

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

??? 4?? ??????? 2013 (*)

«?????????? ????????? – ????? ?????? – ??????? ??? ?????????????? ??????? –
????????????? ????? – ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????????? ?? ?????? ?????????? ?????????? ?????????????? ??? ??? ???
????? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ??????????»

???? ?????? C-350/11,

?? ?????????? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? rechtbank van eerste aanleg te Antwerpen (??????) ?? ??????? ?? 24?? ??????
2011, ? ?????? ??????? ?? ?????????? ??? 4 ??????? 2011, ??? ??????? ??? ???

Argenta Spaarbank NV

????

Belgische Staat,

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

????????? ??? ??? A. Tizzano, ?????? ???????, M. Ileši?, E. Levits (?????????), J.-J. Kasel
?? M. Safjan, ???????,

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

?????????: M. Ferreira, ?????? ?????????? ????????????,

?????? ??? ??? ?????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???
12?? ??????? 2012,

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

– ? Argenta Spaarbank NV, ?????????????? ??? ??? K. Morbée, K. Van Duyse, ??? F.
Smet, advocaten,

– ? ??????? ????????, ?????????????? ??? ??? M. Jacobs ??? ??? J.-C. Halleux,

– ? ??????? ????????, ?????????????? ??? ??? W. Mölls ??? W. Roels,

???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????????? ??? ??? ?? ??????????
?? 19?? ?????????? 2012,

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

??????

1 ? ?????? ?????????????? ??????? ??? ??????? ??? ??????? 49 ???.

2 ? ?????? ??? ?????????? ??? ??????? ??????? ??? ?????? ??? Argenta Spaarbank NV

(???? ?????: Argenta) ??? ?? Belgische Staat, ?? ??? ??????????? ?? ??????????? ??
?????????????? ?? ??????? ?? ?? ??????????? ?? 2008.

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

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

3 ? ??????? ?? ?????????????? ?????? ?????? ?? ?????????? ?????? ?? ?????????? ?????? ??
????? ??????? ?? ?? ?????? 22?? ?????? 2005 ??? ?????? ?????????? ?????????? ??????????
??? ?????????? (Moniteur belge ??? 30?? ?????? 2005, ?. 30077). ? ??????
????? ?????????? ?? ?????? 205bis ??? 205nonies ??? 236 ??? ?????? ??? ?? ??????
????????? ?? 1992 (??? ????: CIR 1992).

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

5 ? ??????? ???. ?????????????????? ????????, ? ?????? ?????????????? ?????? «?????? ???.
????????????? ?????», ?????????? ??? ?????????? ??? ?? ????? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????.

6 ????. ?? ?????. 205quater, ?????????? 1, ??? CIR 1992, ? ??????? ??? ??????????????
?????? ?????? ????. ?? ?????????????? ???????, ?? ????? ?????????????? ????. ??
????? 205ter ??? CIR 1992, ??? ?? ?????????? ??? ?????????? ????. ??????????
?????????? ??? ?????? 205quater.

7 ?? ?????? 205ter, ??????????? 1, ????? ??????, ??? CIR 1992 ?????????? ???, ??? ??
????????? ??? ?????????? ??? ?????????????? ?????? ??? ??? ?????????? ???????, ??
????????????? ??? ??????? ?? ?????? ??????? ?? ?????? ?????? ?????? ???????????, ??? ??
????????? ??? ?????????? 2 ??? 7 ??? ?? ??? ?????? 205ter, ??? ??? ?? ???
????????? ??? ???????, ??? ?????? ??? ??????????? ??????????? ???????, ?? ???
????????????? ??? ??????? ?? ?? ?????????? ?????? ??????????? ??? ??????? ??????????
??? ?????????? ??? ??????????. ?? ?? ??? ?????? ??????? 2 ??? 7 ?????????? ???
????????? ??? ?????? ?? ??? ?????? ??????? ??? ?? ?????????? ??????????????? ??? ??
????????????? ?? ??? ?????? ?????????? ??? ?? ?????? ??????? ??? ?????? ??? ?????????? ???
????????????? ???????.

8 ???????????, ??? ? ? ????? 205ter, ?????????? 2, ??? CIR 1992, ??? ??
????????????? ???????, ?? ???? ?????????????? ??? ?? ????? 205ter, ?????????? 1,
??? CIR 1992, ?????????? ? ?????? ??? ?? ?????????? ??? ?????????? ??? ?? ??????
????????????? ??? ?????? ?? ?????????? ?????????????? ??? ??? ??? ?????? ??????????
??? ??? ?????? ??? ?????? ??????????.

9 ?? ?????? 205quinquies ??? CIR 1992 ?????????? ???, ?? ?????????? ?? ?????????? ??????
???? ??????? ?????????? ??????? ??? ????? ?????? ?? ?????????? ??????? ???
????????????? ???????, ? ?? ?????????? ??? ?? ?????????? ??? ?????????? ?????? ???????
????????????? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????????????? ???.

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

10 ?? ??? 7, ?????????? 1 ??? 3, ??? ?????????? ??? 5?? ?????? 2001 ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????????? (Moniteur belge ??? 20?? ?????????? 2002, ?. 57533, ??? ????: ?????-?????????
?????) ?????:

«1. ?? ??? ?????????????? ?????????????? ?????? ?????????????? ??? ?????? ??? ??????
????? ?? ? ?????????? ?????? ?? ?????????????? ??? ??? ?????? ?????????????? ??? ??????
????? ?????????????? ??? ?????????? ????. ??? ? ?????????? ??? ?????? ?? ??????????????
??? ???' ?????? ??? ?????, ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????
?????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????.

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

3. ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ??????????????, ?????????? ?? ?????? ???
????????????? ??? ?????? ??? ?????? ??? ?????????????? ???, ?????????????? ???
????? ?????????? ???, ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
?????..»

11 ?? ??? 23, ?????????? 1, ??? ???-????????? ?????????? ??????????:

«???? ????, ???? , ???? ?????? ?????? ??? ?????? ??? ?????? ??? ??????:

a) ??? ?????? ?????? ?????? ?????????? ?????????? ??????????, ??? ??? ?????????????? ??? ??????
12, ?????????? 5, ??? ?? ??? ?????? ?????????? ??????????, ??? ? ??????, ? ??????
????????? ??????, ?? ?????? ??? ?????? ?????????? ??? ?????? ???' ?????????? ???
????????? ??????, ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ? ?????????? ??????, ??? ??????, ?????????? ?? ?????????? ?? ?????????? ??? ??????
????? ??? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ??????????
?????, ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????
????????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????.

[...]»

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

12 ? Argenta ??? ?????? ?????? ?????? ??? ??????, ? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ????. ??? ?????? ?????????? ??? ?????? ???, ??? ?????? ??
????????? ?????????? ??? ?????? ?????? ??? ?????-????????? ??????????.

13 ??? ?? ?????????? ??? 2008, ? Argenta ????, ?????? ??? ?????? 205bis ???
205nonies ??? CIR 1992, ??? ?????? ??? ?????? ?????????? ??????????.

14 ??? 19 ?????????? 2008, ?????????? ?????????? ??? Argenta ???? ??? ????

????????? ??? ?? ???? ??????????? ??????? . ??? ??????? ?????????????? ??? ???????????
?????, ? ??????? ?????????? ???, ?????????? ??? ?????? 205ter, ?????????? 2, ??? CIR
1992, ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
????????????? ??? Argenta ??? ?????? ??? ?????? ??? ?????????? ??? ??????????????
?????????, ?? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????????? ??????????.

15 ??? 7 ?????????? 2009, ? ?????????? ??? ?????? ?????? ?????????? ??? ?????????????? ???
Argenta, ??? 20 ????? 2009, ?????????? ??? ??? ?????????? ???.

16 ? Argenta, ?????????? ??? ?? ?????? 205ter, ?????????? 2, ??? CIR 1992 ??????
????????? ??? ?????????? ?????????????? ??? ?????? 49 ???, ?????????? ?? ?????????? ??
????????? ?????????????? ?? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ??
?? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????????? ??? ?????????? ?????????? ?????????, ??? ??????????
????????? ?????????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ??????????
????????? ??? ??? ?? ??? ?????? ??????, ??????, ??? 4 ?????????? 2009, ?????????? ??? ???
????????? ?????? ?????? ?????????? ??? ?????????? ??????????.

17 ??? ??? ?????????? ????, ?? ?? ??? ?????? ?????????? ?????????? ?? ?????????? ??
????????? ??? ?? ?????????? ??? ?????????? ?? ?????? ?????????? ?????????? ????:

«????????? ?? ??? [49 ???] ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
?? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????, ??? ??
????????? ??? ?????????? ??? ?????? ???, ?? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ??? ??? ?????? ?????? ??????, ??????, ??? ?????? ??? ?????????? ??????
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????? ??? ?? ???, ??????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
????????? ??? ?????? ??? ?????????? ???, ??? ?????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ??????;»

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

18 ?? ?? ?????? ???, ?? ?????? ?????????? ??? ?????? ?? ?????????????? ?? ?? ??? ??? 49
???? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????, ???
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ???
????????? ??? ?????????? ?? ??? ?????? ??????, ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????? ?? ?????? ??? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ?? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ???.

19 ??? ?????????? ??? ?????? ?????????, ? ?????????? ??????????????, ??? ???
????????? ??? ?????? ?????? ??? ?????? ?? ??? 49 ??? ??? ? ??? ?????????? ???
????? ??? ?????? ??? ?????? ?? ?????? ??????????????, ?????? ??? ?? ?????? ???
????????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? 54 ???, ??? ?????? ??? ?????????? ??? ?????? ???
????? ?? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???,
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
????????? ??? ?????? ??? ?????????? (?? . ?????? ??? 15? ?????????? 2011, C-310/09, Accor,

?????? 2011, ?. ?-8115, ???? 39 ??? ???? ?????????????? ??????????).

21 ?? ??????? ???. ?????? ?????????????? ???. ?????? ???. ?????? ?????????????? ???. ?????? ???.
????? ???. ?????????????? ???. ??? ???. ?????? ???. ?????? ???. ?????? ???. ?????? ???.
(????? ???. 15?? ???. 2008, C-414/06, Lidl Belgium, ?????? ???. 2008, ?. ?-3601, ?????? 20).

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

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

24 ????? ?????????? ? ??????? ?????????????? ??? ?????? 33 ??? ?????????????? ???, ?
????????????? ??? ?????????? ??? ?????????????? ??? ?????????? ??????????????, ??? ??? ??????????
??? ?????????? ??? ?????????????? ??? ?????????? ?????????????? ??? ??? ??????????
??? ??????, ?????? ?????????????? ??????????????, ?????????? ??? ?????????? ??? ?????????? ???
????????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ? ?? ???
????????? ??? ?????? ??????.

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

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

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

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

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

29 ??????, ?????????? ??? , ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? , ???
????????? ??? ???? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? 267 ???, ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? (??., ???,
????????? ??? 12? ?????? 1993, C-37/92, Vanacker ??? Lesage, ?????? 1993, ?. I-4947,
????? 7? ??? 14? ?????? 2008, C-449/06, Gysen, ?????? 2008, ?. I-553, ?????? 17, ???
??? 17? ?????? 2013, C-23/12, Zakaria, ?????? 29).

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

31 ???????, ??? ?????? ???? ?????? ?????? ?????? ?????? 40 ??? ?????? ??? ,
? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Argenta, ??? ??? ?????? ?????? ?
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????? , ?????? ???? ?????? ?????? ??? ?????? , ? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? , ?????? ???? ??? ?????? ?????? ?????? , ?????? , ?????? ,
????? ?????? ?????? , ??? ??? ?????? ??? ?????? ?????? ?????? , ?? ?????? ??? ????
????? ?????? ??? ?????? , ?????? ??? ?????? ?????? ?????? ?????? .

32 ??? ???????, ? ?????? ?????? ?????? , ? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????? ?????? ??? ?????? ??? ?????? , ?? ?????? , ??? ???? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??? , ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
??? ??? ?????? ??? .

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

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

34 ??????? ??????? ??????? ?????????? ?????????? ?? ?????????? ??????? ??????? ???
??? ?????? ??? ?????????????? ??? ?? ??? ?????? ?????????? ?????????????? ?????????????? ?? ???
?????? ?????? ??? ?????????? ??? ?????????? ??? ???????, ??? ???????, ?????????? ??? ?????? ???
?????? ?????????????? ???' ?????? ??? ?????????? ??? ?????????? ??? ??????? ??? ?????? ??? ??????????
?????????????.

35 ??? ?? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????????? ??? ?????? ?? ?????? ?????? ??? ?????????? ?????????? ??? ?????????? ???
?????? ??????? ?????????? ???, ?? ??????, ??? ?????????? ???, ? ?????????? ??
????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ???
????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? (?. ??????????????
???????? Lidl Belgium, ????? 27 ??? ????? ?????????????? ??????????).

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

37 ???????, ??????, ?? ??????? ?????????? ??? ?????????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????????? ???, ?????????????? ??? ?????? ?? ??? ?????????? ??? ?????????? ???,
??? ??? ?????????? ??? ?????? ?? ??? ????? ?????????? ??? ?????? ?? ??? ????? ?????????? ???
?????????.

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

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

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

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

41 ??? ?? ?? ?? ?? ??????????????? ??? ?? ?? ????? ??????????? ? ???????
??????????, ??????????????? ?? ?? ??????????? ??????? ??? ? ??????? ??????????????? ??
?????? ??????????? ??????????? ??????? ?? ??????????? ??????????? ??????? ??????? ??
?????????? ??????????? ??? ????? ?????????? ? ??????? (?????????? ?? 28?? ???????????
1992, C-204/90, Bachmann, ??????? 1992, ?. I-249, ????? 28? ?? 7?? ??????????? 2004, C-
319/02, Manninen, ??????? 2004, ?. I-7477, ????? 42? ?? 23?? ??????????? 2006, C-471/04,
Keller Holding, ??????? 2006, ?. I-2107, ????? 40, ??? ?? 27?? ??????????? 2008, C-418/07,
Papillon, ??????? 2008, ?. I-8947, ????? 43).

42 ????????, ??????????? ?? ??????????? ??????????? ??????????? ??? ?? ??
?????????? ??, ?????, ??? ????? ???????????, ?? ??????????? ? ??????? ???????
?????????? ?? ?? ??????? ??????????? ??????????? ??????????? ??? ?? ??????????????? ??
??? ??????????? ??????????? ??????????? (?????????????? ??????????? Manninen, ?????
42, ??? Keller Holding, ????? 40), ? ?? ??????????? ??? ??????????? ????? ??????? ?? ???????????
????? ??? ?????? ??? ??????????? ??????????? (?????????? Manninen, ???????????????, ???
43? ??? 28?? ??????????? 2008, C-293/06, Deutsche Shell, ??????? 2008, ?. I-1129, ????? 39,
??? Papillon, ???????????, ????? 44).

43 ??? ??????????? ?? ?? 24 ??? ??????? ???????????, ?? ??????? ??? ???????
?? ?? ?????? ??? ??????????? ??????????? ??????????? ?? ??????????? ?? ???????????
?????, ??? ?? ??????????? ??? ??????????? ??? ??????????? ???????????, ?? ??????????? ??
?????????? ?? ?? ??????????? ??? ??????????? ??.

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

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

46 ????????, ?? ??????????? ??????? ???????????, ??? ?? ??????????? ??? ??
?? ?? ??????? ??????????? ???????, ?????? ?? ??????????? ??? ?? ???????????
?????????? ??? ??????? ??? ??????????? ??? ??????????? ??? ?? ??????????? ??? ??
??? ??????????? ??? ?? ?? ??? ????? ??????????? ??? ???????????.

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

48 ????????, ?? ??? 205quinquies ??? CIR 1992 ??????????? ???, ?? ??????????? ??
????????? ??? ?????? ??? ??????????? ??????????? ??? ?? ??? ????? ??????? ?? ???????????
????????? ??? ??????????????? ???????????, ? ?? ??????????? ??? ?? ??????????? ??? ??
????????? ??? ??????????? ??? ??????????? ??? ?? ??? ??????????? ??? ?? ??? ??????????? ???.

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

50 ????? ?????? ??? ??????? ?????????????????? ????? ??? ????? ?????????????? ? ???????
?????????, ?????????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ??? ?????? ?????? ?????? ??????, ?????????????? ??? ?? ?????????? (??.,
???????, ?????????? ??? 13?? ?????????? 2005, C-446/03, Marks & Spencer, ??????? 2005, ?. I-10837, ??? 45? ??? 7?? ?????????? 2006, C-470/04, N, ??????? 2006, ?. I-7409, ??? 42? ??? 18?? ?????? 2007, C-231/05, Oy AA, ??????? 2007, ?. I-6373, ??? 51, ??? Lidl Belgium, ????????????, ??? 31). ???????, ??? ????? ?????????? ????????, ???,
????????? ?????? ?????????? ? ?????????? ?? ?????????? ??? ??????? ??? ??????, ?? ?????? ???
????????? ?? ?????? ??????? ?? ?????????? ?????? ?????????? ?????????? ? ?????????? ?? ??????????
????????? ?? ?????? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????? ??
????????? ?? ?????? ?????????? (????????? ??? 19?? ?????????? 2009, C-540/07, ??????? ??? ???????,
???? ???????, ??????? 2009, ?. I-10983, ??? 29, ??? ??? 29?? ?????????? 2011, C-371/10,
National Grid Indus, ??????? 2011, ?. ?-12273, ??? 45).

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

52 ? ??????? ?? ???? ?? ?????????????? ?? ???? ?????????? ?????????????? ?????????????? ???
??? ??? ???? ?? ???? ?? ??????? ?????????? ?? ???? ?????? ??? ?????? ?????????? ??????????
????????? ?????????? ?? ???? ?? ???? ?? ??????? ?? ???? ?????? ?????????? ?????????? ???
????? ??? ?? ???? ?????? ?????? (??., ???????, ????????? Marks & Spencer,
?????????????, ??? 40, ??? ?? 29?? ?????? 2007, C-347/04, Rewe Zentralfinanz,
?????? 2007, ?. I-2647, ??? 43).

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

?? ?????? ?????????? ?????????????? ??? ?????????? ? ?????????????? ??? ?????? ?????? ??? ??
????????? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????? ?????? ??? (??.,
???????, ?????????????????? ?????????? Oy AA, ????? 56, ??? Lidl Belgium, ????? 34).

55 ??????, ??? ?????? ? ?????? ?????????????? ??? ?????? 63 ??? ?????????? ???, ?
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ?????????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ??? ???
??? ??? ?????? ??? ?????? ??? ?????? ?????? ???.

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

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

58 ??? ??? ?????????? ???, ? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
?????.

59 ?????????? ??? ?????? ??? ?????? ??? ?????????? , ??? ?????????? ?????? ???
?? ?????? ? ?????? ??? ?? ?????? 49 ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ?????? ??? ?????? ??? ?????? , ??? ??? ?????????? ?????????? ?????????? ???
????? ?? ?????? ?????? ?????? ??? ?????? ?? ??? ?????? ?????? ?????? , ??? ?????????? ???
? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? , ??? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???.

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

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

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

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

(?????????)

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