

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

??? 19?? ??????? 2012 (*)

«????? ?????????? — ?????????? ?????????????? — ?????????? ?????????????? ??? ?????????? —
????????? ??? ??? — ????? 31 ??? 40 — ?????? 2009/133/?? — ????? ?????????? —
????????? ?????? ?????? ?????? ?????????? ?????????????? ?? ?????? ?????? ??? ?????? ??? ??????
????????????? ?? ?????? ?????? ??? ?????? ?????????????? ?????? ??? ?????? ??? ?????? ??? ??? ???
— ?????? ?????????? ?????????? ?????????? — ?????? ??? ?????? ??? ??????
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????? ??????? C-48/11,

??. ?????????? ??? ?????? ??????? ?????????????? ?????????? ?????? ??? ?????? 267 ????,
??? ??????? ?? Korkein hallinto-oikeus (?????????) ?? ??????? ??? 31?? ?????????? 2011, ?
????? ??????? ?? ?????????? ??? 2 ?????????? 2011, ??? ??????? ??? ????

Veronsaajien oikeudenvallontayksikkö

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A Oy,

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

????????? ??? ??? K. Lenaerts, ?????? ???????, J. Malenovský, R. Silva de Lapuerta, ?.
????? (????????) ??? D. Šváby, ???????,

????????? ??????????: P. Mengozzi

?????????: C. Strömholm, ??????? ????????????,

????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
29?? ?????????? 2012,

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

- ? A Oy, ?????????? ??? M. Ohtonen, asianajaja,
 - ? ?????????? ???????, ?????????? ??? M. Pere,
 - ? ?????????? ???????, ?????????? ??? L. Fernandes,
 - ? ?????????? ???????, ?????????? ??? K. B. Moen ??? ??? K. Moe Winther,
 - ? ?????????? ???????, ?????????? ??? R. Lyal ??? I. Koskinen,
 - ? ?????????? ??? ???, ?????????? ??? X. Lewis ??? ??? F. Simonetti,
- ????? ??? ??????? ??? ?????, ??? ?????? ??? ?????? ???????????, ?? ??????? ???
????? ??? ?????? ???????, ???

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1 ? ??????? ???????? ?????????????? ?????????? ??? ?????? ???. 31 ???
40 ??? ???????? ??? ???. ?????????? ?????, ??? 2?? ????? 1992 (?? 1994, L 1, ?. 3, ??? ???: ??????? ??? ???. ???).

2 ? ??????? ???. ?????????? ??? ?????? ??????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? Veronsaajien oikeudenvalvontayksikkö [????????? ??? ??? ??????] ??? ??? ?????? ?????? ??? ?????? ?????? ?????? A Oy (??? ????: A), ??? ?????? ?????? ??????.

?? ?????? ???

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3 ?? ?????? 6 ?? ??????????? ???. ???. ???. ???. ???. ??????????? ???. ???:

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

4 ?? ?????? 31 ??? ?????????? ?????? ?????? ?? ????????:

«1. ?????????????? ??? ?????????????? ??? ?????????????? ??????????????, ??? ?????????????? ?????????????? ???
????????????? ?????????????? ??? ?????????? ??? ?????????? ?????? ?????? [????????????? ??????????] ?
????????? ??? [????????????? ??? ?????????? ?????? ?????????? ?????? (?????)] ??? ?????? ??????????
????? ??? ?? ?????? ????. ??? ?????????????? ?????? ?????? ?????????????? ??? ??? ??? ??????
?????????????, ?????????????????? ? ?????????????? ?????????? ??? ??? ?????? ?????????? ??? ??????
????? ??? [????????????? ??????????] ? ?????????? ??? ??? ?????? ?????? ?????????????? ???
????? ?????????????? ??? ?? ?????? ???.

2. ?? ??????? ?????????? ??? ?????? ?? ??????? ?????????????? ?????????????????? ??
????????? VIII ?? XI.»

5 ?? ?????? 40 ??? ?? ???? ?????????? ??????? ?? ????:

«???? ??????? ??? ???????? ??? ??????? ??????????, ??? ?????????????? ???????????
?????? ??? ?????????????? ????, ??? ??????? ?????????? ??? ??????? ?? ??????? ???
????? ??????? ?? ?????? ?????? ??? ?????????? ??????????? ??? ?????? ??? ??????????
????????????? [????????? ??????????] ??? ?????[?] ??? ??? ?????????? ? ??? ??? ??????

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

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6 ? ?????????? ??????? ??????? ?? ?????????? ??? ?????? 2, ??????? ??, ??? ??????
2009/133/?? ??? ??????????, ??? 19?? ?????????? 2009, ??????? ?? ?? ????? ??????????
????????? ?? ?????????? ??? ?????????????, ??????????, ??????? ??????????, ??????????
????????????? ??? ?????????? ??? ?????????? ??????? ?????????? ?????????????? ??????
????? ??? ?? ?? ??????? ??? ?????????? ?????? SE [????????? ??????] ? ???
SCE [????????? ?????????? ??????] ??? ??? ?????? ?????? ?? ??? (?? L 310, ?. 34):

«[...] ? ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?????? ?????????? ??
????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
?, ??????? ?????????? ??? ?????? ?????????? ?????????? ??????????, ?????? ??? ??????????
?????????, ?????? ?????? ??? ?????? ?????????? ??? ?????????? ?????? ??????????, ??
????????? ??? ?????? ???, ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ??????
????????? ???, ??????????, ?????? ?????????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ??????????
?? 10 % ??? ?????????? ??? ?????? ??? ?????? ?????? ?, ?????????? ?????????? ???, ???
????????? ??? ?????? ??? ?????? ???»..

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7 ?? ??? 52 ??? 52f, ?????????? 1 ??? 2, ??? ??? 360/1968 ??? ??????????
????????? ??? ?????????? ??? ?????????? ?????????? [Laki elinkeinotulon
verottamisesta (360/1968), ??? ????: ?????? ??? ?????????? ??????] ??? ?? ??????????:

«????? 52

?? ?????????? ??? ?????? 52a ??? 52f ?????????? ??? ?????? ?????????? ??? ??????????, ???
?????????, ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??????????. ?? ?????? 52a ??? 52e ??? ?????????? ??? ?????? ?????????? ?????? ???
?????????, ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????? ??????????
????????? ??? ?????? ?????? ?????? ??? ?????? 3 ??? ?????? ??? ??????????
?????????.. ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????, ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ??? ????. ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ???
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????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ????.

?? ?????? 52a ??? 52f ??????????, ?? ??? ?????????? ??? ?????????? ??????????????
?????????, ??? ? ??????????, ? ??????, ? ?????? ?????????? ?? ??????????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? 3, ?????? ?, ???
????? 90/434/?? ??? ??????, [?? 23?? ?????? 1990], ?????? ?? ?? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?? ??
????????? ?????? ??? ?????? ?????? ?????? ?????? SE ? ??? SCE ??? ??? ?????? ?????? ?? ???, ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ???

???? ?????????? ?? ?????????????? ?????? ??? ?????????? ?????? ???' ?????????? ?????????? ??????????
????????????? ?????? ?????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??????
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[...]

????? 52f

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

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

8 ? A ?????? 4 093 ??? ?? 20 743 ?????? ??? ?????????? ?? ?????????? ?? ?????????? ??? ??????????
????????? ?????? C Oy (??? ????: C), ??? ?????? ?????? ?????? 19,7 % ???????. ?
????? ?????? ?? C, ??? ??? ?????? ?????? 80,3 % ?????? ?? ?????? ??? ?????? ????
????????? ????, ??? ? ?????????? ?????? B AS (??? ????: B). ?????? ??? ?????? ????
????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ????
??? ?????? ??? ?????? 52f ??? ?????? ??? ?????? ?????? ???, ?? ??? ?????? ? A, ????,
????????? ??? B ??? ?????? ??? C ??? ?????? ?????? ???, ?????? ???, ?????? ???
????????? ??? ?????? ??? B ?????????? ??? 6 % ?????? ??? ?????? ??? ?????? ???.
????? ??? ?????????? ??? ? B ?? ?????? ?? 100 % ??? ?????? ??? C.

9 ? A ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? keskusverolautakunta
[????????? ?????????? ??????] ?????? ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ????
????? ?????? ??? ?????? 52f, ?????? ??? ?????? ? ?????? ?????? ?????? ????
?????????, ??? ?????? ?????? ?????????? ???, ?? ?????? ?????? ??????.

10 ? ? ? ?????? ?????? ???, ?? ? ?????????? ?????? ??? ?????? ?? 55/2008, ??? 1??
????????? 2008, ??? ? ?????? ??? ?????? ?? ?????? 52f ??? ?????? ??? ?????? ?????? ?????? ????
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? A ??? B. ??? ? ? ??????
????, ?? ?????? ??? ?????? ??? ?? ?????? 52f ??? ?????? ??? ?????? ?????? ?????? ????
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? A.

11 ?? ??? ?????? ?????????? ??? Korkein hallinto-oikeus (????????? ??????????)
?????????), ? Veronsaajien oikeudenvallontayksikkö ?????? ??? ?????? ??? ?????? ????
????????? ??? ?????? ?????? ?????? ??????.

12 ?? Korkein hallinto-oikeus ?????????? ?? ?????????? ?? ?????????? ??? ?? ??????????

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

«????????????? ??? 31 ??? 40 ??? ?????????? ??? ??? ???, ?????? ?? ???????
??? ??? ?????????? ?????????????? ?????????????? ? ?????????? ???????, ??? ??????? ???
?????? ?????????? ?????? ?????? ?????????? ?? ?????????? ??????? (?????? ??
?????? ????? «aksjeselskap» [????????? ??????]) ?????? ?????????? ??? ??? ??????? ???
????????? ?? ?????????? ?????? ?????? ?????? ?????? ???????, ??? ??? ??? ??????????
?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????? ?????? ??????
????? ??? ?????????? ??????;»

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

13 ????????????, ?????? ?? ?????????? ??? ?? ?????? ?????????? ??????? ??? ?????.
????? ?????????? ?????? ?????? 2009/133 ??? ?????????? ??????.

14 ??? ?? ????? 1 ??? ?? ????? ???????, ??? ?????? ?????????? ?????????????? ???
????????? ??? ?????? ??? ?????? ?????????? ?????????????? ??? ?????? ??? ?
????????????? ?????? ?????. ?????????? ??? ??? ??? ??? ?????????? ??? ?????????? ???
?????? ?????? ?????? ?????????? ?????? ??? ?????? ?????????????? ?? ?????? ?????,
???? ? B ??? ????? ?????????????? ??? ???????, ? ? ??? ????? ?????????? ??? ?????????? ???
????? ?????????? ??? ?????? 2009/133. ??? ??? ?????? ??????, ?????? ?? ?????? ??????????
??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ???
?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
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15 ??? ?????? ?? ??????? ??? ??? ???, ?????? ?? ?????????? ??? ??? ??? ???
????????? ?????? ??? ?????????? ?????? ??? ???? ?? ?????? ?????????? ?????????? ???
??? ?????????? ?????????? ??? ?????????? ???, ??? ???????, ??? ?????????? ??? ???
????????? ?? ?????? ??? ?????????? ??? ?????????? ?????? ??? (??), ?????? ??? ?
????????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ??? ??? ???
????. ??? ??? ?????? ???, ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ??? ???
????????????? ??? ??? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??? (??.
????????? 1/92, ??? 10? ?????? 1992, ?????? 1992, ?. ?-2821). ??? ?????? ???,
????????? ??? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??? ???
????? ?????????? ???' ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? (????????? ??? 19? ?????? 2009, C-
540/07, ?????? ??? ?????? 2009, ?. I-10983, ??? 65, ??? ??? 28? ?????? 2010, C-72/09, Établissements Rimbaud, ??? 2010, ?. I-10659, ??? 20).

16 ???????, ?????? ?? ?????????? ???, ??? ?????? ??????????, ?????? ????
????????? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????, ?? ?????? ??? ?????????? ??
??????, ??? ??? ?????? ???, ?? ?????? ??? ?????? (??., ???, ?????, ?????????? ??? 7??
????????? 2004, C-319/02, Manninen, ?????? 2004, ?. I-7477, ??? 19? ??? 6?? ??????
2007, C-292/04, Meilicke ??., ?????? 2007, ?. I-1835, ??? 19? ??? 24?? ????? 2007, C-
157/05, Holböck, ?????? 2007, ?. I-4051, ??? 21, ??? ??? 11?? ?????? 2007, C-
451/05, ELISA, ?????? 2007, ?. I-8251, ??? 68). ??????, ? ?????????? ??? ?????? ???
????? ?????? ??? ?????? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ??? (??, ?????? Établissements Rimbaud, ???????????, ??? 23).

17 ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?? ?????????? ????
????? ??? ?????? ??? ???????, ??? ?????? ?????????? ?????????? ???, ??? ?? ?????????????? ??
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ??

????????? ??? ???? ?????????? ?????????????? ??? ??????????, ?????? ?? ?????????? ???????
????????? ??? ?????? ?????? ?????????? (?????? ?? 10?? ????? 2007, C-492/04, Lasertec,
?????? 2007, ?. I-3775, ????? 19 ?? ??? ?????????????? ??????????).

18 ???, ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ????
????? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
??? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ??????????
??? ?????? ?? ??? ?????????? ?????????? ?????? ?????? ??? ?????? ??? (?. ??????
Lasertec, ??????????????, ????? 20 ?? ??? ?????????? ??????????).

19 ??? ?? ?????? ??? ?????? 52f ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ???
???, ??? ?? ?? ?????????? ? ?????? ?????????? ?????? ?? ?????????? ??????????, ?
????????? ?????? ??? ?????? ?? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ?? ??????
??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??????.. ?????? ?????? ?????? ?????? ?? ?????? ?????????? ?? ?????? ??? ?????? ???
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
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20 ???????, ??? ?????????? ??????? ?? ?????? ?????? ?????????? ?????????????? ???
????? ??? ?????? 31 ??? ?????? ??? ??? ???.

21 ??????, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????????? ?????? ?????????? 31 ???
????????? ??? ???, ?????????? ?? ?????? ?????? ?????? ?????? ?????????? ?? ?????? 49
???? (?. ?????? ??? 23?? ?????????? 2006, C-471/04, Keller Holding, ?????? 2006, ?. I-
2107, ????? 49, ??? ??? 23?? ?????????? 2008, C-157/07, Krankenheim Ruhesitz am Wannsee-
Seniorenheimstatt, ?????? 2008, ?. I-8061, ??? 24).

22 ??????, ????? ?? ?????????? ??? ?????? 6 ??? ?????????? ??? ??? ??? ???
???, ?? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????? ??? ?????? ?? ??????
??? ?????????? ??? ?????? ???' ?????? ?????????? ??? ?????? ?????? ?????? ?????? ???
?????, ?????????????, ??? ?? ??? ?? ??? ??? ??? ?????? ??? ?????? ??? ?????? ?? ???
????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??? ??? ??????????
????????? ??? ?? ??? ??????.

23 ???, ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?? ?? ?????????? ???
????? ? ?????? ??? ? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?? ??? ???
????? ??? ?????????? ???, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ??? ???, ? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???
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????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? (?. ??' ???, ?????? Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt,
????????? ???, ????? 28 ??? ??? ?????????? ??????????).

24 ?? ?????????? ??? ?????? ?????? ?????????? ??? ? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????
?????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? (?. ?????? ELISA,
????????? ???, ??? 63). ???, ? ?????? ?????? ?????? ??? ?? ??? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????? ?? ????. ??????????, ?????????????? ???. ??????????, ????. ????. ??????????, ????.
????????? ???. ????. ????. ????. ?????????? ?????????? (?. ?. ??????. ????. 14?. ?????????? 2006, C-
170/05, Denkavit Internationaal ???. Denkavit France, ??????. 2006, ?. I-11949, ????? 22).

25 ???????, ??? ??????????????????, ??????? ?? ?????????????? ?? ??????? ?????????????? ?? ??
?????? ?? ??????????????, ?????????????? ? ?????????? ?????????? ?????????? ??? ?????? ??
????????????? ?????????? (??.. ??????? Krankenheim Ruhesitz am Wannsee-
Seniorenheimstatt, ??????????????, ?????? 30).

26 ????? ?? ?????????? ????? ?????? ????? ?????????? ???????????, ? ?????????? ?????????? ?????????
????????? ??? ?????????? ?????????? ?????????? ?????????????? ?????????????? ??? ?????? ??
????????????? ?????? ??? ?????? ? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???,
??????, ? ?????????? ??????? ??????? ??????? ??? ?????????? ? ?? ?????? ?????? ??? ?????? ??? ??????
???, ???????, ? ?????????? ??????? ??????? ?????????? ??? ?????? ??? ?????????? ??? ??????
??? ?????????? ??????? ??? ?????? ?????????? ??????? . ?? ??? ?????????? ?? ??????????????
?????, ????? ???, ??? ?????? ?????? ??????? ??? ?????? ??????, ? ??? ?? ?????? ?????????? ??????????
????????? ?? ?????? ?????? ??? ?????? ?????????????? ?????? ??? ?????????? ??? ??? ??? ?, ?
????????? ?????? ??????????????????, ??? ?????????? ???????, ?? ?????????? ?????????? ??????????
????????? ??????.

27 ? ?????????????? ????. ?????????????? ????. ?????????????? ????. ????. ??????. ????. ??????????????
????????????? ??????????. ????????, ? ??????. ?????????? ?????????? ?????????? ??????????
????????????? ??????????. ????????, ?? ??????????. ?????? ? ?????????? ?????? ?????? ????,
?????????. ?????? ????. ????. ????. ?????? ?????? ?????? ??????. ??????. ????. ?? ????.
31 ????. ?????????? ????. ????. ????. ??????????. ??????. ??????. ??????. ????. ??????????. ????.
?????. ????. ??????. ??????. (??., ??' ?????, ??????. ????. 26?. ??????. 2008, C-284/06, Burda,
?????. 2008, ?. I-4571, ????. 77 ????. ????. ??????????. ??????????).

28 ??????? ?? ??????????????? ?????? ???, ?????????? ????? ?? ???? ?????????????? ? ???????????
?????????, ? ?????????? ??? ?????? 31 ??? ?????????? ??? ?? ?????? ?? ?????????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????????????? ?????????? ??? ?????? ?????????? ??? ??????
2009/133 ??? ??????? ?? ?????? ?????? ?????? ?????????????????? ?? ?????? ??? ?? ?????
????????????? ??? ?????? ??? ?????????? ??? ??? ??? . ??????? ??? ?????????????? ??? ?????? 31
??? ?????????? ??? ??? ??? ?????? ??? ?????????????? ??? ????????????, ??? ?????? ??? ??????
????????????? ?? ?????????? ??? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ???
????????????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??????
???? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??????
????????????? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??????

29 ?????????????? ? ?????????????? ??? ?? ????????? ?????????????? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ?????????????? ??? ?????????????? ??? ?????????? 31 ??? ?????????? ??? ??? ???
?????????????.

30 ????? ?????????? ??? ?? ?????????? ??? ????????????, ?????????????? ??? ????????????
????????????? ?????? ?? ??????? ?????? ?????? ?? ?????? ?????? ?????????????? ???
????????????? ?????? ?????? ?????? ????????????. ????????, ??? ?????????? ???, ?
????????????? ?????? ?? ?????? ?????????? ??? ??? ?????????? ??? ?????????? ?????? ??? ?? ???
????????? ?? ??????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? (??, ??????)
Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ????????????, ??? 40).

31 ?? ??????? ??????????? ??????? ?? ???? ?????????? ??????? ?? ??????? ?? ? ? ?? ???
?????????? ?? ??????????????? ?? ???? ?????? ??????? ????????????, ??????????????? ?? ???
?????? ?? ???? ??????????? ?? ?? ???? ??????? ?? ???? ??????????????????? ?? ?? ???????????

???????.

32 ??????, ??? ???? ?? ?????? ??, ??? ?????? ?????????? ???????, ?
????????? ??????? ??????? ?? ?????? ??? ?????? ?????? ?????????????? ?????? ??? ??????? ??
??? ??? ??? ?????? ?? ??????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????? ???
?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ??????
????????? ?????? ??? ??? (??., ??' ????, ??????? ?? 26?? ?????????? 2000, C-
478/98, ??????? ??? ??????, ?????? 2000, ?. I-7587, ??? 45? ??? 21?? ???????
2002, C-436/00, X ??? Y, ?????? 2002, ?. I-10829, ??? 62? ??? 4?? ?????? 2004, C-
334/02, ??????? ??? ??????, ?????? 2004, ?. I-2229, ??? 27, ??? 29??
????????? 2011, C-371/10, National Grid Indus, ?????? 2011, ?. ?-12273, ??? 84).

33 ??? ?????? ??? ?????? ?????????????? ??? ?????????????????? ??? ??????????????
??????, ?? ?????????? ??? ?????? ??? ??? ?????? ?? ?????????? ?? ??? ?????????? ???
????????????? ??? ?? ??? ?????????? ?? ?????? ?????????? ?????????????? ??????????
????? ?? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ?????? ?????? ??
?????????????, ?? ??????? ??? ???????, ??? ??? ?????????? ?? ?????????? ?? ?? ????????
??? ?????? ??? (?????? ??? 18?? ?????????? 2007, C-101/05, A, ?????? 2007, ?. I-
11531, ??? 59 ??? ????? ?????????? ???????).

34 ????????, ? ????????, ???, ??????? ?? ??? ????? ?????????? ??? ?????? ???
????????? ??? ??????? ??? ??????? ?????? ?????????? ??? ?????????? ??? ??????, ??? ??????
?? ?????????? ??? ??????? ??? ?????????? ??? ?????? ?????????? ? ?????????? ??? ??? ???,
?????? ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????? (??.,
??' ????, ?????????????? ??????? A, ??? 60, ??? Établissements Rimbaud, ??? 40).

35 ?????? ?? ????????, ???????, ??? ?? ?????? ?????????? ?????? ??? ??????
????? ??? ?????? ???, ?? ?????? ??????? ? ?????? 77/799/???, ??? ??????????, ??? 19??
????????? 1977, ??? ?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? (?? ??? . ??? . 09/001, ?. 86), ?????? ??? ? ?????? 2011/16/?? ??
??????????, ??? 15?? ?????????? 2011, ??????? ?? ?? ?????????? ?????????? ??? ??????
??? ?????????? ??? ?? ??? ?????????? ??? ?????? 77/799/???, (??. L 64, ?. 1), ??? ??????????
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
??? ??? ?????? ??? ?????? ?????? ?????? (??., ??' ????, ?????? Établissements
Rimbaud, ???????????, ??? 41).

36 ????????, ??? ????? ?? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????????? ???
???, ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ?????????? ???
????????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ??? ?????? ???
??? ?????? ?????? ?????? ??????, ??' ????, ?????? ?? ?? ?????????? ?? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?? ?? ??? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??.
????? Établissements Rimbaud, ???????????, ??? 44).

37 ?????? ?? ????????, ??? ???????, ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ???????, ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???
????????? ???, ? ?????? 37/1991, ??? ?????????? ??? ?????? ?????????? ??? 7 ??????????
1989. ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

? ?????????? ? ?????????? ???, ??? ? ??' ?????????? ???????, ? ??? ? ??????????
????????? ?????? ??? ? ?????????? ??? ? ??' ?????????? ?????????? ??????????
????????? ?????? ??? ? ?????? ??? ?????????????? ??? ? ??' ?????????? ??? ? ??' ????
????????? ?? ?????????? ??? ?????? 77/799 ??? 2011/16.

38 ??? ???? ?????? ??????, ?? ?????????????? ?????? ??? ?????? ?? ?????????? ?? ??????????
???? ???? ?????? ?????????????? ??? ?????????????? ??? ?????????? ?????? ??????
????????? ??? ???? ?????????? ?????? ?????????? ??? ?????????? ??? ???? 27 ???
????????? ?????????? (??., ??' ?????, ?????? ELISA, ??????????????, ?????? 98 ??? 101).

39 ???? ???? ?????? ??? ???? ?????? ??? ???????, ??? ?????????????? ?????? ??? ?????? ?? ??????
? ?????????? ??? ?????????? ??? ?????? 31 ??? ?????????? ??? ??? ?????????? ??????
????? ???? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ??????
????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????, ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ?????? ?????? ??? ??? ?? ??? ??????
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ??? ??? ?????????? ??? ??? ?????? 77/799 ??? 2011/16, ?????? ?? ???
????????? ??? ?????? ?????? ?????? ?? ??????????.

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

40 ???? ?????? ??? ???? ?????? ?????????? ??? ? ??' ?????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???, ?? ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??????. ?? ?????? ??? ?????? ?????? ??????
???? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
?? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? (????? ????) ??????????:

????????? ??? ?????? 31 ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???, ???
?? ?????? 1992, ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 77/799/?? ??
????????? ??? 19?? ?????????? 1977, ??? ?????? ?????? ?????? ?????? ?????? ???, ??? 2011/16/?? ??
????????? ??? 15?? ?????????? 2011, ??? ?????? ?? ?? ?????? ?????? ?????? ??????
???? ?????? ??? ?????????? ??? ?? ??? ?????????? ??? ?????? ?????? 77/799/??, ?????? ??
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

(?????????)

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