

?????? C-41/04

**Levob Verzekeringen BV ??? OV Bank NV**

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**Staatssecretaris van Financiën**

(?????? ??? Hoge Raad der Nederlanden

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«????? ?????? ??? — ??? 2, 5, 6 ??? 9 — ?????????? ?????????? ?????????? ???  
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????????? ??? ?????? ?????????? J. Kokott ??? 12?? ???? 2005

????????? ??? ?????????? (????? ????) ??? 27?? ???? 2005

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1. ?????????? — ?????????? ??? ?????????? — ?????? ?????? ?????????? —  
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(?????? 77/388 ??? ??????????, ??? 2 § 1)

2. ?????????? — ?????????? ??? ?????????? — ?????? ?????? ?????????? —  
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(?????? 77/388 ??? ??????????, ??? 6 § 1)

3. ?????????? — ?????????? ??? ?????????? — ?????? ?????? ?????????? —  
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??????, ?????????? ??? ?????? ??? ?????? ?????? ?????? — ?????? — ??????????  
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(?????? 77/388 ??? ??????????, ??? 9 § 2, ????. ??, ??? 3)

1. ?? ??? 2, ??? 1, ??? ??? ?????? 77/388 ??? ?????????? ??? ??????????  
?? ???, ??? ?????? ?? ??? ?????? ??? ?????? ?????? ??????, ??? ?????? ?? ??????????  
?? ??? ?????? ???, ??? ??? ? ?????????? ?????????? ??? ?????? ?????????? ???  
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??????, ??? ??? ???? ?????? ? ?????????? ?? ??? ????? ???????, ?? ?????? ??? ?????????? ?????  
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(...).

(???. ?????? 30, ????????. 1-2)

2. ?? ????? 6, ?????????? 1, ??? ????? ??????? 77/388 ??? ?????????????? ???  
?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ???????, ?????? ??  
????????? ??? ??? ?????? ??? ?????? ?????? ?????, ??? ? ?????? ?????? ???????????, ?????? ??  
????????? ??? ? ?????????? ?????? ?????? ?????? ?????, ??? ?????? ?????? ?????? ??? ???????????,  
????? ?? ?????????? ?? «????? ??????» ??? ?????????? ??? ? ?????????? ???  
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????? ???, ?????????? ?????? ?????? ?????? ?????? ???, ?? ?????? ??? ? ?????? ?????? ????  
??, ? ?????????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ????  
?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????.

(???. ??????? 28-30, ????????. 3)

3. ?? ????? 9, ?????????? 2, ????????, ??, ????? ????????, ??? ?????? ??????? 77/388  
????? ?????????? ??? ?????? ?????? ?????, ??? ?????? ?????? ?? ??? ?????? ?????? ??????  
????????? ?? ?????? ?????? ?????, ??? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ??????  
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????????? ?, ?????? ?????? ??? ?????? ??? ?????? ???????????, ??? ?????? ??? ?????? ?????? ???  
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(???. ??????? 37-41, ????????. 4)

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??? 27?? ?????????? 2005 (\*)

«????? ?????? ??? – ??? 2, 5, 6 ??? 9 – ?????????? ?????????? ?????????????? ??  
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????? ?????? C?41/04,

? ? ?????????? ??? ?????? ?????????? ?????????? ?????????? ?????? ??? ?????? 234 ??,  
????????? ??? ?? Hoge Raad der Nederlanden (????? ????) ?? ??????? ??? 30??  
????????? 2004, ? ??? ?????? ?????? ??? ?????????? ??? 2 ?????????? 2004, ??? ??????  
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**Levob Verzekeringen BV,**

**OV Bank NV**

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**Staatssecretaris van Financiën,**

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

????????? ??? ??? P. Jann, ??????? ????????, K. Schiemann (?????????), N. Colneric, J. N.  
Cunha Rodrigues ??? E. Levits, ????????,

?????? ??????????: J. Kokott

?????????: K. Sztranc, ??????? ??????????,

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? 24??  
????????? 2005,

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

- ? Levob Verzekeringen BV ??? OV Bank NV, ?????????????? ??? ??? J. van Dongen,  
advocaat, ??? G. C. Bulk, adviseur, ??? ??? W. Nieuwenhuizen, belastingadviseur,
- ? ?????????? ????????, ?????????????? ??? ??? H. Sevenster ??? J. van Bakel, ???  
??? ??? M. de Grave,
- ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? L. Ström van Lier ???  
??? A. Weimar,

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??? 12?? ??? 2005,

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1 ? ??????? ??? ?? ?????? ?????????????? ?????????? ??? ??????? ??? ??????? ??? ??????? 2,  
?????????? 1, 5, ?????????? 1, 6, ?????????? 1, ??? 9 ??? ????? ?????? 77/388/??? ???  
??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ??? ??????? ??? ??????? ???,  
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?????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49, ??? ????: ??? ?????).

2 ? ??????? ??? ?????????? ??? ??????? ?????????? ??? ??????? ??? ?????????? ??????????  
Levob Verzekeringen BV ??? OV Bank NV (??? ????: Levob) ??? ??? Staatssecretaris van  
Financien (????????? ??????????) ??????? ?? ??? ?????? ?????? ?????? ?????????????? ???  
(??? ????: ???) ??? ??????? ??????? ??? ?????? ?????? ?????????????? ??? ???????  
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3 ?? ?????? 2 ??? ????? ?????? ??????:

«???? [?] ??????????:

1. ?? ?????????? ??? ?????? ??? ?? ??????? ??????????, ??? ?????????????????? ??  
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2. ?? ?????????? ??????»

4 ??? ?? ??? 5, ?????????? 1, ??? ?? ??? ?????, «[?] “????????? ??????”  
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5 ?? ?????? 6, ?????????? 1, ??? ????? ?????? ??????:

«? “?????? ??????????” ?????????? ??? ?????, ? ?????? ??? ?????? ?????? ?????? ???  
??? ?????? ??? ?????? 5.

[...]»

6 ?? ?????? 9 ??? ????? ?????? ??????:

«1. ?? ?????? ?????? ?????????? ?????????? ? ??? ?????? ??? ?????????? ?????????????? ???  
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2. ?? ??????:

[...]

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[...]».

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7 ? Levob ? ??? ?????? ??? Amersfoort (??? ????) ?????????????????? ??  
?????????. ??? 2 ?????????? 1997, ?????? ?????? (?? ????: ??????) ?? ??  
????????? Financial Data Planning Corporation (?? ????: FDP) ? ????? ?????? ???  
????????? ?????????? ??? ???????.

8 ?? ?? ?????? ???, ? FDP ?????? ?? ?????? ?? ?????????? ?? Levob ??  
????????? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ?????????? ???  
????????? ?????? (?? ????: ?????? ??????). ?????? ?? ?? ?????????? ???,  
????????? ??? Levob ?????????? ??? ?????? ?????????? ??????, ??? ?? ??? ??  
?? 713 000 ?????? ??? (USD), ?? ??? ?????? 101 000 USD ??? ?????????? ??? ??  
????????? ??? ?????????? ??? ?? ?????????? ?????? ?? ?????????? ?? 17 ?????????? ???  
36 000 USD. ?????? ?? ??? ?????? ?? ?????????? ?????? ??? ?? ??? ?? ??? ??  
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????????? ?? ?????? ??? ?????????? ??????????, ?????? ? Levob ?????????? ?? ??????????  
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9 ?? ?????? ?????????? ??? ?????? ?? ?? ?????????? ?????? ??? ?? ??????  
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FDP ?? Levob ?? ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ??  
????? ??? ?????????? ??? Levob.

10 ? ?????? ?????? ??? ? FDP ?? ?????????? ?? ?????? ??????????  
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????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??  
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??, ??? ?????? ???, ?? ?????? ?????? ?????????? ?????? ?????????? ?????????? ??? ??  
??? ?????????? ??? ?????? ???, ?????? ??? ?????? ?????????? ?????????? ??? ??  
????????? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??  
793 000 USD ??? ?????? ??? 970 000 USD.

11 ??? ??, ? FDP ?????? ?? ?????? ?? ?????????? ?? ?????? ?????????? ??? ??  
????????? ??? ?? ?????? ?????????? ??? Levob ?????? ?? ?? ?????????? ??? ??  
????? ?? ?????????? ??? ??????????, ??? 7 500 USD ??? ??? ?? ??? ??  
?????, ? ?????? ?????? ???, ?????? ??? ?????, ?? ?????????? ?????? ??? ??  
?? ?????????? ??? ?????? ?????? ??????.

12 ?? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ???, ??????????  
?? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? 1997 ??? ?? 1999.

13 ? Levob ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?? ??? ??  
????????? ??? ?? ?????? ??????????. ??? 25 ?????????? 2000, ?????? ??? ??  
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????????? ?????????????? ?????????????? ?????? ?????? ?? ?????? ??? ?????????????????? ??? ??  
????????? ??? ?? FDP ?????????????? ??? ?? ?????? ?????? ??????????????, ?????????????? ??? ??  
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14    ?????????? ??? ? ?????????? ??? ?????????????? ??? ?? FDP ?????????? ?????? ??????  
????????? ?? ?? ?????????????? ??????????, ? ?????? ?????? ?????????????? ?????????????? ??? ??  
????????? ?? ?? ?????? ??? ?????? ??? ?????????????? ??? ?? Levob ?????? ??? ??????????.

15    ?????????? ??? ? ?????????? ??? ? Levob ?????? ?????? ?????? ??? Gerechtshof te Amsterdam  
?????????? ?? ?????? ??? 31?? ?????????? 2001, ? Levob ?????? ??? ?? ?????????? ??? ??????????  
????? ?????? ?????????? ?????? ??? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ??????????  
??? ??????????, ? Levob ?????????? ??? Gerechtshof te Amsterdam ?????? ?????? ???  
????????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? «?????? ??????????».  
????? ?? Levob, ? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??????.

16    ??? ?? ?????????? ????, ?? Hoge Raad der Nederlanden ?????????? ?? ?????????? ??  
????????? ?? ?? ?????? ??? ?????????? ?? ?????????? ?????????????? ??????????;

«1)    ?)    ?????? ?? ?????? 2, ?????? 1, ??? ?? ?????? 5, ?????????? 1, ?? ?????????? ?? ??  
????? 6, ?????????? 1, ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ?? ??????????  
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??  
????????? –???, ??? ?? ??? ??????, ??? ?? ?????????? ?? ?????? ??? ?????? ?????? ??????????????  
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???, ??? ?? ??? ??  
?????, ??? ?? ?????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????????? ?????? ???– ?????? ?? ?????? ?????? ??? ?????? ?? ??? ??????;

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

? )    ?? ? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??????????, ?????? ??? ?? ?????? 9  
?? ?????? ?????? (????? ???? ?????? ?? 6 ?????? 2002) ?? ?????????? ??? ?? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? 1 ??? ??????  
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? )    ?? ? ?????????? ??? ?????????? ??? ?????? ?????? ??????????, ??? ?????????? ???  
????? 9, ?????????? 2, ??? ?????? ?????? ??? ??????;

2)    ?)    ?? ? ?????????? ??? ?????? ?????? ?????? 1? ?????? ??????, ?????? ??? ??  
????????? ??? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
??? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? 11, ?, ?????????? 1, ?????? ???, ??? ?????? ???;

? )    ?? ? ?????????? ??? ?????? ??? ?????? ?????? ??????????, ?????? ??? ?? ?????? 9 ??  
????? ?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ? ?????? ?????? ?????????? ?????? ??? ??  
??? ?????????? ? ?????????? 1 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ? ?????????? 2;

? )    ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??  
????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????;»

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??? ??? ?????????? a? ??? ?? ??? ????? ??????????

17 ?? ?? ?????????? ?? ?? ?? ?????? ?????????????? ???, ?? ?????? ?????? ?? ?????????? ?? ???????????  
?????, ?? ?????? ?????????? ?????????? ?? ?????????? ??, ?? ?????? ?????? ???, ?  
????????? ?????????? ?????? ?????????? ??, ?? ?????? ?????????? ?? ?????? ??? ?????? ???  
??? ?????????? ?? ?????????? ?? ?????? ???, ?????? ??? ? ?????????? ?????? ??????????  
??? ?? ?????????? ??, ??? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ??????????  
????????, ??? ?????????? ?????????? ??, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ???, ?????? ?? ?????????? ??? ?????????? ??? ?????????? ? ?????? ???  
???, ??? ?????????? ?????????? ??, ?? ?? ??? ????? ?????? ?????? ?????? ?? ?????????? ???  
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18 ???' ????, ?????? ?? ?????????? ?? ?? ?????? ??? ?????????? ??? ?????? ?????? ???  
????????? ??????, ?? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????????  
????? ??? ?? ??? ??? ?????? ??? ?????????? ??? ?????????? ?, ?? ??????, ???  
????????? ??? ?????? ??? ?????? ?????? ?????? (????????? ??? 25?  
????????? 1999, C-349/96, CPP, ?????? 1999, ?. I-973, ?????? 27).

19 ??? ?????????? ?? ?????????? ?? ?????????? ??? ??????????????, ??? ?????? ??? ?????? ?????????????? ???  
??? ?????? ??????????, ?????? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ??? ?????? ???  
????????? ? ?????? ???, ?????????? ?? ??????????, ??????, ?? ?????????? ??? ??? ?  
????????? ?????? ??? ?????? ??? ?????? ?????? ???, ??????, ??, ??? ?????? ??????  
?????????, ? ?????? ??? ?????? ?????? ?? ?????????? ?? ?????? ?????? ?????? (??., ??  
???? ??????, ??? ?????? ??? 2?? ??? 1996, C-231/94, Faaborg-Gelting Linien, ??????  
1996, ?. I-2395, ?????? 12 ?? 14, ??? ??? ?????????? ?????? CPP, ?????? 28 ???  
29).

20 ??????, ?????????? ??? ?????? ??? ?????????? ???, ??????, ??? ?? ?????? 2, ?????? 1, ???  
????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ?????? ???  
????????? ??? ???, ???????, ? ?????? ???, ?? ?????????? ??????, ?????????? ?? ???  
???? ?????? ??? ?????? ?? ?????????? ?????? ??? ?? ??? ?????????? ??? ?  
????????????? ??? ?????????? ??? ???, ?????? ?? ?????????? ?? ?????????? ??? ?  
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?? ?????? ?????? ?????? ?????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??????  
?? ?????????? ?????? ?????? ?????? (??., ??' ??????, ??? ?????????? ???  
????? CPP, ?????? 29).

21 ?? ??????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ???  
????? ?????? ?? ?????????? ??? ?? ?????????? ?????? ?????? ??? ?????? ??????,  
??? ??? ? ?????????? ?????? ?? ?????? ?? ?????????? ?? ??? ? ?????????? ?????? ??????????  
??????, ?? ??????, ??? ?????? ??????????, ?????????? ??? ??? ??? ?????? ??????  
(????????????? ?????? CPP, ?????? 30, ??? ?????? ??? 15? ??? 2001, C-34/99,  
Primback, ?????? 2001, ?. I-3833, ?????? 45).

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

23 ??? ?????? ??? ?????????? ??? ?????? ?????????? ?? ?????? 234 ??, ?????? ???

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

24 ??? ?????? ?? ??????? ??? ?????? ?????, ??????????, ??? ?????????????? ?? Gerechtshof  
te Amsterdam, ??? ?????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ???  
????????? ??????????????, ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? FDP ??? ??  
Levob ??? ?? ?????????? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??? ??  
????????? ?? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????  
????????????? ??? ?????? ?????????? ??? ?????????? ??????. ?? ??????????, ??? ??????  
????????? ??? ?????????? ??????????, ??? ?????? ??????, ??? ?????? ?? ?????? ??? ??????  
?????????, ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??????????  
????? ??? ?????????? ?????????? ?? ??????, ??? ?????? ???, ??? ?????? ??? ?????? ??????????  
??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???  
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ???.

25 ?? ??????, ??? ?????? ??????? ??? ?????? ??? ??????, ??? ?????????????? ??????????  
?????, ??????, ??? ?? ??????? ??? ?????? ?????????? ?????????? ???, ??????, ??? ??  
????????? ???, ??? ?????? ?????????? ??????. ??????????????, ?? ?????? ??? ?????? ??? ??  
????? ?? ?????? ??? ?????? ?????????? ??????, ??? ?????? ??? ?????? ??? ??????????  
????? ?? ??? ?? ??? ?????? ?????? ??? ?? ??? ?????? ??????, ??? ??? ?????? ??? ?????? ??? ??  
??? ?????? ?????????? ??? (??., ??? ?????? ??????, ??? ?????????????? ?????? CPP,  
????? 31).

26 ??? ??????, ?? ?????? 2 ??? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ??  
??? ?????? ?????????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ??????  
??' ?????? ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ??.

27 ??? ??????, ??? ?? ?????? ?? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ??  
????????????? ?? ?????? ??????????, ?? ?????? ?????? ?????? ?? ?????????????? ??  
????????? ?????????? ??? ?? ?????? ?????? (??., ??? ?????? ??????, ??? ?????????????? ??? ??  
Faaborg-Gelting Linien, ??? 14).

28 ??? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????? ?????? ?????????? ??? ?????? ??? ??  
????? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ?????????? ??? ?????? ??? ??  
????????, ? ????, ? ??????, ? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ??  
????????? ?????? ??? ?? ?????? ?????? ??? ??.

29 ??? ??? ?????????? ?????? ??????????, ?? Gerechtshof te Amsterdam ??? ?????? ??????????  
?? ?????? ?????? ?????? ?????????? ??? ?? ?????? ??? ?????? 6, ?????????? 1, ???  
????? ??????, ?????? ?? ??? ?????? ?????????? ?????? ?????? ?????? ?? ?????? ??? ??  
????? ?? ?????? ?????? ??????????, ?? ?????????? ?????? ??? ?????? ??? ?????? ??????  
????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ??????  
?? ?????????? ?? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

30 ?????????????? ??? ?????? ???, ??? ?????????? ?? ??? ?? ??? ?????? ?????????? ??????????  
????? ?? ?????? ??? ?????? ???:

- ?? ?????? 2, ?????? 1, ??? ?????? ?????? ?????? ?? ?????????? ??? ?? ?????? ??? ??  
????? ?? ?????????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?? ???  
?????????, ??? ?? ?????????? ?????? ??? ?????? ?????????? ?????? ?????? ??? ??????.

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

- ???? ?????????? ??? ?????????? ?? ??? ?????? ?? ??? ?????? ??? ?????????????? ???  
???? ??????? ?? ??? ?????????????? ?????????????? ?????????? ??? ?????????????? ???  
??????????, ??? ??? ?????? ?????? ??? ?????????? ?? ?????? ?????? ??? ?????? ?????????????? ??  
????????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ???.

- ?? ??? 6, ?????????? 1, ??? ??? ?????? ??????? ?? ?????????? ?? ?????????? ??? ??? ????  
??? ??? ?????? ?????? ?????? ?? ?????????????? ?? «?????? ??????????» ???  
????????? ??? ? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ?????????- ??? ?????? ?????????? ???, ?????????????? ??? ?????? ?????????? ??? ?  
????? ???, ?? ?????? ??? ? ?????????? ???, ? ?????????? ??? ?????? ?????? ??????????????  
????????? ??? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????????????  
????????? ??? ? ??????????.

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

31 ?? ?? ?????????? ?? ??? ?? ??? ?????? ?????????? ???, ?? ?????? ?????????? ??? ??  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??  
????? ? ?????????? ??? ?????????? ?? ??? ?? ??? ?????? ??????????.

32 ?? ??????????, ?? ?????? 9 ??? ?????? ?????? ?????????? ??????? ?? ??????  
?????????, ?? ?????? ???, ??? ??? ?????? ??????. ??? ? ?????????? 1 ???  
????????? ??? ? ?????? ?? ?????????? ??? ?????? ?????? ??????, ? ?????????? ??? 2  
????????? ??? ? ?????? ?????????? ??? ??????. ?????? ??? ?????????? ??? ?????? ??????, ???  
????????? ?????? ?????????? ??? ?????? ?? ?????????? ?? ?????? ?????????? ???,  
?????????, ?? ?????????? ?? ??? ?????????? ?????? [??., ?????? ???, ??? ?????? ??? 12??  
????? 2005, C-452/03, RAL (Channel Islands) ?.??., ??? ??? ??? ?????? ?????????? ???  
??????, ?????? 23 ??? ?????????? ??? ?????????? ???].

33 ??? ?????? ?? ?????? ?????? ??? ?? ?????? ?????????? ??? ?????? 9 ??? ???  
??????, ?? ?????????? ??? ?????? ??? ? ?????????? 1 ?????? ?????????? ???  
????????? 2 ??? ?????? ????. ?? ?????? ??? ?????? ?? ??? ?????????? ??? ?????? 9, ??????????  
2- ?? ???, ?????????? ??? ?????????? 1 [????????????? ?????? RAL (Channel Islands) ?.??.,  
????? 24 ??? ?????????? ??? ?????????? ???].

34 ??? ?????? ???, ??? ?????? ?? ?????????? ?????? ??? ?? ?????? 9, ?????????? 2,  
????????? ?, ??? ?????? ?????? ???, ?? ?????? ??? ??????, ?? ?????? ??? ??????, ?? ?????????? ???  
(????????? ??? 15?? ?????? 2001, C?108/00, SPI, ?????? 2001, ?. I-2361, ?????? 17).

35 ??? ???????, ?????? ?? ?????????? ?? ??? ?????? ??? ? ?????? ??? ?????? ???  
?????? ?????? ??? ?????? ??? ?????? 9, ?????????? 2, ??? ?????? ???.

36 ?? ??????????, ?? ?????? ?????????? ?????????? ?? ??? ?????? ?????????? ?? ?????? 9,  
????????? 2, ?????? ??, ??? ?????? ??????, ?? ?? ??? ?????? ??????, ?? ?????? ?????????? ??  
????? ??? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? «?????? ?????????? ???  
?????????, ??????????, ?????? ?????? ??????, ?????????? ??????, ?????????? ??? ?????? ??????????  
??????, ?????? ??? [...] ?????????? ?????? ??? [...] ?????? ?????????? ». ?? ??????  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

37 ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ??  
9, ?????????? 2, ????????, ??? ??????????, ??? ?????????? ??? ?????????? ??? ?????????? ???,  
???? ?? ??? ??????????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???,  
???? ?????? ?????????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ???  
?????. ? ?????????? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????  
????, ?? ??? ?? ??? ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ??  
(?????? ?? 16?? ?????????? 1997, C-145/96, von Hoffmann, ?????? 1997, ?. I-4857,  
????? 15).

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

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

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

41 ?????????? ??? ?????? ??? ??????, ??? ?????????? ?? ??? ?? ??? ?????? ??????????  
?????? ?? ??? ? ?????????? ??? ?? ??? 9, ?????????? 2, ????????, ??? ??????????,,  
??? ?????? ?????? ??? ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ?????????? ??? ??  
????????? ??????????, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ?? ???  
?? ??? ?????? ??????????, ??? ?????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ???  
????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???  
????? ??? ??????????.

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

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

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

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

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

1) ?? ?????? 2, ?????? 1, ??? ?????? ?????? 77/388/??? ??? ?????????? ??? 17??  
????? 1977, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ?????????? ???  
????? ?????? ?????? ?????? - ?????? ?????? ?????? ?????? ?????????????? ????:  
????????? ?????????? ???, ?????? ?? ?????????? ??? ??? ?????? ???, ??? ??? ??  
????????? ?????????? ??? ??? ?????? ?????? ??? ?????? ???, ??? ??? ??

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

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

3) ?? ??? 6, ?????????? 1, ??? ??? ?????? 77/388 ?????? ?? ?????????? ???  
?? ?????? ??? ??? ?????? ??????, ??? ?????? ??? ?????? ?????? ?? ?????? 2 ???  
????????? ??????????, ?????? ?? ?????????????? ?? «????? ??????» ???  
????????? ??? ? ?????? ?????????? ??? ?????? ?????? ? ?????????? ???  
????????? ??? ?????????? ?????????? - ??? ?????? ?????????? ??? ?????? ???, ??????????  
????? ?????????? ??? ? ?????? ???, ?? ?????? ??? ? ?????????? ???, ? ??????????  
????? ?????? ?????????????? ?????????? ??? ? ?????? ?????? ?????? ? ?????? ???  
????????? ??? ?????? ???.

4) ?? ??? 9, ?????????? 2, ???????? ??, ??? ?????? ??????????, ??? ?????? ??????  
77/388 ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????  
????????? ??????????, ??? ?????? ??? ?????? ??? ?????? ?? ?????? 3 ??? ??????  
?????????????, ??? ?????????? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????  
????????? ??? ??????????.

(?????????)

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