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

??? 11?? ??????? 2020 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? (???) – ??? ???????
77/388/?? – ????? 2 ??? 6 – ????? ?????????? – ?????????????? ?????? – ?????? ??????????
?? ?????????? ?????? – ?????????? ?????????? ??? ?????? ?????? ??? ?????????? ??? –
?????????, ?? ?????? ??? ??????????, ????? ??? ?????????????? ??? ?????????????????? ???
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???? ??????? C?94/19,

? ? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ???
?????? ?? Corte suprema di cassazione (?????? ?????????? ??????????, ??????) ??
?????? ??? 27?? ?????????? 2018, ? ???? ?????? ??? ?????????? ??? 2019, ??? ?????????? ???
2019, ??? ??????? ??? ??????

San Domenico Vetraria SpA

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Agenzia delle Entrate,

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Ministero dell'Economia e delle Finanze,

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

????????? ??? ??? P. G. Xuereb, ?????? ???????, T. von Danwitz ??? A. Kumin
(????????), ???????,

?????? ??????????: M. Szpunar

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

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

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

– ? ?????????? ???????, ?????????????? ??? ??? J. Jokubauskait? ??? S. Mortoni,

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

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1 ? ?????? ?????????????? ?????????? ??? ?????? ??? ??????? ??? ?????? 2 ??? 6 ??? ????

?????? 77/388/??? ??? ??????????, ??? 17?? ???? 1977, ??? ?????????????? ???
????????? ??? ?????? ???, ??? ???????? ?? ??? ????? ?????? ?????? ?????? – ???
????? ????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49, ??? ?: ??? ?????), ??? ??? ??? ?????? ??? ?????????? ??? ??????
????????? ??? (???).

2 H ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? San Domenico Vetraria SpA ??? ??? Agenzia delle Entrate (????????? ????, ????) ?????? ?? ??? ??
????? ??? ?????? San Domenico Vetraria ????????, ??? ?? ?????????? ??? 2005, ???
??? ??? ??? ?????? ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? Avir SpA ???
??? ?????????? ??? ?????????????? ??????????.

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3 ?? ????? 2 ??? ????? ?????? ????:

«???? [?] ??????»:

1. ?? ?????????? ??? ?????? ??? ?? ?????? ??????????, ??? ?????????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???, ??? ?????? ???
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[...]»

4 ?? ????? 6 ??? ?????? ?????? ????:

«?? “????? ??????” ?????? ????, ? ?????? ??? ?????? ?????? ?????? ???
??? ?????? ??? ?????? 5.»

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

5 ??? ?? ??? 30 ??? decreto legislativo n. 276 – Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30 (????????? ????. 276 ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ????. 30 ??? 14?? ?????????? 2003), ??? 10?? ?????????? 2003 (????????? ?????????? ??? GURI 235 ??? 9?? ?????????? 2003):

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

2. ?? ?????????? ??????????, ? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
?????? ?????? ??? ?????? ??? ??????????.

6 ?? ??? 8, ?????????? 35, ??? legge n. 67 – Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 1988) [????? ????. 67 ??? ?????? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? (????? ???
????? ?????????? ??? 1988)], ??? 11?? ?????? 1988 (????? ?????? ?????? ??? GURI
61 ??? 14?? ?????? 1988, ??? ????: ??? 67/88), ?????? ?? ??????:

«???? ?????????????? ?????? ??? ???? ?????????? ??? [??] ?? ?????????? ?????????? ?
????????? ?????????? ??? ???? ?????? ?????????????? ??? ???? ?? ?????? ????.»

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

7 ?? 2004 ? ?????? Avir ??????? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ??
???, San Domenico Vetraria, ??? ?? ??????? ?? ??? ????? ?????????? ??? ??
????????????? ??? ?????????? ??????. ??? ?????? ???, ? San Domenico Vetraria
????? ??? ?? ?????? ??? ?????? ?????????? ?????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????????? ?????????? ??????. ??? ?? ?????????? ???
Avir ??? ??????? ?? ??? ?????? ??? ??????, ? San Domenico Vetraria ?????? ??? ??
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8 ? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? ??? ??, ?????? ??? ?????????? ?????? ?????????? ?????? ?????? ??????????
??? ?? ?????????? ??? ??????, ?????? ?????? ?????? ?????????? ?????????? ?????? ??????
????????? ?? ?????????? ??? ?? ??? ?????? ?????? ??????.

9 ? ??????? ??? ?????? ? San Domenico Vetraria ??? ?? ?????????? ??????
????????? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ??????. ??????????, ?? ??????????
????????? ???, ?????? ?????????? ?????? ??? ?? ?????????? ?????????? ?????? ??????????
????? ??? ?????? ??? ? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??????, ?? ??? ?????? ??? ?????????? ? ?????? ??? ?????????? ???
?? ?????????? ??????, ??? ?? ?????? ??? ?????? 8, ?????????? 35, ??? ????? 67/88.

10 ??????? ?????????? ?????????? ?????????? ??? ?? San Domenico Vetraria, ?? Corte
suprema di cassazione (?????? ?????????? ??????????, ????) ?????? ??? ?? ?????? ??
????? ?? ??????? ??? ? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ???
????????? ??? ??? ?????? ?????? ?????????? ?????? ??? ?? ?????? ??? ?????? ???
?????.

11 ??????, ?? ?????????? ??? ?????? ?????????? ???, ??? ?? ?????? 8, ?????????? 35, ???
????? 67/88, ??? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?? ?????? ???
??? ?????? ?? ?????????? ???, ? ?????? ??? ?????? ??? ?????????? ??? ??, ??????????
??? ?? ?????????? ??? ?? ??? ?????????? ??? ?. ??????????, ?????????? ?? ??????
????????? ?? ??? ??? ?????????? ??? ?? ?????? ?????????? ??? ?? ??? ?????? ???
????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?? ??? ?????? ???
????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?? ??? ?????? ???.

12 ??????????, ??? ?? ??? ?????? ??????????, ? ?????????? ?????????? ?????????? ??????????
????? ? ?????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ?? ?????? ??? ??????
30 ??? ?????????? ??? ?????????? ??? ?????? ?????? 5 ??? ?????? ??? ??????, ?? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ??????, ? ?????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

13 ??????, ? ?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
?????????.

14 ?? Corte suprema di cassazione (???????) ??????, ????????,
???? ? ??????? ??????? ??????? ?? ?????????? ?????????????? ?????? ????????????, ?
????? ??????? ?? ??? ?????????? ??? ?????? ??? ?????????? ?????????????? ?????? ?????? ??
?????????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ?????? ?????? ??
????? ?????? ??????? ??????? ?????????? ??????.

15 ??? ??? ??????? ??????, ?? Corte suprema di cassazione (???????) ????????
?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ??
????????? ?????????? ??????:

«????? ?? ????? 2 ??? 6 ??? [????? ??????] ?????? ??? ? ???? ??? ???????????
????????????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? [??] ?? ?????????? ?????????? ? ?????? ??
????????? ?????? ?????? ??? ?????? ? ?????? ?????? ?????? ?????? ?????????? ?????? ??
????? ???;»

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

16 ?????????? ?? ?????? ??????? ?? ?????????? ?????????????? ????????, ?????? ??
???, ??? ?? ????? 2, ?????? 1, ??? ?????? ??????, ?????????? ?????? ?? ?????? ??
????? ?? ?????? ?????????? ?? ?????????????? ?? ?????????????? ?? ?????? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
?????.

17 ??????, ?????? ??? ?????? 6, ?????????? 1, ?????? ??????, ??? ?????? ??????, ??
????? ?????? «????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ???».

18 ?? ??????????, ??? ?? ??????? ?? ?????? ?? ?????? ?????????? ?????????? ??
?? ?????????? ??? ? Avir ??? ?? ?????? ??? ?????????? ?? ?????? ??? ??
????? ?? ?????? ??? ?????? ?????? ??????????, ??? ? ?????? ?????????? ?????????? ???
????????? ?? ?????? ??? ?????????? ???, San Domenico Vetraria, ?????????????? ???
????????? ??? ???.

19 ?????? ?????????? ?? ?????????? ?? ?????????????? ?? ? ?? ?????? ?????? ??????????
????????????? «?? ?????? ??????», ??? ?? ?????? ?? ?????? 2, ?????? 1, ??
????? ??????.

20 ??????, ??? ?????? ????????, ??? ?????? ??? ?????????? ???, ?????????? ??
?? ?????? ?????????? ?????? ??? ? ?????? ?????????? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ???? ????
????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ???? ????
????????? ??? ?????? ?????? ??????????, ??? ?????????? ??? ?????? ?????? ???
????????? ?? ?????? ?????? ??? ?????????? ??? (????? ??? 22? ?????? 2016,
?eský rozhlas, C?11/15, EU:C:2016:470, ??? 20 ??? ?????? ?????????? ???).

21 ?? ?????? ?????????? ?? ?????? ?????????? ?????????????? «?? ?????????? ??????»,
????? ??? ?????? ??? ?????? 2, ?????? 1, ??? ?????? ??????, ???, ???????, ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ??? ???? ????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ??? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ???? ????
?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? (????. ?????? ??? 22?
????? 2016, ?eský rozhlas, C?11/15, EU:C:2016:470, ??? 21 ??? 22 ??? ???

????????????? ?????????? ??? 22?? ?????????? 2018, MEO – Serviços de Comunicações e Multimédia, C?295/17, EU:C:2018:942, ???? 39, ??? ??? 3?? ?????? 2019, UniCredit Leasing, C?242/18, EU:C:2019:558, ???? 69).

22 ?? ????????????, ???. ??? ???? ??????? ???. ?????????????? ????????????. ?????????? ???. ????????????.
???. ? ?????????? ?????????????????? ???. ?????? ?????????? ?????? ?????? ?????? Avir ???. San
Domenico Vetraria.

23 ???????, ??? ??????? ??? ??????? ?????? ???????, ?????????????? ???????
???????, ????, ??????, ? ??????? ?????????? ?????????? ??? Avir ???, ????????, ?
???????, ??? ??? San Domenico Vetrania ??? ????? ??? ??? ?????? ? Avir.

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

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

26 ??? ?? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??
?????? ?????????? ?????????? (????. ???????? ??? 3?? ??????? 1994, Tolsma, C?16/93,
EU:C:1994:80, ??????? 13 ??? 20, ??? ??? 16?? ?????????? 1997, Fillibeck, C?258/95,
EU:C:1997:491, ??????? 15 ??? 17), ??? ????? ? ??? ?????????????????? ????? ??? ??
????????? ??? ??? ? ??? ? ?????? ??? ??????????????, ??? ?????????? (????. ?????????? ???
23?? ?????????? 1988, Naturally Yours Cosmetics, 230/87, EU:C:1988:508, ????? 14, ??? ???
2?? ??????? 1994, Empire Stores, C?33/93, EU:C:1994:225, ????? 16).

27 ????????, ?? ???????????, ?????? ?? ???? ?????????????? ??? ?????? ?????????????? ??
??????, ??? ? ?????????? ?? San Domenico Vetraria ??? ?????? ??? ??? ?????? ? ???????
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????????? ??? ?????????? ?????? ??? ??? ?? ?????? ??? ?????????? ?????? ??? ??? ??
?? ?????????? ??? ??? ???????, ?????? ?? ?????? ??? ?????????? ??? ?????? ?????? ??????
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28 ????? ??????????, ? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?????????????????? ?? ??????????
 ?????? ?? ?????????? ?? ?????? ??, ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ??
 ?????????????????? ?? ?????? 2, ?????? 1, ??? ?????? ??????.

29 ??? ?????? ??????? ??????? ?? ??? ???? ??? ????????????, ??? ?????????????? ?? ?? ???
????? ???, ??????? ? ??????? ?? ??? ???? ??? ????? ?????? ?????????? ? ?????????? ???
????? ??? ??????? ?? ???? ?????? ??? ?????????? ??? (?????. ?????????? ??? 20?? ??????????
2005, Hotel Scandic Gåsabäck, C?412/03, EU:C:2005:47, ??? 22, ?????? ??? ??? 2?? ??????
2016, Lajvér, C?263/15, EU:C:2016:392, ??? 45 ??? ??? ?????????? ??????????).
???????, ??? ?????? ??????? ?? ??? ???? ??? ????? ?? ?????????? ??? ????? ?????? ?????
??? ?????????? ??? ??????? ?? ??? ???? ?????????? ?????????? (??????? ??? 2?? ??????
2016, Lajvér, C?263/15, EU:C:2016:392, ??? 46 ??? ??? ?????????? ??????????).

30 ?????????????? ?????? ??? ??????? ??? ??????? ??????, ??? ?????????????? ??????
?????? ?? ?????? ? ??????? ??? ?? ?????? 2, ?????? 1, ??? ?????? ??????? ????? ?? ?????
??? ??????????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ??
????????? ??? ??? ?? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?? ??????
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????? ?? ??????? ?????, ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????

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?? ?????? 2, ?????? 1, ??? ?????? ??????? 77/388/??? ??? ???????????, ??? 17?? ???
1977, ??? ?????????????? ??? ?????????? ??? ??????, ??? ??????? ?? ???
?????? ?????? ??????? - ??? ?????? ?????? ?????? ?????????????? ?????: ??????????
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??? ??? ??? ?????? ? ?????????? ?????? ?????????? ?????? ?? ?????? ???, ???
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ???
????? ??? ?????????? ? ?????????? ??? ?????? ?????? ?????????? ??????????, ???, ???
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(???????????)

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