

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

??? 26?? ???? 2016 (*)

«????????? ??????? ?????? — ?????????? — ?????????? ?????????????? ?????????? — ??? 63
???? — ??? 40 ??? ?????????? ??? — ??? ?????????????? — ?????????????? ??????
????????? ?????? ?????????????? ?????????? ??? ??? ????? ?????????????? ??? ??? ?????? ??????????
??? ??? ?????????????? ? ?????????????? ?? ?????????? ?????? ??? ?? ?????? ?????? ?????? —
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???? ??????? C2244/15,

??. ?????????????? ?????????? ??? ?????? 258 ?? ??? ??????????????, ??? ?????????? ??? 27 ????
2015,

????????? ???????, ?????????????? ??? ??? ?. ?????????????? ??? W. Roels, ?? ???
????????? ??? ????????????,

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????????? ???????????, ?????????????? ??? ??? M. ?????????? ??? ?. ??????,

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

????????? ??? ??? C. Toader, ?????? ???????, A. Rosas ??? E. Jaraši?nas (?????????),
???????,

????????? ??????????: M. Wathelet

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

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

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

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1 ?? ??? ??????? ???, ? ?????????? ??????? ?????? ??? ?? ?????????? ?? ???????????
?? ? ??????? ??????????, ?????????? ??? ?????????? ?? ?????????? ?? ??? ?????? ?????????? ???????????
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ??????????, ? ?????? ??????????
????????? ?????????? ??? ?????????? ??? ?????????? ?????? ??????, ?????? ??? ?????????? ??? ?????? ??? ??
????? 63 ??? ??? ?? ??? 40 ??? ??????? ??? ??? ?????????? ?????? ???, ??? ?????? 1992 (?? 1994, L 1, ? 3, ??? ????: ?????????? ???).

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2 ?? ?????? 26A ??? ?????? ??????????? ????????????, ?? ????? «????????? ??????
?????????», ?????????? ??? ?????? 1:

«????????? ? ????????, ??? ??????? ?????? ?????? ?????? ??? ?????? ? ?????? ???
????????????? ??? ?????? ?????? ????????, ?? ?????????? ? ??? ?????? ?????? ?? ??????????,,
????????????? ??? ??? ???, ?????? ? ?????????? ? ?????????? ? ? ?????? ?????? ?????? ?
????????????? ??? ?? ??????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?
????????????? ? ??????? ?? ??????? ? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????????? ??????? ?? ??????? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????????? ? ?? ??????? ?????? ????????, ??? ?????? ?????????? ?????? ?????? ?????? ??????
??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? ?????? ? ??????????
????????? ?? ??????? ??? 3.000 ??????. ?? ?????????? ?????? ?????? ?????? ??? ?????? ???
???????????, ?? ?? ??????? ??????? ??? ?????? ?????? ?????? ??? ??? ?????? ?????? ?????? ??????
????????????? ??????? 70 ?.?, ?????????????? ??? 20 ?.?. ??? ?????? ??? ?? ???
????? ??? ??? 25 ?.?. ??? ?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???, ??? ??????
??? ?????????? ??? ? ???????????. ?????????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ??
????? ??????-????? ??? ?????????? ????. ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ??
????? ?????? ????.»

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

3 ?????? ?????????? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? «EU Pilot», ? ???????, ??? 25 ?????????? 2013,
????????? ?????????? ??? ?????? ??? ?????? ?????, ?????????? ??? ?????? ??? ??????
??? ?????? ?? ??? ?????????? ?????????? ??? ?????? 26A, ?????? 1, ??? ??????
????????? ?????????? ??? ?????? 63 ??? ?????? ??? ?? ?????? 40 ??? ?????? ???.

4 ??? ??? 26 ?????? 2013 ?????? ???, ? ?????? ?????? ?????????? ?????????? ??? ?
????? ?????? ?????? ?????? ?????? ?????? ?? ?? ?????????? ??? ?? ??? ?????? ???.

5 ?????? ??? ?????? ?????????? ?????????? ??? ??? ?????? ?????? ???, ? ?????? ?????? ?????? ???
21 ?????? 2013 ?????????? ???, ??? ?????? ?????? ?????? ?????????? ?????? ??? ??
??? 21 ?????? 2014, ?????????? ?? ??? ??? ? ?? ??? ?????? ?????? ?????? ?????? ??? ??
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ???.

6 ??? ??? ?????????? ???, ? ?????? ?????? ?????????? ?? ?????? ??? ?? ??? ???
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7 ? ?????????? ?????????? ??? ?? ?????? 26A, ?????? 1, ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???, ??? ?????????? ??? ??
?? ?????? 63 ??? ??? ? ?? ?????? 40 ??? ?????? ???.

8 ???' ????, ?? ?? ??? ?????? ?????? ???, ??? ?????? ??? ?? ??? ??????
??????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

? ?????????????? ?????? ??? ??????? ?????? ??? ???? ?????? ?? ?????? ?????????? ??? ???? ???? ????
????????????? ??? ??? ????? ????????, ???? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??????? ??????? ??????? ??? ?? ?????? ??? ?????? ?????? ?????????????? ??????
??? ??????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ?????., ?????? ??? ?????? ?????? ?,
???? ??????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?? ??
??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ??????
????????? ??? ??????????, ?????????? ??? ?????? ?? ?????? ?????????? ?????? ??????????
????????? ?????? ??????. ?????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???,
????????? ?? ??? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????????? ???
??? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
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9 ?? ????????, ? ??????? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ???
????????????? ??? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????????????? ??????????
?????????, ?????????? ??? ?? ?????? ?????? ?????? ?????? ? ?????? ?????? ??????????
????????? ??? ?????? ??? 22?? ??????? 2010, Mattner (C?510/08, EU:C:2010:216, ???
36), ??? ?????? ?? ?????????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????????????? ???
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ???
?????????, ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ???
??? ??? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?? ??????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? . ??????, ??? ?????? ?????? , ? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? , ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ???
????????? ??? ??? ?? ?????????? ?????? ??? ?????? ?????? , ?????? ?? ?????????? ???
????? ??? ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
?????????.

10 ???????, ??? ??? ???????, ? ??????? ?????? ?????? ?????? ?????????????? ???
????????? ??? ?????????? ??? ??? ?????? ??? ?????? , ???? ??? ?????????? ?????? ??? ?????? ???
?? ?? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? . ? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ???,
?? ?????? ??? ?????? ?????? ?????? ? ?????? ?????? ?????? ??? ?????? ?????? ???
????????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???.

11 ????????? ??? ?????? ?????????? ??? ?? ?????? ?????? ?????? ?????????? ?????????????? ???
?? ??? ?????? ?????????? ? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? , ? ??????????
????????? ??? ? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? , ??? ?? ?????? ?????? ?????? ?????? ???.

12 ?????, ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
????????? ??? ?????????? ? ?????????? ?????? , ? ?????? ?????? ?????? ??? ? ??????
????????? ??? ??? ?????? ?????????? ?????? ?????? «????? ?????? ??????», ? ?????? ???
????????????? ??? ?????? ?????? ?????? ? ?????? ?????? ?????? , ?????? ??? ?????? ???
??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??????.

13 ? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???

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

14 ????????????????, ?? ?? ????. ?????? ?????? ?????? ?????? ?????????????? ?? ??. ?? ??????? ?? ??.
????????????? ?????? ?? ??. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 26A,
????? 1, ??? ?????? ?????????? ???????????. ??? ?????? ???????????. ??? ?????? ?????? ??????
?? ??????????, ?? ?????? ?????????? ?? ??????????, ?????? ?? ?????????? ?????? ?????? ??????
????????? ? ?????????? ?????? ?????????? ?? ??. ?? ?????? ?? ?????? ?????? ?????? ??????
????? ?? ??????.

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

16 ??' ?????, ? ??????? ???????????, ?????????????? ??? ?? ??? 26A, ?????? 1, ???
?????? ?????????? ??????????? ?????? ??? ?????? ?????????????? ?????? ??????????????
????????? ??? ??? ??? ?????? ??? ?????????????? ?????????? ??? ??? ??? ???????????,
??????????, ???' ??????, ??? ? ?????????? ??? ?????????? ?????? ?????? ???'
????????? ??? ?????? ??? ???????????, ??????? ?????????? ?????????? ?????????? ???,
???? ????????, ??????????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ???????????,
????? ????????. ???????????, ? ??????? ?????????? ?????? ??? ? ?????? ???
????????? ??????????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ???
????? ?? ?????????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ???
??????????????, ? ?????? ??????? ??? ??? ???.

17 ???????, ? ??????? ?????????? ?????????? ???, ?? ?? ?????????? ??????? ???????
??? ??????? ??????? ???, ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ???????????, ?????? ??? ?? ?????????? ?????????? ?????? ???
????????? ???????????, ?? ?????? ?????????? ?????? ?????? ?????????? ??? ?????? ???
????????? ?????? ?????? ?????, ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????? ??????????? ??? ?????? ??? ?????? ??? ?????????? ??????????. ?????????? ??? ? ?????????? ???
????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? «?????????????» ???
????? ??????????, ??? ??? ?? ?????? ??? ?????????? ?????? ?? ?????????? ??? ?? ??????????
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????? ???????????, ???
??? ??? ? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????????? ??? ?????? ??????????
?????????? ??? ??? ?????????? ?????? ?????? ?????? ?? ?????????? ??? ?????? ??????.

18 ??????????, ? ??????? ?????????????? ?????????????? ???, ??? ??????? ??? ?????? 65,
????????? 1, ??????? ??, ??? ?????? ?????? ?????????? ??? ?????????????? ??? ?????? ???
????? ??????????, ?????? ?????, ??? ?????????? ??? 6?? ?????? 2000, Verkooijen
(C?35/98, EU:C:2000:294, ????? 43), ??? 7?? ?????????? 2004, Manninen (C?319/02,
EU:C:2004:484, ?????? 28 ??? 29), ?????? ??? 25?? ?????????? 2012, ?????????? ???
????? (C?387/11, EU:C:2012:670, ????? 45), ????? ?????? ??? ?????????? ??? ??? ???
????????? ??????? ?? ?????? ?????????? ?? ?????? ??????????, ? ?????????? ???
????????? ??? ?????????? ??????? ??? ?????? ??? ?????? ?????????????? ?????????? ??
??? ?????????? ??? ?????????? ??? ?????? ?????????? ??????? ??? ?? ??? ?????? ??????.
??????????, ??? ?? ??????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ? ?? ?????????? ?? ?????????? ??? ?????????, ?? ?????????? ?????????? ???, ???
????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ???.

19 ????? ?? ???? ??????? ???????????, ? ????????, ??????????? ??? ? ?????????? ???
????????? ??????? ?? ???? ??????? ?????????? ?????? ???????????, ??? ??????? ???
????? ??????????????? ?? ?? ???? ??????? ?????????? ??????? ? ?? ??? ????? ?????????? ????

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

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

21 ???????????, ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ???
?? ?????? ?????????? , ? ?????? ?????????? ??? ?????? 26A, ????? 1, ??? ??????
????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??????
????????? ?????????? , ? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? ?????? ???, ?????? ?????? ??? ?? ?????? ?????? , ?????? ?????? ??? ?????? ???
????????? ?????? . ??? ?????? , ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? , ?
????????? ??? ?????? ?????? ??? ?? ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??????.

22 ?? ?? ??? 26A, ?????? 1, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? , ?????? ??? ?????? ?????? ?????? , ?????? , ?????? , ? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? , ???, ?????? , ? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???
????????? , ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??????.

23 ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?????? ?????? ??? ?????? ?????? ?????? ?????? , ??? ??? ?????? ?????? ?????? ???
????????? ???, ?????? ? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ?????? ??? ???
????? ?????? ?????? ?????? ?????? ?????? ?? ??? ?? ?????? ?????? ?????? ?????? ?? ???
????? ??? ?? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ??????.

24 ?????, ? ?????? ?????? ?????? ?????? ??? ?? ?????? 26A, ?????? 1, ??? ??????
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???
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25 ?????????? ???, ??? ?????? ?????? ?????? ??? ?????? ?????? , ? ?????? ?????? ???, ?
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ? ?????? ?????? ??? ??
??? ? ?????? ??? ?????? , ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ?????? , ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? (????????? ???

23?? ??????????? 2006, van Hiltten-van der Heijden, C?513/03, EU:C:2006:131, ??? 42? ???
17?? ??????????? 2008, Jäger, C?256/06, EU:C:2008:20, ??? 25? ??? 17?? ??????????? 2013,
Welte, C?181/12, EU:C:2013:662, ??? 20, ??? ??? 3?? ??????????? 2014, ???????? ???
?????????, C?127/12, ?? ???????????, EU:C:2014:2130, ??? 53 ??? ??? ???????????
?????????).

26 ?? ???????????, ?? ????? 26A, ??? 1, ??? ????? ??????????? ???????????
????????? ??????? ??????? ??????? ??????????? ??? ??? ????? ??????????? ??? ??????? ?? ?????
?????????? ? ??????? ? ?? ????? ??? ???????????????, ??? ????? ??????? ? ???????
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27 ? ??????? ??? ?? ??? ??? ??? ??????????? ????? ??????????? ??? ??????? ??
????????? ??????? ??? ??????????? ????? ????? ??? ????? ??????? ???, ???????,
????????? ??? ??????????? ??????????? ???????????.

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28 ??? ??? ????? ??????????? ??? ???????????, ??? ????? ??? ??????????? ??? ???????????,
??? ??? ??? ??????????? ?? ??? 63 ???, ?? ??????????? ??? ????? ??????????? ??? ???????????,
??????????????, ??? ???, ??? ????? ?? ??????????? ??? ??????????? ??? ??????????? ??? ???????
?????????????? ??????????? ????????? ?? ??? ?? ????? ??? ????? ??????????? ?? ???????
?????????????? ????????? ?? ??? ?? ????? ??????????? ??? ??????????? ??? ??? ??????????? ???
?????????????? ???, ??? 11?? ??????????? 2003, C?364/01, EU:C:2003:665, ???
62, ??? ??? ?? 17?? ??????????? 2013, Welte, C?181/12, EU:C:2013:662, ??? 23 ?? ???
?????????????? ???????????).

29 ???????, ??????? ??????????? ??? ??????????? ????? ??????????? ??????????? ???????????
????????? ??????? ??????? ??? ??? ??? ? ??????????? ??????????? ??? ??? ??? ???????????
?????????? ??? ??? ??????? ??????????? ??? ??????????? ??????????? ??? ??????????? ???
??????????, ??? ??? ?? ??????????? ?? ??????????? ??????????? ??? ??????????? ?? ???????????
?????????? ??? ??????????? ??? ??????????? ??????????? ??????????? ??? ??????????? ?? ??
?????????? ??? ??????????? ??????????? ??????????? ??????????? ??????????? (??., ???????,
?????????? ??? 17?? ??????????? 2013, Welte, C?181/12, EU:C:2013:662, ??? 25 ?? 26,
???? ??? ??? 3?? ??????????? 2014, ???????? ??? ???????????, C?127/12, ??
??????????, EU:C:2014:2130, ??? 58).

30 ?? ???????????, ?? ????? 26A, ??? 1, ??? ????? ??????????? ???????????
?????????? ?? ??? ??? ??????????? ??????????? ? ???????????, ??? ????? ??? ???????????
????, ??? ????? ?? ?? ????? ??? ??????????? ??????????? ??? ????? ??? ????? ??????????? ?
????????? ??????????? ? ????????? ?? ??? ????? ??????????? ??? ??????????? ??? ??????????? ???
????????? ???, ??? ????? ??????????? ??? ????? ??? ????? ??????????? ??? ??????????? ???
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31 ? ??????? ??? ??? ?? ??????????? ??? ??????????? ??? ??????????? ??? ??????? ??? ??????????? ???
?? ??????????? ??? ??????? ??? ??? ??????????? ??????????? ??? ????? ??? ??? ??? ??????? ???
????????? ??????? ??????????? ??? ?????, ??????????? ??? ??????????? ??? ??????????? ???
?? ??? ??? ??????????? ??? ???????????, ?? ??? ??? ???, ?? ??? ??? ???????????
?????????? ??????????? ??????????? ??? ????? ??? ??????????? ?? ??????????? ??? ??????????? ???
?????????? ???.

32 ???????, ? ??????? ??????????? ??????? ??????????? ??? ??????????? ???????????
????????? ? ???????, ???' ???, ??????????? ??? ?? ??? 63 ???.

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

33 ??? ??? ?????? ?????? ?????????????? ?????????????? ??? ?????????? ?????????????? ?????????? ???
????? ??? ?????? 65 ????, ?????????????? ???, ??? ???? ???? ?????????? 1, ?????????? ??, ??? ??
????? ?????? 65, «?? ????? 63 [????] ??? ?????? ?? ?????????? ??? ?????? ?????? [...] ??
????????????? ??? ?????????? ?????????? ??? ?????????????? ??? ?????????????? ?? ??????
????????????? ?????? ?????????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ? ??? ??? ??? ?????? ?????????????? ?? ?????????? ???.

34 ? ??????? ????, ?? ?????????? ??? ???? ?????????? ??? ?????? ??? ?????????? ??????????????
??????????, ?????? ?? ?????????????? ??????. ?? ???? ??????, ? ?? ??? ?????? ?????????? ??? ?????? ??
?????????? ??? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??
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????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??
???. ???????, ? ?????????? ??? ?????????????? ??? ?? ?????? 65, ?????????? 3, ???, ??
????? ?????? ??? ?? ?????????????? ??? ?????? 65, ?????????? 1, ??? ?????? ?????? ??????????
«?? ?????? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ???

????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????? 63 [????]». ???????, ? ?????????? ??? ?????? 65 ??? ?????? ??????????
?????????? ??? ?????????? ??? ??? ?????????? ?????????? ??? ?????? ?????? ?????????? ???
?????????? 3 ??? ?????? ?????? (?????? ??? 3? ?????????? 2014, ??????? ???
????????, C?127/12, ?? ??????????????, EU:C:2014:2130, ?????? 71 ??? 73).

35 ???????, ??? ?? ?????????? ??? ?????????? ?????????? ???, ??? ?? ?????????? ??????
?????????? ?????? ???, ??? ??? ?????????? ??? ?????? ???????????, ?????????? ??
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?????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????????? (?????? ??? 4? ?????????? 2014, API ?.., C?184/13 ??? C?187/13,
C?194/13, C?195/13 ??? C?208/13, EU:C:2014:2147, ?????? 53 ?????? ??? ?????? ??????????????
?????????).

36 ??? ?????, ??????, ?? ?????????????? ??? ?????????? ???????????, ??????????????
???, ?????? ?????? ?????? ?????????? ?????????????? ???????, ?? ?????? ?? ?? ??????????
????????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ???????, ?????? ??????????
????????? ?????????? ??? ?????? ?????????? ?????????? ???????, ?????? ?????????? ???
????????? ??? ?????? ? ???????, ??? ?????? ??? ?????? ?????????? ?????????? ???
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??? ??? ?????????? ??? ?? ??? ?????? ??????. ???????, ? ?????? ?????? ???????, ???????
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?????????????, ??? ?????????? ?????? ??? ??? ????? ?????????????? ?????? ??????????????????
????????? ?????????? ?? ?????????????? ?? ?????????? ?????????? ?????? (??., ???????,
????????? ??? 17?? ?????????? 2013, Welte, C?181/12, EU:C:2013:662, ????? 51 ??? ???
????????????? ??????????).

37 ?? ???????????, ? ???????? ?????????????? ?????????????? ?????????????? ??? ???????????
???? ??????? 18 ??? 19 ??? ?????????? ?????????? ?????????????? ?????????????? ??? ??????????
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38 ????????, ? ???????? ?????????? ???????? ?????? ?????? ?????? ??? ? ????????
????????? ?????? ?????????? ?????? ?????? ?????????? ??? ?? ?????? ?????? ??? ????????
????????? ??? ??? ??? ??????????.

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

40 ??????????????, ???' ????, ???, ?????????? ??? ?????? ?????????? ??? ?????????? ???
??? ?????????? ??? ?????? 35 ??? ?????????? ?????????? ?????????? ?? ????????, ?? ?????? 26A, ?????? 1,
??? ?????? ?????????? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ??????????????
???? ?????? ??? ?????? ?????? ?????????? ?????????? ?????? ???????, ??? ?????? ??????????
? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ??? ?????????? ?????? ??????
??????, ?????????? ??? ? ?????????? ?????? ??? ?? ??? ?????? ?????? ?????? ??? ?????????? ???
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41 ??????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?? ? ?????????? ???
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????????? ??? ?????????? ??? ?????? ??????. ??? ?????? ?????????? ??? ?? ?????????? ??? ? ??????
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?? ?????, ?????? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
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42 ??????, ?????? ?????? ?? ?????????? ? ?????????? ??? ?????? ?????? 19 ?? 22 ??
????????? ?????????? ?????????????? ??? ?????????? ?????????? ?????????? ??????????,,
????????????? ??? ?? ?????????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?? ?????? ??? ??????
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????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? (??????? ??? 21??
????????? 2016, ??????? ?????? ?????, C?515/14, EU:C:2016:30, ????? 54 ??? ???
????????? ??????). ??????, ? ?????? ?????? ?????????? ??? ?????????? ??

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

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

????? ??????? ??? ?????? 65 ??? ?????? ??? ?????????? ?????????? ?????? ?????? ?????????? ??????????

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

??? (??., ?????? ?????, ?????????? ??? 7?? ?????????? 2004, Manninen, C?319/02,

EU:C:2004:484, ??? 49? ??? 27?? ?????????? 2009, Persche, C?318/07, EU:C:2009:33,

????? 46, ??? ??? 10?? ?????????? 2011, Missionswerk Werner Heukelbach, C?25/10,

EU:C:2011:65, ??? 31).

44 ?????, ? ??????? ?????????? ??????? ??????? ??????? ??? ? ?????????? ??? ?? ???????????

??? ?? ??????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 26A, ?????? 1, ???

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45 ??????, ? ??????? ?????????? ??????? ??? ??????? ??????? ??? ?????????? ??? ???????????

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????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 63

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??? ??? ?????????? ??? ?????? 40 ??? ?????????? ???

46 ??? ?????? ??? ??????? ??? ??????? 40 ??? ?????????? ??? ?? ?????? ??? ?????? ??? ??????? ???

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

????? ?????????????? ?????? ??? ??????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????? 26A, ?????? 1,

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

47 ??? ?? ??????????, ???????, ? ?????? ?????????? ??? ?????????????? ??? ?? ??????? ??? ?? ?????? ?

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????????? ??? ?????????? (??., ?????? ?????, ?????????? ??? 4?? ?????????? 2014,

????????? ??? ??????, C?351/13, ?? ??????????????, EU:C:2014:2150, ??? 20? ??? 5??

????????? 2015, ??????? ??? ??????, C?317/14, EU:C:2015:63, ??? 34, ??? ??? 14??

????????? 2016, ??????? ??? ??????, C?66/15, ?? ?????????????, EU:C:2016:5, ???

36).

48 ?????????? ??? ?? ???????????, ?????????? ???, ?????????? ?? ??????? ???

??? ?????? 40 ??? ??????? ??? ?????? ?? ?????? ?????? ?????????? ?? ?? ???' ????

????????????? ?????????? ??? ?????? 63 ???, ?? ?????? ??? ?????????? ??????????? ???????????,

?? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? 63 ???, ?? ?????????? ??? ?? ??????? ???

??? ??? ?????? ?????????, ?????? mutatis mutandis ??? ?? ?? ?????? 40 (??., ???'

?????????, ??????? ??? 1?? ?????????? 2011, ??????? ??? ?????????, C?250/08,

EU:C:2011:793, ????? 83 ??? ????? ?????????? ???????????).

49 ??? ?? ?????? ??? ??????? ?????? ?????????? ??? ? ?????????? ??? ?????????? ???

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

50 ??? ??????????, ?????????????? ??? ? ?????????? ??????????, ?????????????? ???
????????????? ?? ??? ????? ?????????? ?????????? ?????? ??? ??? ????? ?????????? ?? ??
????? ??????????, ? ??? ????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????
??? ?????????? ??? ??????, ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? 63 ??? ??
?? ????? 40 ??? ?????????? ???.

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51 ??? ?? ??? 138, ?????????? 1, ??? ?????????? ?????????? ??? ??????????, ?
????????? ?????????? ?????????? ??? ?????????? ?????, ?????? ?????? ?????? ?????? ??????
?? ?????????? ???????. ?????????? ??? ? ?????????? ?????? ??? ?????????? ??? ?????????? ???
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??? ??? ?????? ????, ?? ?????????? (?????? ????) ??????????:

1) ? ?????????? ??????????, ?????????? ??? ?????????? ??? ?????????? ?? ??? ?????? ??????????
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????????? ??? ?????? ??????, ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 63 ???
?? ??? ?? ??? 40 ??? ?????????? ??? ??? ?????????? ?????? ????, ??? 2??
????? 1992.

2) ?????????? ??? ?????????? ?????????? ??? ?????????? ???.

(?????????)

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