

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

?? 10?? ???? 2012 (*)

«????? 63 ??? 65 ??? — ?????????? ?????????? ?????????? ?? ?????? ?????? (?????)
— ?????? ?????????????? ?????? ??? ?????????? ??? ?????????????? ?? ??????????
?????, ??? ?? ????? ?????????????? ?????? ???, ??? ?? ?????????? ???
????????????? ?? ?????????? ?????, ??? ?? ?????? ??? ?????????????? ?????? —
????? ?? ?????? ?????? ?????? ??? ?????????? ?????? ?????????? ?? ?????? —
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???? ?????????????? C?338/11 ?? C?347/11,

? ? ?????????? ?????? ?????????? ?????? ?????? ??? ?????? 267 ???, ??
????? ?? tribunal administratif de Montreuil (?????) ?? ?????????? ?? 1?? ?????? 2011, ??
????? ?????????? ?? ?????????? ??? 4 ?????? 2011, ??? ?????? ??? ???

Santander Asset Management SGIIC SA, ?????????? ?? ?????? ??? FIM Santander Top 25
Euro Fi (C?338/11),

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Directeur des résidents à l'étranger et des services généraux

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Santander Asset Management SGIIC SA, ?????????? ?? ?????? ??? Cartera Mobiliaria SA
SICAV (C?339/11),

Kapitalanlagegesellschaft mbH, ?????????? ?? ?????? ??? Alltri Inka (C?340/11),

Allianz Global Investors Kapitalanlagegesellschaft mbH, ?????????? ?? ?????? ??? DBI-
Fonds APT n° 737 (C?341/11),

SICAV KBC Select Immo (C?342/11),

SGSS Deutschland Kapitalanlagegesellschaft mbH (C?343/11),

International Values Series of the DFA Investment Trust Co. (C?344/11),

Continental Small Co. Series of the DFA Investment Trust Co. (C?345/11),

SICAV GA Fund B (C?346/11),

Generali Investments Deutschland Kapitalanlagegesellschaft mbH, ?????????? ?? ?????
??? AMB Generali Aktien Euroland (C?347/11),

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Ministre du Budget, des Comptes publics, de la Fonction publique et de la Réforme de l'État,

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

????????? ??? ??? K. Lenaerts (???????), ?????? ????????, J. Malenovský, ?. ??????, T. von Danwitz ??? D. Šváby, ????????,

?????? ??????????: J. Mazák

?????????: R. ?ere?, ????????, ????????????,

?????? ????? ?? ?????? ?????? ?????????? ??? ??????? ??? ??' ?????????? ?????????? ?? 16?? ?????????? 2012,

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

- ?? Santander Asset Management SGIIC SA, ?????????? ??? ?????? ??? FIM Santander Top 25 Euro Fi, ??? Santander Asset Management SGIIC SA, ?????????? ??? ?????? ??? Cartera Mobiliaria SA SICAV, ?????????????? ??? ??? C. Charpentier, N. Gelli, P. Van den Perre ??? C. Profitos, avocats,
- ?? Kapitalanlagegesellschaft mbH, ?????????? ??? ?????? ??? Alltri Inka, International Values Series of the DFA Investment Trust Co., Continental Small Co. Series of the DFA Investment Trust Co. ??? Generali Investments Deutschland Kapitalanlagegesellschaft mbH, ?????????? ??? ?????? ??? AMB Generali Aktien Euroland, ?????????????? ??? ??? Y. Robert ??? ??? S. Lauratet, avocats,
- ? Allianz Global Investors Kapitalanlagegesellschaft mbH, ?????????? ??? ?????? ??? DBI-Fonds APT n° 737, ?????????? ??? P. Schultze ??? A. Feger, avocats,
- ? SICAV KBC Select Immo, ?????????? ??? V. Louvel ??? S. Defert, avocats,
- ? SGSS Deutschland Kapitalanlagegesellschaft mbH, ?????????? ??? A. Lagarrigue ??? B. Hardeck, avocats,
- ? SICAV GA Fund B, ?????????? ??? P. Le Roux ??? L. Bogey, avocats,
- ? ?????? ??????, ?????????? ??? G. de Bergues ??? J.?S. Pilczer,
- ? ?????? ??????, ?????????? ??? C. Soulay ??? W. Roels,

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

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1 ?? ??????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 63 ??? ?? 65 ???.

2 ?? ??????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? (?????) ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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3 ????? ?? ??????? ??????, ????? ????? ?????????????????? ?? ?????????? ???????????
?????????? ?????????? (????) ??? ?? ?????????? ????????. ??????? ?? ?????? 208, 1° bis A
??? code général des impôts (?????? ??????????? ??????, ??? ????: CGI), ?? ????
????????????? ??? ?? ??? ?? ?????????? ?????????? ??? ?? ??? ?? ??? ?????????? ???
?????? ??? ??????? ?????? ????. ??? ?? ?????? ?? ?????????? ????????, ? ?????????? ???
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????? ?????????? ??? ?????????? ???????.

4 ?? ?????? 119 bis, ??????????? 2, ??? CGI ?????? ?? ????:

«???? ??? [??????????] ?????????????? ?????? ??? ?????? ?? ?????????????? ?????????????? ??? ??
????? 187 ?????? ?????????????? ?? ?????? ??? ?????? ?? ?????? ?? ?????????????? ?????????? ??? ?
??? ???? ???? ??? ?????? [...]».

5 ?? ?????? 187 ??? CGI ????. ?? ????:

«1. ? ?????????????? ??? ?????????????????? ??? ????? ?????? ?????? ??? ?????? 119 bis
????????????? ???:

[...]

25 % ??? ??? ?? ?????????? ???????????.»

8 ?? ?????? ??????????? ??????????????? ???, ?? ??????????? ?????? ?????? ? ??????????
??? ?????, ?? ??????? ?? ??????? ???, ??? ??????????? ??? ?????? ??? ?????? ?? ????? ?????? ????,

?? ?????? ?????? ?? ??????????????? ??????????? ??????????. ???? ??? ?? ?????????? ?????? ??
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9 ?????? ????????, ???????? ?????? ??? ?????????????? ?????? ??? ?????, ???
????? ?? ??????????????, ?? ?????? ?????????? ?? ?????? ??? ?????? ?????????????? ????
???????????, ?????????? ??? ?????????? ?????? ????????????, ??? ?????? ??? ?????????? ????
???????????, ??? ?????????? ?????? ?????????? ?????? ?????????????? ??? ??????????????,
???????????, ??? ?????? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ??? ??????????????
???????????, ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????????? ?????? ??? ???
??? ????????????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???????????, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?? ????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
???????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
???????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
???????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
???????????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

10 ??' ?????? ??? ????????, ?? tribunal administratif de Montreuil ?????????? ?? ??????????
?? ?????????? ??? ?? ???????? ??? ?????????? ?? ?????????? ?? ?????????? ?????????? ????

«1) ?????? ?? ?????????? ????, ?????? ??? ?????????? ??? ??????, ??? ? ??????????
??? ?????????? ??? ?????;

2) ?? ?????????? ????????????, ??? ?????? ?????????? ??? ?????? ?? ?????????? ?? ?????? ??
????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ???
????????? ?????????? ??? ??????;»

11 ?? ?????? ??? ???????? ??? ?????????? ??? ?????????? ??? 4?? ?????????? 2011, ??????????
????????? ??? ?????????? C2338/11 ??? C2347/11 ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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12 ????????, ?????????????? ???, ???????? ?? ?????? 119 bis, ?????????? 2, ??? 187 ???
CGI ??????? ??????? ??? ?? ??????? ??? ?????? ??? ?????? ?? ?????????? ??? ? ??? ???????
????? ??? ??????, ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
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13 ?? ?? ??????? ???, ?? ?????? ?????????? ??? ?????? ?? ??????????????, ???' ??????, ??
?? ?????? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ??? ???????,
????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????????? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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14 ???????, ?????????????? ??? ?????? ???, ??? ?????? ??????????, ?????? ? ???
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?? ??????? ??? ???????????? ??? ?????????? ?? ?????? ??? ?????? (?????????? ??? 4??
?????? 2004, C?334/02, ??????? ??? ??????, ??????? 2004, ?. I?2229, ????? 21- ???
20?? ??????????? 2011, C?155/09, ??????? ??? ??????, ??????? 2011, ?. ??65, ????? 39,
??? ?? 16?? ??????? 2011, C?10/10, ??????? ??? ??????, ??????? 2011, ?. ??5389,
????? 23).

15 ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????????????? ??? ??
????? 63, ?????????? 1, ??? ? ?????????? ??? ?????? ?????????? ?????????? ??????????????
????? ??? ?????? ?? ?????????? ??? ?????????? ????? ?????????? ??? ?? ??????????????
????????? ?? ?????? ??? ?????? ?? ?????? ?????? ????? ?????????? ??? ?? ?????? ?????? ??????
??? ?? ?????????? ??? ?????? ??? (????????? ??? 25?? ?????????? 2007,
C?370/05, Festersen, ?????? 2007, ?. I?1129, ????? 24- ?? 18?? ?????????? 2007,
C?101/05, A, ?????? 2007, ?. I?11531, ????? 40, ????? ?? 10?? ?????????? 2011,
C?436/08 ??? C?437/08, Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, ??????
2011, ?. ??305, ????? 50).

16 ??? ?????? ?? ?????? ?? ?????????? ??????? ?????? ??? ? ??????? ??? ??????
????? ??????? ?????????? ??? ??????? ???????, ??????????? ???, ??????? ??? ??
?? ???????, ?? ??????? ??? ?????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??
?????? ???, ?????????? ??? ?? ????? ??????? ?? ????? ??????? ??? ?????? ?????? ?? ?? ??????
??????, ?????????? ??? ?? ?????????? 25 % ??? ?? ?????????? ??? ????? ?????? ???, ???
?? ?? ??? ??????? ??? ?????????????? ??? ????? ?????????? ??? ?? ??????? ????.

17 ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???
?????????, ??????? ??? ?????? ??? ?????? ???, ?????? ?? ??????????, ??????, ???
????????? ??? ?? ?? ?????????? ?????? ??? ?????????? ?? ?????????? ??? ??????
????????? ???, ???????, ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ?? ??????????
????????? ?? ?????????? ???.

18 ???????, ?? ??? ????? ?????????? ??????? ?????????? ??? ?????????? ?????????????? ???
?????????, ?? ?????? ??????? ?????????? ??? ?? ?????? 63 ???.

19 ??? ?????? ??? ?? ?????????? ?? ?? ??? ?????????? ??????? ?? ?????????????? ???
?? ?????????? ??? ???.

20 ?????????? ???, ??? ?? ?????? 65, ?????????? 1, ??????? ??, ???, «[?]?

????????? ??? ?????? 63 [?] ??? ?????? ?? ?????????? ??? ?????? ??? [...] ??
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?? ??????
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??? ?????????? ??? ? ??? ?????? ??? ?????? ?????????? ??? ?????? ???.

21 ?? ??? ??????, ?? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??????????
????????? ??? ??????????, ?????? ?? ?????????? ????. ???????, ??? ?????? ??
????????? ??? ?? ?????? ??? ?????????? ?????????? ??? ?????????? ?????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? (?. ?????????? ???
11?? ?????????? 2008, C?11/07, Eckelkamp ?., ?????? 2008, ?. I?6845, ????? 57- ???
22?? ?????????? 2010, C?510/08, Mattner, ?????? 2010, ?. I?3553, ????? 32, ????? ???
????????? ??? Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, ????? 56).

22 ??????????, ?? ??? ?? ??? ?????? ?????????? ?????????? ??? ?? ?????? 65,
????????? 3, ???, ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ??????
????????? ? ?????????? 1 ??? ?? ??? ?????? «??? ?????? ?? ?????????? ??? ??????

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

23 ?????? ??? ???? ?????? ?????????? ?????? ??? ?????????????? ?????????????? ???
????????????? ??? ???? 65, ?????????? 1, ?????????? ??, ??? ???? ??? ???? ??????????
??? ?????????????? ??? ??? ?????????? 3 ??? ?????? ??????. ??? ?? ?????????? ??????????
???? ??? ??? ?? ?????? ?????? ?????????? ?????????? ??? ? ?????? ?????? ?????? ??????
?? ?????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????? ?????? ?????? ??????
????????????? ??? ??????????, ? ?????????? ?????????? ?????????? ?????? ?? ?????? ?????????? ???
??? ?????? ?????????? ?????? ?????????? ?? ?? ?????????? ?????? ??? ?????? ?????????? ???
????? ?????? (??, ?????????? ??? 6?? ?????? 2000, C?35/98, Verkooijen, ??????
2000, ?. I?4071, ??? 43- ??? 7?? ?????? 2004, C?319/02, Manninen, ?????? 2004, ?.
I?7477, ??? 29, ??? 1?? ?????? 2011, C?250/08, ?????? ??? ?????? ?????, ??????
2011, ?. ??12341, ??? 51).

24 ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????????????? ?? ?????????? ???
????????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ??????????
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25 ??????, ? ?????? ?????????? ?????? ??? ???? ?????? ??? ?????? ?????? ?????????? ???
???????, ??? ?????????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ????. ??? ?? ?????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????????? ??????
?? ?????????? ??? ?????????? ??? ?????????? ??? ???????????. ?????? ?????? ?? ?????? ?????? ???
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????????????? ??? ?????????? ?? ?????? ?????????? ?????? ?????? ?????????? ???, ??
????????? ?? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???,
????? ?????????? ??? ?????? ??????.

26 ? ?????????????????? ??? ??? ?????? ??? ?????? ??? ?????? ???.

27 ??????, ?????????? ?? ??? ?????? ?????? ??? ?????? ?? ??????????, ?????????? ?? ?????? ???
???????, ?? ?????? ??? ??? ?? ?????????? ?????????????? ??????. ??????????, ??? ??????
????????? ?????? ?????????? ?????? ?????? ?????????? ??? ?? ?????????? ???
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????? ?? ?????? ?????????? ??? ?? ??? ?????? ?????? (??., ??' ???, ??????
??? 14?? ?????? 2006, C?170/05, Denkavit Internationaal ??? Denkavit France, ??????
2006, ?. I?11949, ?????? 34 ??? 35- ??? 18?? ?????? 2009, C?303/07, Aberdeen Property
Fininvest Alpha, ?????? 2009, ?. I?5145, ?????? 51 ??? 54- ??? 19?? ?????? 2009,
C?540/07, ?????? ??? ?????, ?????? 2009, ?. I?10983, ?????? 43, ?????? ??? ??? 20??
????????? 2011, C?284/09, ?????? ??? ??????, ?????? 2011, ?. ??9879, ?????? 60).

28 ??????, ??? ?? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ????
????????? ??? ?????? ?? ?????? ?????? ?????? ?????????? ?? ?????????? ?? ? ??????????
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????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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29 ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????, ??????????
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30 ???????, ??? ??????? ? ??????? ??? ?? ?????? ????? ? ?????? ? ??????? ???????
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??????????, ? ?????????? ?????? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????? ???
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31 ?????????????? ??????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??
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????????????? ??? ?? ?????? ?????????????? —????? ?????????? ??? ?????? ?????? ???—
??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??????.

32 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????????? ???????????,
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33 ???????????, ???????, ??? ? ?????????????????? ??? ??????? ?????????? ??????????
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????????? ???????, ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ???????, ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??
?? ??????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
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?????? ?????????? ???, ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
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34 ??????? ??? ?????? ??????????, ?? ?? ?????????? ??? ???????, ?????? ??????????.
??????????, ??? ?????? ?????????? ?? ?? ??? ?????? ?????????? ??? ?? ?????????? ???
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????? ???.

35 ??? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?? ??????????
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?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
?????, ??? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????
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36 ???????, ?? ??????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????? 25 % ?????????? ??? ??
????????? ??? ?????? ???.

37 ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ??????
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

38 ?????? ?? ?????, ?????? ?? ??????????, ????? ?????????? ? ?????? ??????????, ??? ?? ??????????
????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?? ?????????? ??
????????? ?? ?????????? ?????????? ?? ?????? ?????????? ?????? ?????? ??? ?? ?????????? ??
????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?? ?????????? ???
????? ?? ?? ?????? ?????????? ??? ?????????? ???, ???????, ?????????? ??? ?? ?????????? ?????
????? ?? ?? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ???

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

40 ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ???, ??? ?????? ??? 20??
????? 2008, C?194/06, Orange European Smallcap Fund (?????? 2008, ?. I?3747), ???
????????? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??
????????? ?????? ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ?????? ?????????
????????? ?? ?????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????? ?????????
?? ?????? ???????, ?? ??? ?????????? ?????????? ??? ?????????? ?????????? ?? ?????????? ?? ??
????????? ???????, ?? ?????????? ?? ?? ?????????? ?????? ?????? ?????? ?????? ?????????? ???????,
????????? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ?????????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? (????????? ?????? Orange European Smallcap Fund,
????? 8, 33 ?? 60). ??? ?? ??? ??????, ? ?????? ?????? ?????? ??? ?????? ?????? ???
?? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ???.

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

42 ?? ????????, ??? ?????? ?? ?????? ??????????, ??? ?? ?????? ??????
??????????, ??? ? ?????? ??? ?????? ???, ??? ?????? ?? ?????? ?? ?????????? ???
?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????????? ??? ??
????????? ??? ?????????? ?????????? ??? (?. ?????????????? ?????? ?????????? Aberdeen
Property Fininvest Alpha, ?????? 43 ?? 44, ?????? ??? ?????? ??? ?????? ?????? ???, ?????? 58).

43 ?????? ?????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????????? ??? ??
????? ??? 22?? ?????????? 2008, C?282/07, Truck Center (?????? 2008, ?. I?10767, ????)
47), ??? ?? ?????? ? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??????
????? ??????? ??? ?????????? ?????????? ?????? ?????? ?????? ?????????? ?? ?? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???, ??? ??????
?? ?? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???, ??? ??????

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

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

45 ????????, ?????? ?? ?????????? ?? ???? ?????????? ??? ?????????? ??? ??????
????????? ??? ? ?????? ??? ?????? ?????? ?????????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? (?. ?????? ?? 11?? ?????????? 2007, C?451/05, ELISA, ??????
2007, ?. I?8251, ????? 79- ?????????????? ?????????? Haribo Lakritzen Hans Riegel ???
Österreichische Salinen, ????? 63, ????? ??? ?????? ??? ???????, ????? 68).

46 ? ?????? ?????????? ?????????? ?????????? ?????????? ?????????????? ?????? ??????
??? ??????????, ??? ??? ????? ?????????? ??? ?????????? ?????????? ??? ?????????? ???
???????????, ??? ?????? ??? ?????? ???, ??? ?????? ?????????? ???
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????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ???????????. ?? ??????,
???????????, ?? ??? ?????????????? ?????? ??? ?????? ??? ?????????????? ??? ??????????
????????? ??? ?????? ???, ? ?????? ?????? ?????????? ??????????, ??????, ??? ???
??, ??? ?????????? ??? ?????? ???, ?? ?????? ?????? ?????? ?????? ?????????? ??? ???
????????? ??? ?????????????? ??? ?????? ??? ?????????? ??????, ???, ??????, ??? ???
64, ?????????? 1, ???.

47 ?????????????? ??? ???? ????? ?????????? ??? ?????????? ?????????? ??? ??????
????????????? ??? ?????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??? ??????
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??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? (?. ?????????? ?? 18?? ?????? 2007,
C?231/05, Oy AA, ?????? 2007, ?. I?6373, ????? 54- ??? 8?? ?????? 2007, C?379/05,
Amurta, ?????? 2007, ?. I?9569, ????? 58- ?????????????? ?????????? Aberdeen Property
Fininvest Alpha, ????? 66, ??? ?????? ??? ??????????, ????? 77).

48 ????????, ??? ???? ?????? ??? ???? ?????? ?????? ?????? ?????? ?? ?? ?????????? ???
????????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ?????????? ??? ?????? ???
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????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? (?. ?????????????? ??????
Amurta, ????? 59- Aberdeen Property Fininvest Alpha, ????? 67, ??? ?????? ???
?????????, ????? 78).

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

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50 ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????

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??? ?????????? ?????? (???. ?????????? ??? 28?? ?????????? 1992, C?204/90,

Bachmann, ??????? 1992, ?. I?249, ????? 21-? 23?? ?????????? 2008, C?157/07,

Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ??????? 2008, ?. I?8061, ????? 43, ???

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

51 ??????????, ?????????? ?? ?????????? ?????????? ?????????? ?????????? ??? ?? ???

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

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??? ?????????? ?????? ?????????? (????????????? ?????? ?????? ?????? ????

??????, ?????? 71 ??? ????? ?????????? ??????), ? ?? ?????????? ??? ?????????? ???

????? ?????? ?? ?????????? ?????? ??? ?????? ??? ?????????? ?????????? (????????? ???

27?? ?????????? 2008, C?418/07, Papillon, ?????? 2008, ?. I?8947, ????? 44, ???

????????????? ?????? Aberdeen Property Fininvest Alpha, ????? 72).

52 ??? ??? ?????? ?????????? ??? ?? ?????? 30 ??? ?????? ?????????? ??????????, ? ?????????? ???

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

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53 ??? ??????, ??? ?????? ?????? ??? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????????? ???

????????? ??? ?? ?????? 51 ??? ?????? ??????????, ?????? ??? ?????????? ??? ???

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

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

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54 ?????, ?? ?????? ?????????? ?? ??? ?????? ?????????????? ?????? ??? ?? ??????

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

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

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?? ??????????, ?? ?? ??? ?????? ?????????? ?????? ?????? (????????????? ?????? A, ????

60). ?????????????? ??? ?????? ??? ? ?????? ?????????? ??? ?????????? ?????????? ???

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

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

????????? ??? ?????? ??? ?????????? ??? ?????? ?????? 64, ?????????? 1, ????, ???

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

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

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

55 ?????? ??? ?????? ??? ?????? ??????, ??? ?????????? ?????????? ?????? ?? ?????? ?

????????? ??? ?? ?????? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???

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

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

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

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56 ?? ??? ?????????? ?????????????? ???, ? ??????? ?????????? ?????? ??? ??
????????????? ?? ?????????? ?? ?????????? ?????????????? ??? ?????????? ?????????? ??
????????? ?? ?????????? ?? ?????? ?????? ?????????? ??? ? ?????? ??? ?????????? ??
????? ?????? ?????? ?????????? ?? ?? ????? 63 ??? ?? 65 ???.

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

58 ??????, ?????????????? ???, ??? ?????? ??????????, ? ??????? ??? ?????? ??
?????????, ??? ?? ?????? ??? ?????????? ??? ?? ??????? ?? ?????? 267 ???, ??
????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ?? ??????? ??? ??
????????????? ??? ?????? ?????, ??? ?????? ?? ?????? ?? ?????????? ??? ?? ??????????????
??? ??? ?????? ??? ?????? ?????, ? ???' ?????? ??? ?????? ?????????? ??? ?????? ??? ??
??? ?????? ?? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????? ??? ?????????? ???
????????? ??? ??? ?????? ??? ?????????? ??? ?? ?????????? ?????????? ???, ??????
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ??? ?????? (??.,
????? ????, ?????????? ??? 3?? ?????????? 2002, C?347/00, Barreira Pérez, ?????? 2002,
. I?8191, ??? 44- ??? 17?? ?????????? 2005, C?453/02 ??? C?462/02, Linneweber ???
????????, ?????? 2005, ?. I?1131, ??? 41, ??? ?? ??? 6?? ?????? 2007, C?292/04,
Meilicke ?.., ?????? 2007, ?. I?1835, ??? 34).

59 ??? ?????? ???' ??????? ??????? ?? ??????????, ???' ?????????? ??? ?????????? ??
?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????, ?? ?????????? ???
????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????????????? ?? ??????????
????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??????????
????? ?????? ? ?????? ??? ?????? ?????????? ??? ??????, ??? ?????????? ??? ?????? ??????
??? ?????????? ??? ?? ?????? ??? ?????????? ?????????? (??., ?????? ???,
????????? ??? 10?? ?????????? 2006, C?402/03, Skov ??? Bilka, ?????? 2006, ?. I?199,
????? 51, ??? 3?? ?????? 2010, C?2/09, Kalinchev, ?????? 2010, ?. I?4939,
????? 50).

60 ??????????, ?? ?????????? ??????? ??? ?????? ??? ?????? ??? ?????? ??????????????
?????????, ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ??????????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??????????
??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??????????
????????? ??? ?????? ?????? ??? ?? ?????? ?????, ?????????? ??? ?????? ?????? ???
????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
(??., ?????? ???, ?????? ??? 27?? ?????? 2006, C?423/04, Richards, ?????? 2006, ?.
I?3585, ??? 42, ??? ?????????? ?????? Kalinchev, ??? 51).

61 ????? ?????? ?? ?????????? ??? ?????????? ?????????????? ??? ?????????? ??? ????
????????????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ????
????????? ??? ??????, ? ?? ???? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ????
????????? ??? ??????. ?? ???? ??????????, ??? ?????? ?? ?????? ?????? ??? ?????? ??? ????
????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ??????. ??????????, ??? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????? 27 ??? ?????? ?????????, ?????????? ???, ?????????? ???, ?????????? ???
????? ? ?????????? ?????????, ??? ? ?????? ??? ?????? ??? ?????? ???, ??? ? ?????? 63
????? ??? 65 ???, ? ?????? ??? ???? ???? ?????????? ??? ?????? ?????????? ??? ????
????? ?? ?????????? ??? ?????? ??? ?????? ??? ???? ???? ?????? ???, ?? ?????????? ???
????? ??? ??????. ??????, ??? ?????????? ??? ???? ?????? ??? ?????? ?????????, ? ??????
?? ?????????? ??? ?? ?????? 63 ??? 65 ??? ?????? ?????? ??? ???? ???? ?????? ???
????? ?????? ??? ?????? ?????? ?????????? ??? ???? ?????? ??? ?????? ?????? ??? ????
?? ?????????? ??? ?????? ???.

62 ?? ?????? ?? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??????
?????????, ?? ?????????? ??? ?????????? ??? ???? ?????????? ??? ?????????? ??? ???? ????
????? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???,
??? ?????????? ??? ?????????? ?????? ?????????? ??? ???? ???? ?????? (????????? ???
20?? ?????????? 2001, C?184/99, Grzelczyk, ?????? 2001, ?. I?6193, ????? 52- ??? 15??
????? 2005, C?209/03, Bidar, ?????? 2005, ?. I?2119, ????? 68, ??? ?????????? ???
????? Kalinchev, ????? 52). ?? ?????????? ???, ? ?????? ?????????? ??? ?????? ??????
????? ??? ??? ??' ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?????????, ??? ?????????? ??? ???? ???? ?????? ??? ??' ?????????? ??? ??????????
????????? ??? ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

63 ?? ???? ?????? ?????? ?????? ??? ?????? ??? ???? ?????? ??? ???? ???? ?????????? ??
????????? ?????????? ??? ?????? ??????.

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

64 ????????? ??? ???? ?????? ?????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ????
??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ???, ?' ????
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??????. ?? ?????? ??? ?????? ?????? ??????
????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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

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

(?????????)

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