

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

?? 17?? ?????????? 2015 (*)

«????????????? ?????????? — ?????? ??? — ???? 63 ??? 65 ??? — ???????
????????? ??? ?????????? — ?????????? ??? ?????????? ?????????????? ?????? —
????????? ??? — ?????????? — ?????????? ?????????? ?????????? — ???????
?? ?? ?????? ??? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ??????????
?? ?? ?????????? ?????? — ?????????? — ?????????? ??? ?????????? ???
????? ?????????? ??? — ?????????? ??? ?????? — ?????????? ??? ?????? ???
????? — ?????????? ??? ?????????? ??? ?????????? ??? ??????????»

???? ?????????????? C?10/14, C?14/14 ?? C?17/14,

? ? ?????????? ?????? ?????????? ?????????? ?????? 267 ???, ??
????? ?? Hoge Raad der Nederlanden (????? ??????, ????) ?? ?????????? ??
20?? ?????????? 2013, ?? ?????? ?????? ??? ?????????? ??? 13 ?????????? 2014, 15
????????? 2014 ?? 16 ?????????? 2014, ??? ?????? ??? ???

J. B. G. T. Miljoen (C?10/14),

X (C?14/14),

Société Générale SA (C?17/14)

????

Staatssecretaris van Financiën,

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

????????? ??? A. Ó Caoimh (?????), ?????????? ??? ?????? ????????, K.
Lenaerts, ?????????? ??? ??????????, ?????? ?????? ?????? ??? ??????
???????, C. Toader, E. Jaraši?nas ??? C. G. Fernlund, ????????,

?????? ??????????: N. Jääskinen

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

?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
18?? ?????? 2015,

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

- ? J. B. G. T. Miljoen, ?????????????? ??? ??? E. Nijkeuter,
- ? X, ?????????????? ??? ??? N. de Haan, ??? ??? ??? ??? G. Meussen ??? S.
Baum?Sillé, advocaten,
- ? Société Générale SA, ?????????????? ??? ??? M. Sanders ??? A. Breuer, advocaten,
- ? ?????????? ????????, ?????????????? ??? ??? M. Bulterman, M. Gijzen ??? M. de

Ree, ?????????????? ??? ?? I. Siemonsma ??? ?? H. Guiljam,

— ??????????? ??????????, ??????????????? ??? ?? T. Henze ??? ??? K. Petersen,

– ? ?????????? ??????????, ??????????????? ??? ??? A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren ??? K. Sparrmann, ????? ??? ??? L. Swedenborg, E. Karlsson ??? F. Sjövall,

– ? ?????????? ??? ??????? ??????????, ?????????????????? ??? ??? J. Beeko,
????????????? ??? ??? S. Ford, barrister,

— ??????????? ????????, ?????????????????? ??? ??? W. Roels ??? A. Cordewener,

???? ??????? ??? ??????? ???????????? ??? ?????????? ??? ?????????? ??? ??????? ?? ???????????
??? 25?? ??????? 2015,

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

????????

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

2 ?? ?????????? ??? ??????? ?? J. B. G. T. Miljoen, ???
X ??? ?? Société Générale SA (??? ????: Société Générale) ?? ?? Staatssecretaris van
Financiën (?????????? ???????????), ??? ?? ?????????????? ?? ?? ??? ?? ?????????? ?
?????????? ?? ?? ??? ?? ?????????? ?? ?????????? ?? ??????????? ?? ?? ?????????? ?? ??
?????????? ?? ?? ??? ?? ?????????? ?? ??.

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

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

? ?????? ????

3 ?? ?????? 1 ??? ?????? ??? ?????????????? ?????????????? (Wet op de dividendbelasting),
????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ??? ?????? ???, ??? ?????:

2. ??? ???. ?????? ??????? ???. ?????????? ???. ?????????? ???. ?????, ?? ?????????? ???.
????????? ???. ?????? ???. ?????????????? ???. ?????? 2, ?????????? 2, ??? [????? ???. ??????
?????????], ?????????????? ???. ?????? ???. ?????????? ???. ?????? ???. ?????? ???. ?????? ???.
?? ?. ??????, ?????? ???. ?????? ???. ??????, ??? ???. ?????? ???. ?????????????? ???. ??????.

[...] »

4 ??????? ?? ?????? 5 ??? ?????? ??? ??????????????, ? ?????? ?????? ??????????? ??
15 % ??? ??? ??????????.

5 ??? ? ? ?????? 10, ?????????? 1, ??? ? ???? ?????:

«?????? ??????? ?????????????? ??? ?????? ?????? ??? ? ??????????? ?? ??? ?????? ????????
?????? ?? ??????? ??? ??? ?????? ??? ?????? ??????????, ??? ?????? ?????? ??????? ??
????????? ?????????? ???????, ?? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ??
????????? ??? ?????????????? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????????????? ??? [...]

? ????? IR 2001

6 ? ?????? ??? ?????? ?????????????? ??? 2001 (Wet Inkomstenbelasting 2001, ??? ????: IR
2001), ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????? ???,
????????? ?? ?????????? ??? ?????????? ?????????????? ?????????? ?????????? ??????????.

7 ?? ?????? 2.13 ??? ?????? ?????? ?????????? ?????????? 30 % ??? ???????
??? ?????????? ??? ??????????, ?? ?????? ?????????? ??? ?????????? ?????? «?????? 3» ? «?????? 3».

8 ?? ?????? 5.1 ??? ?? ?????? ?????? ?????????? ??? ?? «????????? ?????? ????.
????????? ??? ?????????? ??? ?????????? » ?????????? ??? «?????? ??? ??
????????? ??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??????».

9 ??????? ??? ?????? 5.2 ??? ?????? ????, ? ??????? ??? ?????????? ??? ?????????? ???
????????? ???' ??????? ?? 4 % ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???,
????? ? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???.

10 ?? ?????? 5.3, ?????????? 2, ??? ?????? IR 2001 ?????? ?? ?????????? ??? ??????? ??
????:

«a. ?? ????????

b. ?? ?????????? ??? ?????? ?????? ? ?????? ? ?????? ????????

c. ?? ?????? ??? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ??? ??? ??????????

d. ?????????? ??? ????????

e. ?? ?? ?????????? ??? ????????, ??? ?? ????????

f. ?? ?????? ?????????? ??? ?????? ??? ?????? ??????? ???..»

11 ??? ?????? 5.3, ?????????? 3, ??? ?????? IR 2001 ?????????? ??? «?? «[?]??
????????? ?????????? ??? ?????? ?????? ???».

12 ?? ?????? 5.5 ??? ?????? IR 2001, ?? ?????? «????????? ??? ?????????? ???
?????????», ?????? ??? ?????? 1 ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???
????????? ?? 20 014 ????. ?? ?????????? 2 ??? 4 ??? ?????? ??? ?????? ?????????? ??? ??
????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?????????.

13 ?? ?????? 5.19, ?????????? 1, ??? ?????? IR 2001, ?????? ?? ??? ??????? ???

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

14 ?? ?????? 7.1 ??? ????? IR 2001 ??????:

«??? ??? ?????????? ??????????????, ? ??? ??? ?????????? ?????????????? ????:

[...]

b. ??? ?????????? ?????????? ??? ?????????? ?????????? ?? ?????????????? ???
????? ??? ??? ??????, ???

[...]

??? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????????? ???».

15 ?? ?????? 9.2 ??? ????? IR 2001, ??????? ?? ??? ?????????????? ??????????????,
????????? ??? ?????????? 1 ???, ??? ??? ?????????????? ?????????? ??????????, ? ???
????????? ?????????? ?????????? . ? ?????????? 8 ?????? ??? ?????? ?????? ???, ??? ???
????????????? ?????????? ?????????? «? ?????????? ?????? ?????? ?????????? ??? ?????
????????? ??? ?????????? ?? ?????????? ?????????? ?? ?????????? ?? ??????????».

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

16 ??? ?? ?????? 17, ?????????? 3, ?????????? ??, ??? ?????? ??? ?????? ?????? ???,
????? ??? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???, ?? ??????????
????????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ??????????
??? ?????????? ??????????, ?????? ?? ?????? ??? ?????????? ??? ?????????? ?????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ???
(????????? ??????????).

17 ?? ?????? 25 ??? ??? ?????? ??? ?? ???:

«1. ?? ?????????? ?????? ? ?????????? ?????? ?????? ??????????, ?????????? ??? ???
??? ?????????? ?????? ??? ?????? 12, ?????????? 1, ??? [????? ??? ?????? ?????? ??????????],
??? ? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??????, ?????? ?? ?????? ???
????????????? ??? ??? ??? ?????????? ? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????? ? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???

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

a. ?? ?????????? ??? ??????????, ?? ??? ? ?? ?????, ?????? ? ??????, ?????? ? ??????
????????? ?? ??? ?????? ?????????? ?????? ?? ?????? ??????, ?????????? ???
????????? ??? ?????? ?????? ?????????? ??? ?, ?? ? ?????? ??? ?????? ??? ?????? ???
???

b. ?? ?? ??? ?????? ?????? ? ?????? ?????? ?????? ?????? ? ??????, ?????? ? ??????, ?????? ??
??????, ?????? ?????? ?????? ? ?????? ??? ?????? ?????? ??? ?????? 10, ?????????? 1,

? ?????? d, ??? [????? ???? ???? ??????] ??????????? ?? ?? ??????? ??? ??????? ??? ??????? ????.
???? ???????, ??????? ?????????? ? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ???????????.

3. ??? ??? ????? ??????? ??? ?????????? ??? ?????????? 2:

a. ??????? ?? ??????? ?????? ?????? ?????????? ??? ?? ?????????? ??????????????????????
?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 1, ?????????? 1, ??? ?????? ???
????????????????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ?
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????

b. ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ???
??? ??????.

4. ? ?????? ??? ??? ?????????? ? ??????, ?????? ??? ?????? 9.2, ?????????? 4, ???
[????? IR 2001], ??? ?????????????? ?? ?????????? ?????? ?? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????? 19 g, ?????????? 3, ??? ?????? ???
????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? . ? ?????? ?????????? ? ??????,
????????? ??? ?????? 9.2, ?????????? 4, ??? [????? IR 2001], ??? ?????????? ??? ?????? ??
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? 19 g, ?????????? 3, ??? ?????? ??? ?????????? ??? ?????? ??? 1964, ??? ?
?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???

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

18 ?? ????? 15 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (Algemene wet inzake
rijksbelastingen), ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????
?????, ?????????? ??? ? ?????????? ??? ?????? ?? ?????????? ?? ?????? ??? ?????? ???
????????? ?????????? ????. ??? ?????????? ??? ? ?????? ??? ?????? ?????????? ??? ?????? ??? ??
????????? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
?????????.

? ?????? ??????-????? ????

19 ? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? ?????????? , ? ?????? ?????????? ??? ?????????? ???
5 ?????? 2001 (??? ????: ?????? ??????-????? ????), ?????????? ??? ?????? 10:

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

2. ??????, ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????, ???, ?? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? , ? ?????? ??? ?????? ??? ?????? ???' ?????? ??? ?????? ??? ?????? ???
??????????:

[...]

?) ?? 15 [%] ??? ?????????? ?????? ??? ?????????? [...]»

20 ?? ????? 23 ??? ?? ??? ????????, ?? ????? «??????? ??????? ??? ?????
?????????», ?????? ??? ??????? 1, ??????? ?:

«??? ??? ???????? ??? ???????? ??? ???????? ?????????? ??? ?????? ?? ??? ??????????
??? ???????? ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? c, ???????, ??? ?????? ? ??? ???
????????? ??? ?????? 12, ?????????? 5, ? ?????????? ??? ????? ??? ?????????? ??? ??
????????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?? ??? ????? ??????»

? ??????? ??????-???? ????

21 ? ??????? ??? ?????? ??? ?????????? ??? ???????? ?????????? ??? ??? ??????????
??? ???????? ??? ??? ??? ??? ??? ?????? ??? ?????? ?????????? ??? ??? ??? ??????
??? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ? ???
????????? ??? ?????? 16 ?????? 1973 (??? ????: ?????? ??????-???? ????),
????? ??? ??? 10:

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

2. ??? ?????? ?? ?????????? ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ??????
? ?????????? ?? ?????????? ??? ?????? ?????? ?? ?? ?????????? ??? ?????? ???, ????
????? ??? ?????????? ???' ???? ??? ?????? ??? ?????? ?? ??????????;

[...]

?) ?? 15 % ??? ?????????? ??? ?????? ??? ?????????? [...]»

22 ?? ????? 24 ??? ?? ??? ?????????? ??? ?????? «????????? ??? ??? ?????? ???
????? ??????????». ?? ?? ??? ?????? 24, B, ??????? ?, ??????:

«???? ???? ?? ?????????? [??? ????] 10 [...] ??? ??? ?????? ?????????? ? ??????????
????? ?????? ?? ??? ?????????? [??? ????] , ? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ??
????? ??? ?????????? ???.

? ?? ??? ?????? ???, ? ???? ??? ?????? ?? ?????????? ?? ??? ??? ??? ?????? ??? ?? ??
????? ?????????? ??? ?????????? ??? ??????, ?????????? ?? ??? ??? ??? ?????? ??? ?? ??
????? 2, ?????????? 3, ?????? b, ??? ??? ?????? ??? ?????? ?????????? ??? ?????? ???

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

? ?????? C?10/14

23 ? J. B. G. T. Miljoen, ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ???

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

25 ? J. B. G. T. Miljoen ???????, ?? ?? ??????????? ??????? ??? ?? ??????????? ??? ???????
???? ?? 2007, ??????? ??????? ??????? ??? ?? ??????? ??? ?? ??????? ??? ?? ????????.

26 ?????? ??? ????????, ? ?????????? ?????????? ??? ?????? ?????? ??????????????
????????? ??? ????? ??????????. ? J. B. G. T. Miljoen ?????? ?????? ??? ?? ???? ????
????????? ??? ?????????????????? ?????????????? ??? ?????? ?????????? ??? ?? ???? ????
438 ??? ?? ?? ?????????? ??? ??????, ?? ?????????????? ?????????? ??????????,
????????????? ?????????????? ?????????? ??????????, ? ?????? ?????????????? ??? ?? ???? 63 ????.
????????? ??? ?????????? ????, ?? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?? ???? ????
????????????? ???????.

27 ? J. B. G. T. Miljoen ??????? ?????????? ??? ?? ?????????? ?????? ??????? ?????? ???
Rechtbank te Breda (?????????? ?? Breda), ?? ?? ?????? ?????? ?? ?????? ?? ?
?????????? ?? ?????????? ?? ?????????? ?????? ?????? ?????????? ?? ?????? ?????????? ??
????????? ?? ?????????? ?????????? ?? ?????? ?????? ?????? ?? ?????? ?????? ?? ?????? 63
????. ?? ?? ????? ?????????? ?? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????????? ??
????? ?????????? ?? ?????? ?????? ? J. B. G. T. Miljoen ?????? ?????? ?????? ??
????? ??????????.

? ??????? C?14/14

28 ? X, ??????? ???????, ??????? ???????, ??????? 2 ??? ??? 95 ??????? ???
?????? ?? ??????? ??????? ??? A Holding BV, ??????? ?????????????? ??? ??
????, ??? ??????????? ??? 2,1 % ??? ?? ??? ?????????? ??????????. ?? 2007 ???????
????????? ??? ?? ??????? ???, ???????? ?????? 107 372 ????. ??? ??? ?????? ???
????????????? ?????????? 16 105,80 ??? ??? ????? ??????????.

30 ? X ??????? ??????? ?? ?????????? ?????????????? ?????? ?????????? ?????? ?????? ???
??? ?????????????? ????, ?? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??
?? ?????????????? ??????? ?? ?????? . ? ?????????? ???, ?? ?????? ??? 29?? ??????
2010, ??????? ?? ?????????? ??? ??????.

31 ? X ?????? ?????????? ???????? ??? Rechtsbank te Breda ????. ??? ?? ???? ??????????.
?? ?? ??? ?????????? ?????? ?? ??? ????? ?????? ??? ?????????? ????. ? X ??? ? ??????????
????????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ?????????? ?????? ???
Gerechtshof te's?Hertogenbosch (????????? ??? s?Hertogenbosch), ?? ?????? ?????????? ??
????? ??? ?? ??? ?????? ??????. ? X ??? ? ?????????? ?????????? ??? ?????? ?????????? ???
??? ?????????? ?????? ?????? ??? ?????????? ??? ?????????? ??????????.

? ??????? C?17/14

32 ? Société Générale ????? ??????? ?????????? ?????????? ?????????????????? ??? ??????. ???
?? ??????? 2000 ?? 2008, ? ? ????? ??????? ???????, ??? ?????????? ?????????? ?????????? ??????
????????????? ??? ??????, ?????? ??????? ??? ?????????????? ?????? ?????????? ?????????? ??? 5
% ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ??
?? ??? ?????????? ?????????? ??? Société Générale ?????????? ??? ?? ???
????????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?? ??? ?????? ??????????
??????? 15 %.

33 ??? ?? ??????? ?? 2000 ?? ?? 2007, ? ????? ?????????? ??? Société Générale
??? ?????????????? ??? ?????? ?????? ?????????????? ?? ??? ??? ??? ?????????? ???
????????? ??? ??????.

34 ?????????? ??? Société Générale ?????????? ?????? ??? ?? 2008, ? ????? ??????????????
??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?? ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ?????????????? ??? ?????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????????
????????? ??? ?? ??? ?????? ??? ?????? ?????? ?????????, ?????????? ??? ?????? ??? ?????? ??????????
????????? ??? ?????????? ??????????. ? Société Générale ?????? ??? ?????? ??????
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????.

35 ??? ?????? ?? ?????? ?????????????? ? ?????????? ??? ?????? ?????????????? ???
????????????? ?? ?? 2007 ?? 2008, ?? Rechtbank te Haarlem (????????? ?? Haarlem)
????????? ??? ?????????? ??? ?????? ? ?????????????? ??? ?????? ???, ?? ?? ?????????? ???,
????? ??? ?? 2007, ? ?????? ?????????? ??? ?????? ?????????? ?????????? ?? ??? ??
????????? ??? ?????? ?????????? ?? ?? ??? ?????? ?????? ?????????? ??? ???, ??? ?????? ?? 2008,
? Société Générale ??? ?????? ??? ? ?????????? ?????????? ?????????? ??? ???
????????? ??? ?????????? ??? ?????? ??? ? ?????????? ??? ?????????? ?? ?????????? ??? ?????
????????????? ??? ?????? ??? ??????. ?? Gerechtshof te Amsterdam (????????? ?? ??????????)
????? ?????? ??? ? ?????????? ?????? ??? ?????????????? ?????????? ?????????????? ??????????????
????????? ?????????? ??? ?????? ??? ?????????????? ?????? ??? ?????? ?????????? ??? ?????? ??
????????? ??? ?????? ?????????? ??? ??? ?????? ??? ?????? ?????????? ??? ? Société Générale
????? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??????????????
????????? ??????????. ? Société Générale ?????? ?????????? ?????????? ??? ??????????
????????? ??? ??? ?????????? ??? Gerechtshof te Amsterdam.

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

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

37 ??????????, ?? ?? ??? ?????? ?????????? ??? ?????? ??? ? ?????? ?????????? ?????????? ???
????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ???

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

38 ?? ?????? ?????????? ?????????? ?????? ??? ?? ??? ?????? ?? ?????????? ? ???
????????? ??? ????? ?????????? ????? ?????????? ??? ? ?? ??? ?????????? ?????? ??
?????????.

39 ??? ?????????? ??? ?? ?????????? ?????? ??? ?????? ?????????? ?? ?????????? ??
????????? ??? ?????? ?????????? ?????? ?? ?????? ?????????? ?????????? ?????????? ??????????
?? ??? ??? ???????????, ?? ?????? ?????????? ?????????? ?????????? ???????, ????, ??? ?????? ?
????????? ??????? ??? ?????? ?? ?????? ?????? ??? ?? ?????????????? ? ?????????? ????.
??????????, ? ??????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
??????????, ?????????????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ????, ?? ??????
?????????? ?????? ?? ?????????????? ?? ? ?????????? ?????????? ?????????? ?????????? ????
?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ????
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ?, ?????????? ??? ?????? ??? ??????, ??? ?????
????????? ?????????? ??? ?????? ??? ?????????? ???, ?????????? ??? ?????? ??? ?????????? ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ???,
? ?????????? ??? ??? ???, ? ?????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ???,
??? ?????????? ??? ?????? ?????? 5.5 ??? ????? IR 2001. ??????, ??? ??????
C?17/14, ?? ?????? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
??????, ??? ?? ??? ?????? ??? ?????????? ?????????? ?? ??? ?????? ??? ?????? ??? ??????
?????????? ?? ?????????? ?, ?????????? ???, ? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.

40 ???????, ??? ??????? C?14/14 ?? C?17/14, ?? ?????? ?????????? ?????????? ??
??? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ?????? ?????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
????? ??? ? ?????? ??? ?????? ? ?????????????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

41 ?? ??? ?????? ????, ?? Hoge Raad der Nederlanden ??????? ?? ?????????? ???
?????? ?? ?????????? ?? ?? ??????? ?? ?????? ??? ?????????? ?? ??? ?????? ??????????
???????:

- ??? ?????? C?10/14:

«1) ???, ??? ?? ?????? ??? ?????? 63 ???, ? ?????? ?? ?????? ?????? ??? ?????? ??
?????? ???????, ?? ?????????? ??? ?????? ???????, ??? ?????????? ?????? ??? ?? ??????
????? ??? ?????? ?????????? ??? ?????? ???????, ?? ?????????? ?????? ??? ??????
????????? ? ?????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????? ??? ?????? ???????, ?????? ??? ?????? ??? ?????? ???;

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

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

- ??? ????? C?14/14:

«1) ????, ??? ?? ??????? ??? ?????? 63 ???, ? ??????? ?? ??????? ?????????? ??
?????? ???????, ?? ?????????? ??? ?? ???????, ??? ?????????? ?????? ?? ??
????? ??? ?????? ?????????? ??? ??????? ???????, ?? ?????????? ?????? ??? ??
??????????, ? ?????? ??????? ?? ?????????? ??? ?????????? ??? ?? ??? ??, ???
????? ??? ?????? ???????, ??????? ???? ?? ???????;»

2) ?? ?? ?????? ??????? ??????? ???????????, ??????, ??? ?? ??????? ??
?? ?? ?????????? ?????????? ??? ?? ??????? ??????? ?????? ?????????? ?? ??
????????? ??? ?? ??????? ???????, ?? ?????????? ? ?????????? ?????? ?? ??
????????? ??????? ??????? ??????? ?????? ?????????? ?? ?????????? ??? ??
????????? ??? ?????????? ?????????? ??? ??' ??????? ?????????? ???, ???
?? ??? ?????? ??? ??????????, ?????????? ??? ?? ?????? ??? ?????????? ?? ??
????????? ???????, ? ?????????? ??? ?? ?????? ??? ?????? ?? ?????? ??? ?????
?????????; ????, ??? ?? ??????? ????, ?? ?????? ??? ?????? ??? ?????? ??? ?????
????? ???????, ??? ?????? ??? ?????????? ??? ?? ??????? ???????, ???, ?? ???????
????????? ???????, ?? ??? ?????? (?????? Welte, C?181/12, EU:C:2013:662);

3) ?? ?? ?????? ??????? ?????? ???????????, ??????, ??? ?? ??????? ??
?? ?? ?????????? ?????????? ??????? ??????? ?????????? ?????? ?????? ?? ??
????????? ?????? ???????, i) ? ??????? ?????????? ??????? ?? ?????????? ?????? ??
?? ?????? ??????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ??,
????????? ? ?????????? ??? ?? ?????????? ?????? ??????????????, ii) ??? ??????????
?????????, ? ?????????? ??? ?? ?????? ?????????? ?????? ?????? ??? ?????????? ???
?? ?????????? ??????? ?????????? ?? ?????????? ?????? ??? ?????????? ???
????, ??? ?????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??????;»

- ??? ????? C?17/14:

«1) ????, ??? ?? ??????? ??? ?????? 63 ???, ? ??????? ?? ??????? ?????????? ??
?????? ???????, ?? ?? ??????? ??? ??????? ?????????? ??? ?? ?????? ?????? ??
????????? ??? ??????? ???????, ?? ?????????? ?????? ??? ?? ?????? ?????? ?? ??
????? ??? ?????? ??????? ??????? ??????? ??? ?? ??????? ?????? ??? ??????;»

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

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

42 ?? ??????? ?? ??????? ?? ??????????? ?? 2?? ??????? 2014, ??????????? ?
?????????? ?? C?10/14, C?14/14 C?17/14 ?? ??????????? ?? ?? ??????? ???.

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

43 ?? ?? ??????? ???, ?? ?????? ?????? ?? ??????????? ?? ???????, ?? ??????
?????????? ???, ???' ??????, ??? ?? ????? 63 ???? ?? 65 ???? ?????? ?? ?????? ??
?????????? ?? ?????????? ????????, ?????? ? ??????? ?????? ?????? ?????? ?? ??????
?????, ? ?????? ??????? ?????????? ????????, ???? ???? ???? ?????????? ???? ?????????? ??
????????????? ???? ?????? ?????? ?????? ???? ?????? ?????????????????? ?????????? ??????????
??? ???? ?????? ?????????????? ?????????? ??????????, ?????????????? ???? ??????????
????????? ? ?????????? ??? ?????????? ?????? ?????? ?????????? ???? ????
????????????? ?????? ?????????? ????????, ???, ??? ?????? ?????????????? ?????? ??????
??? ????????, ?????? ?????? ?????? ?????????? ?????? ????????, ? ??????????
??? ????????

???? ?????? ??? ?????? ?????????????? ??? ?????????? ?????????????? ??? ?????????? ??? ?????? ???
?????? ??? ?????? 63, ?????????? 1, ????

44 ????. ????? ?????. ????????, ????. ???????????, ?????? ????. ?????? ????. ?????????????? ???.
???. ?????? 63, ?????????? 1, ????, ???. ?????????? ?????????????? ????. ?????????? ?????????? ??????????,,
????????????????? ?????? ????. ?????? ???. ?????????? ????. ?????????? ?????? ?????????? ?????????? ????. ????.
????????????? ????. ?????????? ???. ?????? ?????? ????. ???. ?????????? ????. ?????? ?????? ????. ????. ????.
????????? ????. ????. ????. ?????????????? ?????????? ???. ????. ????. (????????? Santander
Asset Management SGIIC .??., C?338/11 ??? C?347/11, EU:C:2012:286, ????? 15 ????.
????????? ????.).

46 ??????????????, ??? ???? , ?????? , ?? ?????????? ?? ?????????????? ?? ??????

????????? ??? ???????? ??? ?? ???????, ??? ??????????? ??? ?? ?????????? ??? ??????????? ??? ???????????
??? ???????? ?? ???? ???????, ? ??????????? ??? ?? ??????? ?????????? ?????????? ??? ??????
?????????? ??? «????? 3», ? ?????????? ??? ?? ??????? ?????????? ?? 30 %, ??? ?
?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??????? ??????????, ???' ???????, ?? 4 % ??? ???
???? ?? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????????????? ??? ?? ??? ?? ??? ??
???? ?? ?????????? ?????? ??? ?? ?????????? ??????. ??? ?? ?????????? ??? ?? ?????????? ?????? ??????
??? ? ?????????? ?????? ??? ?? ?????????? ?????? ??? ?? ?????????? ?????? ??? ?? ?????????? ?????? ???
?? ?? ?????????? ??? ?? ??? ?? ?????????? ?????? ??? ?? ??? ?? ?????????? ??? ??, ??? ?? ??? ?? ??? ??
????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

47 ??? ???????, ??? ?? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ??????? ??????????????
??? ?? ??? ??, ??? ?? ?????????? ??? ?? ??? ?? ???????, ? ??????? ??? ?? ??????????????
??? ?? ?????????? ???, ??? ?? ?????????? ?? ??? ??, ?? ?????????? 25,5 % ??? ?? ??? ??
????? ?? ??? ?? ?????? ??? ?? ?????????? ??? ?? ???????, ? ?? ??? ?? ?????????? ?????,
???? ?? ??? ?? 25 ??? ?? ?????? ??? ?? ???????, ?? ?????????? ??? ?? ?????? ?????????? ???
????????????? ?? ?????????? ?? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????? ?????????? ??? ??
?????. ??? ?? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ?? ??? ??
??????????, ? ?? ??? ?? ?????? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ?? ??? ??
??????????, ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????? ???
??????????, ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????? ???
????? ??????.

48 ??? ?????????? ?? ?????????? ?? ?????????? ???????, ??? ?? ??????? ???
????????? ??? ?? ?????? ???, ??? ?? ?????? ?? ?? ??? ?? 63 ???, ??? ?? ?????? ??????????
??????????, ?? ??? ?? ?????? ?? ?? ??? ?? ??????? ?? ?????????? ?? ?????????? ??????????
??? ?? ??????? ?? ???????????, ?? ??????????? ???, ??? ?? ?????? ?? ?????????? ??????????, ?
?????? ?? ?????????????? ?? ??? ?? ?????? ?????? ??? ?????????????? ??? ?? ?????????? 15
% ??? ?? ?????????? ?? ??? ?? ?????? ?????????? ?????????? ??? ?? ?????????? ??? ?? ???????,
????? ?????????????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?? ?????? ???
????? ?? ?????????? ?????? ?????????? ?????????? ??? ?? ?????? ??????????.

49 ??? ??????, ?? ?????? ?????????? ?????????? ??? ?? ??????? ??? ?? ?????????? ??? ??
????? ??? ?? ?????????? ??? ?? ?????????? ?????????? ?????????? ??? ?? ?????????? ??? ??
????????? ??? ?? ?????????? ??? ?? ??????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ???
?????, ?? ?????????? ?????????? ??? ?? ??????? ?????? (????????? C?10/14 ??? C?14/14)
??? ?? ?????????? ?????????? ??? ?? ??????? (????????? C?17/14).

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

50 ??? ?????????? C?10/14 ??? C?14/14, ?? ?????? ?????????? ???????????, ???' ????,
?????????? ?? ?????????? ??? ?? ??????? ?????????? ?????????? ?????????? ??? ?? ??????????????
????????? ?????????? ??? ?? ?????????? ?????????? ?????????? ?????????? ??? ?? ??????? ?? ??????????,
???? ?? ?????? ?????????? ??? ?? ??????? ??????.. ?????????? ??? ?? ?????????? ??? ?? ??????????
????????? ?? ?????? ??? ?? ?????? ???, ??? ?? ?????? ??? ?? ?????????? ?????? ??? ?? ?????? ???
????????? ?? ?????? ??? ?? ?????????? ?????? ??? ?? ???????, ?????????? ??? ?? ??????????
????????? ?? ?? ?????????? ???, ??? ?? ?????? C?14/14, ?? ?? ??? ?? ?????????? ??? ??
????????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ??????????
?????????.

51 ???, ??? ?? ?????? ?? ?????????? ??? ?? ??????? ??? ?? ?????????? ??? ??

? ?????????? ??????????? ???? ?????????? ??? ???????????????, ??????? ???????, ??? ????
????????? ??????? ??? ?????? ??? ?????? ?????? ??????? ???????, ?????????????? ???, ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ???????, ? ?????????? ??? ??????????
????? ??? ?? ??????????, ??? ?? ?????? 5.2 ?? ????? IR 2001, ??? ?? ??????????
????. ???????, ??? ?????? ? ??????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??? ??????????.

52 ???????, ??? ?????? ?? ???????????, ?????????? ? ???????, ??? ??????????? ???
????????????? ??? ?? ??? ?????? ???????, ??????????? ?? ?????????? ? ???????
????????? ?????????? ??? ?????????????? ?????????? ?????????? ??? ??? ??????????????
????????? ???????, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?
????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ???'
????????? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ???
??? ?? ?????????? ??? ?? ??? ?????? ???????????, ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ???
?????? ???.

53 ??????, ??? ?????? ?? ??????? ??, ??? ??? ?????? ???????, ??????? ?? ?????? ???
?? ??????? ??? ??????????? ??, ??? ?????? ???????????, ? ?????????? ??? ??????
C?14/14 ?????? ?????????? ?????????? ??? ? ???????, ? ?????, ??? ?? ?????? 5.2 ?? ???
IR 2001, ?????????? ???' ??????, ?????????????? ?????? ?????? ?????? ?????????? ??
????????????? ??? ?? ??? ?????? ?????? ???????, ?? ?????? ?????????? ?? 20 014 ????.
??????, ?????? ?? ??????? ??? ???????, ??? ???????, ??? ? ?????? ??? ?????? ??? ??????
?????, ? ?????? ?????? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??????????????
????????? ???????, ?????????? ??? ?????????? ?????? ?????????? ???, ??? ?????? ??? ??????
????????? ??? ?????????? ?? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ???.
????????? ? ?????? ?????????? ??? ?????? 83 ??? ?????????? ???, ??? ?????? ??? ? ??
???? ?????? ?????????? ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ???
????????? ???????, ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ??? ?????? ???
????????? ?????????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ???.

54 ??? ?? ?????????? ??? ??????? ??, ??? ?????????? ??? ?????? ??? ?????? ???
? ?????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ?????????? ?????????? ??? ?
????????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? ???
????????? ??? ?????? ?????????? ???????, ?????? ?? ?????????? ??? ?????????? ???
????, ?????????? ??? ?????? ?????????? ??? ?????????? ???, ?????????? ???, ?????????? ???
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??????????.

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

55 ??? ?????? C?17/14, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????????
????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ???, ?, ?????????? ?????, ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ???.

56 ? Société Générale ??????? ???, ?? ??????? ?????? ?????? ?????????? ???????
(hedging), ?????? ?? ?????????? ?????? ??? ?????? ?? ?????? ??? ?????? ?? ??????????.

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

57 ???????, ??? ?????? ?????????? ??? ???????????, ??? ?????? ???????, ??? ??
????????????? ??? ?????? ??? ?????????? ?????? ?? ?????????????? ??? ??? ?????? ??????????
????????? ?????????? ?? ?????????? ?????? ?????, ?? ??????? ?????????? ??? ??
????????? ?????????? ?????????? ?? ?????????? ?????? ?????, ??? ?????????? ?????? ?? ???
????????? ? ?????, ??? ?????? ??? ???????????, ??? ?????????? ?????? ?????? ??????????
????????? ?? ?????? ?????????? ??? ?????? ?????, ?????? ??? ?????? ?? ?????? ??
????????? ?? ?????? ??? ?????? ?????? ?????? ???, ?? ?? ??????, ?????? ?????? ??????
????????? ?????? ?????? (?????? Schröder, C?450/09, EU:C:2011:198, ??? 40
??? ??? ?????????? ??????).

58 ??????????, ??? ?????? ??????? ??? ?????????? ??? ?? ?????? ??????????, ?
????????? ??? ?????? ?????????? ??? ?? ?????? ???, ?? ?????? ??????, ???????????, ??
????????? ??? ?????? ?? ?????? ??? ?????????? ??? ?? ?????????? ?????? ??? ??????
??????, ?????????? ??? ?????? ?? ?????? ?????? ??? ?????????? ??? ?? ?????? ?????????? (??.,
??? ??? ?????? ???, ?????? ?????? ???, ?????? ???????, C?600/10, EU:C:2012:737, ???
20).

59 ???????, ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ???
??????, ?????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ?????? ?? ???
?????? ??? ?????? ??? ??????????.

60 ?? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ?? ?? ?????????????? ???????
????? ?????? C?17/14 ?? ?????????? ?? ??? ?????? ??????. ???????????, ??? ?????,
??????, ??? ?????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ??? ???????,
??? ?? ?????????? ??? ?????????? ?? ?????????? ?????? ?????? ?????? ?? ???????,
????????? ??? ?????? ??? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?? ???????,
?????????, ?????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????? ??? ???????,
??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??????. ???????, ?? ?????? ?????????? ??? ?? ??????
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ??????.

61 ?? ??????????, ??? ?????? ??? ?????? ??? ?? ?????? ?????????? ?????????? ??? ??????????
??, ??? ?????? ??? ?????? ???, ? ?????? ?????????? ??? ?????? ??? ?????? 15
% ??? ??? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????? ??? ?? ?????? ?????????, ?????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????? ??? ?????????? ?????? ?????????? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ???
?? ?? ?????? ?? ?????????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???, ?? ??
?????, ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ???, ?? ??????
????????? ??? ?????? ???' ???, ??? ?? ?????? 63 ???.

????? ??? ?????? ??? ?????? ?????????????? ?????? ??? ?? ?????????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? 65 ???

62 ??? ?? ?????? 65, ?????????? 1, ??????? ??, ???, «[?] ??? 63 [??] ??? ?????? ??
????????? ??? ?????? ??? [...] ?? ?????????? ??? ?????? ?????????? ??? ??????????
????? ??????????, ?? ?????? ?????????? ?????? ?????????????? ??? ??? ?????????? ???

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

63 ? ??????? ??? ?????? ??? ?????? 65 ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? 65, ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? 1, ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? 63 [????]» (??., ??? ??? ?????? ???, ?????? Welte, C?181/12,
EU:C:2013:662, ??? 42 ??? 43 ??? ?????? ?????? ??????).

64 ??????, ???????, ?? ?????? ??????? ??????? ?????? ??? ?????????? ?????? ?????????????? ???
????????? ??? ?????? ??? ?????? 65, ?????????? 1, ????????, ??, ??? ?????? ???
????????? ??? ?????? ??? ?????? 65, ?????????? 3, ??? ???????. ??????, ??? ??????????
??? ?? ?????????? ??? ??????????, ?????????? ??? ?????? ?????????? ??????, ??? ??????
????????? ??? ?????? ???, ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ?????????? ??? ??????????, ?????? ? ?????????? ?????? ?????????? ??? ??????
????????? ?? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??
????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? (?. ?????? Santander Asset
Management SGIIC ?.??., C?338/11 ??? C?347/11, EU:C:2012:286, ??? 23 ??? ???
????????? ??????).

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

65 ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

66 ? ?????????? ??????????, ? ?????? ?????? ?????? ??? ? ?????? ?????? ??? ?????? ???
????????? ?????????? ???, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

67 ???????, ?????? ?? ?????????? ??? ??? ?? ?????????? ??? ???????????, ?????? ??
????? ?????? ?????????? ???, ?????????? ? ???? ?????? ??????????, ??? ??? ??????????? ??
????? ??? ?????????????? ?????????? ?????????, ??? ??? ??? ?????????????? ??????????
??????????, ??? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ?????
?????????, ? ?????????? ??? ?? ??? ?????????????? ?????????? ?????????? ?????? ??????????
?? ??? ?????????? ??? ?????????????? ?????????? ?????????? (??., ??? ??? ?????? ???,
????????? Denkavit Internationaal ??? Denkavit France, C?170/05, EU:C:2006:783, ???? 35?
????????? ???, C?540/07, EU:C:2009:717, ???? 52? ?????????? ??? ??????????,
C?487/08, EU:C:2010:310, ???? 51? ?????????? ??? ??????????, C?284/09, EU:C:2011:670,
????? 56, ????? ??? ?????? Tate & Lyle Investments, C?384/11, EU:C:2012:463, ???? 31).

68 ???????????, ? ?????????? ?????? ??? ?????????? ?????????? ?????????????? ?? ?????? ??
?? ??? ?????? ?????? ?????????????? ??? ?????????? ??? ?????????? ?????????????? ?? ???????????
????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ?????? ???????????,
?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????. ?? ??? ?????? ???????????,
?????????? ?? ?????????????? ?????????? ?????????? ?????????? ?????????? ?? ??? ???????????
?????????? ??? ?????????? ?????????? ??? ??????????, ???????????, ???????, ??? ??
????? 63 ???, ?? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??????? ?? ???????
????, ??? ?????? ??? ?????????? ??? ?? ?????? ?????? ?????????? ?????????? ??? ??? ?????? ???
??? ?????????? ??? ?????????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ?????? ??? ???????, ??
????????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?? ???
????????????? ?????????? ?????????? (??., ??? ??? ?????? ???, ?????? Tate & Lyle
Investments, C?384/11, EU:C:2012:463, ???? 32 ?????? ??? ?????? ??????????? ??????????).

69 ??? ?????????? ??? ?????? ???, ?????????? ? ?????????? ??? ?? ?????? ??
????? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????? ?????? ?? ?????????? ?????? ?????? ?????????????? ???
????????? ?? ??? ?????? ???.. ?? ?????????? ?????? ?????? ?????????? ?????????? ???
????????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? (??., ???'
????????, ?????????? ?????????? ??? ??????????, C?487/08, EU:C:2010:310, ???? 53, ???
????????? ??? ?????????? C?284/09, EU:C:2011:670, ???? 58, ????? ??? ?????? Tate &
Lyle Investments, C?384/11, EU:C:2012:463, ???? 33).

70 ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????? ?????????? ?? ?????????? Truck Center (C?282/07, EU:C:2008:762), ??? ? ? ? ? ? ?
????????????? ?????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ?? ?
????????????? ?????????? ?? ?????????? ?????????? ?????????? ?????? ?? ?????????? ?????????? ??
????? ?????? ?????????? ?? ?????????? ??????, ?????? ?? ?????? ?????? ?????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????? ?????? ???, ???, ??? ?????? ?????????? , ?? ? ? ??
????? ?????????? ?? ?????????? ?????????? ?????????? ?????? ?? ?????????? ?????? . ???????, ??? ??
????????? ?? ?????????? ?? ?????????? ?????? ?? ?????? ?????? ?????????? ? ?????? ?????? ?????? ??
????? ?? ?????????? ?????????? , ?????? ?????????? ?????????? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?????????? , ?????????? ?????????? ?? ?????????? ?????????? ?????? ??
????? ?? ?????????? ?????????? , ?????? ?????????? ?????????? ?????????? ?????? , ?? ?????????? ??
????? ?? ?????? ?????????? ?????????? (??., ??? ?? ???? ?????? ???, ?????? Truck Center,
C?282/07, EU:C:2008:762, ??? 41). ??????, ? ?? ??? ?????????? ?????????? ?????????? ???
????? ?????? ?????????? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? , ?? ??????????
????? ?????? ??? ?? ?????????? ?????????? ?????? ?????????? ?????????? ?????????? (??., ??? ??
????? ???, ?????? Truck Center, C?282/07, EU:C:2008:762, ?????? 49 ?? 50).

71 ?????, ?????????? ??, ??????, ?????, ????? ?????????? ?? ?????? ?????? ??????, ?
????????????? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?? ?????????? ?????????? ??
????????? ?? ?????? ?? ?????????? ?????? ?????? ?????????? ?????? ?????????? ?????????? ??
????? ?????????? ?????????? , ?????? ?????????? ?? ?????? ?????????? ?????? ?????????? ??
????????????? ?????????? ?????????? ?? ?????? ?????? ?????????? ?? ?????? ?????????? ?????????? ??
????????? ??????????.

72 ???????, ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????
EU:C:2008:762), ? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ??????
?? ???? ?????? ?? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????????? ??
????????? , ??? ?????????? ?? ?????? ?????? , ? ?????? ?????????? ?????????? ??? ??
????? ?????????? ?? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????????? ?????????? ??
?? ?? ???? ?????????? ?????? ?????? ?????????? , ?????? ??? ?????????? ?????? ?????? ?????????? ??
?????.

73 ???????, ??? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?????? , ? ?????????? ??
????????? ?? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
?? ???? ?????? ?? ?????? 65, ?????????? 1, ?????? ??, ????. ?????????? , ??? ??
????????? ?? ?????? ?????? , ??? ?????? ?? ?? ?????? ?????? ?????? ?????? ? ?????? ?????? ?????? ??
????????? ?? ? ?????? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?? ??? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? ?? ??? ?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??

74 ????? ????????, ??? ?????????? ????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????
????? ??? ?? ?????????????? ???????????, ??? ?? ?????????? ??? ?????????????? ??????????????
?????? ?? ?????????????? ?????????? ?????????? ??? ?? ?????????????? ?????????????? ??????????
????????? ?? ?????? ?? ?????????? ?????, ????, ? ?????? ?????????? ??? ?? ?????? ???
????????????? ?????? ?????????? ???, ??????, ? ?????? ?????????? ??? ?? ?????? ??????????
??? ?????? ??? ?????????? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ??????
????? ??? ?????????? ???, ??? ?? ?????? ?????? ???, ?? ?????? ?????? ??? ?????????? ??? ?? ???
????? ??? ?? ?????? ?????? ?????? ??? ?????? ???.

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

75 ?? ?? ?????? ?????? ??? ?????? C?14/14 ??? C?17/14, ?? ?????? ??????????
??????????, ???' ??????, ??? ? ?????????? ?????????????? ??? ?????????? ?????????????? ???
????????? ?????? ?? ?????????????? ??? ?????????????? ?????? ?????????? ?????????? ??? ?? ??????
????? ?????????? ?? ?????????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ??????
????????? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ???
?????????. ??????, ??? ?????? C?17/14, ?? ?????? ?????????? ???, ?????????? ??? ?? ??????
????????? ?? ?? ?????????? ??? ?? ??? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ?? ??? ?? ???
??????, ???? ???, ??? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ???
????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ???.

76 ?????? ?? ?????????? ???, ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ?????????? ???
?????????? ? ???????????, ?? ?????? ??? ?????????? ??? ?? ?????? ?????? ??? ?? ???
??????????, ?????????? ? ??????????, ?? ?????? ?????? ?????????? ??? ?????????? ??? ?? ???
??????????, ??????????, ????, ?? ?????????? ?? ?????? ?????????, ???, ???????, ???
? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ??
????????? (??., ????, ???, ??? Nordea Bank Danmark, C?48/13, EU:C:2014:2087,
????? 27 ??? ?????????????? ??????).

77 ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?? ??????
????????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ???, ?????????? ??? ??
????????? ??? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? (?????? Amurta, C?379/05,
EU:C:2007:655, ??? 78).

78 ????????, ??? ?????? ?? ?????????? ?? ?????????? ?? ?????? ??? ?????? ??? ??
?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ??
????? ???? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? (????????? Test
Claimants in Class IV of the ACT Group Litigation, C?374/04, EU:C:2006:773, ??? 71? Amurta,
C?379/05, EU:C:2007:655, ??? 79, ??? ?????? ??? ?????? C?487/08, EU:C:2010:310,
????? 58).

79 ??? ???, ??? ?????? ?????????? ? ?????? ??? ?????? ?????? ?????????? ?? ??????
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?? ??????????
????? ?????? ???????. ?? ?????????? ??? ?????? ?????? ?????????? ??? ?? ?????? ??? ??????????
????? ??? ?????? ? ???' ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?? ??? ?? ????
????? ?? ?????????? ?? ??? ?????????? ??? ?????? ?????? ??? ?????? ???, ??? ?? ??? ?? ????
????? ?? ?????? ? ?????? ?????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?? ????
? ?????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?? ??? ?? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? (??.
????????? ??? ?????????? C?487/08, EU:C:2010:310, ??? 59 ??? ?????? ????????????

??????????).

80 ???????, ????? ?? ?????????? ??? ?? ?????????? ??? ?????? ???, ??????????? ??
?????????? ? ?????? ??? ??????????????, ? ?????? ??? ?????? ??????????????
?????????? ?? ?????? ?? ?????? ?? ?????????? ??? ? ?????? ?????????? ???
????????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ???
??? ?? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????, ??? ? ??????????
????????? ?????????? ?? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ???
??????, ??? ?? ?????? ?????????? ??? ?????????????? ?????? ?????????? ??? ?????? ?????? ??
????????? ??? ?????????? (??., ??? ?? ?????? ???, ?????? ?????????? ??? ?????? ??????????,
C?487/08, EU:C:2010:310, ??? 60).

81 ?? ??????????, ??? ?? ?????? ??? ?????? ??? ?????? C?14/14 ?????????? ???
????????? ??? ?? ?????????? ??? ?????????? ?????-????? ???, ??? ?????????????? ???,
?????? ??? ?????? 23, ?????????? 1, ??? ?????????? ???, ?? ?????????? ??? ?????
????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
??? ? ?????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ???.

82 ??????? ?? ?? ?????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?? ?????????? ???
??????, ?? ?????????? ??? ?????? ??? ?????, ??? ?? ?????????? ??? ?????????????? ???
????? 77 ??? ?????? ??????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ?????????? ??? ?????? ???.

83 ???????, ??? ??????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??
??? ?? ??????????, ??? ?????? ?? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
??????, ??? ?????? ??? ?????????? ?????? 25 % ??? ?????? ??? ?????????? ??? ???????,
????????, ? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ??????????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
??? ?????? ??? ??????????. ??????, ??? ?????? C?14/14, ? X ?????????? ??? ??? ??'
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

84 ??????, ????? ?? ?????? ???, ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
C?14/14, ? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ???.

85 ??? ?????? ??? ?????????? ??? ?????????? C?17/14 ??? ?????? ??? ??
??? ?????????? ??????-????? ???, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
??? ?? ?????? ??????????, ??? ??????, ??? ?????? ?????????? ??? ?? ?????????? ???
??? ?? 2007. ??????, ?????? ?? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ? Société Générale ??? ?????? ??? 2008.

86 ??????, ??? ?? ?????? 24, B, ????????, ??? ?????? ???, ??? ?????????? ???
?????????, ??? ?????? ?? ?????????? ??? ?????????? ??? ?????? ???, ??? ??
????????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ???

?????? ?????????? ?????? ?????? ?????? ?? ??? ?????????? ????. ??????, ???, ??
?????? ?????? ??? ?????????? ?????? ?????? ?????? ??? ? ?? ????? ?????? ?????? ??? ??????
?? ??????? ?? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??????????????,
?????? ?? ?????????? ?? ??? ?????????????? ?? ??? ?????? ??? ?????? ?????????? ???
?????????? ??? ?????? ????, ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?????????? ??? ?????????? ??? ?????????? ??? ?????? 79 ??? ?????????? ??????????.
??????, ??? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ???
?????? ??? ?????? ??????.

87 ????????, ??? ?? ???? ?????? ???, ??? ?????????????? ??? ?????? ??? ??????????
C?17/14, ??? ?? ?????????? ??? ?????? ??? ?????? ?? ?????????????? ??? ?? ??????
??????????, ? ?????????????? ?????????? ??? ?????????? ?????????????? ??? ?????????? ???
????? ?? ?????????? ??? ?????????????? ??? ?? ?????????????? ??? ?????????? ??? ??????-
???? ???.

88 ??????????, ?? ??????? ??, ??? ?????????????? ??? ? ?????????????? ??? ???????
????????????? ??? ?????????????? ??? ?????? ??? ?????? ?????? ??? ?????????????? ??? ??????? ??
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ?? ??? ?????? ???
????? ?????????? ?? ?? ??? ?????? ??????????, ? ?????????? ?????????????? ??? ??????? ???
????????? ??? ?????? ?? ??????? ?? ??? ?????? ?? ??? ?????? ?? ?????????? ??? ?????????????? ???
????????? ??? ?????????????, ?????????? ?? ?????????? ???, ?? ??? ?????? ???
????????? ??? ??????????, ?? ?????? ?????????? ?????????? ??? ?????? ??? ??????????
????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ??????????
????????? ??? Société Générale, ??? ??????, ??? ?????? ??? ?????????? ??? ??????? ???
????????? ?? 2008 ??? ??? ??????? ??????? ?? ?????? ??? ?????? ????. ??? ??? ??????????
?????, ?? ?? ??? ?????? ??????? ??????? ?? ?????????? ?????? ???, ?? ?? ??????, ??????????
(?????? Pohotovos?, C?470/12, EU:C:2014:101, ??? 27 ??? ??? ??????????).

89 ???????, ?????? ?? ??????????? ???, ??? ??????????? ??? ?? ??? ??????? ??????? ?? ??
????? ??????? ?? ???? ??????? ?? ?????????? ??????????????? ??? ??????????? ?? ?? ???? ?? ??
?????????? ?? ??? ??????? ??????????? ??? ???????????, ?????? ??????????? ??
?????????? ?? ??? ??????????? ??? ??????????? ??? ??????????? (?).., ????, ?????? Tate &
Lyle Investments, C?384/11, EU:C:2012:463, ????? 45 ????? ?? ??? ????? ???????????
??????). ??????, ???????, ?? ??????????? ???, ??? ??????????? ??? ??????? ?????,
???? ?? ?????? ??????????? ??? ? ?????????? ??????????? ??????????? ??????????? ???????.

90 ????????????????????, ??? ?????????????? ?????????????? ?????????? ?? ?????? ? ???????????
?? ?????? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????????????? ?? ?????????????? ?? ?????????????? ??????
????????? ??? ?????????????? ?????????????? ??? ?????? ??? ?????? ??? ?????????????? ?? ?????????????? ???
????????? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ?????????????????? ?? ?????????? ??????
??? ??? ?????? ?????????????? ?????????? ??????????, ?????????????? ?????????? ??????????
? ?????????? ??? ?? ??? ?????? ?????????? ?????? ??? ?????? ?????????????? ??????????
?????????, ???, ??? ?? ?????? ?????????? ?????????? ?????????? ??? ??? ?????????????? ???
????????? ?????????, ? ?? ??? ?????? ?????????????? ?????????? ?????????? ???, ?????? ? ??????????
????????? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ?????????????? ?????????? ??????????
??? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????????
????????? ?????????, ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?? ?????????????? ???
????????? ??? ?????? ??????. ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??????????????,
?? ?????? ?????????? ?????? ?? ?????? ?????, ??? ?????????? C?10/14 ??? C?14/14, ??
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????????

????????????? ??? ??? ??? ?????? ????? ????????, ???, ??? ?????? C?17/14,
?? ??? ??? ?????????? ??? ?? ??? ????????, ??? ????????, ??? ??????????.

????? ?????????? ? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?
????????? ?????? ?? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ??? ?????? ??????????, ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??
????? ????. ??? ?????????? ??? ?????? ??? ?????? ?????? C?14/14 ??? C?17/14 ??? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?, ??
??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??
?????????.

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

91 ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?, ??
????????? ?? ?????????? ??? ?? ?????? ?????? ?????? ??????. ?? ?????? ??? ?????? ?????? ??????
??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????.

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

? ? ?????? 63 ??? 65 ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ???
????????? , ?????????? ??? ?????? ?????? ?????? ?????? ? ?????? ?????? ??? ?? ???
????????? ?????? ??? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ???, ???, ??? ??
????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? , ? ?? ??? ?????? ?????? ?????? ?????? ?????? ???, ?????? ? ??????
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? C?10/14 ??? C?14/14, ?? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ???, ???, ??? ?????? C?17/14, ?? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

????? ?????????? ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ?? ??? ??
????????? ??? ?????? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??????
??? ??? ?????? ??? ?????? ?????? ?????? ???, ?????? ?????? ??? ?? ?????? ??????
????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? C?14/14
??? C?17/14 ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??
????? ?????????? , ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????????? , ??? ?????? ??? ?????? ?????? ?????? ??????.

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

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