

???????? C-194/06

Staatssecretaris van Financiën

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Orange European Smallcap Fund NV

(?????? ?? Hoge Raad der Nederlanden

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«?????? 56 ?? ?? 58 ?? – ?????????? ?????????????? ??? ?????????? – ?????????????? ??? ??????????????
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??? ?????? ?????????? – ?????????? ??? ?? ??? ????? ?????????????? ??? ??? ?????? ???
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1. ?????????? ?????????? ??? ?????????? – ?????????? – ?????????? ?????????? – ?????????? ?????????? – ?????????? ?????????? – ?????????? – ?????????? – ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ???

(????? 56 ?? ??? 58 ??)

(????? 56 ?? ??? 58 ??)

3. ??????? ?????????? ?? ?????????? – ?????????? – ?????? – ??????????
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(????? 56 § 1 ??)

4. ?????????? ?????????? ??? ?????????? – ?????????? ??? ?????????? ?????????? ???
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(?????? 57 § 1 ??)

1. ?? ?????? 56 ?? ??? 58 ?? ??? ?????????????? ?????????? ??????? ?????? ? ?????, ??
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????????? ??? ?????????? ?????????????? ??? ?????????????? ??? ??????. ???????, ? ?? ???
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??? ??? ?????????? ??? ??????????????, ?????? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????????? ??????????????, ???' ?????, ??? ?? ????? 56 ??.

???????, ??? ??????? ?????????? ??????? ????? ?? ??????? ?????????? ?????????? ??? ??????????????
????????????????? ??? ?????????? ??? ????? ?????????? ??? ?????????? ? ?????????? ??? ????? ??????????????
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????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?? ?? ?????? ?? ?????? ?? ?????? ??????
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?????????, ????, ?????????? ??????????? ?? ??? ?????, ?????????????? ?? ?????????????? ??? ?????????????? ??? ??
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
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??? 58 ??? ??????????? ??? ?????? ?????? ??? ?????????? ??? ?? ??? ???????????,
????? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????
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(?. ??????? 56, 60-65, ??????. 1)

2. ?? ?????? 56 ?? ??? 58 ?? ?????????????? ?????????? ??????? ???? ???? , ???
????????? , ??? ???? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????? ?????????????? ??? ???? ?????? ??? ?? ??? ?????? ?????? , ?????????????? ????
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????? ?????? ?????? , ?????? ? ?????? ??? , ??? ?????? ?? ?????????? ?? ?????? ???
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????????????? ???' ?????? ??? ?? ?????? 56 ??, ??? ?????? ?? ?????? ??? ?????? ?? ??????????
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????????? ??? ?????????? ? ?????? ?????????????????? ??? ?????? ?????? ?????? ?????? ?????? ??????????????,
????? ?????????? ??? ?????????????? ??? ?????? ??????????????????, ??? ?????? ?????? ?????????????? ???
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? ??? ?? ??? ??? ??????????? ??? ?????? ?? ??????? ?? ?????? ??????????? ??????????? ????
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????? ??? ????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
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???? ?? ????? ??, ??????, ??? ?????? ?????? ??????????? ??? ?????? ??? ?? ??? ??????????? ??
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?????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????????? ? ?????? ??????????????? ??
????? ??? ?????? ??? ??, ???????, ? ??????????? ??? ?????????? ?' ??? ?????? ?????? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ??????????? ??? ?????? ??? ?????? ?????? ???
?? ??? ???????, ?????? ? ?????????? ??????????? ??? ?? ??? ?????? ??????? ??? ?????? ??? ??????
????? ?? ?????? ???????, ? ?????? ??????????? ??????????? ??????????????? ???????????????
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????? ??? ?? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????????? ??
?????????? ??? ?????? ??????????? ?? ??????????? ? ??????????? ??? ??????????? ??? ??????????
????????? ??? ? ??? ?????? ??????, ? ??????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????,
????? ?? ?????? ??? ? ?? ?????? ?????? ?????? ??????????? ??????????? ??????????? ?????? ???
????????? ??? ?????? ?????????? ??????????? ??????????? ??????????? ??????????? ???????????, ???
????????? ? ??? ?????? ??????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ? ???
?????????????? ??? ?????? ?????? ??????.

???? ???? ??? ?????? ??????????, ??? ?????? ??????? ?? ??????? ??? ?????????? ??? ?? ???????????
????????? ??? ??????????? ??????????? ??????????? ??????????? ??????????? ??????????? ???
?????????????? ??? ?????? ?????? ?? ?? ?????? ?? ?????? ?????? ?????? ??????????? ???
????????????? ??? ?????? ?????? ?????? ?????? ???????????, ??? ??? ??? ??????????? ???, ???
????????????? ??? ??????????? ??????????? ??????????? ??? ??????????????? ??? ?????? ??? ???
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(??, ??????? 72, 74, 79, 82, 84, 92-97, 108, 113-114, ???????, 2)

3. ? ?????? ??? ??????????? ??? ?????? ?????????? ??????????? ??? ?????? ?? ??????????? ???
?? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
??? ??????? ??? ?????? ??? ?????? ????. ???????????, ?????????? ? ??????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???????????, ??????, ??? ??????
????????, ?????? ??? ??????????? ??? ?????? ??????????? ??????, ?????? ?? ?? ??????????? ???
?????????? ??? ?????? ??????????? ?????? ??????????? ??? ??????????? ??????????? ??? ??? ??
??????????, ?????? ??? ?????? ??????, ??????????? ??????????? ??????????? ??????????????? ???, ???
????? ? ?????????? ??? ?????? ??? ??????????? ??????????? ??????????? ???????????, ?? ?? ???
56, ?????????? 1, ??, ??? ?????? ??????? ??????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ??
????? ??? ???????, ??? ??? ??????????? ??? ?????? ??????, ?? ??? ?????? ??? ?????? ??? ??? ???
????????? ??? ??? ??? ?????????? ??????????? ??? ??????????? ??? ??????????? ??? ??? ??? ???
??? ?????????? ??????????? ??? ??? ??? ??? ?????? ???.

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

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

(???. ??????? 87-90)

4. ??? ?????????????? ?????????? ??? ????? 57, ?????????? 1, ??, ?? ?????????????? ??? ?????????? ?????? ?????? ?????? ?????????? ??????.

(???. ?????? 102, ????????. 3)

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

??? 20?? ????? 2008 (*)

«????? 56 ?? ??? 58 ?? — ???????? ?????????? ??? ?????????? — ?????????? ???
????????? — ?????????? ?????? ?????????? ?? ?????????? ?????????? ??????????
????????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? — ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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????? ??????? C-194/06,

? ? ?????????? ??? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
??? ?????? ?? Hoge Raad der Nederlanden (????? ??????) ?? ?????? ??? 14?? ???????
2006, ? ?????? ?????? ??? ?????? ??? 26 ?????? 2006, ??? ?????? ??? ??????

Staatssecretaris van Financiën

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Orange European Smallcap Fund NV,

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

????????? ??? ??? . ??????, ???????, C. W. A. Timmermans, A. Rosas, K. Lenaerts, L. Bay Larsen, ??????? ???????, R. Silva de Lapuerta, K. Schiemann, P. K?ris, E. Juhász, E. Levits (????????), A. Ó Caoimh, P. Lindh ??? J.-C. Bonichot, ???????,

?????? ??????????: Y. Bot

?????????: J. Swedenborg, ??????? ????????????

?????? ??? ?? ??????? ??????????? ??? ??????? ??? ??' ??????????? ??????????? ???
24?? ??????? 2007,

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

- ? Orange European Smallcap Fund NV, ?????????????? ??? ??? B. J. Kiekebeld, J. van Eijsden ??? D. Smit, belastingadviseurs,
- ? ?????????? ??? ??? ?????, ?????????????? ??? ??? H. G. Sevenster ??? M. de Grave,
- ? ?????????? ??? ?????????? ?????????????, ?????????????? ??? ??? R. Lyal ??? A. Weimar,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ??????? ??? ?????????? ??? ??? ?? ???????????
??? 3?? ??????? 2007,

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

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1 ? ?????? ?????? ?????????? ?????????????? ??????? ??? ??????? ??? ?????? 56 ??
??? 58 ??.

2 ? ?????? ??? ?????????? ??? ?????? ??????? ??????? ??????? ??? Staatssecretaris
van Financiën (????????? ??????????) ??? ?? Orange European Smallcap Fund NV (??
????: OESF), ??? ?????? ?? ??? ????? ?????????????? ??? ??????? ?? ?????????, ???????
?? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??
????????? ?????????? ?????????? ?????????? ?????????? ??? ?????????, ??? ??? ?????????????? ???
????????? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????????? OESF ??? ?? ?????????? ???
1997/1998.

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3 ?????? ?? ?? 28 ??? ????? ?? 1969 ??? ?????????? ??? ??????? (Wet op de
vennootschapsbelasting 1969, Stb. 1969, ??? 469, ??? ????: ?????? ??? ?????????? ??
????????), ?? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??
????????? ?? ?? ?????? ?????????? ?????????? (naamloze vennootschap), ??????????
????????????? ?????????? (besloten vennootschap) ? ?????????? ?????????? (fonds voor gemene
rekening), ?????????????? ??? ??? ?????, ? ?????? ??? ?? ?????? ??? ?? ?????? ??? ??
????????????? ??? ?????????????? ?????????? ??? ??????? ?????????? ??? ???????
?????????????.

4 ??? ?????? ?????????? ?????????? ??? ??????? ??? ???????, ??? ?? ??? ??

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

5 ????? ???. ?????? ??????? ??????????? ??????????? ?????????? ??? ?????????????? ??? ???????
????????????? ??? ???. ?????? ?????, ?????????????? ?????? ??? ?????? ??? ???. ?????????? ???,
?????? ???. ?????? 1, ?????????? 1, ??? ?????? ???. 1965 ????. ??? ?????????? ???
????????? (Wet op de dividendbelasting 1965, Stb. 1965, ??. 621, ???. ???: ????. ??? ???.
????????? ??? ??????????).

6 ???????, ??? ?? ????? 10, ?????????? 2, ??? ?????? ??????, ? ?????????? ??????
??????, ??????? ??????? ?????????????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???????, ?? ??????? ??? ?????????? ??? ?????????? ?????????????????? ?????? ??? ??
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7 ????? ?????? ?? ?????????? ??? ?????????????? ?????? ?????? ??????, ??? ?????? ?????? ?????? ?????? ??
????? ?????? ?????? ?????? ?????????????? ???, ??? ?????????????? ?? ?????? ?????? ??????????, ?
?????????? ?????????? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ?????? ?? ???
????????? ??? ?????????? ??? ??? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????????? ?????? ???
??? ?????????? ?????? ??? ?? ??? ?????? ??????. ???? ??? ?? ??? ?????? ??????????, ??? ??????
??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ??
????????? ??????????, ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?? ??????????, ?????? ? ?????? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??
????????? ?????? ?????? ??????.

8 ?? ?????? 28 ??? ?????? ??? ?????????????? ??? ?????????? ??? ?? ?????? 6 ??? ??????????
????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? (Besluit beleggingsinstellingen),
??? 29?? ?????????? 1970 (Stb. 1970, ?????. 190), ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????????? ??? ?????? ??? (??? ????: ?????????? ??????????), ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
?????????????, ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
?? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????.

9 ????, ?? ?????? 28, ??????????? 1, ??????? ??, ??? ????? ????? ??????????? ???
??????????, ????, ?????? ????, ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ????
??????????????, ??? ?????????????? ??? ??????? ?? ???????????, ?? ?????? ?????????? ????,
«???? ??????? ??????? ??? ?????? ?? ?????????? ??????????? ??????????? ???????????
??????????, ??? ???????????????, ?????? ??? ?????? ????, ?????? ??? ?????? ??? ???????????
????? ?? ??? ?????????????? ?????????? ??????? ??? ???????????, ? ?????? ??? ??????
?? ?????????? ?? ??? ?????? ??? ?????? ???, ?? ?????????? ?????? ???????????, ?? ?????????? ??
?????????? ?? ??? ?????? ???????????, ??????? ??? ?????? ??? ?????? ??? ??????????? ???
?????????? ??? ?????? ?????? [Belastingregeling voor het Koninkrijk] ??? ?????????? ???
?? ??????? ?? ??? ?????? ???????????, ?? ??????? ?????? ? ?????????? ?????????? ???
????????? ? ?????? ??????????????? ??? ?????? ??? ?????».

10 ?? ?????? 6 ??? ?????????? ?????????????? ??????? ?? ????:

«1. ??????, ??? ???? ?????? ?????????????????????? ??? ?????????? ? ?????? ?????? ?? ??? ?????? ?????????????? ?????????? ?? ?????? ?? ?????? 28,

? ?????????? 1, ??????? ??, ??? ????? ??? ?????????? ??? ??????], ?? ?????????? ???
????????? ??? ?????? ?????? ?????????? ?????????? ?????? ?????? ?????? ?????????? ???
????? ?????? ?????? ?? ?????? ?????????? ??? ?????? ?????? ? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? [???][...] ?????? ??? ??
???? ??? ?????? ??? ?????? ?????????? [?? ??? 28, ?????????? 1, ??????? ??, ??? ??????
???? ?????????? ??? ??????] ?? ?????? ?? ?????????? ?? ??? ?????? ?????????? ?? ??
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? [...]

2. ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????
????????? ??? ??????????????, ??? ?? ?????? ?????? ??? ?????????? 1,
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?? ??
?????????, ? ?????????? ?????? ?????????? ?? ??? ?????? ??? ?????? ??? ????:

T = B x (7 Sr) / (10 S – 3 Sr),

????

? T ?????????????? ??? ??????????.

? ? ?????????????? ?? ??? ?????? ??? ?????? 1.

? Sr ?????????????? ?? ?????????? ???, ??? ?? ?????? ?????? ??? ?????????? ??? ?????????? 1, ??
?? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ???
????? ??????, ??? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????, ??? ??
????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??????????, ?? ?????? ???
????? ?????????? ?????????? ??????????, ?????????? ?????? ??? ?????? ??? ???, ???

? S ?????????????? ?? ?????????? ???, ??? ?? ?????? ?????? ??? ?????? ??? ?????????? 1, ??
?? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ???
????? ??? ??????????.

[...]»

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

12 ? ?????????? ?????? ??? ?????? ??? 16 ?????? 1959 ?????? ??? ??????????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????????????? ?? ??
????????? ??? 13? ?????? 1980 ??? ?? 21? ?????? 1991, ??? ?????? ???, ??? ??
????????? ??? 1997/1998, ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ? ??????
????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???

?????. ?????? ??????? ?? ???? ??????? ?? ???? ?????? ??????????? ?? ???? ?????? ??
?????????? ?? 1997/1998 ?????? ?? ???? ??????? ?? ???? ?????? ?? ???? ?????? ?? ???? ???????????
??????????.

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

13 ? OESF ?????? ??????? ?????????? ?????????? ?????????? ?????????? ?????????? (????? ??????), ? ?????? ??? ? ??????? ?????? ??? ?????? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ?? ?????????? ??????????, ??????? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????,
????????? ?? ??????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ????. ? ??????? ????? ?????????? ?????? ?????????????? ?????? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????????? . ??????? ?? ??? ?????? ?????????? ?????????? , ??? ? ?????? ?????? ?????????? ?????? 1997/1998, ?? ?????????? ??? ?????? ?????? ? OESF ?? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? .

14 ?? ??????? ?? OESF ????? ?????? ??? ?????? ??????. ??? ?? ?????????? ??
?????????? ?? 1997/1998, ?? ??????? ?????? ??? ?????? ????? ?????????????? ??? ?? ?????? ?????
????????? ?? ?????? ??? ?????? ??? ?????????????? ?????????????? ??? ?? ?????? ??? ?????? ?? ?????? ???
????????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?? . ?? ?????? ?????????? ?????????? ??
????????? ?? ?????????????? ??? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? (???)
????????? ?? ??????????, ??? ?????????????? ?????????????? ??? ??????????, ??? ??????????
??????????, ??? ?????? ?????? ??? ?????? ??? ?????????????? ??? ?? ?????????? ?????????? ??
????????? ?????????? ??? ?? ?????? ?????????) ??? ?????????? ?????????????? ??? ??
?????. ????, ????, ??? ?????? ??? OESF ?????????????? ??? ??????????
?????????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ???????.

15 ????? ???? ?? ?????????? ?????? 1997/1998, ? OESF ?????? ?????????? ??? ??????????
?????????? ?? ?????????? ????????, ?????????? ?? ??? ?? ????? ?????????????? ?? 5 257
519,15 ?????????? ??????? (NLG). ??? ?????????? ??? ?????????????? ?????? ??? ??????????
??? ?????????????? ??? ???, ?????????? ?? ??? ?? ????? ?????????????? ?? 735 320
NLG, ?? ??? ?????? 132 339 NLG ?????????? ??? 9 905 NLG ?????????? ???.

16 ????? ???? ??????????? ?????? ??? ??????????? ??????, ? OESF ?????? ?? ?????? ???
?????????????? ?????? 28, ??????????? 1, ??????? ??, ??? ????? ????? ??????????? ???
????????, ?? ??????? ?? ???? 6 ??? ?????????? ??????????. ??? ? ???????????,
???? ??? ?????????? ? OESF, ?????????? ?? 518 270 NLG, ?? ??? ??????????
???????? ?? ??????????? ??? 735 320 NLG, ??? ??????????? ??? ?????? ??
????????? ???.

17 ? ??????? ?????????? ??? ?????? ?????? ?? ??? ???? ?? ?????? ???,
????????????????? ?? ??? ????? ?????????? ??? 593 076 NLG, ??? ? ? ? ???? ??? 735
320 NLG ??????? ??? ?? ??? ??? ?????????? (132 339 NLG) ??? ??? ?????????? (9
905 NLG) ??????, ??? ??????? ?? ??? ??? ?????????????? ?? 418 013 NLG. ??????? ???
????????? ?????????? ??? ???????, ? ?????? ??? ??????????????.

18 ??????? ?? ??????? ?????????? ?? ?????? ??? OESF, ?? Gerechtshof te Amsterdam
?????? ?? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????????????????? ?? 622 006
NLG. ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ? ?????????? ?? ?????? ?? ?????? ?? ??????????????
?? ??????? ?? ?? ?????????? ?? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?? ?????????? ?? ??
? ?????? ?? ?????????????? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ??? OESF
?????? ?? ?????????? ?? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?? ?????? ??????????

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

19 ? Staatsscretaris van Financiën ?????? ??????? ??? ?? ?????????? ??? Gerechtshof te Amsterdam ?????? ??? ?????????? ????????????, ?????????? ??? ?? ?????????? ??? ?????? ??? ?????, ????, ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? OESF ?? ?????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

20 ?????????? ??? ??? ??? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? Hoge Raad der Nederlanden ?????????? ??? ?????? ??? ?????????? ??? ??????????:

«1) ??? ?? ??? 56 ??, ?? ???????? ?? ?? ??? 58, ?????????? 1, ??, ??? ?????? ??? ?????????? ??? ??????? ?????? ?????????? ?????????? ?????? ??? ?????, ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? [...]»

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

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

2) ?? ?????????? ?? ?????????? ? ?? ?????? ?????????? ?????????? ??? ?????? 1:

?) ?????????? ??? ?????? “????? ??????” ??? ?? ?????? 57, ?????????? 1, ?? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????;

?) ???, ??? 56 ??, ??? ?????? ?? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? [?] ????, ??? ?????? ??? ?????? ??? —???

?) ?? ?????????? ?????????? ?????????? ??? ?????? 2., ??? ?? ?????? 56 ?? ??? ?????? ??? ??? ? ?????? ??? ??????;

3) ?????????? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

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

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

?) ?? ?????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??
????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?? ???
?????????, ?????????? ? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ??????????;»

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

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

21 ?? ?? ??? ?????? ??? ???????, ?????????? ??, ?? ?????? ?????????? ????, ???' ??????, ??
?? ?????? 56 ?? ?? 58 ?? ?????? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??????
????? ? ???????? ??? ?????? ???, ??? ???????, ??? ?????????, ??? ?????? ?????????? ??????????
????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ??? ??????
????? ?????, ?????????? ? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
????? ?????, ?????????? ??? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??.

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

23 ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ???
?? ??? ?????? ?????????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???.

24 ??????, ? OESF ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????.

25 ??????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

26 ????? ? ?????????? ??????????? ?? ??? ???? ?? ???????????, ??????, ?? ?????????? ???
OESF ??? ??? ?????????? ??? ??????? ?? ?????????? ???, ???????, ??
????????? ???????????, ??? ??? ?????????????? ??? ????? ??? ?????? ?????? ?????
????????????? ?? ??????? ?????????? ??? ????? ??????, ?????? ?? ?????? ?? ?????? ?? ??????????
????????? ??? ?????????? ?????????? ??? ??????????, ??????????????, ???' ????? ?? ???? ??
??????.

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

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

29 ???????, ?????? ?? ????????????, ??, ?????????????? ?????? ??? ???? ?????
????????????? ??? ?????? ?????? ?????????? ?????????? ?????????? ??????????
?????????, ? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????????????? ??? ?????? ?????
????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????????? ?????? ??? ??? ?????????? ???
????????????? ??? ?????? ??? ?? ?????????? ?????, ?????? ?????????? ??? ? ?????? ?????? ??? ?????
????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??
????? 56 ?? ??? 58 ??.

30 ???' ??????, ?????????????? ??? ?? ??? ????? ?????? ?????? ?????? ?????? ??????? ?? ??????????,
????????? ?? ?????????? ??????, ?? ??????? ?? ?????????? ?????? ?????????????? ?? ?????? ?????????????? ???,
??? ??????? ????, ?? ?????????? ?? ?????????? ?????? ??? ?? ?????????? ?????? ?????? ?????????? ???
??? ?????? ?? ?????????? ?????? (??., ??' ?????, ?????????? ?? 12??
????????? 2006, C-374/04, Test Claimants in Class IV of the ACT Group Litigation, ??????
2006, ?. I-11673, ????? 50, ??? C-446/04, Test Claimants in the FII Group Litigation, ??????
2006, ?. I-11753, ????? 47).

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

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

32 ???????, ??????? ?????????? ?????? ?????????? ?????? ?????????? ? ?????????? ?? ?????? ?????
????????? ??? ?????????? ?? ???????, ?????????? ? ?????????? ?? ?????????? ?????? ?????????? ??
??? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????? ?? ?????????? ?? ??????
????????? (????????? ??? 12?? ??? 1998, C-336/96, Gilly, ?????? 1998, ?. I-2793,
?????? 24 ??? 30, ??? 21?? ?????????? 1999, C-307/97, Saint-Gobain ZN, ?????? 1999, ?.
?-6161, ??? 57, ??? 8?? ?????? 2007, C-379/05, Amurta, ??? ??? ??? ?????
????????? ??? ???????, ????? 17). ?????????? ??? ?????? 90/435/???

????????? ??? 23?? ?????? 1990, ??????? ?? ?? ?????? ?????????? ?????????? ?? ?????? ???
????? ??? ??? ?????? ??? ?? ?????????? ?????????? ?????????? ?????????? (EE L
225, ?. 6), ??? ?????????? ??? 23?? ?????? 1990, ??? ??? ?????? ??? ?????? ??????????
?? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? (?? L 225, ?. 10), ??? ???
?????? 2003/48/?? ??? ??????????, ??? 3?? ?????? 2003, ??? ?? ?????????? ??? ???
????? ??? ?????? ?????????? ??? ?????????? (?? L 157, ?. 38), ??? ?????? ??? ???
????????? ??? ?????? ??? ?????? ?????, ??? ??? ?????????? ?????? ?????? ?????, ??? ??????
?? ?????????? ??????, ??? ?????? ????? ?????????? ? ?????????????? ??? ?????? ?????? ???
????????? ?????? ??????.

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

34 ???????, ??? ?????????? ? ?????? ?????????? ??? ?????? ??? ?????? 85 ??? 87 ???
????????? ???, ??? ?? ?????? ? ?????? ? ?????????? ??? ?????????? ?? ?????????? ?????? ???
?? ?????????? ??? ?????? ?????? ?????????? ??? ? OESF. ?????????? ??, ??? ??????, ????, ???
????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ???, ? ??????
????????? ??? ?????? ?????? ?????? ?????, ? ?????? ?????? ?????, ?????? ?? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????, ??????????, ?????????? ??? ?? ?????????? ?????????? ?????????? ??????????
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????.
????????, ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??????.

35 ??? ???????, ?? ??????? ??? ?????? ??? ?????, ?? ?????????? ??, ?? ???? ???
????????? ?????? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ?? ?????????? ??
????????? ??? ?? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ?? ??????????
????????? ?? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????? ??????????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ??????????
????????, ?? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???, ??
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??????.

36 ???????, ?????????? ??? ??? ?????????? ? OESF ??? ? ???????, ? ??????????
????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ???
????????? ??? ?? ??????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??

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

37 ??, ??? ??? ??????? ??????, ?? ?????????? ??? ?? ??????? ??? ?? ??????? ??? ?? ??????? ??
????????? ?????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?? ?????????? ??
????????? ??? ?? ?????????? ?????? ?????? ?????? ?????????? ?????????? ??? ?? ?????????? ??
????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ?????? ?????????? ??? ?? ?????????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????????? ??? ?? ?????????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? (??., ??' ????, ?????? ??? 14?? ?????? 2006, C-513/04, Kerckhaert ???
Morres, ?????? 2006, ?. ?-10967, ????? 20).

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

39 ? ?????? ??? ?? ?????? ?? ?????? ?? ?????? ?? ??????. ??????? ?????? ??? ?? ??????? ??,
???? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??
???? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ??
(????????? ?????? Test Claimants in Class IV of the ACT Group Litigation, ??? 55 ??
????????? ?????? ??????).

40 ???????????, ??? ?????? ?????? ?????? ???????????, ? ?????????? ??? ??????? ??
????????? ??? ?????? ?????? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??
????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??
?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ??? ?????? ?????? ?????? (????????? ?????? Test Claimants in Class IV of
the ACT Group Litigation, ??? 56).

41 ??????, ? ??????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?? ??????? ??
????????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ??????.

42 ??????, ?? ??????? ??? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ??
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

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

43 ?????, ? OESF ?????????? ??? ???? ???? ?????????? ??? ???? ???? ?????????? ??? ???? ???? ??????
????????? ?????? ?????????? ?????????? ?????????? ??? ???? ???? ?????????? ?????? ???
????? ?????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ?? ???? ???? ?????????? ??? ????
????? 28, ?????????? 1, ?????????? ?, ??? ?????? ??? ?????????? ??? ???? ?????? ?, ??
????????? ?? ?? ?????? 6 ??? ?????????? ?????????? , ?????????? ?? ???? ?????? ??? ????
????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ???? ????
OESF, ?? ?????? 56 ?? ??? 58 ?? ?????????? ??? ?????? ?????????? ?????????? ??????????
????????? ??? ?????? ??? ?????????? ?? ???? ?????? ??????????.

44 ? ?????????? ?????????? ?????????? ???, ??? ?? ?????? ??? ???? ??????????
????????? ?????? ?????????? ?????????? ?????????? ?????????? ?? ???? ?????? ?????????? ,
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? , ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ????. ?????????? ???
????????? ?????? ??? ?????????? , ??? ?????? ?????? ?????????? , ?????????? ?? ??
????????? ?????? ?????????? ??? ?????? ?????? ?????? , ? ?????? ??? ?? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ??????????
??? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ?????? ?????? ??????????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????.

45 ??? ??????, ? ?????????? ?????????? ??? ???? ???? ?????????? ??? ???? ???? ??????????
??? ??? ???? ??? ???? ?????????? , ??? ?????????? ??? ???? ???? ???? ??????????
????????????? ??? ???? ?? ?????????? ?????? ?????? ?????????? . ??? ??? ???? ???, ??
????????? ?????????? ?????? ?????????? ?????? ?????? , ? ?????????? ?????? ??? ??????????????
???? ?????????? ??? ?????? ?????? , ?????? ?????? ?????????? ?????? ?????? , ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????.

46 ??????, ??? ??? ?????? ??? 5? ?????? 2005, C-376/03, D. (????? 2005, ?. I-
5821), ?????????? ??? ? ?????????? ??? ?????? ??? ?????????? ?????????? ??????????
????????? ??? ???? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?? ???? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? , ??? ?????? ?????? ?????? ?????? ?????? ?????? . ?????????? ??? ???? ??????????
??? ?????? ?? ?????????? ?????? ?????? ?? ???? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? , ?????? ???
????????? ?????? , ??? ?????? ?????? ?????? ?????? ?????? ?????? ???, ? ?????? ?????? ???
????? , ??? ??? ?? ?????? ?????? ?????? , ?? ?????? ?????? ?????? ?????? ??? ?? ??? ??????
????? ??? ??? ?? ?????? ?????? ?????? ??????.

47 ??? ?????? ??? ???? 42 ??? ?????? ?????? , ?? ?????? ?????? ?????? ??? ???? ???? ????
????????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ? ??????
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

48 ??????, ?????????? ???, ??? ?????? ?????? ??? ???? ?????? 30 ??? 32 ??? ??????

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

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

50 ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ?????? ???, ??
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?? ?????? ? ?????? ?????? ?? ?????? ??? ?????? ???
????????? ?????????? D., ??? 54, ??? Test Claimants in Class IV of the ACT Group
Litigation, ??? 84).

51 ?? ??? ?????????? ???, ?? ?????????? ??? ?????? ???, ??? ???? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ???
????????? ?? ?????????? ??? ?? ?????? ???, ??? ?????????? ??? ?????? ??? ?????????? ???,
????????? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ??? ??? ??? ?????? ??? (??., ??' ???,
????????? D., ??? 59 ?? 63, ??? Test Claimants in Class IV of the ACT
Group Litigation, ??? 88 ??? 93).

52 ?? ??????????, ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
????????????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ???, ? ?????? ??? ?????? 28, ?????????? 1, ?????????? ??, ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

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

54 ??????, ??? ?????? ? ?????? ?????????? ??? ?????? 107 ??? ?????????? ???, ?
????????? ??? ?????????? ??? ?????? 28, ?????????? 1, ?????????? ??, ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? 6 ??? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???, ???
??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???.

55 ???????, ??? ??? ?????? ??? ?????????? ??? ?????? 48 ??? 49 ??? ???????

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

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

57 ??????, ??? ?? ????? 58, ?????????? 1, ??????? ?, ??, «[?] ? ?????????? ??? ??????
56 ??? ?????? ?? ?????????? ??? ?????? ?????? [...] ?? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ?? ?????? ?????????? ?????? ?????? ?????? ?????????????? ??? ???
????????? ??? ?????? ?????? ?????? ?????? [...] ??? ??? ?????? ?????? ?????? ?????????????? ???
????????? ???».

58 ?????????? ?????? ??? ? ?????????????? ??? ?????? 58, ?????????? 1, ??????? ?, ??
????????? ?????????????? ??? ?? ?????? 58, ?????????? 3, ??, ??? ?????????? ??? ?? ??????
????????? ??? ?????? ?????? ?????? ?????? 1 ??? ?????? ??? «??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? 56 [??]» (??.
????? ??? 7?? ?????????? 2004, C-319/02, Manninen, ?????? 2004, ?. I-7477, ?????? 28).

59 ???????, ? ?????????? ?????????????? ? ?????? ?????????? ?????? ??? ?????? 58,
????????? 1, ??????? ?, ?? ?????? ?? ?????????? ??? ??? ?????????? ?????? ?????????? ???
????????? ? ?????????? 3 ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ?????????? ???,
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ?? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ???????, ?????? ? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? (??., ??' ???, ?????? ??? 6?? ?????? 2000, C-35/98, Verkooijen, ??????
2000, ?. I-4071, ??? 43, ??? Manninen, ?????????? ???, ??? 29, ??? ??? 8??
????????? 2005, C-512/03, Blanckaert, ?????? 2005, ?. I-7685, ?????? 42).

60 ??? ?????? ? ?????????? ??? ??? ?????, ?????????? ??? ?????????????? , ? ??????
????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?? ?????? ?????????? ???
????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

61 ??? ?? ?????? ??? ?????? ?????? ??????????, ? ?????????? ??? ?????????? ??????????
????????? ?????????? ??????????, ?????? ?????????? ?????? ?????? ?????????? ??? ??
????? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???

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

62 ????????, ?? ??? ??????????? ? ?????????????? ??????? ?? ??? ?????????? ???
???? ????????, ?? ?????? ??????????? ?? ?????? ? ??????? ????? ??????????????
????????? ??? ??????????? ??????????? ?????????? ?????????? ?????????? ??????????
????????? ??? ?????????? ?????? ?????? ??' ?,?? ??? ????? ??????????, ??????
????????? ??? ??????????? ?????? ??? ?????? ?????? ??? ?? ?????? ?? ?????????? ??? ???
????? ??? ?????? ??????? ?????? ?????????? ??????

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

64 ??????????, ??? ?????????? ??????????? ?????? ? ?????????? ????? ?????? ???, ?? ??? ??????,
????????????? ?? ?????????? ????? ?? ??????? ? ?????????? ?????????????? ??? ??????
????????????? ?? ????? ?? ?????????? ????? ?????????????????? ??? ????? ?? ??????????
????????????? ??????????, ??? ?????? ?????? ?????? ?????????? ?? ?????????? ?????? ??????????????
?????? ?????????????? ??? ?? ?????????? ?????????????? ?????? ??? ?????????????????? ???
????? ??? ?? ?????????? ??? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ???
?????????, ??? ?????? ?????? ?????????, ?? ?????????? ??? ?????? ?????? ?????? ?????? ??
????????????? ??? ?? ??? ????? ?????????????? ?? ??? ?????? ?????????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????, ?? ?????? 56 ?? ??? 58 ?? ??? ?????????????? ??? ??????
????? ??? ?? ?????????? ??? ?? ??? ?????? ?????????, ??? ?????? ??? ?????? ?? ?????????? ???
????????????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ?????????? ??????????
????????????? ?????? ?????? ?????, ??? ?? ?????? ??? ?? ?????? ?????????? ?????????? ???
????????????? ?????? ?????? ?????? ?????.

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

66 ?? ?? ?????? ?? ????????, ????????, ??, ?? ?????? ??????????? ??????, ???' ??????, ??
?? ?????? 56 ?? ?? 58 ?? ?????? ?? ?????? ?? ?????????????? ?????????? ?????? ??????
????? ? ????????, ?? ?????? ?? ?????? ?? ??????, ?? ???????????, ?? ?????? ?? ??????????? ??????????
?????????? ??????????? ???????????, ??????????? ? ?????? ?????? ?? ?? ?????? ?????? ??
????? ?? ??????????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????? ??
?????????? ?????? ??????????? ???????, ?????????? ?? ?????? ?? ?????? ??

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

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

68 ????? ?????????? ??? ?? ??????? ????? ???????????, ?????? ??? ?????? ??? OESF
????????????????? ?????? ??? ?????? ??????? ??? ?????????? ? ?????? ?????????????? ??????
????? ?????? ?????? ??? ?????? ?????? ?????? ??????.

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

70 ?????????????? ? ??????????? ???, ??? ?????? ??? ?????????????? ??? ?????? ???
????????????? ??? ?????????? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ???,
????????????? ?? ??????? ?????? ?? ?????????????? ?????????????? ??? ??????????????
????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??????????????, ? ?????????????? ??????????
????????? ?????????????? ?????????????? ?????? ??? ?????????? ?????????????? ??????????????
????????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ?????????????? ? ?????? ??????????????
????? ??? ?????? ??? ?????????????, ??? ? OESF, ??? ?????? ?????? ??? ??????
????????? ? ?????? ?????????????? ?????? ??? ?????? ?????????? ??????. ??? ?????? ?????? ??????????, ? ??
????? ?????????????? ??????????????, ???????? ??? ?????? 6, ?????????????? 1, ??? ??????????
?????????????, ??? ?????? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ?? ?????????? ??
?????????????, ??? ?????? ?? ?????? ?????? ??????????????, ?? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??????????
????? ??? ??????? ?????? ??????. ??? ?????? ?????? ???????????, ?????????? ?? ?? ?????? 6,
?????????? 2, ??? ?????????? ???????????, ?? ??? ?????? ?????????? ???' ?????????? ??? ??
?????????? ??? ??????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???????????.

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

72 ????? ?????????????? ? ??????? ?????????????? ??? ?????? 118 ??? ?????????? ???, ?
?????? ??? ?????????????? ??? ?????? ??? ?????????? ???' ?????????? ???? ?? ??????????
??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ? ?????? ?????????????? ??
????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ???, ???? ???? ?? ??????????
?? ?????? ??? ?????????? ?????? ??? ?????????? ?????.

73 ?????????, ????, ?????? ?????????? ?????? ??? ?????? ?????? ???, ????
????????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ??
????????? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ??????
??? ?????? ??? ?????? ?????? ??????????????, ???? ?? ?????? ??? ?????? ?????? ?????? ??
????????? ??? ?????? ?????? ??? ?????? ?????? ? ?????? ?????????????? ?? ????
????? ????, ???? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????? ?????.

74 ??????, ? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????????? ??
?????????, ?????????????? ???' ?????? ???? ?? ?????? 56 ??, ???? ?? ?????? ??? ?????? ??
????????? ?????? ???? ?? ?????? ??? ?????????? ?????????? ?????????? ??????????
????????????? ?????????? ?????????? ?????????? ?????? ?????? ?????? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ?????????????? ? ?????????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ?????????? ???? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??
????????? ?????? ?????.

75 ? ?????????? ??? ?????? ?????? ?????????? ???, ???? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ?? ?????????? ?? ?????? ?????????? ??????????
????????? ?????????? ??????????, ?? ?????? 28, ?????????? 1, ?????????? ??, ??? ??????
????? ?????????? ??? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?? ?????????? ???
????? ??? ?????????? ?????? ?????? ?????????? ???.

76 ????? ??? ?????????? ???, ???? ?????? ?? ?????????? ?????????? ??? ??????????????
??? ?????????? ???? ???? ???? ???? ?????? ??? ?????????? ???? ?????????? ?????????? ?,
????????? ???? ?????? ???? ????, ? ?????? ?????? ???? ?????? ???? ?????????? ????
????????? ???? ?????? ?????? ???? ?????? ??????, ?????? ??? ?????? ?????? ???? ?????? ????
????????? ???? ?????? ?????? ???? ?????? ??????, ?????? ?? ?????? ???? ?????? ???? ?????? ????
????????? ???? ?????? ?????? ???? ?????? ?????? ???? ?????? ???? ?????? ???? ?????? ????
????????? ???? ???? ?????? ?????? ???.

77 ?????????, ? ???????, ?? ???? ?? ???? ???? ?? ?????????????? ??? ??????????
?? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ???? ?? ?? ??????
??? ???????, ???? ???? ?? ?????????? ?????? ?????????? ?????? ?????? ?????????? ? ???? ??????
????? ???? ???? ???? ???, ?????????? ???? ?? ?????? 56 ??, ?? ?????????? ?? ?? ????
58, ?????????? 1, ??????? ??, ??, ???? ?? ?????? ???? ?????????? ?????? ?????? ???? ??????
??? ?????? ???? ?? ?????????? ?????? ???? ?????????? ?????? ???? ?????? ???? ??????

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

79 ??? ??????, ??? ?????? ???? ?????????? ?? ?????? ?????????? ??? ?????? 121 ???
????????? ???, ??? ?? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ?? ??????????
????? ?????????? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????????
????????? ?????? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????????? ???
????????? ?????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??
????? ??? ?????????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ???,
????? ?????????? ? ????? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ????
????? ?????? ???, ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ???
????? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????? ??
????? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?? ?????? ?????? ?????? (??., ??'
?????, ?????? ??? 14?? ?????????? 2006, C-170/05, Denkavit Internationaal ??? Denkavit
France, ?????? 2006, ?. I-11949, ????? 37 ??? ?????????? ?????? ???).

80 ??????, ? ?????????? ??? ?????? ?????? ?????????? ???, ??? ?? ?????? ??? ?
????????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ?????????? ??? ?????? ??????????
????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ?? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
????? ?????? ?? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

81 ??? ??? ?????????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ???
????? ?????????? ??? ??? ?????? ??? ?? ?????? ?????????? ?????? ?????? ?????? ??? ??? ??
????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ???, ?? 15 %. ?? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ???.

82 ??????, ?????? ? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?? ??????????
????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??
??? ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

? ??????????? ?? ?? ???? 72 ?? ???? ?????? ??????????, ? ?????? ??? ?????? ?????? ???????????
????? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??????????
????? ??? ?? ?????????? ?? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ??????.

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

84 ??????, ??? ?????? ??????????, ? ?????? ??? ?????????? ?????? ??? ?????? ???
????????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ??
????????? ??? ?????? ???' ?????? ?????????? ?? ?????????? ?????? (??., ??????
?????, ?????????????? ?????? Manninen, ??? 49 ??? ?????????? ??????????).

85 ????????, ?? ??? 56 ?? ??? 58 ?? ?????????? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ? ???, ??? ???????, ??? ?????????, ??? ?????? ?????????? ??????????
????????? ?????????? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ?? ???
????? ????, ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????? ????, ?????? ??? ?????? ?????????? ???, ?? ??? ?????? ?? ?????? ??? ?????? ??? ??
????? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ??????, ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?? ??? ?????? ??????.

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

87 ??????, ??? ?????????? ?? ?????????? ?? ?? ?????? 31 ??? ?????????? ??? 18??
????????? 2007, C-101/05, A (?? ??? ??? ?????? ?????? ?????????? ??? ??????), ??????????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????,
??? ?????? ??????, ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ?? ????????, ??? ?????? ??? ?????? ??????, ?????????? ?????? ?????? ?????? ?????? ??????
??????, ??????????, ?????? ?, ?????????? ???, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????????? ?????? ?????? ?????? ?? ?? ?????? 56, ?????????? 1, ??, ???
????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
??? ?????????? ??? ?????? ???, ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ???
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???.

88 ?? ?????????? ?????? ?????? ??? ??? ?????????? ?????????? ?? ?????????? ???, ??
? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

?????? ?????????? ??? ?????????? ?????? ??? ?????? ??????, ?????? ?? ?????????? ??
????????? ?????????????? ??? ?????? ?????????? ?? ?????? ?????? ?????????? ?? ??????
??? ?????? ??? (?. ?????????????? ?????? A, ????? 38).

89 ??????, ?? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??????????
??? ?? ??? ??? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ??????????????????
??? ?????????? ??? ?????????? (?. ?????????? ?????? A, ????? 36). ???, ?????,
??? ?????? ??? ?????????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ?????????? ??????, ??? ?? ??? ?????? ?????????? ?????????? ?????????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??????, ??? ?????? ? ??????
77/799/??? ??? ??????????, ??? 19?? ?????????? 1977, ??? ?? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (?? ????. ??? 09/001, ?. 86),
? ??????????, ??? ?????? ???, ??? ?????????? ?????? ?????????? ??????????
????????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? ??? ?????? ??? ?????? ?????? (?. ?????????????? ?????? Test Claimants in the
FII Group Litigation, ??? 170, ??? ?, ??? 37).

90 ??? ??????????, ??????, ??? ?????? ?????? ?? ?????? ?? ??? ?????? ?? ?????????? ??? ???
????????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????????????? ??? ??????
??? ?? ?? ?????????? ?? ?????????????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???
????? ?????? (????????????? ?????? Test Claimants in the FII Group Litigation, ???
171, ??? ?, ??? 37).

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

92 ??????, ??????????, ??????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
??? ?? ??? ?????????? ?? ?????????? ?? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?
????????? ??? ?????????? ?' ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?? ??? ?????? ?????? ??? ?
????????? ?????? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????. ???????, ?? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ??????
????????????? ?????????????? ?????????? ???.

93 ? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?? ?????????? ???
??? ?????? ?? ?????????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????
????????? ?????? ?? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ??????
??? ?????? ?????? ?? ?????????? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????
????????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???

94 ?????????????? ?????? ??? ? ?????? ??? ?????????????? ???? ??? ?????????? ???
????????? ???? ?????????? ?????????? ?????????? ?????????? ?????????? ???? ????
????????? ???? ?????? ??? ?????????? ?????? ??? ?????? ?????? ???? ?????? ????
????????? ?? ?????? ??? ?????????? ?????? ??? ?????? ???? ?????? ?? ?????????? ????
????????? ???? ?????????? ??????.

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

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

97 ??? ?????? ???? ???????, ???? ?????? ???????, ?????????? ??, ?????? ?? ?????? ? ??????????
??? ?? ?????? 56 ?? ??? 58 ?? ?????????? ?????????? ?????? ?????? ???? ?????? ?????? ??????
????? ???? ? ?????? , ??? ???????, ???? ?????????? , ???? ???? ?????????? ?????????? ??????????
????????? ?????????? ???? ?????? ?????? ?????????? ?????? ???? ?????? ???? ?? ?????? ??????
????? , ?????????????? ? ?????? ?????? ???? ?? ?????? ?????? ?????? ? ?????? ???? ?????????????? ????
????? ???? ?????? ???? ???? ?????????? ???? ?????? ?????????? ?????? ?????? ?????????? ??????
????? ?????? ???? ?????????? ????, ?? ??? ?????? ?? ?????? ???? ?????? ???? ?? ?????? ?????????? ????
????? ?????? ???? ?????????? ???? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
? ?????? ?????? ?????? , ?????? ? ?????? ???? ?????? ?????? ?????????? ?????? ?????? ?????? ??????
????? ??????.

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

98 ?? ?? ?????? ???????, ?????????? ??, ?? ?????? ?????????? ?????? ?? ? ?????? «??????
?????????» ???? ?? ?????? 57, ?????????? 1, ?? ?????? ???? ?????? ?????? ?????? ????
????????? ? ?????? ???? ?????? ?? ?????????? ?????????? ?????????? ?????????? ????
????????? ? ?????? ?????? ???? ?????? ?????? ??????.

99 ??? ?? ?????? 57, ?????????? 1, ??, ?? ?????? 56 ?? ?? ?????? ???? ???????, ??????
????? ?????? , ??? ?????????? ???? ?????? ???? 31 ?????????? 1993, ?????? ???? ??????
? ??? ?????????? ?????? , ?????? ?? ??? ?????? ?????????? ?????? ???? ?????? ?????? ????
??? ?????? ?????? ?????????? , ???? ?????? ?????????? ?????? ?????? ???? ?????? ????
????????? , ?????? ?????????? ?????? ?????? ???? ?????? ?????? ???? ?????? ???? ??????????.

100 ?????????? ???? ?????? ???? ?????????? ?????? ?????? ???? ?????? ???? ???? «??????
?????????» ???? ?? ?????? 56, ?????????? 1, ??, ?? ?????????? ???? ?????? ??????
????????? ???? ?????????? ???? ??? ?????? ?????? ???? ?????? ???? ?????? ???? ?????? ????
????? 88/361/??? ??? ?????????? , ??? 24? ?????? 1988, ??? ?? ???? ?? ?????? ????
????? 67 ??? ?????? (????? ?????????? ???? ?? ?????? 56, ?????????? 1, ?? ?????? , ????
????? , ?? ?????? ?????????? , ?????? , ???? ?????? ???? ?? ???? ?? ?????? ?????????? ????
??? ??? ?????? ?????????? , ?????? ?????? ???? ?? ?????? ???? ?? ?????? ?????? ????

?????????? ???? ? ?????? ?????? ?????? ??? ?? ?????? ?????????????? ??? ?????????????? ???? ?????????????? ????
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????????????? ???
??? ?????? ?????????????? ?? ?????????? ???, ??? ?????? ?????????????? ?????????????? (??.,
??' ????, ??????? Test Claimants in the FII Group Litigation, ??????????????, ??????? 179
??? 181, ??? 23? ?????????? 2007, C-112/05, ?????????? ??? ??????????, ??? ??? ??? ??? ?????
????????????? ??? ???????, ????? 18, ??? ?, ???????????????, ????? 46).

101 ????? ?????? ?? ??????????? ?? ???? ? ??????????? ??????????????, ????. ??????????????????
 ??? ?? ???? ??????????????? ???????????, ? ?????? ??? ??????????? ? ?? ??????????????
 ??????? ??????????? ?????? ??????????? ??? ???? ??????? ?????????? ??? ???????, ???
 ????? ??????? ??? ??????? ?????????? ??? ?????????? ?????? ?????? ???????, ??
 ?????????? ?? ??????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ???
 (?????????????? ??????? ??????? ???????, ????? 18 ??? ??????????????
 ????????).

102 ???????, ??? ??????? ???????, ?????????? ??, ?????? ?? ?????? ? ??????? ???????
?????????? ??????? ?? ?????? 57, ?????????? 1, ??, ?? ?????????? ????? ???????
????????? ?? ??????? ??????? ??????????, ?????? ?????????? ????? ?????? ?????
????????? ?? ??????? ?????????? ?????? ? ?????? ?????? ?????? ?? ?????? ??????????
?? ?????????? ? ?? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ??????
?? ?????????? ?? ?? ?????????? ?????????? ?? ?????? ?????? ?????? ??, ??? ??????
????????? ??????????.

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

103 ?? ??????? ??????????? ?????? ???' ??????, ?? ?? ??????? ???????, ????????, ??, ?? ??
?????? 56 ?? ????, ?? ?? ????? ??????????? ????? ?????? ??? ?????????? ?????????? ????? ? ???
?????? ?????? ??? ?????????? ?????????? ????? ?????????????????? ?????? ???
????????????? ?????? ?????????? ??? ?? ?? ??????? ???????, ????????, ??, ?? ?? ??????? ??? ??
?????? ?????? ?????????? ??? ?????????????? ? ?????? ?????????????? ??? ?????? ??? ??????????
????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????????????? ???
????????? ??? ?? ? ?????? ?????? ??? ?? ??????? ?????? ??? ?????? ??? ?????????????? ???
???? ?? ?? ?????????? ??? ?????????? ??? ?????? ???, ???' ????????, ??? ??
????????? ??? ?????????? ??? ?????????? ????? ??????? ?????? ??? ?????????? ??? ?? ?????
????????????? ??? ?????? ??? ?????????? ?????, ??????? ?????????? ??? ?????? ??? ??????
????????????? ??? ??????????

105 ???????, ??? ?? ?????? 79 ??? 96 ??? ??????? ?????????? ?????????? ???, ??? ??
????? ??? ?? ??????? ??? ??? ????? ?????? ?????? ?????????? ?? ?????????? ?????? ??????????????????
????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????? ?????????? ?????? ??????????
????????? ??? ?? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ???
??? ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ??
????????? ?? ?????????? ?????? ?????? ?????? ??????, ??? ?????? ?????? ?????? ?????? ????
????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??????, ??????? ?? ?????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??????
????? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????? ?????? ???
????? ??? ?????????? ?????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ???.

106 ????????, ??? ?????????????? ?? ??? ?????? 70 ??? 96 ??? ????????, ??????????, ?

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

107 ?????????????? ? ?????????????? ??? ? ?????????? ?????? ?????????????? ??? ???? 56 ?? ??? 58
??, ?????????????? ??? ?? ?? ?????????????? ?????????????????? ?????? ??? ?????? ?????????? ?????? ?
????????????? ?????????????? ?????? ?????? ?????? ?????? ?????? ? ?????? ?????? ??????, ??? ??
????? ???, ?? ?????????? ??? ??????????????, ?????????? ?????? ?????????????? ?????? ???
????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????????????? ?????? ??? ???
????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????
????? ?????? ?????? ?????? ? ?????? ?????? ??????, ??? ??? ?? ??????????????
????????????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????????????? ?? ??????????
?? ?????????????? ?? ?? ??? ?????? ??????????.

108 ???????, ??? ??????? ???????, ??????? ?? ??? ??, ?????? ?? ?????? ? ??????? ?? ??????? ??
?? ????? 56 ?? ??? 58 ?? ??????????? ?????????? ??????? ?????? ?????? ?? ??????? ?? ??????? ??
????? ??? ? ?????, ??? ??????????, ??? ??? ?????????? ?????????? ?????????? ??????????
?????????? ?????????? ??? ?????? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????
??????, ??????????? ? ?????? ?????? ??? ?? ?????? ?????? ?????? ? ?????? ??? ??????????? ???
????? ??? ???? ??? ?? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ???????,
?????? ??? ?????????? ???, ?? ??? ?????? ?? ?????? ?????? ??? ?? ??? ?????? ?????? ??????? ??
????? ?????? ??? ?????????? ? ?????? ?????? ?????????? ?????????? ?????? ?????? ?????? ??????
? ?????? ?????? ?????, ?????? ? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ??????
????? ???????.

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

110 ????? ?????????? ??? ?? ?????? ????? ???????????, ?? ?????? ?????????????? ??????????????
?? ?????? ????, ?? ?????? ?????? ?????????? ??????, ? ?????????????? ??? ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
OESF ?????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ?? 17,5 %, ??? ? ?????????? ???
????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ??? OESF ?????????? ?? 15 %.

111 ???????, ?????????????? ????? ?? ???? ?????????????? ??? ?? ?????????????? ?????????????? ???
????????? ????? ?? ???? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??????????????
???? ?????? ????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ???
????????????? ????? ?? ???? ?????????????? ??? ??????? ?? ???????, ?????????? ??, ??????????
? ??????? ?? ????? ??????, ??????? ??.

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

114 ???????, ??? ????? ???????, ??????? ??, ?????? ?? ?????? ? ??????? ??
?????? ?? ???? ??????? ??????? ?? ?????????? ?????????? ?????????? ??????????
????????? ?????????? ? ?????? ?????????????? ?????? ??????? ?? ?? ?????? ?? ?????? ??
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ??????????, ??? ?? ??
?????????????, ??? ?????????? ?? ?????????? ?????????????? ??? ?????????????? ???
???? ?? ?? ??? ?????????? ?? ?????? ?????? ??? ?? ?????????? ??? ?????? ??
????? ???????, ??????? ??.

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

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

116 ?????????????? ?????? ??? ??????????? ??? ?????? ??? ?????? ??????????, ?????????? ??,
????????? ? ???????? ??? ??????? ???.

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

117 ?????????? ??? ? ??????? ??????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ?? ??????? ??????? ??? ?????? ??????????????, ?' ????
?????????? ?? ?????????? ??? ?? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ??????? ?????????????? ??? ???????????, ??? ??? ?? ??? ??????????, ??? ???????????.

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

1) ?? ????? 56 ?? ??? 58 ?? ??? ?????????????? ??????????? ?????????? ??????? ?
????????? ????, ??? ??????????, ??? ?????????, ??? ?????????? ?????????? ??????????
????????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ???
????????? ??????, ?????????????? ? ?????? ?????? ??? ?? ?????? ?????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ???
????????? ?????? ?????? ?????????? ??????, ?????????? ??? ?????????? ?????? ??????
????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ??? ??????
????????? ?????? ?? ?????????? ?? ??????????, ??? ?????????? ??????????????, ???
????????? ??? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?? ??? ??????
????? ???.

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

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

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

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

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

3) ????? ?????????????? ?????????? ??? ?????? 57, ??????????? 1, ??, ?? ??????????????
????? ?????????? ?????????? ??? ?????? ?????? ?????? ??????????, ?????? ??????????
????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????????? ?????? ? ?????? ??????
??? ?? ?????? ?????????? ??? ?????????? ? ??? ?????????? ???? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
?? ?????????? ???, ??? ?????? ?????????? ?????????? ?????????? ??????????.

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

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