

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

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

??? 20?? ?????????? 2017 (\*)

«????????????? ?????????? – ????? ?????????? – ?????????? ?????????????? – ??????  
90/435/??? – ????? 1, ?????????? 2 – ????? 5 – ?????? ?????? – ?????? ??????????????  
– ?????????? ????? ???? ??? ?????? ??? ?????????? ?? ?????????????? ??? ??????????????  
?????? ?????? ?????????? – ?????? – ?????????? ?????, ?????????? ???  
????????? ?????? – ??????»

???? ?????????????? ?????? C-504/16 ??? C-613/16,

? ? ?????????? ?????? ?????????? ?????? ?????? ??? ?????? 267 ????, ??  
?????? ?? Finanzgericht Köln (?????????? ?????????? ??? ???????, ???????) ??  
????????? ??? 8?? ?????? ??? ??? 31?? ?????? 2016, ?? ?????? ?????????? ???  
????????? ??? 23 ?????????? ??? ??? 28 ?????? 2016, ??????????, ??? ??????  
??? ????

**Deister Holding AG**, ??? Traxx Investments NV (C-504/16),

**Juhler Holding A/S** (C-613/16)

????

**Bundeszentralamt für Steuern**,

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

????????? ??? ??? C. G. Fernlund (?????????), ?????? ???????, J.?C. Bonichot ??? E.  
Regan, ???????,

????????? ??????????: M. Campos Sánchez-Bordona

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

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

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

- ? Deister Holding AG, ?????????????? ??? ??? J. Schönfeld ??? C. Süß, Rechtsanwälte,
- ? Juhler Holding A/S, ?????????????? ??? ??? A. Stange, Rechtsanwalt,
- ? ?????????? ???????, ?????????????? ??? ??? T. Henze ??? R. Kanitz,
- ? ??????? ???????, ?????????????? ??? ??? D. Colas, ????? ??? ??? ??? E. de  
Moustier ??? S. Ghiandoni,

– ? ?????????? ??????????, ??????????????? ??? ??? A. Falk, C. Meyer-Seitz ??? H. Shev, ????? ??? ??? ??? F. Bergius ??? L. Swedenborg,

— ? ?????????? ? ????????, ??????????????? ??? ???. W. Roels ??? M. Wasmeier,

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

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

????????

1 ?? ??????? ?????????????? ?????????? ??????? ??? ??????? ??? ?????? 49 ????,  
????? ??? ??? ?????? 1, ?????????? 2, ??? ??? ?????? 5 ??? ?????? 90/435/??? ???  
??????????, ??? 23?? ??????? 1990, ??????? ?? ?? ??? ????? ??????????? ??????? ?? ???  
????? ??? ??? ??????? ??? ??? ?????????? ??????? ?????????????? ??????? ??? (??  
1990, L 225, ?. 6), ??? ????? ?????????????? ?? ??? ?????? 2006/98/?? ??? ???????????, ???  
20?? ??????? 2006 (?? 2006, L 363, ?. 129) (??? ????: ?????? ??? ??? ?????????? ??? ???  
????????? ???????).

2 ?? ??????????? ?????????? ?????????? ??? ??????? ?????????? ??????? ??? Deister  
Holding AG, ????? Traxx Investments NV (??? ????: Traxx), ??? Juhler Holding A/S ?? ???  
Bundeszentralamt für Steuern (????????? ?????????????? ?????????? ??????????, ??????????),  
???? ?????? ??? ?????? ??? ?? ??? ?????????? ?? ?????????? ??? ??? ?????????? ??? ?????  
?? ?????????? ??? ?? ?????????? ?????? ?????????? ??? ??? ?????????? ??? ?????????? ???.

?? ?????? ???

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

3 ? ?????? ?? ? ??????? ?????????????? ?????? ?? ?????????? ?? ?? ?? ?????????? ?? ?? ??  
?????????? ??????? ?? ???:

[...]

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

4      ?? ?????? 1 ??? ??????? ?????? ??????????

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

- ????? ?????????? ??????? ?? ?????? ?????????????????? ??? ?????????? ?????? ???  
?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ????,
- ????? ?????????? ??????? ?? ?????????????????? ??? ?????????? ?????? ??? ??????  
????? ?????????? ????, ??? ?????? ??? ?????? ????????????,

[...]

2. ? ??????? ??????? ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ? ??????????  
????????? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ?????????? ?????????? ?????? ???  
?????????????»

5 ?? ?????? 2 ??? ?? ??? ?????? ??????:

«??? ??? ?????????? ??? ?????????? ???????, ?? ??? ??? “????????? ?????????? ??????” ???????  
????? ??????:

?) ? ?????? ??? ??????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????????????????? ???  
???????????

?) ? ??????, ????, ??? ?????????? ?????? ?????????? ??? ?????? ?????????? ??????, ?????????? ???  
????? ?????????? ?????? ?????? ??? ?????? ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ???  
????????? ?????? ???????, ?????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ???  
?? ?????? ??????????

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

[...]

- selskabsskat ??? ????,
- Körperschaftsteuer ??? ?????????????? ?????????? ??? ??????????,

[...]

- vennootschapsbelasting ??? ??? ?????,

[...]».

6 ?? ?????? 3 ??? ?????? ??????? ??????:

«??? ??? ?????????? ??? ?????????? ??????:

?) ? ?????????? ?????????? ?? ?????????? ?????????????? ?????????????? ?? ?????? ??????  
?????? ?????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 2 ??? ?????????? ???  
20 % ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????  
?????.

? ?????????? ??? ?????????????? ????, ??? ??? ?????? ?????? ????, ?? ??? ?????? ??????  
?????? ? ?????? ?????????? ??? 20 % ?????????? ??? ?????? ?????? ??? ?????? ?????? ???  
?????? ??????, ??? ???????, ?? ??? ? ?? ?????? ??? ??? ?????? ?????????? ?????????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ???.

??? 1?? ?????????????? 2007, ?? ?????????? ?????????? ?????????????? ?????????????? ?? 15 %.

??? 1?? ?????????? 2009, ?? ??????? ?????????? ?????????? ?????????? ?? 10 %.

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

– ?? ????????????????, ?? ?????? ??????????, ?? ?????????? ??? ?????????????? ??? ?????????? ??  
?? ??????? ??? ?????? ?????????????? ????,

7      ??????? ?? ?????? 5, ??????????? 1, ??? ??????? ?? ?? ??????? ?? ??  
?????????? ???????:

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

8      ?? ?????????? ???. ????????. ?????, ?? ????? «???????. ???. ?????????? ???. ???????????.  
???. ?????? 2. ???????????. 1. ?????????? A)»,. ??????????:

«?) ??? ?????????? ??? ????? ?????????? ??? ?????? ??? ???????????? (E?) ???? . 2157/2001 ???  
???????????, ??? 8?? ?????????? 2001, ??? ???? ?????????????? ??? ?????????? ??????????  
(SE) [(?? 2001, L 294, ?. 1)], ??? ??? ?????????? 2001/86/E? ??? ????????????, ??? 8?? ??????????  
2001, ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???  
??? ?????????? [(?? 2001, L 294, ?. 22)], ??? ?? ?????????? ?????????? ??? ?????? ??? ???  
????????? ??? ?????????? (??) ???? . 1435/2003 ??? ??????????, ??? 22?? ??????  
2003, ??? ?? ?????????? ??? ?????????? ?????????? ?????????? (SEC) [(?? 2003, L  
207, ?. 1)], ??? ??? ?????? 2003/72/?? ??? ??????????, ??? 22?? ?????? 2003, ??? ??  
????????? ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ??? ???  
????????? [(?? 2003, L 207, ?. 25)]?

[...]

?) ??????? ??????? ??????? ??? ?????????????? "aktieselskab" ??? "anpartsselskab"?  
????? ??????? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
?????????????, ?????? ?? ?????????????? ?????????? ??? ?????????????? ??? ??????????????  
?????? ?? ??? ????? ??????? ??? ?????? ??? ?????????????? ?????????????? ??? ?????????????? ??  
"aktieselskaber"?

??) ?????????? ?????????? ?????? ??? ?????????? “Aktiengesellschaft”,  
“Kommanditgesellschaft auf Aktien”, “Gesellschaft mit beschränkter Haftung”,  
“Versicherungsverein auf Gegenseitigkeit”, “Erwerbs- und Wirtschaftsgenossenschaft”, “Betriebe  
gewerblicher Art von juristischen Personen des öffentlichen Rechts”, ????? ??? ????? ??????  
??? ????? ???????? ??? ????? ??? ?????????? ?????? ??? ?????????? ?? ?????????? ??????  
??? ??????????

[...]

[...]».

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

9      ? Einkommensteuergesetz (????? ??? ?????? ??????????????), ??? ?????? ??? ??  
?????????? ??? ?????????? ?????????? ??? ?????? ????? (??? ????: EStG), ?????? ???  
????? 36:

«(1)    ??? ??? ???????? ???????????? ????, ? ?????? ??????????? ??????????

(2) ??????????????? ?? ??? ??? ????? ??????????????

1. ?????????????? ??? ????? ?????????? ??? ?????????? ??? ?? ?????? ?????????? ??? (????? 37)?

2. ?????? ??????????? ?? ???? ??????????? ?? ???? ??????????? ?? ???? ??????????? ?? ???? , ?????? ????? ??  
?????????? ?? ???? ??????????? ?? ???? ?? ???? ??????????? ?? ???? ?? ???? ?? ???? ?? ???? ??????????? ??  
?? ???? , ??????? ?? ? ? ? ???? 3, ?????? 40, ??? ??????? ?? ???? , ? ? ? ? ???? 8b,  
?????????? 1 ??? 6, ??????? ???????, ??? Körperschaftssteuergesetz [????? ???  
????????? ??????], ??? ?????????? ????? ??? ????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???  
??? ?? ????? ?? ??????? ????? ?????????????? ????? ?????????? ????? . ? ????? ?????????? ???  
??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ??? ?????????? ???  
????? 45a, ??????? 2 ? 3. ??? ?????????? ??? ?????? 8b, ?????????? 6,  
?????? ??????, ??? ?????? ??? ?????????? ???????, ?????? ??? ?????? ??? ?????????? ?  
????????? ??? ?????????? ??? ?????? 45a, ?????????? 2 ? 3, ??? ?????????? ???  
????????? ??? ?????????? ??? ??????????.

(3)    ?? ???? ???. ?????? ???. ?????????????? ???. ?????? ?????????? 2, ?????? 2,  
 ?????????????????? ???. ??? ?. ?????? ?????? ???. ?????? ?????? ???. ?????? ?????????????? ???. ??? ?,  
 ?????????????????? ???. ??? ?????? ???. ?????? ???. ?????? ?????? ?????? ?????? ??????????????.

(4)    ???, ??????? ?? ???? ???????????, ?????????? ?????????? ?????????? ?? ???? ???  
??????????????, ?? ??????? ??? (? ??????? ?????? ?????? ??????? ?? ?????) ??????? ?? ??  
????????? ??????, ?????? ?? ??????? ??? ?????? ?? ??? ????? ??????????? ?????? ??? ???  
??? ???????, ??? ?? ??? ????? ??????? ??? ?? ??? ?????.. ??? ????? ????? ?????????? ?  
????????? ??? ?????????? ??? ?????? ?????? ?? ??? ????? ?????????? ?????? ?????? ??? ??? ???  
??? ?????????????? ?????????? ??? ?????? (?????? ??????). ???, ??????? ???  
??????????, ??????? ?????????? ?????????? ??? ?????? ??? ???????????????, ?? ??????? ???  
?????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ???????????????  
?????????? ??? ?????????? [...»

10 ?? ?????? 43, ??????????? 1, ?????? ??????, ?????? 1, ??? EStG ?????????:

«???? ?????????? ?????????? ?????????? ??? ?????? ?????????????????? ???  
?????? ???, ??? ?????????? ??? ?????????? ??? ?????? 6, ??? ?????? 7, ??????? ??,  
??? ??? ?????? 8 ??? 12, ??? ??? ??? ?????? ??????, ??? ??????, ??????????  
????? ?? ??????????:

1. ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 20, ?????????? 1, ?????? 1 ???  
2. ?? ?????? ??? ?????? mutatis mutandis ??? ?????????? ??? ???????, ??? ???  
????? ??? ?????? 20, ?????????? 2, ??? ??????, ??? 2, ?????????? ?, ??? ?????? 2,  
????? ??????????

[...]».

11. ??? ?????? ??? ?????? 43b, ?????????? 1, ??? EStG, ?????? ?????????? ???  
?????????????, ??? ?????????? ???? ??? ?? ?????????? ??? ?????????? ??? ???????,  
????? ??? ?????? 20, ?????????? 1, ?????? 1, ??? EStG, ?? ?????? ?????????? ??????  
????? ???? ??? ?????? ??? ?????? ?????? ??? ??? ??? ?? ?????????? ??? ??? ?? ???  
????????? ??? ?????? ?????? ?????? ??????.

12. ??? ?? ?????? 43b, ?????????? 2, ??? ??????, ??? EStG, ?? «????? ??????»???  
??? ?????? ??? ?????????? 1 ??? ?? ??? ?????? 43b, ?????? ? ?????? ???? ??? ??????  
??? ?????????? ??? ?????????? ??? ?????????? 2 ??? ?????? ?????? ??? ??? ?? ???,  
????? ?? ?? ??? 3, ?????????? 1, ?????? ??, ??? ?????? 90/435, ??? ???  
????????? ??? ??? ?????? 2006/98, ??? ??? ?????? ?????? ??? ?????? ??? ??? ???  
????????? ??? ?????????, ??? ?? ?????? 44, ?????????? 1, ?????? ??????, ??? EStG,  
????? ?? ?????????? ??? ?????? ?????? ?????? ?????? 15 % ?????????? ???  
????????? ??? ??????????.

13. ?? ?????? 43b, ?????????? 2, ?????? ??? EStG ?????? ??? ?????? ??????????  
?? ?????????? ??? ? ?????????? ?????? ??? ?????? ???.

14. ?? ?????? 50d, ?????????? 3, ??? EStG ??????:

«????????? ?????? ??? ?????? ?????????? ?????? ? ?????? ?????????? ?????? ???  
1 ? ??? ?????????? 2, ?????? ?????????? ?? ?????? ?????? ??? ?? ??? ??????????  
????????? ? ?????? ??? ?????????? ?????? ?? ?????????? ???

(1) ?? ?????????? ?????????? ???? ?????? ??? ?????? ?????? ??? ?? ?????????? ???  
????????? ??? ?????? ???

(2) ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ???  
????????? ??? ?????? ?? 10 % ?? ?????? ?????? ?????? ??? ?? ??? ?? ??? ??  
????? ?????????? ???

(3) ? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????? ?????????? ?????????? ?? ???  
????? ?????????? ?????? ?????? ?????? ?????? ?????? ???

?????? ???? ???? ? ?????????? ??? ?????????? ?????????? ??????????, ?????????? ?  
???? ?????????? ?????????????? ??? ?????????? ??? ?????????? ?? ??? ??????  
?????? [????? 1, ?????????? 2, ??? Außensteuergesetz (????? ??? ?????????????? ??????  
?? ??? ??????)] ??? ?????????? ??????. ? ?????????? ?????? ?????????? ??????  
????????? ?????????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ??  
????????? ?????????? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ??  
????????? ?????????? ????. [...»

15 ?? ??? 42 ??? Abgabenordnung (????????? ????) ??????:

«(1) ??? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ?? ?????????? ???  
????????? ??? ?????????? ??? ?????????? ?? ??? ?????????? ?? ?????????????? ??? ??????  
????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ?? ??? ?????? ??????????  
????????? ??? ?? ??? ?? ?????????? ??? ?????? ?????????? ??? ??????  
????????? ?????????? ??? ?? ??? ?? ?????????? ??? ?????? ?????????? 2, ? ??? ?????????? ?? ???  
????? ??? ?? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ????.

(2) ? ?????????? ?????????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??????, ?  
????? ?????? ?? ?????????????? ?? ??? ?????? ?????????? ?????????? ?? ??? ?????? ???  
????????? ??? ?? ??? ?? ?????? ?? ??? ?????? ??? ?????????? ?? ??? ?????????? ?????????? ??  
? ?????? ??? ?????? ??? ?????? ?????? ??? ? ?????????????? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?? ??? ?????? ?????? ??  
????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ?????????? ????.»

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

16 ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? C?504/16, ? Deister  
Holding ????? ?????? ?????? ??? Traxx, ? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ?  
????????? ??? Traxx ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??  
????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????????? ????, ?????? ?????? ?? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ????.

17 ??? ?? 2005, ? Traxx ?????????? ?? ?????? 26,5 % ?????????? ??? Deister  
electronik GmbH, ?????? ?????? ?????? ????. ??? ??? ?????? ??? 2007, ? Traxx ??????  
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?? 2007 ??? ??  
2008. ? ?????? ?????? ??? Traxx, ? ?. Stobbe, ??? ?????? ??????.

18 ??? 19 ?????????? 2007, ? Deister electronik ?????? ?????????? ??? Traxx, ??? ??  
????? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???  
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ??? 16 ??? 2008,  
? Traxx ?????? ?? ?????????? ? ?? ?????? ?????? ?????????? ??? ??? ?????? ??? ??? ????.  
????????? ??????.

19 ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????????? ??? ?????? ??? ?????? ??? ? Deister Holding, ?? ?????? ?????????? ???  
Traxx, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Finanzgericht Köln  
(????????? ?????????? ??? ?????? ???), ?????????? ?? ?? ?????????? ??? ?? ??? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ???  
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

20 ????? ?????????? ??? ??? ??????? ??? ?????????????? ??? ????? C?613/16, ? Juhler Holding ????? ??????? ?????????????? ?? ??? ????? ??? ??????. ?? ?????????? ??? ??????? ?? ??????? 100 % ? Juhler Services Limited, ??????? ?????????? ??????. ?????????? ??????? ??? ?????????? ??? ??????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

21 ? Juhler Holding ??????? ??????? ??????????? ?? ?????????????? ??? 25 ??????????,  
?????? ?? ???? ?????? ?????? ?????? ??? ?????? ??? ?????, ?????? ?????? ??? ?????  
????? ??????????????. ? ?????????????? ?????? ?????????? ?????????? ?????????? ??????????  
?? ?? ?? ?????? ??? ?????????? ?????? ??? ?????????? ?????????? ?????? ??? ?????? ??? ??????  
?????. ??? ?? 2003, ? Juhler Holding ?????? ?? 100 % ??? ?????????? ??? temp-team  
Personal GmbH, ??????? ?????????????? ??? ???????.

22 ??? ??? ??????? ??? ?????????? ?????????? ?????????? ??? ? Juhler Holding ??????? ???  
?????? ????????, ??? ? ??????? ??? ?????? ??? ?????? ??? ?????????????????? ???????  
??? ??????, ??????????? ?? ?????????????? ??? ?????????? ??? ?????? ??? ??????, ???  
????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???????  
????????? ??? ?????? ??? ?????????? ??? ??????. ??? ?????? ??? ?????? ??? ?????? ???, ? Juhler  
Holding ?????????? ??? ?????? ????. ??? ??????, ? ?????? ??? ?????? ??? ?????? ???  
??? ??????. ??? ???????, ? ?????? ?????????? ??? ???????, ??? ?????????? ??? ??  
????????? ??? ?????? ??????? ??? ?? ??? ??????. ????, ? ?????????? ??? Juhler Holding  
????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???.

23      ????? ?? 2011, ? Juhler Holding ?????????? ?????????? ??? ?? temp?team Personal.  
????????? ?? ???? ?????????? ??? ?????????? ?????????? ?????????? ??? ?? ???? ????? ?? ?????  
???????????, ? ????? ?? ???? ?? ???? ?????????? ?????? ??? ?????????? ????. ? ??????????  
???? ??????? ?? ??????? ??? ?? ?????? ???, ????? ?? ??? ?? ??????? ??? ?? ??????????  
???? ?? ??? ?????? ??? ? Juhler Holding ?????? ??????? ??? ?? ??? ??????????  
???? ?????? ??? Finanzgericht Köln (???????????, ????????????, ??? ???????),  
?????????? ?? ?? ?????????? ??? ??????? ??? ?? ?????? ??? ?? ?????????? ?? ??  
????????? ?????????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ??? ??????????  
?????????.

24      ????? ?????? ??? ??????????? ????? ?? ???? ?????????? ??? ?????? ?????? ?????? ???????????, ??  
?????? ??????????? ???????????, ??????, ???, ??????? ?????? ??? ?????? ??? ?????? ??? ???????????  
?????, ??? ??????? ?? ?????? 50d, ??????????? 3, ??? EStG, ??? ??????????????? ?? ???  
Jahressteuergesetz 2007 (?????? ??????????? ?????? ??? ?? 2007), ??? 13?? ???????????  
2006 (BGBI. 2006 I, ? 2878). ????????, ?? ?????????? ?? ?????????????? ??? ?????? ???  
?? ?????? ??? ??????, ??? ??? ?????????? ??? ?????? 42 ??? ??????????? ??????, ??????  
?? ??? ??????????? ??? ??????????? ?? ?????? ??????? ??????, ? ?????? ??? ?????? ???  
????????????? ??? ?????? ?????? ?? ???????????.

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

26 ???????, ??????? ?? ???? 50d, ?????????? 3, ??? EStG, ?? ??????? ?? ??????? ?  
????????? ??????????, ??????, ??? ?? ??????? ??? ?????????? ????? ?????????? ?????  
????????? ?????????? ??? ?? ?????????? ?????? ? ?????????? ??? ?????????? ???  
????????? ??? ??, ???????, ??? ??????? ?? ?????????? ??? ??? ??? ?????????? ???  
??????????, ??????, ??? ?? ?????????? ?????????? ??? ? ?????? ?????? ??? ??

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

27 ?? ??? ?????????? ?????????? ???, ??? ?? ?????????? ?? ? ?????????? ?????? ???  
????????? ?????? ?????? ?????? ??? ?????????? ?????? ?????????? ?????????? , ? ? ???? ??????????  
????????? ??? ???? ?????? ??? ?????????? ??? ?????????? ?????? ?????? ?????????? ??????????  
?????????. ?? ??????????, ?????????? ???? ?????????? ?????? ?????????? ?????????? ?????? ??????????  
??? ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ?????? . ??? ?????????? , ?????????,  
????? ? ?????????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.  
??????, ?????????? ??? ?????? ?????? ??? ?????? 50d, ?????????? 3, ??? EStG  
????????? ????, ??? ?????????? ??? ?????? ?????? ?????? , ?? ?????????? ?????????? ??????  
????????? ??? ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

29 ?????????, ??? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? , ?  
????? ?????????? ?????? ?????????? ?????????? ?????????? , ?????????, ?????????? ???  
????????????? ? ?????????? ?????????? ?????? ?????? ?????? ?????? ?? ?????????? , ???  
????????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ???  
????????? ?????????? , ??? ??? ?????? ??? ?????? 50d, ?????????? 3, ??? EStG.

30 ?????????, ??? ?? ?????????? ? ?????? ? ? ?????????? ??? ?????? ?????? ?????? , ??? ??  
????? ?????????? , ? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?? ?????? ??? ??  
??? ?????????? ??? ?????? ?????? 50d, ?????????? 3, ??? EStG. ??? ??????????  
??, ? ?????? ?????? ?????? ?????? , ?????? ?? ?????? ?? ?????? ?????? , ??? ??????  
?? ?????????? ??????.

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

32 ?? ? ? ?????? ?????????? ?????? ??? ? ? ?????? 50d, ?????????? 3, ??? EStG ??????  
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ? ?????? ??????  
????????? ??? ?????? ?? ? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?????? ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????????? ?????? ???, ?????? , ?? ? ? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ? ??????.

33 ??? ?????? ??? ?????? ??? ? ? ?????? ??? ?????? ?????? ??? ? ? ?????? ?????? ?????? , ?? ??????  
????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??????  
????????? ??? ?????? 1, ?????? 2, ??? ?????? ?????? , ?????? ?? ?????? ??? ??????.

??????, ??? ?????? ??? ?????????? –????????? ??? ?????? ??? ?????????? ?????????? ??? ???  
?????????, ??? ???????, ??? ??????? ? ??? ?????? – ??? ?????????? ?? ??? «?????????».  
?? ?? ??? ?????????? ???, ??? ??? ??????? ???, ??? ?????? ??? ?????????? ???, ? ?????? ??? ?????????? ???  
????????? ??? ?????? 1, ?????????? 2, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????, ????, ?? ??? ?????????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
??? ??????.

34 ??? ??? ?????? ??? Finanzgericht Köln (????????? ??? ?????????? ??? ??????)  
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
???? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???' ?????? ??? ?????????? ??? ?????? ???  
?????????:

«1) ??? ?????? ??? ?????? 49 ???, ?? ?????? ??? ?????? 54 ???, ?????? ??? ??????????  
??????, ??? ? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
[????? C-504/16] (?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ? ?? ??? ?????? ??? ?????? ??? ?????? [????? C-613/16]), ?????? ?????? ???  
????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ???

– ??? ?????????? ??? ?????????? ? ??? ?????? ??? ?????? ??? ?? ??? ?????????? ???  
????????? ??? ?????? ???

– ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? 10 % ??? ?????? ??? ?????????? ??? ?????? ???  
??? ?? ??? ?????? ??? ?????? ??? (????? ?? ??? ??????, ??? ?????? ???, ??? ?? ??? ??????  
????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ???) ?

– ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????,

??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???;

2) ??? ?????? ??? ?????? 5, ?????????? 1, ?? ?????? ??? ?????? 1, ?????????? 2,  
??? ?????? 90/435/???, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? [????? C-504/16] (?? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? [?????  
613/13]), ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

– ??? ?????????? ??? ?????????? ? ??? ?????? ??? ?????? ??? ?? ??? ?????????? ???  
????????? ??? ?????? ???

– ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? 10 % ??? ?????? ??? ?????? ??? ?????? ???  
??? ?? ??? ?????? ??? ?????? ??? (????? ?? ??? ??????, ??? ?????? ???, ??? ?? ??? ??????)

???????????? ? ?? ?????????? ?????????? ?????????????? ??? ?? ?????????????? ?????????????? ??????????) ?

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

?? ?? ?????????? ?????????? ?????????????????? ?????????????????? ??? ?????? ?????????????? ??  
????????? ????? ?? ?????????????? ????? ?? ?????????? ??????????????????;»

35 ?? ?????????? ??? ?????????? ??? ?????????????? ??? 6?? ?????????? 2017, ?????????????? ??  
????????????? ??? ?????????? C-504/16 ??? C-613/16 ??? ?????????????? ??? ?????????? ??  
????????????? ??? ??? ?????? ?????? ??????????????.

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

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

36 ? ?????????? ?????????? ?????????? ??? ?? ?????????? ??? ?????????????? ??? ?????? ??? ??????  
?????????, ??????? ??????? ?? ?????? ??? ?????? 50d, ?????????? 3, ??? EStG,  
????????????? ?? ?????? ??? ?????? ?????????? ??? ??? ?????????? ??? ?????????? ??? ??????????  
????????? ??? ?????????? ??????????.

37 ??? ?????? ??? ?????? C-504/16, ? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ?? ??????  
????????? ??? ?????? ??? ?????? ?? ? ?????????? ?????????????? ??? ?? ?????? 1, ?????????? 2,  
??? ?????? ??? ??? ?????? ??? ??? ?????????? ??? ??? ?????????? ??????????, ?? ?????????? ?? ?? ?????? 5,  
????????? 1, ??? ?????? ???, ?????????? ?? «?????? ?????????? ?????????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???, ??? ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ???, ?????????, ??? ?????????? ??? ?????????? ???  
????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

38 ??? ?????? ??? ?????? C-613/16, ??? ?? ??? ?????? ?????????? ??? ?????? ?? ??????  
????????? ??? ?????? ??? ?????? ?? ? ?????????? ?????????????? ??? ?? ?????? 1, ?????????? 2,  
??? ?????? ??? ??? ?????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? 5,  
????????? 1, ??? ?????? ???, ?????????? ?? «?????? ?????????? ?????????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ? ? ?????? ??? ?????? ??? ?????? ???, ?????????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ???, ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

39 ??? ?? ?????????? ???, ??? ?????? ?????? ?????????? , ? ?????????? ??? ?????? ???  
????? 267 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ???, ?? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? (?????? ??? 8?? ?????????? 2016, Eurosaneamientos .??., C-

532/15 ??? C-538/15, EU:C:2016:932, ????? 26 ?????? ??? ????? ?????????????? ??????????).

40      ?????????? ?????????????? ??????, ?????????????? ?????????????? ??? ??????  
????????? ?? ?????? ??? ??????????? ??? ???????, ??? ?????? ??? ?????? ??? ??????????  
????????? ??? ??????????? ?? ???????, ?? ??????????, ?????????????? ?????? ??? ??????????  
??? ??????????, ??? ??? ?????????? ?????? ?????? ?????????????? ?????????? ??? ??? ??????  
??? ?????? ??? ?????????? ??? ??? ?? ?????????? ??? ?????????? ??? ?????????? ???  
?????????. ???????, ?????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ???  
?????? ??? ??????, ?? ?????????? ???????????, ???' ????, ?? ?????????? ??' ????  
(?????? ??? 8?? ?????????? 2016, Eurosaneamientos ?.., C-532/15 ??? C-538/15,  
EU:C:2016:932, ????? 27 ????? ??? ??? ?????????????? ??????????).

41      ????? ??????????, ??? ?? ?????????? ??? ?????????? ?? ?????? ?????????? ?????????? ??  
???? ??????? ?? ?????? ??? ??????? ?? ??????, ?????? ?? ?????????? ?? ?????? ?????????? ??  
?? ?????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??  
?? ?????? ?? ??????????, ?????? ?? ??????? ?? ?????? ?? ?????? ??????. ?? ?????????? ??  
?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????????? ?? ?????? ??  
????????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????? ?????, ??? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??  
????? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?? ?????? ??  
????? ?????? (??????? ?? 8?? ??????????)  
2016, Eurosaneamientos ?., C-532/15 ?? C-538/15, EU:C:2016:932, ????? 28 ????? ??  
???? ?????????????? ??????????).

42 ??????????? ? ??????????, ??????, ???, ??? ???? ?????????? ??? ?????? ??????, ??  
?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?? ??????  
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? 50d,  
????????? 3, ??? EStG, ?????????? ?? ?????? ?? ?????????? ??? ?????? ??? ?????????? ???  
????? ??????????. ???????, ?????? ?????????? ??? ?? ?????????? ?????? ??????.  
????????? ?????????????? ??? ??? ?????? ??? ?????? ?????? ?????.

43      ??? ??? ????????, ????, ????, ?? ????, ?????? ????????, ???, ????????, ???, ????????, ??  
Finanzgericht Köln (??????????, ???????????, ???, ????????).

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

44 ?? ?? ??????? ??, ?? ?????? ?????? ?? ??????????? ?? ???????, ?? ??????  
?????????? ??, ???' ??????, ??? ?? ????? 1, ?????????? 2, ??? ??????? ?? ????  
????????? ?? ???? ??????????? ???????, ?? ?????????? ?? ?? ?????? 5, ?????????? 1, ???  
???????? ??, ????, ??? ?? ????? 49 ????, ???????, ????? ?? ?????? ???  
????????????? ?? ?????????? ?????????? ??????? ?????? ??? ? ??????? ??? ?????? ???  
?????? ??, ?? ??? ??, ????, ???? ?????? ??????? ??????? ?? ?????????? ???  
????????? ??????? ??????? ??????? ?? ?? ?????????? ??????? ??????? ? ??????? ???  
????????????? ?? ???? ??, ??? ?????????? ?????? ?? ?????????? ??????? ????  
????????? ??????? ???????, ??? ?????????? ?????? ?? ?????? ?????? ??????? ??????? ???  
??? ??????????? ?? ???? ??, ??? ??????? ?????? ?? ?????????? ??????? ??????? ???  
????????? ??? ??????? ??, ??? ??????? ?????? ?? ?????? ?????? ??????? ??????? ???  
???? ?????? ??

???? ??, ??? ????? ???? ???????, ??? ?????? ?????? ?? ?????? ? ?????? ?????? ??? ?????? ??????????? ??  
?????????? ?????? ??????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ??? ?????? ???  
????????? ??????, ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???  
????? 1, ?????????? 2, ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? (??., ???  
?? ?????? ???, ?????? ??? 7?? ?????????? 2017, Eqiom ??? Enka, C-6/16,  
EU:C:2017:641, ?????? 15 ??? 17).

46    ???????, ?????????? ??? ? ??????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
????????? ??? ?????? ??? ???? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??????.

?? ?? ?????? 1, ?????????? 2, ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
???????, ?? ?????? ??? 5 ??? ?????? ??????

47    ??????????, ?????? ?? ?????????????? ??? ?? ?????????? ??? ?????? ??????????????,  
?????, ??? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????? ??? ??? ?????? ??? ?????? ?????? ?????? ???, ????????, ??? ?? ?????? ???  
??? ?????? Deister electronik ??? Traxx ??? temp-team Personal ??? Juhler Holding  
????????? ??? ?????? ?????? 5, ?????????? 1, ??? ?????? ??????.

48    ??? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????. ? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? (????? ??? 8??  
????? 2017, Wereldhave Belgium .??., C?448/15, EU:C:2017:180, ??? 25 ??? 25 ???  
????????? ??????).

49    ??? ???, ? ??? ?????? ?????????? ??? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ???,  
????????? ?? ??? ?????????? ? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????????? ???  
??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

50    ?? ??? ?? ??????, ?????????? ?? ?????? ??? ?????? ??? ?????? ??????????, ?? ??? 5,  
????????? 1, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? (????? ??? 7??  
????????? 2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641, ??? 22 ??? 22 ???  
????????? ??????).

51    ?????????? ??? ?????? ??? ?? ?????????? ?? ?????? ?????????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (????? ??? 7??  
????????? 2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641, ??? 23 ??? 23 ???  
????????? ??????).

52    ???????, ??????? ??? ???? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???

?????????? ????? ?????????? ??? ?????????????? ?????????????? ??? ?????????????????? ??????????????  
??? ?????????? ??? ??????, ?? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??????????  
????????????? ??? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?????? ?? ?????????? ?????????? ??? ???  
????????????? ??? ?????? ??? ?????????? ?? ?? ?????? ?????? 5, ?????????? 1 (??., ??? ???  
????? ????, ?????????? ??? 17?? ?????????? 1996, Denkavit ???., C-283/94, C-291/94 ??? C-  
292/94, EU:C:1996:387, ????? 26, ????? ??? ??? 7?? ?????????????? 2017, Eqiom ??? Enka, C-  
6/16, EU:C:2017:641, ????? 24 ????? ??? ??? ?????????????? ??????????).

53      ???????, ?? ????? 1, ??????????? 2, ??? ??????? ??? ???? ?????????? ??? ??? ???????????  
???????, ?????????? ??? ??? ????? ?? ?????????? ?? ?????????? ?? ?????????? ??????? ?????????? ?  
????????? ??????? ?????????? ?????????? ?? ?????????? ?????????? ?????????? ??????? ???  
??????????, ??????? ?????????? ??? ??? ?????????? ?????????? ??? ??? ?????????? ??? ?????????? ? ??  
?????????.

54      ????? ???? ?? ?? ????? ?????? 1, ??????????? 2, ?????? ?? ?????????? ??? ?? ??????  
?????????? ?????????? ?? ?????? ?????????? ?????? ?? ?????? ?????????? ?????????? ??????????  
???, ?????? ? ?????? ?? ?????????? ?? ?????????? ?? ?????? 1, ?????????? 2, ??? ???????????,  
?????????, ?????? ????, ?? ?? ?????????? ?? ????????, ??????, ?????? ? ???????, ??  
???? «?????????».

55 ???????, ?????????? ? ?????????? ???, ??? ??? ??????? ??? ?????? 1, ??????????  
2, ??? ?????? ??? ?? ??????? ??? ??? ?????????? ??????, ??? ?????? ?????? ??? ?? ???  
??? ?????????????? ?????? ??? «?????????» ??? ?????? ??? ??? ??????????.  
??????????, ?? ??? ?? ??? ???????, ?? ??? ?????????, ?? ??? ?? ?????????? ???  
???? ?????? ?? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
??????????, ??? ??? ?? ?????????????? (??., ???' ???????, ??????? ??? 17?? ??????)  
1997, Leur-Bloem, C-28/95, EU:C:1997:369, ?????? 38 ??? 43).

56 ? ?????? ??? ???? ?????? ?????? ?????????? ?? ???? ???? ?????????? ?? ???? ???? ???? ????  
?? ?????????? ?????????? ?????? ??? ?????????? ?? ???? ???? ???? ???? ???? ???? ???? ???? ????  
???? ?????? ??? ?????? ??? ???? ?? ??? ?????????? ?? ???? ???? ???? ???? ???? ???? ???? ???? (?.,  
??? ??? ?????? ???, ?????????? ??? 18?? ?????????? 1987, Maizena ?.??., 137/85,  
EU:C:1987:493, ??? 15, ??? ??? ??? 30?? ?????? 2011, Meilicke ?.??., C-262/09,  
EU:C:2011:438, ??? 42 ??? ??? ??? ?????????? ??????????).

57      ????????, ??? ???? ?????????????? ?????? ?????????????? ??? ?????????????? ?????????????? ,  
????????????? ??? ?????????? ??? ?????? ???, ??????? ?????? 1, ?????????? 2, ???  
????????? ??? ??? ?????????? ??? ??? ?????????????? ??????????, ?????? ?? ?????????? ??? ???  
????????? ?????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ???  
????? ????.

58     ? ??????? ???? ?????????????? ??? ?? ???? ?????? ??? ?? ???? ?????? ?????,  
????? ?????????? ??? ?? ???? 48 ??? 52 ??? ?????? ??????????, ??????????, ?? ???  
????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ?????????? ??? ??????????  
??? ??????, ??? ?????????? ??? ?????????? ?????????? ?? ??????? ??????.

59      ????? ?????? ?? ?????? ??? ?????????????? ?????????????? ?????? ?? ????????????,  
????? ??? ?????? ?? ?????? 1, ?????????? 2, ??? ?????? ??? ?? ?????? ??? ????  
????????? ???????, ?????? ?? ?????? ???, ?????? ? ?????? ?????? ??? ?????? ?????  
????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ? ?????? ???, ?????? ??? ?????? ???  
????????? ?????? ?????????? ?????? ?? ?????? ?????????? ??? ?????? ?????? ??? ????  
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???, ?? ????  
????? ?????? ?? ?????????? ?????? ?????? ??? ?????? ?????????? ??? ?? ?????? ?????? ??? 24??

?????? 2010, P. Ferrero e C. ??? General Beverage Europe, C-338/08 ??? C-339/08, EU:C:2010:364, ????? 45, ????? ??? ??? 8?? ??????? 2017, Euro Park Service, C?14/16, EU:C:2017:177, ????? 49 ??? ??? ?????????????? ??????????).

60      ?? ??????????? ??????????? ???, ??? ?? ??????? ??? ?????? ?????????? ??  
?????????? ??? ?????????? ?????? ??? ???????????, ? ??????? ??? ?????? ?? ?????? ??  
????? ? ?????????? ??????????? ??? ?????????? ??? ?????????? ?????? ??????? ???????  
??????????, ?? ?????? ??? ????? ?????????? ?????????? ??? ??????? ??? ?????????? ???  
????????? ?????????????? ?????????? ?????????? (??????? ??? 7?? ????????????  
2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641, ??? 30 ??? ??? ??? ???????????  
?????????).

61 ????????, ??? ?????? ?????????? ?????? ??? ?????????????? ??? ?????? ?????? ?????????? ??  
????????????? ?????????? ?????? ?? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??????  
????????? ? ?????? (??????? ??? 7?? ?????????? 2017, Eqiom ??? Enka, C-6/16,  
EU:C:2017:641, ??? 31 ??? ??? ?????????? ??????????).

62    ??? ?? ?????????????? ????. ????. ????. ????????. ?????????? ?? ?? ?????? ???. ??  
???????????, ?? ????????. ????????. ?????? ???. ?????? ?????? ????????. ?? ?? ?????????????? ???.  
????????? ?????????????????? ????????. ??????????, ???. ?????? ????????. ?? ?? ?????????? ???. ???.  
????????? ?????????? ???. ????????. ??????. ?. ? ?????????? ?????????? ?????? ?????? ?????? ??????.  
??? ?????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ????. ????. ????. ???.  
????????? ??????????,, ?????? ? ?????????? ?????? ???. ?? ?? ?????????? ???. ?? ?? ?????????? ???.  
???. ???. ?????????? ? ?????????? ?????? ? ?????? ??????????, ???. ?????? ?????? ???. ???. ???.  
????? ???. ???. ?????????? ?????? ? ?????????? (???????. ???. 7???. ?????????? 2017, Eqiom  
??? Enka, C?6/16, EU:C:2017:641, ????. 32 ?????? ????. ????. ?????????????? ??????????).

64      ???????, ?????????? ? ??????????, ??????, ??? ? ??????? ????? ????? ?????  
????????? ??? ????? ?? ?????? ?????? ?? ?????????? ??? ?? ?????????? ?????????? ???

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

65 ??? ???????, ?? ??????? ??? ?????? ??? ?? ??????? ??? ?????? ?????????? ??????? ??????????  
??? ???????????, ???????, ??? ?????? ?????? ??????? ?????????? ?????????? ? ?????? ??? ??  
????????? ?????????? ??????? ??????? ??? ?????????? ??????? ?????????? ??????? ??? ??  
????????????? ?????????? ?????????? ???????.

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

67 ???, ??? ??????? ?? ?????????? ??? ? ?????????????? ??? ?????? ??????? ??????? ???????  
??????????, ?? ??? ???????????, ??? ?????????? ?????????? ??? ??????? ??????? ??????? ??? ??  
??? ??????? ?????? ?????????????? (?????? ??? 7?? ?????????? 2017, Eqiom ??? Enka, C-  
6/16, EU:C:2017:641, ??? 35 ??? ?????? ??? ?????????? ?????????? ???).

68 ???, ? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????????? ???  
????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????? 5, ??????????  
1, ??? ??????? ??? ??? ??????? ??? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ?? ???  
????????? ??? ??? ??? ?????? ?????????????? ??? ?????????? ??? ?????????? ? ??? ??? ?????? ??????????, ??  
????????? ?????????? ??? ?????? 63 ??? ?????? ?????????? ??????????.

69 ???, ?????????? ? ?????????? ??? ?????????? ??? ?????, ??? ? ?? ??? ?????? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???, ?????????? ???  
????????? ??? ?? ??? 62 ??? ?????? ??? ???????, ??? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
??? ?????????? ??? ???????, ?????????? ??? ?????? ??? 5, ?????????? 1, ?????? ??? ??????  
??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??  
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??  
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??

70 ???, ? ?? ??? ???????, ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??  
????????? ??? ?????????? ?' ????, ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ??????.

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

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

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

75      ??????? ???? ????????????????, ?????????????? ? ?????????????? ??? ?? ?????? 1, ?????????????  
 2, ??? ??????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ???????, ?? ?????????? ?? ?? ??????  
 5, ?????????? 1, ??? ??????? ????, ??? ?? ?????? ??? ?????????? ?? ?????????? ?? ??????  
 ?????????? ?????????? ??? ? ??????? ?????? ??? ?????? ?????? ??? ?????? ??????.

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

76     ???? ?? ?????????? ??? ?????????? ?????????? ??? ?? ?????? ??? ??????????  
????????????? ??? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ??????????????  
??? ??? ??? ?????????? ?????????? ??? ?????????? (?????? ??? 7?? ?????????? 2017,  
Eqiom ??? Enka, C-6/16, EU:C:2017:641, ??? 39 ?????? ??? ??? ?????????? ??????????).

79     ?? ??????????, ???? ?????????? ??? ?? ?????????? ???? ??????????, ? ??????? ??  
????? ???? ?????????? ?????????? ???? ?????????? ???? ?????????? ???? ?????????? ???? ??????????

????????????? ?? 15 % ??? ?????????? ??? ?????????? ????. ??????????, ? ??????? ????.  
????????? ??? ?????????? ?????????? ?? ??? ??? ??? ?????? ??? ?????????? ????.

80 ?? ?? ??? ????? ?????????? ?????????? ??? ?????????? ???' ?????? ??? ? ??????? ??? ?? ???  
?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????? (?).., ??? ??? ?????? ???, ?????? ??? 7?? ?????????? 2017, Eqiom ???  
Enka, C-6/16, EU:C:2017:641, ??? 43 ??? ??? ?????????? ??????????).

81 ??? ??? ?????? ????, ?????? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ???  
????????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ?? ??? ?????? ??? ?? ??? ?????? ???  
????????? (?)????? ??? 7?? ?????????? 2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641,  
????? 44 ??? ??? ?????????? ??????????).

82 ??? ????, ????, ??? ?????? C-504/16, ??? ?? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? Traxx ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????????? ?????????? ???, ?????? ?????????? ?????????? 26,5 % ??? Deister  
electronik. ?? ??????????, ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??  
??? ?????? ??? ?????? ?????????? ??? ?? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??????????.

83 ??? ????, ????, ??? ?????? C-613/16, ??? ?? ?????????? ??? ?????????? ???  
????????? ??? ?????? ??? Juhler Holding ??????, ??? ?? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? ???, ?? ?????? ??? temp-team Personal.  
????????? ???, ?? ?? ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????? ??? ?????? ??? ?????? ???.

84 ??? ?????? ????, ????, ?? ?????????? ??? ? ?????????? ??? ? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? (?).., ??? ??? ?????? ???, ?????? ??? 7??  
????????? 2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641, ??? 48 ??? ???  
????????? ??????). ?????, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????????? ???  
??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

85 ??? ????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ???  
????????? ??????.

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

86 ? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? 49 ??? ??? ?????? ???  
??? ??????, ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

??? ??? ???? ?????? ??? ??????? . ? ?????????? ??? ????? ??????????????, ??? ? ???? 54 ???, ???  
??? ?????????? ??? ??? ????? ?????? ??? ?? ???? ?????? ??? ????? ???? ?????? ??? ??  
?????? ??? ???? ??? ?????????? ??? ???, ??? ?????? ??? ????? ???? ?????? ? ??? ???  
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
(????? ??? 7? ?????????? 2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641, ??? 52 ???  
??? ??? ?????????? ??????).

87 ??? ???? ??? ???? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ???? ????  
??? ?????????? ??? ?????? ???, ??? ?????? ??? ?? ???? 49, ??? ???? ?????, ???  
??????, ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? (????? ??? 7? ?????????? 2017, Eqiom ??? Enka, C-  
6/16, EU:C:2017:641, ??? 53 ??? ??? ?????? ?????? ??????)).

88 ???, ??? ???? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???  
EU:C:2017:641, ??? 54 ??? ??? ?????? ?????? ??????)).

89 ?? ??????????, ??? ???? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? 5, ??? ?????? 1, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???).

90 ? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?????????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??????, ?? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ???).

91 ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? (????? ??? 7? ?????????? 2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641, ???  
57 ??? ??? ??? ?????? ??????)).

92 ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 50  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???).

93 ??? ???? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???).

??? ??? ??????? ??? ??? ?????? ?????? ??? ??????????? ??? ?????????????? ??? ??? ?????????????? ??? ??? ?????????? ???  
??? ?????????????? ??? ??? ?????????? ??????, ??? ??? ??? ??? ?????????????? ??? ??? ?????????? ??? ??????????  
?????????, ??? ?? ?????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ????? ?????????? ??? ??????????  
????????? ??? ?? ??? ?????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????  
????????? (????????? ??? ?? ??? ?????????? 2017, Eqiom ??? Enka, C?6/16, EU:C:2017:641, ???  
59 ????) ??? ?????? ?????? ?????????????? ??????????).

94 ??? ?????? ?????????? ??? ?????? ???, ? ?????????????? ?????????????? ??? ?????????? ??? ??????????  
????????? ?? ?????????? ?? ?????????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ??????????  
????????????? ??? ????? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ?????????????? ???  
????????? ????????, ??? ????? ?????? ?? ?????? ?????? ??? ?? ?? ??? ?????? ?????????????? ???  
????????? ????????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?? ?? ??? ?????? ?????????????? ???  
?? ?????? ??? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???, ?? ?????????? ??????????  
?? ?????? ??? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????.

95 ??? ?????? ?? ?????????????? ??? ??? ?????????? ?????????? ??? ?????????? ??? ?????????????? ?, ?  
????????????? ?????????????? ??? ?????????? ?????????? ??? ?????????? ??? ? ?????????????? ???  
????????????? ??? ??? ??? ?????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???  
????????????? ??? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

96 ??? ??????, ??? ?????? ?? ??????????, ??? ?????, ??? ? ?????? ?????????????? ??? ?????????????? ???  
????? ??? ??? ?????????????? ??? ? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???  
????????? ?????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????????? ???, ??????????, ???  
????? ?????? ?? ?????????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????????? ??????????????  
??? ?????? ?????????? ??? ??????, ??? ?????? ?????????? ?????????????? ?????? ?????? ??????  
????????? (????????? ??? ?? ??? ?????????? 2017, Eqiom ??? Enka, C-6/16, EU:C:2017:641,  
????? 63 ????) ??? ?????? ?????? ?????????????? ?????????).

97 ??? ?????, ?????????????? ? ?????????? ??? ? ?????? ??? ?????????????? ???  
????????????? ??? ?????? ??? ??? ?????????????? ??? ??? ? ?????? ?????????? ??? ?????????? ??? ??  
????????? ?????????? ??? ???' ?????????? ??? ?????? 1, ?????????? 2, ??? ?????? ??? ?? ???  
????????? ??? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????????????? ??????????  
??? ?????????? ?????? (????????? ??? ?? ??? ?????????? 2017, Eqiom ??? Enka, C-6/16,  
EU:C:2017:641, ??? 64). ?? ?? ??????, ?? ??? ?????????? ??? ?????? ??? ?????? 60 ?? 74 ??  
??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

98 ??? ??????, ??? ?????? ??? ?????????? ?????????? ??? ?????????? ?????????????? ?????????? ???  
????? ????, ??? ?????? ??? ?????????????? ???, ?????????????? ??? ?????? ??? ?????? ??? ??????????  
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ? ?????????????? ??? ?????? ???  
????????? ?????? ??? ?????????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ???  
????????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

99 ??? ??????, ? ?????? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????????????  
??? ? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????????? ?????????? ???  
??? ?????? ??? ?????? ??? ?????? ??????, ?? ??????????, ?? ?????????? ?????? ?????????? ???  
????????? ??????.

100 ??? ??? ?????? ???????, ??? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ? ??????  
?? ?? ?????? 1, ?????????? 2, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???  
?? ?????????? ?? ?? ?????? 5, ?????????? 1, ??? ?????? ??? ?????, ????, ??? ?? ?????? 49  
????, ???????, ??? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ?????????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????, ??? ??????

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

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

101 ??? ??????? ??? ???? ?????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ???  
??? ?????????? ?????????????? ??? ?????? ?????????? ??? ?????????? ??????????????, ?' ???  
????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ?????? ??????????  
???? ?????? ?????????? ??? ?????????? ??? ??????????, ??? ??? ?? ??? ?????????, ??? ??????????.

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

? ???? 1, ?????????? 2, ??? ?????? 90/435/??? ??? ??????????, ??? 23? ??????  
1990, ??????? ?? ?? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ??? ??????  
??? ??? ?????????? ?????????? ?????????? ?????? ?????, ??? ????  
????????????? ?? ??? ?????? 2006/98/?? ??? ??????????, ??? 20?? ?????????? 2006,  
?? ?????????? ?? ?? ?????? 5, ?????????? 1, ??? ?????? ??????, ??????, ??? ?? ??????  
49 ????, ???????, ?????? ??? ?????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ??????????  
????????? ?????? ?????? ??? ?????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????, ? ????,  
???? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ??? ??  
????????? ??? ?????????? ? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ?????????? ??????????, ???  
????????? ??? ?? ??? ?????? ??????, ??? ?????????? ??? ??? ?? ??? ??????????????  
??? ?????????? ?? ?? ?????????? ???, ??? ?????? ??? ??? ?????????? ??? ?????? ???  
????????? ?????? ??? ?????????? ???.

(?????????)

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