

@import url(../../../../css/generic.css); EUR-Lex - 61997J0254 - EL

Avis juridique important

1

61997J0254

????????? ??? ???????????? ??? 8?? ??????? 1999. - Société Baxter, B. Braun Médical SA, Société Fresenius France ??? Laboratoires Bristol-Myers-Squibb SA ???? Premier Ministre, Ministère du Travail et des Affaires sociales, Ministère de l'Economie et des Finances ??? Ministère de l'Agriculture, de la Pêche et de l'Alimentation. - ?????? ??? ??? ?????? ?????????????? ??????????: Conseil d'État - ??????. - ?????????? ????? - ??????? ??? ??? - ?????????????? ?????? - ?????????????? - ?????????????? - ?????????????? C-254/97.

????????? ??? ??????????? ?? ??????????? 1999 ?????? I-04809

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[?????? ??, ????? 52 (???, ??????? ??????????????, ????? 43 ??) ??? ????? 58 (???, ????? 48 ??)]

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?? ??? ?? ?????????? ??? Conseil d'Etat (??????) ??? ?? ???????????, ???'
????????? ??? ?????? 177 ??? ??????? ?? (?? ?????? 234 ??), ?? ??? ?????? ???????,
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Soci?t? Baxter,

B. Braun M?dical SA,

Soci?t? Fresenius France,

Laboratoires Bristol-Myers-Squibb SA

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Premier ministre,

Minist?re du Travail et des Affaires sociales,

Minist?re de l'Economie et des Finances, Minist?re de l'Agriculture, de la P?che et de
l'Alimentation,

? ?????? ?????????????? ?????????? ?? ??? ?????? ?????? ??? ?????? 52 ??? ?????????? ??
(???, ??????? ??????????????, ?????? 43 ??), 58 ??? ?????????? ?? (?? ?????? 48 ??), 92 ??
95 ??? ??????? ?? (???, ??????? ??????????????, ?????? 87 ?? ??? 90 ??),

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

????????? ??? ??? G. C. Rodr?guez Iglesias, ???????, P. J. G. Kapteyn, G. Hirsch ??? P.
Jann, ????????, C. Gulmann (??????), J. L. Murray, D. A. O. Edward, H.
Ragnemalm ??? L. Sev?n, ???????,

????????? ??????????: A. Saggio

?????????: D. Louterman-Hubeau, ????? ?????????? ????????????,

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

- ?? ??????? Baxter, B. Braun M?dical SA ??? Fresenius France, ???????????????? ??? ?? Alexandre Carnelutti, ??????? ???????,

- ? Laboratoires Bristol-Myers-Squibb SA, ?????????????? ??? ?? Alain Monod, ??????? ????????,

- ? ??????? ????????, ?????????????? ??? ?? ?areen Rispal-Bellanger, ?????????????? ??????? ??????? ????????, ??? ?????????? ????????, ??? ?? Jean-Marc Belorgey, charg? de mission ??? ?? ????????,

- ? ??????? ??? ?????????? ???????????, ?????????????? ??? ?? G?rard Rozet, ??????? ????????, ??? ?? H?l?ne Michard, ????? ?? ??????? ????????,

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

????? ?????? ??? ?????????? ?????????????? ??? ?? Baxter, B. Braun M?dical SA ??? Fresenius France, ?????????????? ??? ?? Alexandre Carnelutti, ??? Laboratoires Bristol-Myers-Squibb SA, ?????????????? ??? ?? Alain Monod, ??? ??????? ?????????? ?????????? ?????????? ??? ?? Kareen Rispal-Bellanger ??? ?? Fr?d?rik Million, charg? de mission ??? ??????? ??????? ??????? ??? ?? G?rard Rozet ??? ?? H?l?ne Michard, ??? ?? ?????????? ??? ?? 16?? ??????? 1998,

????? ?????? ??? ?????? ?????????? ??? ?? ??????? ??? ?? ?????????? ??? ?? ??????? ?? ??????? 1?? ??????? 1998,

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1 ?? ??????? ??? 28?? ??????? 1997, ? ?????? ??????? ??? ?????????? ??? ?? 14 ??????? 1997, ?? Conseil d'?tat ???????, ???' ??????? ??? ?? 177 ??? ??????? ?? (?? ??????? 234 ??), ??? ?????????? ??? ?? 52 ??? ??????? ?? (?? ??????? 43 ??), 58 ??? ??????? ?? (?? ??????? 48 ??), 92 ??? 95 ??? ??????? ?? (??, ??????? ???????????, ??????? 87 ?? ??? 90 ??).

2 ?? ?????????? ??? ??????? ??? ??????? ?????????? ??? ?? ??????? Baxter ?????? ??? ?????? ??????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??????? ??????? ??? ?????? Conseil d'?tat ?? ?????? ??? ??????? ??? ?? 12 ??? ?????????? ??? ?? 96-51, ??? 24?? ?????????? 1996, ??? ?????????? ??? ?? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? (JORF ??? 25?? ?????????? 1996, ?. 1230), ??? ?????????? ??? ?? 52, 58, 93, ?????????? 3, ??? ??????? ?? (?? ??????? 88, ?????????? 3, ??) ??? 95 ??? ?????? ???????.

3 ?? ????? 12 ??? ?????????? ??? ?????? ??????? ?????????? ?? ?????? ??????? ??????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ?????????? ??? ?? ?????????? ?????????? ??? ??????? ??????? ??? ?????? ??? ?????? ? ??? ?????? ?????????? ??? ?? ?????????? - ?? ?????????? ??? ?????? - ??? ?????????? ??? ?? ?????? ?????? ??????? ??? ?? 1?? ?????????? 1995 ??? ?? 31?? ?????????? 1995 ??????? ?? ?? ????????????

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4 ? ??????? Baxter ??? ?? ?????? ?????????????? ??? ?????? ??? ?????, ?? ?????? ??? ?????
????????? ?????????? ?????????? ?????????????? ??? ?? ?????? ??? ?????, ?????????????? ??????
??? Conseil d'etat ??? ? ?????????? ???????????, ??? ?? ?????? ?????????? ??? ?? ?????
????????? ????????, ??? ?????? ?????????????? ??? ?????????? ??????? ?????????? ??????????
??????, ??????, ??? ?????? ?????????????? ??? ?????? ?? ?????????? ??????? ??? ??????
????????? ??? ?????? ???, ???????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??????
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5 ?????????? ??? ?? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ?? ??? ?? ??
????????? ??? ?????????? ???????, ?? Conseil d'etat ?????????? ?? ?????????? ??
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????????? ??????????:

«1) ?????????? ?? ??? 52 ??? 58 ??? ??????? ??? 25?? ??????? 1957 ??? ??????
?? ?????????? ?????????? ?? ?????? ?????????? ??? ?????, ?????????? ?? 1996, ??????????
?? ?? ??? ?????? ?????? ???????, ??? ?????? ? ?????????? ??????? ?? ??????? ??????
?? 1,5 ??? 2 % ??? ?????? ??????? - ?? ?????????????? ??? ????? - ??? ??
????????? ??? ?????????? ?????? ?????????? ?????? ?????? ?? 1?? ?????????? 1995 ??? ?? 31?? ??????????
1995 ??? ?????? ?? ?????????? ?????? ?????????? ?? ?????? ?? ?????? ?????????? ??
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??? ??????;

2) ?????????? ?? ??? 95 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??
?? ?????? ???????;

3) ?? ??????? ?????????? ?????????? ?? ??? ?? ??? ?????????? ???????????, ????
? ??????? ?? ??? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ??????
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????????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? 92 ??? ?????????? ???
????????? ?? ?????????? ??????????;»

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6 ?? ?? ?????? ??? ???????, ?? ?????? ?????????? ??? ?? ?? ?????? 52 ??? 58 ???
????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????, ???????, ?????????? ???
??????????, ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????????????? ???
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7 ????? ??? ?????????????? ??? ?????? ?????? ??? ??? ???????, ? ?????????????? ?????
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????? ?????? ?????????? ?? ?? ?????? 52 ?? 58 ?? ??????.

8 ? ??????? ?????????? ?????????????? ???, ?' ??? ??????? ??? ?????? ???
??????????????????, ??? ?? ?????? ?????????? ?????????? ?? ?????? ?????????????? ???
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?? ??? ?????? ??? ??, ???????????, ?????? ? ?????????????? ?????? ?????? ??????????????
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????? ?????????? ?? ?? ?????? 52 ?? ?????? ??? 48 ?? ?????? ??? ??????????, ??????????????
????? ??? ?????????? ?????? ??? ?????? ???????, ???, ?????? ??? ?? ?? ??? ??????
??, ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????????? ???
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9 ?????' ??' ???, ??????? ?? ?????????? ??? ?????? ?????????? ??????????????, ??? ?????? ??
????? 52 ?? ??????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????
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????? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? 58
?? ???????, ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?? ?? ?????????? ?????? ???
??? ?????? ??? ?????????? ??? ?????, ??? ?????????? ??? ?????? ?????? ??? ?????? ???
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????????????? ??? ?????????? (?? . ?? ?????? ?? 12?? ?????? 1994, C-1/93, Halliburton
Services, ?????? 1994, ?. ?-1137, ????? 14).

10 ??? ???????, ??? ?? ?????????? ??? ?????????? (?? . ?? ?????? ?? 13?? ???????
1993, C-330/91, Commerzbank, ?????? 1993, ?. ?-4017, ????? 14) ?????????? ??? ?? ???????
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11 ??????, ?????? ?????? ?? ??????????? ???, ??? ???? ?????????? ??? ???? ?????? ???'
????????? (??., ????, ??? ?????????????? ??? ?????? Halliburton Services, ??? 16), ??????
????? ? ?????????? ?? ?????? 52 ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ???? ??????, ?? ?????????? ?????, ??? ?????? ??? ?????????? ??? ?????????? ???
????? 54, ?????????? 2, ??? 57, ?????????? 1, ??? ?????? ?? (??, ??????
?????????????, ??? 44, ?????????? 1, ?? ??? 47, ?????????? 1, ??).

12 ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????????? ??? ?????????????? ??? ???? ? ??????????
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????????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? 1995.
???? ?????, ?????????? ??? ???? ?????????? ??? ?????? ??????????, ??? ?????? ??? ???? ??????????
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13 ??????, ?????? ?? ?????????? ???, ??? ???? ?????????? ??? ?????? ?????????? ?????????? ???
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14 ? ?????????? ??? ?????? ??? ?????????? ??? ???? ?????? ??? ???? ?????? ??? ?????? ???
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15 ??? ??? ?????? ???, ??? ???? ?????? ??? ???? ?????? ??? ???? ??????????, ???
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16 ??????, ? ?????? ?????? ?????? ?????? ??? ???? ?????? ??? ???? ?????? ?????? ??????
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17 ? ?????? ???, ??? ??????, ?? ?????????? ??? ???? ?????? ??? ?????? ??? ?????? ???
?? ???? ?????? ??? ?????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? 78/660/EOK ??? ?????? ???, ??? 25? ??? 1978, ??? ?????? ???
????? 54, ?????? 3, ?????? ?, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? (?? ??. ?? 06/002, ?. 17), ??? ??? ?????? ?????? 83/349/???
??? ?????? ??? 13? ?????? 1983, ??? ?????? ??? ?????? 54, ?????? 3,
????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? (?? L 193, ?. 1),

????????? ?? ??? ???? ???? ?????? ? ?????? ?????? ?? ??????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??
?? ?????? ??????. ????????, ? ??????? ?????????????? ??, ??? ??? ?????????? ??????
??? ?????????? ??????, ? ??????? ?????????? ??? ??? ??? ?????? ?? ??????????
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18 ??????? ?? ?????????? ??? ?? ?????????? ???' ?????????? ??? ?
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????????? ??? ?? ?????????? ?????? ?????? ?????? ??? ??????????
????????? ??? ?????????? (??., ????, ??? ?????? ??? 15?? ??? 1997, C-
250/95, *Futura Participations* ??? Singer, ?????? 1997, ?. ?-2471, ??? 31). ???,
????????? ?? ?????? ?????? ?? ?????????? ?????? ??? ?????????? ?????? ??? ??????????,
?? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????? ???
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19 ?????, ?????????????? ? ??????????? ??? ?????? ?????? ? ?????? ?????????? ?? ??????
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20 ????????????, ??? ?????? ?? ????????????, ?? ??? ?????????? ?? ? ?????????????? ??
????? ?? ??? ?? ????????????, ?? ?????????? ?? ?????????? ?????????????? ?????? ?? ??????????
????? ????????????, ?? ??? ?????? ?? ?????????? ?????? ?????????? ?? ?????????? ?????? ??
???????????, ?? ????????????, ?? ?????????? ?? ??????????, ?? ??? ?????? ?????? ?????? ?? ???
????? ??? ?? ??? ?????? ?????????? ?????? ??? ??????.

21 ???????????, ??? ?????? ??????? ??????? ?? ?????? ? ?????????? ??? ?? ?????? 52 ??? 58
??? ??????? ??????????? ??????? ??????? ?????? ?????, ????, ??????, ??????? ???
??????????, ??? ?????? ??????????????? ??? ?????? ?????? ??? ?????? ?????????????????? ???
?????????? ???????????????, ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? - ??
????????????????? ??? ?????? - ??? ?????????????????? ??? ??? ?????????????? ???
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