

@import url(../../../../css/generic.css); EUR-Lex - 62000J0040 - EL

**Avis juridique important**

/

## **62000J0040**

????????? ??? ??????????? (?????? ?????) ??? 14?? ??????? 2001. - ???????? ???  
?????????? ??????????? ??? ?????????? ??????????? - ???????? ??????? ?????? - ???  
17, ??????????? 2 ??? 6, ??? ????? ??????? ??? - ???????????, ??? ??? ??????????  
????????? ??? ??????? ??? ???????, ??? ??????? ??????????? ??? ??????????? ?????  
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???????? C-40/00.

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### **?????? ???????**

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????????????? ??? ????? - ??????? ??? ?????? ?????? ?? ?????????? ??? ??????????  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? - ?????  
????????? - ??????? ??? ?????? ?????????? ??? ?????????? ?????????? - ??? ??????  
????? - ?????????????? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ??????  
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(?????? ??? ?????????? 77/388, ??? 17 § 2 ??? 6, ?? 2)

### **??????????**

\$\$\$\$ ?????? ??????? ?????????? ?????????? ?????? ??? ?????? 17, ?????????? 6, ??????  
??????, ??? ?????? ?????? 77/388 ??? ?????????? ??? ?????????? ??? ??????? ?????,  
??? ??????? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? 17,  
????????? 2, ??? ?????? ? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?? ?????? ?? ?????????? ??  
?????????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ??????????  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????  
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??????, ??????? ?? ???? ??????????? ?? ???? ?????? ?? ???? 17, ??????????? 2, ??  
????? ??????? ?? ?????? ?????? ?? ????? ???????????, ?? 1?? ??????????? 1998, ?? ??????  
????????? ?? ??????????? ?? ?????? ?????? ??????????????? ?????? ?? ??????????? ?? ???????????  
?? ?????????? ??????????? ?? ?????? ??????????????? ?? ?????? ??????????? ?? ?????? ?? ???????????  
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( ?? ??????? 17-18, 24 )

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???? ??????? C-40/00,

????????? ?? ??????????? ???????????, ??????????????? ?? ??? ??? E. Traversa ??? C. Giolito,  
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????????? ???????????, ??????????????? ?? ??? ??? K. Rispal-Bellanger ??? ??? S. Seam, ??  
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1?? ??????????? 1998, ?? ??? ????? ??????????? ?? ??????????? ??????????? ?? ??? ??????  
????????????? ?? ?????? ?????? ??????????? ?? ??????????? ??????????? ??????????? ?? ??? ??????  
?????????????? ?? ?????? ?????? ??????????? ?? ?????? ?? ?????? ?? ??????????? ???????????  
??????????, ??? ??????????????? ?? ??????????? ??????????????? ??????????? ?? ?????? ?? ???????  
??????????, ?????? ??? ??????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ???????  
?????????? 77/388/?? ?? ???????????, ?? 17?? ??\_?? 1977, ??? ??????????? ??  
?????????? ?? ?????? ?????? ?????, ??? ??????????? ?? ?????? ?????? ?????? ?????? - ???  
????????? ??? ??????????????? ?????: ??????????? ??????????? ?? (?? ??? . ??? . 09/001, ?. 49),  
?? ??? ?????? 95/7/?? ?? ???????????, ?? 10?? ??????????? 1995, ?? ???  
?????????? ?? ?????? 77/388 ??? ?? ?????? ?????? ??????????? ?? ??? ?????? ??  
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????????????? ?????? (?? L 102, ?. 18),

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

?????????? ?? ??? A. La Pergola, ??????? ???????, D. A. O. Edward, P. Jann, S. von Bahr  
(???????) ??? C. W. A. Timmermans, ???????,

????????? ??????????: L. A. Geelhoed

?????????: R. Grass

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??? 22?? ??????????? 2001,

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## ????????? ??? ????????

1 ?? ?????????? ??? ??????? ??? ?????????? ??? ?????????????? ??? ????? 11 ??????????? 2000,  
? ??????? ??? ?????????? ?????????? ??????, ??????? ??? ?????? 226 ??, ??????? ??  
??? ?????? ?????? ?? ?????????????? ??? ? ??????? ??????????, ???????????????, ??? 1??  
?????????? 1998, ??? ????? ?????????? ??? ?????????? ?????????? ??? ???????  
????????????? ??? (?? ?????: ??) ? ?????? ?????????? ??? ?????????? ??????????????  
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????????? ???????, ??? ?????????????? ??? ?????????????? ?????????????? ??? ??????? ??  
????????? ???????, ?????? ??? ?????????? ??? ??????? ??? ?? ?????? 17, ??????????? 2,  
??? ????? ??????? 77/388/??? ??? ??????????, ??? 17?? ??\_?? 1977, ??? ??????????????  
??? ?????????? ??? ?????? ???, ??? ??????? ?? ??? ????? ?????? ?????? ?????? - ???  
?????? ??? ????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49),  
?? ??? ?????? 95/7?? ??? ??????????, ??? 10?? ??????? 1995, ??? ???  
?????????? ??? ??????? 77/388 ??? ??? ?? ??? ?????? ?????????????? ??? ??????? ???  
???? ?????????????? ??? - ??? ?????????? ?????????? ?????????? ??? ??????????  
?????????? ?????????? ??? (?? L 102, ?. 18, ??? ????: ??? ??????).

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2 ?? ????? 17, ?????????? 2, ??????? ?\_, ??? ??? ????? ?????? ?????????? ?? ???:

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

3 ?? ????? 17, ?????????? 6, ??? ??? ????? ?????? ?????????? ?? ???:

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

4 ?????????? ??? ???. ?????????? ??? ??????? ? ????????, ??????? ??? ?????? 17, ?????????? 6, ????? ???. ??? ?????? ??????, ??? ?????? ??????, ?????????? ??? ?? ??????????.

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

5 ??? 1? ?????????? 1979, ?????????? ??????? ??? ?????? ??? ?????? ???????, ??? ??? ???? ??? 30? ?????? 1982, ?? ?????? ?????? ??????? ??? ?????? ??? ?????????????? ?? ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ??.

6 ?????? 1982 ??? 1991, ??? ? ?????????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ???????????. ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? 10 % ?? 1982 ?? 90 % ?? 1991 ??? ?????? ??? 50 % ??? ?? ?????? ??? 1991.

7 ?? ??????? ??? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ?? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?? ?????? 1998 ??? ???????. ??????, ?? ?? ??? 15 ??? ???? 97-1269, ??? 30?? ?????????? 1997, ??? ??? ?????????? ??? 1998 (JORF ??? 31?? ?????????? 1997, ?. 19261), ?????????????? ?? ??? ?? ?????? 298, ?????????? 4, 1?, ??? ?????? ?????????? ??????:

«??? ??????? ? ??? ?????????????? ?????? ??? ?? ??????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????:

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- ?? ?????????? ??? ?????? ??? ?? ?????? 265 ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????.

[...]».

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

8 ?????????? ??? ? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?? ?? 17, ?????????? 2, ??? ?????? ??????, ? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

9 ??? 30 ?????????? 1998, ?? ?????? 1? ?????? 1979.

10 ? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? 19 1999.

11 ?? ?????????? ??? ???? ?????????????? ??? ???? ?????????????? ??? ???? ?????? ???  
????????? ??? ?????????? ??? ???? ??????, ??? 10 ?????????? 1999, ?????????? ??? ????  
????????????? ??? ???? ???.

12 ??? ??? ??????? ????, ? ???????? ??????? ?? ?????? ??? ??????? ??? ??????? ???????.  
? ?????????? ??? ??????? ??? ? ??????? ??? ??????????

13 ? ??????? ?????????? ??? ???? ?????? ??????? ???????, ?????????????? ???  
????????? ??? ?????????? ??? ???? ?????? ??? ???? ?????????? ??? ?????????? ???  
????????? ??? ?????? ?? ?????????????? ??? ??????? ??? ??????? ??? ?????????? ??? ??  
????? ??? ?????????? ???????, ??? ?????????? ??? ???? ?????????? ??? ?????????? ???  
????????? ??? ?????? 17, ?????????? 6, ??? ?????? ??????? ??? ?????????? ??? ?????????? ???  
17, ?????????? 2, ??? ?? ??? ?????? ??????. ??????????, ??? ?? ??? ?????? ??? ?????????, ??  
????? 17, ?????????? 6, ??? ??????? ?? ?????? ?????? ?? ?????????? ?? ??? ?????? ??  
????? ?????? ?????????? ?????? ?? ?????? ?????????????? ??? ??? ???????,  
????????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?? ??? ???????  
?????.. ?????????? ??? ?? ?????????????? ??? ??? ?????????? ?????? ?????????? ???, ?? ?????? ??? ??  
?????????, ??? ?? ??? ?????? ??? ??????????, ??? ?????? ?????? ?????????, ?? ?????? ???????  
????????????? ??? ??????????????, ??? ?? ??? ?????? ?????????, ?? ?????? ???????  
????????????? ??????, ??? ?? ??? ?????? ?????????? ??? ?????? ?????????? ?????????????????? ???  
????????? ? ?????? ??????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ???????.

14 ??? ?? ??? ?????? ??? ?????????? ???????????, ?? ??? 17, ?????????? 6, ??? ????  
?????? ??? ?????????? ??? ?????? ?????? ?? ??????? ?????????????? ??? ??????????????  
????????? ??? ?????????? ??? ?????? ?????? ?? ??????? ?????????? ??? ?????? ??? ?????? ???  
????? ??? ?? ??? ?????? ??? ???????, ??? ?? ??? ?????????? ??? ?? ?????????? ?????????????? ???  
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?????.. ? ?????? ?????????? ?????? ?????????? ??? ?????? ?? ??? ?????? ???????.

15 ? ??????? ?????????? ?????????? ??? ???? ?????? ?????????? ?????????? ???  
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?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????? ??? ?????????? ?????????? ???  
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????????? ??? ?? ??? ?????? ???, ?????? ??? ?????? ?? ?????????? ??? ?? ??? ?????? ??? ?????? ???  
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16 ??????, ?????????????? ???, ?????? ?? ?? ?????? ?????? ?????? ??? ?????? C-345/99,  
????????? ??? ?????? (?? ?????????????? ??? ?????? ??? ???????, ??? 22), ?????? ?  
????????? ?????? ?????? ?????? ?????? ?????????? ?????????????? ?????? ??? ?????? ???  
????? ??? ?????? ??????, ?? ?????? ??? ?????????? ?????????? ?????????? ???  
????????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??????, ?????????? ??? ??? ?????????? ? ?????? ?????????? ??? ?????? 17, ?????????? 6,  
?????? ????, ??? ?????? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? 17, ??????????  
2.

17 ??????????, ??? ?????? ??????????? ??????? ??? ?????? ?????????? ?????????????? ??????????????  
????? ??? ?????? 17, ??????????? 6, ??????? ??????, ??? ?????? ??????? ??? ??????????  
???? ?? ????? 17, ??????????? 2, ??? ?????? ?????? ?? ??? ?? ??????????? ?? ??????????  
???? ??? ?????? ??? ?????? ??? ?????? ??????, ?? ?????? ??? ??????????? ??????????  
????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????.

18 ?? ??? ?????? ?????? ??? ??? ?????????????? ?????????????? ??? ?????????? ??? ??????  
??? ?????? ???????, ?? ??? ?????? ?????????????? ?? ?????? ??? ??????????? ?????????????? ??  
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???????????.

19 ?????? ?????? ??? ? ?????????? ????????, ?????????????? ?????? ?? ?????????? ???  
?????? ??? ??, ??????? ??????????? ???? ?????? ??????????? ?? ?????? ?????????? ??? ???  
????? ??? ?????? ??????. ????? ?????? ??? ?????? ??? ?????? ??? ?? ??? ??????????? ???  
????????????? ?? ?????? ??? ??????????? ??????????? ?? ?????? ?????? ??? ??? ??? ??????  
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20 ????????, ? ?????? ??? ?????? ??? ??????????? ??? ??? ?????????? ???? ?????? ??????????? ???  
????? 17, ??????????? 6, ??????? ??????, ??? ?????? ??????? ??? ??????????? ??? ?????? ??? ??????  
17, ??????????? 2, ??? ?? ??? ?????? ??????.

21 ?? ?????????? ??? ??????? ??????????? ?????????? ??? ?? ?????? ?? ??? ?????? ??????????  
?????????? ?????????????? ??? ?????? ??? ?????? ?? ??????????? ?????? ??????????,  
????????? ??? ??? ??? ?????? ??????.

22 ? ?????? ?????????? ?????????? ??????? ?? ?????????????? ??? ?????? ??????????  
????????????? ??? ? ?????????? ??? ??????? ?????? ??? ?????????? ?????????????? ??? ???  
????????????? ?????????? ??????????????, ?? ??? ?????? ?????? ?????????? ?? ??????????????  
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????????????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ??????????  
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23 ???????, ?????????????? ???, ??? ?????? ??????????, ??? ?????? ?????????? ??????????? ??  
????????? ?? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????  
(?. ?????? ??? ?????? ??? 1?? ?????? 1994, C-317/92, ??????? ??? ?????? ??????, ??????  
1994, ?. ?-2039, ????? 4).

24 ?????????????? ?????????? ??? ? ?????? ??????????, ??????????????, ??? 1??  
????????? 1998, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ???  
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???  
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25 ??????? ?? ?? ??? 69, ?????????? 2, ??? ?????????? ???????????, ? ???????  
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1) ? ??????? ???????????, ???????????????, ??? 1?? ??????????? 1998, ??? ????? ???????????  
??? ??????????? ??? ?????? ??? ????? ??????????????? ????? ??? ??????????? ???  
????????? ?????????? ??????? ?? ??????????????? ?? ??????? ??? ??????? ??? ??????? ???  
????????? ??? ?? ????? ??? ?????????? ?????? ???????, ??? ??????? ??? ??????????? ???  
????????? ?? ????? ??? ??????? ?? ??????? ???????, ?????? ??? ??????????? ??? ??????  
??? ?? ????? 17, ??????????? 2, ??? ????? ??????? 77/388/?? ?? ???????????, ??? 17??  
??\_?? 1977, ??? ?????????????? ??? ??????????? ??? ??????? ?????, ??? ?????????? ?? ???  
?????? ?????? ??????? - ????? ?????? ????? ?????????????? ?????: ??????????  
?????????? ???, ?? ??? ?????? 95/7/?? ?? ???????????, ??? 10?? ?????????? 1995,  
??? ?? ??????????? ??? ??????? 77/388 ??? ?? ??? ????? ?????????????? ??? ??????  
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????????????? ?????????? ???.

2) ??????????? ?? ?????? ??????????? ??? ?????????? ?????.