

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

??? 10?? ??????? 2014 (*)

«????????? — ??? — ?????? 77/388/??? — ?????? 17, ?????????? 5, ????? ??????, ??????????
?? — ????? 19 — ??????? ??? ????? ??? ?????? — ??????? ??????????????????
????????? — ????? ??? ?????????? ?????? — ??????? ?????????????? ???
????????? ??? — ?????????? ?????? — ??????????»

???? ?????? C?183/13,

?? ?????????? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Supremo Tribunal Administrativo (??????????) ?? ??????? ??? 16?? ??????????
2013, ? ?????? ??????? ??? ?????????? ??? 12 ??????? 2013, ??? ?????? ??? ???

Fazenda Pública

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Banco Mais SA,

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

????????? ??? ??? L. Bay Larsen, ??????? ????????, K. Lenaerts, ?????????? ???
??????????, ??????? ??? ??????? ????????, M. Safjan, J. Malenovský (?????????) ??? K.
Jürimäe, ???????,

?????? ??????????: M. Szpunar

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

?????? ??? ?????? ??? ??????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???
6?? ??????? 2014,

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

– ? ?????????? ????????, ?????????????? ??? ??? L. Inez Fernandes ??? ??? R.
Laires,

– ? ?????????? ????????, ?????????????? ??? ??? J. Heliskoski,

– ? ?????????? ??? ??????? ????????, ?????????????? ??? ??? J. Beeko ??? V. Kaye,
????????????? ??? ??? O. Thomas ??? R. Hill, barristers,

– ? ?????????? ????????, ?????????????? ??? ??? M. Afonso ??? C. Soulay,

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

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

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1 H ??? ????? ?????? ?????????????? ?????????? ?????? ??? ???????? ??? ?????? 17 ???
????? ??????? 77/388/E?? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ???
????????? ??? ?????? ???, ??? ?????? ?? ??? ????? ?????? ?????? ?????? — ???
????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?.
49, ??? ?????????? ??? ??? ?????? 95/7?? ??? ??????????, ??? 10?? ?????? 1995,
?? L102, ?. 18, ??? ?: ??? ?????).

2 ?? ??? ????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? Fazenda
Pública (????????? ??????) ??? ??? Banco Mais SA (??? ????: Banco Mais), ??????
????????????? ???, ?? ?????????? ??? ?????????? ?????? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????????
????? ?????????? ?????? (?? ????: ???) ??? ??? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ??? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? (?? ????:
????? ??? ?????? ?????? ??????).

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

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3 ?? ????? 17 ??? ?????? ???, ?? ??? «????? ??? ?????? ??? ?????????? ???
?????», ?????????? ??? ?????? ?????? ??? 2 ??? 5 ?? ???:

«2. ??? ?? ?????? ??? ?? ?????? ? ?? ?????? ?????????????? ??? ??
????????????? ??? ?????????????? ???, ? ?????????? ??? ?????? ??? ?????????? ??
????????? ??? ???, ??? ??? ?????? ??? ?????? ??????:

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

[...]

5. ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????????????? ???
????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? 2
??? 3, ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??? ??????, ?? ?????? ???
????????? ?????? ???, ? ?????? ?????? ??? ??? ??? ?????? ??? [??], ?? ??????
????????? ??? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ??????????.

? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????????????? ??? ??
????????? ???, ??? ?????? ??? ?? ??? 19.

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

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

?) ?? ??????????? ? ?? ??????????? ??? ??????????? ??? ????? ?? ??????? ?? ??????? ?? ???????

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

?) ?? ??????? ???, ??? ? [??], ? ?????? ??? ??????? ?? ??????????? ??? ??
?????????? ??? ?? ??? ??????? ???????, ??? ? ??? ?? ??? ?? ??? ?? ??????? ???.»

4 ?? ?????? 19, ??????????? 1, ??? ?????? ???????, ??? ??? ?????? «????????????? ??? ?????????? ??? ???????», ?????? ???:

«? ?????????? ?????????? ??? ?????????? ??? ?? ?????? 17 ?????????? 5 ?????? ????,
????????? ??? ?? ?????? ??? ????????????

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

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

5 ?? ?????? 23 ?? ?????? ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. (Código do Imposto sobre o
Valor Acrescentado), ?? ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. ???. 2004 (???. ???: CIVA), ???. ???. ???. ???:

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

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

- a) ????? ? ?????????????? ??? ???? ?????? ?????????? ?????????????? ??????????????????
b) ????? ? ?????????? ?? ???? ?????????????? ?? ???? ?????????? 1 ?????????????? ??????????????
????????????? ?? ???? ?? ??????????????.

4. ?????????????????? ??? ?????????????? 1 ?????????? ?????????????? ?????????????? ??? ?????? ?
????????????? ??? ?????? ?????????????? ?? ?????? ???, ??? ??????, ??? ?????????????? ??????
??? ??? ?????????? ?????????? ??? ?????????? ?????????? ?????? ?????????? ?????????? ??? ?????? 19
??? 20, ?????????? 1, ??? ? ???o????????? ??? ?????? ?????????????? ?? ?????? ???, ???
?????, ??? ?????? ?????????? ??? ?????????????? ??? ?????? ???, ?????????????????? ??? ?????????? ???
????????????? ??? ?????? ?????????? ??? ?????? ???, ?????????? ???, ??? ?????????? ??? ??????
????????????? ??? ?????? ???, ?????????????? ??? ?????????? ??? ?????????? ??? ??????????.

[...]»

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

6 ? Banco Mais ?????? ??????? ?? ?????? ?????????????????? ?????????????????? ??????????
????? ?????? ??? ?????????????????????? ?????? ??? ?????? ?????????????????? ??????????????????
?????????????????.

7 ??? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??? ??? ?????? ???
????????????? ???, ? Banco Mais ?????????? ??? ?????????? ??? ?????? ??? ??? ??????
????????? ?? ??? ?????? ??? ?????????? ??? ?????? ???, ??? ?????? ???, ? Banco Mais
????????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??? ? ??? ???
????????? ???, ??? ?????? ??? ??? ?????? ??? ?????????? ??? ?????? ???, ??? ??? ??????????
??? ?????? ? Banco Mais ?????? ?? ?????????? ???.

8 ????? ?? ??????????? ???? 2004 ? Banco Mais ??????? ?? ?????????? ??? ??? ??? ??? ?????
????? ?????????? ??? ?? ?????????? ??? ?????? ??? ??? ?????????? ??? ??????????????
????????????????? ??? ?? ?????????? ???????? ??? ?????? ?????????? ?????????? ??? ??????, ?????? ???
????? ?????????????? ? ???????? ???????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ??????????????
????????????? ???????? ??? ?????? ??? ?????? ??? ?????????????? ??????.

9 ???? ?????? ?? ??????? ?????? ??? ????? ?????????? ?????? ???????, ? Banco Mais ??????????
???? ??????? ?? ?????????? ??? ?????? ?????? ?????? ??????????, ? ?????????? ??? ??????
????????????? ?? ?????????? ??? ?????????????? ??' ?????? ??? ?????????????????? ??????
??? ?????????? ?????????? ??? ???????, ??? ?????? ?????????? ?????? ?????? ?????????? ??? ???
????????? ?????????????? ?????????? ??? ?????????? ?????????? ?????? ???????, ??? ?
????????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ???
????????????? ???????, ??? ?????? ?????? ?????????? ? ?????? ?????????? ??? ?? ??????
??? ??????? ?????????????? ??????????. ??? ??????, ? ?? ??? ????? ?????????? ??? ??
????????? ? Banco Mais ?? ??????? ??? ?????? ?????????? ??? ?????? ??? ?? 39 %

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

10 ??????? ?????????????? ??????? ??? ?? ??????? ??? 2007, ? ?????? ?????????? ???
????????? ??? 2004, ?? ??? ??? 7 ?????????? 2008 ??????? ??? ??????????????
????????? ??? Fazenda Pública, ? Banco Mais ??????? ?? ?????????? ??? ???
????????????????? ???, ?? ?? ?????????? ??? ? ??????? ??? ??? ??????????
????????????? ?? ?????????? ??? ??????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ???.

11 ?? ??? ?????????????? ????, ? Fazenda Pública ??? ?????????? ?? ??????????
??? Banco Mais ?? ?????????? ??? ??????? ??? ?????????, ??? ??? ??? ??
????????????????? ??? ??????? ?????????? ??? ?????????? ??? ?????????????? ??????????
????, ???' ????, ??? ?????? ??? ?????????? ?????? ??? ?????????? ??? ??????????
????????? ??? ?????? ???????, ???????, ??? ?????? ??? ?????????? ?????????????? ??????????
????? ?? Fazenda Pública, ?? ??????? ??? ?? ?????????? ?????????????? ?? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????????? ???
??????, ??? ?? ?????????? ??? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ??????????????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???.

12 ? Banco Mais ?????? ??????? ??? 6 ?????? 2008 ?????? ??? tribunal tributário de
Lisboa ??? ?? 7 ?????????? 2008 ?????? ??? Fazenda Pública.

13 ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? Banco Mais, ?? ??
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?? contra legem ??????? ??? ?????? 23,
????????? 4, ??? CIVA, ??????? ? ?????????? ?????? ?????????? ??? ?????????? ??? ?? ?????????? ???
????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ???????, ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????????
?????????. ??? ?? ??? ?? ??? ???????, ??? ?? ??? ?????????? ??? ?????? ??? Banco Mais ?? ???
????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???.

14 ? Fazenda Pública ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ???????, ???????????, ???' ??????, ??? ?? ?????? ?????? ??? ?????????? ???
????????? ??? ?????????? 4 ??? ?????? 23 ??? CIVA, ? ?????? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????????? 1 ??? ?? ??? ?????? ???, ??? ?? ??????????
??? ?????????? ??? ?? ??????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
????? ??? ??????????, ?????????? ?? ?????????? ?????????? ?????????? ??? ?????? ???
?????????. ??????????, ? ?????? ??? ?????? ? Banco Mais, ? ?????? ?????????? ???
????????? ??? ??????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???,
????????? ?????? ?????????? ???, ??????, ?????? ???, ?? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? ???.

15 ??? ??? ?????? ?? Supremo Tribunal Administrativo ?????????? ?? ??????????
?? ?????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????????? ??????:

«????????? ??, ??? ?????? ?????????? ?????????? ?????????????? ??????????, ? ?? ?????? ??? ??????
????????? ?????????? ?????????, ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???

??????????, ?? ?????? ??? ????? ??????????????, ?????? ? ??? ? ?????????????? ?????? ???
?????????? ? ? ?????????? ?????? ?? ?????????? ?????? ?????? ?????????????? ??? ?????? ??
????? ?? ?????? ??? ?????????? ??? ??????, ?? ?????? ??? ??? ?????? ??? ?? ???
????????? ?????????????? ?????????? ?????????? ??????????;»

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

16 ??? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???
??????????, ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ???
Fazenda Pública ?? ?????????????? ?? ?????????? ??? Banco Mais ??? ??????, ??? ??????
????? ??? ?????????? ?????? ??????, ???' ?????? ??? ?????????? ?????????? ??? ?????????? ???
????????? ?? ??? 23, ?????????? 2, ??? CIVA.

17 ??? ??? ?????????? ???, ?????????????? ?? ?????????? ?? ?? ??? 23, ??????????
3, ??? CIVA, ?? ?????????? ?????????? ?????????? ??? ?????? ?? ?????????? ?, ? ??????????
????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ?? ?????? ?? ?????? ?? ??????????
????? ??? ?????? ?? ?????? ??? ?????????????? ?????? ??? ?????? ??? ?????????? ??? ??????
?????????????.

18 ????, ? ?? ??? ?????? ???????, ???' ??????, ??? ?????? ?????????????? ???
?????????? ??? ?????? ??? ?????? ?? ?????? 17, ?????????? 5, ?????? ???,
????? ??, ??? ?????? ??????, ?? ?????? ?????? ?????? ?? ?????????? ?????????????? ???,
????? ?? ?? ?????? ?? ?????? 17, ?????????? 5, ?????? ???, ??? 19, ?????????? 1, ???
?? ??? ??????.

19 ??? ??????, ??? ?????? ?? ?????? ?? 23, ?????????? 2, ??? CIVA ??????
????????? ??? 17, ?????????? 5, ?????? ???, ?????? ??, ??? ?????? ?????? ???
????? ??? ?????? ?? ?????????????? ??????, ??? ?????????? ??? ?????????? ???
????????? ??? ???' ?????????? ??????.

20 ??? ?????? ??? ???????, ?????? ?? ?????? ?????? ??? ?? ?? ?????????????? ??????
????????? ???' ?????? ?? ?????????????? ?? ?????????? ??? ?????? 17, ?????????? 5, ???
?????, ??????? ??, ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ??? ?????????? ??
????? ?? ?????? ?????? ?????? ?????????????? ?????? ?????????? ??? ??????, ???
????????????? ??? ?????? ??? ?????? ?????, ?? ?????????? ??? ?????? ?????? ??? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
?????????.

21 ??? ?????? ??????????, ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????, ????
?? ?????????? ??? ?????? ??? ?????? ?? ?????? ???, ??? ??? ?? ?????? ??? ?????? ??????????
??? ?? ?????? ??? ?????????? ?? ?? ?????? ??? ?????? ?????? ??? (???????)
SGAE, C?306/05, EU:C:2006:764, ??? 34).

22 ?? ??????????, ?? ??? 17, ?????????? 5, ?????? ??????, ?????????? ??, ??? ???
????????? ?????? ??? ?? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ??? ??????
?? ??? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?? ?? ?????????????? ??? ??? ????
????? ??? ?????? ??? ??????.

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

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

24 ?????????? ?????? ??????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (??., ??'?????, ????????? Royal Bank of Scotland, C?488/07, EU:C:2008:750, ????? 25, ??? Crédit Lyonnais, C?388/11, EU:C:2013:541, ????? 31).

25 ???????????, ??????, ??? ?????????? ?????? ??? ???? ?????? ??? ?????? 17, ???????????
5, ??? 19, ?????????? 1, ??? ????? ???????, ? ?????? ?????? ?????????? ?????????? ??? ????
?????? ?????? ??? ?????????? ??? ?????? 17, ?????????? 5, ????? ??????, ??? ?????? ???
???, ??????, ?????? ?????????? ?????? ??? ?????? ?????? ?????????? ??? ?????????????? ???
????? 17, ?????????? 5, ????? ??????, ?????????? (??., ??' ????, ?????? Royal Bank of
Scotland, EU:C:2008:750, ??? 22).

26 ????????, ??? ?? ?????? ?????? ??? ?????? 17, ?????????? 5, ??? ?????? ??????
????????? ??? ? ?? ??? ?????? ?????? ?????????? ?????????? ?????????? ?? ?? ?? ?
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ???, ?? ?????? ??????
??? ?????? 17, ?????????? 5, ?? ?????? ?????????? ?????? ?? ?????? ??? ?????? ??? ?????? ??,
?????? ?? ?? ??? «?????????», ?????? ??? ?????????? ??? ?????? ?????????? ??? ??
?? ??? ?????? (?????? Royal Bank of Scotland, EU:C:2008:750, ??? 23).

27 ??????????, ??? ???? ?????? ?? ?????????? ?????????????? ??? ???? ?????? ??????
????????????? ??? ?? ??? ????? ??????? ?? ?????? ?? ?????? 17, ?????????? 5, ?????? ??????,
????????? ??, ??? ????? ???????, ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??? ??
??? ?????????? ??? ?? ??? ????? ???????, ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ??? (????????? BLC Baumarkt, C?511/10, EU:C:2012:689, ??? 22, ??? Crédit
Lyonnais, EU:C:2013:541, ??? 52).

28 ???????, ?? ?????????? ?????????? ??? ?? ??????? ??? ?????????? ??? ????? ??
????????? ?????? ??? ?????????????? ??? ?? ?????? ??? ??? ?????? ? ??? ??????
??? ??????? ??? ?? ?????????????? ?????????????? ???.. ?? ?????? ??????? ??? ??????????
?? ?????????? ??? ?? ?????????????? ?? ??? ?? ?????????? ?????????? ??? ??
????????? ??????????????, ?????????? ??? ?????? ? ??? ?????????????? ???, ??? ??
????????? ??? ?? ?? ??? ????? ?????????????? ?????????? ?????????? ?????? ?????????? ??? ??
(?????? Royal Bank of Scotland, EU:C:2008:750, ??? 15).

29 ???????, ?? ?????????? ?????? ??? ?????? ??? ?????? 17, ?????????? 5, ????
??????, ??? ????? ?????? ?????? ?? ?????? ?? ?????? ??? ?????? ?? ?????????? ?? ??????????
????? ?? ?????????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ???
????????????? ?? ?????????? ?? ?????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? (??., ??' ????, ????????? Royal Bank of Scotland,
EU:C:2008:750, ??? 24, ??? BLC Baumarkt, EU:C:2012:689, ?????? 23 ??? 24).

30 ??? ?? ?????????????? ?????????? ???, ??????????, ???????, ??? ?????????? ??? ??????
17, ?????????? 5, ????? ?????, ??????? ??, ??? ????? ???????, ???????, ??? ?????
????? ??? ?????? ?????????? ?? ? ???? ?????? ???????, ???????, ??? ?????? ??? ??????????
????????????? ??? ?? ???????????????, ???, ???????, ??? ?????? ??? ?????? 17,
????????? 5, ????? ?????, ??? ?? ??? ?????? ???????, ?? ?????? ??? ?????? ?? ??????????,
???? ?? ?????? ??? ??????? ?? ???? ?????? ?????? ?????? ??? ?? ?????? 17, ?????????? 5, ????
??????, ??????? ??, ??? ?????? ???????, ??? ? ?????????? ??? ?? ?????????? ???
?????? ?? ? ???? ?????? ?????? ??? ?????? ?? ?????? ??????? ?????????? ?????????? ??
????? ??? ?? ??????? ?????????? (??., ??' ?????, ??????? BLC Baumarkt, EU:C:2012:689,

????? 23).

31 ???????????, ? ??? ? ?? ??????????????, ? ?????? ?????? ?????? ??? ??????
????????? ???, ?????????? ? ?????????? ??? ?????????? ?? ?????????? ?????????????? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? ?????? ?????? ?????? ??? ??????????
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(??., ??' ????, ?????? Securenta, C?437/06, EU:C:2008:166, ??? 37).

32 ????? ???? ?????? ?????, ? ????. ??????? ???. ??????????? ????. ?????? ????, ????. ?????? ?????? ????
?? ????. ???????, ?? ???????????, ????. ??????????? ?????, ?????? ? ?????? ??????? ??????????
?????????? ???. ???. ???. ?????? ???. ??????? ?????? ?????, ?????? ? ?????? ?????????? ???. ???. ???. ?????????? ???. ???.
????? ???. ???. ??????? ???. ??????? ?????????? ???. ?????????? ???. ???. ???. ??????? ?????????? ???. ???.
???. ???. ???. ??????? ???. ??????? ???. ??????? ???. ???. ???. ??????? ???. ???. ??????? ???. ???.
????????? ???. ???. ?????? ?????? (??., ??' ?????, ??????? BLC Baumarkt, EU:C:2012:689,
????? 24).

33 ???????, ?????????????? ??? ??????? ? ?????????????? ??? ??????
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?? ??????? ??? ??????? ?? ??????? ?? ?????????????? ?????????? ??? ?????? ? ??????????
?????? ???????, ??? ??????, ?????????? ?????????? ?????????? ? ?????????? ??? ??????????
?????????, ??? ?????????????? ??? ?? ?????????????? ?????? ??? ??????????
????????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??????????
??? ??????? ? ?????????? ?? ??? ?????? ??? ?? ??? ??? ?? ??? ?????? ??? ?????? ??? ??????
??? ????????. ??? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
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34 ??? ?????? ??? ????????, ? ?????????????? ??? ?????????????? ??? ?????? ??? ?????????????? ???
????????? ??? ?????????? ??? ?????? ?????? ????????, ??? ?????? ??? ?????? ??? ?????? ?????????????? ???
?? ??? ?????? ??? ?????????????? ??? ?? ?????? ??? ?????????????? ??? ?????????????? ?? ?????? ???
????????????????? ?? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??????????????
????????? ??? ?????????? ?????????? ??? ?????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ?? ?? ??????
??? ?????????? ? Fazenda Pública, ? ?????? ?????????? ?????????????????? ??? ?????? ???
????????????? ??? ?????????????? ?????? ?????? ?? ?????? ?????????????????? ??? ?????? ???
????????????? ?????? ?????????????????? ??? ?????????????? ??? ?????????????? , ?????? ??? ??? ???
????????????? ?????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????????????? ??? ?????? ??? ??????????????
????????????? ??? ?????? ??? ?????? ??? ??????????????????????.

35 ?????????????? ?????? ??? ??????????????, ??? ?????????????? ?????????? ?????? ?? ??????
? ?????????? ??? ??? ?????????? ??? ?????? 17, ?????????? 5, ?????? ??????, ????????, ????????,
??? ?????? ??????? ? ??????? ??? ?????? ?????? ??? ?????????????? ?? ??????? ??? ??????,
?????? ??????, ?????????????? ?????????????? ??????????, ??? ?????????????? ??? ??????
??? ?????? ??????, ?? ?????????? ??? ?????? ?????? ??? ??? ?????????? ??? ?????????? ???
????????? ?? ??? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ??????
?????? ??? ?????????? ?????? ?????? ?????????? ?????????????? ??? ?????? ?? ?????? ???
????????????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ??????, ?????? ?? ?????????? ???
????????????? ??? ??? ?????????? ?????????????? ?????? ??? ?? ?????????????? ??? ??
????????? ??? ?? ??? ?????? ??????????, ??? ?????? ?? ?????? ?????????? ??? ?????? ?????????? ??
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36 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ??????? ?????????? ??? ?????? ??? ?????????? ??????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ?????????? ?????????????? ??? ??????????, ??? ??? ?? ??? ?????????, ??? ?????????????.

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

???? ??????????? ??? ????? 17, ?????????? 5, ????? ??????, ????????, ??, ??? ???
?????? 77/388/E?? ??? ???????????, ??? 17?? ??? 1977, ??? ??????????? ??
?????????? ??? ?????? ????, ??? ??????? ?? ??? ????? ?????? ?????? ??????? —
????? ?????? ?????? ?????? ?????? ?????: ?????????? ?????????? ????, ?
?????? ??? ?????? ?????? ??? ??????????? ?? ??????? ??? ?????, ?????? ???,
?????????????? ??????????????? ??????????, ??? ??????????? ??? ????? ???
????? ????, ?? ??????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
??? ??????? ?? ??? ??? ??? ??????????? ??? ????? ??? ????? ?????????? ??????????
??? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ?????????????? ??? ????? ??
????? ??? ??????????????? ??? ????? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????????? ??? ?????? ?????????? ??? ?????????? ??? ?????, ??????
?? ?????????????? ??? ?????? ??? ?????????? ?????????????? ?????????? ??? ??
????????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????
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(???????????)

* ?????? ?????????????; ? ?????????????.