

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

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

??? 18?? ?????????? 2018 (\*)

«????????????? ?????????? – ?????????? ?????????? ??? ?????????? – ?????? 63 ??? 65 ??? –  
????????? (??) 883/2004 – ????? 11 – ?????????? ??? ?????????? ??? ?????????? ??  
????? ?????????????????? ??? ?? ?????????????? ??? ?????????? ?????????? ?????????? ??????  
????? – ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??  
????????? ?????????? ?????? ?????? ?????? – ?????? ?????? ??? ?????????? ??  
????????? ?????????? ?????????? ?????? ?????? – ?????????? ?????????? –  
????????? – ??????????»

???? ?????? C45/17,

? ? ?????????? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ??? ??????  
?? Conseil d'État (????????? ??? ???????????, ??????) ?? ?????? ??? 25?? ??????????  
2017, ?? ?????? ?????? ??? ?????????? ??? 30 ?????????? 2017, ??? ?????? ??? ????

**Frédéric Jahin**

????

**Ministre de l'Économie et des Finances,**

**Ministre des Affaires sociales et de la Santé,**

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

????????? ??? ??? A. Borg Barthet, ?????????? ???????, M. Berger ??? F. Biltgen  
(?????????), ???????,

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

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

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

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

– ? F. Jahin, ?????????????? ??? ??? E. d'Onorio di Meo, avocat,

– ? ?????? ????????, ?????????????? ??? ??? D. Colas ??? R. Coesme,

– ? ?????? ????????, ?????????????? ??? ??? D. Martin ??? L. Malferrari,

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

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

???????

1 ? ??????? ?????????????? ?????????? ?????? ??? ??????? ??? ?????? 63 ??? 65 ????,  
????? ??? ?? ?????? 11 ??? ?????????? (??) 883/2004 ??? ?????????? ?????????????? ???  
??? ?????????? , ??? 29?? ??????? 2004, ??? ??? ?????????? ??? ?????????? ??????????  
????????? (?? 2004, L 166, ?. 1, ??? ?????????? ?? 2004, L 200, ?. 1).

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ??????? ??? Frédéric Jahin  
??? ??? Ministre de l'Économie et des Finances (????????? ??????? ?????????? ???  
????????? , ??????) ????? ??? ??? Ministre des Affaires sociales et de la Santé (?????????  
????????? ??????? ??? ?????? , ?????), ??????? ?? ??? ??????? ?????????? ??????????  
?? ?????????? ?????????? ??? ?? ??? ??? ?? 2012 ??? ?? 2014, ??? ????  
????????? ??? ?????? ?????????? ??? ?????????? ??? ??????????.

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

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

3 ? ?????????? 883/2004 ?????????? , ??? 1?? ??? 2010, ??? ?????????? (??) 1408/71  
??? ?????????? , ??? 14?? ?????? 1971, ??? ?????????? ??? ?????????? ??????????????  
????????? ?????? ?????? ?????????? , ????? ?? ?????????? ??? ??? ??? ??? ?????????????? ???  
????????? ?????? ??? ?????????? , ????? ?????????????? ??? ?????????????? ?? ?????????????? ?? ???  
????????? (??) 118/97 ??? ?????????? , ??? 2?? ?????????? 1996 (?? 1997, L 28, ?. 1) (??)  
????: ?????????? 1408/71). ?????? , ?? ?????????? ??? ??? ?????????? ?????????? ?????????? ???  
????????? 883/2004 ??? ?????????? ?????????? ?????????? ?? ????? ?? ??? ??????????????  
????????? ??? ?????????????? ??????????.

4 ? ???? 2 ??? ?????????? 883/2004, ?? ????? «????????? ??? ????? ??????????», ??????,  
????? ?????????? 1:

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

5 ???? ? ???? 3, ?????????? 1, ??? ?????????? ??????:

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

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

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

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

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

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

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

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

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

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

?) ?????????????? ??????.»

6 ?? ????? 11, ?????????? 1, ??? ?? ??? ????? ?????????? ??????????:

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

7 ? ?????????? 883/2004 ?????????? ?? ??? ?? ?????? ??? ?????? ??? ??????????  
????????????? ??? (???) ??????? ??? ?????????? 76/2011 ??? ??????? ?????????? ??? ???,  
??? 1?? ??????? 2011, ??? ??? ?????????? ??? ?????????? VI (????????? ???????) ???  
??? ?????????? 37 ??? ??????? ??? (?? 2011, L 262, ?. 33).

8 ??????, ??? ?????? ??? ?????????? ??????????????, ??? ?? ??? 8 ??? ??????????  
??? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ???  
????? ???, ???, ??? ??? ?????????? ??????????????, ???, ???, ? ???  
????????? ??? ?????????? ??? 21? ?????? 1999 (?? 2002, L 114, ?. 6), ??? ?????? ??  
??? ??? 1? ?????? 2002, ?? ?????????? ??? ??????????, ?????? ?? ?? ?????????? ??  
??? ?????????? ???, ??? ?????????? ??? ?????????? ?????????? ?????????? ??  
???????? 1/2012 ??? ?????? ?????????? ??? ?????????? ?????? ??? ?????????? ?????????? ??  
????????? ?????????? ??? ?????? ?????? ???, ??????, ??? ??? ??????????  
?????????????, ???, ??? ??? ?????????? ?????????? ??? ??????????, ??? 31?? ??????  
2012, ??? ?????????? ?? ?????????? ?? ??? ?? ??? ?????????? ??? ??? ?????????? ??  
????????? ?????????? ?????????? (?? 2012, L 103, ?. 51), ? ?????? ?????? ?? ??? 1?  
????????? 2012, ?? ?????? ?? ??? ?? ????? ?????????? ?????????? ?? ??? ?????????? ??  
????? ??????? 883/2004.

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

9 ?? ?????? ??? ?????? 1600?0 C ??? code général des impôts (????????? ??????????????  
?????), ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ????:

«? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ??? ??????????????  
????? ?? ??? ?????????? ??? ?????? L. 136?6 ??? code de la sécurité sociale (??????  
????????? ?????????? ??????????).»

10 ?? ????? L. 136?6 ??? ?????? ?????????? ?????????? ???, ??? ?? ??? ?????????????? ??  
??? ??? 2012?958, ??? 16?? ?????????? 2012, ??? ?? ????:

«I. – ?? ?????? ?????? ??? ?????? ?? ?????????? ?????????? ??? ?????? ??? ??????, ??? ??  
????? ??? ?????? 4 B ??? ?????? ?????????? ???????, ?????????? ?? ?????????? ??? ??????????  
????????? ?????????? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ?, ???  
????????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????  
????????? [...]»

I bis. – ????? ??????? ?????????? ?????? ?? ?????? ?????? ?????? ??? ?????? ???????????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 4 B ??? ?????? ?????????????? ??????,  
????? ??? ?????? ?????????? ??? ?????????? ??? ?????? I, ???????? a, ??? ??????  
164 B ??? ?????? ??????, ?? ?????? ?????????? ??? ?????? ??? ??? ?????????? ??? ??????  
??????????.

[...]»

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

11 ? F. Jahin, ?????? ??????, ??????? ??? 2003. ?????? ???  
????????????? ?????????????? ??? ?????? ?????????????? ?? ?????? ?????? ?????????? ??????????  
??????????.

12 ?? ???????? ??? ?? 2012 ?? ?? 2014, ??? ???????????, ??? ??????, ??????????  
????????????? ??? ?? ??????????? ??? ??????, ?????? ??? ?? ??? ?????????? ???  
????????????? ??? ?? ??????????? ???????.

13 ?? ??????????, ?????????? ??? ?????????? ?????????????? ?????????? ?? ?????? ???  
????????? ??????????, ?????? ??? Conseil d'État (????????? ??? ??????????, ??????),  
?? ??? ?????? ??? ?????? ?? ?????????????? ??? ?????????????? ??? ??? ?????? ?????????? ?  
????? ??? 26?? ?????????? 2015, de Ruyter (C?623/13, EU:C:2015:123), ??? ??????, ???  
?????, ??? ?? ?????????? ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
?? ?????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????????? ??? ?????? 4 ???  
????????? 1408/71, ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??????, ? ???  
????????? ??? ????? 13, ?????????? 1, ??? ?? ??? ?????? ???????, ???????  
????????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??,  
????????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ?????????????? ???????????????.

14 ?????? ??? ??????? ???, ?? ?????? ?????????? ???, ?? ?????? ??? 27??  
?????? 2015, ??? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????????? ?????????? ??????????  
?? ??? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

15 ? ?????????? ?????????? ??? ?????????? ??? ?????????????? ??? ?????????? ???  
????? ??? ?????? ?????????????? ?? ??? ?????????????? ??? 20?? ?????????? 2015  
?? ?????? ??????????, ??????, ??? ??? secrétaire d'État chargé du Budget (????????? ??? ???  
????????????? ?????????, ??????) ???, ??????, ??? ??? directeur général des Finances  
publiques (????? ?????? ??? ?????? ?????????? ?????????, ??????). ??? ?????????????? ???  
????????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????  
??? ?????????? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
?????????????, ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????  
?????????????, ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????????? ??? ?????????? ?? ?????? ???.

16 ??? 11 ?????? 2016, ? F. Jahin ??????, ?????? ??? ?????????? ???????????, ???  
?????????, ??? ?????????? ??? ??????, ??? ??? ?????? ?????????????? ???,  
????????????? ??? ? ?? ??? ?????? ?????????? ?????????? ??? ?????? 883/2004 ??? ???  
??? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 63 ???.

17 ??? ??? ?????? ???, ?? Conseil d'État (????????? ??? ??????????) ?????????? ??

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

«?????? ?? ?????? 63, 64 ??? 65 ???? ??? ?????? ???:

1) ??????? ??????????? ????? ?????????? ??????????? ??? ?? ??? ????? ?????? ??????, ? ??????,  
???' ?????, ?????????????? ??? ?? ????? 63 ????, ?? ??? ?????? ????? ?????????? ?? ??????????  
?????????? ?????????? ?????? ?????? ??? [...] ????, ??? ???? ?????? ?????? ?????? ???  
[???] ? ??? [?????????? ??????????????], ??????????, ??? ???? ?????? ??? ?????????? ???  
????????? ?????????? ?????????? ??? ??????, ??? ?????????????? ??? ??? ?????????? ???  
????????? ??? ?????????? ? ?????? ?????????? ? ?????? ?????????? ??? ????? ?????????? ???  
????????? [883/2004], ??? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???  
????????? ?????? ??? [????????? ??????????] ??? ??????, ?????????????? ??? ??????  
????????? ??? ?????????? ??????, ?? ?????????? ??? ????? ?????????? ??????;

2) ?????????????? ?????????????? ?????????????? ??? ?????? ???????, ?????? ? ??????????????  
?????? ??? ??????????, ? ?????? ?????????? ??? ?????????? ?????????????? ?? ?????? ??? ??????????  
??????????, ? ?????? ?????????? ??? ?????????? ?????????????? ?? ?????? ??? ?????? ??? ??????????  
????????? ?????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????  
?????????? ??????????, ??? ?????? ??? ?????????? ?????????? ??? [...] ??????, ?? ??????????  
????????? ??? ??? ?????????? ??? ?? ?????? ?????? ??? ?????????? [??], ?????:

- ??? ?? ??????? ?? ?????? 64, ??????????? 1, [?????], ??? ?? ?????????? ?????????? ???  
????????? ??? ?? ?????? ?????????? ???, ??? ?? ?????? ??? ? ?????????? ?????????? ??? ??  
???? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???  
????? 11 ??? ?????????? [883/2004], ? ?????? ?????? ??? ?????? ??? ?????? ?? ?? ??? 13  
??? ?????????? [1408/71], ?????? ?? ?????????? ?????????? ??? 31?? ?????????? 1993,  
??? ?? ?????? ?????????? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ?????????? ?  
????????? ?????????? ??? 31 ?????????? 1993?

– ??? ?? ??????? ?? ?????? 65, ??????????? 1, [?????], ??? ?? ?????? ?? ? ???????  
?????????? ??????????, ? ????? ??????????? ??????? ?? ??? ?????????? [883/2004],  
?????????? ??????? ??????? ??? ??????????????? ??? ??? ??????????? ??? ??  
?????????? ??? ??? ??????????? ??? ??????????? ??? ??? ??????? ?? ?????????? ???????????  
??????????

- ??? ?? ??????? ?? ?????????? ?????????????? ?????? ??????? ?????????? ??????????????, ?????? ??  
????????????? ?????????? ?????? ?????????? ?????????????? ??? ??????????, ?? ??????  
????????? ??? ?? ??????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ?? ?????????? ??? ?? ??????????  
????????? ??? ??????? ?????????? ??? ? ??? ????? ?????? ?????? ?????? ?????????????? ???  
????????????? ?? ??? ?????????? [883/2004] ?????? ??? ?????????? ?????????????? ???  
????????? ??? ??? [...] ??????;»

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

18    ?? ?? ??? ????????????, ?? ?????? ??????? ?? ??????????? ?? ???????, ?? ??????  
?????????? ???, ???' ??????, ?? ? ???? 63 ?? 65 ??? ????? ?? ??????? ??  
?????????????? ?? ?????????? ??????? ???, ?? ? ??????? ?? ??????? ???, ?? ??????? ??  
?????? ? ??????? ?? ? ??????? ???, ? ?????? ??????? ?? ??????? ?? ???????, ?? ? ??  
?????? ?? ? ?? ? ?? ? ??????? ????????????, ?? ??????? ?? ??????? ?? ???????  
?????????? ??????????? ?? ? ?? ?????? ??????? ???????, ???????????, ?? ??????? ?? ???????, ??  
?????????? ?? ? ?? ??????????? ?? ? ?? ??????? ?? ??????? ?? ??????? ?? ???????????  
?????????? ?? ? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ???????

???????????? ???? ?????????? ?????? ??????? ?????? ?????????????????? ???? ??? ?????? ???  
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ??????????,  
????? ?????????????? ??? ?????? 11 ??? ?????????? 883/2004, ?????? ? ?????????? ???  
?????? ?????????? ??? ?????? ?????? ?????? ??? ? ?????? ?????? ???, ? ??????  
?????????????.

19     ????' ??????, ?????? ?? ??????????? ??? ?? ?????? 63 ????. ?????? ??????? ?? ???????  
?????????? ?? ??????????, ??????, ?????? ?? ?????? ?????? ???, ??????, ?????? ??  
????? ???. ???. ???. ???.

20      ?????? ??????, ?? ?????? 63 ????, ?? ?????? ?????????????????? ??? ?????????? 4 ??? ??????  
IV ??? ??????? ???, ?? ?????? ?????????????? «????????? ?? ??????????», ?????? ???  
????????????? ?????????????? ?????????????? ??? ?????????? ?????????? ?????? ?????? ??????,  
????? ??? ?????? ?????? ?????? ??? ?????? ??????.

22      ????? ?????? ?? ???' ????? ?????? ??????????? ?? ?????? 63 ????, ?????????? ? ????????  
???? ??? ?????? ?? ??? ?????? «????????? ??????????», ????, ????? ?????? ?????????? ?? ???????????  
?? ?? ????, ??????????, ????, ??? ?????? ??? ?????? ??? ?????, ???????????????, ?????? ????, ???  
????????? ?? ??? ?????? ?? ?????????? ?????????? ?????????????? ?????????????? ?? ??????????  
?????????? ?? ??? ?????? ??????? ?????? (??., ??? ??? ?????? ???, ?????????? ??? 11??  
?????????? 2001, Stefan, C?464/98, EU:C:2001:9, ????? 5? ??? 5?? ??????? 2002, Reisch  
?.., C?515/99, C?519/99 ??? C?524/99 ??? C?526/99 ??? C?540/99, EU:C:2002:135, ?????  
30, ??? ??? 8?? ??????????? 2005, Blanckaert, C?512/03, EU:C:2005:516, ????? 35).

23    ??? ?? ?????????????? ?????????? ??? ?????????????? ??? ?? ?????????????? ??? ??  
????????? ??? ?? ?????? ??? ?????? ?????? ??????????, ??????? ??????? ?? ?????????? ???  
????????? ??? ?? ?????????? ??????? ?? ?????????????? ??????? ?? ?????? ?????????? ??  
?????? ?????? ?????? ??????? ?? ?????? ??? ?????? ?????????? ??? ??????? ?? ?????, ??? ?? ??????  
?? ?????? ??????, ??? ?? ?????? ?????? ??? ??? ? ??? ?????????? ??????????????,  
????????? ??? ?? ?????? «????????? ??????», ??? ?? ?????? ?????????? ??? ?? 63 ???.

25      ???' ?????????? ??????? ?????????????? ??? ??????????????, ??? ?????? ??? ??????????????  
???? ?? ????? 63, ?????????? 1, ????, ?? ?????????? ??? ?????????? ??? ?????????? ??????????,  
????????????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ???  
??? ?????????????? ??? ?????????? ?? ?????? ??? ? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??  
???? ?????? ??? ?????? ??? ??? ?????????????? ?????????? ?? ??? ?????? [????????? ???  
23?? ?????????? 2006, van Hilten-van der Heijden, C?513/03, EU:C:2006:131, ??? 44? ???  
26?? ??? 2016, NN (L) International, C?48/15, EU:C:2016:356, ??? 44, ??? ??? 2??  
?????? 2016, Pensioenfonds Metaal en Techniek, C?252/14, EU:C:2016:402, ??? 27].

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

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

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

28    ? ?????????? ??? ?????????? ?????????? ?? ?????????? ?? ??????? ?????? ???  
????????? ?? ?????????? ?????????? ?????????? ???????, ??? ?? ?????????? ?????? ??? ?????? ???  
??? ??? ? ??? ?????????? ??????????????, ??? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?? ??????  
??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????, ???????, ?? ?????????? ???  
????????? ??? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

29    ???????, ?????? ???????, ??? ? ??????? ??? ?????? ???, ?????? ?????? ??????????  
????? ??????? ?????????? ??? ??????? ?????? ??? ?????? ?????? ?????? ??? ??? ??????  
??????, ? ?????? ??????????, ???' ????, ??? ?? ?????? 63 ???.

30    ????, ?????? ?? ?????????? ??? ? ?????????? ??? ?????????? ?????????????? ???  
????????? ??? ?? ??????????.

31    ??? ???? 65, ?????????? 1, ??????? ?, ???, «[?] ? ?????????? ??? ?????? 63  
[?] ??? ?????? ?? ??????? ??? ?????? ??? [...] ?? ?????????? ??? ?????? ?????????? ???  
??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ?????? ??? ??  
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? [...]».

32    ??? ?????? ?????????? ??? ??????????, ? ?????? ???, ?????? ???  
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??????????, ??? ??  
????????? ????. ???????, ? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??  
??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
??? ?????? ?????????? ??? ? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???  
????? ??? ?????? ?????? ?? ?? ?????? (????????? ??? 17? ?????? 2013, Welte,  
C?181/12, EU:C:2013:662, ??? 42, ??? ?? ??? 7?? ?????? 2013, K, C?322/11,  
EU:C:2013:716, ??? 34).

33    ???????????, ? ?????????? ??? ?????????? ??? ?????? 65, ?????????? 1, ???  
????? ??? ?? ?????????? ??? ?????????? 3 ??? ?????? ???, ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ?????????? ? ?????????? 1 ??? ?????? ??? «??? ??????  
?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????????? ??? ?????????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 63»  
(????????? ??? 17? ?????? 2013, Welte, C?181/12, EU:C:2013:662, ??? 43).

34    ??????, ??????, ?? ??? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ???  
65, ?????????? 1, ??? ?????????? ??? ?????? ?????????? ??? ?? ??? ??????????  
????????? ??? ?????????? ??? ?????? 3 ??? ?????? ????. ??? ??????  
????????? ??? ??????????, ?????????? ?? ?????? ??? ?????? ?????????? ??? ??????????  
???? ? ?????? ??? ?????? ???, ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????  
???? ??? ?????????? ?????????? ??? ?????? ??? ?????? ? ?????????? ??? ?????????? ???  
????? ?????????? ??? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ???  
????? ?????????? ??? ?????? ?????? ?????????? (????????? ??? 6?? ?????? 2000, Verkooijen,  
C?35/98, EU:C:2000:294, ??? 43? ??? 7?? ?????? 2004, Manninen, C?319/02,

EU:C:2004:484, ??????? 28 ??? 29, ????? ?? 8?? ???????????? 2005, Blanckaert, C?512/03, EU:C:2005:516, ????? 42).

36      ????????, ?????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ? ?????? ?????? ?????? ?????  
????? ?????? ??????? ?? ?????????? ?????? ?? ?????????????? ??? ????? ?????????? ?????? ??? ??????????????  
????? ?????? ??????? ?? ?????????? ?????? ?? ?????? ?? ??? ????? ?????? ???, ??? ??????????  
????? ?????? ?????? ?? ?????????? ?????????? ??????????.

37     ??????????????????, ????. ?????? ??? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ?? ??????????  
????????? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??  
????? ??????, ?? ?????????? ????. ?????? ?????? ?????? ?????? ?????????????? ?? ?????????? ???  
????????????? ?????? ?????? ?????? ?????? ??? ?????????? ??? (??., ???. ??? ???? ??????  
????, ?????? ??? 8?? ?????????? 2005, Blanckaert, C?512/03, EU:C:2005:516, ??? 38).

39      ?????? ??????, ?? ????????????, ??? ?????? ??? ?????????? ????????????, ?????? ??  
???????????, ??? ?????????????? ??? ?????? 13 ??? 15 ??? ?????????? ????????????, ??? ??  
????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ?????????????? ??? ?????? ?? ????????????  
???????????, ?? ?????????????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ?? ??????? ??  
?????? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ???????, ??? ???????????, ??  
????????? ?????? ?????????????? ??? ?????? ???????.

40 ????????????, ?????? ?? ??? ??? ?? ?????????? ?? ?????????? ????? ????  
?????? ?????? ?? ?????? ?????????? ???????????, ??? ?????????????? ?? ??? ???? 11 ???  
????????? 883/2004, ??? ?????????? ?? ??? ?????? ????? ?? ???????????, ?? ?????? ???  
????? ??? ?????????? ?? ?????? ?????????? ?????????? ?????? ?????? ?????? ??????,  
?????????????, ??? ?? ??????? ?????? ?????? ?????, ?? ??????, ?????????? ? ?????? ??????????  
?? ?????????? ?? ??????, ?????? ????? ?? ?????????? ?????????? ?????????? ?? ???  
????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ?????? ??????????????  
?? ?????? 3, ?????????? 1, ??? ?????? 883/2004, ??? ?????????????? ?????? ???  
????? ??? ?? ?????????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??????  
????? (??., ??? ??? ?????? ???, ?????? ??? 26?? ?????????? 2015, de Ruyter, C?623/13,  
EU:C:2015:123, ?????? 23, 24, 26 ??? 39).

41     ? ???? ???? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????? ?????? ??? ?????????? ??? ?????????? ??? ????????, ??? ?????? ??? ?????? ??? ?????? ??? ??????  
??? ?????????? ??? ?????? ??? ???????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
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????????? ??? ?????? ??????????????? ??? ?? ?????????????? ? ??????? ? ?????? ?????? ?????? ???  
????????????? ?????????? (??., ??? ??? ?????? ???, ?????? ??? 26?? ?????????? 2015,  
de Ruyter, C?623/13, EU:C:2015:123, ??? 37 ??? ????? ?????????????? ??????????).

42 ??? ??? ?????? ?????? ?????????? ??? ?????????? ?????????????? ?????? ?????? ??????,  
??????, ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?? ??????  
??????, ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????  
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??????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
??????, ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
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????????? ?????? 11 ??? ?????? 883/2004, ??? ??? ?????? ??? ?????? ??? ?????? ???  
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43 ??????????, ??? ?????????? ?????? ?????????????? ?????? ?????? ??? ?????????? ??????  
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44 ??????, ?????? ??????????, ??? ? ?????? ??? ?????? ?????? ?????? ???, ?????? ??  
?????????????, ??? ? ?????? ??? ?????? 65, ?????????? 1, ????????, ??, ???, ??? ??  
????????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????? , ? ?????? ??? ?????? ?????? ??? ?????? ??????, ??? ??? ?????? ?????? ?????? ??? ??? ? ???  
????????? ??????????????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
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????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

45 ?? ??? ??????????, ?????? ?? ?????????? ??? ?????? ?????????? ?????????? ??  
????????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????,  
????? ??? ?????? ??? ??? ??? ?????? ?????? ?????? ??????????????, ??? ? F. Jahin, ??? ????  
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????  
?????????, ? ??? ?????? ?????????? ??? ?????? 11 ??? ?????? 883/2004, ???, ??? ??  
????? 2, ?????????? 1, ??? ?????????? ???, ? ??? ?????? ?????? ?????? ?????? ???  
????????? ??? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
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46 ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ? ?????? ?? ?????????? ???  
????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???,  
????? ?? ?????????? ?? ?????????? ?? ?????? ?????? ? ?????? ??? ?????? 63, ?????????? 1,  
????, ?? ??? ??? ?????? ??? ?????? ??? ?????? ??????, ??? ??? ?????? ?????? ?????? ??? ??? ? ???  
????????? ??????????????, ?? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
??? ?????????? (??., ??? ??? ?????? ???, ?????? ??? 13? ?????? 2012, Test  
Claimants in the FII Group Litigation, C?35/11, EU:C:2012:707, ??? 100).

47 ?????? ??? ??????, ??? ?????????? ?????? ?????? ?? ?????? ? ?????? ?????? ??? ??  
????? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
??????, ??? ? ?????? ??? ?????? ???, ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

? ?????? ?????, ? ?????? ?????????? ?? ?????? ??????, ???? ??? ?????? ?????? ?????? ??? ???? ????  
????????? ???????????????, ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ???? ????  
???? ?????? ???????, ??????????, ??? ?????? ?????? ???, ?? ?????????????? ??? ???? ????  
????????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???? ????  
?????????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 11 ???  
????????? 883/2004.

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

48    ?????????? ??? ? ?????? ?????????? ???? ?? ??? ?????? ?????? ?????? ?????? ??? ???? ????  
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?' ????  
????????? ?? ?????????? ??? ???? ?????? ?????? ??????. ?? ?????? ??? ?????? ?????? ?????? ??????  
???? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

? ? ?????? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ????  
????????? ??????, ??? ? ?????? ??? ?????? ???, ?????? ??? ?????? ???? ???? ???? ???? ???? ????  
??? ?????? ?????? ????, ? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????? ??? ?????? ?????? ?????? ?????? ?????? (??) ? ??? ?????? ?????? ?????? ?????? ?????? ??????  
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
?????????, ??? ?????? ?????? ???, ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????  
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???  
?????????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????  
????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??????  
??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????? ??? ?????? 11 ??? ?????????? (??) 883/2004 ??? ?????????? ?????? ?????? ??????  
??? ??? ?????? ???, ??? 29?? ?????? 2004, ??? ??? ?????? ??? ?????? ??????.

(?????????)

\*    ?????? ??????????: ? ??????.