

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

??? 6?? ???????????? 2012 (*)

«????????? ????????????? – ????? 49 ??? – ?????????? ?????????? – ????? ?????????? –
????????????? ??? ?? ??????? ??? ?????????????? ??? ?????????? ??? ?????? ?????????? –
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ???
????? ?? ??? ?????? ?????? – ?????????? – ?????????? – ?????????? ?????? ?????? ??????
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???? ?????? C-380/11,

? ? ?????????? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? tribunal administratif (????????????) ?? ??????? ??? 13?? ?????? 2011, ? ????
????????? ??? ?????????? ??? 18 ?????? 2011, ??? ?????? ??? ??????

DI. VI. Finanziaria di Diego della Valle & C. SapA

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Administration des contributions en matière d'impôts,

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

????????? ??? ??? J.-C. Bonichot, ?????? ???????, A. Prechal, K. Schiemann, L. Bay
Larsen ??? C. Toader (??????????), ????????,

????? ??????????: J. Kokott

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

?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ???
28?? ?????? 2012,

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

– ? DI. VI. Finanziaria di Diego della Valle & C. SapA, ?????????????? ??? ??? J.-P.
Winandy, avocat,

– ? ?????????????? ???, ?????????????? ??? ??? ??? C. Schiltz, ??????????????
??? ??? M. Adams, avocat,

– ? ?????????? ???, ?????????????? ??? ??? ??? C. Soulay ??? ??? W. Roels,

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

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2 ? ?????? ??? ??????????? ?? ?????? ??????? ??????? ?????? ??? DI. VI.
Finanziaria di Diego della Valle & C. SapA (??? ????: DIVI), ??????? ?????????? ??????? ???
?????? ? ??????????? ??? ??????????? ??? ???????, ??? ??? ???????????????
?????????? ????, ??? ?????? ?? ??? ??????? ??? ?????????????? ??? ?????????? ??? ??????
??????????, ??? ?????? ??????? ? ?????? DA. DV. Family Holding Sàrl (??? ????: DADV),
???? ??? ??????? ??? ?????? ??? ?? ??? ????? ?????? ??? ?????? ??? ?????? ??? ??????? ???
??????????????.

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3 ? ?????? ??? 16?? ?????????? 1934 ??? ????? ???????????, ??? ??????????????? ?? ???
???? ??? 21?? ?????????? 2001 ??? ????? ??????????? ?????????? ?????????? ?? ???
????? ??? ?????? ?????????? (*Mémorial A* 2001, 157, ?, 3312, ??? ????: LIF), ?????????? ??
?????? ?? ??? ????? ??? ??? ???????????.

4 ??? ??? ??? ????? ?????? ??? ?? ??????????? ??????????? ??? ?? ??? ??? ?????
????.

5 ????? ??? ?????? 8a ??? ?? ??? ????? ??????????? ? ??????????? ?????????? ??? ??????
??????????, ??????????? ?? ?? ??????????? ??? ??????????? ?? ??????????? ??????????? ???
????? ??? ?????? ????? ??????????? ??? ????? ?? ?????? ?????????????? ??? ?????? 1, ????
??????, ?????????? ???????????, ??? LIF, ?????? ??? ?????? ?????????????? ??? ??
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6 ?? ?????? 8a ??? LIF ?????? ?? ???:

«1. ?? ??????????? ?? ?????? ?????????????? ??? ?????? 1, ?????????? 1, ???????
??????, ??? ?? ?????? ??????????? ??? ?????????? ?? ?????????? ??????????? ???
?????????? ??? ?????? ??? ??????????? ??? ?????? ?? ?????????? ??????????? ???, ???????????
?? ?????????? ?? ?????? ??? ??????????? ??? ?????????? ?????, ?????????? ?????????? ???
?????????? ??? ?? ??? ?????? ??? ?????? ???????????, ?????????? ?????????? ??? ? ??????
?????????? ??? ?????? ?????? ????????????. H ?????? ??? ??????????? ??? ??? ??????? ???
?????????? ???????????, ?? ?????? ?????? ??? ?????? ?? ?????????? ?? ??? ??? ??? ???
?????????? ???????????, ?????? ??? ?????????? ??? ?????? ?????????? ???????????, ??? ???????
??? ??? ??????????? ??????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???.
?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????????? ???
??????, ?? ??????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
??? ??? ??????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???.

[...]

3. ?? ?????????? ?????????????? ??? ??????????? ??? ?? ??? ?????? ??? ?????????? ???
????? ??? ??? ??? ?????????? ??? ?????? ??? ???????, ?????????? ? ??? ?????? ?????????? ??? ??
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???????????????????
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[...]

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

?????????? ?? ?????????? ?????????? ??? ??????????..»

7 ? ?????????????? ??????????, ??? ?????????? ?? ?????? 172 ??? ?????? ??? ?????
????????? (Mémorial A 1967, 79, ?. 1228, ??? ????: LIR), ??? ??????????????, ?? ?????
????????? ??? ??? 169 ??? ??? ????? ?????, ?????????? ?? ?????????? ??????????
????????? ?? ?????????? ??? ??? ??? ?? ??? ????? ?????, ????? ??? ??? ?????????? ???
????????? ?????? ?????? ?????? ??????.

8 ?? ??? 172 ??? LIR ?????? ???:

«1. ?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????????? ???
??? ? ??? ?????? ?????? ??? ?????? ?????? ???, ?? ?? ??????, ?????? ??? ?????????? ???
????????? ?????????????? ?????? ?????????? ?? ?????????? ??? ?????? 169. ? ??????????????
???? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ??????????
???? ??? ?????? ??? ??????????, ?????????? ?? ?????? ?????? ??? ??? ??????.

[...]»

9 ?? ??? 169 ??? LIR ?????????? ?? ???:

«1. ?? ?????????????? ??? ?????? ?????? ?????????? ??? ??? ?????? ?????? ???
???? ?????? ??? ?????? ??? ?????????? ???.

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5. ?? ??????????, ??? ??? ?????? ??? ??????, ?????? ?????????? ?????????? ?? ??????????
???? ?? ??? ??? ?????????? ??? ?? ??? ?????? ?????????? ??????, ??? ?????? ???
??? ?????????? ??? ?????? ?????????? ?????????? ??????, ??? ? ?????? ??? ?????????? ???
??? ?????? ????, ?????????? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ???
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?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ???
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10 ? DADV ?????? ?????? ?????????? ??? ?? ?????????? ?????? ??????. ?????? ??? 12
????????? 2012 ??? ??? ??? ??? ?????? ??????. ??? ??? ??? ?????? ?????? ???
???? ??? ??? ??????.

11 ??? ?? ??? 2004 ? DADV ?????? ?????? ??? ?????? ?????????? ?????? 50 965 ???,
???? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? 10 193 000
????. ?? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? 8a, ???
??????, ??? LIF, ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? 2004 ????????
??? 254 825 ???.

12 ??? ?? ?????????? ??? DADV ??? ?? ?????????? ??? 2005 ?????????? ???
????????? ??? ?????? ?????????? ?????? ?????? 9 364 604 ???, ??? ??? ??????
????????? ??? ?????? ?????? 46 820 ???, ??? ??? ?????? ??? ?????? ??? 234 100 ???.

13 ??? ?????? ?? ??? 2006, ? DADV ?????? ?????????? ?????? 249 987 ???, ???

??? ?????? ??????????? ????. ?????? ?????????? ????. 1 245 ???.

14 ??? ?????????? ??? 2006 ? DIVI ?????????? ??? DADV ?????? ???????????.

15 ?? ??????? ??? DADV, ??? ?? ??????? ?????????? ??? ?? ?????? ??? ?? ?????? ?????
????????????? ??????????????, ? DIVI ??????, ????? ?? ?????? 8a ??? LIF, ?? ?????? ???
????? ?????????? ??? ?????? ?????? ? ?????? ?????? ??? ?? ?????????? ??? 2005 ???
2006.

16 ? administration des contributions en matière d'impôts [??? ????: ?????????? ???]
????????? ??? ??????? ????, ??? ??? ??? ??? ?????????? ?? ?????????? ??? ?????????? ???
????? ??? LIF.

17 ?? ?? ??????, ??? 15 ?????? 2009, ? ?????? ?????????? ?????????? ??????????
????????????? ?????????? ??? DADV ??? ?????? ??? ?? ?????? ??????????
???. ?? ?? ?????? ????????, ??? ??? ?????????? ??? 2005, ? ?????????? ??? ?? ??????
??? ? ?????????? ??? ??? ?????? ??? ?????? ??????????, ??? 1? ?????????? 2005, ??? 9 364
000 ????, ??? ????????, ??????? ?? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? 46
820 ???.

18 ?? ?? ??????? ????????, ?? ??? ?????? ??????? ?? ?????????? ??? 2006, ? ??? ??
?????? ??? ?????????? ??? ?? ??????? ?????? ??? ?????? ??????????, ??? 1? ?????????? 2006, ???
9 131 000 ????, ??? ????????, ??????? ?? ??? ??? ?????? ?????????? ??? ?????? ??????????
??? 45 655 ???.

19 ??????, ?? ?? ?????? ??? ?????????? ?????? ?????????? ???, ? ?????? ??????????
????????? ?????? ??? DADV ??? ?????? ??? ?? ?????????? ??? ?? ?????? ??????????
??? ?? ?????? 8a ??? LIF ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? 2004. ??????, ?
????????? ??? ?????? ??? DADV ??? ?????? ??? 50 965 ???, ??? ?? ?? ?? ??????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? 2004.

20 ?? ?????????? ??? ?????? ??? ?????? ?????? ??? 9 ?????????? 2009, ? DIVI ?????? ??
????????? ??? ?? ?????? ??? ?? ?????? ?????????? ?????????? ???, ?? ?????????? ???,
????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 8a ???
LIF, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???, ??? ?????????? ??
????? ???.

21 ?????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ? DIVI
?????, ??? 15 ?????? 2009, ?????? ?????? ??? tribunal administratif, ?? ?????? ??
????????? ??? ?? ?????? ??? ?? ?????? ?????????? ??? ?????????? ???.

22 ?????? ??? ?????????? ???, ? DIVI ?????????? ??? ? ?????? ??????????
????????? ?????? ??? ?????? ??? 8a ??? LIF. ? ?????? ?????????? ??? ?? ?????? ??? ?
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ?? 2004, 2005 ???
2006. ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? DADV ?????????? ??
????????? ??? ?????? ??? ?????? ???, ? ?????? ??? ?????????? ???, ?? ??????????
????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 31 ?????? 2008
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

23 ??????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 8a ??? LIF, ??? ???

? ??????????????? ??? ????? ?????? ??? ????? ???????????, ?????? ??? ?????? 8a ??? LIF,
?????? ?? ??? ????? ??????????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?? ???
?????????????? ??? ?? ?????????????? ?? ?????? ?????????????? ??? ?????? ?????????? ???' ??? ??
????????? ?????????? ?????????????? ??? ?????????????? ???, ?? ?????? ?????????????? ???
????????? ?????? ?????????? ???, ?? ??????????, ???, ? DADV ??? ?????????????? ??
????????? ??? ?????? ?????????????? ???' ??? ?? ?????????? ??? ?????????? ??? ?????????? ???
??? ???????????, ??? ?????? ?????? ?????????? ??? ?????? 8a ??? LIF.

24 ??? ?? ?????? ???????????, ?? ?????? ?????????????? ?????????? ??? ?????? ??????????
???? ?? ?? ??????? ??? ??????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????????? ???
????????? ???' ??? ?? ??????? ??? ??????? ??? ?????????? ?? ?????? 8a ??? LIF.

25 ??????, ? DIVI ??????????? ??? ?? ?????? ??? ?????? ?????????? ?????????? ??????????
????????? ??? ?????? 8a ??? LIF ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
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26 ?? ?????? ?????????? ?????????? ??? ?? ?????? 8a ??? LIF ??? ?????????? ??? ?
?????? ?? ?????? ?????????? ??? ?????????? ??? ?? ?? ?????????? ? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ?? ?????? ???
????????? ??? ?????????? ???' ?????? ??? ? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????? ?????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?, ? ?????? ?????? ??
????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ???;»

27 ??? ?? ?????? ??????, ?? tribunal administratif ?????????? ?? ?????????? ???
????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ?? ?????? ??????????
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«???? ?? ??? 49 ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ???, ??? ?????? ??? ?????? 8a ??? LIF ? ?????, ??? ?????? ??? ??????,
????? ???, ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ?, ? ?????? ?????? ??
????????? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ???;»

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?????????

28 ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ? DADV, ?????? ??????????
??? ???????????, ??????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ???
?? ?????? ?????????? ?????????? ???, ??? ??? ?????????? ???, ? DADV ?????? ??
????? ??? ?????????? ??? ?????? ?????? ??? ?????????????? ??? ?????? ?????????? ???' ??? ??
????? ??? ?????? ??? ?????????? ??? ?????? 8a ??? LIF ??? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
?????.

29 ??? ?? ?????? ???, ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ? ?????? ???
?????? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ???, ?????? ?????? ?????????? ??? ?????? ???
????? ?????? (??., ???????, ?????? ??? 29?? ??????? 2011, C-371/10, National Grid

Indus, ??????? 2011, ?. ?-12273, ????? 31).

30 ?? ?? ???????, ? DADV, ? ?????, ?? ??????? ?????????????? ??????? ?? ?? ??????????
?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????, ??? ?? ????? 54
????, ??????? ??? ????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ????? ??????????
??????????????, ?????? ?? ??????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ????? 49 ???
????????????? ?? ?????? ?? ??????? ?? ?????????? ?? ?????????? ??? ?????????????? ???, ??? ???
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????, ??? ?????????? ?????????????? ??? ??????
?? ?????? ?? ??????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ???????????, ?? ???????, ?? ?? ??????, ??? ?????? ?????????? ??? ?????? ??? ?? ????.
?????? ?? ???.

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

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32 ?? ????? 49 ??? ??????????? ???. ??????????? ???. ?????????????? ???. ??????????????
?????????????. ????????, ????. ?? ?????? ????, ?? ?????????? ???. ?????????? ???. ?????? ???.
????????? ?????????????? ???. ??????? ???. ?????????????? ???. ??????? ???. ?????????????? ???.
????????? ???. ??????? ???. ?????????? ???. ?????????? ???. ??????? ???. ?????????? ???.
????? ?????????? ???. ?????????? ???. ??????? ???. ?????????? ???. ?????? ?????????????? ???.
??? ? ?????????? ???. ?????????? ???. ?? ?????????? ???. (??. ?????????????? ???.
National Grid Indus, ????. 35 ??? ???. ?????????????? ???.).

33 ????? ?????? ??????????, ???????, ??????? ?????? ??? ?????????? ?????????????? ???
????????? ?????????????? ??? ?? ?????? ??? ??????????, ?????????????? ? ??????????
????????? ?????????? ??? ?????? ??? ?????????? ?????? (?? . ???????? ??? 5?? ??????????
2004, C-442/02, CaixaBank France, ??????? 2004, ?. I-8961, ????? 11? ??? 6?? ??????????
2007, C-298/05, Columbus Container Services, ??????? 2007, ?. I-10451, ????? 34? ??? 23?
????????? 2008, C-157/07, Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ???????
2008, ?. I-8061, ????? 30, ??? ??? 15?? ??????? 2010, C-96/08, CIBA, ??????? 2010, ?. I-
2911, ????? 19).

34 ?????????????? ???, ??? ?????? ??? ?????? ??? ?????? ??????, ??????? ??????????????????
????????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????????????? ?????????????? ???
????????? ?????????? ??? ?????????????? ??? ?????? ??? ?????????????? ?????? ??? ?? ?????? ???
????????? ?????? ??? ?????? ???????????, ??? ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???,
????????? ?????????????? ?????????????? ??? ?,?? ?????? ?????? ?????? ??? ?????????? ??? ?????????????? ??
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35 ????????????, ??? ???? ??????? ?????? ?????? ??? ?????? ?????? ????????, ? ???????,
?? ?????? ??? ???? ??????????? ?? ???? ?????? ??????? ?? ???? ???????????, ??? ????
???????, ??????????????????? ?????? ????? ?? ???? ?????? ??????? ?????????? ??????????? ??
????? ??????? ?? ???? ??????????? ?? ???? ?????? ??? ?????, ??? ???? ?????? ???
????????? ??? ???? ??????? ?? ???? ?????? ?????? ??????? ?????????? ?? ??????? ??
????????????? ??????????. ?? ?????????? ?? ???? ?????? ?????? ??? ?????? ?????? ?????? ??????????
?? ??????? ?? ???? ?????????? ?? ???? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????????
???? ?? ?????????? ??????? ?? ???? ???????????, ?? ?????? ?????????? ?? ???? 8a,
????????? 3, ??? LIF, ??? ???? ?????? ??? ?????????? ??? ?????????? ??? ???? ?????? ?????? ??? ??
????????? ??? ??????? ???????.

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

? ?????????? ?? ??????? ??? ????? ???? ?????????? ??? ?????????? ??? ?????? ????????????, ?
????? ?????????? ?? ??? ?????? ?????? ?????? ?????? ???????????????, ?????? ?? ?????????? ???
????????? ?????????????? ?????? ??? ?? ?????????? ?????? ???????????????, ?????? ?? ?????????? ???
????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ?????? (??., ???????, ???????, ??? 11??
?????? 2004, C-9/02, de Lasteyrie du Saillant, ?????? 2004, ?. I-2409, ??? 46, ??? 7??
????????? 2006, C-470/04, N, ?????? 2006, ?. I-7409, ??? 35, ??? ??? 6?? ???????????
2012, C-38/10, ??????? ??? ???????????, ??? 28).

37 ?????????? ??? ?? ?????????? ???? ?????????? ???? ?????????????? ???????????, ? ??????
????????????? ??????? ?? ??? ?? ?????????? ??? ???????????, ??? ?????????? ??? ?? ??????
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????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????? ??? ?? ?????? ???
????? ?????? ?????? ?????? ???? ?????? ?????????? ?? ?????? ?????? ??? ?????? ???, ??????
????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? (??., ???????, ???????????????, ??????? National
Grid Indus, ??? 38, ??? ??????? ??? ???????????, ??? 29).

38 ? ?????????????? ?????? ?????????? ?????????? ?????? ??? ? ?????? ??? ?????????? ??? ??????????????
?? ?????????? ??? ?????? ??? ?????? 8a ??? LIF, ??? ?????????? ???? ?????????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? DIVI, ??? ?????????? ?????????? ???
????????? ??? ?????? ??? DADV ??? ?????? ?????????????? ???????????, ??? ???
????????? ??? ??? ?????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????? ??? ?????? 8a ??? LIF, ?? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ??? ?????? ??????.

39 ? ?????????????? ??? ?????? ??? ?????? ?? ?????? ????. ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
??? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? 8a ??? LIF. ???????????,
??? ?? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??? ? DADV ???, ??????????,
? DIVI ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 8a,
????? ??????, ??? LIF. ?? ?? ??????, ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ???
?????????, ? ?????? ??? ?????????? ??? ?????? 8a ??? LIF ?????? ?????? ???
????????? ??? ? DADV ??? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????????? ?? ?????? ??? ?????? ??? ?????? 8a,
????? ??????, ??? LIF. ??? ? DADV ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
?????????????.

40 ??????, ? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??????????, ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??????????, ?? ?????? ?????????????? ?????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??? ??????????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ??????????

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

41 ????? ?????? ????????????, ?????????????? ??? ?????????????? ?????????????????? ??????????????
????? ?????? ?????????????????? ??? ?????????????? ?????? ?????? ?????????? ??????????????. ????????,
?? ?????? ??????????, ?? ?????? ? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ??
????????????? ?????? ??? ?? ??? ?????????? ?? ?????? ?????? ??? ?????? ?????????? ??
????????????? ?????? ??? (?. ?????????????? ?????? National Grid Indus, ??? 42 ???
???? ?????????? ??????).

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

43 ??????? ?? ??????????? ??????? ??? ? ??????????? ??? ?????????? ?????????? ???
????????????? ?????????????? ?????? ??? ?????? ????? ?????????? ?????? ?????, ??? ????
????????????? ?? ??????????? (????????????? ?????? National Grid Indus, ??? 45 ???
???? ?????????????? ??????????).

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

45 ????? ??????? ? ??????????, ??? ????? ?????? ??? ? ?????????? ???????, ???
????????? ??? ?????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??? ? ?????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????????? ?????????? ???
????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ?????????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????????? ??????????????
?????? ??? ?????????? ????. ??????????????, ?? ?? ??? ?????? ???, ? ?????????????? ???
????????? ?????????????? ?????????????? ??? ?? ??? ?????? ?????? ??? ?????? ?????????????? ???
?? ?????????? ?? ?????????????? ??? ???, ???????, ?? ?????? ??? ?????? ?????? ?????????????? ???
????????? ??????????????, ?? ?????????? ??? ??? ?????? ?????? ?????????? ?? ?????????????? ???
?????? 8a ??? LIE.

46 ? ?????????? ????. ?????? ????. ?????? ?????????????? ????. ?????? ????. ?????????????? ????. ?????? ????.
?????? ?????????????? ????. ?????? ????. ?????? ????. ?????????????? ????. ??????????????, ? ?????? ??????
????? ?? ?????????? ?????????? ????. ?????? ????. ?????????? ?????????? (??., ????????, ?????????? ???
28?? ?????????? 1992, C-204/90, Bachmann, ?????? 1992, ?. I-249, ????? 28, ??? C-300/90,
???????. ????. ????????, ??????? 1992, ?. I -305, ????? 21).

47 ???????????????, ??? ?? ?????????????? ?????????????? ?????????????? ??? ?????????????? ??? ?????????????? ???
?????? ?? ??????????? ??? ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??????????????
?????????????? ??? ??? ?????????????? ??? ??? ?????????????? ??? ??? ?????????????? ?????????????? ??????????????
(??.. ??????? ??? 29?? ??????? 2007, C-347/04, Rewe Zentralfinanz, ??????? 2007, ?. I-2647,
????? 62 ??? ??? ?????????????? ??????????). ??? ?????????? ?????? ?????????? ??????
?????????, ?????, ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??????????????
????????????? ?????????????? (??., ???????, ?????????? ??? 18?? ?????????? 2003, C-
168/01, Bosal, ?????? 2003, ?. I-9409, ??? 30, ??? ??? 1?? ?????????? 2011, C-253/09,
????????? ??? ??????????, ?????? 2011, ?. ?-12391, ??? 77).

48 ?????, ????, ??????????? ??? ???? ?????????? ??? ?????????? ????? ?????? ????? ???????????, ???
????????? ?????? ?????? ?????????? ???????, ???????, ??? ?????????? ??? ?????????????? ???
????????? ??? ?????? ?????????? ?? ??????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? 8a,
????? ???????, ??? LIF ???, ???????, ??? ?????? ??? ?????????? ? ??????? ???,
????????? ?? ??? ?????????????? ??? ?? ??? ?????????????? ??? ?????????????? ?????????????? ?? ???????
????? ??? ?????? ??? ????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ????? ??????????
????????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ??????????
?? ?????? 8a, ?????? ???????, ??? LIF.

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

50 ????. ?????? ????. ?????? ????. ?????? ????. ?????????????? ?? ??. ?? ?????????? ?????? ????. ??????
8a ??? LIF, ????. ?????? ????. ??? ??. ?????????????? ????. ?????? ????. ??? ??. ?????? ????.
????????? ????. ????. ????. ?????? ????????, ????. ?????? ????. ????. ?????? ?????? ?????? ????. ????. ????.
????????? ????. ????. ????. ?????? ????????, ? ?????? ????. ?????? ?????? ????. ????. ????. ????.
????????? ?????? ????. ????. ?????? ?????? ?????? ????. ????. ?????? ????. ?????? ?????? ????.
????????? ????. ????. ?????? ?????? ?????? ????. ????. ?????? ?????? ?????? (?)?. ????.
16?? ????. 1998, C-264/96, ICI, ????. 1998, ?. I-4695, ????. 28, ??? ??. 8?? ????.
2001, C-397/98 ??? C-410/98, Metallgesellschaft ??., ????. 2001, ?. I-1727, ????. 59).

51 ??? ??? ?????????????? ??????? ?????????? ??? ?????? ?????? ?????? ??? ? ?????? ???
?????? ??? ?????? ?????? ?? ?????? ?? ?????? ?? ?????????????? ??? ?????????????? ?????? ???
?????????????.

52 ???????, ??? ?????????? ??????? ??????? ?? ????? ? ??????? ? ??????? ????? ?? ????? 49 ????
???? ?? ?????? ???, ?? ?????????? ????? ?? ??????? ?????? ?????? ?????? ???, ?????????? ??
?????? ?????? ?????? ?????? ?????? ??? ?????? ? ??????? ?????? ?????? ??? ?????? ?????? ??????
????????? ??? ? ??????? ??? ?????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????? ?????? ???
????? ??? ?????? ?? ??????? ?????? ?????? ?????? ???.

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

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

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

?? ?????? 49 ????, ?? ?????????????? ????, ?? ?????????????? ????, ?? ?????????? ????,
?????, ??, ?????????????? ?? ??????? ?????????? ??????? ?????? ?? ?????? ?? ?????? ? ??????
????????? ?? ?????????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??,
?? ?????????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????????
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(???????????)

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