

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

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

??? 13?? ??????? 2018 (\*)

???? ??????? C-665/16,

?? ??????????? ?? Naczelnego S?d Administracyjnego (???????, ????) ??  
?????? ?? 14?? ??????????? 2016, ? ????? ??????? ?? ??????????? 22 ???????????  
2016, ??? ??????? ??? ?????

Minister Finansów

???

# Gmina Wrocław,

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

?????????? ??? ??? A. Rosas, ?????? ????????, C. Toader (?????????) ??? A. Prechal,  
???????,

????????? ??????????: M. Bobek

?????????: K. Malacek, ?????????? ??????????,

????????? ?????? ??? ??????? ???????????? ??? ?????????? ??? ??' ?????????????? ?????????????? ???  
13?? ?????????? 2017,

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

- ? Minister Finansów, ??????????????? ??? ?? J. Kaute ??? ??? M. Kowalewska,
  - ? Gmina Wrocław, ??????????????? ??? ?? A. Januszkiewicz, radca prawny, ??? ??? J. Martini, doradca podatkowy,
  - ? ???????? ????????, ??????????????? ??? ?? B. Majczyna ??? ??? A. Kramarczyk-Sza?adzi?skiego,
  - ? ???????? ????????, ??????????????? ??? ?? N. Gossement ??? ??? L. Baumgart, ????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????

??? 22?? ?????????????? 2018,

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

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1 ? ??????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 14, ?????????? 2,  
????????? ?, ?? ?????? 2006/112/?? ??? ??????????, ?? 28? ?????????? 2006, ??????  
?? ?? ?????? ?????? ?????? ?????????????? ?????? (?? 2006, L 347, ?. 1, ??? ????: ??????  
???? ??)).

2 ? ?????? ??? ?????????????? ??? ?????? ?????????? ?????????? ?????????? ??? Minister Finansów (????????? ?????????????? ??? ??????, ??? ????: ??????) ??? ??? Gmina Wrocław (????? Wrocław, ??? ????: ?????), ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??? (???) ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??????????????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ???.

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

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

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

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

[...]».

4      ?? ?????? 9, ??????????? 1, ??? ????? ??????? ?????????? ?? ????:

«????????? ?? “?????????????? ???? ????” ?????????????? ??????, ????. ?????? ?????? ?????????????? ????. ????.  
????????????? ????, ??????????? ??????????????, ?????????????? ????. ????. ????. ?????????????? ????.  
????. ????. ?????????????? ????. ?????????????? ????.

?? “???????????? ??????????????” ?????????? ??? ?????????????????? ??? ??????????, ???  
???????? ? ??? ?????????? ??????????, ?????????????????? ??? ??? ??????????????  
?????????, ??? ?????????? ?????????????????? ?????? ??? ??? ?????????????????? ??? ??????????  
?????????????. ?? ?????????? ?????????????? ??????????????, ??????, ? ??????????????  
????????? ??? ?????? ??????, ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

5      ?? ?????? 13, ??????????? 1, ??? ? ? ????? ?????? ?????????? ?????????? ? ? ?????:

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

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

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

6 ?? ????? 14 ??? ?????? ??? ??? ???, ?? ????? ?????????????? ??? ?????????? ?, ??  
????? «????????? ???», ??? ????? IV ?????, ? ?????? ?????????? «????????? ???»,  
?????», ???????, ??? ?????????? 1 ??? 2, ??????? ?, ?? ???:

«1. ?? “????????? ??????” ?????????? ? ?????????? ??? ?????????? ?? ?????????? ??????,  
?? ??????, ??????? ????

2. ??? ??? ??? ??? ?????? ??? ?????????? 1, ?? ?????????? ?????? ?????????? ?? ??????????  
???????:

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

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

? ?????? ????

7 ?? ????? 7, ?????????? 1, ?????? 1, ??? ustanowiona o podatku od towarów i usług (?????  
????? ??? ?????? ??? ?????? ??? ???????), ??? 11?? ?????? 2004, ??? ??  
????????????? (Dz. U. ??? 2011, ??? 177, ??? 1054) (??? ????: ?????? ????), ??????????  
?? ????:

«?? ?????????? ?????? ??? ?????? ??? ?????? 5, ?????????? 1, ?????? 1, ??????? ?  
????????? ??? ?????????? ?? ??????? ??????, ?? ??????, ???,  
????????????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ??????????  
????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?? ??????????  
?????».

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

8 ?? ????? 12, ?????????? 4 ??? 4a, ??? ustanowiona o szczególnych zasadach przygotowania i  
realizacji inwestycji w zakresie dróg publicznych (????? ??? ?????? ?????? ?????? ??? ??  
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ???), ???  
10?? ?????? 2003 (Dz. U. ??? 80, ??? 721), ??? ??? ??????????????, ?????????? ??  
???:

«4. ?? ?????? ? ??? ?????? [...] ???????????, ?????? ?? ??? ?????????? ??? ????:

1) ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ????,

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

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

??????????.

4a. ? ??????? ?? ??? ????? ?????????? ? ?????????? ??? ?? ??????? ??? ?????????? 4  
????????? ?????? ?????????? ??? ?? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????  
????????? ??? ?? ?????? ??????»

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

9 ?? ??? 1 ??? ustanowiona o drogach publicznych (????? ??? ?????? ?????? ??????),  
??? 21?? ?????? 1985, ??? ?????? ?????????? (Dz. U. ??? 2016, ??? 1440), ??????  
?? ???:

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

10 ?? ??? 2, ?????????? 1, ??? ??? ?????? ?????? ?????????? ?? ????:

«????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????, ?? ?????? ???  
????????? ???

1) ?????? ????,

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

3) ?????????? ????,

4) ?????? ????.»

11 ?? ??? 19, ?????????? 1 ??? 5, ??? ?? ??? ?????? ?????? ?????????? ?? ????:

«1. ??? ?????? ??? ?????? ?????? ?????? ? ?????? ??? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????.

5. ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
??? ??? ??? ?????? ??? ?????? ??? ??????.

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

12 ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ????: ???  
????? ?????? ?????? ? gmina (?????), ??? ?????? ? powiat (?????????) ??? ??? ??? ???  
? województwo (??????, ??? ????: ??????). ? miasto na prawach powiatu (?????????????)  
????? ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????????? ?????? ? ?????? ?, ? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???  
??? ??????, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ???, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

13 ? Województwo Dolnośląskie (????? ??? ??? ?????? ??????, ??????) ?????????? ??  
26 ??????????, ??? ?????????? 169 ?????, ??? ?? 4 ?????????? ?????? ???

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

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

15 ???? ??? ?????? ?????????? ??? Wojewoda Dolno?l?ski (???????, ??? ???: ???????, ??? ???  
???????, ???), ? ?????????? ?????????? ??????? ?????????? ?????????? ??? ?????  
????????????? ??? ??????? ?????? ??? ?????? ?????? ?????????? ??????? ????. ?? ??????  
??????, ? ??????? ??? ??? ?????? ?????? ??????? ?? ??? ??? ?????????? ??? ?????.  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????.

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

17 ???? ?????? ??? ?????? ???????, ? ??????? ?????? ???, ?? ??????????, ???????  
????? ??? ?????? ?????? ??????? ?? ??????? ?????? ?????? ?????????? ???, ?????????? ???  
? ?????????? ??? ??????? ?????? ?????? ?????????? ??? ??? ?????? ??? ?????? ??????  
??????????. ??????? ?? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ???,  
????????? ??? ? ??????? ??? ?????? ?????????? ?????? ?????????? ?????????????? ??? ???  
????????? ?? ??? ??? ??????.

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

19 ? ?????? ?????? ?????? ??? Wojewódzki S?d Administracyjny w Warszawie  
(????????? ?????????? ??? ?????? Wroclaw, ??????) ??????? ??? ??? ?????? ???  
?? ??? ?????????? ?????????? ?????????? ??????????.

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

21 ??? ?? ??? ???? ??????? ? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
??????????, ??? ??? Naczelnego S?du Administracyjnego (????????? ?????????? ??????????,,  
??????).

22 ??? 12 ?????????? 2015, ?? ??????? ?????? ??? ?????????? ??? ??????? ???  
????????? ??? ???????, ?????????? ??? ??? ?????? ??? ?????? ??? ? ?????????? ??? ??????????  
????????? ??? ??? ???, ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ????,  
?????? ?? ??????? «????????? ??????» ??? ??? ?????? ??? ?????? 7, ?????????? 1, ??????  
1, ??? ?????? ???, ?????????? ??? ?????? ?? ?????????? ???????, ?????????? ??????????  
??? ??????? ??????.

23 ?? ?????? ??? 12? ??????? 2015, ?? ?????? ??????????, ?? ??????? ???????,  
????????? ??? ?????? ?????? ?????????? ?????? «????????? ??????» ??? ??? ??????? ???  
?????? 7, ?????????? 1, ?????? 1, ??? ?????? ??? ??? ?????????? ?????????? ?? ???

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

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

25 ??? ??? ??????? ?????, ?? Naczelnny S?d Administracyjny (?????? ??????????  
?????????) ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???  
????????? ?? ?????????? ?????????? ??????:

«????? ?????????? ??? ?????? ??? ?????? ??? ?????? 14, ?????????? 2, ??????? ??,  
??? [????? ???] ? ?? ?????? ?????? ?????? ???????????, ?????? ???????????, ???  
????????? ?????? ??? ?????? ??? ?????? ??? ? ?????? ?????? ??????, ??? ??? ?????? ??? ??????  
????? ?????? ?????? ?????? ??? ?? ?? ?????? ?????? ?????????? ?? ?????????????? ?  
????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????, ?????? ??????, ??????????  
????? ??? ???;

????? ?????? ??? ??? ??????? ??? ?????? ?????? ?? ?? ? ?????????? ??????????????  
????????? ??? ??? ? ?? ??? ?????? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ???  
????? ??? ??? ?????????????? ??? ??????;»

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

26 ??? ???????????, ?????????????? ??? ??? ?????????????? ?????? ??? ?????? ???  
??? ?????? 14, ?????????? 2, ??????? ??, ??? ?????? ??? ??, ??? ?? ??????  
????????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??  
????????? ?? «????? ?????????? ???» ?????????? ??? ?????? 2, ?????????? 2,  
????? ??, ??? ?????? ???.

27 ????, ??? ?????? ?????????? ??? ???????????, ?? ??????? ??, ??? ??????  
??????, ??? ?????? ?????????? ?????????? ??? ?????? ?????????????? ?????????? ??????????  
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?? ??  
????????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?? ??? ?????? ?????? ??? ??  
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?? ?? ?? ?????? ?? ??  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? (?????? ?? 20??  
????????? 2017, Incyte, C?492/16, EU:C:2017:995, ??? 30 ??? ??? ??????????).

28 ????, ?? ?????????? ?????? ??? ?????? ?? ?????????? ??? ?? ??? ?? ?????? ??? ??????  
2, ?????????? 1, ??????? ??, ??? ?????? ???.

29 ?? ?? ?????? ???, ?? ?????? ?????????? ???, ???' ??????, ?? ?????????????? ???  
?? ?????? 2, ?????????? 1, ??? ?? ??? 14, ?????????? 2, ??????? ??, ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ??? ?????? ??? ??  
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ???, ??? ?????? ?????? ?????? ?????? ???, ??? ?????????? ???, ??? ?????? ???  
????????? ??? ?????? ???, ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ???, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?? ?? ??? ?????? ?????? ???????????, ??? ???????????????, ?? ?????????????? ??  
????? ?????? ???, ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

30 ????????, ??? ?? ?????????? ??? ? ?????? ??? ?? ?????????? ?????? ?????? ???  
?? ??? ??????????, ??? ??, ?? ?????? ?????? ??? ?????????? ?????? (??????  
??? 11?? ????? 2017, Posnania Investment, C-36/16, EU:C:2017:361, ????? 25 ??? ???  
????????????? ??????????).

31      ?????, ????, ?? ???? 2, ??????????? 1, ?????????? ??, ??? ??????? ????? ???, ???????????  
 ????? ??? ?? ??????????? ?????? ??? ?????????????????? ?? ?????????? ?????? ??? ??????  
 ????? ??????? ?????? ??? ??????????? ????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

32      ????? ??????, ????????, ??? ?????? ??? «?????????? ??????», ??? ?????? ??????? ?????? ??????.

33 ??????????, ?? ???? 14, ?????????? 1, ??? ?????? ??? ?????? ?? «?????????  
??????» ?? ?????????? ??? ?????????? ?? ?????????? ??????, ?? ??????, ????????.  
??????, ?? ???? 14, ?????????? 2, ????????, ??, ??? ?????? ??????? ?????????? ???, ???  
??? ??? ?????? ??? ?????????? 1 ??? ?? ??? ?????? ??????, ?? «????????? ??????» ??????? ?  
??????????, ?? ??????? ???????????, ?? ?????????? ??????, ???????, ??????? ??????? ???  
????????? ?????? ?? ??? ?????? ??? ?????.

34      ????? ?????? ??? ??????? ?????? ?????? ?????? ?????? ?????? ??????, ???? ???? ???????  
????????????? ??? ??? ???? ???? ??' ?????????????? ????????, ? ?????? ?????????? ???, ???  
?? ????????, ??? ?????? ??? ?????? ?????????? ??? ?????? 14, ?????????? 2, ?????????? ??, ???  
?????? ????, ???, ?????? ?? ?????? ?????? ?? ?????? ??? ?????? 14, ?????????? 1, ???  
?????? ????.

35 ???????, ??? ?? ?????? 14, ?????????? 1, ??? ?????? ??? ?????? ?????? ??????  
??? ?????? ??? «????????? ?????», ?????? ??? ???? ?????? ??? ???? ?????? ?????  
??? ?????????? 2 ??? ????? ??????, ?????? ??? ???? «????? ??? ??? ?????? ???  
????????? 1», ??? ? ?????????? 2 ????? ?????? ?????? ?? ?????? ?????? ??????????  
«????????? ?????». ???????, ? ?????????? ??? ?????????? ?????, ?????? ??????????  
???? ??? ?????, ??? ??? «????????? ?????», ??? ?????? ??? ?????? 14, ?????????? 2,  
????????? ?, ??? ?????? ??? ??? ??? ?????? ??? ?????? ??? ?????? 14, ?????????? 1, ??? ???  
??????, ?????? ??? ?? ??? ??????????, ?????????? ??? ?? ??? ?????? ?????? ???  
????????? ???' ????. ??????, ??????????, ? ?????? ??? ?????? ??? ?????? 14,  
????????? 2, ??????? ?, ??? ?????? ?????? ?????? ?????? ?????????? ??? «????????? ??  
????????? ??????, ?? ??????, ?????? ??????», ??? ???? ?????? ?????? ??? 14,  
????????? 1, ??? ?????? ??????.

36 ????????, ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????? 14 ??? ?????? ??? ??  
?????????, ??? ?? ?????????? ??? ?? ?????? ?????????? ??? ?? ?????? 47 ??? ?????? ???,  
??? ?? ?????????? 2 ??? ?? ?????? ??? ?? ??????, ?? ?????? ?? ??? ?? ?????? ?????? ??? ?? ??????  
???? ?? ?????? 1 ?????, lex specialis, ??? ?????? ?? ?????????? ?????? ??????  
????????? ?????????? ?? ?????? ?? ??? ?? ?????????????? ?????????? ??? ?? ?????????? 1.

37 ????????, ??? ??? ?????????????? ??????? ?? «????????????? ??????», ??? ??? ??????????  
?????? 14, ?????????? 2, ??????? ??, ??? ?????? ???, ?????? ??, ?????? ?? ??????????  
????????? ?????? ??????????????. ??????, ?????? ?? ?????? ?????????? ??? ??????????  
?????????. ???????, ? ?? ??? ????? ?????????? ?????? ?? ?????? ?????? ?????? ??????  
??????? ?????? ??? ? ??? ?????? ??? ? ?? ?????? ??????. ??????, ?????? ?? ??????????  
?????????.

38 ???????, ?????????????? ?? ? ?????? ?? ?? ????? ?????? ?????????? ??????????????, ????

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

39 ?????????? ?????????? ???, ??????? ?? ?????????????? ?? ?????? 5, ?????????????? 1, ??? ??????  
????????? 77/388/??? ??? ????????????, ??? 17?? ?????? 1977, ??? ?????????????? ???  
????????? ??? ?????? ??????, ??? ?????????? ?? ????? ?????? ?????? ?????? ?????? – ???  
????????? ?????? ?????????????? ??????: ?????????? ?????????????? ??? (?? ????. ????. 09/001, ?. 49), ??? ?????? ?? ?????? ?????????? ?? ?? ?????? ??? ?????? 14, ?????????? 1, ???  
????????? ??? ???, ?? ?????????? ?????? ??? ?? ?????? 5, ?????????? 1, ??? ??? ???? ??????  
??? ?????? ?? «????????? ??????» ? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??  
????????? ?????? ?????, ????? ??? ?? ??? ?????? ??? ?????????? ??? ??? ?????? ??????  
????????? ??? ??? ?????? (????????? ??? 8?? ?????????? 1990, Shipping and Forwarding  
Enterprise Safe, C-320/88, EU:C:1990:61, ??? 9). ??????????, ??? ?????????? ??? ??? ??????  
????????? ?????????????? ??????????, ?? ?????? ?????????? ?????? ?? ?????????????? ???  
????????? ?? ?????? «????????? ??????» ??? ??? ?????? ??? ?????? 14, ?????????? 2,  
????????? ??, ??? ?????? ???, ??? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ??? ?????? ??? ?????? ??? ??????, ??? ?????? ??????????????, ??? ? ????  
??? ?????????? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????. ????????, ?  
????????? ??? ?????????? ?????????? ?????????? ?????? ??? ?????? ??? ??????, ?? ??????????  
????????? ??? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?? ?????????? ???,  
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????, ? ?????? ??????????????  
??? ??? ???????, ?? ?????????? ?? ?????????? ??? ?????????? ??? ? ?????? ?????????? ???,  
????????? ?? ???, ?????????? ?????????? ?????????? ???, ??? ??? ??? ??? ???? ?? ???? ?? ???? ?? ?  
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????????

40 ???????, ?? ??? 14, ?????????? 2, ??????? ?, ?? ??????? ???? ??? ????  
????????? ??? ?????????? ??? ?????????? ?? ?????????? ??????, ?? ??????, ????, ????  
? ?????????? 1 ??? ??? ??????, ????, ??? ????? ??????????, ??? ?????????? ???  
????????? ??? ?? ??? ?????? (??., ??? ?????? ?? ????? 14, ?????????? 2, ?????????? ?,  
?????? ??? 4?? ?????????? 2017, Mercedes-Benz Financial Services UK, C-164/16,  
EU:C:2017:734, ??? 31).

41      ????? ????????, ????, ?????? ?????????? ? ??????? ?????????????? ?? ?? ?????? 53 ???  
????????? ???, ??? ????? ??????? ?? 14, ?????????? 2, ??????? ??, ??? ??????  
???? ??, ? ?????????? ??? ?????????? ??? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ??? ?? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ?????????? ? ?????? ?? ?????????? ???  
???? «????????? ?????», ?????? ?????? ?????????? ??? ?? ?????? ?????????? ??? ??  
???? ???????.

42 ????????, ??? ???? ?? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??????, ?  
????? ?????????? ??? ???? 2, ?????????? 1, ?????? ??, ??? ?????? ??? ?, ??  
????? ?????????? ????, ???' ??????, ?? ?????????? ??? ?????? ??? ? ?????? ?????? ???  
????? ??? «???????, ?????» ??? ?????????? ??? ?? ?????? ??? ?????? ??? ??? ?????? ???  
???' ??? 14, ?????????? 2, ??????? ??, ??? ?????? ?????? «?????????», ???  
????????? ??? ?? ?????? ? ?????????? ??? ?? ?????? ? ?????? ?????? ??? ??  
????????????????? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??????.

43      ????? ?????? ??? ?????? ?????????? ??? ?????????????? ????????, ??? ????? ?????? ??????????  
??? ????????????, ? ?????????? ?????? ??? ?????????????? «?? ?????????? ?????», ??? ???  
?????? ??? ?????? 2, ?????????? 1, ?????????? ??, ??? ?????????? ??? ???, ?????????? ???  
?????? ?????? ?????? ?????? ??? ?????????????? ?????? ??? ??? ?????????? ???  
????????? (??., ??' ?????? ??? ??????, ?????? ??? 7?? ?????????? 2010, Loyalty

Management UK ??? Baxi Group, C?53/09 ??? C-55/09, EU:C:2010:590, ?????? 51 ??? ???  
????????????? ??????????). ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
??? ?????????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ??????, ?? ?? ?????? ??? ?????????? ? ?????????? ?????? ?????? ?????? ??????  
????????? ??? ?? ?????????? ?????? (??., ??' ?????? ?? ??????, ?????? ?? 11?? ????  
2017, Posnania Investment, C-36/16, EU:C:2017:361, ?????? 31 ??? ?????? ??????????????  
?????????). ??????????, ?? ?????????? ?????? ?????? ?? ?????? ?????????????? ???,  
????????? ?????????? ??? ?????????? ?? ?????? (??., ??' ?????? ?? ??????, ?????? ????  
19?? ?????????? 2012, Orfey, C-549/11, EU:C:2012:832, ?????? 44 ??? 45, ?????? ??? ???  
????????? ??????, ?????? ??? ?? 7?? ?????????? 2013, Tulic? ??? Plavo?in, C-249/12  
?? C-250/12, EU:C:2013:722, ?????? 33 ??? ?????? ?????????????? ??????????).

44    ??????????, ??? ?????????, ???' ??????, ??? ? ?????? ?????????????? ?? ?? ?????? 61  
??? ?????????? ???, ?? ?????? ???, ??? ? ?????? «????????? ?????????????» ??? ?? ??????  
??? ?????? 14, ?????????? 2, ?????????? ?, ??? ?????? ???, ??? ?????? ??, ?????? ?????????? ??  
????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? «????????? ??????», ?  
????? ?????????? ??? ?????? 2, ?????????? 1, ?????????? ?, ??? ?????? ???????,  
????????? ??????, ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ??? ??????  
????????? ?? lex specialis, ??? ?????????? ??? ?? ?????? 36 ??? ?????????? ??????????.  
????????, ?? ?????????? ?????? ?????????? ?????????????? ??? ?? ?????????? ??? ?? ??????  
??? ?????????? ??? ?????? 14, ?????????? 2, ?????????? ?, ??? ?????? ??? ??, ??? ??  
????? 2, ?????????? 1, ???.

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

46    ??????, ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? 2, ?????????? 1,  
????????? ??, ??? ?????? ???, ??? ?????? ?????? ???, ??? ?? ?????????? ?????? ?? ??? ?????? ??????????  
??? ??????, ??? ?????????? ??? ?????? ??? ?????? ??? ??????, ?? ?????????? ?? ???, ?????? ???  
????????? ??? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????  
?? ??????? «?? ?? ?????? ???», ??? ?????????? ??? ? ??? ?????? ?? ?????? ??? ??????????  
????????, ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???, ??? ??  
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47    ??????, ?? ?????? ??? ? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ??  
????? ??????????. ?????? ??? ?????? 9, ?????????? 1, ??? ?????? ??? ??, ??  
«????????? ???» ?????? ?????????? ???, ??? ?????? ?????????? ??? ?? ??  
????????? ???, ?????????? ?????????? ???, ?????????? ??? ?????? ??? ?????????? ??? ??  
?? ?? ?????????? ??? ?????????? ??? ??????. ?? «????????? ?????????? ???»  
????????, ??????, ? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
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48    ?????, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ? ?????????? ??? ?????? ???  
?? ??????? «?? ?? ?????? ???» ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? 13, ?????????? 1, ????  
?????, ??? ?????? ???, ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

??????????, ???????? ??? ????? ???? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???  
????????? ??????????? ??? ??? ????? ????????????, ??? ??? ?? ?????????????? ??? ?????? ??? ?????? ???  
??? ??? ?????? ??????? ??????????? ?? ??? ????? ??????? ??? ??? ?????? ??? ?????? ??????????????  
(??????? ??? 16?? ??????????? 2008, Isle of Wight Council ?., C-288/07, EU:C:2008:505,  
????? 21 ??? ??? ????? ??????????? ??????????). ??? ?????? ?????????? ?????????? ???  
?????????? ?? ?????????? ? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????.

49      ????? ?????? ??? ??????? ??? ??????? ??????, ??? ??????????? ??? ?? ??? ?????? 15 ???  
????????? ??????????, ? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??????????  
????????????? ??? ??????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ????. ? ?? ???  
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??????, ??? ?????? ??? ?????? ??? ?????  
?????????, ? ??????, ?? ?????? ??????, ??????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????  
?????????.

50     ?? ?? ??????, ?? ?? ?????????? ?? ?? ?????????? ?????????????? ?? ?? ?? ??????  
???????????, ?? ?????????? ?? ?? ?????????? ?? ?? ?????????????? ?? ?? ?????? 14, ?? ?????????? 2,  
???????? ?? ?, ?? ?????? ????.

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

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

?? ?????? 2, ??????????? 1, ???????? ?? ???? ???? 14, ??????????? 2, ???????? ??,  
?? ??????? 2006/112/?? ??? ??????????, ??? 28?? ??????????? 2006, ??????? ?? ??  
????? ??????? ????? ?????????????? ??????, ?????? ??? ?????? ??? ??????? ?????  
?????????? ??? ????? ?????????????? ?????? ? ?? ??????? ?????? ??? ??????  
?????????? ?????? ??? ?????, ?? ?????????? ?????? ??????? ??????, ?? ?????? ?????? ??  
?????????? ??? ?, ??? ?????? ?????? ?????? ??????? ??????? ??????, ??? ??????????? ???,  
???? ??? ?????? ?????? ??? ?????? ??????, ?? ??? ?????? ?????? ??????????? ?????????? ???  
???? ? ? ??????????? ??? ??? ??? ??? ??? ??? ?????? ?????? ??? ??  
?????????????? ???????, ??? ??? ??? ?????? ?? ??????? ??????, ?????? ??? ?? ? ??????? ???  
??????????????, ?? ??????????? ?? ??????? ??????, ?????? ??? ?? ? ??????? ???  
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(???????????)

\* ?????? ??????????: ? ???????