

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

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

??? 16?? ?????????? 2021 (*)

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

???? ?????????????? ?????? C?478/19 ??? C?479/19,

? ? ?????????? ?????? ?????????????? ?????????? ?????? 267 ????, ???
?????? ?? Corte suprema di cassazione (?????? ?????????? ??????????, ???????) ??
?????? ??? 21?? ?????????? 2018, ? ???? ?????? ??? ?????????? ??? 19 ??????
2019, ??? ?????? ??? ???

UBS Real Estate Kapitalanlagegesellschaft mbH

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Agenzia delle Entrate,

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

????????? ??? ??? A. Arabadjiev, ?????? ??? ?????? ???????, ?????????????? ???
????????? ???????, I. Ziemele, T. von Danwitz, P. G. Xuereb (???????) ??? A. Kumin,
???????,

?????? ??????????: G. Hogan

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

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

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

– ? UBS Real Estate Kapitalanlagegesellschaft mbH, ?????????????? ??? ??? S. Ricci ???
M. Serpieri, avvocati,

– ? ??????? ????????, ?????????????? ??? ??? G. Palmieri, ?????????????? ??? ??? P.
Gentili, avvocato dello Stato,

– ? ??????? ????????, ?????????????? ??? ??? W. Roels ??? ??? F. Tomat,

???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ??????????
?? 25?? ?????????? 2021,

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1 ?? ?????????? ?????????????? ?????????? ?????????? ?? ?????????? ??? ?????? 43 ?? 56
?? (???, ??????? ????????????, ?????? 49 ?? 63 ???).

2 ?? ?????????? ?????? ?????????????? ?? ?????????? ?????????? ?????????? ?????? ??? UBS Real
Estate Kapitalanlagegesellschaft mbH (??? ????: UBS Real Estate) ??? ?? Agenzia delle
Entrate (???????????, ????, ?????), ??????? ?? ??? ?????????? ?? ?????????????? ???
????????? ?? ?????? ?????????? ?? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??????
????? ?????????? ?? ?????????? ?? ??????, ?????????????? ?? ?????? ?????????? ?????? ?????? ??????????
?????????.

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

?? ?????????? ??????? ???. 347 ?? 31?? ?????????? 1990

3 ?? decreto legislativo n. 347 – Approvazione del testo unico delle disposizioni concernenti le
imposte ipotecaria e catastale (????????? ?????? 347, ??? ?????????? ??
????????????? ?? ?????????? ?? ?????? ?? ?? ?????????? ?? ?????????? ?? ?????????? ??
?????????), ?? 31?? ?????????? 1990 (????????? ?????????? ?? GURI ????. 277, ??? 27??
????????? 1990), ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?????????? ?? ??????
?????, ??????????, ??????, ?? ?? ?????????? ??????????, ?????????? ??????????, ??????????
?? ?????????? ?? ?????? ?????????? ?????????? ?? ?????? ?????????? (imposta
ipotecaria). ??? ?????????? ?? ?????? ?????????? ?? ?????? ?? ?????????????????? ?
?????????????, ?? ?????????? ?????????? ?? 1,6 %.

4 ???????, ?? ?????? ??????? ?? ?????? ?????????? (imposta catastale) ???????
????? ?? ?????????? ???. 347, ?? 31?? ?????????? 1990, ?? ??????????
???? ?????????? ??????????, ?? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?????????? ?? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ??????????????
?? ?????????????? ??????. ?? ?????? ?????? ?????? ?????? ??????, ?? ?? ?????????????? ??
????????? ?? 0,4 % ?? ?????? ??? ??????.

?? ?????????? ??????? ???. 58/1998

5 ?? decreto legislativo n. 58 – Testo unico delle disposizioni in materia di intermediazione
finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52 (????????? ??????
???. 58, ??? ?????????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ??????????????
????????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? 8 ?? 21 ?? ?????? ???. 52 ?? 6??
????????? ???. 24?? ?????????? 1998 (????????? ?????????? ?? GURI ????. 71,
?? 26?? ?????? 1998), ?? ?????? ?????? ?? ?????? ?? ?????????? ?????????????? ??
????? ?????? (?? ?????: ?????????? ?????????? ???. 58/1998), ?????????? ?? ?????? 1, ??
????? ?????? ?? ????? «??????», ?? ???:

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

[...]

(k) “????????? ??????? ?????”: ?????????? ?????????? ?????????? ?? ?????????????? ???
????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????? ?????????? ?? ?????????? ?????????? ?? ??????????

(l) “????????? ?????????? ?????”: ?????????? ?????????? ?????????? ?? ?????????? ??
?? ?????????? ?????????? ?? ?????????? ?????????????????? ?????? ?????????????? ???
????????????????? ?????????? ?????????? [...]

[...]»

6 ?? ????? 36 ??? ?? ??? ?????????????? ??????????????, ?? ?????? ?????? ??? ????
«????????? ??????», ?????????? ?? ????:

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

[...]

3. ? ?????????? ??? ?????????? ?????????? ??? ?? ?????????? ????. ? Banca
d'Italia [(????????? ??? ??????)], ?????? ?????????????? ??? [Commissione Nationale per le
Società e la Borsa (Consob) (????????? ?????????? ??????????????, ??????)], ?????????? ??
????????? ?????????? ?? ?????????? ?? ?????????????? ?? ?????? ??? ?????????? ??
?????????, ?????? ??? ?? ?????????? ?????????? ?????????? ?????, ?????? ??? ??????????????
??? ????? 39.

[...]

6. ??? ?????????? ?????????, ? ?????????????? ?? ?????? ??????????, ?????????? ??????????
?????????????, ?????????, ??? ?????? ?????????, ??? ?? ?????????????? ?????????? ??
????????????? ?? ?????????????? ?????? ??? ?? ?????????????? ?????????? ??????????
?????????????, ? ??? ??? ?????????????? ?????????? ?? ?????????????????? ?? ?????? ??????????. [...]»

7 ?? ????? 37 ??? ?? ??? ?????????????? ?????????????? ?? ?????????? ?? ????:

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

a) ??? ?????? ??? ??????????????

b) ??? ?????????? ?????????? ??? ?????? ?????? ?????????????? ?? ?????????? ??????????

c) ??? ?????? ?????????? ?? ?????????? ?????????? ?? ?????????? ??? ?????????? ????, ??? ?????? ??
????????? ?????????? ?? ?????????? ??????????, ?? ??? ?????? ?????????? ?????????? ??? ??????????????
??? ??? ?????????? ??????????????

d) ??? ?????????? ??? ?? ?????? ?????????, ??? ??????????????

d bis) ??? ?????? ??? ?? ?????????????? ?? ?????????? ??? ?? ?????????? ?? ??? ??????????
????????????? ??????????, ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??
????????? ????, ??? ?? ?????????? ??? ?????????????????, ???' ?????????????????? ?? ??? ??????

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

[...]

2 bis. ? ?????????? ??? ????? ?????????? ? ?????????? 1 ?????????? ?????? ?? ??????
??? ?? ????? ?? ?????????? ?????????? ?????? ?????????????? ?? ?????????? ??? ??
???? ?????????? ?????????? ??? ??? ?????? ?????????? ??????????????. ? ??????????
????????? ?????? ??? ??? ?????????? ??? ?????? ?????????? ?????????????? ??????????????,
??? ??? ?????? ?????? ?????????? ??? ?????? ??????????????, ?????? ??? ??? ???
?????????, ??? ??? ?????????? ?????????? ??? ?????????????? ??? ?????????????? ?????????? [...]]»

8 ?? ????? 39 ??? ????? ????????????, ?? ?????? ?????? ??? ??????
«????????? ??? ??????», ?????? ?? ???:

«1. ??? ??? ????? ?????????? ?????????? ?????????????? ?????????? ? ?????? ?????????? ??
????????????? ????, ?????? ?? ?????????? ???, ?????? ??? ?????? ?????????? ???,
??? ?????????? –?? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? – ?? ???
????????-????????? ????, ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??????????
??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????????????.

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

a) ??? ?????? ??? ?? ?????? ??? ??????????

b) ??? ?????? ?????????? ??? ????????, ??? ?????? ??? ?????? ??? ?????? ??? ??????????????
????????? ??? ?????? ??? ??????????????, ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ??????????

c) ?? ?????? ??? ??? ?????? ??? ?????????? ?????? ??? ?? ?????? ??? ??? ???
????????? ??? ??????????

d) ??? ?????????? ????, ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???
????? ?????? ? ?????????? ??? ?????????? ??? ?????????? ??? ??????????.

[...]]».

? ?????? ?????????? ????. 223/2006

9 ?? ????? 35, ?? ?????? ??? ?????? «????? ??? ?? ?????????? ???
????????? ??? ?? ??????????», ??? decreto-legge n. 223 – Disposizioni urgenti per il
rilancio economico e sociale, per il contenimento e la razionalizzazione della spesa pubblica,
nonché interventi in materia di entrate e di contrasto all'evasione fiscale (????? ??????????
????????? ????. 223 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 2006 (GURI ????. 153 ??? 4?? 2006), ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? (?? ?????: ??? ?????? ?????????? ??? ?????????? ???
????. 223/2006), ? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????? ????. 248 – Conversione
in legge, con modificazioni, del decreto-legge 4 luglio 2006, n. 223, recante disposizioni urgenti
per il rilancio economico e sociale, per il contenimento e la razionalizzazione della spesa pubblica,
nonché interventi in materia di entrate e di contrasto all'evasione fiscale (????? ????. 248 ??? ??
????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ????. 223 ????
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????????? ??? ??????? ??????? ??? ??? ?????????????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? 2006 (????????? ?????????? ??? GURI ????. 186, ??? 11?? ?????????? 2006), ?????????? ??? ?????????? 10 ter ?? ????:

? ?????????? ??????? ?????. 228/1999

10 ? decreto ministeriale n. 228 – Regolamento recante norme per la determinazione dei criteri generali cui devono essere uniformati i fondi comuni di investimento (????????? ??????? ????. 228 – ????. ?????????? ??????? ?????????? ??? ??????? ?????????? ?? ?????? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??) ??? 24?? ????? 1999 (GURI ????. 164, ??? 15?? ??????? 1999), ?? ?????? ????. ?????? ????. ?????? ?????????? ?????????????? ??? ?????? ????. (?? ?????: ?????????? ??????? ????. 228/1999), ?????? ????. ?????? 1, ?????????? 1, ?????????? d bis), ?? ????:

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

11 ?? ?????? 12 bis, ??????????? 1, ??? ?????????????????????????? 228/1999 ??????? ?? ????:

«?? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ??????????»

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

13 ??? 4 ?????????? 2006 ? ?? ??? ????? ??????? ?????????????? ???????, ??? ?????????? ???
????????????? ?????????? UBS, ??? ?????????????? ?????????? ??? ?????????????? ???,
????????? ??? San Donato Milanese (?????), ??? ??? ?????????? ??? ?????? ???
????????????? ?????????? ?? ??????????, ??? ?????????? ???, ??? ?????????? ???,
????????? ??? ?????? ??????????, ?? ?????????? ??? ??? ?????? ?????????, ?????????? ???,
??? ?????? ??? ?? ??? ????? ???????, ?? 802 400 ??? ?? 820 900 ???.

14 ????????????, ? ?? ??? ????? ??????? ?????????????? ?????????????? ??? ? ???
????????? ?????????? ??? ????????. 223/2006 ??? ?????? ?? ??? ?????? ??? ?????? ??
????????? ??? ????????, ??? ??? 1? ?????????? 2006, ??? ??? ? ?????? ???
????????? ??? ?????? 35, ?????????? 10 ter, ?????? ??? ?? ?????? ??? ?????? ??????????
??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????????? ??? ? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ?????????? ??
????????? ??? ?????? ??? ?? ?????? 37 ??? ?????????? ?????????? ????. 58/1998.

15 ??????? ??? ?? ??????? ?????? ?????? ?????????? ?????????? ?????????? ???
????? ??? ?? ??? ?????? ????????, ? ?? ??? ?????? ?????????? ?????? ??? ?? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ???,
????? ??? ?? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
????????? ??? UBS.

16 ??????? ?????????? ??? ?????????? ?????? ?????????? ???, ? UBS Real Estate ?????? ??? ??
????? ??????? ?????????? ?????????? ?????????? ?????????? ??? Commissione Tributaria
Provinciale di Milano (????????? ?????????? ?????????? ?????????? ?????????? ??? ???????,
?????). ?? ?????????? ??? 21?? ?????????? 2009 (????. 282/05/09 ??? 283/05/09), ?? ?? ??
????????? ??????? ??? ????????, ?????????? ???, ?? ??? ?????? ??????????
????????????? ????. 223/2006, ? ?????? ??????? ?????? ?? ?????????? ?? ?????????? ??
??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????? ??????????
????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????? ???.

17 ? UBS Real Estate ?????? ??????? ??? ?? ??? ?????? ?????????? ??????? ???
Commissione Tributaria Regionale per la Lombardia (????????? ?????? ??????????)
????????? ?????????? ??? ?????????? ???). ?? ?????????? ??? 3?? ?????????? 2012,
?? ?? ??? ?????? ?????????? ??? ?????? ??? ???????, ?? ?? ????????, ???' ??????, ???,
????????? ??? ?????????? ??????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???????, ??? ??
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
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????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???.

18 ??????? ??? ?? ?????????? ?????? ?????????? ???, ?? ??? ?????? ?????????? ??? ??
????????? 10 ter, ??? ?????? ?????????? ?????????? ????. 223/2006 ??? ??????
????? ??? ?????????? ??? ?????? 12, 43 ?? 56 ?? (??, ?????? ?????????? ???, ?????? 18,
49 ?? 63 ???), ? UBS Real Estate ?????? ?????? ?????????? ?????? ??? ??????????
????????? ??? ?????? Corte suprema di cassazione (????????? ?????????? ?????????? ???,
?????). ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?, ? UBS Real Estate ??????????,,
????? ???, ???, ??? ?????? ??? ???' ?????? ??? ?????? ??? ?? ?? ??? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? 10 ter, ??? ?????? ?????????? ????. 223/2006, ????????????

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

19 ?? ??????? ??????????? ???????????????, ??????????, ??? ?? ??????? ?????????????? ??????????
???? ??????? ????? ??????????? ??????????? ?????????? ?????????? ????? ???????????
?????????? ??????????? ??????????? ??????????? ?? ??????? ??? ??????? ?????????? ??? ??
????????? ????. ?? ??????????? ?????? ??????????????? ??? ?? ???????????????????????
??????, ??? ?? ??????????? ??? ?????????? ??? ?????????? ????? ?????????? ???????????
?????????? ??????????? ??? ??????????? ????? ?????????????? ??? ?????????? ??? ?????? ???
????????? ??? ??????? ?????????????????? ??? ??????????? ??????????.

20 ??? ???????, ?? ?????? ??????????? ??????? ?????????????? ??????? ?? ?? ??????
????????????? ?? ?? ?????? ?????????? ?????????? ?????????? ??????????. ???????, ?? ??????
????????? ???????????, ???????, ?? ? ?????? ?????????? ?????? ?????????? ?????????? ??????????
?????????, ???? ????? ?? ??????? ?????? ?????? ?????????? ?????????, ??? ?????????? ??? ??
????????? ?????????? ?????????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?? ???
????????? ???? ?? ?????????? ?????????????? ??????. ???????, ?? ?????????? ???
????????????? ??? ?? ?????? ?????????? ?????????, ?? ?????? ?????????, ? ?????? ??? ??????????
?? ?? ?????? ??? ??????. ?????????? ??? ?? ?????????? ?????????? ?????????? ?????????? ??????
?? ?? ?????? ?????????? ?????????? ??? ?? ?????? ?????? ?? ?????????? ???, ? ?????????? ??? ??
???? ?????? ?????? ?????????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?? ?????????? ??????
????????????? ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ???' ?????? ???
????? ?????? ?? ?????????? ?????? ??? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?? ???
??? ?????????? ?????????? ?????? ??? ?? ?????? ??? ?????? ??????. ?????? ?????? ??? ??????????, ?
????? ??? ? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??????
????? ???? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ??????
????????? ?????? ??? ??????????????. ?????????? ??? ? ?????????? ??? ?????? ?????? ??????????
????????? ?????? 10 ????, ?? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?? ??? ?????? ??????????
????????? ???? ?? ???? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?, ?? ??????????
????????? ???, ?? ???? ?????? ?????? ?????????? ??? ??????.

21 ??????????, ??? ??? ?????????? ?????????? ?????????? ?????????? ??? ?? ?????????? ?????
?????????? ?????????? ?????????????????? ??? ?? ?????????? ????? ??? ?????????? ???, ??
????? ?????? ?? ?????????? ? ?? ?????????? ?? ?????????? ???, ?????????? ??? ??
????????? ?????????? ?????????? ? ??? ?????????? ?????????? ??????????. ?? ?? ??????, ?
????????? ??? ?? ??? ?????? ?????? ??? ?? ??? ?????, ??? ??? ? ??????????, ??
??? ? ?? ?????, ??? ?????????? ??????????. ??????, ?? ?????? ??????????
????????????? ???, ??? ? ?????????? ?????????? ?????? ?????????? ?????????? ??? ?????????? ??
????????????? ??? ?????????? ??? ?? ??? ?????? ?????????? ?????????? ??? ?? ?????????? ??? ??????????
?? ?? ??????, ??????????, ? ?????? ?????????? ?????????? ?????? ?????????? ?????????? ???
?? ?????????? ?? ?????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ??? ??????????
?? ?????????? ???.

22 ??????, ?? ?????? ??????????? ?????????????? ??? ?????? ?????? ?????? ?????? ??????, ? ?????? ??
????????? ?? ?????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????????, ?? ?????????? ??
?????? ?????????? ?????????????? ?????????? ?????????? ?????????? ?????????? ?????? ?? ?????????? ??
?????? ?????????? ??? ?????????? ???, ??????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ??? ??????????
?? «????????? ??????????» ??? ?????????? ?????? ??????????. ?? ?? ??? ?????? ?????????? ??
???????????, ?? ?? ??????, ?? ?????????? ?????? ??? ?????????? ?????????? ?????????? ??????????
?? ??? ?????? ??????? ?? ?????????? ??? ??????, ?????????? ?? ?????????? ?? ?????????? ?? ??????????
???? ?? ??? ?????? ??????? ?? ??????. ??? ?? ?????? ???, ? ?????? ??? ?????? ?????? ?????? ??
????????? ?? ?? ?????? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ?????? ?????????? ??
????????? ?? ?? ?????? ?????????? ?????????????? ?????????????? ??? ?????????? ?????????? ?????????? ??

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

23 ??? ??? ??????? ?? Corte suprema di cassazione (???????)
???????????) ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???
?????????? ?? ?????????? ?????????? ???, ?? ?????? ??? ?????????????? ??????????
????? ?????????? C?478/19 ??? C?479/19:

«????????? ??? ?????? [?? ??????] – ??? ?????????? ??? ?????????? [?? ??????] ??
?????? ?? ??? ?????????? ?????????????? ??? ??? ?????????? ?????????? ??? ??????????,
???? ?????? ?????????? ??? ?? ?????????? – ? ?????????? ?????????? ??? ?????????? ??????
???? ??? ??? ?????? 35, ?????????? 10 ter, ??? [??????] ?????????? ?????????? ?????????? ???.
223/2006] (?? ?????? ??? ?????????? ?? ?????? ?? ?? ??? ?????????? ??? ?????????? ???
????? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??????????);»

24 ?? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? 2?? ??????? 2014, ??????????????
?????????? ?? C?478/19 ??? C?479/19 ??? ?????????? ??? ?????????? ???
?? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??????????.

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

25 ?? ?? ?????? ??, ?? ?????? ?????????? ??, ???' ??????, ?? ?????????????? ?? ??
????? 43 ?? 56 ?? (??, ?????? ??????????????, ??? 49 ?? 63 ??) ?????? ?? ??????
?? ?????????? ?? ?????? ??????, ??? ? ?????? ??? ?????? ???, ? ?????? ??????????
?? ?????????? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??????????
????? ??? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??????.

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

26 ??????????????, ??? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ?? ??????????
?? ?? ?? ?????????? ?? ?????? ?????????? ??, ???' ??????, ? ?????????? ??
????????? ?? ?????? ?????? ?? ?????? ?????? ?? ?????? 2011/61/?? ?? ??????????
????????? ?? ??? ?????? ?????? ??, ??? 8?? ?????? 2011, ??? ?? ??????????
????????? ?????? ?????? ?????? ??, ??? ?????? ?????? ??? ?????? 2003/41/??
?? 2009/65/?? ?? ??? ?? ?????????? (??) 1060/2009 ?? (??) 1095/2010 (?? 2011, L 174,
. 1), ??? ? ?????? ?? ?????? ??? ? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ???
????????? ?????????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

27 ?????? ??? ?????? ?????????? ?? ?????????? ?? ?? ?????????? ?? ??????????
????????? ??? ?????? ?????? ?????? ??, ??? ?????? ?? ?????? ?? ?? ??????????
????????? ??? ?????? ?????? ??, ?????? ?? ?????????? ?? ?????? ?????? ?? ?????? ??????
????????? ??? ?????? ?????? (?????? ?? 6?? ?????? 2018, SEGRO ?? Horváth, C?52/16
?? C?113/16, EU:C:2018:157, ??? 52 ??? ?????? ?????????? ??? ??????).

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

?????? ??, ??? ?????? ?? ??????????? ?????? ?? ??????????? ??? ??????? ?????????? (???.
????????? ?? 21?? ??????? 2018, Fidelity Funds ?.?, C?480/16, EU:C:2018:480, ??? 33
??? ??? ??????????????? ???????, ??? ?? 3?? ??????? 2020, Tesco-Global Áruházak,
C?323/18, EU:C:2020:140, ??? 51 ?? ??? ?????????????? ??????????).

29 ??????????????? ?????? ??, ??? ?????? ??????????, ?? ?????? ?????? ?? ??????????
?? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????????? ?? ?????????? ??? ?? 43 ?? (???,
????????? ???????????????, ??? 49 ???), ??????? ?? ?? ?????????? ???????????????, ???
??? ?? ?????? 56 ?? (???, ??????? ???????????, ??? 63 ???), ??????? ?? ??
????????? ?????????? ?? ?????????? (???. ??????? ?? 1?? ??????? 1999, Konle, C?302/97,
EU:C:1999:271, ??? 22).

30 ? ??????, ???, ??? ??????????? ???????, ??????????????? ?? ??????????????
????????? ??????????? ?? ?????? ?????? ?????? ???????, ? ?????? ?????????? ??????????
????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? (???.
????????? ?? 25?? ?????????? 2007, Festersen, C?370/05, EU:C:2007:59, ??? 22 ??
???? ???????????, ??? ?? 11?? ?????????? 2007, ELISA, C?451/05,
EU:C:2007:594, ??? 58 ??? ??? ?????????????? ??????????).

31 ??????????, ?? ??????? ?????????? ?????????? ??????????????? ?? ?????????????? ??????????
?? ??????? ?????????? ?? ?????? ?????? ?????? ??????? ?? ?????? ?????? ?? ??? ?? ?????????? ??
????? ???, ??? ??????? ?? ??? ?? ?????????? ?? ?????? ?????????? ?? ?????????? ??
????????? ?? ?????? I ?? ?????? 88/361/?? ?? ???????????, ?? 24?? ??????
1988, ?? ?? ?? ?? ?? ??????? ?? ?? ?????? 67 ?? ?????? (?? 1988, L 178, ?. 5), ? ??
????????? ?? ?? ????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????
????????? (?????? ?? 6?? ?????? 2018, SEGRO ?? Horváth, C?52/16 ?? C?113/16,
EU:C:2018:157, ??? 56 ??? ??? ?????????????? ??????????).

32 ?? ??????????, ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ??
????? ?????????? ?? ?????? ?????? ?????? ?????????? ?? ?????? ?????????? ?? ??
????????? ?????? ?? ?????? ?????????? ?????, ?? ?????? ???????????????, ???
????, ?? ?????? ?????? ?????? ?????????? ?? ??????.

33 ??????? ?? ?? ?????????? ?????????? a priori ?? ??????? ??? ?????? ?? ?????? 43 ?? ??
?? ?? ?????? 56 ?? (??, ?????? ???????????, ??? 49 ?? 63 ???), ???????,
????????? ?????????? ??, ??? ?????? ??? ?????????? ?? ?????? ???????, ?? ??????
????????? ?? ?? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?????????? ??????????
????????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ?????????? ??
????????? ??, ??? ???????, ?? ?????????? ?????? ?????? ?? ?????? ?? ?????????? ??
?? ?? ?????? ??? ?????? 43 ??? (???. ?????? ?? 6?? ?????? 2018, SEGRO ??
Horváth, C?52/16 ?? C?113/16, EU:C:2018:157, ??? 55 ??? ??? ??????????????).

34 ???????, ??? ???????, ???' ??????, ? ?????? ?????????? ?? ?? ?????? 44 ??
????????? ??, ??? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?????? ?????????? ??
? ?????? ??? ??? UBS Real Estate ??? ?????????? ?? ?????????? ?????? ?????????? ??????
????????????? ?? ?????????? ?? ?????????? ?????? ?????????? UBS ?? ?????????? ??????????
?? ?????, ?? ?????????? ?? ?????? ?? ?????????? ?????? ?????????? ?????????? ??
?? ?????? ?? ??? ?????????? ??????????.

35 ?????? ??? ???????????, ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????????? ?????????? ?? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???

?????????? ??????????? ?? ??????????, ??? ???? ?????? 56 ?? (???, ??????? ???????????, ??? 63 ????).

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

36 ??? ?????????????? ???, ??? ????? ?????????? ??? ?????????????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?? ?????? 56, ?????????? 1, ?? (???, ??????? ?????????????? ?????? 63, ?????????? 1, ???), ??????? ?????????? ?????????????? ??? ?????????? ?????????????? ?????? ?????????? ?????????? ?????????? ?????? ??? ?????????????? ?????? ??? ?????? ?? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????? (?????. ?????????? ??? 2016, Pensioenfonds Metaal en Techniek, C?252/14, EU:C:2016:402, ?????? 27 ??? ?????? ?????????? ?????? 30?? ?????????? 2020, Köln-Aktienfonds Deka, C?156/17, EU:C:2020:51, ?????? 49 ??? ??? ?????????????? ??????????)).

37 ?? ??????????, ?????????? ??? ?? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????????? ?????? ?? ?????????? ?? «????????» ? «????????» ?????? ?????? ?? ?????????? ?????????? ?? ??????, ???????, ?????????? ??? ?? ?????? 56, ?????????? 1, ?? (???, ??????? ?????????????? ?????? 63, ?????????? 1, ???).

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

39 ??????, ?????? ?????????? ? ?????? ?????????? ?????????? ?????????? ?????? ?????? ?????????? (??????? ??? 30?? ?????????? 2020, Köln-Aktienfonds Deka, C?156/17, EU:C:2020:51, ?????? 55 ??? ??? ?????????? ??????)).

40 ?????? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ? ?????? ?????????? (??????? ??? 30?? ?????????? 2020, Köln-Aktienfonds Deka, C?156/17, EU:C:2020:51, ?????? 56 ??? ??? ?????????? ??????)).

41 ??????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ?????????? ???, ??????? ?? ?? ?????? 12? ??? ?????? ?????????? ?????????? ?????????? ?????? 228/1999, ?? ??????? ?????????? ?? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

42 ???, ???, ?????????? ? ?????? ?????????? ?? ?? ?????? 75 ??? 76 ??? ?????????? ???, ???, ?????????? ??? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

?????? ??????, ??? ???? ?????????? ????????????, ?????? ?????? ??????? ?? ??????????? ?? ??
????? ?????????? ?????? ?????????? ?????? ???, ??? ????????, ?? ??? ?????? ???
????????? ?????? ?????????? ??? 35, ?????????? 10 ter, ??? ??????
????????? ?????? 223/2006, ? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?? «????????» ? «????????» ??? ??
????????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?? ?????? ?????, ??? ?? ?????? ?????????? ??? ?????? ???, ??? ?? ?????? ???
????????? ?? ?????? ?????? ?????????? ??? ?????? ???.

43 ????????, ??? ???? ?? ?????? ???, ??? ?????????? ?? ?????? ???????????, ?
????????? ??? ?????? ?????? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??? ?????? ?????? ???????????,
????? ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ??????, ?? ?? ??????, ?????????? ??? ??????????
????????? ??? ?????? ?????? ?????????? ???, ??? ?? ?????? 56 ?? (???,
????? ???????????, ??? 63 ???).

44 ?????? ??????????, ??? ???? ?? ?????? 58, ?????????? 1, ??????? ??, ?? (???, ???????
??????????, ??? 65, ?????????? 1, ??????? ??, ???), ?? ?????? 56 ?? (???, ???????
??????????, ??? 63 ???) ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ?? ??????????
??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ???
????????????? ??? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

45 ?? ??? ??????, ?? ?????????? ?????????? ??? ?? ?????????? ??? ?? ??????????
????????? ??? ??????????, ??? ?????? ?? ?????????? ????. ???????, ?? ??? ?????? ??????
??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????????? ?, ?? (???, ??????? ???????????, ??? 65, ?????????? 1, ??????? ??, ???)
????????? ??? ?? ?????? 58, ?????????? 3, ?? (???, ??????? ???????????, ??? 65,
????????? 3, ???), ?? ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? 1 ??? ?? ?????? 58 (???, ??????? ???????????, ???
65) «??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? [56 ?? (???, ??????? ???????????, ??? 63 ???)]» [????. ??????? ??? 29?
????????? 2021, Veronsaajien oikeudenvontayksikkö (????? ??? ???), C?480/19,
EU:C:2021:334, ??? 29 ??? ??? ?????????? ??? ??????].

46 ?? ?????????? ??? ?????? ?????? ???, ?? ?? ??????, ?????????? ?? ??????????
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? 58, ??????????
1, ??????? ??, ?? (???, ??????? ???????????, ??? 65, ?????????? 1, ??????? ??,
???) ??? ??? ?????????? ??? ?? ?????? 58, ?????????? 3, ?? (???, ???????
??????????, ??? 65, ?????????? 3, ???) ?????? ?????? ?????????? ????,
?????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? [????. ??????? ??? 29? 2021, Veronsaajien oikeudenvontayksikkö
(????? ??? ???) (C?480/19, EU:C:2021:334, ??? 30 ??? ??? ?????????? ??? ??????].

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

47 ??? ?? ?????????? ??? ?????????????? ?????????????? ??? ? ?????????????? ?????????????? ?? ?? ???
????????????? ?????????????? ?? ??? ?????????? ?????????????? ??? ?????????? ?????? ?????? ???
????????? ?????? (????., ?????? ?????, ?????? ??? 30?? ?????????? 2020, Société Générale,
C?565/18, EU:C:2020:318, ??? 26 ??? ??? ?????????????? ??????????), ?????? ??? ??
????????????? ??? ??? ?????????????? ??? ?????????? ?????? (????. ?????? ??? 2?? ??????
2016, Pensioenfonds Metaal en Techniek, C?252/14, EU:C:2016:402, ??? 48 ??? ???
????????????? ??????????).

48 ???????, ??? ?? ??????? ?????????? ?????????? ??? ?????????????? ??? ?? ??? ?? ??????????
????????? ?????? ?? ?????????????? ?????? ?????????????? ?? ?????????? ?? ? ??????????????
????????????? ??? ?????????? ??? ??? ?? ??? ?????????? ?????????? ?????????? ???
????????????? ?????? ?????? (????. ?????? ??? 2?? ?????? 2016,
Pensioenfonds Metaal en Techniek, C?252/14, EU:C:2016:402, ??? 49 ??? ???
????????????? ??????????).

49 ??????? ?????????????? ???, ??? ?????? ? ?????? ?????? ?????????????? ?? ?? ??? ?? 78 ???
????????? ???, ??????, ?????????????? ?? ?????????? ??? ?????? ?????????? ??????????????
????????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?? ?????? ???
????????? ??? ?????????? ??? ?????????? ?????????? ?? ???????, ? ?????? ??????????
????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????????? ??? ??????
????????? ?? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ???
????????????????? ?????????, ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????, ? ?????? ?? ?????????? ??
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????, ?? ?????????? ?? ??????
????????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ?????????? ???, ?????? ?? ?????? ?? ?????? ?? ?????????? ??? ?????????? ???
«????????? ??????????» ??? ?????????? ??? ?????? ?????????? ?? ?? ??? ?????? ?????????? ??
????????? ??, ?? ?? ??????, ?? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??????????
?? ??? ?????? ??? ?????????? ??? ?????, ?????????? ?? ?????? ??? ?????????? ?? ?????????? ??
???? ?? ??? ?????? ?????????? ??? ??????. ??? ??? ?????????? ???, ?? ?????? ??????????
????????? ??? ? ?????? ??? ?????????? ? ?????? ?????????? ??? ?? ?????????? ?? ?? ??????????
????????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ??? ?? ??????????
????????? ??? ?????? ??? 35, ?????????? 10 ter, ??? ?????? ?????????? ??? ??????????
????????? ??? . 223/2006 ??? ?????? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??
????????? ?? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ?? ?????????? ??????????
????????? ?? ?????? ??? ?????????? ?? «????? ?????????? ??? ?????? ?????????? ??? ?????????? ??????????».

51 ???????, ?????????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ???
????????? ?? ?????? ?????????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ???
?? ?????? ??? ?????????? ?????????? ?????????? ??? ?????????? ?? ?????? 35, ?????????? 10 ter,
?? ?????? ?????????? ?????????? ??? . 223/2006, ? ?????? ?????????? ?? ??????

????? 50 % ??? ?????????? ??? ????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ???
??? ?????? ??????? ??? ?????????????? ??? ? ??? ?????????? ?????? ?????? ??????
????????? ??? ?? ?????????? 37 ??? ?????????? ?????????? ????. 58/1998.

52 ???????, ? UBS Real Estate ?????????? ??? ??????? ??? ?????? ?????????? ???
?????? ?????????? ??? ?????????? ??? ? ratio legis ??? ?????????? ??? ? ??????? ???
????? ???, ? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ????
??? ??? ??????? ?? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ?? ?????????? ?????? ??? ?????? ?????????? ?????? ???
????????? ?????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ???, ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???, ??????
?????, ??? ??? ?????? ??? Consiglio nazionale del Notariato (?????? ??????????)
?????????????, ???) ??? ??? ??? ?????? ??? Associazione fra le società italiane per
azioni (Assonime) (?????? ?????? ?????? ??????).

53 ?? ???????, ? ??????? ?????????? ?????????? ??? ?? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????????? ??? ?????????? ?? ???????, ??? ?????? ?????? ??? ?????????? ??? ??????????
????????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????? ?????? ?????????, ?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?? ??????? ??? ?????????? ?? ?????????? ??? ?????????? ?????????? ??? ??
????????? ??? ?????? ?????????? ??? ?????????? ?? ????????. ?? ?????????? ???
????????? ???, ???, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??
????? ?????????? ??? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???, ??? ??? ?? ?? ??????????
????? ?????????? ??? ?????????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??
????? ?????? ???' ?????, ?? ?????? ??? ?????????? ??? ?????? ???, ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??????.

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

55 ??? ?????? ???, ??????? ??? ?????? ??? ?????????? , ?? ?????? ??? ?????? ???
?????? ?? ?????????? ?? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????
????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (????).
?????? ??? 30?? ?????????? 2020, Köln-Aktienfonds Deka, C?156/17, EU:C:2020:51, ???
79).

56 ??????, ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?

?????? ???? ?????? 35, ?????????? 10 ter, ??? ?????? ?????????????? ?????????????? ??????.
223/2006 ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??? ?????? ?????????? ??????
????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????????? ?????????? ???, ?????? ??
????? ?????? ???, ??? ???? ?????? ??? ?????? ?????, ??? ??? ?????? ?????? ? ??????
????????????? ?? ?? ?????? 81 ??? ?????????? ???, ?? ?????? ?????? ?????????? ?????????? ??? ??
????????? ?????????? ?????????? ?????? ?????????? ?? ?????????????? ?????????? ?????????? ???.

57 ??????, ?? ?????? ?????????? ?? ???????, ??????, ?? ?????????? ??? ??????????
??? ?? ?????? ?????? ?????? ?????????? ? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ??????
????????????? ?????????? ?? ?????? ??? ?????????? ?? ?????? ?????????? ?????? ?????? ??????
?????????, ??? ???? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???
??? ?? ?????????? ?????? ???????, ???????, ?? ??? ??? ??? ?????? ?? ?????????? ?? ??????????
????????? ?????????? ?????? ?????????????? ??? ?? ?????????? ?????????? ?????????? ??? ?????????? ??
????? 35, ?????????? 10 ter, ??? ?????? ?????????? ?????????? ?????????? ????. 223/2006.
?????, ??????, ?? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ???
????? ?? ?????? ?????????????? ?? ?????????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

58 ??????????, ??? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ??????????,
????????????? ??? ?????????? ??? ?????? ?????? ?????? 50 % ??? ?????????? ???
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ???
????????? ??? ?? ?????? 37 ??? ?????????? ?????????? ????. 58/1998 ??? ??, ???
????? ?? ?? ?????? ?????????? ???????????, ??? ?????? ?????? ?????? ?????? ?????? ??? ??
????????? ?????? ?????? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ???,
????????? ?????? ?????? ?? ?????????? ?????? ??? ?????? ?????? ???, ?? ?????? ???,
?? ?????????? ?????? ??? ???? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.

59 ??? ??? ?????? ??????, ?????? ?? ?????????? ?? ? ?????????? ?????????? ???
????? ?????? ?? ?? ??? 37 ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????? ?????? ??????.

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

60 ?????????? ???, ??? ?????? ?????????? ??? ?????????? ?, ?????????? ???
????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ???
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
??? ?????? ?????? [????. ?????? ??? 29?? ?????? 2021, Veronsaajien
oikeudenvontayksikkö (????? ??? ???), C?480/19, EU:C:2021:334, ??? 56 ??? ???
????????? ?????? ??????].

61 ?? ??????????, ?????????? ???, ?????? ?? ?????? ?????????? ???
????????? ??? ?????? ?? ??? ?????? ?????? ?????????? ?????? ???, ??????????,
?????????, ??? ?????????? ??? ?????? 50 ??? ?????? ?????? ???, ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
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??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

62 ??? ?????, ???????, ??? ?????????? ?? ?????????? ??????? ?? ?????????? ???????,
????????? ?? ??????? ?? ???? ?????????? ??????? ??????? ?? ??????? ?? ??????? ?????????? ??
????????? ?????????? ?? ??????? ??????? ?? ??????? ?? ?????????????? ?? ??? ??????? ??????????
??? ?????????? ?? ??? ?????????? ??????? ?? ?????????? ??????? ?? ??????? ??????? ??????
????????? ?????????? ?? ??????? ?? ?????????? ??????? ?? ??????? ?? ?????????? ??????? ?? ??????
????????? ?? ??????? ?? ?????????? ??????? ?? ??????? ?? ?????????? [????????? ?? 26?? ??????????]
2019, X (E????????? ??????? ?????????? ?????????????? ?? ??????? ??????), C?135/17, EU:C:2019:136,
????? 73 ??? ????? ?????????????? ??????????). ?? ?? ???????, ??? ?????? ?????????? ????
????????? ?????? ?????????? ??? ?????? ??? ?? ?????????? ?????????? ?????????? ????
????? ??? ?????? ?????? (?????? ?? 11?? ?????????? 2007, ELISA, C?451/05,
EU:C:2007:594, ??? 91 ??? ????? ?????????? ??????????).

63 ???????, ??? ? ?????????? ??, ??? ?????? ??? ? ?????? ??????? ?????????? ?????????? ????
????????? ?????????? ?? ?????????? ?? ??????? ??????? ?????????? ?????????? ?? ??????????, ????
????? ??? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ?? ?????????? ??, ??
?? ??????, ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??
??? ??????.

64 ?? ???????, ? ?????? ?????????? ?????????? ?? ?????????? ?? ?????????? ?????????? ??
?????? ?? ??? 35, ?????????? 10 ter, ??? ?????? ?????????? ?????????? ?????????? ?? ?????????? ????.
223/2006 ?????????? ??? ?????? ?????? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ????
??? ?????? ??????????, ?????????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ??????????
??? ?????? ?? ?????????? ?????? ?????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ???
????? ?? ?????????? ?? ?????? ??????????.

65 ???????, ?????????? ??, ??? ???????, ?? ?????????? ?? ?????? ?????? ?? ????
????????? ?? ??????? ?? ?????????? ?????????? ?????????? ?? ?????????? ?????????? ??????????
????? ?? ?????????? ?? ?????????? ?????? (????. ??????? ?? 10?? ??? 2012,
Santander Asset Management SGIIC ?.??., C?338/11 ??? C?347/11, EU:C:2012:286, ????? 50
??? ??? ?????????? ????, ??? ??? 13?? ?????? 2014, Bouanich, C?375/12,
EU:C:2014:138, ??? 69 ??? ????? ?????????? ??????????).

66 ???????, ?????????? ?? ?????????? ?????????? ?????????? ?? ?????? ?? ???
????????? ??, ??? ???????, ??? ?????? ?????????? ?? ?????????? ?? ?????? ?? ??????
????????? ?? ??????? ?? ?????????? ?????????? ?????????? ?? ?????? ?? ?????????? ?? ??
??? ?????????? ?? ?????????? ?? ?????????? ?????????? (????????? ?? 10?? ??? 2012,
Santander Asset Management SGIIC ?.??., C?338/11 ??? C?347/11, EU:C:2012:286, ????? 51
??? ??? ?????????? ????, ??? ??? 13?? ?????? 2014, Bouanich, C?375/12,
EU:C:2014:138, ??? 69 ??? ????? ?????????? ??????????).

67 ?? ???????????, ??????, ? ?????? ??????????? ??? ??????? ??? ?? ???????????
?????????? ??? ??????????? ??? ?????? ??????????? ??????? ??????? ??????? ???
?????????????? ??? ??????????? ??? ??????????? ??????? ??????? ??? ??
?????????????? ??? ??????????? ??? ?? ??? ????? ??????????? ??? ??????? ??????? ???
?????? ??? ??????????? ??? ?? ?????? ?????, ??? ?? ????? ??????????? ???????????, ????.
????.

68 ?????, ??? ?????, ??? ?????? ??????????? ??? ?????????? ??? ?????? ??????? ??????????
?????????? ??? ??????????? ???????????, ?? ?????? ?????????? ?????? ??????????? ???????????
?? ?????? ?? ?? ??????????? ?? ?????? ?????????? ?????? ?????????? ???????????, ????. ??
??? ?????? ??? ??????????? ??? ?????????? ?????? ?????? ?????? ???????????,
??????????????, ??????, ??? ?????? ??? ?????? ??? ?????? ?????? ??????????? ??? ??????????? ???
?????? ???????????, ??? ?? ??? ????? ?????? ??????? ?? ??????????? ?? ??????????? ??? ??
?????? ?????????? ? ?????? ?????????? ??? ?? ?????? ?????? ??????????? ??? ??????????? ???????????.

69 ??????, ? ??????? ??????????? ??????????? ??? ?????????? ??? ?????? ?????, ?? ??????
????? ??????? ??????? ?? ?? ?????????? ?????? ?????? ???????, ???, ???' ???????, ??
?????????? ?? ??????????? ??????? ?????????? ??? ?????? ?????? ??????????? ??? ??????????? ???????????.

70 ???????, ??? ?????? ???????????, ?????? ?????? ??????????? ?????????? ??? ?????? ??? ??????? ??
?????????? ??????????? ??????????? ??????????? ??????????? ??????????? ??? ?? ???????
(?????? ?? 25?? ??????????? 2021, Novo Banco, C?712/19, EU:C:2021:137, ??? 40 ??
???? ??????????? ??????).

71 ???????, ??????????? ???, ??? ?????? ? ?????? ??????????? ??? ??????? 88
?? 89 ??? ?????????? ???, ??????, ??? ??????? ?? ??????? ?????? ?????? ?????? ??????? ???
????????? ? ??????? ?????????? ??? ?????????? ?????? ?????????? ?????? ??? ?? ?????? ???????????
?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ??? ?????? ?????????? ??? ?? ?????????? ???
????????? ??????? ?????????? ??? ?????? ?? ??? ?????? ??? ?????? ???, ???????, ?? ???????
?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ???
????????? ?? ??????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
??? ?, ?? ?? ??? ?????? ?????? ?????? ??????? ???????.

72 ???????, ?????? ?? ?????? ?????? ??? ? ?????? ??????????? ??? ??????????? ??? ??????????? ???
????? ??? ??????? ?? ??????? ?? ??????? ?? ?????????? ??? ?????? ?????? ??????? ???????????
?????? ?? ??????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ???????????,
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?? ???????
????, ??? ?????? ??? ? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????????
????????? ?????? ??? ?????, ?????????????? ??? ?????????? ?????????? ?????????? ?????????? ???,
??? ?????????? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ???????.

73 ??????, ??? ??????? ? ?????? ??????????? ??? ?????? ??????????? ?? ?? ?????? 90 ?? 91 ??
????????? ???, ? ?????? ??? ??????????? ??? ?????????? ?????? ?????????? ?????? ?????? ???????
?? ??????? ?? ?????? ?????????? ??? ?????? ?????? ?????????? . ??????, ??????????? ?
????????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?? ?????????? ?? ?????????? ???
?? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???????
?? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????? ??
????????? ?????? ?? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ???????
????????? ??? ?? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???????.

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

? ?????? ?? ?????? ? ??????? ?????? ?? ?????? 56 ?? (???, ?????? ???????????????, ?????? 63
????) ????? ?? ?????? ?? ?????????????? ?? ?????????????? ?????? ?????? ?????????? ?????? ? ??????
????????????? ?? ?????????????? ?? ?????????? ?? ?????? ?????????? ?? ?????????? ?? ?????? ??????
????????????? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ?????????? ?? ???????,
????????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?? ?????? ??
??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????????? ??????
????????? ?????? ?????? ?? ? ?????????? ?????? ?????? ?????????? ?????? ?????????? ?????? ?? ??????
??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

75 ?????????? ?? ? ?????? ?????????? ?? ?????? ?? ?????? ?????? ?????????? ?? ?????? ??????
?? ?????????? ?????????????? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ??????
????????? ?? ?????????? ?? ?????? ?????? ?????? ??????. ?? ?????? ?? ?????? ?????? ??????????
???? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ??????????.

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

? ? ?????? 56 ?? (???, ?????? ???????????????, ?????? 63 ????) ?????? ?? ?????? ????
????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ? ?????? ?????????? ??
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?? ??? ?????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??????.

(?????????)

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