? ?????????????? ?????????????? ?????, ???? ?????? ??? ?????? ?????? ?????? ?????? ???? ?????????????? .
????? ?????????? ??? ??? ?????? ??? ???? ???? ?????????????? ??? ???? ?????????????? ?????? ??? ?????????????? , ???
??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???, ?? ??? ?????? ?????? ?????? ?????, ?????? ???
????????????? ?? ??? ??? ??? ??? ?????????????? ??? ??? ?????? ?????? ?????? ???? ??? ??????
????????????? ???? ?????? ?????? ??? ?????? ??? ?????????????? ???? ?????? ?????? ?????? ??? ?????? ???
????? (????. ?????????? ??? 7?? ?????????? 2010, R., C?285/09, EU:C:2010:742, ??????
51 ??? 52, ??? 6?? ?????????? 2012, Mecsek-Gabona, C?273/11, EU:C:2012:547, ????? 54,
??? 9?? ?????? 2014, Traum, C?492/13, EU:C:2014:2267, ????? 42, ??? ??? 18??
????????? 2014, Schoenimport «Italmoda» Mariano Previti ?.??., C?131/13, C?163/13 ???
C?164/13, EU:C:2014:2455, ?????? 49 ??? 50).

41 ?????????, ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? , ? ??? ?????? ?????? ??? ?????? ???
????? ?????? ?????? , ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ,
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .

42 ?????????? ??? ??? ???, ?? ?????????? ?????? ??? ?????? ??? ???, ? ?????? ??????
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ??? ??
????????????? ??? ?????? ?? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????
??? ?? ??? ?????? ?????? , ??? ?????? ?????? ?????? ?????? ??? ?????? 30 ??? 31 ??? ??????
????? .

43 ???????, ?????? ?????? ?? ??? ?? ?????????? ?? ?????? ?????? ?????? ?????? ???? ??????????
??? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? , ?? ??? ?????? ?????? ??? ??????
?? ?????? , ??? ?? ?????? ?????? ?????? ?????? ?????? ???, ??? ?????? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? .

44 ?????????? , ?????????? ??? ???? ???? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? , ? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? 3 ???
4 ??? ?????? 2008/8 ??? ??? ??? 44 ??? ?????? ??? ???, ?????? ??? ???? ???? ?
????????????? , ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? , ??? ?????? ?????? ??? ???
????????? (??., ??' ?????? , ?????? ??? 8?? ?????? 2016, A ??? B, C?453/15,
EU:C:2016:933, ??? 25 ??? ??? ?????? ?????? ??????). ???, ?????? ??? ??? ???
??? ?????? ??? ??? ?????? 42 ??? ?????? ??? ?????? ??? ?????? , ?? ?????? ??? ??? ???
????? ??? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? .

45 ???????, ??? ?????? ?? ?????????? ?????? , ?????? ??? ?????? ??? ???? ?
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?? ??? ?????? ?????? ??? ?????? ?
????? ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ?????? .
????????? , ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ?????? .
??? ?????? ?????? ?????? ??? ?????? ??? ?????? , ?? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? .

46 ???????, ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? , ???
????????? ?????? ?????? , ??? ??? ?????? ??? ?????? 138 ??? ?????? ??? ??? ?
????????? ??? ?????? ?????? ?????? ???, ??? ??? ?????? ??? ?????? 2, ?????? ?
1, ?????? ??, ??? ??????. ? ?????? ?????? ?????? ?????? ??? ? ?????? ?????? , ?

????? ??????? ?????? ?????????????? ?????, ?????????? ??? ?????? ?????????????? ?????, ??
????? ??? ????? ? ?????????? ?????????????? ?????????????? ?????? ??? ?????? ?????? ??? ??
????? ?????????? ? ?????????? ????? ?????? ??? ??? ?????? ?????? ?????? ??? ?? ??? ??????
?????, ?? ?????? ????? ?????????????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????????? (????. ??????? ??? 27?? ?????????? 2007, Teleos ???., C?409/04,
EU:C:2007:548, ?????? 22 ??? 24).

47 ???????????, ? ?????????????? ?????? ?????? ?????????????? ??? ?????? ?????? ???
?? ?????? ?????????? ? ?????????? ???, ?????? ?? ?????? ?? ?????????? ?????????? ? ??????????
??? ??? ??? ?????????? ??? ?? ?????? ??? ?? ?????? ?????? ?????, ??? ? ??????????????
????????? ?????????? ??? ?? ?????? ?????? ?????? ?????? (????. ??????? ??? 7??
????????? 2010, R., C?285/09, EU:C:2010:742, ????? 38 ??? ??? ??????????????
?????????).

48 ?? ?? ??????, ?? ?????? ?????? ??? ?? ?????? ?????????? ? ?????????? ??? ??????
??????, ???????????, ?? ?????? ?? ?????????? ?????????? ?????????? ?????? ??????????????
??? ??? ?????? ?????????? ??? ?????? 131 ??? ?????? ?????? ??? ??? ?????? ??????????
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ???
????????? ??? ?????????????? ???????????, ?????????????? ? ?????????? (????. ??????? ???
7?? ?????????? 2010, R., C?285/09, EU:C:2010:742, ????? 51).

49 ????????, ?? ?????? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ??????
????? ?????????????? ?????? ?????????? ?????? ??? ??????, ?? ??? ??? ??? ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????, ?? ?????? ?????????? ?????? ??? ???
????????? ??? ?????? ??? ?????? ???.

50 ????????, ?? ???????? ?? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ???
?? ?????? ??????? ? ?????????? ?????? ?? ?????? ?????????? ?? ?????????? ??????????????
?????????, ??? ?????? ?????? ?????????? ??? ?????? 46 ??? 48 ??? ?????? ?????????, ??
????? ?????? ??? ?????? ?????? ?????????????? ? ?????? ?????? ?????????? ?? ?????? ?????????? ???
????? ?????????????? ?? ??? ?????? ??????, ? ?????? ?????? ??? ?????? ?????????? ???
????? ?? ?? ?????? 44 ??? ?????? ???, ?????? ??? ?????????? ??????, ???
????????, ?????? ??? ??????, ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???.

51 ?? ?? ??????, ? ?????????????? ??? ?????? 40 ??? ?????? ?????????? ?????????? ???
????? ?? ?????????? ???' ?????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ??????.

52 ??? ?? ?????????????? ?????????? ??? ? ?????? ?????? ?????????? ??? ?????? ??
????????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? 44 ??? ?????? ??? ???
??? ??? ??? ??? ? ?????? ?????? ?????? ?????? ??? ??? ??? ???.

53 ?????? ???????, ?????? ??? ?????? 273 ??? ?????? ???, ?? ?????? ???
????????? ?? ?????????? ?????? ??? ?? ?????????? ??? ?????? ?????????? ??? ??? ??? ???
????????? ??? ??????. ?????????, ?? ?? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ???
????? ?????????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????????? ?????? ??????????
???' ?????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
(????. ?????????? ??? 27?? ?????????? 2007, Collée, C?146/05, EU:C:2007:549, ????? 40
??? ??? ?????????? ??? 21?? ?????? 2012, Mahagében ??? Dávid, C?80/11
??? C?142/11, EU:C:2012:373, ?????? 57 ??? 62, ??? ??? 1?? ?????? 2021, Tribunal
Económico Administrativo Regional de Galicia, C?521/19, EU:C:2021:527, ????? 38).

54 ??? ?? ??????? ?? ??????? ?? ??????????????, ??? ?????????? ?????????????? ???????
?????? ?? ?????? ? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??
??????????, ?? ?????????? ??????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
??? ?????? ?? ??? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?? ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
??????, ??????? ?? ?? ?????? 44 ??? ??????, ?????????? ?? ?????? ?? ?????? ?? ?????? ??
?????????, ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??, ?? ??? ?????? ??
?????????, ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????????? ?? ?????? ?? ?????? ??
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55 ??? ??????? ?? ? ??????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??
?? ?????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??, ?' ??
?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??????. ?? ?????? ?? ?????? ?? ??????????
????? ?????????? ?????????????? ?? ???????????, ??? ?????? ?? ?????? ?? ??????????, ?? ??????????????.

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

? ? ?????????? ?? ? ??????? 2006/112/? ? ? ??????????, ?? 28? ? ?????????? 2006,
?????? ?? ?? ???? ?????? ?? ?????? ?????? ?????? ?????????????? ??, ??? ?????????????? ??
?? ???? 2008/8/E? ?? ??????????, ?? 12? ? ?????????? 2008,

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

??????????, ?? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ??
?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??
????? ?????? ???, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????? ?????? ?? ?????? ?? ?????? ??, ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
2006/112, ?? ?????????????? ?? ?? ???? 2008/8, ?????????? ?? ?????? ?? ?????? ??
?? ???? ?? ?????? ?? ??????????, ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??
?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??, ??
?? ?????? ?? ?????? ?? ?????? ??, ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??.

(?????????)

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