

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

?? 11?? ?????????? 2014 (*)

«????????????? ?????????? — ???? 49 ??? 54 ??? — ?????????? ?????????? —
????? 63 ??? 65 ??? — ?????????? ?????????? ??? ?????????? — ??????????
????????? — ?????? ?????? — ?????? ?????? ?????? ??? ?????????? ??? ??????
??? ?????? ?????????? ??? ?????????? ?????? — ?????? ?????? ??? ??????????
??? ?????????? ??? ?????????? ??? ?????????? ?????? — ?????? ?????? ??? ??????
??? ? ?????? ??? ?????? ??? ?????????? ??? — ?????? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???
????? — ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????»

???? ?????? C47/12,

? ?????????? ??? ?????? ?????????? ?????? ??? ?????? 267 ???, ???
????? ?? Finanzgericht Köln (????????) ?? ?????? ??? 6?? ?????????? 2011, ? ???
????????? ??? ?????????? ??? 31 ?????????? 2012, ??? ?????? ??? ????

Kronos International Inc.

????

Finanzamt Leverkusen,

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

????????? ??? ??? A. Tizzano, ?????? ??????, A. Borg Barthet, J. L. da Cruz Vilaça, E. Levits (????????) ??? M. Berger, ???????,

????????? ??????: P. Cruz Villalón

?????????: K. Malacek, ??????? ????????,

????????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
16?? ??? 2013,

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

- ? Kronos International Inc., ?????????? ??? W. Meilicke ??? D. Rabback,
Rechtsanwälte,
- ?? Finanzamt Leverkusen, ?????????? ??? B. Hillebrand, K. Kusch ??? H.
Brandenberg ??? ??? M. Brombach-Krüger,
- ? ?????????? ????????, ?????????? ??? T. Henze ??? ??? K. Petersen,
- ? ?????????? ??? ????????, ?????????? ??? S. Ossowski,
????????? ??? ??? S. Ford, barrister,

– ?????????? ???????, ?????????????? ??? ??? W. Roels ??? W. Mölls,
???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??? ?????? ???
??? 7?? ??????? 2013,

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

???????

1 ? ?????? ?????????????? ?????? ??? ?????? ??? ?????? 49 ??? ?? 54
????, ?? ?????? ?????????? ??? ?????? ??????????, ??? ?? ??? ?????? 63 ??? ??
65 ???, ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????????.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? Kronos International Inc.
(??? ????: Kronos), ??????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
Delaware (?), ??? ??? Finanzamt Leverkusen (? ??? ??? Leverkusen, ??? ????: Finanzamt),
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
?????????, ??? ?? ??? 1991 ??? 2001, ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? Kronos ??? ?????? ?????????? ?????????.

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

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

3 ??? ???? 1991-2000 ?? ??? 49, ?????????? 1, ??? ?????????? ??? ?? ??
????????? ?????????? ?????? (Körperschaftsteuergesetz, *BGBL* 1991, I, ?. 638,
??? ????: KStG ??? 1991) ????????, ??? ?????? ?? ?????????? ??? ????????,
????????????????? ??? ??????????, ??? ?????????????? ??? ??? ?????????? ??? ??,
???? ?????????? ??? ?????? ??? ?? ?????????? ?????????? ?????????? ??????????
(Einkommensteuergesetz, *BGBL* 1990 I, ?. 1898, ??? ????: EStG ??? 1990).

4 ?? ????? 36, ?????????? 2, ?????? 3, ??? EStG ??? 1990 ??????? ?? ??? ??
???????? «????????? ???????»:

«(2) [...] ??? ??? ??? ?????? ?????????? ????????:

[...]

3. ? ?????? ? ?????? ?????????? ??? ?????? ?????? ? ?????? ?????? ??? ??????????
????? ??? ?????? ?????? ?????????? ??? ?????? ??????, ??? ?????? ??? ?? ?? 3/7 ??? ?????? ???
??? ?????? ??? ?????? 20, ?????????? 1, ?????? 1 ? 2, ?????? ?? ?? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????????? ??? ??????????
??? ??? ?????? ??? ?????? 30, ?????????? 2, ?????? 1, ??? ?????? ?? ??????????
????????? ??? ?????? ??????. ?? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ??????
20, ?????????? 2, ?????? 2, ?????? a, ?? ??? ?????? ?????????? ??? ?? ?????? ??? ??????
????? ??? ?????? ??? ?????????? ?????? ?????????? ?????? ?????? ?????????? ???
????????? ????, ? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ???
3/7 ??? ?????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? [...]? ??? ?????? ??????????
?????? ?????? ??? ???????:

[...]

f) ?? ?? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ???

?????,

[...]».

5 ?? ?????? 36, ?????????? 4, ??? EStG 1990 ??????? ?? ????:

«??, ??????? ?? ???????????, ??????? ?????????? ??????? ?? ?????? ?? ???????????
????? ??? ??????????, ?? ??????? ??? (? ??????????????) ??????? ?? ?? ?????????? ??????,
????? ?? ??????? ??? ??????? ?? ?? ?????????? ?????? ?? ?????? ?? ?????? ?? ???????, ???
??? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ???????, ???
????????????? ?????? ?? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ??????
????????? ??? ?????? (?????? ??????). [...] ??, ??????? ??? ??????????, ????????
????????? ?????? ??? ?????? ??? ??????????????, ?? ??????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????????? ??? ?????????????? ?????????????? ??? ??????»

6 ??? ?? ??????? ?? ??????? ?? ??????? ?? ?????????? ?????????? ?? ?????????? ???????
??? «?????? ?? 50 %», ? ??????? ?????????? ?? 36, ?????????? 2,
????? 3, ??? EStG ??? 1990. ??? ?? ??????? ?? ?????????? ?? ??? ?? ??? ??????????
?? ?????????? ?????????? ?????????? ???, ??? ?? ?????????? ?????????? ?? ??? ??
????? ??? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ?? ??? ?????????? ??
????????? ?? 2001.

7 ?? ?????? 26, ?????????? 7, ??? KStG ??? 1991, ??? ?????? ??? 1993, ??? ??
????? 8b, ?????????? 5, ??? ?????? ???, ??? ?????? ?? 1994 (??? ????: KStG
??? 1994), ??????? ?? ???:

«?? ?? ??????? ?? ?????? ?? ??????? ?? ?????????? ?? ?????? ??????????????, ???????
????????? ?? ?????? ??????? ?? ?????? ??????????, ??? ?? ?????? ?????????????? ???????
????????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????????? ?????????? ??
????????? ??, ? ?????????? ??????????, ?????????? ?? ?????? ?????????? ?? ?????????? ??
????????? ?????? ?????? ?????????? ?? ?????? ?????????? ?????????? ?? ?????????? ?? ?? 10
%.»

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

8 ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ???????????, ??????? ?? ???
????????? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?? ?????????? ??
?????, ?? ??????? ??????????, ?? ?????? ?????????? ?? ?????? ??????, ?? ?????????? ??
??? ?????????? ?? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????????? ??
? ?????????? ?????? ??, ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????? ??
?????????.

9 ??? ?????????????? ???????????, ?? ??????? ?????? ?????????? ??? ???????
????? 10 %. ? ??????? ?? ?? ??????? ?????????? ??????? ?? ?????? ?? ?????? ??? 25 %,
???? ?? ? ??????? ?? ?? ?????? ??? ?? 2000, ??? ?? ? 2001 ?? ??? ?? ??? 10
%.

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

10 ? Kronos ??? ?????? ?????? ?????????? ??? ?????? ?????? ??????. ? ?????????? ???
????? ?????????? ??? ?????? ?????? ?????? ??? ? ?????? ??? ???????, ??? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?? 1989. ? Kronos
????????? ?? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???

?????????? ??????? ?? ??????. ??? ?? 1989 ??????? ?? 99,95 % ??? ??????? ??
????????? ?????? Kronos Titan GmbH, ?? ??? ?????, ??? ?? ???? ?????? ??????????
????????, ??? ?????? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ???
?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???.

11 ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???????, ?????? ??? ??
?? 1991 ?? 2001, ? Kronos ?????? ?????? ?????????? ??? ?????? ????????:

- ??? Société Industrielle du Titane (?????) ?? ?????? ?????????? ??? ??????????
????? 92,941 % ??? 93,771 % ??? ?? ?????? 1991-2001,
- ??? Kronos Norge (?????) ?? ?????? ?????????? ??? ??? 100 % ??? ??
????? 1991-1998,
- ??? Kronos UK Ltd (????? ?????) ?? ?????? ?????????? ??? ??? 100 % ??? ??
?? ?????? 1991-2001,
- ??? Kronos Europa SA (?????) ?? ?????? ?????????? ??? ??? ?????????? ?????? 98,4
% ??? 100 % ??? ?? ?????? 1991-1998,
- ??? Kronos Denmark ApS (?????) ?? ?????? ?????????? ??? ??? 100 % ??? ??
????? 1999-2001 ???
- ??? Kronos Canada Inc. (?????) ?? ?????? ?????????? ??? ??? 100 % ??? ??
????? 1991-2001.

12 ??? ?? ?? 2000 ?? 2001 ? Kronos ?????? ?????? ??? ??????? ??? ??????? ??
Kronos Europa SA (?????) ??? Kronos Norge (?????), ??? ?? ?????????? ??? Kronos
Denmark ApS (????), ??? ?????? ?? ?????? ??? ??? 100 %. ?? ??????
????????? ??? Kronos Denmark ApS ??? ?????? ??? ??? ?????????? ?????? ??? ??????
??? 99,99 % ??? 100 % ???????.

13 ??? ?? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ? Kronos ???
????????? ??? ?? 1991 ?? 2001 ?????? ??? ?? 2004 ?? ?? 2010 ?????? ???
????????, ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? 150 ?? 840 ?????????? ?????????? ???
??? ?????? ? ?????? ?????? ??? 1991, ??? ?? ?????? ?????? ??? ?????? ???
?????????, ?? 4 190 788,57 ??? ?? 1992, ??? ?? ?????? ??? ?????? ???
?? 2 050 183,81 ????. ???????, ??? ?? ?????????? ??? 1993 ?? 2001 ? ?????? ???
?????????.

14 ?? ?????????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ?????????? ???
????????????? ??? ?? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ???
????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

15 ??' ?????? ??? ????????, ? Kronos ?????? ?? ??????? ??? ??? ??? ??????????????
????????? ???????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????????????? ???????? ??????????
??? ?? ?????? ??? ??????? ?????? ??? ?????? ?????? ?????? ?????????????? ?? ?????????????? ??? ?? ?
????????? ??? ?????????? ??? ?? ??? ?????? ?????? ??? (?? ??????, ?? ?????? ??? ?? ??????)
????????) ??? ?? ?????? ????? (??? ?????? ??? ?? ???????) ??? ?? 1991 ??? ?? 2001,
????? ??? ?? ??? ?????????????? ?? ?????????? ??? ?????????? ??? ?????????? ???.

16 ?? ??????? ?? 15?? ??????????? 2005, ?? Finanzamt Leverkusen ??????? ?? ???????
????. ? ??????????? ?? ?? ??????? ?????? ?????????? ?? ?????????? ?? ?????? 36, ??????????? 2,
?????? 3, ??????? f, ??? EStG ??? 1990, ?? ??????? ?? ?? ?????? 49, ??????????? 1, ???
KStG ??? 1991, ??????? ?? ?? ?????? ?? ?????? ??????????? ??????? ?????????? ??
?????????? ?? ?? ?? ?????????? ?????? ?????? ??????? ?? ??????? ?????? ??? ?? ?? ??
????????? ??????????????? ?? ?? ?????????? ??????. ?????????? ??? ?? ?? ??
????????? ?????????? ?????????? ?????????????? ?? ?? ?? ??, ??????? ?? ?? ?? ?? 26,
????????? 7, ??? KStG ??? 1991, ??? ?????? ?? ?? 1991 ??? 1993, ??? ??????? ?? ??
????? 8b, ?????????? 5, ??? KStG ??? 1994 ?? ?? ??????? ??, ?? ?? ?????????? ??
????????? ?? ?????????? ?? ?? ?????????? ?????? ??????? ?? ?? ?????????? ?? ?? ??
?? ?? ??.

17 ?? ??????? ?? 10?? ?????????? 2007, ?? Finanzamt Leverkusen ??????? ?? ???????
?? ??????? ?? Kronos ??? ?? ?????? ?? ??????? ?? ??????? ?? ?? ?????????? ?? ?? ?? ?? ?? ??
?? ?????????? ?? ?????????? ?? ?? ?????? ?? ?? ?? ?????????? ?? ?? 1994.

18 ??? 7 ?????????? 2007 ? Kronos ?????? ??????? ??? Finanzgericht Köln ???????
?????? ?? ??????? ??????? ?? ??????? ??? ??????? ?????? ??????? ?? ??
????????? ?? ?????????? ??????? ??????? ??? ??????? ??? ?????????? ??? 1991 ?? 1993
?? 1995 ?? 2001.

19 ??? ?????? ?????? ??? ??????????? ?????? ?????? ??? ?????? ?????????? ?????????? ? Kronos ???
??? ?????? ??? 201 966 724 ????, ?? ??? ????? ?????????? ??? ?????? ?????? ?????????? ???
????????? ?????? ??? ?????? ??? ????? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ??
????????? ??? Kronos ??? ?????? ??? ?? ??? 1991 ??? 2001, ??? ?????? ?????? ??? ?? ??
?? 1997 ??? 1999 ??? ??? ?????? ??? ?? ??? 2000 ??? 2001 ??? ?? ?????? ??????
????????? ?? 78 501 794 ????. ?? ?????? ??? Kronos ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??
????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?? ??????????
????????? ??? ?????????? ???, ?????? ?????? ??? ?????? 123 448 418 ????, ?????? ???
?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????, ?????? 16 512 ???.

21 ????? ???? ?????????? ??????, ?? ??????? ?????????????? ??????????? ?? ?????????????? ??
????????????? ?? ?? ?????????? ?? ?????????????? ?? ?????????????? ?? ?????? ?????????????? ?? ??????????:

«1) ?????????? ????, ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? 49, ??
????????? ?? ?? ?????? 54 ????, ? ????, ????, ?????????? ????, ?????????? ????, ?????????? ????, ?????????? ????,
????????? ????, ?????? 63 ????, 65 ????, ? ??????? ????, ?????????? ????, ?????????? ????, ?????????? ????,
?????? ?????????? ?? ??????? ????, ????, ????, ?????????? ????, ?????????? ????, ?????????? ????, ??????? ??
????????? ????, ?????????? ?????????????? ????, ?????????? ????, ?????????? ????, ?????????? ????, ????

???????????? ???? ?????????????? ?????????? ?????????????????? ??? ??? ??? ??? ??? ??? ????
????????? ??? ? ?????????? ??? ?????????? ?????????????? ?????????? ?????????? ?????????? ??
????????? ?????????? 10 % ??? ?????????? ?????????? ??? ?????????????? ??????????, ????
????????? ??? ?????? ? ?????????? ?????????? ??? ?????????? ??? ?????????????? ?????????? ??? ??????
?? ?????????? ?????????? ?? ??????? 100 %;

2) ????? ?? ?????????? ????? ?????????? ?????????????????? (???? ?????? 49 ?????) ???,
?????????????, ??? ?? ?????????? ????? ?????????? ?????????????? ??? ?????????? (????? ??
1993 ?????? 67 ??? ????????, ??? ?????? 63 ??? 65 ????) ??? ?????? ??? ?????????????? ??
????????? ????????, ?????? ?? ?????????? ??? ?????????? ????? ?????????? ?????????? ??????
????????? ?????????????? ??? ?????????? ?????????? ?????? ?????? ??? ? ?????????? ???
????? ?????????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???, ?????? ???
????? ?????????? ??? ?????? ? ?????? ?????? ?????? ??? ?????? ??????, ??? ??? ??
????????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ??????????
????? ??? ?????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????;
????;

4) ????? ?????????? ????? ?????? ?????? ?? ?????????????? ??? ?? ?????????? ????? ???????????
????????????? ?? ??????????, ??????? ??????, ?? ?????? ?? ?? ?????????? ??????????
?????????, ??????? ?? ?????????? ?? ??????? ??????, ?? ??????? ??????:

????? ?? ??? ?????? 64, ??????????? 1, ??? ???? ?????? ??? ?????????? ??? ??????????????
?????????? ?? ???? ??????? ?? ?????????? ??? ??????? ?????????? ??? ??? ?? ?????????? ??
????????? ??????? ?? ?????? ??????????, ?? ?????? ?????? ?????? ?????????? ???' ????
????????????? ?? ??? 31 ?????????? 1993, ???, ???????, ?? ?????????????? ?? ?????????? ??
?????????? ?? ??????? ? ?????????? ?????? ?????? ?????????? ?????? ?????? ???
?????????? ?? ??????? ??? ??? ?????????????? ??? ??????;»

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

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

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

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

23 ??? ?? ??? 36, ?????????? 2, ?????? 3, ??????? f, ??? EStG ??? 1990, ? ???
????????????? ??????? ?????????? ?? ?? ?????? ??? ?????????? ?????????? ??? ??,
????????????? ??? ?????? ?????? ??????.

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

25 ??? ?????? ?? ?????? ?????????? ?????????? ??? ?? ?????????? ??? ?????? ??????????
??? ?????????? ?????????? ??? ??????, ??? ?????????? ??? ?? ?????? ?????????? ??? ??,
????????? ??? ?????? ?????????? ???, ??????? ?? ?? ??????????, ??? ?? ?????? 26,
????????? 7, ??? KStG ??? 1991, ??? ?? ?? 1991 ??? 1993, ? ??? ?? ?????? 8b, ??????????
5, ??? KStG ??? 1994, ??? ?? ?? 1994 ??? 2000, ??? ?????????? ??? ?????? ?????? ??????????
??? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ??,
????????? ??? ?? ?????????? ??????????, ?????????? ?? ?????????? ??? ?????? ??? 10 % ?? ??,
????????? ???, ??? ?????? ??? ?????? ?????? ?????????? ??????????, ??? ?? ?????? ?????? ???
????????? ?????? ??????.

26 ?? ?????? ?????????? ??????? ?????? ??? ? Kronos, ???' ??? ?? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ??????, ??? ?????? ?????????? ??? 93 % ?? 100
% ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ??????.

27 ?????, ?????? ?? ?????????? ???, ??????? ?? ?? ?????????? ??? ?????????? ?? ??????
?????????, ? ?????????? ??? ?????? ??? Kronos ?????????? ??? ?????????? ?????????? ??? ??,
????????? ??? ??? ?????????, ??? ?????? ?????????? ??? ?????? ?????????? ??? ??,
????????? ??????. ??? ?????????? ??? ? Kronos ?????? ?????? ??? ?????? ??????????
????????? ?? ?? ?????????? ??? ?????????? ??? Delaware. ? ?????????? ??????????
????????? ???, ?????? ?? ????? XXV, ?????????? 5, ??? ?????????? ??? ??????,
????????? ??? ?????????? ??? ?????? 29 ?????? 1954 ?????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? (BGBI. 1956 II, ?,
487), ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????????? ??? ?????????? ??? ??????.

28 ??? ?? ?????????? ???, ?? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ??? ??,
????????? ?? ?? ?????? ??? ?????? ?? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ??,
?????????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ? ?????????? ??? ??,
????? ?????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??????????
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????????
????? ??? ?? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ?????????? 10 % ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ?? ?????? ??? ?????? ??? ?????? 49 ??? 54 ??? ?, ??? ??????, ?? ?????? 63
????? ?? 65 ???, ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???

???????????????? ???? ?????? ??? ??????? ?? ?????????? ?????????? ?? 90 % ??? ?
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?? ?? ?????????? ??????
??????.,.

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

29 ??? ??? ??? ????? ?????????? ??? ?????????? ?????????? ??? ? ?????????? ?????????? ?
??? ?????????? ?????? ?? ?????????? ??? ?????? 49 ???, ??? ?????? ??? ??????????
?????????????, ??? ??? ????? 63 ???, ??? ?????? ??? ?????????? ?????????? ??? ??????????
(????????? Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, C?436/08 ??? C?437/08,
EU:C:2011:61, ????? 33, Accor, C?310/09, EU:C:2011:581, ????? 30, ??? Test Claimants in the
FII Group Litigation, C?35/11, EU:C:2012:707, ????? 89).

30 ??? ??? ??? ?? ?????? ?? ??? ??? ??? ?????????? ?????????? ?????????? ??? ??????
????????? ??????, ??? ?????? ?????????? ?????????? ??? ?????? ?? ?????????? ?????? ??
????????? ??? ?? ??? ?????? ?????????? (????????? Test Claimants in the FII Group Litigation,
EU:C:2012:707, ????? 90 ??? ????? ?????????? ??????????).

31 ??? ??? ?????? ?????????? ??? ?????? 49 ???, ??? ?????? ??? ?????????? ??????????????,
????????? ? ?????? ?????????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? (?. ?????????? Test
Claimants in the FII Group Litigation, C?446/04, EU:C:2006:774, ????? 37, ?????? ???,
C?81/09, EU:C:2010:622, ????? 47, Accor, EU:C:2011:581, ????? 32, Scheunemann, C?31/11,
EU:C:2012:481, ????? 23, ??? Test Claimants in the FII Group Litigation, EU:C:2012:707, ?????
91).

32 ????????, ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ??
????? ?????????? ?? ?????????? ?????? ??? ?????????????? ?????????? ??????????, ?????
????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??????????, ?????? ??
????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ??????????
(????????? Haribo Lakritzen Hans Riegel ??? Österreichische Salinen, EU:C:2011:61, ????? 35,
Accor, EU:C:2011:581, ????? 32, Scheunemann, EU:C:2012:481, ????? 23, ??? Test Claimants
in the FII Group Litigation, EU:C:2012:707, ????? 92).

33 ??? ?????? ??? ?????? ??????, ??? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ??? ?????? ? ?????????????? ?????????? ??? ?????????? ??? ?????? ??? ??????????
??? ??????, ?? ?????? ?????????? ??? –????? ?????? ?? ?????????? ??? 2001– ??? ??????,
????? ??? ??? ?? ?????????? ?????? ??? ?????? 8b, ?????????? 5, ??? KStG ??? 1994
??? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ???
????? ?? ?????????? ??? 2000, ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????? ??? ?????? ??? ?????????? ??? 10 %.

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

35 ????????, ??????? ??? ?? ?? ?????????? ? ?????????? ???????, ?? ??????? ???

????? ??? ???? , ???????, ?? ?????????? ?? ?????? ? ??????? ?????? ??? ?? ?????????? ???
????????? ?? ?????????? ?????? ?????????????? ?????? ?????????? ??? ?? ?????????? ???
????????? ?? ?????????? ?????? ?????????????? ??? ?????????????? ??? . ?????????????, ?? ?????????? ???
????? ??? ???? ?????????? ?????? ??? ?????????? ??? ?????????? ???' ?????? ??? ? ??????
?? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
(?. ??' ?????? ?????? ITELCAR ??? Fazenda P?blica, C?282/12, EU:C:2013:629, ??? 22).

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

37 ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????? ???
????????? ?? ?????????? ?? ? ?????? ??? ?????? ??? ?????????? ??? ?????? 49 ??? ?
?? ????? 63 ????, ?? ?????????? ??? ?????? ???, ?????? ? ?????? ?????? ????
????????? ?????????? ??? ?????? ???, ?????? ?? ?????????? ??? ?????? ?? ??????????
????????? ??? ?????????? ???, ?????? ?? ?????????? ??? ?????? ?? ?????????? ??? ? ??????
????? ??? ?????? ??? ?????????? ??? ?????? 49 ??? ? ??? ????? 63 ??? (?. ??' ????
????????? Test Claimants in the FII Group Litigation, EU:C:2012:707, ?????? 93 ??? 94 ???
?? ?????? ?????????? ???, Beker, C?168/11, EU:C:2013:117, ?????? 27 ??? 28,
????? ??? Bouanich, C?375/12, EU:C:2014:138, ??? 30).

38 ???????, ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
?? ?????? ????, ?? ?????????? ??? ?????? ??? ? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? 49 ??? (?. ??' ???? ?????? Test Claimants in the FII Group
Litigation, EU:C:2012:707, ?????? 96 ??? 97).

39 ?? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ???
????? ??????, ?? ?????? ?? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ??????
????? ??? ?????? ?????????? ?? ?????? ??? ?????????? ?? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?? ?????? ??? ?????? ???, ?????? ?? ?????????? ??? ?????? ???
????? 63 ??? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ???, ? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? (?. ?????? Test Claimants in the FII Group Litigation, EU:C:2012:707,
????? 104).

40 ??? ???????, ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 49 ??? ??? ??? ?????? 63 ??? ??? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ?? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

41 ???? ?, ?? ??????? ?? ? ?????????? ?? ?????? ??????? ?????????? ?? ?????? ??????,
???? ? ??????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ???
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ???, ???
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ??? ??????????
?????????. ???????????, ? ??????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ??
?????????? ?? ?????? 63 ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????
????????, ??????????? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?????????? ?? ?????????? ??
????????? ???????, ? ?????? ?????? ?????????? ?? ?????? ?????? (?. ??' ?????? ???????
Test Claimants in the FII Group Litigation, EU:C:2012:707, ?????? 99 ??? 104).

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

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

44 ???????, ?? ??????? ?? ?????? ?????? ??????? ?? ?????? ?????????? ??????????????
????????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? (?. ??' ?????? ???????
Ferrer Laderer, C:147/91, EU:C:1992:278, ??? 9).

45 ??? ?? ??? 54 ???, ?? ??????? ?? ?????? ?????? ?????? ??????? ?? ?? ??????????
????????? ?????? ?? ?????? ?????? ?????????????? ??, ??? ?????????? ?????? ?????????? ?? ??
????? ?????????? ?? ?????? ?????? ?????? ?????????????? ??, ??? ??? ?????????? ?? ??
????????? ?? ?????? ?????? ??? ?????????? ?? ?????????? ?????????????? ??, ?? ?? ?????? ???????
?? ?????? ?????? ??? ?????? ?????? (?????? National Grid Indus, C:371/10, EU:C:2011:785,
????? 25).

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

47 ? ??????? ?? ?????????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? Kronos
?? ?? ??????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??????? ??
????????? ?? ?????????? ??, ?? ?? ?????? ?????? ?????????? ?? ?????? ?? ?????? ?? ??????? ??
????????? ?? ?????????? ?? ?????? ?????? ?? ?????? 49 ???.

48 ???????, ??? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????????? ??????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??
????????, ??? ?? ?????? ?? ?? 49 ??? ?????? ?????? ?? ?????????? ?? ?????? ?? ?????? ??
?? ?????????? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????? ??????????
??????, ?? ?????, ??? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ??
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? (?. ?????????? Cartesio,
C:210/06, EU:C:2008:723, ??? 109, ??? National Grid Indus, EU:C:2011:75, ??? 26).

49 ?? ?????? ??? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????????? ??
????????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?? ??????
????? ?????? ?? ??? ??, ?? ?? ??????, ?? ?????? ?????????? ?????????? (?. ??' ??????
????????? Cartesio, EU:C:2008:723, ??? 110, ??? National Grid Indus, EU:C:2011:785, ???

27).

50 ?? ?????? ??? ?????? ?????? ??????? ?? ?????????? ?????????? ?? ?????????? ?????
????????? ??? ?????????? ??? ?????????? ?? ?????? ?????? ??? ?????????? ?????????????? ???
??? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????????????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? (???. ??' ?????? ?????? Lasertec, C?492/04,
EU:C:2007:273, ??? 27).

51 ?? ?????????? ?????????? ??? ?????? ?? ?????????? ???, ??? ?????????? ??? ?????? ???
???, ??? ?????? ???, ??? ?????? ?????? ? ?????????? ??? ?????????? ?????????????, ??? ??????
?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????????? ?? ?????????? ?? ??? ?????? ???
?????? ????????, ? ?????? ?????? ?????? ??? ?? ?????????? ?????????? ??? ?????????? ??? ??????????
??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????, ? ?????? ??? ?????????? ???
????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 63 ???.

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

53 ??? ?????? ??? ?????? ?? ?????????? ???, ??? ?????? ?????? ?? ?????????? ??? ?????? ?? ??????
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ???
????? ??????, ??? ?????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? 63,
????????? 1, ????, ?? ??? ?????? ??? ?????? ?? ??? ?????? ??????, ?? ?????????? ?????? ???
??? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ?????????? (????? Test Claimants in the FII Group Litigation,
EU:C:2012:707, ??? 100).

54 ??? ?????? ?????????? ???' ?????? ? ?????? ?????????? ?????? ??? ?????? 64 ??? ??????????
???, ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ???
????? ?????? . ?????? ???, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ?????? ??? ?????? . ? ?????? ?????? ??? ?????? ??? ?? ???
????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

55 ??? ??? ?????????? ????, ??? ?????? ?????? ?????? ?? ?????? ? ?????? ??? ?????? ????
????? ??? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???,
? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ?????? 10 % ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ?? ?????? ?? ??? 63 ??? ?? 65 ???, ?????? ??? ?????????? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? 90 % ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ?????? ???.

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

56 ?? ?????? ??????????? ?????? ???' ?????, ?? ?? ?????? ???????, ?? ?????? ?? ??
????? 49 ??? ? ??????????? ?? ????? 63 ??? ????? ?? ?????? ??? ??????????? ??
????????? ?? ?????? ??????? ?????????? ??? ?????????? ??? ??????????? ??
????????????? ?? ??? ?????? ?????? ??? ?????? ?? ?????? ??????, ?????? ??? ?????????? ??
????????? ?? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??
????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????? ?? ??????.

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

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

59 ??????, ?? ?????? ??? ?????? ??? ??????, ??? ??? Kronos, ?????????? ?? ??
????? ??? ???????, ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????.

60 ??? ?????? ??? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ?????????????? ???
??? ??? ?????? ?????????? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??
????????? ??? ?????????? (????? Kersbergen-Lap ??? Dams-Schipper, C?154/05,
EU:C:2006:449, ??? 21).

61 ?? ?? ?????? ?????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ???
????????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ??
????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ??
?? ?????? ?????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? ??????, ??? ?? ?????? ???
????????? ?????? ?? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ??????.

62 ???????????, ? ?????? ?????????? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ??
????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????? ?? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????????? ??? ???, ??? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?? ?????? ???, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ??????.

63 ???????, ?? ?????????? ??? ?????????? ??? ? ?????????? ?????????? ???
?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? (?? . ??' ?????? ?????? Santander Asset
Management SGIIC .??., C?338/11 ?? C?347/11, EU:C:2012:286, ?????? 28 ?? 41).

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

65 ??? ?????? ??? ?????? ????????????, ????????????, ?????? ??? ?????? ???
???????????, ??? ?? ????? 63 ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? (?? . ?????? Test Claimants in the FII Group Litigation,
EU:C:2006:774, ??? 72, Haribo Lakritzen Hans Riegel ??? Österreichische Saline,
EU:C:2011:61, ??? 156, ??? Test Claimants in the FII Group Litigation, EU:C:2012:707,
????? 38).

66 ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ??????
?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ?????????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? (????? Test Claimants in the FII Group Litigation, EU:C:2012:707,
????? 39 ??? ??? ?????????? ??????).

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

68 ????????, ??? ?? ?????? ??? ??????, ??? ?? ????? ?????? ??? ?????????? ???, ???
????????? ?????? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? (?????????)
Kerckhaert ??? Morres, C?513/04, EU:C:2006:713, ??? 22, ??? ??? Banco Bilbao Vizcaya
Argentaria, C?157/10, EU:C:2011:813, ??? 31 ??? ??? ?????????? ??? ??????????), ???
????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ?? ??? ??? ??? ?????? ??? ?????????? ???
????????? ???, ??? ?? ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?? ??????????
????????? ??? ?? ?????? ?????????? (?????? Test Claimants in the FII Group
Litigation, EU:C:2012:707, ??? 40).

69 ?????????????? ??? ??????????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ? ??? ?????????????? ???
????????????? ?????????????? ? ??? ?????? ?????????? ??????????????, ? ??????????
?????????, ??? ?????????????? ??? ?? ??????? ?????? ??? ??? ?????????? ?????? ???, ??????????
??? ?????? ??? ?? ?????????????? ?????? ??? ?????????? ?????????? ?? ?????????? ?????????? ?????????? ??
????? ?? ?? ?????????? ???????, ?????? ?? ? ?? ????? ?????????? ?????????? ?????????? ?????????? ??
????? ?????????? ??? ?? ?????? ?? ?????????? ?????????? ?????????? ? ?????????????? ???
????????? ?????? ?????? ?????? ?????????? (??, ??' ?????? ?????????? Lenz, C?315/02,
EU:C:2004:446, ?????? 20 ??? 49, Manninen, C?319/02, EU:C:2004:484, ?????? 20 ??? 55,
??? Test Claimants in the FII Group Litigation, EU:C:2006:774, ????? 46).

70 ????? ?????????? ???????? ??? ?????? 64, ?? ?????????? ??? ?????? ??? ??????
????????????? ??? ??????? ??????????, ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ????, ?? ?????????? ??????????, ??????? ?? ??? ????? ?????????? ???
????????? ?? ?????????? ??????????.

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

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

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

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

75 ????? ?????????? ??? ?? ??????? ????? ????????????, ? ?????????????? ??? ?????? ??????
?????? ?? ??????? ??????? ?????????? ?????????? ??? ??????? ??? ?????? ??? ??????????
?????????? ?? ??????????? ? ??????? ???????.

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

77 ? ??????? ?? ?????????? ?? ? ? ??????? ?? ?????????????? ?????????? ??
????????? ?? ???? ?? ?????? ?? ?????????????? ?? ???? ?????? ?????????? ?? ????
?? ?????????? ?? ???? ?????????? ?? ???? ?????? ?????? ?????????? ?? ???? ?? ???? ??????????
?? ?????????? ?? ???? ?? ?????? ?????? ?? ???? ?????? ?????? ?????? ?????? ??????????????.

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

79 ????? ?????????????? ????? ???????, ????? ?????????????? ????? ?????????? ??? ??????? ????????,
????????? ??? ?????????? ?? ??????? ?????? ?????? ???????, ? ?????????????? ??? ??????? ??? ?????? ??? ?????
????????? ? ?????????? ?? ??????? ?????? ??? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????? ?????? ?? ?????????? ???????.

80 ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ? ??????? ??? ?????? ?????? ??????????
????????????? ?? ???? ?????? ?????? ?????????? ??????????, ??????? ?? ?????????? ?? ??????????
???? ??????? ?? ???? ?????? ?????????? ??? ??????? ?????? ?????????? ???????, ???????
????????? ?? ???? ?????? ?????????? ??? ??????? (?).., ???' ???????, ???????
????????? ??? ???????, C2269/09, EU:C:2012:439, ????? 59 ??? ??? ??????????????
?????????).

81 ??????????, ??? ??????? ??? ?????????? ??? ?????? ?????, ? ??????? ??? ?? ?????????
??? ?????????? ?????????? ??? ?????? ??? ?? ?????????? ?????? ?????? ?????? ??????????
????????? ??? ? ?????? ?????????????? ?????? ?????? ?????? ??? ??????????. ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????,
????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? Kronos, ? ??????? ???
????????? ?????????? ?????????? ?????????? ??? ?????????? ?? ?????????? ?????????? ??
??? ??????? ??? ??????? ?????????? ??????????.

82 ? ??????? ?????? ??? ?????????????? ?????? ??????????, ??????, ??? ??????? ??? ?
????????????? ?????????? ??? ?????????? ??? ??????????, ?????? ??? ??????? ?? ???
????? ??? ??? ?????? ?????? ?????????? ??? ??? ?????? ??? ?????? ??????????, ??? ???
????? ??? ?????????? ??? ?????????? ??? ?? ?????? ?? ?? ?????????? ??? ?????????? ??
????????????? ??? ?? ??? ?????? ?????? ??????????.

?????????????? ?? ?????? 63, ??????????? 1, ????, ??? ?????? ?? ??? ???? ?? ??????????? ??
?????????? ?? ?????? ??? ? ?????????? ?? ??????? ?????? ??? ?????????? ?? ??????? ??
????? ??????????? ?? ?????? ?? ??????? ?? ?????????? ?? ??????? ??? ?? ?????????? ?? ??????? ??
????????? ?????????? ?? ?? ?????????? ?? ??????? ?????? ?????? ?????? ?????????? ??? ??
????????? ?????? ?????? ?????? ?????? (??., ???' ???????, ?????? Test Claimants in
the FII Group Litigation, EU:C:2006:774, ??? 52), ??????? ? ?????????? ?????????? ??
????? ?????? ?????? ?? ?????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????? ??
????? ?????? ?????? (??., ?????? ????, ?????? Meilicke ??., C?262/09, EU:C:2011:438,
????? 33 ??? ????? ?????????????? ??????????).

84 ????????, ?? ?????????? ????? ?????? ??? ? ?????????? ??? ?????????? ?????
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????????? ???
????????? ??? ?????? ?????? ?????? ?? ?????????????? ??? ?????????? ?????????????? ???
????????? ??? ??? ?????????? ?????????? ??? ?????? ?????? ?????????? ?????????????? ???
????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????????? ? ?????????? ???
????????? ????? ??????, ?????? ?? ?????? ?????? ?????? ?????? ??? ?????????? ???
????????????? ?????????? ?? ?????????? ?????? ??????????, ??? ?????? ??? ?????? ??????????????
????????? ?????????? ??? ?????? ?????????????? ??? ?????? ??? (??????? Orange
European Smallcap Fund, C?194/06, EU:C:2008:289, ???? 41).

85 ????? ??????????, ?? ?????????? ??? ???? ?????? ?????? ??? ?????? ?? ??????????
????????????? ??? ???? ?? ?????? ?? ???? ?????????? ?????????? ??????????, ??? ???? ?? ??????????
???? ?? ?????????????? ?????????????, ??? ?????? ??? ?????? ??? ?? ???????????, ??
????????????? ??? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
??? ?????? ??? ?????? ?????? ??? ?? ?????? ?? ?????????????? ?? ?????????????? ??????????
??? ?????????? ??? ??? ?????? ??? ?????????? ?????????????? ?????? ?????? ?????? ?????? ?
????? ??????.

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

87 ????????, ? ????????, ??? ?????? ?????? ? Kronos ??????? ???????, ??? ??????? ???.
??????, ??? ???????, ?? ???????, ??? ?????????? ?????? ??? ?????????????? ??? ?????????? ???
??????, ??? ?????????????????? ?? ?????????? ?????? ?????? ?????? ??? ?????? ???
??????, ?? ??????????. ?? ?????? ??? ?????????????? ?????? ?????? ??????, ?
????????????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?? ??????
??????, ??? ?????? ?? ?????? ?? ?????? ??? ?????? ?????????? ?????????? ??? ??????????
????? ??? ?? ?????? ?????? ???, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
?? ?????? ?????? (??, ??' ?????? ?????? Cobelfret, C?138/07, EU:C:2009:82, ??????? 39 ??,
40, ?????? ??? ?????? KBC Bank ??? Beleggen, Risicokapitaal, Beheer, C?439/07 ???
C?499/07, EU:C:2009:339, ??????? 39 ?? 40).

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

89 ??? ??? ?????????? ??????, ??? ?????????? ?????????? ??????? ?? ??????? ? ?????????? ?? ?????????? ??

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

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

90 ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??????, ?????? ???? ???? ???? ???
????? ??? ??? ?????? ??????.

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

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

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

1) ?? ?????? ??? ?????????? ?? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
?????????, ??? ? ?????? ??? ?????? ?????? ??? ?????? ??????, ??? ? ?????????????? ???
??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ?????????? ?????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? 10 % ???
????????? ?????????? ??? ?????????? ?????? ??????????, ?????? ?? ?????????? ?? ?????? ??
????? 63 ??? ???? 65 ???, ?????? ??? ?????????? ?????????? ?????????? ? ??????????
????????? ??? ?????????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? 90 % ??? ? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ??????.

2) ?? ????? 63 ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????
?? ??? ?????? ?????? ?? ?????? ??????, ?????? ??? ?????????? ??? ?????????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????????? ?? ?????????? ?????????? ? ?????? ?????? ?????? ??????, ? ?????? ?????? ???
?????????, ??? ? ?????? ??? ?????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ???
????????? ?????????? ? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????? ??? ??????.

(?????????)

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