

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

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

??? 8?? ??? 2019 (*)

«????????????? ?????????? – ????? ?????????????? ????? (???) – ?????????????? ?????? –
?????? ?????????? ?????????? ?????? – ?????????? ??? ?????? ?????????? ??? ?????? ??????
??? ?????????? ?? ??? ??? – ?????? ?????????? ?????????? ??? ??? ??? ??? ??? ??? ???
????????? – ?????????? ?? ??? ??? ??? ??? ?????????? ??? ??? ??? ??? ??? ???
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???? ?????? C-712/17,

?? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ???
?????? ?? Commissione tributaria regionale di Lombardia (????????????? ??????????
????????? ??????????, ??????) ?? ?????? ??? 9?? ?????????? 2017, ? ?????? ??????????
??? ?????????? ??? 20 ?????????? 2017, ??? ?????? ??? ??????

EN.SA. Srl

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Agenzia delle Entrate – Direzione Regionale Lombardia Ufficio Contenzioso,

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

????????? ??? ??? J.-C. Bonichot (????????), ?????? ????????, C. Toader, A. Rosas, L.
Bay Larsen ??? M. Safjan, ????????,

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

?????????: A. Calot Escobar

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

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

– ? ??????? ????????, ?????????????? ??? ??? G. Palmieri, ?????????????? ??? ???
M. Capolupo ??? G. De Bellis, avvocati dello Stato,

– ? ??????? ????????, ?????????????? ??? ??? N. Gossement ??? F. Tomat,

???? ?????? ?? ?????? ?????????? ??? ??????? ??? ?????????? ??? ?????? ?? ??????????
??? 17?? ?????????? 2019,

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

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1 ? ?????? ?????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 2006/112/?? ???
??????????, ??? 28?? ?????????? 2006, ?????? ?? ?? ?????? ?????? ?????? ????????????????

????? (?? 2006, L 347, ? . 1, ??? ????: ?????? ????.).

2 ? ?? ??? ?????? ??????? ?? ?????? ?????? ?????? ?????? ?????? ??? EN.SA. Srl
??? ??? Agenzia delle Entrate – Direzione Regionale della Lombardia (????????? ???
????? – ?????????? ?????? ?????????? ??????, ?????) (??? ????: ?????????? ???), ??
????????? ?????? ?????????? ?????? ?????? ?????? ? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????? ?????????? ??? ?????????? ?????? ?????? ?????????? ?????? (??), ???
????? ??? ??????.

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

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

3 ?? ????? 63 ??? ?????? ??? ?????? ?? ????:

«? ?????????? ??? ?????? ?????? ??? ? ?????? ?????????? ?????????? ??? ?????? ??? ??????
????????????? ??? ?????? ?????? ? ??? ?????? ?????? ? ??? ?????? ?????? ??????..»

4 ?? ????? 167 ??? ?????? ?????? ?????????? ?? ??????:

«? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ? ??? ?????? ?????? ???
????? ??????..»

5 ?? ????? 168 ??? ?? ??? ?????? ?????? ??? ?? ????:

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

?) ??? ?????????? ? ?????????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ? ?????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ??
? ?????????? ?? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???,

[...].».

6 ?? ????? 203 ??? ?????? ?????? ?????? ?? ??????:

«? ??? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ??? ??????..»

7 ?? ????? 273 ??? ?????? ??? ?????? ?? ????:

«? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 3.»

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

9 ?? ?????? 19, ??????????? 1, ??? DPR 633/1972 ??? ?????:

«???? ??? ?????????????? ??? ?????? ??? ?????????? ??????? ??? ?????? 17, ?????????? 1, ?
??? ?????????????? ??? ?????? ??? ?????????????? ??? ?????? 30, ?????????? 2, ??? ?? ??? ???? ???
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ? ?????????????? ??????????
?? ??? ?????? ??? ? ?????? ?????????? ? ??????? ? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?? ??? ??????????, ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????????????? ??????????????, ??? ?????? ???
????????? ????. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???».

10 ?? ?????? 21 ??? DPR 633/1972 ?????? ?? ????:

«?? ??????? ?????????? ?? ?????????? ?????????? ?? ? ?? ??? ?????????? ?? ??? ?? ???? «?? ??????? ?? ? ?? ??????? ?? ?????? ?????????? ?? ?????????? ?? ? ?? ??? ?????????? ?? ??? ?? ???? ?? ??????? ?? ? ?? ??????? ?? ?????????? ?? ?????????? ?? ? ?? ??? ?????????? ?? ??? ?? ????».

11 ?? ?????? 6, ?????????? 6, ??? Decreto legislativo n. 471 (????????????? ???????????
????. 471), ??? 18?? ?????????? 1997, ?? ??? ?????? ?? ?????? ?? ?????? ?? ????;
????????????? ?? ?????? ?????? ?????? ??????. ?????????? ?? ??????;

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

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

12 ? EN.SA. ?????? ??????? ??????? ?????????? ??? ?????????? ?????????? ?????????? . ?
????????? ??? ?????? ?? ??????? ?? ??????? ??? ??????? ??? ?? EN.SA. ??? ?? ?????????? ???
2009 ??? 2010. ??????? ??? ?????? 19 ??? DPR 633/1972, ? ?? ??? ?????? ?????????? ??
????????? ?? ?????????? ?????????? ??? ??? ??? ?????????? ?? ?????? ?????????? ??????
????????? ???????, ??? ?????? ??????? ?????????? ??? ?????????? ?? ??? ?????????? ??? ??? ???
????????? ??? ?????????? ??????????, ??? ???????, ??????? ??? ?????? 6, ?????????? 6, ???
????????????? ??? ?????? 11 ??? ?????? ?????????? ?????????? ?????????? ?????????? ,
????????? ?????? ??? ??? ??? ?????? ?????????? .

13 ??????????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? EN.SA. ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

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

14 ??? ???? ?? ??? ???, ?? ?????????????? ??? ????? ?????????? ?????????????? ?? ??? ?? ??? ?????
????????? ?????????? ??? ????? ?????????? ?????????? ??? ????? ?????, ?????? ??????????
??? ?????? ??????. ?? ?????? ????? ?????????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ???
????? «Green Network» ??? ?????????? ?????????????? ?????????????? ?????????????? ???????????,
????? ?? ?????????? ?? ????? ?????????? ??????????.

15 ? ?????????? ??? ?????? ??? ?????? ??? EN.SA. ??? ?????????? ?????????? ?????????? ??????????
?????, ?????? ?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????, ??? 47 618 491 ??? ?? 22 001 078 ??? ?? 2009 ?? 2010, ??????????.

16 ??? ???? ?????? ?????? ? EN.SA. ?????? ?????????? ?????? ??? Commissione
tributaria provinciale di Milano (????????? ?????????? ?????????? ?????????? ??????), ??
????? ??? ??????. ? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ???
????????? ?????? ??? Commissione tributaria regionale di Lombardia (?????????????
????????? ?????????? ?????????? ?????????? ??????).

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

18 ??? ??? ????????, ?? Commissione tributaria regionale di Lombardia
(????????????? ?????????? ?????????? ??????????) ?????????? ?? ?????????? ??? ??????????
??? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????? ??????????:

«??????, ?? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ???
?????????????, ? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ?????? 19 (???????)
?? 21, ?????????? 7 (????????? ??? ??????????), ??? [DPR 633/1972] ?? ?? 6,
????????? 6, ??? decreto legislativo n. 471 (????????? ?????????? ??? 471) ?? 18??
????????? 1997 (????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ??? ?????????? ??? ??????????), ?? ??? ?????? ??? ?????? ??? ?????? ??????????
?? ??? ??? ??? ?????? ??? ?????????? ?? [?????????], ??? ? ?????????? ?????????? ???
?????? ??? ?????????? ??? ?????? ??????????:

?) ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????? ??? ??? ?? ??????????, ??? ?? ??? ?????? ??? ??? ?????? ?????????? ?????????? ???
?????? ??? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ?????????? ???

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

?) ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????? ?? ??????;»

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

19 ?????????? ?? ?????? ?????????? ????? ?????? ?????????? ?????????? ?? ?????????? ?? ?????? ??
????????? ?? «??[?] ??? ?????? ??? ?????? ?????????? ?? ??? ??? ??? ?????? ??? ?????? ??
????????? ?? ??????????», ?????????????? ?????? ??? ?????? ??? ?????????????? ??
??? ?????????? ??, ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ?? ?????? ??? ?????????????? ??
???? ?????????? ?????? ??? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ?????????? ?? ? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????????? ??? . ??????, ??? ?????????? ?????????? ?? ?????? ??? ?????? ???, ??? ??
????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??
??? ?????????? ??? ?????????? ???, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (????.
????????? ??? 4?? ?????????? 2018, L.E.G.O., C-242/17, EU:C:2018:804, ??? 43, ??? 7??
????????? 2019, Escribano Vindel, C?49/18, EU:C:2019:106, ??? 32, ??? ??? 12??
????????? 2019, TC, C?492/18 PPU, EU:C:2019:108, ??? 37).

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

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

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

22 ??????, ? ?? ?????????? ?????????? ??? ?? ??? ?????? ?? ?????????? ??? ?????? ???
????????? ??? ?? ??? 168 ??? ?? ??? ??????.

23 ???????, ??? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (????. ?????? ???
6?? ?????????? 2012, Portugal Telecom, C-496/11, EU:C:2012:557, ??? 36).

24 ???????, ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? (????? ??? 27?? ?????? 2018, SGI ???
Valérian, C-459/17 ??? C-460/17, EU:C:2018:501, ??? 36).

25 ???????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

26 ???????, ? ??????? ?????? ??? ??????? ??????? ??? ??????? ??? ?? ??????? ??? ??
????????? ?????????? ?????? 203 ??? ?????? ??? ???. ???????, ??
????????? ??? ?????? ??? ?? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????? ??? ?? ?????? ??????? ?????? ??? ?????? ?????? ??? ?? ?????? ?????? ??????
????????? ??? (????. ?????? ??? 31?? ??????? 2013, Stroy trans, C-642/11,
EU:C:2013:54, ??? 38).

27 ???????, ?? ??? ?????????????? ??????? ??? ?????????????? ??? ?????? ???.
????????? ?? ??????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
?????????, ??? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????
??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???.

28 ???????, ??? ?????? ?????????? ??? ??????? ??? ??????? ??? ??????, ?? ??????????
?? ?????????? ?? ?? 168 ??? 203 ??? ?????? ??? ??????? ??? ?????? ??? ?????? ???
?? ??? ?????? ??????, ?? ?????? ?????????? ?????????? ?????????? ?????????? ??????????
?????????, ??? ?????? ?????? ?????????? ?????????? ?????? ??? ?????????? ??? ?????? ??????
????? ??? ?????? ?????, ?? ?????????? ?? ?????????? ?????? ?? ?????? ??? ?? ?????? ??? ??
????? ??? ?? ?????? ?????????? ??? ?????? ????. ??????????, ??? ?????????? ??? ?????? ??????
????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??? ??
????? ?????? ??? ?????? ?????? ??? ?????? ?????, ??? ?????? ???, ??? ?????? ??????
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ????. ??????, ?? ??????
????????? ??? ???' ?????? ??? ?????? ??? ?????? 203 ??? ?????? ??? ?????? ???, ? EN.SA.
???? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
??????. ??????????, ??? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? 168 ??? ?? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
????????? ??? ???.

29 ??? ??? ?????? ???, ?? ?????? ?????????? ?????????? ??? ? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? EN.SA, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???.

30 ?????? ?????? ??? ? ?????????? ?????????? ??? ???, ??? ?????????? ??? ?? ?? ???
167 ???. ??? ?????? ???, ??? ?? ?????? ?? ?????????? ?????? ??? ?????????? ???
?? ??? ??? ?????? ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????, ?????? ?????? ?????????? ?? ????. ??????, ?? ?????? ?????? ???
????????????? ?????? ?????????? ?? ????. ?????? ??? ?????????? ?????? ??? ??
????????????? ?????????? ??? ?????? ?????? ??? ?? ??? ?????? ?????????? ???
?????????, ??????, ?? ??? (????. ?????? ??? 29?? ??????? 2009, NCC Construction
Danmark, C?174/08, EU:C:2009:669, ??? 27, ??? ??? 22?? ??????? 2010, RBS
Deutschland Holdings, C?277/09, EU:C:2010:810, ??? 38).

31 ??????, ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????? ??? ??? (????? ??? 31?? ??????? 2013, Stroy trans, C?642/11, EU:C:2013:54,
????? 46). ? ???????, ???, ?????? ?????????? ?????? ??? ?????? ??? ?????????? ???,
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? (????? ??? 31?? ??????? 2013, Stroy trans, C-642/11, EU:C:2013:54, ???).

31).

32 ??? ??????? ????, ? ???????? ??? ??????????? ?? ?? ?????? 203 ??? ?? ??? ?????? ???????
?????????? ??? ?? ?????????? ??? ?????? ?????????? ?????????? ?????? ??? ??????
?????????? ?????????? ?? ?????? ?????? ?????? (?????? ?? 31?? ?????????? 2013,
Stroy trans, C-642/11, EU:C:2013:54, ??? 32).

33 ????????, ??????? ?? ??? ??? ??? ??????????????, ? ?? ??? ?????????? ???
?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ??? ?????????? ???
????????????? ?????? ???, ?????? ???, ?? ?? ?????? ??? ?????? ?????? ?????????? ??? ?? ???
????????????? ??? ?? . ??????, ?? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?? ???
?????, ??? ?????? ? ?????????? ?????? ?????????? ??? ?????? ?????????? ?? ??????????
????????? ??? ??????, ? ?????? ??? ?????? ??? ?????????????? ??? ?? ?????? ?????????? ???
?? ?????????? ???, ??? ?????? ?? ?????? ?? ?????????? ?? ?????? ???, ??? ?????????? ???
????? ??? ?????? ?????? ?? ??????????, ?????? ? ?????? ??? ?????????? ??? ??????????
????????? ??? ??? ?????? ?????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ???
????????? ?????? ?????????? ?????? (?????? ?? 31?? ?????????? 2013, Stroy Trans, C-
642/11, EU:C:2013:54, ??? 43).

34 ?? ??????????, ??? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ?? ??????
????????? ?????????? ??? ? EN.SA. ?? ?????? ??? ?????? ?????????? ?? ?????? ???
????????????? ?? ?????? ?????????? ????. ??? ??? ?????????? ????, ? ?? ??? ?????? ?????? ???
????? ?? ?????????? ??? ?????????? ??????????, ??????????, ?????? ??? ?? ??????
?????????, ?? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ??? ?? ??? ?????? ??????
?? ?????? ?? ?????????? ?????????? ?????????? ?????????? ?????? . ??????????, ???
????????? ? ?????? ?????????? ??? ?????? 47 ??? ?????????? ???, ?? ??????????
????????? ?????????? ?????????? ??? ??? ??? ?????? ?????? ?????????????? ?????????? ???,
?? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ???
????? ????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

35 ??? ?????? ??? ????????, ??? ?? ??? 33 ??? ?????? ?????????? ?????????? ??? ?
????? ???, ?????????? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ??????
?? ?????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???.

36 ?????? ??? ????????????, ??? ?? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ?? ??? ? ?????? ??? ?? ?????? ??? ?????? ??? ? ?????? ??? ??????
?? ?????? ???, ??? ?????? ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ???
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????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???, ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ??? ??????
????????? ??? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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37 ?? ?? ?????? ??? ?????? ??? ?????????????? ?????????????? ?? ?????? ?????????????? ?????? ??
????????????? ?? ? ??? ?????? ??? ?????????????? ?????? ??? ?????? ???, ?? ?????????? ??? ???? ?
????????? ??? ?????? ??? ?????? ???, ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?
????????????? ??? ??????.

38 ??????? ??? ?????? 273 ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??
?????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ????????, ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ???,
?? ?????????? ?? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????????? ??? ?????????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? (????. ?????????? ??? 15?? ??????????
2016, Senatex, C?518/14, EU:C:2016:691, ??? 41, ??? 26?? ?????? 2017, Farkas, C-
564/15, EU:C:2017:302, ??? 59 ??? ?????? ?????????? ??????????).

39 ??????? ??? ?????? ?? ?????? ?? ?????? ?????????? ?????????? ?? ?????? ??? ?????? ??
??? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? ??????????????
??? ??? (????. ??????? ??? 26?? ?????? 2017, Farkas, C?564/15, EU:C:2017:302, ??? 59
??? ??? ??????????). ???????, ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??????????
??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
273 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? (????. ??????
??? 9?? ?????? 2015, Salomie ??? Oltean, C-183/14, EU:C:2015:454, ??? 62).

40 ??????, ?????????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ??? ?????? ???
?????????????, ??? ??? ?? ?????????? ???, ?????? ??? ?????? ??? ?????, ? ??? ??? ???? ???? ?????????? ???
????????? ??? ??? ?????? ?????????? ? ?????? ??? ?????? ??? ?????? ??? ???? ?????? ?????????? ???
????? ??? ?????? (?????? ??? 26?? ?????? 2017, Farkas, C-564/15, EU:C:2017:302,
????? 60 ??? ?????? ?????????? ??????????).

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

42 ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????????? ???
?????? ?????????? ??? ?????? 63 ??? ?????????? ???, ?????????? ??? ? EN.SA. ??????
??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
?????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????. ?? ??? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? 100 % ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ???, ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

43 ???????, ?? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ??? ???

???????????????? ? ?? ? ?? ? ?????????? ?????? ? ?? ? ?????? ? ?????????? ? ?? ? ?????? ?
????????????? ? ?? ? ?? ? ?????? ??????. ????????, ?? ? ?? ? ?????? ??????????, ????
????????????? ? ?? ? ?? ? 33 ? ?? ? ?????? ??????????, ? ?? ? ?????? ? ?? ? ?? ? ?? ?
????????????? ? ?? ? ?? ? ?????????????? ?????? ? ?? ? ????????????, ??? ? ?? ? ?? ? ?? ? ?? ?
????????? ? ?? ? ?? ? ?? ?, ??? ? ?????? ?????? ? ?? ? ?? ? ?? ? ?? ? ?????? ?????? ??
?????????, ?????? ? ?? ? ?????? ?????????? ? ?? ? ?????????? ?????????????? ? ?? ? ?? ? ?? ? ?? ?
????????? ? ?? ? ?????? ?????? ? ?? ? ?????????? ? ?? ? ?????????? ?????????????? ? ?? ? ?? ? ?? ?

44 ????, ????, ?????????? ? ?????? ??????????? ??? ?????? 57 ??? ?????? ?????????? ???, ?
?????? ?????????? ??? 100 % ??? ?????? ??? ?????? ??????????? ??? ?????????? ??? ?????? ??????
???? ?????????????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
???? ?? ?????? 203 ??? ?????? ????. ???????, ????? ??? ?? ? ?????????? ?????? ????
?????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ???, ??????????
?? ????????, ??? ?????? ??? ?? ??? ??????????, ??? ??? ??? ?????? ??? ?????? ??? ??????
?????????? ????.

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

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

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

1) ?????????? ???? ? ??????? ????? ?????? ?????? ??????, ????, ?????
?????????? ?????? ??????? ?????????? ?????? ?????????????? ?????? ??????
??? ?????? ?????????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ?????????? ??????, ? ?????? 2006/112/?? ??? ??????????, ??? 28??
????????? 2006, ??????? ?? ?? ?????? ??????? ?????? ?????????????? ????,
????????????? ??? ?? ?????? ??? ?????? ??? ?????????????? ??? ??
?????????????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??????
????????? ??? ?? ?????????? ?????? ?????????? ?? ?????????????? ?? ??????????????
????????? ?????? ?????????? ?????? (??), ??? ?????? ?????????? ??? ?????????? ???
????????? ??? ?? ??? ?? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????????? ???
???? ?????????? ??? ?????????? ??????, ??? ?? ?????????? ?? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

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

* ???? ??? ??????????; ? ???????.