

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

??? 23?? ??????? 2009 (*)

«????????? ??????? ?????? – ?????????? ?????????????? – ?????????? ?????????? ???
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???? ?????? C?406/07,

? ? ?????????? ?????? ?? ?????? 226 ?? ??? ??????????, ? ?????? ?????? ??? 4
????????? 2007,

????????? ??? ?????????? ??????????, ?????????????? ??? ??? ?. ??????????????, ??
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????????? ??????????, ?????????????? ??? ??? ?. M?????????, ?????? ??? ??? ??? M.
T????????? ??? I. ????, ?? ??? ?????? ??? ????????????,

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

????????? ??? ??? A. Rosas (????????), ?????? ???????, A. Ó Caoimh, J. N. Cunha
Rodrigues, U. Löhmus ??? A. Arabadjiev, ???????,

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

?????????: R. Grass

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

?????? ??? ?????? ??? ?????, ??? ?????? ?? ?????? ????????????, ?? ?????????? ???
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1 ?? ?? ?????????? ?? ?????????? ???, ? ?????????? ?? ?????????? ?????????? ??????
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?) ?????????????? ?????????? ??? ?? ?????????? ?????????? ?????? ?????????? ??????????
????????? ??????? ??' ?? ?? ?? ?? ?????????? ?????????? ???????????, ? ?????????? ??????????
?????? ??? ?????????? ??? ?????? ??? ?? ?????? 56 ?? ??? 43 ??, ?????? ??? ??? ?? ????
40 ??? 31 ??? ?????????? ??? ??? ?????????? ?????????? ???, ??? ?? ??? 1992 (?? 1994,
L 1, ?. 3, ??? ????: ??????? ??? ??? ????)?

?) ??????????? ?? ??? ???? ?????????? ?? ?????? ?????????? ?????????? (?????
2238/1994, ??? ?????????????? ?? ??? ??? 3296/2004, ??? ????: ????? 2238/1994), ?? ???
????? ?? ?????????? ?????????? ?????????? ?????????????? ????? ?????? ?????????? ??? ?????
?????????, ? ??????? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?? ????? 43 ??
?? 31 ??? ?????????? ??? ??? ???.

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2 ?? ????? 24 ??? ????? 2238/1994 ?????????? ??? ? ? ?????????????? ??? ?????????? ?
????????? ?????????????? ?????????? ?????????? ?????????? ?? ?????????? ??? ?????????? ??? .

3 ????? ???? ?? ?????????????? ??? ?????????? ?????????? ?????????? ??????????, ?? ????? 54,
?????????? 1, ?? 114, ?????????? 1, ?????????????? 1, ?? ?????? ?????? ?????? ?????????? ??
?? ?????????????? ?????? ?????? ???, ??????? ?? ?? ??? ?????? ?????????? ??????????
????????????? ??? ?????? ??? ?????? ??????????.

4 ?? ?????? 114, ?????????? 1, ?????????? 2, ??? ????? 2238/1994 ?????????? ???
? ?????? ??? ?????? ??? ??? ?????? ?????????? ?????????? ?????????? ??? ??????????
????????? ??? ?? ?????????? ?????? ??? ?????????? ?????.

5 ????? ?????? ?? ?????????? ?????????? ???????????, ?? ?????? 9, ?????????? 8, ?????????
??, ??? ?????? 2238/1994 ?????????? ?? ???? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????
?????? ?????????? ?????????? ? ?????? ?? ?????????????? ?????????????? ?????? ?????????? ??
?? ?????????????? ??????????, ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??' ??? ??
????????? ??? ??????????.

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

6 ????. ?? ?????? 2, ??????????? 4, ??? ????? 2238/1994, ??????????? ?? ????. ??
?????????? ???. ?? ??????????? ???????.

7 ????? ?????? ?? ??????????? ?????????????????????? ?? 2006, ?? ????? 10, ???????????
1. ??? ????? ?????? ??????????? ?? ????:

?) [...] 22 % ?????????????? ??? ?????????????? ??? ?????????????? ??? ??????

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[...]

?? ?? ???? ?????? ?? ?? ???? ?? ?? ?? (?????????) ?? ?? ???? ?????????? ? ?? ??????????
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8 ??? ? ? ?????? 3 ??? ?????? 3296/2004, ? ?????????? ?????????????? ?????????????? 25 %
(???.????????????? ???. 2004) ??? ?????????????? ??? ?????????????? ?????????????? ??????????????

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18 ? ?????????? ??????????? ?? ?????? 54, ?????????? 1, ??? 114, ?????????? 1, ???
????? 2238/1994 ?????????? ?????? ??? ??? ??? ?????????? ??? ?????????? ??? ??????????
????????? ???????????. ??????????, ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
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??? ??????-????? ??????. ? ?????????? ??? ?????????? ?????????? ?????????? ??? ??????,
????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ???
????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?,?. ??? ?????? ??? 40 %, ?
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????.

19 ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ???
????? 56 ?? ??? 40 ??? ?????????? ??? ??? ???, ??? ?????? ??? ? ?????? ??????
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????????? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ???
????? ?? ?????? 43 E? ??? 31 ??? ?????????? ??? ??? ???.

20 ? ?????????? ?????????? ?????????? ??? ? ?????????? ??? ?????? ?????????? ???
??? ??? ??? ??? ?????????? ?? ??? ??? ?????, ??? ?????? ??? ?????????? ??? ??????
????? ????. ???? ??? ?????? ?? ?????????? ?????????? ??????????, ??? ?????? ?????? ?
????????? ???, ??? ?????? ??? ?????? ?? ??? ??? ?? ??? ?????? ?????????? ?????????? ??
????? ??? ?????? ??? ?????????? ?????????? ?????????? ???, ??? ?????? ??? ??????
????????? ???, ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????. ?????????? ???
??? ?????? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????????? ?????????? ?, ??? ?????? ??? ?????? ???
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21 ??????, ??? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ?? ??????????
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22 ? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?
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????????? ??? ?????? ?????? ?????? ??????, ?????? ?????? ?? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? 56 ?? ??? 40 ??? ?????????? ??? ??? ???, ??? ??? ??????????
????????? ??????, ??? ??????, ??? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ??? ??? ??
????????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????.

??? ?????????? ??? ?? ?????????? ??? ??????????????? ???, ??? ?????? 43 ?? ??? 31 ???
????????? ??? ??, ??? ?? ?????????? ?????????????? (??., ??? ?? ?????? ????,
????????? ??? 12?? ?????????? 2006, C?374/04, Test Claimants in Class IV of the ACT Group
Litigation, ??????? 2006, ?. I?11673, ??????? 37 ??? 38? ??? 12?? ?????????? 2006,
C?446/04, Test Claimants in the FII Group Litigation, ??????? 2006, ?. I?11753, ??????? 36, 80
??? 142? ??? 24?? ????? 2007, C?157/05, Holböck, ??????? 2007, ?. I?4051, ?????? 24? ???
26?? ??????? 2009, C?326/07, ??????? ?????, ??? ??? ?????????????? ?????? ???
???????, ?????? 36).

23 ?? ?????????? ??? ?????????????? ?? ?????????????? ?????????????? ?????????????? ???
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? (???
????: ?????? ??? ??????) ? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????????? ??? ?????? ?????? ?????? ??????, ??? ?????????? ?????? ??? ?? ?????? ???
????????? ?????????? ??? ?????? ?????? ?????? (???? ?????? ??? ?????? ?????? ?????? ???
??? ?????????, ??., ??? ??? ?????? ???, ?????????? ??? 6?? ?????? 2000, C?35/98,
Verkooijen, ??????? 2000, ?. I?4071, ??????? 34 ??? 36, ??? ??? 7?? ?????????? 2004, C-
319/02, Manninen, ??????? 2004, ?. I?7477, ??????? 22 ??? 24? ??? ?????? ??? ?????? ???
???????????, ??., ??? ??? ?????? ???, ?????????????? ?????? Test Claimants in the FII
Group Litigation, ?????? 46).

24 E? ??????????, ? ??????? ?? ??????? 54, ?????????? 1, ??? 114, ?????????? 1,
????????????? 1 ??? 2, ??? ?????? 2238/1994 ?????????? ??? ?????? ?????? ??? ??
????????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ???, ??
????? 114, ?????????? 1, ?????????? 2, ??? ?????? ?????? ?????? ??? ?? ?????? ???
????? ??? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ??
????????? ??? ??????. ???????, ??? ???????, ?????????? ??? ??? ?????? ?????? ???
????????? ?????????, ??? ?????????? ?????????? ??? ??? ??? ??? ?????? ???
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25 ???????, ?? ??????? ?? ?????????? ??? ?????????? ??? ?????????? ?????????? ?? ???
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??? ??????-?????? ??????. ??? ?????????? ? ???????, ??? ?????????? ??????????
????????????? ? ??????? ??? ?????? ?????? ?????? ?? ??? 9, ?????????? 8, ???????
??, ??? ?????? 2238/1994 ??? ?????? ??? ?????????? ?????????? ??? ?????? ???.

26 ?? ?? ??????, ? ??????? ?????????? ?????????? ?????????? ?????????????? ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ??
????????? ??? ???????, ??????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ???
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27 ??????, ??? ??? ?????? ??????? ?? ???, ?? ?????????? ?????????? ?, ???
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??? ??? ?????????? ?????? ?? ?????? ?????? ?? ?????????? ??? ?????? ?????? ?????? ???
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28 ? ??????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ?? ??? ?????? ??? ? ?? ?????? ??? ?????? ??????, ???????,
????????? ??? ??? ?????????? ?????????? ??? ??? ??? ?????? ?????????? ??? ???
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29 ??????? ??? ? ??????? ?????? ??? ?????? ??? ?????? ?????????? ?? ???

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30 ? ?????????? ?????????? ??? ? ??????? ?????? ?????????? ?????????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ??????????
????????? ?????? ?????? ?????????? ?????????? ?????????? ??? ? ?????? 43, ??????
??????, ?? ??? 31, ?????????? 1, ??????? ??????, ??? ?????????? ??? ??? ???.

31 ? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ? ?????? ??? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? «????????????? ??????».
?????????????, ??? ??? ???????, ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
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32 ??????, ? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ?? ?????????? ??????????
??? ?? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ? ?????? ??????????
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?????????, ?? ?????????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ???
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33 ? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ??????????
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?? ?????? ??? ?? ??? ??? ?? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ??????
????????? ??? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??????.

34 ? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ? ?????? ?????? ??????????
????????? ??? ?????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ??
????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???, ???
??? ?????? ???, ??? ?????? ?????? ? ?????????? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ???, ??? ? ??? ?????? ?????????? ??? ? ?????????? ?????? ?????? ??? ?????? ???
????? ?????????? ??? ? ??? ??? ?????? ?????? ?????? ???, ??? ? ??? ?????? ?????? ??? ?????? ???
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35 ? ?????????? ?????????? ?????????? ???, ?? ??? ??????????, ??? ?????????? ???
?? ?????????? ??? ?????? 2238/94 ?? ??? ??? 3296/2004, ??? ?????? ?????? ?????? ???
????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???, ???
????????? ??? ?????? ?????? ??? ?????? ??????.

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36 ? ?????????? ?????????? ??? ?????? ?? ?????? 43 ?? ?????????? ?????? ??????????
????????? ??? ? ?????? ?????????? ??' ?????? ??? ?????? ??? ?????? ?? ??????
?????????????, ??? ?????? ?? ?????? ??? ?????? ?????? ?????????? ???, ??? ??? ????
????????????? ?? ?????? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??????????
?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?? ?? ?????? 48 EK, ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
?? ??????????, ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????
????? ?????????? ?????? ?????? ?????? ?????? (??., ?????? ???, ??????)
?? 29?? ?????? 1999, C?311/97, Royal Bank of Scotland, ?????? 1999, ?. I?2651, ???
23? ??? 21?? ?????????? 1999, C?307/97, Saint-Gobain ZN, ?????? 1999, ?. I?6161, ???

35? ??? 12?? ???????????? 2006, C?196/04, Cadbury Schweppes ??? Cadbury Schweppes Overseas, ??????? 2006, ?. ??7995, ????? 41? ??? 13?? ??????? 2007, C?524/04, Test Claimants in the Thin Cap Group Litigation, ??????? 2007, ?. ??2107, ????? 36, ????? ??? ??? 17?? ??????????? 2008, C?105/07, Lammers & Van Cleeff, ??????? 2008, ?. I?173, ????? 18).

37 ? «????» ??? ???????? ??? ?? ?????? ??? ?????? 48 ?? ???????????, ??? ???? ?
????????? ??? ?????? ????????, ??? ??? ?????????????? ??? ??????? ??? ???? ???? ????
???? ???? ??????. ?? ??????? ?????? ??? ?? ?????? ????? ?????????????? ??? ?????? ??????????
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???? ???? ??? ?????????? ??? ?????? ??? ???? ??? ?????? ?????????? ?????????? ?????????? ?? ???
????? ??????, ?? ????? 43 ?? ?? ?????????? ??? ?????????????? (??., ??? ??? ?????? ???,
????????????? ?????? Royal Bank of Scotland, ??? 23). ??????, ????????, ???
????????? ?????????????? ??? ?? ?????????????? ??? ?????? ????? ?????????? ??????????????
???? ???? ??? ?????? ??? ?????? ?????????? ?? ?????????? ??? ??????????, ?????????????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? (??., ??? ??? ?????? ???,
????????????? ?????? Saint-Gobain ZN, ??? 35, Test Claimants in the Thin Cap Group
Litigation, ??? 37, ??? Lammers & Van Cleeff, ??? 19).

38 E? ??????????, ? ??????? ?????????? ??? ?????????? ??? ? ??????????
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???? ?????????? ?????????? ??????????, ?????? ?????? ??? ?? ?????????? ??????????
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39 ???????, ? ??????? ?????????? ?????? ?????? ?? ?????????? ??? ?????????????? ?????????????? ?????????????? ?????????? ?? ?????????? ?????? ?????? ?????? ?????-????? ??? ?????? ?????? ?????? ?????? ?????? (??., ??? ??? ?????? ?????? ???, ??? ?????? ?? ??????? ??, ??????? ??? 15?? ?????? 2008, C?414/06, Lidl Belgium, ??????? 2008, ?. I?3601, ????? 25, ???, ??? ?????? ?? ?????????? ??? ??? ??? ???, ??????? ??? 23?? ?????????? 2008, C?157/07, Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt, ??? ??? ?????????? ?????? ??? ??????, ??? 38).

41 ?? ?????????? ?? ? ??????? ?????????????? ?????????????? ?????????????? ?????????????? ??
????????????? ?? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????????????? ??????????
????????????? ??? ?????? ?????? ??? ?????? ?????????? ?? ??????????, ?????????? ? ??????????
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42 ????? ?????? ??? ?????????? ?????????????? ?????????? ??? ?????????????? ?????????????? ???
????????????? ??? ?????????? ?????? ??????, ??????????? ??? ?? ?????? ?????? ?????? ?
?????????, ? ?????????? ??? ?????? ???' ?????? ?? ??????????? ?????????????? ?????????????? ??????????
??? ?????????? ????????. ?? ??? ????????????, ? ???????????? ??? ???????????
????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? ?????????????? ???
??????????.

43 ??? ?? ??????? ?????????? ??? ?? ?????????? ?????????? ??? ?? ?????????? ?
?????? ??????? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ??????????
???? ?? ????? 43 ?? ??? 31 ??? ?????????? ??? ??? ???.

44 ?????????? ??? ? ?????????? ?????????? ??? ?????????? ?????? ?????????? ??? ??
????????????? ??? ?????????? ???, ?????? ?? ?????? ?????? ??? ? ?????? ?????? ?????? ??????
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45 ??? ?? ??? 69, ?????????? 2, ??? ?????????? ??????????, ? ?????????? ??????????
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?????????. ?????????? ??? ? ?????? ?????? ??????????, ?????? ?? ?????????? ???
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??? ??? ?????? ??????, ?? ?????????? (????? ????) ??????????:

1) ?????????? ?????? ?????????? ??? ?? ?????????? ?????????? ?????????? ??????????
????????? ?????? ??' ?,?? ??? ?? ?????????? ?????????? ??????????, ? ??????????
????????? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? 43 ?? ??? 56 ??,
????? ??? ??? ?? ????? 31 ??? 40 ??? ?????????? ??? ??? ?????????? ??????????
????, ??? 2?? ??? 1992.

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2238/1994, ??? ?????????? ?? ??? ??? 3296/2004), ?? ??? ?????? ?? ??????????
????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?? ??????????, ?
????????? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? 43 ?? ???
31 ??? ?????? ??? ??? ?????????? ?????????? ???.

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

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