

?????? C?418/07

Société Papillon

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Ministère du Budget, des Comptes publics et de la Fonction publique

[?????? ??? Conseil d'État (??????)]

??? ??? ?????? ?????????????? ??????????]

«????????? ?????????????? – ????? ?????????? – ????? ?????????? – ?????????? ?????????? ????? – ?????????? ?????????? – ?????????? ?????????? – ?????????? ?????????? ?????????? ??? ?????????? ????? ??????????»

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

????????? ?????????? ??? ?????? – ?????????? ?????????????? – ?????????? ?????????? – ?????????? ?????????? – ?????? ??????????

(????????? ??, ????? 52 (???, ??????? ??????????????, ????? 43 ??))

?? ?????? 52 ??? ?????????? (???, ??????? ??????????????, ????? 43 ??) ?????? ??
????????? ??? ??? ?????? ??? ?????????? ?????????????? ?????????? ?????? ?????????? ??? ??????
????????? ?????? ?????????? ?????????? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????????????? ???
?? ??? ?????? ??????, ??? ?????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??????
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ???
????? ?????? ??????.

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

? ?? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ?????? ???, ?????? ??? ?????? a priori, ??? ??????
?????????.

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

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

(???. ??????? 30–32, 39–40, 46, 48–51, 53–55, 58, 60–63 ??? ???????.)

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

??? 27?? ?????????? 2008 (*)

«?????????? ?????????????? – ?????? ?????????? – ?????? ?????????? – ?????????? ??????????
????? – ?????? ?????? ?????? – ?????? ?????????????? ?????????? ??? ??????????
????? ?????????? ??????????»

???? ??????? C?418/07,

? ? ?????????????? ?????? ?????????? ?????????????? ?????????? ??? ?????? 234 ??,
??? ??????? ?? Conseil d'Etat (??????) ?? ?????? ??? 10?? ??????? 2007, ? ?????? ???????
??? ?????????? ??? 12 ?????????? 2007, ??? ?????? ??? ???

Société Papillon

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Ministère du Budget, des Comptes publics et de la Fonction publique,

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

????????? ??? ??? K. Lenaerts (???????), ?????? ????????, R. Silva de Lapuerta, E. Juhász, ?. ?????? ??? J. Malenovský, ????????,

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

?????????: B. Fülöp, ??????? ????????????,

????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ??? 4?? ??????, 2008,

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

- ? ??????? Papillon, ?????????????? ??? ??? G. Calisti, avocat,
- ? ??????? ????????, ?????????????? ??? ??? G. de Bergues ??? J.-C. Gracia,
- ? ????????, ????????, ??? ??? C. Blaschke,
- ? ????????, ????????, ??? ??? M. Muñoz Pérez,
- ? ????????, ????????, ??? ??? C. Wissels ??? C. ten Dam ??? ??? ??? M. de Grave,
- ? ????????, ??? ?????????? ????????, ??? ?????????? ??? ??? R. Lyal ??? J.-P. Keppenne,

???? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? 4?? ??????, 2008,

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

??????

1 ? ??????? ??????? ?????????? ?????????? ??? ?????? ??? ??????? ??? ?????? 52 ??? ??????? ?? (??, ?????? ?????????? ???, 43 ??).

2 ? ?????? ??? ??????????? ??? ?????? ?????? ?????? ?????? ??? ???????
Papillon (??? ????: Papillon), ?? ??? ???? ??????, ??? ??? ministère du Budget, des Comptes
publics et de la Fonction publique ??? ????? ??? ?????? ??? ?????????? ?? ??? ?????? ???
?????????? ??? ?????????? ?????????? «????????????? ??????????».

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

3 ?? ?????? 223 A ??? ?????? ?????? ?????????? (??? ????: ???), ??? ?????? ??? ???? ???
????? ??? ?????????? ?????????? ??? ?????? ???, ????:

«??? ?????? [...] ?????? ?? ??????? ?? ??? ?????? ?????? ??? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ??? ???
??? ?????? ??? ?????? ?????? ?? 95 % ?????????? ??? ?????? ??? ?????? ??? ?????? ???' ??? ??
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? [...] . ?? ?????? ???
????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [...] . ??? ??
????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? [...]»

4 ?? ?????? ?????????? ???, ???' ?????? ??? ?????? 223 A ??? ???, ?
?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???????, ???' ?????? ???, ?? ?????? ???
?????. ?????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

5 ?????? ?? ?? ?????? 223 B ??? ???, ?? «????????? ?????????? ?????????? ??? ??
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ???
????? [...]».

6 ?? ?????? 223 B, 223 D ??? 223 F ??? ??? ??????????, ?????? ???, ???
????????? ??? ?????????? ??? ?????? ??? ??????, ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ??????.

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

7 ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? 1?? ?????? 1989 ??? 31?? ?????? 1991, ? Papillon ?????? ?? 100 % ??
????????? ??? ?????????? ?????? Artist Performance and Communication, ? ?????? ??????
?? 99,99 % ??? ?????? ??? Kiron SARL, ?? ??? ??? ??????. ??? ?????? ???, ? Papillon
????? ?? ?????? ?????????? ???????????, ??? ?????? ??? ?????? ??? ?????? ???
F ??? ??, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? 95 % ?????????? ??? ?????? ???, ? Papillon ??????????, ??? ?????? ???
????? ??? ?????? ???, ??? Kiron SARL ??? ?????? ?????? ???, ??? ?????? ???, ???
????? ???.

8 ? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?? ??????????
?? ? Papillon ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???

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

9 ???? , ??????? ?????????????? ???????, ? Papillon ?????????????? ??? ??? ?????? ?????? ??????
??? ??? ???????, ??? ?? ?????? ?? ?????????? ?? ?????? ??? ?? ?? ?????????????? ???
????????? ??????? ??? ?????????? ?????? ??????.

10 ? Papillon ?????????? ??? ??????? ??? ?????????? ?????? ?????????? ??? ??? ??????????
??? ?? ?????????? ??? 1989 ??? 1991 ?????? ??? tribunal administratif de Paris [?????????]
????????? ??????], ?? ?????? ??????? ?? ??????? ??? ?? ?????? ??? 9??
????????? 2004. ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? cour
administrative d'appel de Paris [????????? ?????? ?????? ??????], ?? ?? ??? ?????? ??????????, ??
????? ??? 24?? ?????? 2005, ?????? ??? ?????? ?????? ??? ??? ?????? ?????? ?????? ??????
????? ??? ?? ??????.

11 ?? Conseil d'État, ?????? ?????????? ??? ?????? ?????? ??? ? Papillon ??? ?? ??
??? ???????, ?????????? ?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?? ??
????? ??? ??????, ?? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?? ?????? ???
????????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????.

12 ?? Conseil d'État ?????????? ?? ? ?????????? ???, ?? ?????? ??? ??????????,
????? ?? ?????????????? ??? ?????????? ??? ?????? ?????? ??????????, ?????? ?? ??
??? ?????? ?????????? ??? ?????? ?????? ??? ??????????.

13 ??? ?? ??????? ????, ?? Conseil d'État ?????? ?? ?? ?????????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????:

«1) ??? ?? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????????? ???
"????????? ??????" ??? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ???
????????? ??? ??????, ?? ?????? ?????? ?? ?????????? ?? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
?? ?????? ??? ?????? 223 A ??, ??? [??], ?????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [...] ??? ?? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ??????, ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????;

2) ?? ?????????? ?????????? ???, ?????? ? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
"????????? ??????", ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????? ??????????;»

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

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

15 ??????, ?????????? ??? ? ?????????? ?????????????? ??????????????, ??? ??????
??? ??????? ??? ?????? ??????? ??????? ?? ?? ?????????? ??????? ??? ?????? ????
????????? ????, ??? ??????? ?????? ?????? ?????? ?????? ?????????????? ??? ??????
??? ?????????? ??????????, ?? ??????? ?? ?????? ??? ?????????????? ??? ??????
????? ??? ?????? ?????????? ?????????, ?????????????? ??? ?????????? (????????? ??? 23??
????????? 2006, C-471/04, Keller Holding, ?????? 2006, ?. -2107, ????? 29, ??? ??? 15??
????? 2008, C-414/06, Lidl Belgium, ??? ??? ??? ?????? ?????????? ??? ???????, ?????? 18).

16 ?? ?????????? ??? ??????? ?? ??? ?????? ??? ?????????? ??????????????, ??? ??? ??,
?????? ?? ?? ?????? ???, ?????? ?? ?????? ?? ?????????????? ?????? ??? ??????? ???????
????????? ??? ?? ?????????? ?? ???????????, ?????????? ?????? ??? ??????? ??????? ??????
????????? ?? ?????????? ?? ??????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ???????
??? ? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ??? (????????? ??? 16??
????? 1998, C-264/96, ICI, ?????? 1998, ?. -4695, ????? 21- ??? 6?? ?????? 2007, C-
298/05, Columbus Container Services, ?????? 2007, ?. I?10451, ????? 33, ??? Lidl Belgium,
??????????, ??? 19).

17 ?? ??? ??? ?????? ??? ?????? ?????, ?????? ?? ?????????? ?? ?????? ??? ?? ??????
????????? ??? ?????? ?? ?????????? ?????????? ??? ?????????? ?????????????? ?? ??
????????? ??? ?????????? ?????????? ??? Papillon ?? ??????? ??? ???????
????????? ??????. ??? ?????? ?? ?????? ?????????? ??? ?????? 5 ??? 24 ???
????????? ???, ? ?????? ?????? ?????????? ?????????? ??? ?????? ?? ?????? ??? ??????????
??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 52 ??? ???????, ?? ???????
??? ?????? ?????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????????? ??? ?????? ?????? ?????????? ?? ??? ?????? ???, ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ???.

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

19 ??????, ???' ?????????? ??? ?????? 223 A ?. ??? ??, ?? ?????????? ???
????????? ??? ?????????? ??? ? ?????? ?????? ?????? ??? ?????? ?????????????? ??? ??????
????? ??????????????, ? ?????? ??? ?????? ?????? ??? ?????? ??? ??????, ??? ?????????? ???
????? ?????????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?????.

20 ????????????, ??? ?????????????? ?? ??? ?????? ?????? 3 ??? 4 ??? ?????? ?????????? ??????????,
? ?????? ??? ?????? ??? ?????? ??????, ?????????? ?? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ?????????? ?, ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ??????.

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

22 ??? ?????? ?? ?????? ?????????? ?? ?? ?????? 30 ??? ?????????? ???, ?? ??????
??? ?????? ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ?????????? ?????????? ?? ???
?? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?? ?
????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ?????????? ??? ?? ?
????? ??? ??????.

23 ? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ? ?????????? ?????? ?????????? ??????????
??? ?? ?????? ??? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??????.

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

25 ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ???.

26 ??????????, ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????????? ???
????????? ?? ?????????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ? ???
????????? ?????????? ?? ??? ?????? ???, ?? ?????? ?? ??? ?????? ?????? ??????????????
????? ?? ?????????? ?????? ?????????? (??., ??????, ?????????? ??? 28?? ??????????
1986, 270/83, ?????? ??? ?????? 1986, ?. 273, ????? 18, ??? ?? 8?? ??????
2001, C-397/98 ?? C-410/98, Metallgesellschaft ?.??., ?????? 2001, ?. I-1727, ????? 42).

27 ??? ?? ?????????? ? ?????? ?????????? ??????????, ? ?????????? ?????????? ??????
????????? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????????? ?????? ??
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????????
????? (??., ??????, ?????? Metallgesellschaft ?.??., ??????????????, ????? 60, ??? ??
18?? ?????? 2007, C-231/05, Oy AA, ?????? 2007, ?. I-6373, ????? 38).

28 ??? ?????? ??? ?????? ???, ?? ?????? ?????? ?????????? ??? ??? ?????????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ?????, ?????????? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ??????.

29 ??????, ? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ??????

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

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

31 ??? ??????, ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

32 ??? ?????? ??? ?????? ?? ?????????? ???, ??? ?????????? ???, ??? ?????????? ???, ??? ??????????
????????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

33 ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
(????????????? ?????? Lidl Belgium, ????? 27 ??? ?? ?????? ?????? ?????? ??????).

34 ??????, ?????? ?? ???????, ??????, ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

35 ??' ?????, ?? ?? ??? ?????????? ?????????? ??? ?????? ?????? ??? 13?? ??????????
2005, C-446/03, Marks & Spencer (?????? 2005, ?. I-10837) ??? ??? ?????? ??????????
????? Oy AA ??? ?????????? ??? ? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????.

36 ?? ?????????????? ??? ?????? ?????? ??? ??????.

37 ??????????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? Marks & Spencer ??? Oy AA, ?? ?????????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

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

?????????????? ??? ?????? ??? ??????????? ?? ??? ????? ?????? ??????, ??????? ???
?????????, a priori, ??? ?????? ????????????.

40 ???????, ? ??????????? ??? ??????????? ?? ??? ?????? 22 ??? 32 ??? ???????
????????? ??? ?????? ?? ??????????? ?? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ??? ?????? ???.

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

42 ?? ?????? ?????????? ?????????? ???, ??? ? ?????? ?????????? ???????
????????? ??? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
?????????, ?????? ??? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ? ??????
??? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ??? ?????? ?????? ?????? ?????? ? ?????????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?? ??? ??????
??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???.

43 ??????, ?????? ?? ?????????? ??? ? ?????????? ??? ?????? ?????? ??? ? ??????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ? ??????
(????????? ??? 28?? ?????????? 1992, C-204/90, Bachmann, ?????? 1992, ?. I-249, ????
28- ??? ??? ?????????? 2004, C?319/02, Manninen, ?????? 2004, ?. I-7477, ??? 42, ???
Keller Holding, ???????????, ??? 40).

44 ?????, ??? ?? ?????????? ??? ?????????? ?????????????? ??? ?????????? ???, ??
????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????????? (?????? ??? 14?? ?????? 1995, C-484/93, Svensson ??? Gustavsson,
?????? 1995, ?. I-3955, ??? 18- ?????????? ??? ?????? ICI, ??? 29, Manninen,
????? 42, ??? Keller Holding, ??? 40), ? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? (?????????
Manninen, ???????????, ??? 43, ??? ??? 28?? ?????????? 2008, C?293/06, Deutsche
Shell, ??? ??? ??? ?????? ?????? ??? ???????, ??? ??????, ??? 39).

45 ??? ?????? ??? ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?? ?? ?????? 223 B, 223 D ??? 223 F ??? ???.

46 ??????, ?????? ?? ?????? ??? ?????????? ??? ? ?????????? ??? ?????? ?????????? ???
??? ?????? ?????????, ???, ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

47 ???????????, ?? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ???, ? ??????????
?????? ?? ?????? ??? ?????? ?? ?????? ?????? ?????????? ??? ?????????? ??? ??????
????????? ???, ??? ? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ??????. ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ???????, ?? ??? ??? ?? ?????? ??? ?????????? ??? ?????? ???.

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

48 ??????, ??? ?????????? ??? ? ?????????? ?????? ??? ?????? ???????, ?? ?????? ???
????????????? ?????? ?? ??????? ??? ?????? ??? ?????, ?????? ?? ?????? ?????? ??? ??????
??? ??????? ?? ??????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ???
?? ??? ?????????? ???????, ?????? ?? ?????????? ?????? ??? ?????????? ??? ?????????????? ???
??? ? ??????? ?????????? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????????
?????????????.

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

50 ????????, ? ?????? ??????? ??? ????????, ?? ?? ??????? ??????????????
?????????????, ?????? ?? ?????????? ?????????????? ??? ?? ?????????? ??? ?????????????? ???
????? ??? ?????? ?????????? ?????????? ?????????? ?????????????? ??? ?????? ??? ?????????? ?? ??????
??? ?? ??? ??????????.

51 ????????, ?? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ??, ?? ?????????????? ??
????????????? ??? ?????????? ?????????????? ?????????????? ?? ?????? ??? ?????????? ?????????? ???
????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????????? ?????????? ??? ??????
????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?? ?????? ??? ?? ???
?????????.

52 ? ?????? ??? ?????????? ?????? ??? ?? ??? ?????????? ?? ??????? ??? ??
????????? ??? ?????? ???, ?????? ?? ??? ?????? ? ?????????? ?????????? ???
????? ??? ?????? ?? ?????? ?????????? ?????????? ??? ?????????? ??????????????.

53 ????????, ? ?????? ?????????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?? ??? ??????
????????????? ??? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????????? ???
????????? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?????????? ?????????? ?????????????? ???
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ?????? ??? ?? ?????? ??? ?????????? ???
????????????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????.

54 ?????? ?? ??????? ??' ????, ??????, ??? ?????????? ?????????? ??????? ??
????????? ??? ?????? ??? ?? ?????????????? ??? ?????????? ??? ?????????? ???
????????? ? ?????? (????????? ??? 4?? ?????? 2004, C-334/02, ?????????? ???
????????, ?????? 2004, ?. I-2229, ??? 29- ?? 14?? ?????????? 2006, C-386/04, Centro di
Musicologia Walter Stauffer, ?????? 2006, ?. I-8203, ??? 48, ?? ?? 12?? ??????????
2006, C-446/04, Test Claimants in the FII Group Litigation, ?????? 2006, ?. I-11753, ??? 70).

55 ??????, ??? ???????, ?? ?????????? ??? ?????????? ??? ? ?????????? ???????, ?????? ? ??????
77/799/??? ??? ??????????, ??? 19?? ?????????? 1977, ??? ?? ?????????? ??????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (?? L 336, ?. 15), ??????????
?? ?????? ??? ?? ??????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????????? ??? ?????????? ?? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ??????.

56 ?????, ?????? ?? ?????????? ???, ??? ?????? ? ?????? ?????????? ??? ?????? 66

??? ?????????? ???, ?? ??????? ??????????? ?????? ??? ?? ?????????? ?? ?????????? ?? ?????? ???
?? ??????? ?????? ?? ??????? ??? ??? ????? ?????? ?????? ?????? ?????? ?? ?? ?????????? ?? ??
????????????? ??? ????? ?????????? ??? ??? ?????? ????? ?????? ?????? ?????? ?????? ???
????????????? ??? ??? ?????????? ??? ?????????? ?????? ?????? ?? ?????????? ?????? ??? ?????? ???
????????????? ??? ?????????? (??., ???????, ????????? Centro di Musicologia Walter Stauffer,
?????????????, ????? 49- ??? 30?? ?????????? 2007, C-150/04, ?????????? ??? ???????,
????????? 2007, ?. I?1163, ????? 54- ??? 29?? ?????????? 2007, C-347/04, Rewe Zentralfinanz,
????????? 2007, ?. I-2647, ????? 57, ??? ??? 11?? ?????????? 2007, C-451/05, ELISA, ???????
2007, ?. I-8251, ????? 95).

57 ??? ?????? ?????? ?????? ??????, ?? ?????????? ? ?????? ?????????? ?? ?????????? ?? ??? ??? ??????
????????????? ??? ????? ?????????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ???
?? ?? ?????????? ?? ?????????? ??? ?????? ?????? ?????????? ?? ?????? ?????? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ???
????? ?????? ?????? (??., ???????, ??????? ??? 18?? ?????????? 2007, C-101/05, A,
?????? 2007, ?. I-11531, ????? 62).

58 ???, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??????????
??? ?????????? ?????????? ?????????? ?????? ?? ?????? ?????? ?????????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ???, ??? ?????
????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????? ?????? ?????? ??? ?? ?????????? ?????? ?????? ? ?????? ?????? ??? ?????????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????.

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

60 ??????, ? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ???
????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ??????.

61 ?? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ??????.

62 ??????, ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ??????, ??
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????.

63 ?????? ??? ?????? ??? ?????? ??????, ??? ?????????? ?????? ?????? ??? ?????? ?? ??? ?
????????? ??? ?? ?????? 52 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???

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64 ?????????? ??? ? ??????? ??????????? ????? ?? ??? ????? ????? ??????????? ??? ??????? ?????
??? ?????????? ??????????????? ??? ??????? ?????????? ??? ??????? ????? ???????????, ?' ???
????????????? ?? ?????????? ??? ??? ??????????? ??????. ?? ????? ??? ????? ??????????????
???? ??????? ?????????????? ??? ???????????, ??? ??? ?? ??? ???????, ??? ???????????.

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

?? ??? 52 ??? ??????? ?? (??, ??????? ???????????????, ????? 43 ??) ?????? ??
?????????? ??? ??? ??????? ??? ?????????? ??????????? ?????????? ?????? ?????? ???????
??? ?????? ?????????? ?????????? ?????????? ??????? ?? ?????????????? ??? ?????????????? ??? ??????
????? ??? ?????? ??????? ??? ?????? ?????????? ?????????? ??? ?????????????? ??? ??????????
????? ?????????????? ??? ?? ??? ????? ??????, ??? ?????????? ??? ?? ??????????
???? ?? ??????? ??????? ??? ?????? ??? ?????????? ?????????????? ??? ??????????
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(?????????)

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