

?????? C-446/04

Test Claimants in the FII Group Litigation

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Commissioners of Inland Revenue

[?????? ??? High Court of Justice (England & Wales), Chancery Division,

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«????????? ?????????????? — ?????????? ?????????? ??? ?????????? — ?????? 90/435/??? —
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????????? ??? ?????????? L. A. Geelhoed ??? 6?? ??????? 2006

????????? ??? ?????????? (????? ??????? ??????????) ??? 12?? ?????????? 2006

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1. ?????????? ?????????? ??? ??????? — ?????????? ?????????????? — ??????????
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(????? 43 ?? ??? 56 ??)

2. ?????????? ?????????? ??? ??????? — ?????????? ?????????????? — ??????????
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(????? 43 ?? ??? 56 ??)

3. ?????????? ?????????? ??? ??????? — ?????????? — ?????????? ??????????

(????? 56 ??)

4. ?????????? ?????????? ??? ??????? — ?????????? ?????????????? — ??????????
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(????? 43 ?? ??? 56 ??)

5. ?????????? ?????????? ??? ??????? — ?????????? ?????????????? — ??????????
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(????? 43 ?? ??? 56 ??)

6. ?????????? ?????????? ??? ??????? — ?????????? ?????????????? — ??????????
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(????? 43 ??)

7. ??????? ??????????? ??? ??????? — ?????????? ?????????????? — ??????????
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(????? 43 ?? ??? 56 ??)

8. ??????? ??????????? ??? ??????? — ?????????? ??? ?????????? ?????????? ???
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(????? 56 ?? ??? 57 § 1 ??)

9. ??????? ?????? — ?????????? ?????? — ??????? ??? ?????? ?????? — ??????????
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10. ??????? ?????? — ?????????? ?????? — ??????? ??? ?????? ?????? — ??????????
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1. ?? ??? 43 ?? ??? 56 ?? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???, ??? ??? ??? ????
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(?. ??? 72, ??????. 1)

2. ?? ??? 43 ?? ??? 56 ?? ??? ?????????? ?????????? ??????? ?????? ???,
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(?. ?????? 53, 60, 73, ??????. 1)

3. ?? ??? 56 ?? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ???
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? ??????? ???? ?????? ??? ??????? ?????? ??? ?????? ?????? ?????? ??? ?? 10 % ???
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(??, ?????? 64-65, 70, 74, ??????. 1)

4. ?? ??? 43 ?? ??? 56 ?? ?????????? ?????????? ?????? ?????? ?????? ?????? ??
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(??, ?????? 84, 86, 93, 112, ??????. 2)

5. ?? ??? 43 ?? ??? 56 ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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(??, ?????? 120, 125, 138, ??????. 3)

6. ?? ????? 43 ?? ?????????? ?????????? ?????? ?????? ? ?????? ?????????? ???
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(??, ?????? 139, ??????. 3)

7. ?? ????? 43 ?? ??? 56 ?? ?????????? ?????? ?????? ?????? ? ??????, ?? ?????????? ???
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(?. ??????? 156, 158-159, 172-173, ???????. 4)

8. ?? ?????? 57, ??????????? 1, ?? ?????? ?? ??????????? ????? ?? ?????? ???, ?? ??
?????? ?????? ????, ???????????, ????, ??? 31 ??????????? 1993, ?????????? ? ?????? ???????
????????????????? ???, ?? ?? ?????? 56 ?? ??????????? ?????? ?????????? ?????????? ???, ?? ??
?????? ?????? ???, ????, ??? ??????????? ???, ??????? ?????????? ?? ??????, ??????
????????? ??? ?????? ??????????? ???, ?? ?? ?????? ?????????, ?????? ???' ?????? ?????? ?? ??
????????????? ?????????? ? ?????? ??????????? ? ?????? ?????????? ??? ?????????? ???, ??
????????? ?????????? ??? ?????????, ?? ?????? ?????? ?????????????? ?????????, ??
????? 56 ?? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?? ??? ?????? ??? ?????? ???,
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(?. ???? 196, ??????. 5)

?? ?? ?????????? ?? ?? ?????????? ?? ??????????????, ?? ?? ?????? ?????????? ?? ?????????? ??
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(???. ??????? 209, 219-220, ????????. 6)

10. ??? ?? ???? ?? ?? ??????? ?????? ?????????? ?? ?????? ??? ?? ??????????? ???????
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(???. ??????? 204, 213-215, 217)

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

?? 12?? ?????????? 2006 (*)

«????????? ?????????? – ?????? ?????????? ?????????? – ?????? 90/435/??? – ??????
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?? ??????? ?? High Court of Justice (England & Wales), Chancery Division (?????? ???????)
?? ??????? ?? 13?? ??????? 2004, ? ?????? ??????? ?? ?????????? ?? 22 ???????
2004, ?? ??????? ?? ??????????

Test Claimants in the FII Group Litigation

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Commissioners of Inland Revenue,

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

????????? ??? ??? . ??????, ??????, P. Jann, C. W. A. Timmermans, A. Rosas, K. Lenaerts (????????), P. K?ris ??? E. Juhász (???????? ??????), J. N. Cunha Rodrigues, ?. ??????, A. Borg Barthet ??? M. Illeši?, ???????,

?????? ??????????: L. A. Geelhoed

?????????: K. Sztranc, ??????? ????????????,

?????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ??? 29?? ????????, 2005,

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

– ?? Test Claimants in the FII Group Litigation, ?????????????? ??? ??? G. Aaronson, QC, ????? ??? ??? ??? P. Farmer ??? D. Cavender, barristers, ???' ?????? ??? S. Whitehead ??? M. Anderson, solicitors,

– ? ?????????? ??? ?????????? ??????????, ?????????????? ???????? ??? ??? E. O'Neill, ??? ???????? ??? ??? C. Gibbs, ?????????????? ??? ??? G. Barling, QC, ????? ??? ??? D. Ewart ??? ??? S. Stevens, barristers,

– ? ????????, ?????????????? ??? ??? D. O'Hagan, ?????????? ??? ??? G. Clohessy, BL, ??? ??? A. Collins, SC,

– ? ????????, ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal,

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1 ? ?????? ??? ??? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 43 ?? ??? 56 ??, ????? ??? ??? ?????? 4, ?????????? 1, ??? 6 ??? ?????? 90/435/??? ??? ?????????? ??? 23?? ?????? 1990, ?????? ?? ?? ?????? ?????????? ?????????? ?? ?????? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? (?? L 225, ?. 6).

2 ? ?????? ?????????? ??? ?????? ????????, ??????, ??????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Commissioners of Inland Revenue (????????? ??? ??? ?????? ??????) ??????? ?? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??????.

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3 ?? ?????? 4, ?????????? 1, ??? ?????? 90/435, ?? ??? ?????? ??????, ??????:

«???? ?????? ??????, ??? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???,

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????????? ?????????????? ??? ?????? 5, ?????? ??? ?????? ??? ?????????????? ??????
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4 ????? ?? ????? 6 ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??
????????? ?????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ?????? ??? ?????? ??? ?????????? ???.

5 ?? ????? 7 ??? ?????? 90/435 ?????:

«1. ??? “????????????? ????” ??? ?????????????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? (precomte) ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????? ?????????? ? ??????????, ? ?????? ?????????? ?????????????? ??? ??????????
?? ?? ?????? ??? ?????? ??? ??????.

2. ? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ? ?????????? ???
????? ??? ?????? ?? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????????? ???
????? ??? ?????????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???
?????????..»

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

6 ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ??????????, ??????????
?? ??? ?????? ??? ?? ??? ?????? ??? ?????? ?? ?????? ??? ?????????????? ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ???, ?????? ??? ???
????????? ??? ?????? ??? ?????? ?????????? ???, ?????? ??? ?????? ??? ?????? ??????????
????? ??? ?????????? ???.

7 ??? ?? 1973, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???
????????? ??? ?????? ??? ??????????, ?????????? «????? ?????? ???», ?? ?????? ???
?????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??????????, ?????? ??? ?????? ???
????????? ????, ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ???
??? ? ?????? ??? ?????? ??? ?????? ??? 6 ?????? 1999, ?? ?????? ???
????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????? ???, ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

8 ??? ?? ????? 14 ??? ?????? ??? 1988, ??? ?????? ?????????? ??? ?????? ???
(Income and Corporation Taxes Act 1988, ??? ????: ICTA), ?? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ???, ? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

????? ?????????? (advance corporation tax, ??? ????: ACT), ??????????????? ??? ?? ???? ???? ? ???
????? ??? ???????.

9 ? ????????? ??????????? ?? ???????????, ?????? ??????? ????, ??? ACT ???
?????????? ??? ?????????? ??? ?????? ??? ?????????????????? ??? ?????? ??? ??????? ?? ??? ???
????????? ??? ??????? ??? ?????? ??? (mainstream corporation tax). ?? ? ??????????
?????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??????????? ?? ??????????
ACT, ? ??????? ACT ?????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ??????????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ?????? ??? ??
?????????? ?? ?????? ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? . ? ?????? ACT
????? ?? ?????????? ??? ?? ?????????? ?????? ??? ?????????????? ??? ?????? ??? ??????.

10 ?? ?????????????? ??? ??????? ?????????? ?????? ?????? ?????????? ?????? ???
????????? ?? ??????? ??? ??????? ?????????? ?????? ?????? ???????, ?? ?????? ??????????
???? ??????? ??? ??????? ?? ?????? ??? ?????? ??? ?????? ACT ?????? ??? ?
????????? ??????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?? ?????? ???, ?? ??????
????????? ?????????? ??? ?????? ??? 8?? ?????? 2001, C?397/98 ??? C?410/98,
Metallgesellschaft ??. (?????? 2001, ?. I?1727), ??? ?????????? ??? ?? ??????.

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

11 ???' ??????? ??? ?????? 208 ??? IICTA, ?????? ??? ?????????????? ??? ??????
????????? ??????? ??????? ?????????? ??? ?????? ?????????????? ?? ?????? ?? ?????? ???
??????, ??? ??????? ??? ?????? ??? ?????? ??? ?? ?????????? ???.

12 ???????, ??????? ?? ?? ?????? 231, ?????????? 1, ??? IICTA, ?????????? ??????????
?? ACT ??????? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??????????
?? ?? ??????? ?????????? ?? ?????? ??? ?????????????? ??? ?????? ?????????? ACT ??? ??????? ?
????. ??? ?? ?????? 238, ?????????? 1, ??? IICTA, ?? ?????????? ?????? ??? ? ??????
????? ??????? ?????????? ??? ?? ?????????? ?????? «????????????? ?????? ??? ? ??????
?????????» (franked investment income ? FII)

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

14 ??????? ?? ?? ??????? F ??? IICTA, ?? ?????? ??????? ??? ?????? ?????????? ??????????
????????? ?????????? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ???
????????? . ????, ????, ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?? ??? ?????? ?????????? ???
????????? ACT. ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
????? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ???, ?? ??????

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

15 ?????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??
????????? ???.

16 ?? ??? ?????? ??????????, ? ?????????? ?????? ??? ?????????? ??????? ??? ??
????????? ??? ?????????????? ?????????????? ?????????? ??? ?????????? ?????????? ???,
????????? ?? ?? ?????? 788 ?? 790 ?? ICTA, ??????????, ??? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?????????? ?????????? ??? ??? ?????????? ??? ??????
????????? (??? ????: ????) ??? ?? ?????? ?????????? ??? ?????????? ?? ?? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ??????
????????? ???.

17 ???????, ? ?????? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ???
????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ???
????? ??? ??? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ?? ? ?????????? ?????????? ???
?????????, ? ?????? ?????????? ?????????? ??? ?????? ?????? ??????, ?????????? ?????????? ?? 10 %
??? ?????????? ??? ?????? ??? ?????????? ??????, ? ?????????? ?????????? ??? ?????????? ???
???? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?? ?????? ?????????? ???
?????????. ? ?????????? ??? ?????????? ?? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ???
?????????.

18 ?????? ?????????? ?????????? ?? ??? ??? ?????? ?????? ?? ?????? ?????? ??????????.

19 ?? ? ?????? ?????? ?????? ?? ?????? ?????????? ?????? ?????? ?????? ???, ??????
ACT.

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

21 ??????, ??? ?????????? ?? ?? ??? 16 ??? ?????? ??????????, ? ??????
????????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ???
????????? ?? ??? ACT ??? ? ?????? ?????? ?????? ?? ?????? ?? ?????????? ?????? ??????
????????? ?????? ?????? ???.

22 ??????, ?????? ? ?????? ?????? ?????? ?????????? ?????????? ??? ??? ??? ??? ???
????????? ? ?????? ?????? ??? ?????? ?????????? ???, ? ?????????? ??? ??? ???
????? ??? ??? ?????? ?????? ?????????? ???, ??? ??? ?????? ?????? ??? ?????? ??? ??? ??? ???
?? ??? ?????? ?????? ?? ?????????? ? ACT.

? ?????? FID

23 ??? 1?? ?????? 1994, ?? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ??? ??????
????????? ??????, ??? ?? ?????? ?????????? ?????? ?????? ?????? ???, ?? ?????????? ???
????????? ??? ?? ??? ?????? ?????????? ?? «????????? ??? ?????? ?????? ?????? ???
?????????» (foreign income dividend, ??? ????: FID), ??? ??? ?????? ?????????? ??? ACT,
????? ? ?????? ??????, ?????? ?? FID ?????? ?? ?? ??? ?????? ?????????? ??????????
?????????, ?? ?????? ?????? ?????? ??? ??????.

24 ??? ? ACT ?????? ?? ?????????? ?????? ?????????? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????? ?? ??????, ? ?????? ??? ??????????
????????? ??? ?????? ACT ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??????, ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

25 ????? ?? ??????????????? ?? FID ??????? ?????????????? ?? ?????? ???????, ? ??????
????? ?? ????? ?? ????? ?????? ??????? ???????, ????, ???? ???????, ??? ??????? ?? ?????
??????????, ??? ?? ????? ??????????????? ??????? ??????????? ?? ??? ???????????
?????????. ?? ??????????????? ?? ??? ?? ????? ???????, ???? ?? ?????? ??????????? ??
?????? ???????, ??? ??????? FID, ??? ?????????? ??????? ??????.

26 ?? ??????? ??? ACT, ?????????????????? ??? ?? ???? ????????? FID, ??????????? ???
????? ?? ?????????? ??? ?????????? ??? ??? 6 ??????? 1999.

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

27 ? ??????? ???. ??? ?????? ?????? ?????????????? ?? ?? ?????????? «group litigation», ???
?????????? ???. ??? ?????????? ?????? ?????? ?????? ???. ?? ?? ?????????? ?????? ??????
??? ?????? (Franked Investment Income Group Litigation), ??? ?????????? ???
????????? ??? ?????? ?????? ??? High Court of Justice (England & Wales), Chancery
Division, ??????? ?????????????? ??? ?????? ?????? ???. ?????? ?????? ??? ??????
????????????? ???. ??? ?????? ?????? ????. ?? ?? ?????? ???.

28 ?? ?????????? ?? ???? ?? ?????? ?????????????? ??????? ?? «?????????????????» ??? ?? ????
????? ?????? ?????????? ?????????????? ?????????? ?????? ?????????? ??????????
????????????????? ?? ???? ??????? ??????????, ?? ?????? ?????????? ??? ?????? British American
Tobacco (BAT, ??? ????: ?????????????? ?? ?????? ??????). ? ?????????? ?? ???? ??????
?????? ?????? ???????, ?????? ? ???????, ?? 100 % ??? ?????????? ?????? ???????, ??
?????? ?????????? ?? 100 % ??? ?????????? ?????????? ?????????????????? ?? ?????? ??????? ??????
???? ?? ?????????? ??????? ?? ???? ?? ?????????? ?????????? ???????, ?????? ??? ?? ??????
?????.

29 ?? ?????????? ?????? ???????, ??????, ?????????? ?? ?????????? ?? ?? ?? ?? ??????????
????????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ???
30 ?????????? 1973 ????, ??????? ?? ??? ?????? ??? ??????????, ??? ??????????
????????? ???, ???????, ??????? ?? ?????????? ???? ?????????? ???? ?????????? ??? ?????? BAT ????
????????? ??? ??? ??? ??? ?????????? ?????? ??? 31 ?????? 1999, ?????? ??? ACT
??? ?????? ?????????? ?? ?????????????? ??? ?????????? ?????? ??? ??? ?? ??? ??????????
????? ?????? ??? 14 ?????? 1999 ??, ???????, ?? ?????????????? ?? FID ??????
?? ?????????? ??? 30 ?????????? 1994 ?? 30 ?????????? 1997.

— ??? ??? ???? ??????? ?? ???? ?????????? ?????????? ?????????? ?????????? , ??? ???? ?? ???? ???? ??
??? ??? ???? ?????? ?????????? ?? ???? ?????????? ?????? , ?? ?????? ?? ?????????? , ?? ??? ???
????????? ??? ???? ???? , ?? ?????????????????? ?? ???? ?????????? ?????? ?????? ?????? ?????? ,

– ??? ??????? ACT ??? ?????????? ??? ??? ??? ?????????? ??? ????? ?????????? ???
????????????? ??? ?????????? ?????????? ??????????,

- ?????????????? ??????????, ??? ??????? ??? ?????????????? ?????????????????? ???
????????? ?????? ??? ?????????????? ?? ACT ??? ??? ?????????? ?????????? ??? ACT ???
??? ??? ?????????? ?????????? ??? ACT ?? ??? ??? ?????????? ???.

= ????? ?????? ?? ?????????? ?????????????? ??? ?????????????????????? ?? FID. ??? ?????????? ???

????????????? ?????????????????? ??? ?????????? ?????? ??? ?????????????? ?? ACT ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????, ?????? ??? ???
????????? ??? ?????? ??? ? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ???
????????? ??? ?????? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???.

31 ??? ??? ??????? ????, ?? High Court of Justice (England & Wales), Chancery Division,
????????? ?? ?????????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ???
????????? ??? ??????????:

«1. ??? ?????????? ??? 43 ?? ? ?? ????? 56 ?? ? ?? ???????? ?? ??? ??? ??
????????? ??? ?????? ?????????? ??????? ?? ??? ?????? ?????????????? ??? ??? ??? ???
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ?????? ???
????: ?????? ??????) ??? ????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ?????????? ??? ?????????? ? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ???
????? ??? (??? ????: ?????????? ??????) (??? ??? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??? ???
????????? ??? ?????? ???, ??? ?????????? ?????????? ???, ??? ?????? ??? ?????????? ???
????????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????);

2. ??? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ???, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ACT, ???, ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ACT;

3. ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????? 2 ?????? ?? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
??? ? ? ??? ? ??? ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ???,

?) ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ACT ? ??? ??????
????????? (??? ?????? ??? ACT) ??? ?????? ?? ?????? ??? ??????????????, ??? ??????
??? ? ? ??? ?????? ??? ?? ?????? ??? ?????? ???, ?? ? ? ?????????????? ??? ?????? ???
????????? ??? ?????? ???/?

?) ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ?? ?????????? ? ACT;

4. ?? ? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ACT ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????? ??? ? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (????????????????, ???
????? ???, ??? ? ? ?????????? ??? ? ?????? ??? ?????? ???) ?? ?????? ??? ?????? ???,

? ??????????? ?? ???????? ?????? ?? ?????? 43 ? 56 ?? ? ? ? ?????? 4, ?????????? 1, ? 6 ???
?????? [90/435] ?:

?) ? ??????????? ?? ???????? ?????? ?? ?????????? ?? ????????? ACT, ?????????? ????

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

5. ?? ??? ?????? ?????? ?????? ?????? ?????? ??? 31 ?????????? 1993 ??? ?????? ???
??? ?????? ?????? ?????? ??? ?????????? 1 ??? 2 ??? ??????, ??? ? ? ?????????? ???,
??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? 4 ???, ?? ?????? ???
?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 56 ???
?????? ?, ?????? ?? ?????? ? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????? ??? ??
?????? ??? 31 ?????????? 1993;

6. ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 1 ??? 5
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
???? ?????? ??? ? ?????? ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???,
????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? :

?) ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????? 1,

?) ?????? ??? ?????????? ??? ?????? ?????? ?? ?????? ?????? ?????? (?) ???
????????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ??? ?????? ?????? ?????? ??? 1,

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

?) ?? ?????????? ??? ? ACT ?????????? ?? ??? ?????? ??????, ?????? ??????????
????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ACT ??? ??? ?????????? ??? ??
????? ??? ??? ? ??????????,

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

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

?) ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ACT (?) ??? ??????

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

?) ?? ?????????? ??? ? ?????????????? ?????? ??? ?????????? ??? ACT ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ???
?????? 4, ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ???
????????? ?????????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ACT
??? ??? ?????????? ??? ?????????? ???,

?) ?????? ??????????, ??? ?????? ??? ? ?????? ??? ?????? ?????? ??? ?????? ?? ??????
??? ?????????? ??? ACT ??? ?????? ??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? 4
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ?? ??? ??? ??????????,

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

- ?????? ?????????? ?????????? ?????????? ??????, ??? ??? ? ?????????? ???
?? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??????????
????????? ?

- ?????? ?????????? ? ?????????????? ??????, ??? ??? ? ?????? ?? ?????????? ??
????????? ??? ?????????? ??? ?????? [??? 5?? ?????? 1996, ?????????????? ???
????????? C-46/93 ??? C-48/93, Brasserie du Pêcheur ??? Factortame, ?????? 1996, ?. .-
1029] ?

- ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??????????
?????????;

7. ?? ?????????? ??? ? ?????????? ?? ?????????? ?????? ??? ?????????? 6 ??? ?????? ???
????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ?????????? ??????????
????????? ??????????:

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

?) ?????? ?? ?????????? ??? ?? ?????? ?????? ?????????? ?? ?????????? ??? ?????????? ???
????????????? ??? [????????????? ??? Brasserie du Pêcheur ??? Factortame] ?

?) ?????? ?? ?????????? ?????? ?????? ?????????? ???;

8. ?????????? ? ?????????? ??? ?????????? 6 ? 7 ?? ?? ?????? ?????? ?????? ??? ???
????? ?????? ??? ?????? ??? ?????? 6 ???????????, ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ???; ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????????;

9. ?????????????????? ??????, ?????? ??????????, ?????? ?????????? ?? ?????? ??
?????????? ?????? ?????? ?????? ?????? ?? ? ?????? ?????????? ?????? ?? ??????
????? ?? ?????? ?????????? ?????????? ?? ?????????? ?? ?????? ?????????? ??????????
??? ??? ?????? ??? [????????????????? ?????????? Brasserie du Pêcheur ??? Factortame],
?????????? ?? ? ?????? ?????? ?????? ?????? ?????????, ?????????????? ?????? ??? ?????????? ???
????????? ?????? ?? ? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ?? ?
????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ? ??????
“????? ?????? ??????” ??? ?? ?????? ??? ?????????? ??????;»

32 ?? ?????? ?????????? ?????????? ???, ??? ?? ?????? 57, ?????????? 1, ?? ??????????
???, ???? ?????? ??? ?????? ?? ?????? ?????, ??? ?????????????? ??? 31 ?????????? 1993
????????? ??? ?????? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ??????????
??? ?????? 56 ?? . ?????? ???, ?????? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ??????, ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????????? ?????????? . ?? ?????? ??? ?? ?????? ??????, ??????, ??? ?????? ?????????? ???
????????? ?????????? ??? ?????????? ??????, ??????, ??? ?????? ?????????? ???
????? 56 ??, ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????? ?? ??????
?????.

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

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

33 ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ?????? ???' ?????? ?? ?? ?????? 43 ?? ?
56 ?? ?????????? ?????????? ?????????? ?????? ?????? ?????? ?????? ??? ??????
????????????? ??? ?? ?????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ??????
??? ??? ?????? ?????? (??? ????: ?????????? ?????????? ??????????), ??? ??????????
????? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ?????? (???
????: ?????????? ?????????? ?????????), ??? ??????????, ??? ?????? ??????????,
????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ???, ? ???
????????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????? ???, ??? ???
????? ?????? ??? ?????? ??? ?????? ?????????? ??????????, ? ?????? ?????? ?????? ???
????????? ?????? ??????????.

34 ??? ?? ?????????? ??? ?????? ???, ?? ?????????? ?????? ?????? ?????????? ???
????? 43 ?? ?? 56 ?? ??????, ????, ?????????? ?? ?????????? ??? ?????????? ??? ??????????
?? ?? ?? ?????????? ?????????? ?? ? ?????????? ?? ?????? ?????? ?????????? ?? ?????? ???
???? ??, ???????, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
?????????, ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????
?????????.

35 ???????????, ?????? ?? ?????????? ???, ??? ?????? ?????????, ?????? ? ??????
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????? ?????? ?? ?????????? ??? (??., ?????? ????, ??? ?????? ??? 6?? ??????)
2000, C?35/98, Verkooijen, ?????? 2000, ?. I?4071, ?????? 32, ??? ?????????? ?????? 2006,
Metallgesellschaft ??., ?????? 37, ??? ?? ?????? ??? 23? ?????????? 2006, C?471/04,
Keller Holding, ?????? 2006, ?. I-2107, ?????? 28).

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

????????????? ??? ?????? ?????????????? ??? ?????????????? ?????????? ?????????????? ??? ?? ?? ??
????????? ??? ?????? ?????????? ? ?????????? ??????????, ?????? ??? ?? ?????? ???
????????? ??? ?????????? ?????? ?????????? ?????????, ?????????? ?? ?????????? ???
????? ?????????? ??? ?????? 43 ??, ??? ?????????? ??????????, ??? ?????? ???
????? 56 ??, ??? ?????? ?????????? ?????????? ??????????.

37 ??? ??? ?????? ?????? ?????????????? ?????????? ??? ?? ?????????? ??? ?????????????? ??
«?????????????????», ??? ?????? ??? ?????????? ?????????? ??? ?????????? ?????????????? ???
?????????, ??????? ?????????????? ??? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? 100 %. ?????? ??????????
??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ?? ?????? ?????????????? ???
????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????????? ???, ?????? ??????????
?? ?????????? ??? ?????????? ?? ?????? ?????????? ?????????? (????????? ??? 13??
????????? 2000, C?251/98, Baars, ?????? 2000, ?. I-2787, ?????? 21 ?? 22, ??? 21??
????????? 2002, C-436/00, X ??? Y, ?????? 2002, ?. I-10829, ?????? 37 ?? 66 ??? 68,
????? ??? ?? 12?? ?????????? 2006, C?196/04, Cadbury Schweppes et Cadbury Schweppes
Overseas, ? ?????? ??? ?????? ?????? ?????????? ??? ??????, ??? 31).

38 ??? ?????????? ? ?????? ?????????? ?? ?? ?????? 33 ??? ?????????? ???, ???
?????? ?????? ??? ?????????? ?? ?? ?????? ?????????? ?? ?? ?????? ?????????? ??? ??????
????????? ??? ?????? ????. ??? ??????????, ?? ?? ??????, ? ?? ??? ?????? ?????? ?? ?????? ???
??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
??? ?? ?????????? ??? ?????????????? ????. ???????, ? ?????????? ??? ?????? ?????? ??
????????? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
?????????.

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

39 ??? ?????, ??????, ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ???,
????????????? ??? ? ?????????? ??????????????, ??? ?????? ?? ?????? 43 ?? ??????????
????? ?????????? ??? ?????? ?????? ??? ? ?????? ?????????? ??' ?????? ??? ?????? ???
????? ?? ?????? ??????????????, ?????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ??????????????,
??? ??? ?????? ?????????????? ?? ?????? ??? ?????? ??? ?????????? ? ?????????? ??? ?????? ???
????????????? ??? ??? ?????? ??? ?????? ??? ??????????, ?????????? ??? ?????? ?? ?? ?????? 48 EK,
??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??
????? ?????? ??? ?????????? ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ??????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ??? ??????????, ?????????????? ? ?????????? (??., ????)
?????, ?????? ??? 21?? ?????????? 1999, C-307/97, Saint-Gobain ZN, ?????? 1999, ?. I-
6161, ??? 35, ?????? ??? 13?? ?????????? 2005, C?446/03, Marks & Spencer, ??????
2005, ?. ?-10837, ??? 30, ?????? ??? ?????????? Cadbury Schweppes et Cadbury
Schweppes Overseas, ??? 41).

40 ?????????? ? ?????????? ??? ? ???? ??? ?????? ??? ?????? 48 ?? ???? ??? ??????
?????????, ??? ? ?????????? ??? ?????? ??????????, ??? ??? ?????????????? ??? ??????
????? ?? ??? ?????? ??? ?????? ??????. ?? ?????? ?????? ??? ?? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????? ??? ? ???? ??? ?????? ?????????? ??? ?????? ?????? ???, ?? ?????? 52 ??? ??????
??? ?? ??? ?????? ?????? ?????? (??., ???? ??? ?????? ???, ??? ?????????? ??? 28??
????????? 1986, 270/83, ?????? ??? ??????, ?????? 1986, ?. 273, ??? 18, ??? 13??

?????? 1993, C?330/91, Commerzbank, ?????? 1993, ?. I?4017, ????? 13, ??? ???.
????????????? Metallgesellschaft ?.?, ??? 42, ??? Marks & Spencer, ??? 37). ?
????????? ?????????????? ?????????? ??? ?? ?????????????? ?? ?????????????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? (?., ??? ??? ?????? ???, ???
????????? ?????? ?????? ?????? ?????? ?????? 14, ??? Saint-Gobain ZN, ???
35).

41 ??? ?????? ??? ?????? ???, ?????????????? ???, ??????? ?? ??? ??????
?????????, ? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????? ???,
????? ? ??????, ?????????? ?? 10 % ??? ?????????? ??? ?????? ??? ??????????
????????? ?????????? ??? ?????? ?? ?? ? ?????? ??? ?????????? ?? ?????????? ????
????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????? ??????????, ?? ?????????? ?????????? ??? ??? ?????? ?????? ???, ??? ??????,
?????????????, ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ???? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ??????
?? ??? ??????.

42 ??? ??? ?????????? ??? ?????? ???, ?? ??? ? ?????? ??? ?????? ??? ??????
????????? ??????, ??? ??? ?????? ?????? ?????? ?????????? ??????????, ??????
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??????????
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ??? ?????.

43 ??????????, ???????, ? ?????????? ??? ??? ?????? ?????? ??? ?????? ??
????????? ?? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ??
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ?? ?????????? ???
??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ?.?, ?
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???,
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ???, ??? ?? ?????? ??? ?????? ???, ? ?????? ??? ?????? ?? ?????????? ???, ?? ???
????? ??? ??? ??????????, ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?????? ??? ?????? ??????.

44 ??? ??? ???? ???? ?????? ??? ?????? ?????? ?????????? ?? ??? ?????? ????
?? ?????? ?????? ?????? ?????????? ??? ?????? ???, ? ?????? ?????? ??????????
???? 25 % ??? ?????? ??? ?????? ???, ?? ?????? 4, ?????????? 1, ??? ?????? 90/435
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ??????
??????????. ???????, ?????????? ???, ???, ??? ? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ???? ???? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ???, ?????????? ???, ??? ?????? ?????? ???, ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

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

46 ??? ?? ?????????? ?????????? ???, ?????????? ??? ?????????????? ??? ?? ?????????? ???
??? ??????? ? ??? ?????????? ??? ?????????????? ? ??? ?????????? ?????? ?????????? ?,
????????? ??????????, ??? ?????????????? ??? ?? ??????, ?????????? ??? ?????? ??? ??
????????????? ??? ?????? ?????? ?????????? ?????? ?? ?????????? ?????????? ?????????? ??
????? ?? ?? ???????, ??? ?? ?? ??? ?????????? ?????????? ?????????? ?????? ??????????
??? ?? ?????? ?? ?????????? ?????????? ? ?????????? ?????? ??? ?????????? ?????? ???
????????? ?????????? (??., ??? ?? ??? ?????? ???, ??? ?????????? ??? 15?? ?????? 2004,
C?315/02, Lenz, ?????? 2004, ?. I-7063, ?????? 20 ?? 49, ??? ?? 7?? ?????????? 2004,
C?319/02, Manninen, ?????? 2004, ?. I?7477, ?????? 20 ?? 55). ??????, ?? ??????????
???? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ?????? 90/435 ?????? ??? ?????????? ?????????? ?????????? ???
????????? ?? ???, ?????? ?????, ??? ?????????? ??? ?????????? ?????????? ??????????
(????????????? ?????? Keller Holding, ????? 45).

47 ??????? ?? ?? ??? ?????? ?????? ?????? ?? ?????????? ??? ?? ?????????? ??????????
????????? ???????, ??? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?? ??????????
????????? ??????????, ??????? ?? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ??????
?? ??????????, ?????????? ?? ?????????? ??????, ?? ?????????? ??? ?????????? ??? ?????????? ??
????????????? ?????? ???, ??????????, ?? ?????????? ?? ?????????? ??? ?????????? ??? ?? ???
????????? ?????????? ?????? ??? ?????? ?? ?????????? ?????, ?????? ?????????? ???
????????? ?????????? ???, ? ?????????? ?????? ???/?? ?????????? ??????.

48 ???????, ?? ?????????? ?????? ?? ??????????, ???????, ?? ?? ?????? ?????? ???
?????????, ?????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????? ??????, ?????????? ??? ?????????? ?????????? ?????????? ??? ??????????
?????, ??? ?????????????? ??? ?????? ??????, ??? ?????? ?????????? ?????????? ??? ??????
????????? ?????????????? ??? ?????????? ??????.

49 ??????????, ?? ?? ?????? ?????? ??????????, ? ?????? ??? ?????????? ?????????????? ???
????? ?????? ?? ?? ?????????? ??????, ??????, ??????, ?? ?????? ?????? ??? ?? ??
????????? ?? ?????????? ?????????? ?????????? ?? ?????????? ?????????? ??? ?????? ???
????? ??? ?? ?????????? ?????????? ??????.

50 ??????????, ?? ?????? ?????? ?????? ?????? ?? ?????????? ??? ?????????????? ?????????? ???
????????? ?????????? ??????????, ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????
?? ?????? ?? ??? ?????? ??? ?????? ???.

51 ???????, ?? ? ??????? ??? ?????????? ?????????? ?????????? ?????? ??? ?????? ??
?????? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?? ???
?? ??????? ?? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??????, ?? ?????? ??? ??????
????? ??????? ?? ?????????? ?????? ?????? ?????? ??????, ?????????? ?? ??? ?????? ???
????????? ? ?????????? ??? ?????? ??? ?????????? ???.

52 ??????????, ?? ?? ?????? ??? ?????? ?? ?????? ??? ?????????? ?????? ??? ??????????
????????? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
?????????, ?? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
?????????, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

53 ??? ??????? ????, ??? ??????? ?? ??????? ???, ???????????? ???, ??? ??????? ??? ???????
??????????, ?? ??????? ??????????? ?????????? ?????? ?????????????????? ?????? ???????
?????????? ???, ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ??? ???????
?????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ???????, ??? ?????? ??
????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????
?? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ??????????
????????? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ?????? ?????????? ??? ??????????
????????? ?????????? ??????.

54 ?? ?????????????? ??? ?????? ?????? ?????? ???????????, ???????, ???, ??????? ?? ???
????????? ??? ?????? ?????????? ?????????, ?? ?????????? ?????????? ?????????? ???
????????????? ??? ?????? ??? ?????????? ???????, ?????????? ??? ?????? ??? ???????
? ?????????? ???, ?????? ?????????? ??? ?????? ? ?????? ???, ??? ?????? ??????????
????????? ??? ??????????, ??? ?????? ?????????? ??? ?????? ? ?????? ?????? ???, ??? ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ??
????????? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?????????? ??????.

55 ??? ??? ?????????????? ??? ??? ?????????? ??? ?????? ?????????? ???????????, ? ?????, ???,
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? ???????????, ?? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ????.

56 ???????, ???????, ??? ?????? ?????????? ?? ?????????? ??? ?????????? ?????????? ??? ? ???????????
????????? ??? ? ??? ? ?? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ??
????????? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ???
????' ?????? ??????????.

57 ???????, ??? ?????? ??? ??????? ??? ?????? ??? ?????? ?????? ?????????? ???????????, ?
????????? ??? ??? ??????? ?????????? ?????????? ??? ?????????? ?????? ?????????? ???????????, ??? ??
????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????????? ???
???? ??? ?????????? ?????????? ??? ?????? 43 ??, ?????? ? ?????????? ?????????? ?????????? ???
??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????????
??????? ?? ?? ??? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ???????, ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ????
????????? ??? ?????? ??? ?????????? ??????.

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

58 ??? ???, ???????, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ???????
????? ??? ?????? ?????????? ?????????? ?? 10 % ??? ?????????? ???, ?????? ? ??????????
????? ?? ??? ?????? ?? ?????????? ?? ?????? ?????????? ?????? ?????????? ??? ?????? ? ??????????
??? ??????? ??? ?? ?????????? ??? ?????? ?????????? ???, ?????????? ? ?????????? ???
??? ??? ??? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ??????.

59 ????? ???. ?????????????????? ???. ????????. ??????, ????????????. ????. ???????????????. ??????????????
? ?????? ????????????. ????. ???????????????. ????. ????????. ???????????. ???????????. ????. ???. ???.
??????????. ????. ??????????. ??????????. ???????????????. ????. ??????. ????. ??????. ????. ????. ??????.
??????????. ???????????????. ???????????????. ???????????. 56 ???. ????. ??????.
??????????. ??????????.

60 ?????? ?? ????????, ???????, ???, ??? ?????????????? ?? ??? ?????????? 47 ??? 56 ???
????????? ????????, ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????????? ?? ??? ?????? ??? ????????, ??? ????????, ?????????? ?????????? ?????????? ??????????.
?????????, ?? ?????????? ??? ?????????? ??? ?????? 57 ??? ?????????? ?????????? ??????
??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????? ??????????.

61 ??????, ????, ?????? ??? ?????????? ?????????? ??? ?????????? ?????????? ??? ?????????
????? ?????? ?????????? ?????????? ??? ?? 10 % ??? ?????????? ??????, ??? ?? ?????? ?????? ???
????? ????, ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ?????????? ?????????? ???
????????????? ??? ?? ??? ??????????, ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ???
????? ????, ?????????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????? ????, ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???

62 ????????, ??????????? ?? ??????????? ????????, ???, ?????? ??????????? ?????? ??
????????? ?? ???? ?????? ? ?? ???? ??????? ?? ?????????? ?? ?????????? ?? ???????, ?
????????? ?? ???? ??????? ??????? ? ?? ???? ??????? ?????????? ?????????? ??????????
????? ?????????? ?? ???? ?????? ?? ?????????? ??????? ?? ?????????? ?????????? ??????????
??????????, ??? ? ???? ???, ?? ??????? ?? ???????????, ?? ???????????????, ?? ???????????????
????? ??????????, ???????, ?? ??????? ??????????? ??????????.

63 ???????, ??? ??? ??? ?????????? ?????????? ??? ?????????? ?????????????? ??? ??? ????? ???????
????????? ?? ?????? ?????????? ?????????? ?????? ??? ?????? ?????????????? ?????????????? ???
????????????? ??????, ??? ?????? ?? ??? ??? ??? ?????? ??? ?????????? ?? ?????????? ?? ??????????
?????????. ??, ??? ??????? ??????????, ?? ?????? ?????????????? ??? ?????????? ?????????????? ???
????????? ?????????? ??? ?????? ??? ?????????????? ?????? ??? ?????? ?????????????? ???
????????????? ??????????, ? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???
????????? ?????? ?????????? ??? ?? ?????????? ??????. ??????????, ? ?????????? ??? ?????? ???
????????????? ?????????? ??? ?????????????? ??????????, ??? ?? ?????????? ??? ?????????? ???
??????????, ??????, ??? ??? ??? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????? ?????????????? ??? ???, ???????, ??? ??? ??? ?????????? ??? ?????????? ?? ?????????? ???
?????.

64 ??? ?????? ??????????? ?????????? ??? ?????? ?? ?????????? ?? ???? ?????????? ???
????????????? ??? ?????? ?????? ?????? ?????? ??? ?? ???? ?????? ?? ?????????? ???
????????? ?????????????? ?? ??? ?????? ?????? ??????. ??? ?????? ?????? ?????????????? ???
??? ??? ?????????????? ?? ??? ?????? ?????? ?????? ??????, ?????? ?????? ?????? ??' ???
??? ?????????? ?????????? ??? ?????? ?????? ??????. ??????, ?????? ?? ?????????? ???
????????? ?????????? ?????????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ??'
?,?? ?? ?????????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?????????? ??????????, ??
????????? ??? ?????????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
??? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ?????? ??? ??????
??? ?????????? ??' ??? ?? ?????? ?????? (??. ??? ?????????????? ?????? Verkooijen,
?????? 34 ??? 35, Lenz, ?????? 20 ??? 21, ?????? ??? Manninen, ?????? 22 ??? 23).

65 ??? ?? ?????????????? ?????????? ??? ?????????????? ??? ??????????, ??? ? ??????
????? ?????? ????, ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????

? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ?? 10 % ??? ?????????? ????
????? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ????
???' ?????? ??? ?? ????? 56 ??.

66 ???? ??? ?????????? ??? ?????? ??????????, ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????????? ?? ?? ?????????? ?? ?????? ??? ?????? ?????????? ?????????? ???
??? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????? ??? ?? ?????? ???????????. ??????????, ?????????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????????? ?? ?????? ??? ?????? ?????????? ?????? ?????????? ??? 10 % ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??????. ?????????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ???, ????
????????? ?????? ??? ?????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ?????? ???
?????, ???????, ?????? ?? ?????????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ???
????? ?? 10 % ??? ?????????? ?? ?????? ?????????? ??????, ??????, ??? ?????????????? ???
????? ?? 25 % ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????????? ?????????? ?????????? ??? ?????????? (????) ??? ?? ???
????? ? ?????? 90/435 ?? ?????? ??????.

67 ??????, ?????????? ?????????? ??? ?????? ???, ??? ?????????? ?????????? ??? ?????? ??
?? ?????? ? ??? ?????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ??
????????? ??? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ???
????? ?????????? ?????? ???????????. ?????? ?? ?????? ??? ?????????? ??? ?????? ?????? ???
????????? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ?????? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

68 ?? ?????? 4 ??? ?????? 90/435, ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????? ??????, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

69 ??????????, ????, ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????????? ???
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?? ??? ?? ???
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

70 ???????, ?????????? ??? ?? ??? ?? ?????? ??? ?????, ?? ??? ?????????? ??? ??????
????? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

?????????? ?? ??????????, ??? ????? ???? ?????? ? ??????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??., ??? ?????? ?????? ??????, ??? ?????? ??? 4?? ?????? 2004, C?334/02, ??????? ?????? ?????? ?????? ?????? ?????? 2004, ?. I?2229, ????? 29, ??? ??? ?????????????? ?????? Manninen, ????? 54).

71 ????????, ?????????? ?????????? ??? ? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????? ??? ???? ?????????? ?????????? ?????????? ?????? 56 ??.

72 ????????????, ??? ?????? ??????? ??????? ?? ?????? ? ?????????? ??? ?? ?????? 43 ?? ???
56 ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ?????? ??????
?????? ??????? ? ?????????? ? ?????????? ??? ?????????? ?????????? ? ?? ?????????? ??????
????????? ??? ?????? ?? ?????????? ??? ?????????? ?????? ?? ?????????? ?????? ???
????????? ???????, ??? ?????? ?? ?????????? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ?? ??????? ??????? ??? ?????????? ??????????.

73 ?? ?????? 43 ?? ? 56 ?? ??? ?????????????? ?????????????? ?????????? ?????????? ?????????? ????????, ????????
???? ?????? ?????????????? ??? ?? ???? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ?????? ????????
?????????? ??? ?? ???? ????????, ??? ? ?????? ?????? ?????????????? ??? ?? ?????????? ??? ?? ?????????? ???
??? ??????? ??????? ??????? ??? ?? ???? ??? ?????? ?????????? ?????????, ??? ??????? ? ?????? ?????? ??????????
?????????? ?? 10 % ??? ?????????? ???, ??? ??????????, ??? ?????????? ??? ?????????? ?????????? ??? ?? ???????,
????????? ??????? ??? ?? ???? ??? ?????? ?????????? ?????????? ? ?????????? ?????????? ??? ?? ???????,
?????????? ???, ??? ?? ???? ?????????? ??? ? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??????????
????????? ?????????? ??? ?? ???? ?????? ?????????? ??? ?? ?????????? ?????????? ??? ?? ?????????? ??????????
????????? ??? ?? ???? ?????? ?????????? ??? ?? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??????????
????????? ? ?????????? ??? ?? ???? ?????? ?????????? ??? ?? ?????????? ?????????? ???, ??? ?? ???? ???
????? ??? ?? ?????????? ??? ?? ???? ?????? ?????????? ??? ?? ?????????? ?????????? ??? ?? ??????????.

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

75 ?? ?? ??????? ??????? ???, ?? ?????? ??????????? ??????, ???' ?????? ?? ?? ????? 43
?? ??? 56 ?? ???/? ?? ????? 4, ??????????? 1, ??? 6 ??? ?????? 90/435 ?????? ??
?????????? ?? ?? ?????? ?? ??????????? ?????? ?????????? ?????? ?????????? ?????? ?? ?? ??????
????? ?????? ??, ??? ? ?? ????? ? ??????? ?????? ?????? ??? ?????????? ?????????? ?? ?? ??
????????? ?????? ?????????? ?????? ??? ACT ??? ?????????? ? ??????? ?????? ?? ?? ??
????????? ?? ?? ?????? ??, ???????, ?????????? ?? ?????????? ?????????? ?????????? ?????? ??
?? ??????? ?? ?????? ?? ?????????? ?? ?????????? ACT, ??? ?? ?????? ?????? ?????? ??
????????? ?????????? ?? ??????? ??????? ???????, ?? ?????? ?????????? ?? ???????, ?? ???????
????????? ?? ACT.

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

77 ???????, ?????????? ??? ?? «????????????????» ?????????? ??? ?????? ?????? ??????
????????? ??? ?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? 31 ?????????? 1973,
??????, ?????????? ?? ??????, ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??????
????????? ??? ?????? 90/435.

78 ???????, ??? ?? ?????? ?????????? ??? ?????????? ???????, ?????? ?? ??????????
????????? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??????? ?? ??? ?????????? ??? ???????.

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

79 ??????? ?? ??? ??????? ??? ?????? ??? ?????? ?????? ??????????, ??????? ??????? ???
????????? ?????????? ??? ?? ?????? ?????????? ?????????? ?????????? ?????? ??????? ?? ???
????????????? ??? ?? ?????? ?????? ACT, ?????? ??? ?? ?????????? ?? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????????????? ??? ACT ??? ?????? ??? ?????? ???
?? ??? ACT ??? ??? ?????????? ?? ??? ??????. ??????????, ??????? ?????? ??? ??????
????????? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????? ???, ???????,
???????????, ??? ?? ??????? ?????? ?????? ?????? ??? ?????????? ?? ?????????? ??????????
?? ACT.

80 ??????? ?? ? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ?????????????? ???
????????? - ??????? ?????????????? ??? ?????????? ??? ?????????? ???, ?????????? ??
????????? ??? ?????? ?????????? ??? ?????? ??? 43 ?? ??? ?????????????? ?????????????? ???
??? ??? ?????? 56 ?? ??? ?????????? ?????????? ?????????? ??? ?????????? ?? ?????????? ??????????.

81 ?????, ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?? ??????????
?? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ???
????????????? ???, ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??????????
????????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? «?????????????????»
????????? ??? ?????? ?????, ? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??
????????? ??? ??? ?????? ??? ?????? 43 ?? (??. ??? 37 ??? ?????? ??????????).

82 ??? ?????????????? ?? ?????????????? ??? ?????? ???, ?????? ?????? ?????? ???
????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??????
??? ??????, ?????? ?????????? ??? ? ?????? ??? ?????? ???, ?? ?????????? ??????
??? ACT, ??? ? ACT ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????????? ??????????
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????????????? ?? ??
????????? ?????? ?????? ??? ?????? ??? ?????? 43 ?? (??. ??? 37 ??? ?????? ??????????).
ACT.

83 ??? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ???????, ??
??????? ??? ?????????? ???, ?????? ? ?????????? ?????? ?????? ?????? ?????? ??????
????????? ???, ? ACT ?????????? ??? ?????? ?. ?????? ??? ?????????? ??? ??? ???? ACT, ? ????
????????? ?? ??? ?????? ??? ?????? ?????????? ??????, ?????? ?? ?????????? ??? ??????????
??? ??? ??? ?????? ???, ??? ? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ??????????
????? ?????? ??????.

84 ?????????? ? ?????????? ??? ?? ??? ?????????? ?? ?????????? ACT ?????? ???

????????? ??????? ?????????? ????????????, ??? ?????? ?????? ?? ????????????, ?????? ????.
ACT ??????? ????????, ?? ??? ???? ?????? ?? ??????? ?? ?????????? (???????????????,
?????? Metallgesellschaft ?., ??? 44).

85 ??? ???? ??? ?????????? ??? ?????????? ????????????, ? ?????????? ??? ?????????????? ???
?????? ?????????????? ??? ???? ?????????? ?????? ?????? ?????????? ??????????, ?????? ??? ??????????
?? ??????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ??????????
???????????, ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ACT ??? ??????????
??? ??? ?????? ??? ???????????. ? ??????? ?????? ??? ?????????? ?? ?????????? ?????? ??????
?????????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ???
?????????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ACT. ??? ??????????, ???, ??????
??? ??????? ?????????? ??? ?????? ?????????? ??????, ??? ?????? ?????? ?????????? ?????????? ??????
?????????? ?? ??? ??? ACT, ?????? ? ?????? ??? ?????? ??? ?????? ?????????? ??????? ACT.

86 ??????, ??? ??????? ??? ?????????? ??? ?????? ??? ?????? ?????? ????????????, ?? ??? ???
ACT ??? ? ??????? ??????? ??????? ?? ??????????, ??? ?????????? ?? ??????? ??????????
????? ??????? ???, ?????????? ??? ???? ??? ??????? ?????? ?????????? ?????????? ??? ??????
??? ??? ?????????? ACT, ?????????? ? ?????? ??? ??????????, ??? ??????, ??????
????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???
??? ??????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????? ?????????? ??????????, ? ??? ?????? ?????? ?????????? ?? ?????????? ?????????? ???
ACT, ??? ? ??????? ??????? ACT ?????? ??? ???? ?? ?????? ??? ?? ?????? ??? ?????????? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ???.

87 ??????, ?????????? ??? ???? ?????????? ? ?????????? ??? ?????????? ????????????, ??
??? ?????? ??? ?????????? ??? ????????????, ??? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ??????????, ? ?????? ??? ?????? ?????????? ?????????? ???
?????????? ?????????? ?? ?????????? ?????????? ??? ??? ??? ?????????? ??? ?????????? ???
?????????? ?????????? ??????????, ??? ??? ??? ?????? ?????????? ?????????? ??? ??????????
????????? ??? ?????????? ACT.

88 ????????????, ??? ?????????? ? ?????? ?????????? ?????????? ?? ?? ?????? 65 ?? 68 ??
????????? ???, ? ACT ??? ?????? ??????? ?????????? ??? ?????? ?????? ?????????? ???????
????????? ??? ?????????? ??? ?????? ???????, ??? ??? ?? ?????????? ?????? ??? ??
????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??????. ? ACT ???
????????????? ??? ?????????? ?????????? ?????? ?????? ?????????? ?? ?????????? ??? ?? ??? ??
????????? ??? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??????????
??????, ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ???, ??
????? ??? ?????? ??????? ???, ??? ?????? ??? ?????? ?????? ??????, ? ?????? ?????? ??? ??
?????????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
??????????, ???????, ??? ?????? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ??? ??????
????? (?. ?????????????? ?????? Metallgesellschaft ?., ??? 53).

89 ??????????? ? ?????????? ??? ???? ?????? ?? ??????, ??? ??? ??? ?? ?????? ???
????????? ??? ?????? ??????? ???????, ??? ?????????? ?? ?????????? ACT ??????
????????? ?????????? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ??????
??????????.

90 ??? ?????? ???, ?? ??? ??? ?????? ?????? ??? ?????? ACT ??? ?? ??????
????????? ?? ?????? ??????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???, ???
????????? ??????, ??? ?????????? ?? ?????? ??? ACT ??? ?? ?????????? ?? ??????????
?? ?????????? ?????? ??????????. ???????, ?? ??? ? ?? ??? ?????? ?????????? ?????????? ???

?????????? ?? ACT ?????????? ?? ???? ?????????? ?? ??? ????? ?????????? ?? ???? ?????
????????????? ???, ??? ??? ??? ?????? ??????. ??? ?????? ??? ?????? ?? ??????????
?? ?????????? ???, ??? ??? ?????? ??? ?????? (??., ??? ??? ?????? ???, ???
????????? Metallgesellschaft ?.., ?????? 55 ??? 56).

91 ?????????? ??? ??? ?? ?????????? ?? ??? ?? ?????????? ?????????? ?? ???? ??????????
????????? ?? ?????????? ?????????? ?????????? ?? ??? ?????? ?????? ?? ?????? ??????????
????, ?????? ?????? ???? ?????? ?????????? ??? ?????? ?????? ?? ?????????? ?????????? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ??
????????? ?????? ???, ??????, ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??
????????? ?????? ?? ?????????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??????, ??? ?????? ??
????????? ?????? ?????? ??? ?????????? ???.

92 ??? ???????, ???????, ? ?????????? ?? ??? ?????????? ??? ?????????? ?? ???? ?????????? ???,
???? ??????????????, ? ?? ??? ?????????? ?????????? ???, ?????? ??? ??
????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ?? ?????????? ACT ?????? ?? ?????????? ?????????? ??? ?????? ?????? ??????????
???. ???????????, ?? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ?????? ?????????? ??
???? ?????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???????
??? ??????????.

93 ? ?????????? ?????????? ??? ?????? ?? ?????????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????????,,
???? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ??????, ??? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ACT ???
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ???.

94 ???????, ?? ??? 43 ?? ?????????? ?????? ??? ?????? ?????????? ?????? ?????? ???
????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????? ??? ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ACT ?? ??? ??? ACT ???
????? ???, ???, ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????? ???, ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ?? ??? ?????? ?????? ??? ?????? ?????? ???.

95 ?????? ??? ?????? ?? ?????????? ??? ? ?????? ??? ?????? ?????? ?????????? ??????????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??
???? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ???, ? ?????? ??? ?????? ?? ?????????? ???
?? ?????? ??? ??? ???? ?????? ??? ?????? 56 ?? ??? ?????? ?????? ?????????? ???.

96 ??????????, ??????, ?? ?????????? ??? ?? ?????????? ?????? ?????? ??? ??????????
????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
?? ?????????? ??? ?????? ?????? ???, ? ?????? ??? ?????? ?? ?????????? ??? ??
??? ? ?????? ??? ?????? ?????? ?????? ???.

97 ?????? ?????????? ?????????? ??? ?? ?????????? ?? ?????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??
????? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

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

98 ?????????? ??? ?? ????? ???? ?????????????? ? ?????????? ??? ?????????? ?????????????? ???
????????????? ??? ?????????? ????? ???? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????? ??? ????? ?????????? ????? ???? ?????????? ??? ?????????? ????? ???? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?????????? ?????????? ?????, ?????????? ?? ?????????? ??? ?????????? ???
?? ?????? 56 ?? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ???
??? ?????? ???.

??? ??? ?????? 90/435

99 ??? ??? ?????????????? ??? ?????? ?????, ?? ?????? ??? ?????? ?????????? ??????????????
????????? ??? ????? ?????? ?????? ??? ?????? ?????????? ?????? ?????????? ?????????? ??????
????????? ??? ??? ?????? 4, ?????????? 1, ??? 6 ??? ?????? 90/435.

100 ??????, ?????? ?????????? ??? ?????? 4, ?????????? 1, ??? ?????? ??????, ??? ??
????? ??? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?,
????????? ??? ?? ?????????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ??????,
????? ?? ?????? ?????????? ?????? ?????? ???, ?????????? ?????????? ?????????? ?????????? ???
ACT, ?????? ?? ??????????, ??? ?????? ?????? ?????????? ??? ??? ?????? ?????? ?????????? ??? ???
????????? ???, ??? ?????? ?????? ?????? ??? ?????????? ??? ??? ?????? ??????.

101 ???????, ? ?????????? ????????? ACT ??? ?? ?????????? ?????????? ??????????
????????? ?????????? ???, ? ?????? ?????????? ??? ?????? 6 ??? ?????? 90/435,
????? ?? ?????????? ??? ?? ?????? 7 ??? ?????? ???.

102 ??????, ?????? ?? ??????????, ??????, ???, ?????? ?? ?? ?????? 4, ?????????? 1,
??? ?????? 90/435, ??? ?????? ???, ?????? ??? ?????????? ?? ?????? ??? ??? ??????
????????? ?????? ?????? ??? ?????????????? ?? ?????? ?????? ?????? ?????????? ???,
????? ?? ?????????? ??? ?? ?????? ?????? ?????????? ?? ?????? ?????? ??? ?? ?????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ?????????? ???,
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???, ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???, ?????? ???.

103 ??? ??????????, ?????? ???, ??? ?? ?????? ?????????? ???, ? ?????? ???
????????? ??? ??????????, ?? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ???, ???
????????? ?????????????? ??? ?????????? ?????? ?????? ?????????? ?????????? ?????? ???,
?? ?????? ?? ?? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ???, ?? ?? ??? ???
?????, ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? (????????? ???
17?? ?????????? 1996, C?283/94, C-291/94 ??? C-292/94, Denkavit ?.??., ?????? 1996, ?. I-
5063, ??? 22, ??? ?? 4?? ?????? 2001, C?294/99, ?????? ?????????? 2001, ?????? 2001,
. ?-6797, ??? 25).

104 ????? ?????? ??? ?????????? ??? ??????? ?? ?????? ??? ???? 4, ?????????? 1,
??? ?????? 90/435, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ?????? ?????????????? ??? ?? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?? ?????????? ?????, ? ?????? ??? ?????????? ?????, ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????????? ?????, ?????? ?? ??????????
????? ?? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?? ??? ?? ?????? ???
????? ??? ??????.

105 ??????, ?????????? ??? ? ?? ?????????? ?? ?????????? ??? ?????? ???, ?
????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
??? ?????? ???????, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????????? ??????? ??? ?????? ?????? ???????, ?? ?????????? ??? ?? ??????????
?? ???????????, ?? ??? ??? ??? ??????????, ?????? ?? ??? ??? ?????? ??? ??
????????? ? ?????????? ??? ?????? ?????????? ???.

106 ?????? ?? ??????????, ???????, ???, ?????? ??? ?????? ??? ? ?? ?????????? ??
????????? ??? ?? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? 6 ??? ??????
90/435 ?? ?????????? ?? ?????????? ?????????? ??? ?????? ??? ?? ?????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???.

107 ??????????, ???????, ???, ??? ?????? ??? ?????? ??? ?????, ? ??? «?????????»
????? ???» ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ?? ?????????? ???, ??? ?????? ?????? ??? ?????, ??? ?????????? ???
????, ??? ?????? ? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???,
????????? ??? ??? ?????? ?????????? ??? ?? ?????? ?????? (??., ?????? ???, ???
????????? ??? ?????? ??? ?????? ???, ?????? 26 ??? 27, ??? ??? ?????? ???
25?? ?????????? 2003, C?58/01, Océ Van der Grinten, ?????? 2003, ?. I?9809, ??? 46).

108 ??? ?????? ??? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? 5 ??? ??????
90/435, ?? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? (?????? ??? 8?? ?????? 2000, C?375/98, Epson Europe,
?????? 2000, ?. I?4243, ??? 23- ?????????? ?????? ?????? ???????, ???????
28 ??? 29, ??? ?????? ??? ?????????? ?????? Océ Van der Grinten, ??? 47).

109 ? ??? «????????? ??? ?????» ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 6 ??? ?????? 90/435. ??????, ??????, «????????? ??? ???»,
????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

110 ???, ???, ?????? ? ?????? ??? ?????? ??? ?????? ??? ??????, ??? ?????? ???
????????? ?? ?????? ACT ?????? ?????? ??? ?????? ??? ?????? ???

? ?????? ??. ?????????????? ?????? ?? ACT ??? ?????? ?? ?????????? ??? ???????
????????? ?????????? ?????????? ?????????? ??? ?????, ???????, ? ???? ???
?????????, ??? ? ?????? ??? ?????????? ?????? ?????? ?????? ???.

111 ??? ???????, ? ACT ??? ?????? ?? ?????? ?????????? ?????????? ??????????
????????? ?????? ?? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 6 ??? ?????? 90/435.

112 ???????, ??? ?????? ?????? ?????? ?? ?????? ? ??????? ?????? ?? ?????? 43 ?? ?? 56
?? ?????????? ?????????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ?? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ???
????????? ??????, ???, ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??????, ??? ?????????? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???.

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

113 ?? ?? ?????? ???????, ?? ?????? ?????????? ???, ???' ??????, ?? ?? ?????? 43 ?? ??
56 ?? ???/? ?? ????? 4, ?????????? 1, ??? 6 ??? ?????? 90/435 ?????? ?? ?????????? ???
??? ?????? ??? ?????????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ???.

- ? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ???
????????? ?????????? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ?? ??? ?????? ?????? ?? ?????????? ??? ?????? ?????? ACT?

- ??? ?????????? ??? ?????? ?????? ?? ?????? ?? ?????? ??? ?????? ?????????? ACT,
?? ?? ?????? ?? ?????????? ?? ??? ?????? ?????? ?? ?????? ?????????? ??? ??
????????? ? ?????????? ?????? ??? ?????? ???, ?? ?????? ?????? ?????? ???
????????? ??? ?? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ???.

114 ?? ?? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????????? ??? ???????
????????? ? ?????? ??? ?????????? ?????? ???/? ?????? ?????? ?????????? ??????????
?????????, ??? ?????? ??? ??????????, ?? ?? ?????????? ??? ?????? ???, ??? ACT ??? ?
?? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ???
????????? ???.

115 ???????, ?????????? ? ?????????? ???, ??? ?????? ?? ?????? ?????? ???
????????? ???, ? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ACT ?? ???????
?????????, ??? ?????? ?? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

116 ??? ??? ?????? ??? ?????????? ??? ?????? 76 ??? 78 ??? ?????? ?????????? ???, ???
?? ?????? ?????? ??? ?????????? ???, ?????? ?? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

117 ?????????? ? ?????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? 43 ?? ??
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 56 ??
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

118 ? ??????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ???????????, ??? ??? ???
?????? ??? ?????? ??? ?????? ?????????????? ??? ???????, ??? ?? ?????? ??? ??? ?????? ???
??????, ??????? ??? ?????? ??? ?????? ?????????? ??? ?????? 43 ??, ??? ?? ??? ???
????? 56 ??.

119 ??? ??? ?????????????? ??? ?????? ??? ?????, ? ?? ??? ????? ?????????? ??????????? ???
????? 43 ?? ??? 56 ??, ??? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ?????????? ???/? ?????? ?? ?????? ? ?????? ??????????????
????????? ?????? ?? ?????????? ??? ?????????? ACT ?? ?? ??? ??? ?????? ?????????? ???
????? ??? ??????? ????????. ? ?????????? ??? ?????????? ?????????? ?????????? ??????????
??????????, ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ACT, ?? ??? ??? ??
????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ???/? ??????????
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????????
??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ??????????
????????? ??? ??????????.

120 ?????? ?? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????? ?????????? ???
?????? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ???
????????? ??? -??? ? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????????? ? ?????????? ??????- ?????? ?????????? ??? ?????????? ???
????? ?????? ??? ???????, ?? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????????? ???
ACT ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????? ???
???.

121 ?????? ?? ??????????, ???????, ???, ??? ?????? ??? ACT ??? ??????? ?? ??????????
????? ?? ??????? ?????????? ??? ?????? ?????????? ??? ?????????? ?????????? ???
????????? ???, ?? ?? ?????????? ???, ?? ??? ?????? ???????, ?? ??? 43 ??
?? 56 ?? ?????????? ??? ?????? ???????, ??? ??? ?????? ??? ACT, ??????
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????? (??, ??? 112 ?? ?????? ?????????? ??????????).

122 ??????, ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????????, ??? ??????????????
?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ?????????? ACT ??? ??? ??? ?????? ?????????? ??? ???????, ?? ?????????? ??
????????? ?????????? ACT. ??????, ?? ?????? ?????????? ?????????? ?????? ???
????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???.

123 ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ???????, ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ???
?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???, ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??? ? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???.

124 ??? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?????????? ?????????? ???
????????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ???

???????????? ???? ???? ?????? ?????? ? ?????????? ???? ?????????? ???? ?????????? ????
????????? ?????? ?????????? ?????????? ?????????? ??? ???? ?????????? ????? ???? ?????? ???
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????. ????????????, ???
????????? ? ?????? ?????? ??? ?????? ??????, ?????? ACT ?????? ?? ?????? ???
???? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ??? ?????? ????? ACT ?????????? ??? ??? ?????? ?????? ??? ??????
?????, ????, ???, ??? ?????? ?????? ?????? ?????? ?????? ?????? ? ?????????? ?? ???
????? ?????????? ? ??? ?????? ?????? ??? ??????.

125 ?? ??? ? ??????? ?? ? ?????????????? ?? ???? ?????????? ?? ???? , ?? ???? ???? ??????????
????????? ?????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? , ?? ???? ???? ???? ?????? ?? ????
????? ? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ACT ?? ???? ?????? ?? ????
????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ????
????????? ?? , ?? ???? ?????? , ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?????? ??
????????? ?? ???? ?????? ACT ?? ???? ?????? ?? ???? ?????? .

126 ??????, ??? ?? ???? ?????? ??? ?????????? ?????????????? ?????????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ?????????? ?????????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????????? ?????????????? ???
????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??????????.

127 ????????, ?? ????????, ??? ????????, ??? ????????, ??? ????????, ??? ????????, ??? ????????, ???
??????????, ?????? ????????, ???????????, ???????????, ??? ?????????, ??? ?????????, ???????, ??? ???????????,
???? ????????, ????, ??? ?????? ???????????, ????????, ??? ?????? ????????, ??? ?????? ????????, ??? ???????,
??????????, ???????????, ??? ?????? ???????????, ??? ?????? ????????, ??? ?????? ????????, ?? ??? ?????? ????
???? ???????, ?? ??????????? ACT.

128 ??????? ?? ??????? ?????????? ?? ?????????????? ?? ??????? ?????????? ?? ??????? ?? ??????? ??
????????? ?? ?????????? ?????????? ?????????? ??????????, ?? ?????????? ?? ?????????? ?? ??????????
?? ?? ?????????? ?? ?????? ?? ?????? ?? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????????????? ?? ??????????.

129 ????? ?????? ?? ??????? ?????? ??? ?????? ?????????? ?????????? ??? ???? ?????? ?????? ?????? ??????
??? ?????? ?????????????? ???????, ?????????? ? ?????????? ???, ??? ?????????????? ??
?????? ??????????, ??? ??? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ??
????????? ??? ?? ??? ACT ??? ??? ?????????? ?? ??? ?????????? ??? ?????????? ??
?? ??? ??? ? ?? ?????????? ??? ? ???????, ??? ?? ?????????? ??????? ??
????????? ?? ?? ??? ??? ??? ?????? ?????? ??? ???????, ?????????? ? ??????? ???
????????? ?? ?????? ??? ?????? ?????? ACT ?? ?????? ??? ?????????? ??? ???????,
????? ?? ??? ?????????? ?? ??? ?????? ?????? ??? ??????? ??? ?????????? ??? ???????.

130 ??? ???? ??????????? ???. ?????????? ???????????, ??? ??????? ?????????? ??? ?????? ??
????????????? ?? ??????? ?? ?????????? ????? ?? ?????????? ???????????, ??? ?????? ?? ?????????? ?? ??????????????
??? ??????? ACT ?? ??? ??? ?????????? ???. ?????? ?? ??? ??? ?????????? ????.

131 ???????????????, ??????, ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????????????? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????
????? ??? ?????? ??? ?????? ?????? ??? ? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ??? (?., ?????? ???, ?????????? ??? 16?? ?????? 1998, C-264/96, ICI, ??????
1998, ?. I-4695, ????? 21, ??? ?????????? Marks & Spencer, ????? 31, ??? ???
????????????? Cadbury Schweppes ??? Cadbury Schweppes Overseas, ????? 42).

132 ? ??????????? ???. ??????? ? ??????? ??????? ??????? ?????????? ?????? ??????? ?????????? ???????????????
?? ?????????? ?????????????? ???. ??????, ?? ?????? ???. ?????? ?????? ???. ?????? ??????, ?? ?????? ?????? ???.
????????? ???. ????. ????. ?????? ?????? ???. ?????? ?????? ???. ?????? ?????? ?????? ???. ?????? ?????? ???.
????? ??????, ???. ????. ???. ??????????? ???. ????. ????. ???. ????. ?????? ?????? ???. ????. ????.
????? ???. ??????, ???. ?????? ?????????? ?????????? ???. ????. ????. ?????? ?????? ???. ????. ????.
????? ?????? ??????????, ???. ????. ?????? ?????? ?????????? ???. ????. ??????, ???. ?????? ?????? ???.
????? ?????? ??????????, ???. ????. ????. ?????? ?????? ???. ????. ????. ?????? ?????? ???. ????.
????? ????. (??., ???. ????. ????. ?????? ???. ????. ????. ?????? ?????? ?????? ???. ????. ????.
????? ???. ????. ????. ?????? ?????? ??????????, ???. ????. ?????? ?????? ?????? Marks &
Spencer, ?????? 32 ???. 33).

133 ?????????????????? ?? ?????????????? ??? ?????? ?????? ?????? ??? ? ?????????? ???
????????? ??????????, ?? ??? ??? ?????? ??????? ??? ?????? ?? ?????? ?? ?????????? ???
????????? ACT ?? ?????????? ?????????? ??? ??????? ??? ?????? ?? ?????? ?? ??????
????????? ?????? ?????????? ??? ?????????? ??????????????. ??????, ??? ??? ??????
???? ?????????? ??? ?????? ?????????????? ??? ?????????? ??? ?????????? ??????????
????????? ?????? ??? ?????? ??????, ?????? ?? ?? ??????, ? ?????? ?? ?????????? ??
????????????? ?????? ??????.

134 ????? ?? ?????????????? ?????????? ??? ?? ?????? 43 ?? ?????????? ??????? ?? ???? ??????
????????? ? ?????? ?? ?????????? ??? ?????????? ?????? ?????????? ?? ?????????? ?????? ??????????
????????? ?? ?????????? ACT, ?????? ?? ?????? ?????? ?????????? ?????? ?????????? ?? ?????.
????? ???.

135 ??????, ?? ??????????????? ??? ?????? ?????? ?????? ??????????????? ??? ?????? ?? ?????? ?? ?????? ??
?????? ???????????, ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??
?????? ?????? ACT, ??????????? ??? ??? ?????? 4, ?????????? 1, ??? 6 ??? ?????? 90/435.

136 ???? ?????????????? ?? ??? ??????? 106 ??? 111 ??? ??????? ??????????, ?? ???????
?????? ?? ??????? ?? ??? ????? ?? ??? ????? ?????? ?????????? ?? ??? ?????????? ?? ??? ??????
????????? ?? ??? ?????? 6 ??? ?????? ?????.

137 ????? ?????? ?? ???? 4, ??????????? 1, ??? ?????? 90/435, ?????? ? ?????????? ???, ??
? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ?? ?????????? ??? ?????? ?????? ?????? ???
????????? ?????????? ??? ?????????? ?????????????? ?? ?????? ?????? ?????? ??? ?????? ???
????????? ? ?????????? ??? ?????????? ??? ?? ?????????? ?????? ?? ?????? ?????? ?????? ???
?? ?????? ??? ?????? ?????????? ??? ?????????? ? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??
????? 104 ??? ?????????? ??????????), ?? ?????? ?????? ??? ?????? ?????? ??????????, ???
????????? ???, ?? ?????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???
????????????? ??? ?????????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??? ?????
????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???
????????? ???, ??? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????
????????? ?? ?????????? ??? ?????????????? ???, ??? ??? ?????? ?? ?????????? ??? ?????? ???
????? ??? ???????, ?? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????
????? ??????

138 ????????, ??? ??? ?????? ??????? ?? ??? ???? ? ??????? ??? ?? ??? 43 ?? ??? 56
?? ??? ?????????? ?????????? ??????? ?????? ?????? ?????? ??? ?????? ??????????
????????? ?????????? ??????? ?????? ?????????? ?????????? ?????????? ?????????? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ?? ?????????? ??? ?????????????? ??? ??????????.

139 ?? ??? 43 ?? ?????????? ??????? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? ?????????? ?? ?????????? ?????? ?????? ?????????? ?????? ?? ??? ???
????????? ?????? ?????? ?? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????????? ?????? ?? ??? ?????????? ?? ??? ??? ??????
????????? ??? ?????? ?????? ??? ?????????? ?????? ?? ??? ?????? ?????? ?? ??? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????.

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

140 ?? ?? ?????? ??????? ??, ?? ?????? ?????????? 1, ?? 6 ?? 90/435 ??????????
??? 56 ??, ??? ?? ?? 4, ?????????? 1, ?? 6 ?? 90/435 ??????????
?????? ??????????, ??? ? ?????? ?????? ???, ? ?????, ??? ?????? ??? ??????????
????????? ??? ?????????? ?????????? ?????????? ?? ?????????? ?? ??????????
????????? ?? ?????? ??? ?????????? ?????????? ?????????? ??? ACT ??? ?????????? ???
????????????? ?????????? ?????? ?????, ??????, ?????????? ??? ??????????
????? ?? ?????????????? ??? ?? ??? ?????? ??? ?? ?????????? ?? ?????????? ??? ??????????
??, ???????, ??? ?????????? ?????????? ?????? ??? ?????? ?????????? ???, ??? ????
?? ?????? ?????? ?????? ?? ?????????? ???????, ??? ?????? ???????, ??? ??????
????????? ??? ?????????? ??? ??????????.

141 ??? ?????? ??? ?????????? ??? ?????? 90/435, ? ???????? ??? ?????? ??? ?????????? ???
????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??????. ???????????, ??????, ???
????????????? ?? ?? 137 ??? ?????? ??????, ?? ?????? 4, ?????????? 1, ???
????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?? ?????????? ? ??????????
????????????? ??? ?????? ?????????? ?????????? ?? ?????? ??? ?????????? ??? ??????????
????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ???
????????? ?????????, ? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ?????? ???
????????? ?????????, ?????? ?? ?????????? ??? ? ACT ??? ?????? ?????????? ??? ??????
????? ?? ?????? ??? ?????? 6 ?? ?? ??? ?????? (??, ??? 111 ?? ??????).

142 ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???????????, ??????????
????????? ???, ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ???
????????? ???????, ?????????? ??? ?????? ?????? ??? ?????????? ???, ?????????? ??
????????? ??? ?????? ?????????? ??? ?????? 43 ?? ??? ?????? ?????????? ?????????? ???
??? ??? ?????? 56 ?? ??? ?????? ?????????? ??????????.

143 ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? (??, ??? 37 ???
????????? ??????), ? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?? ??????
??? ?? ?????? ??? ?????? 43 ??.

144 ??? ?????????? ? ?????? ?????????? ??? ?????? 94 ??? ?????????? ???, ?? ??
????????? ???, ?? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ?? ?? ?????????? ???
????????? FID, ?? ?????? ?????? ??? 1?? ?????? 1994 ?? ?????? ?????? ??? ??????.

????? ?????????? ???? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??????????
?? ?????? ?????????? ??? ????????? ACT ??? ?? ?????? ?? ?????????? ?? ?????????? ?? ??? ??????????
????? ?????????.

145 ??????, ??????????? ? ?????????? ??? ? ?????????? ?????????? ??? ??????
????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?? ?????????? ???
????????? FID ????????, ??? ??? ???????, ?????????????????? ?? ?????? ?? ?????? ??? ?????? ??? ??????
????????? ??? ???????, ?????????? ?????????? ??????????.

146 ??????????, ???????, ?? ?????????? ?????????? ??? ????????? ACT, ??? ??? ??????
????? ?????????? ?????????? ???, ??? ? ACT ?????? ?? ?????????? ??? ????? ??????????
????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ? ?????? ?????? ?????? ?????? ??????
????? ?????? ???, ? ?????? ?????????? ??? ?????? ACT ?????? ??? ???
????????? ?????????? ? ??? ?????? ???????, ?????? ?????? ?????? ??? ?? ?????? ??? ??????.
???????, ??????? ?? ?? ??? ?????? ?????????? ?? ????????, ? ?????? ?????? ??? ?????? ACT.
????? ??????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ?????? ? ?????????? ACT.

147 ???????, ??? ?????????????? ?? ?????????????? ??? ??????? ??????, ?? ???????
?????? ?? ?????????? ?? ?????????? ?? ??????? ?????? ?????? ?????????? ??????????
????????? ?????????? ??????????, ?????????, ?? ?????????????? ??? ?? ?????? ?? ????
????????? ?????????? ?? ?????????? ?????????? ?????????? ??????????. ??? ??????
?????????, ???????, ?????? ? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ACT ???
?? ?????????? ??????, ??? ?????? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ??????? ??????, ? ?????? ??? ?????????? ?? ?????????? ?? ??? ?????? ??? ?????? ???
?? ???????, ??? ?? ?????????? ?? ?????????? ACT.

148 ????????, ? ??????? ?? ?????????? ?????????? ?????????? ?? ??????? ??????? ?? ???????
????? ?????????? ?? ??????? ?????????? ?????????? ??????????, ?????????????? ?? FID, ???
????????? ?? ??????? ??, ??? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ???
????????? ?? ?????????? ?? ?????? ?? ?????? ?????????? ???. ?????????? ?????????? ??, ?
?????? ?? ?????? ?? ?????????? ?????????? ?? ?????? ?????? ?? ?????? ?????????? ?? ? ?? ?
????????? ?? ?????? ?????????? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ??????????
????????? ?? ?????? ??????????.

149 ????????, ??? ?????????????? ?? ?????????????? ??? ????????, ??? ??????????????
??? ??????? ??? ??? ?????????? ?? ??????? FID ?? ??????? ?? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?? ?????????????? ?????? ?????????? ??? ??????? ?????????????? ?? ??? ???
????????? ?????? ??????????.

151 ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? FID ??
?????????? ??? ACT ??? ?? ???? ?????? ??????? ??? ?????????? ???, ? ?? ??? ??????????
????????? ?? ??? ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????
????????? ?????????? ??????????, ?????? ? ?????????? ??? ?????? ?? ?????????? ACT ??
????????? ?????????????? ??? ?????????? ?????????? ?????????????? ??? ?? ?????? ??? ?????????? ???,
????????? ??? ?? ?????? ??? ???????, ?????? ?????????? ??? ?? ?????? ??? ?????????? ??? ??????????
???????? ACT. ?? ???, ?????? ??? ?????????????? ??? ?????? ???????, ? ?????? ??? ??????????
????????? ?????????? ?????????? ??? ?????????? ?? ?????????? FID ?????????? ??????????
?? ?????????????? ACT ?????? ?????? ?? ?????????? ?????????? ??????????

152 ??????, ??? ?????????????? ?? ??? ??????? 87 ??? 91 ??? ????????? ???????????, ??????
?? ?????? ??? ?????????? ?? ??????? ?????????? ??? ??? ????? ?????????? ??? ??????
????????????? ???, ??? ??????? ?????????????? ??? ??? ????? ??????????, ??? ????? ?????????? ?
????????? ??????????? ??? ?????????? ??? ??? ????? ?????????? ??? ??? ?????? ??? ?????????? ??
????????? ??????????? ?? ?????????????? ??? ?????????????? ??? ??? ?????????? ??? ??? ?????????? ??????
????????? ?????? ??? ?????????????? ??????, ??? ??? ??? ????? ?????? ??? ?????????? ?????????? ???
????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?? ??????
??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??
????????? ?????????? ?? ??? ??? ?????????.

153 ??????, ??????, ? ?????????? ??? ?????? ?????????? ?????????? ?????????????? ??? ???
????????????? ?????????? ??? ?????????????? ??? ??? ?????????? ??? ??? ?????? ?? ?????????????? ??
??? ?????????? ??? ?????????? , ?? ??? ??? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ???
????????? ?????? ??' ?? ??? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ???,
??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ??????????.

154 ?????? ?????????? ?????????? , ? ?????? ?????? ?? ?????????? ?? ?????????? ?? ??????????
????????? ?????????? ?????????? ??? ?? ?????????? ?? ?????????? ?????????? , ???????, ??????????
????????????? ?????????????? , ?????????? ?? ?????????? ??????????.

155 ?????????? ??? ?? ?????????? ? ?????????? ?? ?????????? ??? ?????????? ?????????? , ?? ??????????
????????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ?? ?????????? FID ??? ??????
?? ?????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ???, ??? ?? ??????????
??? ?? ??? ?????????? , ?????????? ?????????? ?????? ??? ??? ?????????????? , ??? ??
?????? ?????? , ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????????????? ?????? , ??? ??
?????? ?????? ?????? ??? ?????? ??????.

156 ?????????? , ?????? ?????? ??? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ??? ??
????????? ?????? , ??? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????????? , ?
????????????? ??? ??? ?????? ??? ?????? ?????? ?????? ?? ?????????? ?????? ?????? , ?????? ???
?????? ??? ?????????? ?? ???, ??? ?????????? ?????? ?????? ?????? ?????? ?????????? ?????? , ??
?????? ?????? ?????? , ??? ??? ?????????? ??? ACT ??? ?????? ?? ?????????? ? ?????????? ??
????????? ?????? , ?? ?????????? ?? ??? ACT ??? ??? ?????? ?????? ?????? ? ?????????? ??
????????? ??? ??? ?????? ?????? ?????? ?? ??? ??? ?????????? ?????? ?????? –?? ?????? ??????
???? ?? ??? ??? ?? ??? ?????? ?? ?????? ?????? ??? ? ??? ?????? ?????? ?????? ??? ??? ???
????????????? – ???, ??? ?????????? ?????????? ?????????? ?????????? , ?? ?????? ??????
???? ?????????? ??? ?????????? ACT, ??? ??? ?? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????????? ?????? ?????????? ??? ?????? ?????????? ?????????? , ?? ??? ?? ???
?CT, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

157 ?? ?????????? ???, ??? ?????????? ?????? , ? ?????????????? ??? ?????????????? ?? ??????????????
????? ??? ??? ?????????? ?????? ?????? ?? ?????????? ??? ?????????? ?????? ?????? ??????????
????????????? ??? ??? ?????? ?????? ?????? ?? ?????? ??? ?????????? ?????????? ?????????? , ??????????
??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? , ?????????? ??? ?????????? ?? ?????????? ?? ??????????.

158 ??? ?????? ?? ?????? ??? ?????? FID ??? ?????????? ??? ??? ?????? ??????
????????? ???, ? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ??????????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????? , ?????? ?????? ?????? ?? ?????????? ?????? ?????? ??????.

????? ??????? ??? ?????????? ??? ??????? FID, ??? ? ? ?????? ???, ??????, ??? ???
?????????? ?????? ACT ??? ? ? ?????????? ?????????? ?????????? ???, ???????,
????????????? ?? ?????????? ? ACT ??? ? ?????? ?????? ?????????? ??? ??????????
????? ??????? ?? ?????????? ??? ?????? ?? ?????? ?????? ?????? ???.

159 ?????, ? ?????????????????? ??? ?????????????? ??? ?????? ?????????? ?????? ???
????????? ?????? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ??????????
??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? ACT ??? ? ? ??????
????????? ???, ???, ??? ?????, ? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??????????
????????? ??? ?????????? ??????, ??? ?????? ?? ?????? ?????? ?????????? ??? ???
????????? ??? ?????? ?????????????? ???, ?????? ?? ??? ?????? ?????? ?????????? ?????????? ???
?????.

160 ??? ??? ??? ???, ? ?????????? ??? ?????????? ?????????? ??? ?????? ?? ??????????
??? ? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????? ?????????? ??????, ?????????? ??? ? ?????? ???, ??? ??? ?????????? ???
????????? ACT, ?????? ?? ?????????? ?????????? ??? ?????? ?????? ?????????? ???.
?????.

161 ?????????? ??? ?? ?????????? ??? ? ?????????? ??? ? ?????????? ?????????? ??? ??????
????????? ?????????? ??? ?????????? ??? ? ?????? ??? ?????????? FID ??? ??????
????????? ??? ?????????? ????????????, ?????? ? ?????? ??? ?????? ??? ?????? ???
?????????.

162 ???????, ??? ?????????? ?? ?????????????? ??? ?????? ???, ??? ??????????
??? ?????????? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ?? ?? ?????????? ???
????? ??? ?? ?????????? ??? ?????? ??????????.

163 ??? ???, ???, ?? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ?????????? ???
????????? ?????????? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ?????????? (??.. ??? 93 ??? ?????? ?????? ??????????).

164 ??? ?? ?????????? ??? ?????? ??? ? ?????????? ??? ? ?????????? FID, ??? ??
????? ??? ?? ?????? ??? ?? ?????? ?????????? ??? ?????? ???, ?????? ?????? ??? ??
43 ??.

165 ???, ??? ?? ?????? ??????????, ?? ?????? ??? ?????? ??? ?????? ??? ?? ??????
????????? ?????????? ?? ?????? ???, ?? ?????? ??? ??????????, ?? ?? ??????, ???
????? ?????????? ??? ?????? 43 ?? ??? ?????? ?????????? ??????????, ?????? ??? ??? ??? ???
??? ?????????? ??? ?????? 38 ?? ?????? ?????????? ??????????, ?????? ?? ?????? ?? ??????????
??? ?????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??? ???
56 ?? ??? ?????? ?????????? ?????????? ???.

166 ??? ?? ??????????, ???, ??? ? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??????????, ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??
????? FID (??.. ?????? 145 ?? 149 ?? ?????? ??????????), ??? ?? ?????????? ??
????????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??????
????????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

167 ? ?????????? ??? ?????? ??????????, ??? ?? ?????? ?????? ?? ??? ?????????? ???

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

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

174 ?? ?? ?????? ?? ??????? ??, ?? ?????? ?????????? ?? ???' ?????? ??, ??????????????
????? ?? ?? ?? ?????????? ?? ?????? ?????????? ?? ??? ?? ?????? ?????? ?? ?????? ??
????? ?? ?? ?????? ?????????? ?? ?????????? ?? 31 ?????????? 1993, ?? ??????????
?? ?? ?????? ?????? ?? ?????? ?? ?????? ???????, ?? ?????? ?????????? ?? ?????? ??
?????????? ?? ???, ??? ?????????? ?? ?? ?? ?????????? ?? ?????? ?????????? ???????????, ???
?? ?????????? ?? ?????? ?????????????? ?? ?? ?? ?????? 56 ?? ?????????? ?? ??? ??????????
?????????, ??? ?? ??? ?????????? ?? ?? ?????????? ?????????? ?? 31 ??????????
1993 ??? ?? ??? ?????? ?? ?????? 57, ?????????? 1, ??.

175 ??? ?? ?????????? ?? ???????, ?? ?????? 56 ?? ?? ?????? ?? ???????, ??????
??????, ?????? ?????????? ?? ??? ?????? 31 ?????????? 1993 ??????? ??
?????? ? ?? ?????????? ?? ?????? ?? ?? ?????? ?? ?????? ?????????? ?? ?? ? ?? ?????? ??
????? ?? ?????? ?????? ??????????, ??? ?????? ?????????????? ?? ?????????? ??
??????, ??????????, ?????? ?????????????? ?????????? ? ?????? ?????? ??????? ??
?????????.

176 ??? ???????, ?????? ?? ?????????????? ?? ?? ?????????? ?? ??????? ??????????
?? ?? ?????? ??????? ?? ??? ?????? ?????? ?????? ?? ?????? ?? ?????? ?????????? ??
?????? 57, ?????????? 1, ?? ?? ?????????? ?? ??? ?????? ?????????? ?? ?????? ??
?????????, ??? ?????? ?????????????? ?? ?? ?????? ?????????? ?? ???????, ??????????,
????????????? ?????? ?????????? ?? ?????? ?? ?????? ?????????? ?? ??????????.

177 ??? ???, ????????, ??? «????? ??????», ?????????? ??? ?
?????? ??? ?? ??????.

178 ???, ??? ?????????? ??, ? ?????? ??? ?????? ?????? ?? ?????? ?????????? ??
????????? ?? ?????? ?? ??? ?????????? ?? 1 ??? ?????? 88/361/??? ??
?????????, ??? 24?? ?????? 1988, ??? ?? ??? ?? ?????? ?? ??? ?????? 67 ??? ??????
[????? ?? ??? ?????? ?????????? ?? ?? ?????? ?? ??????] (?? L 178, ?. 5), ???
????????????? ?????? ?????????? ?????????? ??????????.

179 ??? ?????? ???????, ?????? ?? ?????? 56 ?? ??? ?????? ?????????????? ??
????????? ?? ??? 1 ??? ?????? 88/361 ??? ??? ?? ? ?????? ?????? ?????? ?????? ??
?? ?????? 69 ??? 70, ?????????? 1, ??? ?????? ??? (?? ?????? 67 ??? 73 ??? ??????
?? ?????????????? ?? ?? ?????? 73 ? ??? 73 ? ??? ?????? ??, ??? ?????? 56 ?? ??? 60
??), ?? ??? ?????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ??, ??? ??? ?? ?? ???
????? ?? ???, ??? ??? ?????? ??? ?????????, ?????????? ???, ?????? ?? ?? ??? ?????? ??
????????? ?????? ??? ?????????????, ??? ?????? ??? ?????? ?? ??? ?????? ?????????? ??
????? ?????????????? ?????????? (??., ?????? ???, ??? ?????????? ?? 16?? ??????
1999, C-222/97, Trummer ??? Mayer, ?????? 1999, ?. I-1661, ??? 21, ??? 23??
????????? 2006, C?513/03, Van Hiltien-van der Heijden, ?????? 2006, ?. I-1957, ????? 39).

180 ? ?????????? ?????????? ?? ?????????? ?? ??? ?????????? ?? ?????????? ??
?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ?? ??? ?????? ??
?????????. ??? ?????? ?????????? ?? ?? ??? ?????????????, ??? ??? ?????? «?????
?????????», ?????????????? ?? ?????????? ?? ?????????? ?????????????? ?? ???

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

181 ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??????????????????
??????????, ? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ?????????? ???
????????????? ?????? ? ?????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ??? ?????????? ? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?? ?????????? ???
??? ?????? ?????????????? ?? ?????????? ?????? ?????? ?????? ?????????? ?????????? ??????.

182 ??? ?????? ?? ?????????? ?? ??? ? ?????????? ?????????? ??????????????, ??? ??????????????????
??? ??? ?? ??? ?????????????? ???????????, ? ?????? ??? ?????????? ? ??? ?????????? ???
????????? ?????????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ???, ???
????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???, ??
????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.

183 ?????????? ??? ?? ?????????? ?? ?????? ??? ?????????? ??? ?????? ?????? ???, ??
?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????? 57, ?????????? 1, ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ???
????? ? ??? ?????? ?????, ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

184 ???????, ??? ?? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ??????????
?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ?? ?????? ??? ??????????
????? ?? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????? ???, ??????
????????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? ?????? ??? (????????????? ?????? ?????? Verkooijen, ??? 35, Lenz, ??? 21, ??
Manninen, ??? 23).

185 ??? ???????, ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ? ??????????????
?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? 57, ?????????? 1, ??, ?????? ??? ?????? ?????????? ?????????? ???
????? ?? ?????????? ? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

186 ?? ??? ??? ??????????, ? ?????????????? ??? ?? ??? ???? 56 ?? ?????????? ???
????????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

187 ???????, ??? ?? ?????? 57, ?????????? 1, ?? ?????????? ??? ??? ?????? ?????? ??????
?? ???????, ?????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????????? ?? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ??? ?? ?????????? ??? ??????
??? ?????????? ?????????? ??? ?????? 56 ??, ??? ??? ?????????? ??? ?? ??
???? ?????????? ?????? ??? 31?? ?????? 1993.

188 ??? ??? ?????????? ??? ?????????? ?????????, ?? ?? ?????????? ?????????? ??? ??
????? 56 ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?????? ?, ?????????? ??? ?? ?? ?????? ??? ??
??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
????? ??? ?? ?????? ?????????? ??? 31 ?????? 1993, ??? ??? ?? ?? ??????

189 ???????, ?????????, ?? ?????????????? ? ?????? ??? «????????????? ??? ??????» ??? 31
?????????? 1993, ??? ?? ?????? ??? ?????? 57, ?????????? 1, ??.

190 ?????????????? ?? ?????????????? ??? ??????? ??????, ? ?????????? ??? ???????
????????? ??? ? ???????, ?????? ?? ?????? ?????????? ??? ??????? ??? 1?? ??????? 1999,
C?302/97, Konle (?????? 1999, ?. I?3099), ?? ??? ?????? ?? ?????????? ?????????? ???
?????? ??? «????????? ?????? ??????????» ?? ??????? ? ????? ?????? ?????????? ?????????? ???
????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ???????, ??? ?????????? ???
????????? ??? ??? ?????????? ??? ?????????? ??? ??????? ?????????? ??? ?????????? ???
?????? ?????????? ? ?????????? ??? (?? 1994, C 241, ?. 21, ??? ?? 1995, L 1, ?. 1) ???
????????? ??? ?????????? ??? ?????????? ?? ?????????? ?????????? ??? ??? ??? ??????????
????????? ??? ?????????? ??????.

191 ??????????????, ??? ??????????, ??????????, ??? ?????? ??????????? ?? ?????????? ??
????????????? ??? ?????????? ??? ?????????? ?? ?????????????? ???, ?????????????????? ??
????????? ???, ?? ?????????? ???????????, ?? ??? ?????? ???, ??? ?????????? ?? ???
?? ?????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ??? ?????????? ?? ?????? ???
?? ?????? ?????????? ? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ?????????? ??
?? ?????? ?????????? «?????????» ??? ?????????????? ?????? (??., ???? ??? ?????? ???,
??? ?????????????? ?????? Konle, ??? 27).

192 ?????????????? ?? ??????????? ?? ??? ?????? ?????, ????, ?????? ?????? ?????? ???
?????????? ?? ???? ?? ???? ?? ???? ?? ???????????, ?? ??? ?????????? ?????? ??? ?????, ???
?? ??????? ?????????????? ?? ?????????????? ? ?????? ?????????? ??????. ??????????????, ??
????? ?? ?????????? ?????? ??' ?????? ?????????? ?? ??? ?????????? ?????? ?????????? ??
????????? ? ?????????? ?????? ?? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ?? ?????????????? ?????? ?????????????? ?????? ??????????.. ????????, ??????????
????????? ?? ?????????? ?????? ??' ??? ? ???????????, ? ?????? ?????? ?? ?????????
???? ???????????, ??? ?????? ?? ?????????? ?? ??? ?????????? ?????? ??? ?????????? ???
????? ? ?????????? ?????? (?? . ?????????????? ?????? Konle, ?????? 52 ??? 53).

193 ????? ??????, ???????, ??? ?????????????? ??? ?? ?????? ?????????? ?????? ?????? ???
????????? FID ??? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????????? ??????????, ??? ?????? ??? ???? ?????? ?????? ??? ?? ??????
?????????, ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ? ?????? ???
????????????? ?????????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ???
????????? ?????????? ?????????? ??????????, ??? ?????? ??? ???? ?????? ?????? ?? ???
????????? ??? ?????????? ?? ?????? ?????? ?????? ??? ?????? ACT ??? ?????????? ???
????????? ?????????? ?????? ?????? ?????? ???.

194 ??????????, ??????, ??? ?????? ??????????? ?? ?????? ?? ? ???? ??? ???????????
????????? ?????? ?? ??????????? ??????????? ?? ?????? ??????????????? ?? FID ?????? ??
????????? ?? ??? ????? ???????????, ??? ??????????? ?? ??????????????? ?? ?????????? ??? ?????? ????.
????????, ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??????????? ?????????? ??? ?????????? ???
????? ??????????? ?? ?????? FID, ? ?????? ??? ?????? ??? ??????????? ??? ?????????? ???
????????? ?????????? ??? ACT ??? ?????? ?? ??????????? ?????? ??? ? ???????,
????? ???, ??? ?? ?????????????? ??? ?????? ?????? ?????????? ?????????????? ??? ??????????
????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?? ???????
????????? ??? ?????? ?????????? ACT ??? ?????? ??? ?????? ?????????? ??? ?????? FID

?????????????, ????? ??? ??????? ??? ?????? ??? ???????????? ??? 31 ?????????? 1993
?????????, ?? ??? ?? ??????? ??? ??? ???????????? ?????????? ?????.

195 ?? ????? ??????????, ?????????? ????, ?? ?????????????? ? ?????????? ??? ??????????
?????????, ?? ??????? FID ??? ?????? ?? ?????????????? ?? ?????????? ??????????????
????? ??? ?????? ??????, ???? ??? ???? ? ?????????? ??? ?????? ??????????????, ?? ??????
????????? ?????? ?????? ?? ?????????? ?? ?????????????? ?? ?????????? ??? ?????????? ??? ??????????????
??????????, ?? ?? ?????????????? ?????????????? ??? ?????? ??????????????. ????????, ???
????????????? ?? ?? ?????? 162 ??? ?????????? ??????????, ?? ?????? ?????????? ?????????? ??? ?
????????? ?????????? ?????????? ?????????? ?? ?????????? ?? ?? ?????????? ?????? ??? ?? ?
????????? ??? ?????? ??????????.

196 ????????, ??? ?????? ??????? ?????? ?? ?????? ? ???????? ??? ?? ?????? 57,
?????????? 1, ?? ?????? ?? ?????????? ?????? ??? ?????? ???, ?? ?? ?????? ?????? ???
??????, ??? ?? 31 ?????????? 1993, ?????????? ? ?????? ?????? ?????????????????? ???
?? ?????? 56 ?? ?????????????? ??? ?????????? ?????????? ??? ?? ??? ?????? ?????? ???,
???? ?? ?????????? ???, ??????? ?????????? ?? ??????, ??????? ?????????? ??? ?? ???
????????? ?? ?? ?? ???????, ?????? ???' ?????? ?????? ?? ?? ?? ??????????????
????????? ? ?????? ?????????? ? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ??????????, ?? ?????? ??? ? ?????????????? ??????????, ?? ??? 56 ??
?? ?????????? ??? ?????????? ??? ?????????? ?????? ?? ??? ?????? ??? ?????? ???,
????? ?????????? ?????????? ??? ?????????? ?????? ?? ?????? ??? ?????? ??? ??????
????????? ?????????? ?????????? ?? ??????, ??????????, ?????? ??????????????????
????????? ? ?????? ?????????? ??? ?????? ??? ??????, ??????, ?? ?????????? ???
????????? ? ?????????? ?? ?????? ??? ??????????????. ??? ??????, ??????, ?? ?????????? ???
????????? ? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ??? ???
????????? ? ??? ?????? ???.

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

197 ?? ?? ????, ?? ??????, ?? ?????? ?? ?? ?????? ??????????????? ???????, ?? ?????? ??????
?? ??????????? ?? ?????, ?? ?????? ??????????? ?????? ???' ?????? ??, ?? ?????????? ??
?????? ?? ?? ?????????? ?? ??????? ?????????? ?? ??????? ??????? ??????? ??
?????????? ??????? ?? ??????? ?????????? ?? ?? ?????????? ???????, ??????? ??
?? ??????? ?? ??????????????? ?? ??????? ???????, ??? ?????????? ?? ???????????????,
?????? ?? ??????????????? ??????? ?????????? ??????????????? ??????????????? ??
?????????? ??????? ?????????? ?????????????? ??????????? ?, ????????, ???????
???????????. ??? ??????? ???????, ?? ?????? ?????????? ??????? ?? ??????? ??
?????????? ?? ??????????? ?? ?????????????? ?????????????? ?????????? Brasserie du Pêcheur ???
Factortame ??? ?? ??????, ??? ??????? ???, ?? ?????? ?????? ?? ?????? ?? ??? ??????
?????? ?? ??????? ?? ??????? ?????? ?????? ??? ??????? ?????????? ???????????.

198 ????? ?????? ??? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
??????, ?? ?????? ?????????? ??? ?? ???? ?????? ??? ?????? ?? ?????? ?????? ??????????
??????? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ??????????, ?????? ??? ?? ??? ??????
??????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
??????? ??? ?????? ??? ?????? ??? ??????????.

?????????????? ??? ?????? ??? ??????????? ??? ?????? ??? ??????????? ??? ??????????? ??? ?????? ???
?????????????? ?? ??? ?????? ??? ?????? ??? ??????????? ??? ??????????? ??? ??????????? ???
????????????? ??????????? ? ?? ?????? ??? ?????? ??? ??????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????????? ?????? ?? ?????? ??? ??????????? ??? ??????????? ??? FID ?????????? ??????????? ??
?????????????? ?? ?????? ??? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ??
?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ??????
?????? ???????????, ???, ?? ??? ???????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??????????? ?????? Brasserie du Pêcheur ??? Factortame.

200 ??????????, ? ?????????? ??? ?????????? ?????????? ?????????????? ??? ?????? ??? ?? ???
????????? ??? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ?????? ??????????????,
????????? ??? ?????????????? ??? ?????????????? ?????????? Brasserie du Pêcheur ???
Factortame. ? ?????? ??????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ?????? ?????? ??? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ??????.

201 ???????????????, ???????, ??? ? ??????? ?????????????? ??? ?????????? ??? ??????? ??
????????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ?????????????? ??? ?????? ???
?????????. ?? ??????????, ?? ?? ??? ?????????????? ?????????? ?? ?????????????? ??
???? ?? ??? ?????? ?????? ?????? ??? (??. ?? ?????????? ??? ?????? ?????????? ?
?????????), ??? ??? ?????? ??? ?????????? ?????????? (??. ?? ?????????????? ?
????? Metallgesellschaft ???., ??? 81).

202 ????? ?????? ??????????, ?? ?????????? ??????????? ?????? ??? ???? ?????? ?????? ???
????????? ??? ?????????? ??? ??????? ??? ?????????? ?????? ?????????? ?????????? ???
????????? ??? ??????????? ??? ?????????? ?????? ?????? ??? ?????????? ?????????? ???, ???
????? ??? ?????? ?????????? ??? ?? ?????????? (??., ?????? ????, ??? ?????? ??? 9??
????????? 1983, 199/82, San Giorgio, ??????? 1983, ?. 3595, ????? 12, ??? ??
????????????? ?????? Metallgesellschaft ??., ????? 84). ??? ??????????, ?? ?????? ???
??????????, ???????, ?? ?????????? ??? ?????? ??? ????? ?????? ??? ?????? ???
????????? ?????? (??????? ??? 14? ?????????? 1997, C-192/95 ??? C-218/95, Comateb
??., ??????? 1997, ?. ?-165, ????? 20, ??? ?????????????? ?????? Metallgesellschaft ??.,
????? 84).

203 ?????????? ??????????? ?????????? ??? ?? ?????????? ??? ?????????????? ?????????????????
????????? ????, ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????????? ??? ?? ?????????? ??? ?????????????? ?????? ?????? ?????? ?????? ??? ??????
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??
????????? ?????? ??? ?? ?????????? ??????, ??? ??? ??????????, ??????, ??? ?? ??????
????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ?????? ??? (????? ??? ??????????) ???, ?????????, ??? ??? ??????????
????????? ?????? ? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?
????????? ?????? ??? (????? ??? ?????????????????) (??., ?????? ????, ?????????? ???
16?? ?????????? 1976, 33/76, Rewe, ?????? ??? 1976, ?. 747, ?????? 5, ??? 45/76, Comet,
????????? ?????????? ??? ???????, ?????? 1976, ?. 765, ?????? 13 ??? 16, ?????? ???
??? ??? ?????????? ??? 15?? ?????????? 1998, C-231/96, Edis, ?????? 1998, ?. ?-4951,
?????? 19 ??? 34, ??? 9?? ?????????? 1999, C?343/96, Dilexport, ?????? 1999, ?. I?579,
????? 25, ??? ??? ?????????? Metallgesellschaft ???., ?????? 85).

204 ???????, ?? ?? ????? 96 ??? ?????????????????? ?????????? Metallgesellschaft ?.?.?, ??
?????????? ??????? ???, ?? ??????? ??????? ? ? ??????? ????? ?????? ?????????? ??????????
?????????? ??????? ????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????????? ??
????? ?????????? ??? ??????? ?????????? ? ??????? ?????? ??? ?? ?????????? ??? ??????????

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

205 ??? ?? ?????????? ??? ?????????? ???, ?? ??? ?????? ?????? ?????????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????????????? ??? ?????, ?? ?????? ?????? ?????????? ??????????
??? ?????? ??? ?????????? ?????? ?????????? ??????, ??? ?????? ??? ?????? ?????? ?????????? ??? ???
????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ??? ?????? 87 ??? 88 ??? ?????????? ?????? ?????? Metallgesellschaft
??., ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ?????? ??????
????? ??? ?????? ?????? ?????? ??????.

206 ?????? ?? ?????? ??? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?? ?????? ??? ACT ??? ??????????, ??? ?????? ??????
??? ??????????, ?? ??????, ??? ?????? ?????? ?????? ?????? ??? ?????? ??????.

207 ??????, ?????????? ??? ?? ?????????? ?? ?????? ?????????? ??? ?????????? ??? ?????? ???,
?? ?????????? ??? ?????? ? ?????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????, ??? ?????? ? ACT,
?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?? ?????? ?????? ?????????? ???
????????? ?? ?????? FID, ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ???, ?? ?????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?? ??? ?? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????.

208 ??? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ?? ?
????????? ??? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??????????, ???
??? ?????? ???, ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????,
????? ??? ?????? ??? ?????? ??? ??????.

209 ?????? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (????????????? ??? ??????)
Brasserie du pêcheur ??? FactorTame, ?????? 51 ??? 66, ?????? ??? ?????? ??? 30??
????????? 2003, C?224/01, Köbler, ?????? 2003, ?. I?10239, ?????? 51 ??? 57).

210 ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????????? ?? ?????? ??? ??????
????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
?????, ???' ????, ?? ?????????? ??? ?????? ??? ?????? (????????????? ???).

????????? Brasserie du Pêcheur ??? Factortame, ????? 58, ??? Köbler, ????? 100), ???????
?? ?? ?????????????????? ??????? ??? ??? ??????????? ?? ??????????? ??? ??? ?????????? ???
??? ?????????? (?????????????? ??????? Brasserie du Pêcheur ??? Factortame, ??????? 55
??? 57, ??????? ??? 26?? ??????? 1996, C?392/93, British Telecommunications, ??????? 1996,
. I?1631, ????? 41, ?????????????? ??????? Denkavit ?.?.?, ????? 49, ??? ??????????????
?????? Konle, ????? 58).

211 ????? ??????? ???. ?????? ?????? ?????? ?????? ?????????? ???? ?????????? ???? ???? ?????????? ???? ???? ?????? ?????? ???. ?????? ???. ?????? 43 ???. ?????? 56 ???. ??????, ?????????? ????. ?????????? ?????? ?????? ?????? ???? ?????? ?????? ?????? (??., ??????????, ??? ?????????? ?????? ?????? Brasserie du Pêcheur ??? Factortame, ??????? 23 ??? 54, ??? ??? ?????? ??? 14?? ?????????? 1995, C?163/94, C?165/94 ??? C?250/94, Sanz de Lera ?.??., ?????? 1995, ?. I?4821, ????? 43).

212 ?????????? ?? ??????? ???????????, ??????? ?? ???????????, ??????, ??? ?? ???????
??? ?????????? ?? ??????? ?????? ?????? ?????? ?????? ???, ??? ?? ?????? ???
?????????? ?? ?? ???????, ??????, ??? ?????? ?????? ??? ??????, ?? ??? ?? ??
?????????? ?? ?? ???????, ??????, ??? ?????? ?????? ??? ??????, ?? ??? ?? ??
?????????? ?? ?? ???????, ??? ?????? ?????? ??? ?????? (?. ?????????????????? ?????????? Brasserie du
pêcheur ??? Factortame, ??? 55, ??? British Telecommunications, ??? 42, ??? ??? ?? ??????
??? 4?? ??? 2000, C?424/97, Haim, ??? 2000, ?. I?5123, ??? 38). ???????, ?? ??
?????? ?????? ?????, ??? ?? ?????? ??? ???????, ??? ???????, ???????, ???????
??????, ??? ?? ???????, ??????? ???????, ??? ???????, ? ??? ???????, ??? ???????
?????? ?????? ?? ?? ?????? ??? ?????? ?????? ??? ??????? ??????? ??????? (?. ???????
??? 23?? ??? 1996, C?5/94, Hedley Lomas, ??? 1996, ?. I-2553, ??? 28, ??? ??
????????????? ?????? Haim, ??? 38).

213 ??? ?? ??????? ?? ?? ?????????? ?????? ??????????, ?? ??????? ?????????????? ?????? ??
????? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?????????? ??? ?? ?????? ?????????? ???
????? ???.. ?????? ??? ?????????? ?????? ?????????????? ?????? ? ?????? ?????? ?????????? ???
????????? ??? ?????????????? ??????, ? ?????????? ? ?????????? ?????????? ???
????????????? ?????????? ??? ?????? ?????????? ??????, ?? ?????????? ? ??????????
????????? ?????? ??????, ?? ??????? ??? ? ?????? ?????? ??? ?????????? ?????? ?????? ???
????????? ??? ?????? ? ?? ?????? ?????? ?????? ?????? ??? ?? ?????????? ?????? ?????? ???
????? ? ?????? (?? . ?????????????? ?????? Brasserie du pêcheur ??? Factortame,
????? 56, ??? Haim, ?????? 42 ??? 43).

214 ??? ????? ???????????, ??? ???????? ??? ?????????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ? ?????????????? ?????????? ? ?????? ?????? ?????????? ?????????? ??? ??????????, ???
???? ?????????? ??? ? ?????? ?????????? ?????????? ?????????? (?????????????)
????? Brasserie du Pêcheur ??? Factortame, ??? 57).

215 ?? ???????????, ?? ?????? ???????????, ??? ?? ??????????? ?? ? ?????????????? ?? ??
?????? ?????? ?????? ??????? ??????? ?? ???? ?????? 43 ?? ????? ???????, ?????? ?? ?????? ??????
?? ??, ?? ???? ?????? ???? ? ?????? ???????, ?? ?????????? ?? ?????????? ?? ?? ??
????????? ?? ??????? ?? ??????? ?? ?????? ?????????? ?????????????? ??????????, ??????
????? ?? ?????? ?? ?????????? ?? ?????? ?????????? ?? ?????????????? ?????????? ?? ?? 28??
????????? 1986 ??? ??????? ??????? ?? ??????. ???????, ??? ?????? ??
????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ???????, ??
????????? ?? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ?????????? ?? ?? ??
????????? ???????, ??? ?? ???????, ?? ?????? ?? ?????? ?????????? ?????????? ?? ?? ??
????????????????? ?????????? Verkoojien, Lenz ??? Manninen.

216 ????????, ????, ??? ?????????????? ??? ?????????? ??? ?????? 90/435, ?? ????????

?????? ???? ?????? ?????? ??? ?? ?????? ?????? ?????????????? ?? ??????????????, ?? ?????? ??
????? ?????????? ?????????? ? ?????????? ?? ?????????? ?? ?????????? ?????????? ? ??
????????? ?????? ?????? ??????????, ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ??????. ????????, ?????? ??
????? ??? ?????????????? ?????? Verkooijen, Lenz ?? Manninen, ?? ?????? ??
????? ?? ??? ??? ?????? ?????? ?????? ?????????? ?????????????? ?????????? ??? ??? ??????
????????????? ?? ?????? ??? ?? ?????? ?????? ??? ??????????.

217 ??? ?? ??????? ??? ?????????? ??? ?? ?????? ?? ?????? ?????????? ?? ?????? ?? ?????????? ??
????????????? ?? ?? ?????? 213 ??? ??????? ?????????? ??????????, ?????? ?? ?? ?????
????????? ?? ??????? ?? ?????????? ?? ?????????????? ?? ??????, ?????? ?? ?????????? ?????????? ?
????????? ?? ?????? ?????.

218 ?????????? ??? ?????? ??????????????, ??????? ??? ?????? ?????????? ?????????? ??????? ???
????????????? ??? ?????????????? ??? ??????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
?????????????, ?????????? ??? ?????? ?????????? ?? ?????????????? ?? ?????????????? ?? ? ?????????????? ???
????????? ??? ?????????? ??? ?????????????? ?????? ?????? ?????? ?????????? ??????, ??? ??
????? ?????? ?? ?????????????? ?? ?????????????? ?? ?????? ?????? ?????? (??., ???? ??? ?????? ????,
????????? ?? ??? ?????????????? ?????? ??? ??????????????, ??? ?????????? ??? 4?? ??????????
1979, 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 ??? 45/79, Dumortier frères ??. ??.
??????????, ??? ?????? ?????? ?????????? ??????????, [1979] ECR 3091, ???? 21).

219 ??? ?????????????? ??? ?????????????? ??????????????, ?? ????, ?????????????? ?????????? ???
??? ?????????? ??????, ?????? ?????????? ?? ?????????????? ??? ?????????????? ??? ?????????????? ???
????????????? ?????, ?? ?????? ?????????????? ?? ?????????????? ??? ?????????? ??? ?????????? ???
????????????? ?????? ??? ??????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????, ?? ?????????? ??? ??
????????????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ???
????????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ???
????? ?????? ??? ?? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ???
????????? (??????? ?? 19?? ?????????? 1991, C?6/90 ?? C?9/90, Francovich ?..,?
?????? 1991, ?. I?5357, ?????? 41 ?? 43, ?????????????? ?????????? Brasserie du
pêcheur ?? Factortame, ??? 67, ??? ??? Köbler, ??? 58).

220 ??????????, ??? ?, ??? ?????, ??? ???????, ??? ?????? ??? ???? ?????? ?????????????? ??????????
?????? ?? ??? ? ? ?????????? ???, ?????????? ?????????? ?????????? ?????????? ??????????, ??????????
???? ?????????? ?????? ??? ????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????????? ??? ?? ?
????????? ??? ?????????????? ??????? ?????????? ??? ?????? ?????? ?????????? ?? ??? ??
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ??
?? ?????????? ???????, ?????????????????? ??? ?????????????? ??? ?????????? ??? ?? ?????????? ??? ??
????????????? ??????? ??????? ??? ?????????? ??????????. ?? ?????????? ??? ??
?????????????, ????, ?? ?????????????? ??? ?? ?????????? ?????????? ?????????????? ?????????? ??? ??
?????????, ??? ??? ????? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????????
????????????? ????? ?? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ? ??????????????. ??? ????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??
????????????? ?? ??? ?????? ?????? ?????????? ??? ?????????? ???????, ?? ?? ??? ?????? ??? ??
????? ?????????? ?? ?????????? ??? ?????????? ?? ?????? ??? ?????????? ?? ?????????? ??? ?? ??
????????????? ??? ?????????? ??? ?????? 51 ??? ?????????????? ?????????? Brasserie
du Pêcheur ??? Factortame, ??? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??? ??????????
?? ?????? ??? ?????? ??? ?????????? ?????????????? ?????? ?????? ??? ?????????? ??? ??????????

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

221 ????? ??? ??' ??????????? ?????, ? ?????????? ??? ?????????? ?????????? ?????? ???
?? ??????????, ?? ?????????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ?????????? ??????
????????? ??? ? ??????? ??? ?????? ???, ?? ?????? ??????? ?? ?????????? ??? ?????????? ???
????????? ???, ????? ?? ? ?? ?????????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ???.

222 ??????????? ?? ??????????? ???, ? ?? ????? ???????????, ??????, ??????? ?? ???????????
?????????????? ? ??????????? ?? ??????? ??????????? ?? ?? ??????????? ??????? ?? ????
?????? ?? ?? 1973 ???, ???????, ??????????? ?? ??????????? ??????????? ??????????? ??
??????????, ??? ?? ??????? ???????, ??? ?? ??????????? ??????? ??????? ??????? ??
?????????? ??????????? ?? ???????????, ???' ???????, ?? ??? ??????????????? ??
?????????.

223 ?? ???? ????. ?????????????? ?? ???? ?????????? ????. ??? ???? ?????. ?? ???? ???? ?????.
?????? ?????. ??????? ??????? ?????????? ?????? ?????? ?????????? ?????? ?? ???? ?????.
????? ???????. ???????, ???????, ???, ?????? ? ?????? ?????? ???????. ???????.
????????? ???. ?? ?????. ??????? ??????? ???. ?? ?????. ?????????? ???. ?? ?????. ???????????.
?? ? ? ? ? 43 ?? ? 56 ??, ????????. ???. ?????? ?????? ?????? ?????? ???????.
?????? ?? ???? ?????.

224 ?????, ???????, ? ?????????? ??? ? ?????????? ??? ?????????? ?????????? ?????????? ???
????? ?? ?????? ??????? ??????? ??? ?????????? ??? ?????????? ?????? ?????, ??? ?? ???????
????? ?????????????? ??? ?????????????? ??????????, ?????????? ??? ?? ?? ?? ??????????????
??????? ??? ?? ?????????? ??? ?? ?????? ?? ?????????? ?? ?????? ??? ?? ?????????? ???
?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ?????????????? ??? ?????? ???.

225 ??? ??? ????????, ??? ?????????? ?????? ?? ?????????????? ??????? ??
????????????? ??? ?????????? ??????????.

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

226 ?????????? ??? ? ??????? ?????????? ????, ?? ???? ???? ?????????? ??? ?????? ????,
??? ?????????? ?????????????? ??? ???? ?????? ?????? ??? ?????????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ????? ??? ????? ??????????
???? ?????????? ?????????????? ??? ???????????, ??? ?????? ??? ??? ??????????, ??? ??????????.

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

?? ?????? 43 ?? ? 56 ?? ??? ?????????????? ?????????????? ?????????? ?????????? ????????,
????????? ??? ?????? ?????????????? ??? ??? ??? ?????? ?????????? ?? ?????????? ??? ????
????????? ??????? ?????????????? ??? ??? ?????? ?????????? ????????, ??? ? ?????? ?????
????????????? ??? ?????????? ??? ??? ?????? ?????????? ?????????? ?????????? ??? ??????????
?????????, ??? ?????? ? ???????? ???????? ?????????? ?????????????? ?? 10 % ??? ??????????????
??????, ??? ??????????, ??? ?????? ??????????, ?????????? ?????????? ??? ??? ??? ??? ??
????????? ?????????? ? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ??? ??

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

?? ?????? 56 ?? ??????????? ??????????? ??????? ??????? ??????? ??????? ???
?????? ??????????????? ?? ???? ?? ????? ??????? ?? ??????????? ?? ???? ?? ??????
?????? ??????? ?? ???? ?? ??????? ???????, ?? ??????????? ??????? ??????? ?? ???? ?? ????
????????? ?? ???? ?? ??????? ??????? ??????? ?? ???? ?? ??????? ??????? ?? ???? ?? ????
?????? ??????? ?? ???? ?? 10 % ?? ??????????? ???????, ????? ?? ???? ?? ???? ?? ????
?????? ?? ???? ?? ????? ?? ??????? ??????? ? ??????? ?? ??????????? ??????? ?? ???? ?? ????
?????????? ???.

2) ?? ?????? 43 ?? ??? 56 ?? ?????????????? ?????????? ??????? ?????? ?????? ?????? ???
?????? ? ??????? ??????? ??? ??????? ?????????? ??? ??????? ?????? ?????? ???????
?????????? ?? ??????? ??? ??? ?????????????? ??? ?????? ??????? ??? ??????? ???
?????????? ??? ??? ??? ?????????????? ? ??????? ???????, ???, ??? ???????????
????????? ??????? ??? ??????? ?????????? ??? ??????? ??????? ???????, ???
?????????? ??????? ??? ??????? ??? ?????????????? ??? ?????????????? ?????? ?????? ???
??? ?????????? ? ??????? ??? ??????? ??? ??????? ?????????????? ???.

3) ?? ?????? 43 ?? ??? 56 ?? ??? ?????????????? ?????????? ??????? ?????? ???????
??? ?????? ?????????????? ?????????? ?????????? ?????? ?????? ??????????
????????? ?????????? ?????????? ??? ???? ?????????????? ??? ?????? ?????? ???
????? ??? ??? ?????????? ?? ??? ?????? ? ?????? ??? ?????? ?? ?????? ?? ??????????
?? ?????????????? ??? ???????.

?? ?????? 43 ?? ??????????? ?????????? ???????? ??????? ? ?????? ?????????? ?????
????????? ??????? ?? ?????????? ????? ?????????? ?????????? ?????? ?? ?????? ??
????????????????? ?????? ???????, ?? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??
????? ??????? ?? ??????? ?? ?????????? ?????? ?????? ? ?? ?????????????? ?
????????????? ??????, ?????????? ?? ?????????? ?????? ?? ?????? ?? ?? ?????????? ??
?? ?? ?????? ??????? ?? ???????, ?????? ?? ?????????? ?????? ?????????? ?? ?????? ??
????????? ?? ?? ??? ?? ??? ?????? ?????? ?????????? ?????????? ?????? ?? ?????????? ??
????????? ?? ?? ??? ?? ??? ?????? ?????? ?????????? ?????????? ?????? ?? ?????? ??
????????????? ??.

4) ?? ?????? 43 ?? ??? 56 ?? ?????????????? ??????? ?????????? ? ?????, ???
?????????? ?? ???? ?????????? ?????????????? ?????? ?????? ?????????? ??? ??????????
????????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????????????? ??? ??????????
????????? ??????????, ??????? ??? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????????????? ??? ?????????? ?????????? ?????????? ???
????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??????????????
????????? ?? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????????? ???
????? ??? ?????? ?????????? ???, ???, ???, ???, ?????, ?????????? ??? ?????????? ???
????????????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ???
??, ???????, ??? ?????????? ?????????? ?????????? ?????? ??? ??? ?????? ?????????? ???,
??? ?????? ?? ?????? ?????? ?????????? ?? ?????????? ?????????, ??? ?????? ?????????? ???,
????? ?????????????? ??? ?????????? ?????????? ?????????? ??????????.

5) ?? ?????? 57, ?????????? 1, ?? ?????? ?? ?????????? ????, ??? ?????? ?????? ??????, ??? ???? 31 ?????????? 1993, ?????????? ? ?????? ?????????? ?????????? ?????? 56 ?? ?????????? ????, ?????? ?????? ?????? ??????, ?????? ?????? ?????????? ??????, ?????? ??????

? ?????????? ?? ??????, ?????? ?????????? ??? ?????? ?????????????? ??? ?? ???
?????????, ????' ?????? ?????? ?? ??? ?????????????? ??? ?????????? ? ????
????????????? ? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??????????????
?? ??????????, ?? ?????? ?????? ??? ?????????? ??? ??????????, ?? ?????? 56 ?? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?? ??? ?????? ??? ?????? ???, ????
????????? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ????
????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ???.
6) ? ?????????? ?????????? ?????????? ??????????, ?????????? ??? ?????????????? ????
??? ??? ?????? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?? ?????????? ????
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??????????
???? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??????????
????????? ????, ?????????????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ????
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ??????
????????? ????, ????, ?? ?????????? ??? ?? ?????? ?????????? ??? ?? ?????? ??????
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C?48/93, Brasserie du Pêcheur ??? Factortame, ????? ?????? ??? ?? ?????????? ??
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