

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

JÁN MAZÁK

??? 15?? ??????????? 2011 (1)

?????? C?427/10

**Banca Antoniana Popolare Veneta SpA, incorporante la Banca Nazionale dell'Agricoltura SpA,**

????

**Ministero dell'Economia e delle Finanze**

???

**Agenzia delle Entrate**

[?????? ??? Corte suprema di cassazione (??????) ??? ??? ?????? ?????????????? ???????????]

«?????? ?????????????? ??? – ?????? ??? ??????????? ?? ?????????? ??? ???????????  
?????????? – ??????? ??? ??????????? ??? ?????????? ?? ??????? ??? ?? ??????????? ???  
??? ?????????? ??? ??????????? ??????????? ??? – ??????? ??? ?????????? ??? ??????????  
?? ??????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ?????????????? ???  
?????????? ??? ??????????? ??????????? ??? ?????????? ??? – ??????? ??? ??????????  
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? – ?????? ???  
????????? ??????? ??? ??? ?????????? ??? ?????????? ?????????????? ??????????»

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

1. ? ??????? ??? ?????????? ??????? ??? ??????? ?????????? ??????? ??? ???????  
????? ??????? ??? ??????? ??????? ? Banca Nazionale dell'Agricoltura SpA (??? ????: BNA)  
????? ?????? ?????????????? ??? (??? ????: ???) ??? ??????? ??? ?????? ?????????? ??? ??  
????????????? ?????????? ?????????????? ?????????? ??? ?????????? ??? ?????? ??????????????  
????????????? ??? ?? 1984 ??? ?? 1994.

2. ??? ??? ?????? ??? ?????????? ??????????????, ? ?????????????? ???????????  
????????????? ??? ??????? ??? ?????????? ??? ?????????????? ??? «?????? ??? ???????  
??? ??????? ???, ?????????????? ??? ?????????? ??? ??????? ??? ??????? ??? ??????? ???  
????????? ??? ??????????» ? ????? ?????????? ??? ??? ??????? ??? ??????? 10,  
????????? 5, ??? ??????? ?????? 633 ??? 26?? ??????? 1972, ??? ??? ??? ???  
????????? ??? (2) (??? ????: ??????? ?????? 633/72).

3. ???????, ? ?????????? ???, ?? ??? ??????? 52/? ??? 26?? ?????????? 1999,

????????????? ??? ?????? ?????????? ??? ?????????? ?????????????? 633/72, ?????????????? ???  
????? ??? ?? ?????????????? ??? ?????? ?????????? ?????? ??????????, ??? ?????? ??  
????????? ??? ?????? ?????????? ?? ?????????? ?????? ?????????????? ??? ??? ????. ??? ??????  
?? Corte suprema di cassazione (?????) ??? ?????? ??? ??????????, ? ?? ???  
????????? ?????????? ?? ??? ?????????? ??? ?????????? ??? ??? ?????????? ??? ??????????  
??? ?????????????? ???????.

4. ??? ?? ?????????? ??? ?????? ??? ?????? 10, ?????????? 5, ??? ??????????  
????????? 633/72, ?? ?????????? ?????? ?????????? ??? ?? SIFER SpA, ? ????  
???? ?????????? ??? BNA ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ???  
????????????? ??? ???????, ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ??? ??  
????????? ??? ??? ?????? ??? ???????, ??? ?????????? ??? ?????????? ?????????? ???, ??? ???  
????? ??? ?????? 2033 ??? ?????? ??????.

5. ?????? ?? ?? ??????? ???????, ??? ?????? ???????, ?????? ?????? ??????? ???  
????????? ??? ??? ?????? ?????????? ???, ???, ???, ??? ?? ?????????? ??? ?????????? ? ??????  
????????? ??? ???, ???, ???, ??? ??? ?????????? ??? ?????????????? ?????????????, ???  
????????? ?????????? ???, ???, ??? ???????, ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ??? ?????? ??????. ? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???, ???  
????? ?????????? ?? ?????? 2946 ??? ?????? ??????.

6. ? ??? ??? ?? ?????????????? ?????????? ?????? ??? SIFER SpA  
?????? ??? Tribunale, ?? ??? ?????? ??? ?????? ? BNA ??? ?? ??? ??? ??  
?????????. ?? Tribunale ?????????? ?? BNA ?? ?????????? ?????? ?? ??? ??  
????????????? ??? ??? ? ?????? ??? ?????????? ??? ?????????????? ?????? ??? ??  
????????? ??? ???????, ? BNA ?????? ??? ?????? ??? ?????????? ???.

7. ??? ?? ?????? ??? ?????? ??? ???????, ? BNA ?????? ??? ??? ?????????? ???  
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?? ??????????????  
?????????????. ?????? ??? ?????? ??? ?????????? ??? ?????????? ???, ? BNA ?????? ???  
????????? ?????? ??? ?????? ??? ?????????? ???.

8. ??? ?????? ???????, ?????? ? ?????? ?????? ??? BNA ?? ?????????? ??? ??????????,  
? ?????? ?????????? ??? ???, ??????, ??? ??? ?????????? ???, ??????, ??????, ??????, ??? ??  
????????? ??? ?????????? ??? ?????? ?????????? ???, ?????? ??? ?????????? ??? ?????????? ???  
????????? ??????. ??? ?????? ??? ?????? ?????????? ??? ?????????? ?????? ??? ??????????  
????????? ?????? ??? ?????? 21 ??? ?????? ??? ?????????? ??? ?????????? ???  
(????????? ?????? 546/92), ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ????: «? ????  
?????????, ?????? ??? ?????? ??? ?????? ??? ??????, ??? ?????? ?? ?????????? ???  
??? ?????? ??? ??? ??? ??? ?????? ?, ?? ?????? ?????????? ???, ??? ??? ?????? ??? ???  
????? ?????????? ? ?????????? ??? ?????????? ???.

9. ?????? ?? ?????????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ???  
BNA ??? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ?? ?????? ???, ??  
????????????? ?????? ??? ?????????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ??????  
? ?????????? ???, ?????????? ??? ??? ?????????? ?????? ?????????? ?????????? ??? ? BNA  
???? ?????? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ?? ??? 21, ?????????? 2, ??? ?????? ?????? ?????? 546/92 ??? ??? ?  
????????? 52/E ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???  
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

«1) ?????????????? ?? ?????? ??? ?????????????????? ?????????????? ??????????????, ???  
????????????? ??? ??????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? [??]  
?????? ??????? ? ??????? ?????? ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?  
????????? ?? ??? ?????????? ? ??? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?  
????????????? ?????????? ??? ?????? ?????? ??????, ?? ?????????? ?????? ??? ?????? ?????? ???  
?????? ?????? (??? ??????? ??? ?????????? ?? ?????? ? ?????? ? ?????? ??? ??????), ??  
?????? ???, ??? ??? ???, ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??? ??????, ???  
???, ?? ? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?  
??????, ? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
?????? ? ?????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???  
????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

2) ?????????????? ??? ??????????? ??? ?? ?????? ??? ?????? ?????? ??????, ??????? ?? ??  
????????????????? ??? ?? ?????? ??????? ? ?????????? ??? ?????????? ??? ??????? ?? ??  
????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??  
?? ?? ?? ?? ? ??????? ?? ???????, ?? ?? ?? ?? ??????? ?????? ?????? ?????? ?????????? ???????  
????? ?????????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ???????, ?????????? ??? ?? ??????????  
????????? ??? ?? ?? ?? ?????????? ??? ?? ?????????? ??? ?? ??????? ?? ?? ?? ?? ?? ?? ??;  
????????? ?? ?? ??;»

?????????

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

12. ???' ????, ?? ?????? ?? ??????????? ???, ??? ?????? ?????? ??? ?????? ?????? ???  
??????????, ?? Corte suprema di cassazione ??? ?????????? ??? ?? ?????? ???  
?????????? ?? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???????????. ???????, ??  
???? ?? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ??  
????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????????? ??? ??  
????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ???

? ??????????? ???? ??? BNA. ?? ??????? ?? ?????? ??????? ?? ?? ?????????????? ???????????  
????? ?? ??????? ??? ??????? ?? ?????? ??? ?????, ?????? ?? ??????? ?????????????? ???  
?????????? ?????????????? ???, ??? ?????????? ??? ?????? ??? ??? ??????????????  
????????? ??? ?????????? ???.

13. ????, ???, ??? ??????? ???, ?? ???????, ?? ?????? ??? ?????? ??????????  
?????? ??? ?????? ??? ??????? ?? ??????? ?????? ??? ?????????? ???  
?????????? ?????????????? ???, ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????  
??????????. ???, ??? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ??? ??????  
????????? ? ?????? Schmeink & Cofreth ??? Strobel, ??? ?????? ?? ?????????? ???  
????????????? ??? (3).

14. ????????, ? ??? ?????? 77/388/??? ??? ???????????, ??? 17?? ????? 1977, ???  
????????????? ??? ??????????? ??? ??????? ?????, ??? ??????? ?? ??? ?????? ??????  
???????? – ???, ?????? ?????? ????? ?????????????? ?????: ?????????? ?????????? ??? (4),  
??? ?????? ?????? ?????? ?????? ??? ?????? ?????????? ??? ??? ?????? ??? ?????????? ??  
????????? ???, ??? ???????, ?????????? ??? ?????? ??????????.

15. ??????, ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??????????????  
???, ???, ??? ?????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??????????????  
????????????? ???, ?? ??????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???  
????????? ????. ??? ??????? ??? ?????? ?????? ?????????? ???, ?????????? ??? ?????? ??????????  
????????? ??? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?????????? ??? ?? ??? ??????????  
???? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ??? ??????????  
????????? ??? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ???  
???? ?????? ?? ?????? ???, ???, ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????? ?????????? ??? ?????? ?????? ?????? (????? ??? ??????????)  
???, ???????, ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???  
???? ?????? ??? ?????????? ??? (????? ??? ??????????????) (5).

16. ??????, ?? ?????? ?? ?????????? ?????? ???, ?????? ??? ?????????????? ???  
????????? ?? ?? ??????? ??? ??????????, ? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ?? ?? ??????? ??? ??? ?????????? ?????? ?????? ?? ?? ?????? 19, ?????????? 1,  
?????? ??????, ???, ?? ?????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ???  
????????? ?? ?? ?????????????? ? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???  
????????? ?? ?? ?????? ??? ??????.

17. ? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????????? ???  
????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??? ??????????  
????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????????.

18. ??????, ??? ?????? ??? ?? ?????? ?????????? ? ?????? Reemtsma  
Cigarettenfabriken (6), ?? ?????????? ??????? ?? ?????? ?????????? ??? ?? ?????? ??? ??  
??? ??????????????, ??? ?????????????? ?????????? ?????????? ??? ?? ?????? ??????????????  
??? ??????????, ??? ?????????? ?? ?????? ??? ?? ?????? ?????? ??????????  
????????????? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????? ??? ??????????  
????, ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??  
????????? ??? ?????????? ??? . ?? ?????????? ?????? ?????? ??? ?? ?????? ?????????? ???  
?? ??? ?????? ?????? ?????????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ??????  
????????? ?????? ?? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??  
??? ???, ??? ? ?????????? ??? ?????????? ?????? ?? ?????? ?????? ?????? ??? ??????????  
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
(7).

19. ??? ????????, ??? ?????? ??? ?? ?????? ?????????? ? ?????? Edis (8), ??  
????????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ???  
????????? ??? ?????????? ???, ??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????,  
??? ?????????? ?????????? ??? ??? ??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ??????  
??, ????????, ??? ?????? ??? ?????????? ??? ??? ?????????? ?????? ?????????? ?????? ???  
?????. ?? ?????????? ??? ?????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?????? ??? ??????  
???? ?? ?????????? ??????????, ?????????? ?? ??? ?????????? ??? ?????? ?????? ??????, ?  
????? ?????? ??? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??????  
??????, ??????????, ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??????  
????????? ??? ??? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ???  
????? ??? (9).

20. ????, ??? ?????? ??? ?? ?????? ??? ?????????? ?????????? ??? ?? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ?????????? ??? ??  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ??? ?????????? ??? ?? ?????? ??? ?????? . ???????, ??????  
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????????? ??????  
??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? (10). ?  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??????, ? ??? ?????? ?????????? ??? ??? ?????? ???' ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ???  
????????? ??? ?????? ??? ?????????? ??? (11).

21. ? ?????? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ???  
?????????. ??? ?????? ?? ??? ?????? ?????????? ??????????, ?? ?????????? ??? ?????? ???  
????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? (12). ?????? ??? ?? ??????????  
????? ?????? ?????? ?? ?????????? ???' ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ???.

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

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

?????? 10, ?????????? 5, ??? ?????????? ?????????? 633/72, ?? ?????? ?????????? ???  
????????? ??? ??? ??? ?????????????? ?????????? ??????. ?? ??? ?????? ?????? ???  
?? ?????????????? ?????? ?????? ?????????? ??????????, ??? ?????? ?? ?????? ???  
????????????? ??? ??? ?????????????? ?????????? ??? ?????? ?? ?????? ???  
????????????? ??? ??? ???.

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

25. ??? ???????, ? ??? ?? ?????? ??? BNA, ???????, ?? ?????? ??? ???  
??????????, ?????? ?? ??????, ??????, ??? ?????? ??????????, ?? ?????????? ???  
??????????.

26. ? ??? ??? ??? ?????????? ??? ?????? ??? ?????? ? BNA. ??? ?????? ?? Corte  
suprema di cassazione ??? ?????? ??? ??????????, ? BNA ??? ?????? ?????????? ??  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????????? ??? ???, ?????? ?? ??? ?????, ?????? ?? ?????????? ???  
????????? ??? ?????? ?????????? ??? ???????, ?????? ???.

27. ???????, ??? ?????? ??????? ??? ?????????? ??? ?????????? ??? ? BNA ??? ??????? ?? ???????  
?????? ??? ?????????? ??? ??????????????. ??? ???????, ? ??????? ?????? ??? ???????  
????????? ??? ??? ?????? ??? ???, ??? ?????? ?????? ? BNA ??? ?? ??????? ???  
????????? ??? ?????????? ??? ??????????????, ??? ?????? ?? ?????????? ??? ???????, ???  
??? ?????????? ???.

28. ??? ???, ?? ??? ?????? ???????, ?? ?????? ?? ?????????? ?? ?? ??????????????  
????????? ??? ?????????? ??? ?????????? ??? ?????? 10, ?????????? 5, ??? ??????????  
????????? 633/72 ??? ?????? ?????? ??? BAPV, ? ?????? ?????????? ??? BNA,  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
????????? ??? ??????, ??? ?????? ?????????, ?????????????? ??? ?????????? ???  
???? ???, ???????, ?????? ?? ?????????? ??? ?? ?????????? ??????, ??? ??? ??? ?? ???  
????, ??? ??? ??? ?????? ??? ?????????? ??? ??? ?????? ?? ?????????? ??? ?????? (13).

29. ???????, ?? ?????????? ??? ??? ?????? ?????? ?? ?????????? ?? ??? ?????? ???????, ?  
????????? ???, ?????? ??? ? ??????? ???, ?????? ?????? ?? ??? ?????? ??? ???????  
????????? ??? ??? ?????? ?????????? ??? ?????????? ???????????. ? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? 267 ???, ??? ?????? ?????? ??? ?????? ?? ??????? ???  
????? ?????????? ??? ?? ??????? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??? ??  
????? ??? ??? ?????????? ??? ?????????? ?? ?????????? ??? (14).

30. ???????, ?? ?????? ?? ?????????? ??? ? ??? ?? ??????? ??????? ????????,  
??????, ?? ?????? ?? ??????? ??????? ??????? ??? ???????, ???????, ?? ?????? ?? ???????  
????? ?????????? ??? ??? ?????????? ?????? ' ??????. ??? ? ??????? ??? ?????????? ???  
?????? ?????? ?? ?????? ?????????? ???????????, ?????? ??????? ??? ?????????? ???  
??? ?????? ?? ?????? ?????????? ???????????, ??? ?? ??????? ?? ?????????? ???  
????????? ?? ?????? ??? ?????? ?????????? (15).

31. ????? ??? ?????? ???, ?? ??????????, ?? ?????????? ??? ??????? ??? ??? ???  
?????? ?????????? ??? ?????? 10, ?????????? 5, ??? ?????????? ?????????? 633/72, ??  
????? ?????????? ??????? ??? ?????????? ?????? ?????? ??? ??? ???, ??? ???  
????????????? ??? ??? ?????????? ??? . ?????? ?????? ??? ? ?????????? ??? ?????? ??????????  
?????? ?? ??? ?????? ???, ? ?????? ?? ?????????? ?????????? ??? ?? ?????????? ???.

32. ??? ? ?????????? ? ?????????????? ??? ?????????? ??? ??? ? ?????????? ??? ???  
10, ?????????? 5, ??? ?????????? ?????? 633/72, ?? ?????? ?????????? ??? ??  
????? ?? ?????? ??? ??? ?? ?????? ??? ? ?????????? ??? ?????? ?????? ??? ??? ???  
?? ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ?????????? ??? ?????? ??????????  
????????????? ???????, ??? ?? ??? ?? ??? ? ??? ?????? ??? ?????????? ?????????? ?? ??? ??  
????? ??? ?????? ??? ??????????.

33. ??? ??? ??? ??? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???, ???  
?? ?? ?????? ?????????? ?? ??????? ?? ?????? ? ?????? ?????? (16), ??????? ??? ??  
????????????? ??? ?????????? ?? ?????????? ?? ?????? ?? ?????? ??? ?????? ???  
????. ??? ??? ?? ?????????? ??? ?????????? ??? ??? ?? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???.

34. ?? ?????? ?????????? ?? ??????, ??????, ?? ?????? ?? ? ?????????? ???  
????????? ??? ?????? ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ???, ??? ??????, ?? ?????? ?? ?????????? ???  
????? ?????????? (17).

35. ??? ?' ?????????? ??? ???????, ? ?????????? ??? ??????? ??????????  
?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????????? ?????????? ???  
????????????? ??? ?????? ??? ?? ?????? ??? ?????????? ?????????? ??? ??????????  
?????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????????? ???  
????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???.

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

37. ???, ?????? ?? ?????????? ??? ?? ?????? ?????????? , ?????? ?? ?????? ???  
?? ?????? ??? ?????? ?? ??????, ??? ?? ?????? ?????????? ??? ?????? ??? ??  
?? ?????????? ?????? 1 ??? ?????????? ?????????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ?????????? ? ?????? ?????? ??? ??  
???? 4 ?????? 1950, ??? ?? ?????????? ???, ??? ?????, ??? ?????? ?????????, ?????? ???  
????? ??? ?????? ??? ??????. ?????? ??? ?????? ??? ?????? ?????????, ??? ?????? ???

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

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

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

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

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

????? ??? ??? ??? ?????????? (18).

38. ?? ????????, ?? ?????? ?????????? ?????? ?? ????????, ?? ? ? ???? ????????

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

????? ?????? ?????? ??? BAPV ???, ????????, ??? ??? ?????????? ??? ?????? ???

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

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

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

????????? ??? BAPV.

39. ?? ?????? ??? ????????, ?? ?????? ?????????? ?? ?????? ?? ?????????? ??

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

37 ??? ?????? ????.

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

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

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

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

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

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

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

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

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

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

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

41. ?? ?? ?????? ?????? ?? Corte suprema di cassazione ?????? ?? ?? ?????? ???

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

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

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

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

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

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

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

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

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

????????? ??? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??? BNA, ?

????????? ? BAPV, ? ?????? ?????????? ??? BNA, ??? ?????? ?????????? ??? ???.

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

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

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

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

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

44. ?????? ??? ??????? ??? ??????? ??? ?????? ?????????? ?????????????? ?? ???????????.  
?? ?????? ?? ?????????????? ??? ? ??????? ??? ??????, ??? ?????? ?? ????????  
????????????? ?? ?????????????? ??????????, ????? ?????????????? ?? ?????????? ??  
????????? ??? ?? ?? ?? ?? ?????????? ?????????? ?? ??????????, ?????????? ??  
????? ??? ?????????? ??? ??? BAPV, ? ?????? ?????????? ?? BNA, ??? ??? ??? ??????????  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??????????.

?????????

47. ??????? ?? ?????????????? ??????? ?? ??????????, ??????, ?? ??????  
?????????? ?? ?????? ?????????? ?????? ?? ?????? ?? Corte suprema di  
cassazione ???, ???????, ?? ??????? ?? ??? ?????? ?????? ?????????? ???  
????????? ?? ?? ??? ??????????:

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

1 – ??????? ??? ?????????????: ? ???????.

2 – ??????? ?????????? ??? ??????? ?????????? ??? ??????? ?????????? (GURI) ???? .  
292, ??? 11?? ???????? 1972.

3 – ??????? ?? 19?? ??????????? 2000, C-454/98 (?????? 2000, ?. I-6973, ??????? 39 ??? 49).

4 - ?? L 145, ?. 1.

5 – ??., ?? ??????? ??????????????????, ?????????? ??? 15?? ??????????? 1998, C-231/96, Edis (?????? 1998, ?. I-4951, ?????? 33 ??? 34), ??? 11?? ??????? 2002, C-62/00, Mark &

Spencer (?????? 2002, ?. I-6325, ??? 34), ??? ?? 21?? ?????????? 2010, C?472/08, Alstom Power Hydro (?????? 2010, ?. ?-623, ??? 17).

6 – ??????? ?? 15?? ??????? 2007, C-35/05 (?????? 2007, ?. I-2425).

7 – ?????? Reemtsma Cigarettenfabriken (????????????? ??? ?????????? 6, ??? 42).

8 – ?????????????? ??? ?????????? 5.

9 – ?????? Edis (????????????? ??? ?????????? 5, ??? 37). ? ??? ??????????, ??????????, ??? ?????????, ??? ?????? ??? 9?? ?????????? 1999, C-343/96, Dilexport (?????? 1999, ?. I-579, ??? 28).

10 – ??., ?? ?????? ???????????????, ?????????? ??? 16?? ?????????? 1976, 33/76, Rewe-Zentralfinanz ??? Rewe-Zentral (?????? ??? 1976, ?. 747, ??? 5), Edis (????????????? ??? ?????????? 5, ??? 35), ??? ??? 30?? ?????? 2011, C-262/09, Meilicke ???. (??? ??? ?????????? ??? 56).

11 – ??., ???' ???????, ??????? ??? 8?? ????? 2008, C?95/07 ??? C?96/07, Ecotrade (?????? 2008, ?. I?3457, ??? 44), ??? Alstom Power Hydro (????????????? ??? ?????? 5, ??? 16).

12 – ??.. ?????? Ecotrade (????????????? ??? 11, ??? 48) ??? Alstom Power Hydro (????????????? ??? 5, ??? 20).

13 – ??., ?? ?????? ???????????????, ?????????? ??? 14?? ?????????? 2006, C?181/04 ??? C-183/04, ?????? (?????? 2006, ?. I-8167, ??? 31), ??? ??? 10?? ?????????? 2009, C-201/08, Plantanol (?????? 2009, ?. I-8343, ??? 43 ??? ??? ?????????? ??????????).

14 – ??., ?? ?????? ???????????????, ?????? Plantanol (????????????? ??? ?????????? 13, ??? 45 ??? ??? ?????????? ??????????).

15 – ??., ?? ?????? ???????????????, ?????? Plantanol (????????????? ??? ?????????? 13, ??? 46 ??? ??? ?????????? ??????????) ??? ??? 2?? ?????????? 2009, C-358/08, Aventis Pasteur (?????? 2009, ?. I-11305, ??? 47).

16 – ?????????????? ??? ?????????? 13.

17 – ??., ?? ?????? ???????????????, ?????? ?????? (????????????? ??? ?????????? 13, ??? 32 ??? ??? ?????????? ??????????).

18 – ??., ?? ?????? ???????????????, ?????? ??? 3?? ?????????? 2008, C?402/05 P ??? C-415/05 P, Kadi ??? Al Barakaat International Foundation ??? ?????????? (?????? 2008, ?. I-6351, ??? 355 ??? ??? ?????????? ??????????).

19 – ??., ?? ?????? ???????????????, ?????? ???, ?????? ??? 17?? ??? 1994, C-18/93, Corsica Ferries (?????? 1994, ?. I-1783, ??? 14), ??? 18?? ?????? 1998, C-266/96, Corsica Ferries France (?????? 1998, ?. I-3949, ??? 27), ??? ??? 10?? ?????? 2009, C-345/06, Heinrich (?????? 2009, ?. I-1659, ??? 36 ??? 37).