

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

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

??? 26?? ??????????? 2019 (*)

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

???? ??????? C?581/17,

?? ??????????? ?????? ?????????????? ?????????? ??????? 267 ????, ??? ??????? ?? Finanzgericht Baden-Württemberg (?????????? ?????????? ??????-??????????, ???????), ?? ??????? ??? 14?? ??????? 2017, ? ????? ??????? ??? ?????????? ??? ?????????? ??? 4 ?????????? 2017, ??? ??????? ??? ??????

Martin Wächtler

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Finanzamt Konstanz,

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

?????????? ??? ??? K. Lenaerts, ???????, R. Silva de Lapuerta, ???????????, J.-C. Bonichot, A. Prechal, M. ???????, K. Jürimäe ??? ?. ???????, ?????????? ???????, A. Rosas, M. Illeši?, J. Malenovský, M. Safjan, D. Šváby ??? C. G. Fernlund (????????), ???????,

????????? ??????????: M. Wathelet

?????????: K. Malacek, ?????????? ??????????,

?????? ?????? ??? ??????? ??????????? ??? ??????? ??? ??' ??????????? ??????????? ??? ??? ??????? 2018,

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

- ? M. Wächtler, ?????????????? ??? ??? R. Bock, Rechtsanwalt,
- ? ?????????? ???????, ?????????????? ??? ??? T. Henze ??? R. Kanitz,
- ? ?????????? ???????, ?????????????? ??? ??? S. Jiménez ??? V. Ester Casas,
- ? ?????????? ???????, ?????????????? ??? ??? C. Pesendorfer,
- ? ?????????? ???????, ?????????????? ??? ??? M. Wasmeier ??? B.?R. Killmann, ????? ??? ??? M. Šimerdová ??? N. Gossement,

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

?? 27 ?????????? 2018,

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

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1 ? ?????? ?????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????
????? ???, ??????, ??? ??? ?????????? ??????????????, ???????, ? ?????? ?????????? ???
????????????? ??? 21 ?????? 1999 (?? 2002, L 114, ?, 6, ??? ????: ?????????? ??-????????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? M. Wächtler ???
??? Finanzamt Konstanz (????????????? ??? ?????? ??? ???????????, ???????), ?? ??????????
??? ?????? ??? ?? ?????? ?? ?????? ??? ??????????, ??????? ??? ?????????? ??? ??????????
??? M. Wächtler ??? ?? ?????????? ??? ???????, ?? ?????????? ?????? ??? ??????????
????????? ??? ?? ?????? ?????????????? ??? ???????, ??? ?????? ?????? ?????? ??????????
?????????.

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

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

3 ? ?????????? ?????????? ??? ?? ?????? ???, ???????, ??? ? ??????????
?????????????, ???????, ?????????, ??? 21 ?????? 1999, ??? ??????????, ??? ??????
????????? ??? ? ?????????? ??-?????????. ?? ??? ?????? 2002/309/??, ??????? ???
????????? ??? ??? ?????????, ??????? ?? ?? ?????????? ?????????????? ??? ??????????????
??????????, ??? 4?? ?????? 2002, ??? ?? ?????? ??? ?????????? ?? ??? ??????
????????????? (?? 2002, L 114, ?, 1, ??? ?????????? EE 2015, L 210, ?, 38), ?? ??? ??????
????????? ?????????? ?? ?????????? ??? ?????????? ?????????????? ??? ?????? ??? ??????
??? 1? ?????? 2002.

4 ??? ? ?????????? ??? ?????????? ??-????????, ?? ?????????????? ??? ??????
«????????????? ?? ?????????? ??? ?????? ??? ?????????? ?????????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????».

5 ?? ??? 1 ??? ?????????? ??? ?????? ??? ????:

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

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

[...]

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

?) ?? ?????????? ??? ?????? ?????????? ??????????, ?????????????? ??? ?????????? ?? ???
????????? ??? ?????? ??????????»

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

12 ?? ??? 21 ??? ??????? ??-??????, ?? ??? ?????? «????? ?? ???
????????? ??????? ??? ?????? ??? ?????? ??????», ????:

«1. ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?????????? ?? ?????? ?????? ?????????? ??? ?????????? ???
??? ?????? ??????. ???????, ?? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????????? ??????????, ??? ?????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???»

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

3. ?????? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ???
????????? ?? ?????????? ??? ?????? ??????????, ?????????? ??? ?????? ???
??? ?????? ??? ??????????, ?????? ?? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???»

13 ?? ??????? | ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 6 ??? ?? ??? ?????? ????, ??? ?????? 1, ?? ?:

«? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? (??? ??? ???? ?????)
????? ?????? ??????) ??? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
[...]».

14 ?? ?????? 7, ?????? 1, ??? ?????? ??? ?????? ??? ?????? ?? ?:

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

15 ?? ?????? 9 ??? ?? ??? ?????? ???, ?? ??? ?????? «????? ?????? ???»,
?????, ??? ?????? 1 ??? 2, ?? ?:

«1. ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ???, ?? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???»

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

2. ? ?????????? ?????????? ??? ?? ??? ???? ??? ?????????? ??? [...] ????? ?? ???
????????? ??? ?? ?????? ?????????? ??? ?? ????? ?????? ?????????? ??? ??
????? ?? ?? ??? ?? ?????? ?????? ??? ??»

16 ?? ??????? III ?? ?????????????? | ?? ?????????????? ??-?????????, ?? ?????? ?????? ????
????????? ??????????????, ?????????????? ?? ????? 12 ??? 16 ??? ??????????. ?? ?????
12 ??? ????????, ??? ?????????? «?????? ?? ??????????», ??????, ??? ?????????? 1, ??
????:

17 ?? ????? 13 ?? ?? ????? ??????????????, ???. ?????????????? «????????????? ??????????
?????????????», ??????, ????. ?????????????? 1, ?? ????:

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

18 ?? ????? 15 ??? ????? ??????????????, ?? ?????? ?????????????? «????????? ??????????????»,
?????? ?? ????:

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

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

19 ?? ?????? 1 ??? ??????? ?????? ??? ?????????? ?????????????? ??? ???.
????????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ????.
????? ??? ?????? ?????????? ??? ??????????, ??? 11? ?????? 1971 (BGBI. 1972 II, ?.
1022), ??? ???. ?????????? ???. ?? ?? ?????????? ??? 27? ?????? 2010 (BGBI. 2011 I, ?.
1092) (???. ????: ?????? ????. ??? ?????? ?????????? ?????????????? ??? ???. ??? ???????????.
????????? ??? ???????), ?????? ???. ???:

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

20 ?? ?????? 4, ??????????? 1, ??? ??????? ?????? ??? ?????????? ?????????????? ???
??? ?????????????? ??????????? ??? ?????????? ?????? ?? ??????:

«????? ??? ?????? ??? ??????? ??????????, ? ?????? “????????? ?????????????? ??????”
????????? ??? ?????? ?? ?????, ?????? ??? ?????????? ??? ?? ??? ?????? ??????, ??????
????????????? ?????????? ?????????? ??? ?????? ????.»

21 ??? ???? 13 ??? ???? ??????:

«1. ? ??????? ??? ??? ??????? ????????, ??? ?????????? ??? ?????? 6, ?????????? 2,
????????????? ??? ?????????? ?????? ??? ?????? ?????????? ?? ?????? ????.
2. ? ??????? ??? ??? ??????? ??????? ??? ?????????? ??? ?????? ?????????? ??? ??????
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ??????
????????????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ??? ??????
????????????? ??? ?????? ?????????? ?????? (????? ? ?? ?????? ??? ??????????) ? ??? ?????? ????.
??????, ?????????? ?? ??? ?? ??? ??????. [...]»

3. ? ??????? ??? ??????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ????
????????? 1 ??? 2 ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.
????????? ? ??????????.

[...]

5. ?? ?????????? ??? ?????? ??????????, ??? ??? ?????????? ?????? ?????????? ??????????, ??????
??? ?????? ????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
????????????? ??? ?????? ??? ?????? ??? ?????, ?? ??? ?????, ??? ?????????? ??? ?????????? ????
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?? ??? ?????????? ??? ?????????? 3,
????????? ??? ?? ??? ?????? ?????????? ?? ???, ??? ?? ?????? ?????????? ?? ??? ?????? ????.
??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ????.»

22 ?? ?????? 27, ?????????? 1, ??? ?????? ?????????? ?????????? ?? ????:

«?? ??????? ??? ?????? ??? ?????????????? ??? ?????? ?????????????? ??? ?????????????? ??? ??????
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????????
??? ?????????? ??? ?????????????? ??? ?????? ??? “Länder”, ??????????, ??????????,
??????, ?????? ? ?????? ??? ?????? ??? ?????????????? ????, ??? ?????? ??? ? ??????????????
????????? ??? ?????????? ??? ?????? ?. ? ?????????? ?????????? ??? ?????????? ??? ?????????? ????
?? ?????? 1 ??? 2.»

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

23 ? Einkommensteuergesetz (????? ??? ?????? ?????? ??????????), ?? ?????? ??? ?????? ??? ??????
??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? (BGBl. 2009 I, ?. 3366, ???
????: EStG), ??????, ??? ?????? 1, ?????????? 1, ?? ????:

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

24 ?? ?????? 17, ?????????? 1 ??? 2, ??? EStG ?????? ?? ????:

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

????????????? ??? ?????????? –????? ? ??????– ??? ?????????? ??? ?????????? ?? ???????
?????????? 1 %. [...]

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

25 ? Gesetz über die Besteuerung bei Auslandsbeziehungen (????? ??? ?????????????? ??
????????? ?? ? ??????????), ??? 8?? ?????????? 1972 (BGBI. 1972 I, ?, 1713), ?? ??????
???? ??? ????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? (??? ????:
AStG), ????, ??? 6, ?? ????:

«1. ?? ?????????? ??????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??
??? ?????????? ??? ?????? ???, ???' ??????? ??? ?????? 1, ?????????? 1, ???
[EStG], ??? ??? ?????? ? ?????????? ?????????? ?????????? ?????? ?? ?? ?????????? ???
????????? ??? ?????? ?????? 17 ??? [EStG] ?????????? ??? ?????? ??
[EStG], ??? ??? ?????? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ??
??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???.

[...].

4. ?? ??? ?????????? ??? ?????????? 5, ? ??????? ??? ?????????? ???' ?????????? ???
????????? 1 ?????? ?????????? ????, ?????? ?????? ??????, ?? ?????????? ???
? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??????, ??? ?????? ?? ???
???? ??? ??? ?????? ???, ??? ??? ??? ?????? ?????????? ??????, ?????? ? ?????? ??????
?? ??? ?????????? ??? ?????????? ??? ?????? ?????????? . ? ?????? ??? ?????????? ???
?? ?????????? ??, ??? ?? ?????? ??? ??????, ?? ?????? ?????????? ???
????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 17,
????????? 1, ??? [EStG] ? ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
17, ?????????? 4, ??? [EStG]. [...]

5. ?? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? 1, ??? ?????? ???????,
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ? ?????? ?????? ???
????? ??? ?????? ? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, [?? 2?? ??? 1992
(?? 1994, L 1, ?, 3, ??? ????: ??????? ???)], ??? ???????, ??? ?? ??? ??? ??????????
????????? ??????????, ?? ??? ?? ??? ?????? ??? (????? ??????) ?? ???
????????? ?? ??? ?????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????????? ???
????????? 1 ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??
???? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ? ??????
????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? [...]

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

1) ?? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
1, ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
17, ?????????? 1, ??? ?????? ???, ??? [EStG], ? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 17, ?????????? 4, ??? [EStG]?

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

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

3) ?? ?? ??????? ?????????? ?????????????? ?????????????????? ? ?????? ???????, ? ??????,
????????? ???. ??????? ???????, ?????????? ?????????? ?????????????? ???. ??????? ?????? ?????? ? ????
?????????? ???????

4) ??? ?????????????????? ? ? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????, ????
1, ??? ?????????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ? ??? ?????? ?????? ????.»

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

26 ? ??????? ???? M. Wächtler ????, ??? ?? 1? ?????????? 2008, ??????????
????????? ???????, ??? ??????? ??? ?????? ?????? ?????? ?????????????? ??? ?????? ???
?????? ??????? ?????????? ??? ?????? ?? 50 % ??? ???????
??????.

27 ??? 1? ??????? 2011, ? M. Wächtler ??????? ??? ??????? ?? ???? ?? ??????? ???
???????. ??????? ?? ?????????? ?????, ? ?????????? ??? ????? ?? ?????????? ?????, ???'
????????? ??? ?????? 6 ??? AStG ??? ??? ?????? 17 ??? EStG, ??? ?????????? ??? ???
????????????? ?????????? ??? ?????????? ??? ?????????? ?? ??? ??????????.

28 ?????????? ??? ? ?? ??? ????????????, ??? ?????? ?? ?????????????? ?????? ??????????
??? ??????? ??? ?????????? ??? ??? ???????, ?????? ?????????? ??? ?? ?????????? ??-
?????????, ??? ?????????? ??? ?????????????? ??? ?? ?????????? ?????????? ??????????????, ? M.
Wächtler ??????? ??? Finanzgericht Baden-Württemberg (???????????)
???????????, ?????????? ????????????????, ??????????).

29 ?? ??????????? ?? ?? ??????????? ?? ?? ??????? ?? ?? ??????????? ?? ??
?????? ?? ?? ?? ?? 1, 2, 4, 6, 7, 16 ?? 21 ?? ??????????? ??-??????, ????, ???, ?? ??
????? 9 ?? ???? ??????????? | ?? ???? ???????, ? ??????? ??????????? ???????, ??? ????
?? ???? ??????????? ? ??????????? ?? ??????????? ?? ??????????? ??????????? ?? ??
??????, ???, ??? ??????????? ?? ??????????? ?? ??????????? ?? ???????, ?? ??????????? ?? ??
?? ???? ??????? ??????? ?? ??????????? ?? ??????????? ?? ???????, ???, ?? ???????????
?? ? ?? ?? ?? ??????? ?? ??????????? ?? ??????????? ?? ?? ??????? ?? ??????? ?? ??
?????????????? ?? ??????????? ?? ??????????? ?? ?? ??????? ?? ??????? ?? ?? ??????? ?? ??
???? ?? ?? ??????????? ??, ?? ?? ?? ??????????? ?? ??????? ?? ??????????? ?? ?? ??????????? ??
?????????? ?? ?? ??, ?? ??????? ?? ?? ??????? ?? ??????? ?? ???????, ?? ?? ??????????? ?? ??
?????????? ?? ?? ??????????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ?? ??
?????????? ??, ???????, ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ?? ??????????? ?? ??
?????????? ?? ??????????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ?? ??
?????????? ?? ??????????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ?? ??
?????????? ??, ???????, ? ??????????????? ?? ??????????? ?? ?? ??????? ?? ??????? ?? ??????????? ?? ??
?????????? ?? ??????????? ?? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????????? ?? ??
?????????? ??.

30 ?? ??????? ??????????? ?????????????? ???, ??? ????? ?? ?????????? ??? ???????????
????????? ??? ??????????, ? ??????? ?????????? ??????? ??? ??????? ??? ??????? ??? ???????
??? ????? ?? ?? ??? 6, ?????????? 5, ??? AStG, ?????, ?? ??? ?????? ??????????
????????? ??? ?????????? ??? ?????, ? ?????? ?????????? ??????? ?? ?????????? ??? ??????? ???
????????? ??????????? ??? ?????? ?????????? ??? ??????? ??? ???????, ?????????? ??? ?
????????? ??????? ??? ??????? ??? ?????????? ??? ??????? ??? ??????? ?????????? ???????????
????? ??? ??? ?????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????. ?? ???
????? ??? 11?? ?????? 2004, de Lasteyrie du Saillant (C-9/02, EU:C:2004:138),

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

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

32 ??? ??? ??????? ????, ?? Finanzgericht Baden-Württemberg (?????????? ??????????)
?????-????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ?????????? ?? ?????????? ?????????? ??????:

«????? ?? ?????????? ??? ?????????? ??-???????, ?????? ?? ?? ?????????? ??? ?????? ??? ??
????? ??? 1, 2, 4, 6, 7, 16 ??? 21 ??? ?? ?????? 9 ??? ?????????? ??? ?, ?? ?????? ???
????????? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??
????? ??? ?????? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ??,
??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
??? ??? ?? ??? ?????? ??? [...] ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ?????????? ??? (??), ?????????????? ?? ?????????? ??? ????????, ??
?????????????, ?????????? ??? ?????? ?????? ?????? (????? ?????????? ?????? ???
?????????), ?????????? ?? ??? ?????? ?????? ??????;»

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

33 ??? ?????????? ??? ?????? 30 ??? ?????? ???????, ? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ??? ?????????? ???
????????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????????????
????????? ??? ?????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

34 ??????, ??????, ?? ?????? ?????? ???, ?? ?? ?????? ???, ?? ?????? ?????????? ???
??' ?????? ?? ?????????? ??? ???? ?????? ??? ?????? ??? ?????? ??-???????, ?? ?????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

35 ???????, ? ?????? ??-???????, ?? ?????? ?????? ??? ?????? ?? ??????????

????????? ??? 31 ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
23?? ??? 1969 (*Recueil des traités des Nations unies*, ??? 1155, ?, 331), ??? ?? ????,
?????? ?? ?? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?? ?? ?? ?? ??
??? ?????????? ??? ?????? ??? (????????? ??? 2?? ?????? 1999, Eddline El-Yassini,
C-416/96, EU:C:1999:107, ??? 47, ??? ??? 24?? ?????? 2016, SECIL, C-464/14,
EU:C:2016:896, ??? 94 ??? ??? ?????????? ?????????). ????????, ??? ?? ??????
???? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ??? ?? ?????? ??? ?? ??
???? ? ?????? ??? ?????????????? ?????? (????. ?????? ??? 27?? ?????????? 2018,
Western Sahara Campaign UK, C-266/16, EU:C:2018:118, ??? 70).

36 ??? ?????? ???, ??? ?? ???????????????, ??????, ??? ? ?????????? ??-?????????
????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??
????????? ???????????. ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????
???? ?? ??? ?????? ?????????? ??? ?????? ??? ??????, ?????????? ?????????? ?? ??? ????? ??
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????
????? ?????????? ??? ?????? ??? ?????????? ??????, ??? ?????????? ?????? ??? ?????, ??? ??
????????? ??? ?? ??????. ? ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ?????????,
????????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? (????????? ???
6?? ?????? 2011, Graf ??? Engel, C-506/10, EU:C:2011:643, ??? 33).

37 ???, ???????, ??? ?????? ??? ? ?????? ?????? ?????????????? ??? ??? ?????? ?????????????? ???
????????? ??? ?????? ??? ??????, ? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??-????????, ?????? ?? ?????? ?????????? ??? ?????? ??? ??? ??? ???
????? ?????? (????????? ??? 15?? ?????? 2018, Picart, C-355/16, EU:C:2018:184, ??? 29).

38 ??? ????, ???????, ??? ?????? ??? ?????? ??? ?????????? ??-????????? ??? ??? ?????? ?????????? ???
???? ??, ??? ?? ???????, ?? ?????? 1 ??? ?? ?????? 16, ?????????? 2, ??? ?????????? ???,
????????? ??? ?????? ??? ?????? ? ?????? ?????? ?????? ??? ?????? ?????? ?????????, ?????? ???
????? ??? ??? ?????????? ?????????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ???
????? ??? ?????????????? ???, ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?? ?????????????? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?????????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????.

39 ??? ????, ?? ?????????? ??? ?????? ?????????????? ??? ?????????????? ???
????????????? ??? ?? ?????? 16, ?????????? 2, ??? ?????????? ??-????????? ??????????,
??????, ??? ?? ??? ?????? ?????????? ??? ?????? ?? ?????????????? ??? ?????? ?????????? ??????????????
??, ???????, ???, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????, ? ??????
????????? ?? ??????????, ??? ?? ?????? ??? ?????? ??? ?? ??? ?????????????? ???, ??? ??????????
?? ?? ??? ?????? ?????????? . ??????, ?????? ??? ?? ??? ?????????? ?????? ??? ?????? ???
?????, ? ?????????? ??? ??????, ??? ?????????? ? ?????? ?????? ?????? ??? ?????? ??? ?????? 71 ??
72 ??? ?????????? ???, ?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??
????????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??-????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ?? ??????.

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

41 ??? ?? ?????????? ???, ??? ?? ??? ?? ??? ?????? 1, ?????????? ?? ??? ??, ??? ??????
????????? ??? ?????????? ??-????????? ?????????? ??? ?? ?????? ??? ?????? ??? ??????

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

42 ??? ?? ??????????? ??? ??? ??? ??? ?????? ??? ?? ??? ???????????, ?????????? ??? ? M.
Wächtler ??? ?? ?????????? ??? ??????????? ?? ??? ??????? ??????????? ??? ??????
?????? ?? ??????????? ??? ?? ???????, ??? ?????? ??? ?? ???????????.

43 ???? ?? ?????????? ??, ??????? 1, ????????? ??, ??? ??????????, ?????????? ??, ???
????? ??, ?????? ??????, ? ??????? ?????? ?????? ?????? ?????? ?????????? ??????,
?????????, ?????????? ?? ??????? ?????????? ??????????????, ?????????????? ?? ??????????
????????????? ?? ?? ?????????? ?????????? ?? ??????? ?? ?????????? ?????????? ???. ???
?????, ?? ????? 4 ??? ????? ?????? ?????????? ?????????? ?? ?? ?????????? ?????????? ??
????????? ?? ?????????? ?????????????? ?????????????? ?? ?????????? ?? ?? ?????????? ??
????????????? | ??? ??????????.

44 ?????? ??????? ?? ?????????? ?????????? ??? ?????????????? ??????????????????, ??? ?? ??????????
???????, ??????, ??? ?????? 6 ??? 7 ??? ?????????????? | ??? ?????????? ??-????????? ???,
?????????, ??? ?????? 12 ??? 13 ??? ?????????? ??? ?????????? ??? ? ?????? ?????????? ??? ? ?????????? ??????
????????? ?????????? ??? ?????????? ?????????????? ?????????? ??? ? ?????? ??? ?
????????? ?????????? ?????????????? ?????? ?? ?????????????? ?? «????????? ??????????????»
? ?? «?? ?????? ??????????».

45 ?????????? ???, ?????? ?? ???? ?????????? ??? ? ?????? ??? «????????? ??????????»
????????? ?????? ??? ?????? ??? ?????? (????????? ??? 19?? ?????? 1964, Unger, 75/63,
EU:C:1964:19, ?, 363), ? ?????? ?????? ?????????????? ??? ?????????? ??? ??????????. ??
????????? ?????? ??? ?????? ?????????? ??? ??? ?????? ?????????? ??? ??? ?????? ??????, ??? ??
????????? ?????? ???, ??? ?????? ?????? ??? ??? ?? ?????????? ???, ?????? ??????
?????? ??? ?????? ?????? ???, ??? «?? ?????? ??????????»
????????????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? (??., ???' ??????,
????????? ??? 27?? ?????? 1996, Asscher, C-107/94, EU:C:1996:251, ?????? 25 ??? 26,
????? ??? ??? 20?? ?????? 2001, Jany ?.., C-268/99, EU:C:2001:616, ?????? 34).

46 ?????????? ??? ? M. Wächtler ?????? ?? ??????????????? ??? ?? ??????????
????????????? ??? ??????? ?????????? ??? ?????? ?????? ? ?????????????? ??? ?? ??????
?????? ?? 50 % ??? ????????, ??????? ?? ?????????? ? ?????? ??????? ???
????????????? ??? ??????? ???????????????, ??? ?????????? ? ?????? ?????????? ???
?????? 38 ??? 39 ??? ??????? ???.. ???????, ? M. Wächtler ?????? ?? ??????? ??????????
????????????? ?? ??????? ???????????, ??? ??? ?????? ??? ?????? ??? ?????????? ??-??????.

47 ????? ?????? ?? ?????? ??????????? ratione personae ??? ??????? ??? «??????????
????????????», ???? ??? ?????? ?? ??????????? ??-?????????, ?? ?????????? ???
????????????? ??? ?? ?????????????? ?????? ?????????? ?????????? ??? ?????? 12 ??? 13 ???
????????????? | ??? ?????????? ????? (??????? ??? 15?? ??????? 2018, Picart, C-355/16,
EU:C:2018:184, ????? 18).

48 ???? ?? ?????? 12, ??????????? 1, ??? ?? ??? ?????????????????? ?????????????? ??? ? ???????
????? ?????????????? ??? ?????? ??????? ?? ?????? ?????? ?????? ?????? ?? ??? ?????? ??????????????
????? ??? ?? ?????? ?????????????? ??? ?????? ?? ?????? ?????? ?????????????? ??? ?????? ???
????? ?????????????? ?????? (????. ??????? ?? 15?? ?????? 2018, Picart, C-355/16,
EU:C:2018:184, ?????? 22 ??? 23).

49 ? ???????????, ???????????, ??? M. Wächtler ?????? ??? ???? ?????? ?????? ?? ???
?????????????? ?????? ??? ?????????? ??-???????, ??? ?????? ?????????????? ???????????
??? ??????????, ? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?????? ?????????????? ??????,

?????? ???? ?????????? ???????????????, ??????????? ?? ??????? ????? ?? ?? ???????
????????????? ??? ?? ?????? ??????. ???????, ? ?????????? ??? ?????????? ??? ??
????????? ??? ????? 12 ??? ??????????? | ??? ?????????? ??-??????.

50 ?? ??????? ??? M. Wächtler ??????? ?? 50 % ??? ??????? ??????? ?? ?? ???????
?? ??????? ??? ?????? ??? ??????? ?? ??????????? ?? ??????? ??????????? ?? ??
????????? ????. ???????????, ??? ?????????? ???' ?????? ?? ??????? ??????????? ??
?????? 43 ??? 56 ??? ??????? ??, ?? ??????? ??????????? ??? ??????? ??
???????????, ??? ?? ?????? ??? ??????? ??-??????, ???????????, ?? ???????
?? ?????? ??? ???????, ??? ?????????? ?? ?????????? ?????????? ??????? ???????,
?? ?????? ??? ??????? ??? ?????? «??????». ???????, ? ?????????????? ??????? ??
????????? ??? ????? ?????????? ?? ?????????? ??????? ?? ?????????? ??? ??????? ??
?????? ???.

51 ??? ????? ?? ?????????? ??? ??????? ??? ?? ??? ?????????????? ??? ??
????????? ?? ?????????? ??? ??????? ?? ??????? ??-?????? ?????? ??? ???????
?????? ??????? ???, ??????????? ???, ??????? ?? ??? ?????????? ??? ??
????????? ??? ??????? ??????? ?? ???????????, ?? ??????? ???????????, ???
?? ?????? ??? ??????? ??? ???????, ?????????? ??? ?????? ??? ?????????? ???
??????????? ?? ??? ?????? ?????? ??? ?????? ?????? ???????, ??? ??? ??? ??
??????????? ??? ?? ?????? ?????? ?????? ?????? ?????? (????. ??????? ??? 27??
????????? 1988, Daily Mail and General Trust, 81/87, EU:C:1988:456, ??? 16).

52 ???????, ??? ??????? ??????????? ?? ??????? ?? ??????? ?? ?? ???????????
?????????, ? ??????? ??????????? ?? ??????? ??-?????? ?????? ??
?????????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ?? ??????? ??
???? ?? ?????? ?? ??????? ??? ?????? ??????? ???????, ??? ??? ?????? ??? ???????
????????? ??? (?????? ??? 15?? ?????? 2018, Picart, C-355/16, EU:C:2018:184, ??? 16
??? ??? ?????????? ??????).

53 ???????????, ? ??????? ?????????? ?? ??????? ?? ??????? ?? ??????????? ?
???????? ??-?????? ?? ?????????? ?? ??????? ?????????? ??????? ??????? ??
?? ?????????? ??? ?? ??????? ?????? ??????? ?? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ?????????? ?????????? (?????? ??? 15?? ?????? 2011, Bergström, C-
257/10, EU:C:2011:839, ??? 28).

54 ???????, ? ??????? ??????????? ?? ??????? ?? ??????? ?? ??????????? ??
???????? ??-?????? ??????? ?? ??????? ??????? ?? ??????? ?? ???????????, ? ???
?????????? ?? ?? ????? 15, ?????????? 2, ?? ?????????? ?? ?? ????? 9 ??? ??????????? |
?? ?????????? ?????, ?????? ?????? ??? ?????? ?????????? ???.

55 ??????? ?? ? ??? ????? ?????????? ??????? ?? ??????? ?? ??????? ??
?????? (????. ??????? ?? 19?? ??????? 1977, Ruckdeschel ??., 117/76 ?? 16/77,
EU:C:1977:160, ??? 7, ??? ?? 6?? ??????? 2011, Graf ??? Engel, C-506/10,
EU:C:2011:643, ??? 26 ??? ????? ?????????? ???????) ? ?????? ??????? ??
????? ?????????? ?? ?????????? ???????, ?????, ??? ??????? ?? ??????? ??
?? 39 ??? ??????? ???????, ?? ??????? ?????? ?? ?????? ??? ??????? ??
??? ?????????? ?????? ?????? ?????? ?????? ???????, ?????????? ?? ?????????? ??
?? 6?? ??????? 2011, Graf ??? Engel, C-506/10, EU:C:2011:643, ??? 26, ??? ??
21?? ?????????? 2016, Radgen, C-478/15, EU:C:2016:705, ??? 47).

56 ?? ??????????, ?????????? ??? ?? ?????? ??????? ??????? ? ??????, ??? ? M.

Wächtler, ????? ??????? ?? ??????? ?????????????? ?? ??????? ?????????????? ?????????? ?? ??????? ??
?????? ?????????? ??-????????? ?????????? ?????????? ?????????? ?????????? ?????????? ?? ??????? ??
?????? ?????????? ?????????? ?? ?????? ??????, ????, ?????????? ?????????? ?????????? ??????? ??
?????? ?????? ?????????? ?? ?????? ?????????? ?????????? ???????, ????, ?? ?????????? ?? ?? ??
????? ??????, ?????????? ?? ?????? ?????????? ?????? ?????? ??????. ??????????????, ?? ??????? ??
????? ?????????? ?? ?????????? ?????? ?????? ?????????? ?????? ?????? ?????????? ?????? ?????
?????????, ?????? ?????? ?? ?????????? ?????? ??????????????????, ?????? ?????? ????? ??
?????????? ?? ??????????, ??? ?????? ?????? ?????? M. Wächtler ?????? ?????????????? ??
????????? ?? ?????????? ?????? ??? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? ??
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
?? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ???
?????????.

57 ? ?????????? ?????? ?????? ???????????, ? ?????? ?????? ?????? ?????????????? ?? ?????? ?????? ??????????
????????? ??? ?????? ?????? ?????? ?????? M. Wächtler, ?????????? ?? ?????????? ??
?????? ?????? ??? ?????? ?????????????? ?????? ??? ?????????? ?????? ?????????????? ?? ??????
?????? ??? ?? ?????????? ??-?????????. ???????, ? ?????? ?????? ?????? ?????? ?????? ?????? ??????????
?????? ?????????? ?? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ??????
??? ?????????????? ??? ?? ?????????? ?????????? ?????????? ??????????.

58 ???????????, ??????, ??? ?? ?????? 21, ?????????? 2, ??? ?????????? ?????????? ??
????????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??
????????? ???????, ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? (?????? ?? 21??
????????? 2016, Radgen, C-478/15, EU:C:2016:705, ????? 45).

59 ??????, ?????????? ???, ??? ?? ?????? 6 ??? AStG, ? ?????????? ?????? ??????????
??? ?????????? ?????????? ?? ?????? ?? ?????????? ?????? ?????? ??? ?? ?????? ??? ??????????
??? ?????????? ?????????? ?? ?????? ?? ?????????? ?????? ???????, ?????????? ?? ??????
????????????? ??? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????????? ??????????
????????? ??? ?? ?????????? ?? ?????????? ?????? ???????, ?????????? ??? ?? ??????
????????? ??? ?? ?????????? ??????.

60 ??? ?? ?????? ??? ?????? ??? ?????????? ??????, ? ?????? ?????????? ??
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??????????
??? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????
? ?????? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??
????? ??? ?????? ?????? ?????? ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??????????.
??????????, ?? ?????????? ??? ?????????? ?, ?????????? ?????? ?????????? ??? ??????????
????? ??? ?????? ?????????? ??? ?????????? ???, ?????? ? ?????, ?????? ??? ??????
??????????, ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?? ??? ??
?????????? ? ?????????????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

61 ??????, ??????, ?? ?????? ??? ? ?????????? ?????? ?????????? ??? ?? ?????? ?????? ??????
????? ??? ?????? 56 ??? 57 ??? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ?????? ???
????????? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ?? ?????? ?????? ??????????
??? ?? ?????? ?????????? ??? ?????? 31 ??? ?????? ??????, ??? ?? ?????????? ??? ??
????????? ??? ?????????? ?????? ?????? ??? ?????????? ?????? ?????? ?????????? ?????? ??? ??
????????? ??-?????????, ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????????? ?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ?????????? ??????.

62 ??????, ?? ?????? 21, ?????????? 3, ??? ?????? ??-????????? ?????????? ???
????????? ?????? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ???

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

63 ??????, ?? ????? ???, ?? ?????? ???????????, ??????? ?? ?? ?????????? ???
????????????? ? ?????? ??? ?????? ??????????? ??????????? ??? ?????????? ??? ??????, ??
????????????? ?????? ?????? ?????????? (??., ?????? ????, ?????????? ??? 15?? ????
1997, Futura Participations ??? Singer, C-250/95, EU:C:1997:239, ????? 31 ??? ???
????????????? ???????????, ??? 3?? ?????????? 2006, FKP Scorpio Konzertproduktionen, C-
290/04, EU:C:2006:630, ????? 36, ????? ?? 11?? ?????????? 2014, ?????????? ???
????????? C?678/11, EU:C:2014:2434, ??????? 45 ??? 46), ?????? ??????????? ?? ???
?????? ?? ??? ??? ??? ???????????????, ?????? ?? ?????? ?????????? ??? ?? ??????????
??? ??????????????? ?????? ??? ?? ??? ??????????????? ?? ?????????? ??? ?? ??????????
????? ?????? ????

64 ?? ??????????, ?????????????? ??? ? ?????????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ?????????? ???
????????? ??? ??? ??? ?????????? ?????? ?????????? ??? ??????????, ??? ??? ? ???
????? ??? ?????? ?? ?????????? ??? ?? ?????? ?????????? ?????????? ??? ??????????
??? ?????????? ????. ???????????, ? ?????? ??? ?????? ??? ?????????? ??? ? ??????????
????????? ??? ?????????? ???????????, ??? ??? ?????????? ???????????????, ??? ??
????????? ??? ?????? ??? ??? ?????????? ??? ?????????? ???????????????, ??? ??
????????? ??? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????????? ???

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

66 ??? ?????? ??? ?????? ??? ?????????? ?? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ????, ?????????????? ??? ? ?????? ?????????? ??? ?????? ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ?????????? ???
????????????? ??? ??? ?????? ?? ?????????? ??? ?????????? ?????????? ?????????? ???
????????????? ?????? ??? ?????? ?????????? ??? ?????????? ?????????? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ???
????????? ?????????? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ???
????????? ?????? (??., ???' ???????, ?????????? ??? 29?? ?????????? 2011, National Grid
Indus, C-371/10, EU:C:2011:785, ?????? 73 ??? 74, ?????? ??? 23?? ?????????? 2014,

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

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

69 ?????????? ??? ?????? ??? ?????? ??? ?????????? , ??? ?????????? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ??-?????? ?????? ?? ?????????? ??? ???
????? ??? ?????? ?????????? ?? ?????????? ?????? ?????? ?????? ???? , ?? ??????????
??? ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????
????????? ?????????? ?????? ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ??????????
??? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????????? ?????? ??? ???
????????? , ?????????? ??? ???????, ??? ?????? ?????? ?????? ?????? ?????? , ??? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? , ???,
????????? , ?? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? , ?? ??????????
??? ??? ?????????????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? , ?????? ??? ??
????????? ??? ?????? ?????? ?????? ?????? ??????.

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

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

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

?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????????? ???
??? ?????????? ?????????? ??? ?????? ?????? ?????? ???, ?????? , ??? ??? ??????????
????????????? , ?????? , ? ?????? ?????????? ??? ?????????? ?????? 21 ??????
1999, ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ??? ??????????
????? ?????? ?????? ?????? ? ?????? , ?? ?????????? ??? ?????? ?????? ?????? ?????? ?? ??????
????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ?????? ?????? , ??? ?????? ?????? ??? ?????? ?????? ?????? , ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? , ???,
????? , ?? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? , ??? ?????? ???
????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? , ???,
????? , ?? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? , ???,

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

* ???? ??? ??????????; ? ??????????.