

?????? C-97/06

Navicon SA

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Administración del Estado

(?????? ??? Tribunal Superior de Justicia de Madrid

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«????? ?????? ?? — ?????????? — ??? 15, ?????? 5 — ?????? ??? ?????????? ??????
????????? — ?????????? ??? ???? ?????????? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ??????
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1. ?????????? ?????? — ?????????? ??? ?????????? — ??? ?????? ?????? ?????????? —
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(?????? 77/388 ??? ??????????, ??? 15, ?????? 5)

2. ?????????? ?????? — ?????????? ??? ?????????? — ??? ?????? ?????? ?????????? —
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(?????? 77/388 ??? ??????????, ??? 15, ?????? 5 ??? 13)

1. ?? ??? 15, ?????? 5, ??? ??? ?????? ?????? 77/388, ??? ?????????? ??? ??????????
??? ?????? ???, ??? ?????? ?? ??? ?????? ?????? ?????? ??????, ??? ?????????????? ??
??? ?????? 92/111, ?? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ???
????????????? ??? ?????????? ?????? ??????, ??? ?????? ?? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ??? ??? ?? ?????? ?????? ??? ?????? ???
????????, ? ?????? ??? ?????? ?????? ?????? ??????, ? ?????? ?????? ?? ??????????
??? ?????????? ??? ??? ?????? ?????????????? ?????? ??? ?????? ?????? ?????? ??????
??? ?????? ???.

??????????, ??? ?????? ??? ?????? ?????? ??????, ? ?????? ??? ??? ???
????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????, ??? ??????????????
????? ??? ??? ?????? ??????, ??? ?????? ?? ??? 15 ??? ?????? ??????,
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ?????? ?????? ??????. ??? ?????? ?????? ??????, ??? ?????? ??? ?????? ?????? ???
????????? ?? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????????? ??? ??? ???,
????????? ?? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?????????? ??? ??? ???
????? ?????????? ??? ?????? ??????.

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

????????????? ?? ?? ????? ?????????? ?????????? ??? ?? ?? ?????? ??? ?????? ?????? ?? ??????? ?? ?????? ??
????? ??? ?? ?????????????? ??? ?????? ??????. ???, ?????? ?? ?????? ?????? ?????? ??? ??
????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? 15, ?????? 5, ???
????? ?????? ??? ?????? ??? ?????????? ??? ??????????.

??? ?? ?????????? ????, ??? ?? ?????? ?????? ??? ?? ??? ?? ?????????????????? ???
??? ?????????? ??? ?????????? ??? ?????? ?????? ?? ?????? 15, ?????? 5, ??? ?????? ??????
????? ?? ?????????? ????, ????, ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?? ?????? ??? ?????? ??? ?????? ???
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(???. ??????? 29, 31-33, ????????. 1)

2. ? ??????? ?????????? ??? ?? ?????? ??? ?????? ?? ?????? 15, ?????? 5, ??? ?????? ??????
77/388, ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ??????, ??? ?????????? ?? ??? ?? ??????
????? ??????, ??? ?????????????? ?? ??? ?????? ??? ?????? 92/111, ?????????? ??? ?? ??? ?? ??????
????????? ?????? ?? ?? ?????? ??? ?????? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ??????, ???
?????????, ??? ?????? ?? ?????? ??????, ??? ??????, ??? ?????? ? ?????? ??? ??????, ???,
???? ?????????? ?????????? ?????????? ??????, ??? ??? ?????? ??? ?????? ??? ?????? 15, ?????? 13, ?
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ???
?????. ??????????, ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????????, ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ??? ??
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ??? ??
????????? ?????? ??????. ??????????, ?? ?? ?????? ?????????? ?? ?????? ??? ?????? ?? ??????
????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????? 15, ?????? 5, ??? ?????? ??????. ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??????.

(???. ??????? 37-40, ????????. 2)

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

??? 18?? ?????????? 2007 (*)

«????? ?????? ??? – ?????????? – ?????? 15, ?????? 5 – ?????? ??? ?????????? ??????
????????? – ?????????? ??? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ??????
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?? ??????????? ?? ?????? ??????? ?????????????? ?????????? ??? ?????? 234 ??,
?? ??????? ?? Tribunal Superior de Justicia de Madrid (??????), ?? ??????? ??? 23
?????????? 2006, ? ?????? ??????? ??? ?????????? ??? 20 ??????????? 2006, ???
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Navicon SA

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Administración del Estado,

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

?????????? ??? ??? K. Lenaerts, ??????? ???????, ?. ?????? (????????), R. Silva de Lapuerta, J. Malenovský ??? T. von Danwitz, ???????,

?????? ??????????: J. Mazák

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

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

- ? ??????? ????????, ?????????????? ??? ??? M. Muñoz Pérez,
- ? ??????? ????????, ?????????????? ??? ??? A. Hubert,
- ? ??????? ????????, ?????????????? ??? ??? K. ??????? ??? ?? ?. ??????,
- ? ??????? ??? ????????, ?????????????? ??? ??? M. Afonso ??? ??? L. Escobar Guerrero,

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1 ? ?????? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? ???????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ???
?????? ??????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? – ??? ?????? ?????? ???
????????????? ????: ?????????? ?????????? ??? (?? ????. ???.. 09/001, ?. 1), ???
????????????? ?? ??? ????? 92/111/??? ??? ??????????, ??? 14?? ?????????? 1992 (?? L
384, ?. 47, ??? ????: ??? ?????).

2 ? ?????? ??? ?????????? ??? ?????? ?????? ?????? Navicon SA (???: ????:
Navicon), ?????????????? ??? ?????? ??????, ??? ??? Administración del Estado ??????? ??
?????? ?????? ?? ??? ?????????? ??? ??? ????? ?????????????? ?????? (???: ????: ????) ???
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3 ??? ??? ?????? «?????????? ??? ??????? ??? ?????? ??? ???????, ??? ?????? ??? ???????????, ??? ??????????? ??? ?????? ??? ???????, ??? ?????? ??? ???????, ??? ?????? ??? ???????, ??? ?????? ??? ???????, ??? ?????? ??? ???????, ??? ?????? ??? ???????, ??? ?????? ??? ???????, ??? ?????? ??? ???????, ??? ?????? ??? ???????» , ?? ?????? 15, ?????? 1, 4, 5 ??? 13, ??? ?????? ??????? ??????:

«?? ??? ?????????? ?????? ??????????? ??????????, ?? ??? ?????? ???? ??????????????, ???? ???
????????????? ??? ???????, ???? ?? ?????????????? ? ???? ??? ?????? ???? ?????? ????
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1. ??? ?????????? ??????, ??????????????? ? ?????????????? ??? ??? ?????? ? ???
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4. ????????????????? ??????, ?? ?????? ?????????????????? ??? ??????????????:

?) ??????? ??? ?????????????????? ??? ?????????????? ?????????? ?????????? ??? ?????????
????????? ?????????? ??? ?????????? ? ?? ? ? ?????? ?????????? ??????????, ?????????? ?
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?) ??????????????? ?? ?????? ?????? ??????????????? ??????, ?????? ?? ??????
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13. ?? ??????? ??????????, ??????????????????? ??? ?????????? ??? ??? ???????????
???????, ?????????????? ??? ??? ?????? ??? ?????????????? ??????? ?? ?? ????? 13, ????
????? ??? ?????????????? ?? ??? ?????? ?????? ? ?? ??? ?????????? ?????? ???
????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? 7 ?????????? 3 ? ??? ???
16 ?????????? 1 ?????? ?».

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

4 ?? ?????? 22, ??????????? 1, ??? ?????? 37/1992, ??? ?????? ?????????????????? ???? (Ley 37/1992 del Impuesto sobre el Valor Añadido), ??? 28?? ??????????? 1992 (BOE ????. 312, ??? 29?? ??????????? 1992, ?. 44247, ??? ????: ?????? ????)), ????. ?? ????:

«???????????? ???? ?????????? ???? ?????????????????? ?? ??????????

?????????????? ?? ?????, ??? ??? ?????? ??? ??? ?????????????? ??? ??? ?????????????? ??
????????????? ???????, ?? ?????????? ??????:

????????; ?? ????????????, ????????????, ????????????, ????????????????, ? ????????????, ? ??????

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1º) ??? ?????? ??? ?????? ??????????? ??? ?????????? ??? ?????? ?????? ?? ???
????????????? ??? ?????? ??????????? ??? ?????? ???' ?????? ?????????? ??????????????
????????? ??????????? ? ????????, ?????????????? ??? ?????????? ???????????, ?
???? ?????? ??????? ?????????? ?????????? ? ???????.

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

5 ??? ?????? ??? ?????? ??? ?????? ??? ???????????, ? Navicon ??? ? ?????? Compañía
Transatlántica Española SA ?????? ?????? ?????? ?????????? ?? ??? ?????? ? ?????? ???
??? ?????? ??? ???????, ?????? ??????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ??
????????? ?????????????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ???
??? ?????? ????, ??? ?????? ?????? ?????????? ?????? ??? ?????? ?? ?????? 3, ?????????? 3,
?????? ??????, ??? ?????? ??????. ? Navicon ??? ?????? ?????? ??? ??? ??? ??????????
????????? ??? ?? ??? ?????? ???????, ?????? ?????? ??? ? ?????? ?????????? ???????????.

6 ??????, ? ??????? ?????????? ???, ?????????? ??? ?? ?????? ?????????? ??????????
????????? ??? ?????????? ??? ?????????? ?? ?????? 22, ?????????? 1, ??? ?????? ??? ??
??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??? ?????, ?????? ??? ?????????? ???
??? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?? ??? ?????? ?????????? ??????????.

7 ? Navicon ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? Tribunal Económico-
Administrativo Regional de Madrid, ?? ?????? ??????? ??? ?????????? ????. ??????? ???
????????? ??? ?????? ?, ? Navicon ?????? ?????? ?????? ??? ??????????
?????????.

8 ?? Tribunal Superior de Justicia de Madrid, ?????????? ??? ? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??
????????? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
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«1) ??? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ???
15, ?????? 5, ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????????? ??? ?????? ??? ?????? (????? ??????) ? ?????? ?????? ?? ??????
????? ?????? ??? ?????????? ??? ?????? ??? ?????? (????? ??????);

2) ?????????? ??? ?????? ??? ?????? ?????? ?????????? ? ?????? ?????????? ??? ??
????????? ??? ?????? ??????????;»

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

9 ?? ?? ??? ?????? ??? ?????????? ?? ?????? ?????? ?? ?????????? ??? ?????? ?? ??????
????????? ??? ?????? ???' ?????? ?? ?? ?????? 15, ?????? 5, ??? ?????? ?????? ??? ?????? ??
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???
????? ??? ?????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ???, ? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ??? ???
????? ?????? ??? ?????? ??? ?????? ???.

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10 ? ?????????? ??? ? ?????????? ?????????? ?????? ??? ? ?????? ??? ?????????? ???
????????? ?? ????? 15, ?????? 5, ??? ?????? ?????? ?????? ?????????????? ?? ?????? ???
????????? ?????? ??? ?????? ??? ??????????, ????????, ??? ? ?????? ??? ?????? ???
????????? ??? ???? ?? ????? ??????. ?????????? ?????? ???, ??? ???? ?????? ???
????????? ??? ??????????, ?? ?????????? ??? ?????????? ???? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????????? ?????????? ??? ???? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
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11 ? ?????????? ?????????? ?????????? ??? ? ?????? ??? ?????????? ??? ?????????? ? ?? ???
????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ???? ???? ?????????? ??????????????
???????????, ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??????????. ??????? ???? ?????? ?????? ??? ?????? ???, ?????????? ??? ?????? ???
???? ????????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ???
???? ????????, ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ??????????.

12 ? ?????? ?????????? ??? ? ?????????? ??? ?????????? ?????????? ??????????????
?????????, ??? ? ??? «?????????» ??? ?????? 15, ?????? 5, ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ??????.

13 ??? ??? ??? ??????, ??? ???? ?????? ??? ?????? 15, ?????? 5, ??? ?????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???
??? ?? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ????????, ?? ?? ?????? ??????????
????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????
?????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?????????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????????? ??? ?????? ??? ?????? 15, ?????? 5, ??? ??? ?????? ??? ?????? ???
????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???,
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

14 ? ?????????? ??????????, ??? ?????? ???, ??? ?????? ?? ?????????? ?? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ???, ?????????? ???
?? ?????????? ?? ?????? ??? ?????? ??? ?? ?????? ??? ?? ??????????, ?????????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ??? ?? ?????? ??? ?????? ??? ??? ??? ?????? ???.

15 ??????, ??? ??????????, ??? ?? ?????????? ??? ?????? 15, ?????? 5, ??? ??????
?????? ?????????? ??? ? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????
?????? ??? ?????? ????????. ??????????????, ? ?? ??? ?????? ?????? ?????? ?????? ?????
????? ??? ?????? ?????? ???, ???????, ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????????? ??? ?? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? (?).., ??? ?? ??????
????, ?????? ??? 16?? ?????????? 2004, C-382/02, Cimber Air, ?????? 2004, ?. I-8379).
??????, ? ?????? ??????? ??? ?????? 15 ??? ?????? ?????? ?????? ?????? ??? ??????
???? ??? ?????? ??? ?????????? ?? ???' ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?? ??? ??????.

16 ? ????????, ??????, ??? ?? ?????? ?? ?????? ?????????? ??? ?????? ??????
?????? ?? ?????? ????????, ??? ?? ?????? ?????? ??? ?????? ?????????????? ?? ?????? ??? ??????????,
?????? ?? ?????????? ?? ?? ?????????? ??? ?????? ?????????? ?????????? ??????????,
????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????????????? ??? ?????? ?????? ?? ??? ?? ?????????? ?? ?????????? ??? ?? ??? ??
?????? ?? ?????? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?? ?????????? ??? ?? ??? ?? ??????.

17 ??????, ? ????????, ???????, ??? ?????? ?????? 15, ?????? 13, ??? ?????? ??????.
????????? ?? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??????, ??? ?????? ?? ?????? 15, ?????? 13, ??? ?????? ??????.
????????? ?, ? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??????, ?? ?????????? ???
????????? ?, ? ?????? ?????? ??? ?? ?????? ??? ?????? ?? ???, ?????? ??? ??????
????????? ?? ??? ?????? ?????? ?? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?,
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
??? ??????.

18 ?????, ? ????????, ?????????? ??? ?????????? ??? ?????? ?????????? ??
??????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? 15, ?????? 5, ??? ?????? ??????.

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19 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? 21, ?????????? 1, ???
????? ??? ??? ?????????? ??? ?? ??? ??? ??? ?????? ?????? ?????? ??? ?????????????? ???
??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??' ?????? ??????????
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???, ??? ?? ????
3, ?????????? 3, ?????? ???, ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? 15,
????? 1, ??? ?????? ??????, ? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ???, ??? ?????? ??????.

20 ??????????? ? ??????? ??? ?? ?????????? ??? ?????????? ???? ?????? ?????? ?????????
????????? ??????? ??? ?????????? ???????, ?? ?????? ?????????? ??? ?????? ?????? ??????
??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ??? ???
?????? (??., ????, ??????? ?? 26?? ?????? 1987, 235/85, ??????? ??? ?? ??? ??,
?????? 1987, ?. 1471, ??? 18- ?? 5?? ?????? 1997, C-2/95, SDC, ?????? 1997, ?. ?-
3017, ??? 21 ?? Cimber Air, ???????????, ??? 23).

21 ?? ??????? ??? ?????????? ??? ?? ??? ??????. ??????, ? ?? ?????????????? ??? ??
?????? ?????????? ??? ?? ??? ?????????? ?????? ??? ?????????????? ?? ??????????
????? ??? ?????????? ??? ?? . ??????, ? ??? ?? ?????????? ?????????????? ??????????
????????? ?? ?????????? ?????????? ?????????? ??? ?? ?????? ??? ?????????? ??? ??, ???
????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? (?????? Cimber Air, ???????????,
????? 24).

22 ?????????? ??? ?? ??? ?????? ???, ?? ?? ??? ?????? ?????????? ??????, ???????, ??
????????? ???, ??????? ??? ?????????? ?????? ?????????? ??? ?? ?????? ??? ?? ???
????????? ??? ?? ??? ?????????? ?????? ??? ?? ??? ?????? ?????????? ??? ??
????????? ??? ?? ?????????? ?????? ??? ?? ?????????? ?????? ??? ?? (??., ??? ?? ?? ???
????, ?????????????? ?????? SDC, ????? 20, ?? Cimber Air, ????? 25, ????? ??
????? ??? 14?? ?????? 2007, C?445/05, Haderer, ?? ?????????? ?????? ??? ?? ??? ??
????? 18). ?????? ? ?????? ??? ?????? ?????? ?????????? ??? ?? ?????????? ?????? ??? ??
????????????? ??? ?? ??? ?????????? ?????? ??? ?? ?????????? ?????? ?? ??????????????
???? ?? ??? ?? ??? ?????? ??? ?????????? ?????? ??? ?? ?????????? ?????? (????????? ???
18?? ?????? 2004, C-284/03, Temco Europe, ?????? 2004, ?. I-11237, ????? 17, ??
Haderer, ???????????, ??? 18).

23 ? ?????? ?? ??????? ?? 15, ?????? 5, ??? ?????? ?????? ?????? ??
????????? ?? ?? ??? ?? ?????????? ?????? ?? ?????? ?? ?????????? ??
????????? ?? ?? ?????? 20 ?? 22 ?? ?????? ?????? ???????.

24 ??????, ?????????? ? ?????????? ??? ?? ??? ?????? ?????? ??? ?????????? ??????
????? ??? ?????? ?? «?????????». ??? ?????? ???????, ??? ?? ?????? ??????????
??? ?????????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ???, ??? ?? ??
????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ??
????? ??? (??., ?????? ???, ?????? ??? 18?? ?????? 2000, C-301/98, KVS
International, ?????? 2000, ?. I-3583, ?????? 21, ??? ?? 6?? ?????? 2006, C-53/05, ??????
???? ???????, ?????? 2006, ?. I?6215, ?????? 20).

25 ??? ?? ?????????? ??? ?????? 15, ?????? 5, ??? ?????? ?????? ??????????, ??????, ??
?? ?????? ??? ?????????? ??? ??????????, ??????????, ??????????, ??????????, ??????
?????????, ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????????? ??? ??
????????? ?? ??? ??, ??? ?????? ??????, ?????????? ?????? ??? ?????????? ??? ??
????????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??????????
????? ??? ?? ??? ???????, ???????, ?????? ?????? ?????????? ???????????,
????????????? ??? ?? ?????????? ?????? ??????????, ?? ??? ?????? ?????? ?????????? ???
????? ??? ?? ?????????? ??? ?? ?????????? ?????? ??? ??

26 ?????????? ?????? ? ?????????? ??? ?? ?? ??? ????? 15, ?????? 5, ??????
????????? ?????? ?????? ??? ?????? ??????????. ? ?????? ??? ?????????????? ??
????????? ??? ?????????? ?????? ??? ?????????????? ??? ?????????? ?????????? ??????
????? ??? ?????????? ?????? ??? ?? ??? ?????? ?????? ??? ?? ?????? 15, ?????? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????.

27 ??????, ??? ?????? ?? ????? 22, ?????????? 1, ??? ?????? ??? ?????? ?? ?????????? ??
????????? ??? ?????? ??? ?????? ??????????, ?????? ?? ?????????? ???, ??? ??????
?????????, ??????, ?????? ??? ?????????? ?????? ??? ?????? 13, ?, ?????????? 1, ???
????? ??????, ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??
????????????? ??? ??? ??? ??? ?????????? ??? ?? ?????????? ?????????? ??????????
?????????, ?????????? ??? ??????????, ?? ?????????? ?????? ?????? ?????????? ??????????
????? ?????? ??? ?????????? ??? ?????????? ?????? (??., ???' ????????,
????????? ??? 11?? ?????????? 2001, C?76/99, ???????? ??? ???????, ?????? 2001, ?.
I?249, ??? 26, ??? ??? 26?? ????? 2005, C-498/03, Kingscrest Associates ??? Montecello,
?????? 2005, ?. I?4427, ??? 24).

28 ??? ?? ?????? ???, ? ?????? ??? ?????????????? ?????? ??? ?? ?????? ??? ?? ??????
??? ?? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ???
?? ?????? ??? (??., ?????? ???, ?????????? ?????? Kingscrest Associates ???
Montecello, ??? 25, ??? ??? Haderer, ??? 25).

29 ??????, ??? ?????? ??? ?????? ??? ?????????? ?? ?? ?????? 15 ??? ?????? ??????,
????????? ? ?????????? ??? ?????? ??? ?????????? ?? ?? ?????? ??? ?? ?????? ??????????
????? ??? ??????????, ??? ?????????? ??? ?????? ??? ?????? ?????????? ??????????.
?????????, ??? ?????? ??? ?????????, ??? ?????? ?????? ?????????? ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??
????????? ????. ??? ??? ?????? ??????, ??? ??? ??? ?????? ?????? ??? ?????? ?????????? ??
??? ??? ??? ???, ??? ??? ??? ?? ?????????? ??? ??? ??? ??, ?????????? ??
????????? ??? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??????.

30 ??? ?? ?????????? ??? ?????? 22, ?????????? 1, ??? ?????? ??? ?????? ??? ?????????? ??,
??? ?????? ??? ?????? ???, ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?? ????. ???????, ??? ?? ?????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?? ????. ? ??? ?? ??????, ? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?? ?????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?? ?????? 15 ??? ?????? ??????.

31 ??????, ?????? ?? ?????????? ???, ??? ?????????? ?? ?????? ??????????, ?? ?? ???
?????, ?????????????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ??????, ??? ?? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
?????????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?? ??? ??????
????????? ??? ?? ?? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??? ??
????? ????. ???, ?????? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?? ??
????????? ??? ?? ?????????? ??? ?? ?????? 15, ?????? 5, ??? ?????? ?????? ??? ?????? ???
?????????.

32 ??? ?? ?????????????? ???, ??? ?? ?????? ?????? ??? ?? ??? ??

????????????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ??? 15, ?????? 5,
??? ?????? ??????? ??????? ?? ?????????????? ?????, ??????, ??????, ??????? ?? ??????????
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? ?? ?????????? ?? ?? ??? ?????? ???
??? ?????????? ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ???.

33 ????????, ??? ?????????? ?????????? ?????? ?? ?????? ? ?????????? ??? ?? ?????? 15,
?????? 5, ??? ?????? ??????? ?????? ?? ?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ??
????? ??? ?? ?????? ?? ?????? ?????? ?? ?????? ??? ?????????????? ??? ?? ??????????
????????? ???????. ???????, ? ?????? ?? ?????????? ?????? ??????????, ?????? ??????????, ??? ?
????????? ??? ?????? ?????? ?? ?????? ??????, ? ?????? ?????? ?? ?????????? ??? ??????????
??? ??? ??? ??? ??? ?????? ?????? ?????? ???.

35 ??????????? ??????? ? ?????????? ???, ??? ?????? ??? ?????????? ??????? ?? ??
?????????, ? ??? ?????? ?????? ?????????????? ?' ??? ?? ??? ????? ??????????, ??????? ?? ??????
????????? ??? ?? ?????? ??????? ?????????? ?????????? ??????????, ?????????? ?????? ??????????.
? ?????????? ??? ?????????? ?????? ??? ?????????????? ??? ?????????????? ??????????
????????? ?????????? ??? ?????? 15, ?????? 5, ??? ?????? ??????, ??? ?????? ???
????????? ?????????? ?????? ?????????? ??? ?? ?????? 13 ??? ?????? ??????. ??????????, ???
?? ?????????? ??? ?????? ????? ?????????? ??? ? ?????????? ??? ?????????? ??????,
????????? ?? ??? ?????? ?????????? ?? ??? ?????? ?????? ??? ?????? ???, ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ? ??? ??????.

36 ?????????????? ? ??????? ?????????????? ??? ?????? 27 ??? ?????????? ???, ?? ?
????????????? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????????????????? ??? ?????????????? ?????????? ?????????? ??? ?????? ??? ??????
????? ??? ?? ?????????? ?? ?????? ?????? ?? ?????? ??????????????, ?? ?? ???
????????????? ??? 15 ??? ?????? ??????.

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

39 ??? ?????? ??????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????
????? ?????????? ??? ?????? ?????? ?????????? ??? ?? ?????????????? ? ??? ?????? ??? ??????
??? ?????????????? ??? ??? ?????? ?????? ?????????? ??? ?? ?????????????? ??? ?????? ??????????
??????????, ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

40 ????????, ?????????? ??? ?????? ?????????? ?? ?????????? ?? ? ?????? ??? ??????
?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?? ? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? 15, ?????? 5, ??? ?????? ??????.

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

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

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

1) ?? ?????? 15, ?????? 5, ??? ?????? ?????? 77/388/???, ??? ?? ??????????, ??? 17??
????? 1977, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????????? ??
????? ?????? ?????? ?????? – ?????? ?????? ?????? ?????? ?????????????? ????:
????????? ?????????? ???, ??? ?????????? ?? ??? ?????? 92/111/???, ???
?????????, ??? 14?? ?????????? 1992, ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ??????????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

2) ?????????? ??? ?????? ?????????? ?? ?????????? ?? ? ?????? ??? ??????
?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? 15, ?????? 5, ??? ?????? ?????? 77/388, ???
????????? ??? ??? ?????? 92/111.

(?????????)

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