

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

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

??? 9?? ??????????? 2021 (*)

«????????????? ?????????? – ?????????? – ????? 63 ??? – ?????????? ?????????????? ???
????????? – ????? ?????????? – ?????????? ??? ?????????? ?????? – ??????????
????????????? ??? ?????????????? ??? ?????????? ??? ?????? ?????????? ?????????? ???
????????????? ??? – ?????????? ?????? – ?????????? ?????? – ?????????? ??????
????????????? – ?????????? – ????? 65 ??? – ?????????? ?????? ??????????
????????? – ?????????? – ?????? ?????? ?????????? ??????»

???? ?????? C2449/20,

? ? ?????????? ?????? ?????????????? ?????????? ?????? 267 ???, ??
?????? ?? Supremo Tribunal Administrativo (?????? ?????????? ??????????, ??????????)
?? ??????? ??? 22?? ?????????? 2020, ? ????? ?????? ?????? ??? ??????????, ??
?????? ??? ???

Real Vida Seguros SA

????

Autoridade Tributária e Aduaneira,

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

????????? ??? ??? A. Kumin (??????), ?????? ???????, P. G. Xuereb ??? I. Ziemele,
???????,

????????? ??????????: G. Pitruzzella

????????? ?: . Calot Escobar

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

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

- ? Real Vida Seguros SA, ?????????????? ??? ??? C. Ramos Pereira, advogado,
- ? ?????????? ???????, ?????????????? ??? ??? L. Inez Fernandes ??? ??? S. Jaulino, H. Magno ??? P. Barros da Costa,
- ? ?????????? ???????, ?????????????? ??? ??? W. Roels ??? ??? I. Melo Sampaio,
?????? ??? ?????????? ??? ???, ??? ?????? ??? ?????? ?????????? ??????????, ?? ?????????? ???
?????? ??? ?????? ?????????? ??????????,
- ?????? ??? ??????????

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1 ?????????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 63 ??? 65 ????.

2 ? ?????? ??? ??????????? ??? ?????? ??????? ??????? ?????? ??? Real Vida Seguros SA ??? ?? Autoridade Tributária e Aduaneira (?????????? ??? ??????????? ???, ???????????, ??? ????: ?????????? ???), ??????? ?? ?? ??????????? ??????? ??????? ?????????? ??????? ??? ?????? ??????????? ??? ?????? ??????????? ??? ??????? ??? ?????? ??????? ??? ?????? ??? ?????? ???????????.

?? ?????? ???

3 ????. ?? ?????? 2, ??????????? 1, ??? Estatuto dos Benefícios Fiscais (????????????????
?????????? ????. ??????????? ??????????????) (*Diário da República* I, ????? I-A, ?????. 149,
??? 1?? ??????? 1989), ????. ?????? ????. ????. ????. ????. ????. ????. ????. ????. ????. ????.
????????? ????. ????. ????. ????. (??? ????: EBF):

«?? ?????????? ?????????????? ?????????? ?? ?????????? ?????? ??? ?????????????? ??? ??
????????? ?? ?????????? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ??
????????? ?? ?????? ??? ?????? ?????????? ??????????..»

4 ?? ?????? 31 ??? EBF ?????? ?? ????:

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

5 ????. ????. ????????????. ??????? 1999 ??? 2000, ? Real Vida Seguros, ?? ????. ?? ????.
(??????????), ?????????? ?????????? ??? ??????? ?????????? ?????????? ??? ?????? ?????? ??????????????
????????????????? ?????? ??? ??? ?? ?????????? ?????????????????? ??????. ?????????????? ???
????? 31 ??? EBF, ??????, ??? ??????? ??? ?????????????? ??? ?????? ?????? ?????? ??? ????.
????????? ??? ??? ?? ??? ?????, ??? ?????? ??? 50 % ??? ?? ??? ?????????? ???
?? ??????? ?????? ?????????? ???.

6 ??????? ??????????? ??????? ??? ?? ??? ????? ??????????? ???????, ? ??????? ???
?????? ?? ?????????? ??? ??? ????? ??????? ??? ?????, ????? 10 778,46 ????, ??? ??
?????????? ?????????? ??? ?????? 1999, ??? ????? 13 406,62 ????, ??? ?? ??????????
?????????? ??? ?????? 2000, ?????????????? ??? ?????????? ????? ?? ????:

«???? ??? ??????? ??? ????? ?????????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ??? ?????????????? ??? ????? ?????????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ???,
????? ??? ?????? 31 ??? EBF, ?????????? ??? ? ?????????????? ??? ????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ????? ??? ?????????? ??? ?????????????? ???
????????????? ??? ????? ??? ??? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????????
?????.

??????????, ?????????????? ?????? ??? ??????? ??? “????????????? ??????????????”, ??? ???
????? ??? ?? ?????? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????????????? ??????, ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????????????? ??? [...]».

7 ? Real Vida Seguros ?????????? ?????????? ??? ?????????? ?????? ??? ???????????
?????? ?????????? ?????? ??????? ??????, ???????, ?? ?????????? ?????? ???, ???
??????, ?? ?????? ??????. ?? ?? ??????, ? ?????? ?????? ?????? ?????? ?????? ???
Supremo Tribunal Administrativo (????????? ?????????? ?????????? ?????????? ?????), ???
????????? ??????????.

8 ??? ?????? ??? ?????? ??? ?????????? ?, Real Vida Seguros ?????????? ???
????? ?????? ??? ?????? ?????????? ?????? ?????? ??? ???? ?? ?????? 31 ??? EBF
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???,
????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

9 ?? ?????? ?????????? ?????????? ??? ? ?????? ??? ?????? ?? ?????? 31 ??? EBF
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?????. ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? 2, ?????????? 1, ??? EBF, ?? ?????? ?????? ?????? ??? ?????? ???
????????? ?? ??? ?????? ??? ???.

10 ??????, ?????, ?????????? ?? ??? ?? ?????????? ??? ?????????? ?????? ?? ???
????????? ?????? ??? ?????? ?? Supremo Tribunal Administrativo (?????????
????????? ?????? ??????) ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???:

«????????? ?????? ??? ?????? ??? ?????????? ?????????? ?????? ???, ? ??????
????????? ??? 63 ???. ???, ?? ?????? ?????? ?????? ???, ??? ??? ?????? 31 ??? 2
??? [EBF], ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? 1999 ??? 2000, ??? 50 % ??? ??????????
??? ?????????? ??? ?? ?????? (?????????) ?????????? ???, ?????????? ???
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????????? ??? ??????
????? ??? [...]»

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

11 ?? ?? ?????????? ???, ?? ?????? ?????????? ?????? ???' ??????, ??
????????? ??? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????
????? ??? ?? 50 % ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

12 ?????????? ???, ?????????? ???, ?????? ??? ?????? ??? ?????? ?????? ???
????? ?????? ???, ??? ?? ?????? ?????? 1999 ??? 2000, ?? ?????? 31 ??? EBF
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? 50 % ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

????????????????? ????. ??????, ??????, ??? ??? ??????? ?????????????? ??? ?????????????? ?? 1989 ???
???????????? ?? 2008, ?? ?????????? ??? ???? ???????, ?? ?????? ?????????? ?? 2000, ??
????????? ??? ?? ??? ?????? ??????? ??? ?????? ?????????? ??? ??? 50 %, ??? ??? 60 % ???
????? ????. ????????, ? Real Vida Seguros ?????????? ??? ??????? ??? ?????? 31 ??? EBF
????? ????. ??????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
??? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ?? ?????????? ?????? ???
????????? ?????????? ??? ?????? ?????????? ?????? ?????????? ??????, ?????????? ??? ???
????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????.

13 ?????????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????? 267 ????, ??
????? ?????????? ?? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????
??? ??? ??????????, ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??????????
?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?? ??????
????????? ??? ?????? ??????????, ?????????? ??? ?????????? ??? ?????????? ??????
(?????? ??? 3?? ?????????? 2019, Fonds du Logement de la Région de Bruxelles-Capitale,
C?632/18, EU:C:2019:833, ??? 48 ??? ??? ?????????? ?????). ?? ??????????
????? ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ???
????? ?? ?????? ?????????? (?????? ??? 17?? ?????????? 2020, Onofrei, C?218/19,
EU:C:2020:1034, ???18 ??? ??? ?????????? ?????), ????? ?? ?????? ??
????????? ?? ??? ?????? ??? ?????? ??? (????. ?????????? ??? 15?? ??????????
2011, Gueye ??? Salmerón Sánchez, C?483/09 ??? C?1/10, EU:C:2011:583, ??? 42, ??? ??
21?? ?????? 2016, New Valmar, C?15/15, EU:C:2016:464, ??? 25 ??? ??? ?????????? ???
?????????).

14 ????????, ? ??????? ??? ?????????? ?????????????? ??????? ??? ?????? ?? ??????????
????? ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??????????.

15 ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? 63, ?????????? 1,
????, ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ???
????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????
????????? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ?????? ???
??? ??? ?????????? ??? ?????? ??? ??? (?????? ??? 30?? ?????? 2020,
Société Générale, C?565/18, EU:C:2020:318, ??? 22 ??? ??? ?????????? ??? ??????).

16 ????????, ? ?????????? ?????? ??????????, ??? ?????? ?? ?????????? ??????
????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
??? ??? ?????? ???, ?? ?????? ?? ?? ?????????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ?????? ???, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ?? ?????? ??? ?? ??? ?????? ?????? [??.. ?????? ??? 29?? ?????? 2021,
Veronsaajien oikeudenvontayksikkö (????? ??? ???), C?480/19, EU:C:2021:334, ??? 27
??? ??? ?????????? ??? ??????].

17 ??? ??? ?????? ?????????????? ?????????? ?????????? ???, ?????? ??? ?????? 31 ???
EBF, ??? ?????????? ??? ?? ?????????? ???, ? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?? ?????? ?? ?????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ???
??? ?? ?????? ??? ?? ??? ?????? ?????????? ?? ?? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????????? ???.

18 ? ?????????? ?????? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ???, ??? ??? ?????? ?????? ??? ?????? 31

??? EBF, ??? ??????? ??? ?????????????? ?????????????????? ?????? ??? ?????? ??? ???
?????? ? ?????? ??? ?????? ?????????????? ?????? ?????? ?????? ??????, ??? ?? ???
? ??????? ??? ?? ??? ?????????????? ?????? ?????? ?????? ?????? ?????????????? ??? ??
????????? ??????.

19 ????, ??? ???????, ??? ?????????? ???, ??? ?????? ? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ? ?????????? ???, ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?????????? ???, ???, ??? ?? ?????????? ?????? ??? ?????????? ??????
????????? ???, ???, ??? ?? ?????? ??? ? ?????????? ??? ?? ?????? ??? ?????? ??????
????? ?????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ??????

20 ????, ??? ?? ??????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ??
??? ?????????? ?????????? ??? ?????????? ?? ?????????? ?????? (?????? ?? 30??
????????? 2020, Köln-Aktienfonds Deka, C?156/17, EU:C:2020:51, ??? 55 ??? ??
????????? ??? ??????).

21 ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ?????????? ??? ?????? ???,
????????? ???, ?? ?????? ?? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ?? ?????? ?? ??? ?????? ???, ??? ?? ?????????? ???, ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? (??., ??? 30?? ?????????? 2020, Köln-Aktienfonds
Deka, C?156/17, EU:C:2020:51, ??? 56 ??? ?????? ?????????? ??? ??????).

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

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

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

25 ?? ?? ??????, ????, ??? ?? ??? ?????? ??? ?????? ??? ? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????, ??? ????? ???????????, ????, ??? ?? ??????? ??? ??? ?????? ?????????????? ?? ?? ???
?????????? ??? ??????????? ??? ????? ?????????? ?????????????????? ??????, ??? ??????? ??
?????????? ??? ??????????????? ?? ??????? ?? ?????????????? ??? ?????? 31 ??? EBF
?????????? ??????????? ??? ??? ?????????????? ??????????? ?? ??????????? ?????????? ???,
?? ?? ???????, ??????? ??????????? ??? ?????????? ?????????????? ??? ??????????? ?? ??????????
????????????? ???' ????? ?? ??? ?? ????? 63 ???.

26 ???????, ??? ?????????? ??? ? ?????????????? ????????????, ??????? ??? ?????? 65,
?????????? 1, ???????? ??, ???, ?? ????? 63 ??? ????? ?? ?????????? ?? ?????????? ?? ??????
????? ?? ?????????? ?? ??????? ?????????? ?? ?????????? ?? ?????????????? ?? ????? ?????????? ?? ??????
????????? ?? ?????? ?????????????? ?? ??? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ??????
?? ?????? ?? ??? ?? ??? ????? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ???.

27 ? ??????? ???, ??? ?????? ??? ??????? ?????????? ??????????? ??? ?? ?????????? ??? ??
????????? ?????????? ??? ??????????, ??? ?????? ?? ?????????? ??????. ???????, ?? ?? ???
????????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ???
????????? ?????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??????
??.. ???????????, ? ?????????? ??? ?????????? ??? ?????? 65, ?????????? 1, ???????
??, ??? ?????????? ??? ?? ?????? 65, ?????????? 3, ???, ?? ?????? ?????????? ??? ??
????????? ?????????? ??? ?????? ?????????? ? ?????????? 1 ??? ?????? ?????? «??? ??????
?? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????????????? ?????????? ???
????????? ?????? ??? ?????????? ??? ??? ???????, ??? ?????? ??? ?????? ??? ?????? 63 [?????]»
[?????? ?? 29?? ??????? 2021, Veronsaajien oikeudenvalvontayksikkö (????? ?? ?? ???),
C?480/19, EU:C:2021:334, ??? 29 ??? ??? ?????????? ??????????].

28 ?? ??????????? ???? ?????? ?????? ???, ?? ?? ??????, ??????? ?? ???????
?????????????? ???? ?? ???? ?????????? ?????????????? ?? ?????????????? ?? ???? ?? ???????
65, ?????????? 1, ??????? ??, ??? ???? ?? ???? ?????????????? ?? ?? ?? ?????? 65, ??????????
3, ??? ??????? ??????. ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?? ???? ??
????????? ??????? ?? ??? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ??
?????????, ?????? ? ?????????? ?????? ?????????? ?????? ?????? ?? ?????? ?????????? ??
?? ?????? ?????????? ?????? ?????????? ?? ? ?? ?????????? ??? ?????? ?????????? ??
????????? ?????????? [?????? ?? 29?? ??????? 2021, Veronsaajien
oikeudenvalvontayksikkö (????? ?? ?????), C?480/19, EU:C:2021:334, ??? 30 ??? ??
????????? ??????].

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

30 ????? ?????? ???????????, ? ?????????????????? ??? ?????????????????? ?????????????? ?? ??
????????? ?????????? ??? ??????? ?????? ?????? ?? ?????????? ?????????? ?????????? ?????? ??
????? ??? ??????????? ?? ??? ?????? ?????? ?????? ?????????? [????????? ?? 30?? ??????????
2020, Société Générale, C?565/18, EU:C:2020:318, ??? 26 ??? ??? ??????????????
?????????).

31 ???????, ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ???????, ???? ??? ?????? ??????, ? ?????????? ?????? ?????? ?????? ?????? ?????? ?? ????
?? ??? ?????????????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ??? ?? ????
????????????? ?????? ???????, ???? ?? ?????? ?? ?????? ?????? ??? ?? ???????, ?? ??????
?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ??????

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32 ?? ?????????????? ???. ???. ???. ???. ???. ???. ???. ???. ???.

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

34 ??? ????????, ??? ??? ?? ?????????????? ?? ??? ???? ??? ?????????????? ???
?????????. ??? ????, ???, ??? ? ?????????? ?????????? ?????? ??? ?????? ??? ??????????????
??? ?????????????? ??? ?????? ?????????? ?? ?????????? ??? ?? ?????????? ?????? ?? ?????????? ??
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????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???, ?????? ??
????????? ???, ???? ???? ?????? ??????????, ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?? ?????????? ??? ?????????? ?????? ?????? ?????????? ??
??? ?????????? ??????, ? ?????????? ??? ?????????????? ??? ?? ?????????? ?????????? ??
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?? ?????? ???
????????? ??? ?????? ?????? ?????????? ?????????? ?????????? ???, ??? ?????? ???, ??
????????? ??? ??????????, ?? ?????????????? ?????? ?????? ??????????, ???' ??????, ??
????????? ?????????? ?????? (????. ?????? ??? 24? ?????????? 2016, SECIL,
C?464/14, EU:C:2016:896, ????? 55 ??? ??? ?????????????? ??????????). ????????, ?
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?? ?????? ???
????????? ??? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ?? ?????? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?? ??????????
????, ???? ??? ?? ?????? ??????????, ??? ?????? ??? ?????????????? ??? ?????????? ???
?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????????? ???
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35 ??????, ??? ???? ?????? ?????????? ????? ?????????????? ??? ???? ?????? ?????? ?????????? ??????????????
???? ?????????????? ?????????????? ?????????????? ??? ?? ?????????????? ?????????????? ??? ??????????
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????????????? ?????????????????? ??????.

36 ??? ?????? ??? ? ??????? ??????, ???? ??????????? ??? ??? ???????????? ???
????????????????? ???? ??????? 22 ??? 23 ??? ??????? ??????????, ???' ??????? ??????????
????? ?? ??? ??????? ??? ??????? ??????????, ?? ?? ??? ????? ??? ?????? ??? ?????????? ??
?????? ?????????? ??? ?????????????? ?????????????? ?????????????? ?????? ?????????? ???
????????????? ?? ?????????? ?????????????? ??? ?????? ??? ?????? ?????? ?????????? ??
????????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????????? ?????????? ??
????????????? ??????, ??? ?? ?????? 63, ?????????? 1, ??? ?????????? ?????????? ???
????????? ??? ?????????????? ?????????? ?????????? ??????????, ?? ?????????? ?? ?????????? ???
???? ?????????????? [??., ???' ??????????, ??????? ??? 26?? ?????????? 2019, X
(????????? ?????? ?????????? ?????????? ??? ?????? ??????), C?135/17, EU:C:2019:136, ???
68].

37 ????? ?????, ????????, ?? ?????????????? ??? ?????????????? ??? ?????????????? ???
????????? ????????????, ? ?????????????? ?????????? ????????????, ??????, ??? ? ?????????? ???
????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ??? ??????????????
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38 ???????, ?????????????? ???, ??????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?? ?????? ??? ?????????????? ??? ?????????????? ?????? ??? ?? ??????????, ???
????????? ???, ?? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????????? ??????,
?????????, ??? ?????? ??????????, ? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????, ??????
????? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ??? ??????
????????? ??? ??????????, ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ?????????? (????. ?????? ??? 30??
????????? 2020, Köln-Aktienfonds Deka, C?156/17, EU:C:2020:51, ?????? 42 ??? 45 ???
???? ?????????????? ??????????).

39 ??? ?????? ??? ? ?????????? ??? ?????????? ?????? ??????, ????????, ??? ?????????? ???
????????????? ???, ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ??????
????? ?????????? ??? ?????? ?? ?????????? ?????????? ?????????? ?????????? ??????????
????????? ??? ?????? ?????????? ? ?????? (????? ??? 25?? ?????????? 2021, Novo
Banco, C?712/19, EU:C:2021:137, ?????? 40 ??? ??? ?????????????? ??????????).

40 ???????, ?????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ??????,
??? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ? ?????? ?????? ??? ?? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??????
????????? ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??????
????????? ?? ?????????? ?????????????? ?????? ??? ???, ?? ?? ??????, ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??????.

41 ?????????? ??? ?????? ??? ? ?????????? ??? ?????? ??????, ??? ?????????? ??????????
????? ??? ?? ?????? ??? ?????? ?????? ??? ?? ?????? 63 ??? 65 ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????, ??? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????????? ??? ??????
??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ??? 50 % ??? ?????? ???, ??? ?? ?????????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
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42 ?????????? ??? ? ?????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ???, ?' ???
????????? ?? ?????????? ??? ?????? ?????? ?????? ??????. ?? ?????? ??? ?????? ??????????
????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????????.

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

? ? ?????? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??????
????? ?????? ??? 50 % ??? ?????? ???, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ???.

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

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