

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

??? 5?? ?????????? 2013 (*)

«????????? — ??? — ??? ?????? 77/388/EOK — ???? 11, A, ?????????? 1, ?????????? ?, 2, ????????? ?, ??? 3, ?????????? ? — ?????? 2006/112/?? — ???? 73, 78, ????? ??????, ?????????? ?, ??? 79, ????? ??????, ?????????? ? — ??? ?????????? ??? ?????????? ??? ?????????? ??? — ??? ?????????? ??? ?????????? »

???? ?????????????? ?????? C?618/11, C?637/11 ??? C?659/11,

?? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? 267 ????, ??? ?????? ?? Supremo Tribunal Administrativo (?????????), ?? ?????????? ??? 12?? ?????????? 2011, ??? 2?? ?????????? 2011 ??? ??? 16?? ?????????? 2011, ?? ?????? ?????????? ??? ?????????? ??? 1 ?????????? 2011, 12 ?????????? 2011 ??? 27 ?????????? 2011, ??????????, ??? ?????? ??? ??????

TVI – Televisão Independente SA

????

Fazenda Pública,

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

Ministério Público,

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

????????? ??? ??? M. Ileši?, ?????? ???????, K. Lenaerts, ?????????? ??? ?????????? ?, ? ???????, ? ?????? ?????? ?????? ?????????? ??? ?????? ???????, C. G. Fernlund, A. Ó Caoimh ??? E. Jaraši?nas (????????), ????????,

????????? ??????????: P. Cruz Villalón

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

????????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ??? 31?? ?????????? 2013,

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

- ? TVI – Televisão Independente SA, ?????????????? ??? ??? N. Pena, advogado,
- ? ?????????? ???????, ?????????????? ??? ??? L. Inez Fernandes ??? R. Laires,
- ? ?????????? ???????, ?????????????? ??? ?? M. ?????? ??? ??? ?. ???????????,
- ? ?????????? ???????, ?????????????? ??? ??? P. Guerra e Andrade ??? ??? L. Lozano Palacios,

???? ?????? ??? ?????? ??????????? ??? ??????? ??? ?????????? ??? ????? ?? ???????????
??? 11?? ??????? 2013,

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

???????

1 ?? ?????????? ?????????????? ?????????? ?????????? ??? ?????????? ??? ??????? 11, ?,
?????????? 1, ????????, ??, 2, ????????, ??, ??? 3, ????????, ??, ??? ?????? ???????
77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????????? ???
?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ??? ?????? ?????? ??????
????????????? ?????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49, ??? ????:
???? ??????), ????? ??? ??? ????? 73, 78, ????? ??????, ?????????? ??, ??? 79, ?????
??????, ????????, ???, ??? ??????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006,
?????? ?? ?? ?????? ??????? ?????? ?????????????? ?????? (EE L 347, ?. 1).

2 ?? ?????????? ??????????? ??? ??????? ?????? ?????? ?????????? ??????? ??? TVI –
Televisão Independente SA (??? ????: TVI) ??? ??? Fazenda Pública (?????????), ??
?????????? ??? ?????????? ??? ?????????? ?????????????? ??? ?????????? ?????????? ??????
????????????? ????? (??? ????: ???) ??????? ?? ??? ????? ?????? ?????????? 2004, ??????????
2004 ??? ???????? 2007.

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

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

3 ?? ??? ?????? ?????? ??????????? ??? ???????????????, ??? 1?? ??????????? 2007, ??? ??
?????? 2006/112. ??? ??????? ??? ?????? ?????? ??? ??????? ??? ?????????? ??? ??? ??
????? ??????????? ??? ?????????? 2004 (????????? C-637/11 ??? C-618/11) ????? ??? ??
?????????? 2007 (????????? C-659/11), ? ??????? ?????????? ?????, ??? ??? ?????????? C-
637/11 ??? C-618/11, ? ??? ?????? ???, ??? ??? ?????? C-659/11, ? ??????? 2006/112.

4 ?? ????? 11, A, ??? ?????? ???????, ??? ?????? ?? ??? ????? ?????????? ??? ??? ??
????????? ??? ?????, ??????????:

«1. ??? ?????? ??? ?????? ??????:

?) ??? ??? ?????????? ?????? ??? ?????? ?????????? ??????????, ?????? ??? ??????????????
????????? [??? ??????????] ??, ?? ??? ??, ?????????? ?????????? ??? ???????????, ??? ????
????? ? ?????????? ?? ??? ??? ?????? ?????? ?????? ?????????????? ?? ??? ??????? ??
????????? ??? ??? ???????, ??? ?????? ??? ?????? ??????, ?????????????????? ???
????????? ??? ?????????? ?????? ?? ??? ??? ?????? ???????

[...]

2. ??? ??? ?????? ??????? ??? ?????? ????????????????:

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

[...]

3. ??? ??? ????? ?????????? ??? ?????? ??? ??????????????:

[...]

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

5 ??? ??? 73 ??? ?????? 2006/112 ??????????:

«??? ??? ?????????? ??? ?????? ??? ??? ?????? ??????????, ??? ?????? ??? ?????????? ???
????? 74 ??? 77, ? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ???
?????????, ??? ?????? ?????? ??? ?????????? ?? ?????? ??? ??? ?????? ?????? ?????? ? ??????????????
? ?????? ??? ?????????? ??? ??? ??????????, ??? ?????? ??? ?????? ?????? ??????
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??? ?????? ??? ??????
?????»

6 ??? ??? 78, ?????? ??????, ?????????? ??, ??? ?????? ?????? ?????? ?????? ?? ????:

«??? ??? ?????? ??? ?????? ?????????????? ?? ??????????:

?) ??? ???, ??????????, ?????????? ??? ??????, ?? ?????????? ??? ???».

7 ??? ??? 79, ?????? ??????, ?????????? ??, ??? ?? ??? ?????? ?????? ??????????:

«??? ?????????????? ??? ??? ?????? ?????? ??? ?????? ?? ??????????:

[...]

?) ??? ??? ??? ?????? ?????????? ? ?????????????? ??? ??? ??? ?????????? ? ??? ???,
??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??? ?????????? ???, ??? ?? ?????? ??????
????????????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ???????.»

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

8 ??? ??? 16 ??? ?????? ??? ?????? ?????????????? ????: (Código do Imposto sobre o
Valor Acrescentado, ??? ????: ???) ??????:

«1. ??? ??? ?????????? ??? ?????????? ??? ?????????? 2, ? ??? ?????????? ??? ??? ??? ??? ???
????????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ?
????? ????.

[...]

5. ??? ??? ?????? ??? ??? ??????????????, ??? ?????? ??? ??????????:

?) ??? ???, ??????????, ???????? ??? ??????, ?? ?????????? ??? ??? ??? [??]?

[...]

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

[...]

c) ?? ??? ???? ?????????????? ??' ??????? ??? ??? ?????????? ??? ?????????? ??? ???????
? ??? ??????? ??? ??????????, ?? ????? ??? ????? ?????????????? ??? ??? ?????????? ???
???? ?? ?????????? ?????????????? ????????

[...]».

9. ? ????? 42/2004, ??? ?????????????????? ??? ?????????????????? ??? ?????? (Lei nº
42/2004 – Lei de Arte Cinematográfica e do Audiovisual), ??? 18?? ?????????? 2004 (*Diário da
República I*, ??? A, ????. 194, ??? 18?? ?????????? 2004), ?????????? ??? ????? 28 ?? ???
«????? ??????????»:

«1. ??? ?????????? ?????????? ?? ?????? ?????????? ?? ?????????? ??? ?????????????? ???
?????????, ??? ??????????, ??? ??????, ??? ??????, ??? ??????????, ??? ??????????????, ??? ??????????
?????????, ??? ?????? ??? ?????????? ?????????????? ?? ?????????????? ???
?????????????, ??? ?????????? ??? ?????? ??????, ??? ?????????? ??? ????? ??????????, ?? ???
????????? ??? ??????????????, ??? 4 % ??? ??? ?????????????? ??? [??? ????: ???
?????????].

2. H ??????????, ? ?????? ??? ? ?????????? ??? ?????????? ??? ?????? ??? ?????????????? ???
????? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????? ????.»

10. ?? ??? 50 ??? ?????????? ?????????? 227/2006, ??? 15?? ?????????? 2006 (*Diário da República I*, ????. 220, ??? 15?? ?????????? 2006), ??? ??:

«1. ??? ?????????? ?????????? ?? ?????? ?????????? ?? ?????????? ??? ?????????????? ???
????????? ? ?????????????? ?? ?????????? ?????? ??????????????, ??? ?????????? ???
????? ??????, ??? ?????????? ??? ?????? ??????????, ?? ?????? ?????? ??? ?????????????? ???
????????? ??? [Instituto do Cinema, Audiovisual e Multimédia (??? ????: ICAM)] ??? ??:
[Cinamateca Portuguesa – Museu do Cinema (??? ????: CP-MC)].

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

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

11. ?? ??? 51 ??? ?????????? ?????????? 227/2006 ??????????::

«?? ??? ?????????? ?????????? ??? 4 % ??? ??? ?????? ?????????? ? ?????????? ???
????????? ? ?? ?????? ?????????????? ??? ?? ?????????????? ?????? ?????????? ?????????? ???, ??
3,2 % ??? ?????? ?????? ??? ICAM ??? ?? 0,8 % ??? CP-MC.»

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

12 ??? ??????? ??? ?????????????? ??? ??? ????? ?????????? ??????????, ? TVI
?????? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ??????????????
????? ??? ????? ?????????? 2004, ??????? 2004 ??? ?????????? 2007.

13 H TVI ?????? ??? ?????? ?????? ??? ??? ?????????? ??? ?????????????? ??? 4 % ??
????????? ??? ?? ?????? ?????? ?????????? ?????????????, ?????? ??? ?????? ??????????
??? ?? ?????????? ??? ?????????? ??? ?? ?????? ?????? ???, ? TVI ?????? ???
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ??????????, ??????????????
??? ?????? ??????????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????, ??????????????
??? ?????? ?????????? ?????????? ??????????. ??????, ? TVI ?????????? ?? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ?????????????? ???
??? ICAM ??? ?? CP-MC.

14 ? TVI, ?????????? ??? ?? ?????? ?????????? ??? ?????? ?? ?????????? ??? ???
????????? ??? ??, ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????????? ?????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? 2004 ???
??? ?????????? 2007. ?? ?????? ??? ??????????.

15 ?? Tribunal Administrativo e Fiscal de Sintra (????????? ?????????????? ??? ??????????
????????? ??? Sintra), ?????? ??? ?????? ?????????? ? TVI, ?????? ??? ?????????? ???
??? ?????????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?? ?????? ??? ??????
????????? ?? ?????? ?????? ? TVI ?????? ?????????????? ?????? ?? ?????????????? ???
???? ?????????? ??? ??? ?????? ??? ?????? 16, ?????????? 1 ??? 5, ?????? a, ??? ???.
?? ?????????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ?????????? ??? ?????? ?? ??????????
?? ?????????? ??' ?????? ??? ?? ?????? ?????????? ??? ?????? ?? ?????? ?????????? ???
????????? ?????????? ??????????. ??????, ?????? ??? ?????? ?????????? ??? ?????????? ???,
????????? ?? ?? ?????? 28 ??? ?????? 42/2004, ?????? ?????? ?? ??? ?? ?????? ?????? ??????????
????, ?????? ??? ?? ?????????? ??? ?????? ??????, ?????? ?????? ?? ???
????????? ??????.

16 ? TVI ?????? ?????????? ??? ?????? ??? ?????????? ??? Tribunal Administrativo e Fiscal de
Sintra ?????? ??? Supremo Tribunal Administrativo (????????? ?????????? ??? ??????????).
????????? ??? ?????????? ???, ? TVI ?????? ?? ?????? ??? ?????????, ??? ?? ?? ???
11, A, ?????????? 1, ??????? ??, ??? 3, ??????? ??, ??? ?????? ?????? ??? ?? ?? ??
????????? ??? ??????????, ??? ?????????? ??? ?????? 16, ?????????? 1 ??? 6, ??????
??, ??? ??? ?? ?????? ??? ?????????? ???, ? ?????? ?????????? ??? ?? ???
????????????? ???????. ??? ??? ?????? ???, ?? ?????? ?????????? ?????????????? ??? ??
?? ??? ?????? ??? ??, ?????? ?????? ?????? ??? ?????? ?????? ?????????? ??? ??
????????? ??' ?????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??????????
????????? ??????????, ?????? ?? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ???
????????? ?????? ??? ?????????? ???, ?????? ??? ?????????? ??? ?? ?????????? ??? ??

17 ??????????, ? TVI ??????????, ?????? ??? ?????????? ???, ??????, ??? ??
????? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????? ??? ??????
????? ?? ??? ?????? ??? ?????????? ???, ???????, ?? ?????? ?????????? ???
????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??' ?????? ??? ?? ??????????
?????, ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ???
???.

18 ??? ??? ??????? ???, ?? Supremo Tribunal Administrativo ?????????? ?? ??????????

?? ??????????? ?? ???? ?????? ?? ???? ?????????? ?? ???? ?????? ?????????????? ???????????, ??
????? ????, ?????????????? ????, ?????????? ????, ?????? ????:

«1) ??????? ?? ??? ?????????? ?? ???? 11, ?, ?????????? 1, ?????????? ??, ??? [?????
?????] (??? ?????? 73 ??? [????????? 2006/112]), ?????????? ?? ??? ?????? “??????????,
??? ?????? ????, ???? ?????? ?? ?????? ???, ??? ?????? ?????? ???? ? ?????????? ?? ????
???? ??????”, ?? ?????? 16, ?????????? 1, ??? ???, ??? ?????????? ?? ???
????????????? ?????? (????? ??? ???? ?????? ??? ???? ???? ???? ?????? ??????????
????????? ?????????? ??? ?????? ?? ?????????????? ??? ???? ?????? ??? ???? ????
????? ?????? ?? ??? ?????? ?????? ??????);

2) ??????? ?? ??? ?????????? ?? ???? 11, ?, ?????????? 3, ?????????? ??, ??? [?????
?????] (??? ?????? 79, ?????? ????, ??????? ??, ??? [????????? 2006/112]), ??????????
?? ??? ?????? “????? ?? ??? ?????? ?????? ?? ?????????? ???, ??? ?????? ??? ???? ????
????, ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?????? ???, ??? ????
????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ????
16, ?????????? 6, ???????? c, ??? ???, ??? ?????????? ?? ??? ?????????????? ??????
(????? ??? ???? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ??? ????
????? ?????????? ??? ?????? ??? ???? ?????? ?????? ??? ?????? ?????? ??? ????
????????? ???, ??? ???? ???? ?????????? ??? ?????? ?????? ??? ???? ???? ????
????????? ???, ??? ???? ???? ?????? ??? ?????? ?????? ??? ???? ???? ????
????????? ???, ??? ???? ???? ?????? ??? ?????? ?????? ??? ???? ???? ????);»

19 ?? ??????? ?? 18?? ?????????? 2012, ? ??????? ?? ???? ??????????, ?????????? ??
????????? ??? ?????????? C?618/11, C?637/11 ??? C?659/11 ??? ?????????? ???
????????? ??? ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ??????.

???

???

20 ? ?????????? ?????? ?????? ?????? ?????????? ?? ???? ?? ?????????? ?? ???? ????
????????? ?????? ???????. ??? ?????? ?? ?????????? ?????? ?? ?????? ??????????
????? ?????? C?618/11 ??? C?637/11, ?????????? ??? ???? ?????????? ??????????
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ratione temporis
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ????.
??????, ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ????. ??????????, ? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????? C?659/11 ??? ?????? ?? ?????? 11, A, ?????????? 2, ?????????? ??,
??? ?????? ?????? ??? ???? 78, ?????? ?????, ?????? ???, ??? ?????? 2006/112.

21 ??????, ?????????? ???, ??????, ?????, ??? ?????? ??????????, ??? ?????? ???
????????? ??? ?????? 267 ???, ? ?????? ?????????? ?? ???? ?????? ??? ?????? ???
??? ?????? ?????????? ??? ?????? ??????????, ? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
??????. ??????, ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
?? ??????, ?? ??????, ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
?????????, ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
(????? ??? 29?? ?????? 2012, C-182/11 ??? C-183/11, Econord, ??? 21 ??? ??
???? ?????????? ??? ??????). ???????, ??? ?????? ??? ?????? ??? ?????? ???

??? ?????????? ??? ??????????? ??? ?????????????? ?????????? ??? ?????????????? ?? ??????
?????????? ?? ??? ?????? (??., ???????, ??????? ?? 1?? ?????????? 2005, C?213/04,
Burtscher, ?????? 2005, ?. I-10309, ????? 35 ??? ????? ?????????????? ??????????). ??????,
?????? ?? ?????????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????, ??
?????????? ???????????, ???' ?????, ?? ?????????? (??????? Econord, ??????????????,
????? 21).

22 ? ?????????? ??? ?????????? ratione temporis ??????? ?????????? ??? ??????????
C?618/11 ??? C?637/11 ??????? ?????? ?????????? ??? ??????? ??????? ?? ???
?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????.

23 ????????, ??? ????? ???? ?????????? ??? ?????????????? ??????? ????? ??????????
??????????, ?????????????? ???, ??? ????? ????? ?????????? ??? ???????????, ? ??????
????????? ??? ?? ?????? ?????????? ?????????? ??? ??????? ??? ?????? ?????????? ??? ??
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????????? ?, ???????????, ?? ?????????? ??? ??
????????? ??? ??? ?????? ?????????? ?? ?????????? ??? (????????? ??? 17??
????????? 2005, C-134/03, Viacom Outdoor, ?????? 2005, ?. I?1167, ????? 22, ??? ??
17?? ?????? 2008, C?94/07, Raccanelli, ?????? 2008, ?. I?5939, ????? 24).

24 ???????, ?????? ?? ??????? ?? ???? ?????????????? ?????????? ??? ??????????? ?? ??
????????? ?? ?????????? ?? ???? ?????????? ?? ???? ?????????? ?? ???? ?????????? ??
????????? ?? ?????? ?????? ???????, ????? ?? ???? ?? ?????????? ?? ???? ??????????
?? ?????? ?????? ?? ???? ?? ?????? ?????? ?????? ?????????????? ?????????? ?? ?????????? ??
????????? ?????????? ?? ???? ?? ?????? 23 ??? ?????????? ?? ???? ?????????? ??
????????? ?????? (?????? ?? 27?? ??????? 2012, C-370/12, Pringle, ??? 85 ??? ??
????????? ??????).

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

26 ????????, ?? ??????????? ?? ???? ?????? ?????????? ? ?????????????? ?? ?????????? ??????, ?
????????????? ??? ? ?????????? ??????????, ?????? ??? ? ?????????? ?????????? ?????????? ??????????????
??? ?? ?????? ??? ?????????? ?????? ??? ?????????????? ?? ??? ?????????????? ?? ??? ??????????
????????? ??? ?????? ?????? ??? ?????????????? ??? ?????? 24 ??? ?????????? ??????????
?????????.

27 ??????, ??? ?????? ?? ?????????? ?? ??????? ?? ?????????? ?????????????? ?? ??????????
????? ??? ?????????? ?? ??????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ??? ?? ??????
C?659/11, ?????????????? ??, ????????, ?? ??????? ?? ???????, ?? ?????????? ?? ????
????????? ?? ?????????? ?? ?????? ???????, ??????, ?? ?????? 11, A, ?????????? 1,
????????? ??, ?? 3, ??????? ??, ?? ?????? ??????? ??, ?????????? ??, ?????????? ?? 73 ?? 79,
????? ??????, ??????? ??, ?? ?????? 2006/112, ?????????? ?? ?????? ?????? ??????
????????, ????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?????? ?? ?????? ??
????? ?????? ?????? ?? ?????? ?????????? ?? ?????????? ?? (??..

???????, ??????? ??? 3?? ???????? 2008, C?230/06, Militzer & Münch, ?????? 2008, ?. I?1895, ????? 19 ????? ??? ??? ?????????????? ??????????).

28 ???? ? ? ?????????????? ?????????? ??? ? ? ?????????? ?????? ?????? ?????????? ???
????? ?????? ?????? ?????? ?? ? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ? ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????.

29 ????? ???? ?????????????? ??????, ?? ?????????? ?????????????????? ?????????? ?????? ??
???????.

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

30 ?? ???? ?????????? ????, ?? ?????? ??????? ?? ??????????? ??? ???????, ?? ??????
?????????? ?????, ???' ??????, ?? ?????????????? ??? ?? ????? 11, A, ?????????? 1,
????????? ??, 2, ??????? ??, ??? 3, ??????? ??, ??? ?????? ??????? ?????? ?? ?????? ?? ?????? 73,
78, ?????? ??????, ??????? ??, ??? 79, ?????? ??????, ??????? ??, ??? ?????? 2006/112
?????? ?? ??????????? ??, ??? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ?????????? ???
????????? ? ??????????? ?????????? ??? ?? ?????????????? ??? ?????? ?????????????? ???
??????, ?? ?????? ?????????? ??? ?? ???????????????, ??? ?????????????? ??? ??
????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?? ??????????????
????????? «????????? ?????????? ??????????» ??? ?????????????? ?? ?????????? ??????????????
?? ?????????? ??????, ?????? ?? ?????????? ??? ??? ?????? ??? ?? ?????? ??? ?? ??????????
?? ?? ?????????? ?????????? ?????????? ??????????.

31 ? ?????????????? ?? ? ?????????? ?????????? ?????? ??? ? ?????????? ?????? ??? ??
????? ??? ? ???? ?????? ?????????? ?????? ?? ?????????????????? ??? ???? ?????? ?????? ??? ??
??? ?????????? ??? ???? ?????? ?????????? ?????????? ?????????? ?????????? ?????? ??? ??
????????? ??? ???? ?????? ?????????? ?????????? ?????????? ??? ???? ?????? ??? ?? ???? ??????
????? ??? ???? ?????? ??? ???? ?? ???? ?????? ?????? . ??????, ??? ???? ?????? ?????? ??????,
??? ?????? ??? ???? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ???? ?????
????????? ?????? ?????? ?????? ?????? ?????? , ??? ???? ?????? ?????? ?????? ??? ??
??????????, ? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? ?????? ?????? ?????? ?????? ??? ??
??? ?????? ??? ???? ?????? , ? ?????? ??? ???? ?????? 11, A, ?????????? 3, ?????? ??, ???
????? ?????? ??? ???? ?????? 79, ?????? ?????? , ?????? ??, ??? ?????? 2006/112 ???
????? ?? ??????????.

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

33 ???????, ?????????????? ???, ??? ?? ????? 11, ?, ?????????? 1, ????????? ??, ???
????? ??????? ?? ???? 73 ??? ?????? 2006/112, ? ??? ?????? ??? ??
?????????? ?? ???? ?????????? ??? ?????????? ??? ?????? ?????? ? ?? ??????? ?
?????????, ? ?????????? ? ?????? ??? ?????????? ??? ?????? ? ????? ?????????? ???
????????? ??? ??? ?? ??? ??????. ?? ????? 11, A, ?????????? 2 ??? 3, ??? ????? ??????
????? ??? ?? ????? 78, ????? ??????, ????????, ??, ??? 79, ????? ??????, ????????, ?? ??
?????? 2006/112 ?????????? ?????????? ?????????? ?? ?????? ?????? ?? ??????????????????
?? ????? ?????? ??? ????? ?? ????? ?? ????? ?????? ?? ?????????????? (??., ???????,
????????? ??? 1?? ?????? 2006, C-98/05, De Danske Bilimportører, ??????? 2006, ?. !4945,

?????? 15, ?????? ??? ??? 28?? ??????? 2011, C-106/10, Lidl & Companhia, ??????? 2011, ?. I?7235, ??????? 30 ??? 31).

34 ????????, ?? ??? 11, A, ?????????? 2, ??????? ??, ??? ????? ?????? ?? ?
????? 78, ??? ?????, ??????? ??, ??? ?????? 2006/112 ?????????? ?? ? ??????, ??
??????????, ?? ??????? ?? ?? ???, ??????? ?? ?? ??, ?????????????? ?? ?
????????? ???.

35 ?? ?????? 11, ?, ??????????? 3, ?????????? ??, ??? ?????? ???????? ??? ?? ?????? 79, ?????? ???????, ??????? ??, ??? ?????? 2006/112 ?????????? ??? ?????????????? ??? ?? ?????? ?????? ?????? ?? ?????? ?? ???? ?? ?????? ?????? ?? ?????? ?????? ??' ?????? ??? ?? ?????????? ???, ??? ?? ?????? ?????? ?????????? ??.

36 ????????, ??? ?? ??????????? ?? ?????? ??????????? ??? ?????? ??????? ?? ?????? ?????? ?????? ??????
?????? ?? ??????????? ?? ?????? ??????? ?? ?????? ??? ??????????? ?? ?????? ?????? ?????? ??????????
?????????? ?????????? ??????????? ? ?????????? ?? ?????????? ?? ??????????? ?? ?????? ?????? ??????,
??????, ?? ??????????, ?? ??????????? ?? ?????????? ??? ?????? ??? «??????, ????????????,
???????? ?? ?????», ??? ?? ????? 11, ?, ?????????? 2, ??????? ??, ??? ?????? ??????
?? ?? ????? 78, ?????? ??????, ??????? ??, ??? ?????? 2006/112.

37 ???????, ?? ?????????? ???????????? ??? ???, ??? ?? ?????????? ??? ??? ?????????? ???.
???, ??????, ??????????, ?????????? ??? ???, ??? ?? ?????????????? ?????????? ???.
???, ?????? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ???.
????????? ?????? ?? ?? ???? ?? ?????? ?????? (??., ??????, ?????????? ??? 20?? ?????? 2010, C-
228/09, ?????? ??? ?????????, ????? 30, ????? ?? Lidl&Companhia, ????????????,
????? 33).

39 ?????? ?????? ?? ??????? ?????? ?????? ?????? ?? ?????? ?????????????? ??????????? ?????? ?? ??
?????? ?????????? ?????????? ?????????? ??????????????, ??? ?????? ?????????? ??????????
??? ?? ??????? ?? ?? ?????????????? ?????????? ??? ?? ??? ?????? ?????????? ??????? ?????????? ?? ??
??? ?? ?????????? ?????????????? ?????????? ??? ?????? ?????????? ??????? ?????? ?????????? (??.,
??????, ?????????????? ?????????? De Danske Bilimportører, ??????? 17 ?? 18, ?????
?? ??????? ?? ?? ???????, ??????? 30 ?? 32).

40 ?? ???????????, ????. ?????????? ???. ????. ?????? ?????? ?????? ?????? ?????? 28,
?????????? 1, ????. ???? 42/2004, ????. ?????? ?????? ?????? ?????? ???. ?????? ?????? ?????? ???.
????????????????? ???. ????. ?????? ?????? ??????, ?????? ?????? ?????? ??????, ?????? ??????, ?????? ??????,
????? ?????? ??????, ?????? ?????? ??????, ?????? ????. ?????? ?????? ?????? ?????? ?????? ???.
????? ?????? ??????, ?????? ?????? ??????, ?????? ?????? ????. ?????? ?????? ??????, ?????? ??????
????? ?????? ??????, ?? ?. ?????? ?????? ???. ?????? ?????? 4 % ???. ???.
????? ?????? ????. ???. ?????? ??????. ???. ???. ???. ?????? 50, ?????? 1, ????. ?????? ??????
????? 227/2006 ?????? ???. ???. ???. ?????? ?????? ???. ?????? ???. ?????? ???.
????? ???. ???. ?????? ???. ???. ICAM ???. ???. CP-MC.

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

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

42 ???????, ??? ?? ?????? ?????? ?????????????? ?????? ?????? ?????? ?? ??? ?????? ?????? ???????????
?????????? ?????????? ???????????, ?????? ??????????? ?? ??????????? ?????????? ???
????? ??????????? ??? ?? ??? . ???????, ??????? ??? ?????? ??? «??????, ???????????,
????????? ??? ?????» ??? ?????? ????? ?? ?????? 11, ?, ?????????? 2, ??????? ??, ??? ???
?????? ??? ?? ?????? 78, ?????? ??????, ??????? ??, ??? ?????? 2006/112.

43 ?? ??????????? ??? ?? ??????????? ??? ?? ??????? ???, ??? ?? ?????? 50,
????????? 3, ??? ??????????? ??????????? 227/2006, ?? ?????? ??????????
??????????????, ??? ??????????? ??????????????? ??? «?????????? ??????????????», ???
???? ??????????? ??????????? ??????????? ??????????? ???????????.

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

45 ???????, ?? ??????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????? ???????????????
?????? ??? ??????????? ??????????? ?? ??????????? ??? ??????????? ??? ?????? ???
?????????? ??? ??????????? ??????????? ??????. H TVI ??????????? ???, ??????????? ???? ??
???? ?? ??????? ?? ??????????? ??? ??????????? ??????????? ??????????? ???????????,
?????????????? ?? ?? ?????? ??? ?????? ?????? ??????????? ??????????? ??? ??????????? ???
??? ??????????? ?? ?? ?????? ??? ?????? ?????? ??????????? ??? ?????? ??' ??????? ??? ?? ??????????? ???
???????? ???. ? ??????????? ??????????? ?????? ??? ? ?????????? ???????, ???????????, ??? ?
TVI ?????? ??????????? ??? ?????? ???????????, ?????????? ??? ?? ??????????? ??? ???????????
?????????? ??????????? ??????????? ??? ??????????? ??? ?? ??????????? ??? ?? ??????????? ??? ??
?????????? ??????????? ??????. ???????, ??? ?? ?????? ???, ? TVI ??????????? ??
????? ??????????? ??' ??????? ??? ?? ??????????? ???.

46 ??????, ??? ?? ??????? ??? ?? ??????? ??? ? TVI ??????????? ?? ?????? ??????????? ??'
?????? ??? ?? ??????????? ??? ??????? ???, ??? ??????????? ?????? ??? ???????????
?????????? ???????????, ??? ??????? ??? ?????? ???, ??????????? ??? ?? ???
????????? ??? ?? ??? ?? ?????? 11, A, ?????????? 3, ??????? ??, ??? ?????? ?????? ???
?? ?????? 79, ?????? ??????, ??????? ??, ??? ?????? 2006/112.

47 ??????, ??? ??????????? ? ?????? ??????????? ??? ??????????? ??? ?????? 48, 50 ?? 51 ???
????????? ???, ??? ?? ??????????? ??? ??????????? ??? ??????????? ??? ?????? ??? ???????????,
????????? ??? ???????????, ??? ??????? ??? ?? ?????? 18 ?? 20 ?? ?????? ??????? ???????????, ??
????????? ???????????, ??????????? ??? ?????? ??????????? ??? ?????? ???, ??? ? TVI
?????? ?? ?????? ??? ??????????? ??? ?? ??????????? ??? ?????? ??????? ??????? ??? ??
????????? ??????????? ??????????? ??? ??????????? ??? ?????? ??? ?? ?????? ??????????? ??? ??
??? ?????? ?? ?????? ?? ??????????? ?? ?????? ??? ?????? ?? ?????? ??? ??????????? ??? ??
?? ?????????? ??????????? ??? TVI. ???????, ?????????? ??????? ??? ?? ???
?????????? ???????, ? ??????? ??? ?????? ?????????? ?????? ??? ?????? ???????????, ???
? TVI ?????????? ?? ?????? ??? ??' ??????? ??? ?? ?????? ??????????? ???.

48 ??????????? ??? ?? ?????? ??? ???????????, ??? ??????????? ???????????
?????? ?? ?????? ??? ??????? ??? ?? ?????? 11, ?, ?????????? 1, ??????? ??, 2, ?????????? ??,
?? 3, ??????? ??, ??? ?????? ??????? ??? ?? ?? ?????? 73, 78, ?????? ??????, ???????
??, ??? 79, ?????? ??????, ??????? ??, ??? ?????? 2006/112 ??? ?????? ??? ??????? ???

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

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

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

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

? ? ?????? 11, ?, ?????????? 1, ?????????? ??, 2, ?????????? ??, ??? 3, ?????????? ??, ???
????? ??????? 77/388/?? ?? ??????????, ??? 17?? ??? 1977, ??? ??????????
?? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ?????? ????????? -
????? ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ???, ???
??? ?? ?????? 73, 78, ?????? ??????, ?????????? ??, ??? 79, ?????? ??????, ?????????? ??,
??? ??????? 2006/112/?? ?? ??????????, ??? 28?? ??????? 2006, ??????? ?? ??
????? ??????? ?????? ?????????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ??? ?? ?????????????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ??
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