

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

??? 6?? ?????????????? 2014 (*)

«?????? 79/1072/??? — ????? ??????? ????? ?????????????? ????? — ?????????????? ???
???? ?? ?????????? ????? ?????? ?????? — ?????? ?????????? ??? ?? —
????????????? ??? ????? ?? ?????? ?????? ?????? ?????????? ?????????? ??? ?? ??? ??????
????????? ??? ?????? ??? ?????? ?????? — ?????????? — ?????? ??? —
“????????? ??? ?????? ?? ?????????????? ??? ?????????? ??? ?????” — ?????????? ???
????????? ?????????? — ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????
????????? — ?????????? ?????????? ?????????? ?? ?????????? ?????????????? ??? ?????
— ?????? 2006/112/?? — ????? 171»

???? ?????? C?323/12,

? ? ?????????? ?????? ?????????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Curtea de Apel Bucure?ti (?????????) ?? ?????? ??? 26?? ?????????? 2011, ? ????
????????? ??? ?????????? ??? 5 ?????? 2011, ??? ?????? ??? ??????

E.ON Global Commodities SE, ??? E.ON Energy Trading SE,

????

**Agen?ia Na?ional? de Administrare Fiscal? — Direc?ia General? de Solu?ionare a
Contesta?ilor,**

**Direc?ia General? a Finan?elor Publice a Municipiului Bucure?ti — Serviciul de
administrare a contribuabililor nereziden?i,**

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

? ? ?????????? ??? A. Rosas, ?????????? ??? ?????? ???????, D. Šváby ??? C. Vajda
(????????), ???????,

? ? ??????????: N. Wahl

? ? ??????: M. Aleksejov, ?????????? ????????,

? ? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
16?? ??? 2013,

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

– ? E.ON Global Commodities SE, ??? E.ON Energy Trading SE, ?????????????? ???
????? A. Duncea ??? A. Ioni?oaei, avoca?i,

– ? ?????????? ????????, ?????????????? ??? ??? R. H. Radu ??? ??? ??? A.-L.
Cri?an, R.-M. Giurescu ??? E. Gane,

– ? ?????????? ????????, ?????????????? ??? ??? L. Keppenne ??? L. Lozano Palacios
????? ??? ??? ??? G.-D. Balan,

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

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

?????????

2 ? ?????? ????? ??????????? ??? ?????? ??????? ??????? ???????, ??????, ??? E.ON Global Commodities SE, ????? E.ON Energy Trading SE (??? ????: E.ON), ?????????? ??????????????? ??? ???????, ???, ???????, ??? Agen?ia Na?ional? de Administrare Fiscal? — Direc?ia General? de Solu?ionare a Contesta?ilor (?????? ??????????? ????????) ??? ??? Direc?ia General? a Finan?elor Publice a Municipiului Bucure?ti — Serviciul de administrare a contribuabililor nereziden?i (?????? ??????? ??????? ??????? ??????????? ??? ????) ?????????? — ??????? ?????????? ?????????? ?????????? ?????????? ?????????? ??? ??????? ?????????? (??? ????, ??? ??????: ??????????? ????), ??????? ?? ??? ?????????? ??? ??? ?????????? ?????? (??? ????: ???) ??? ?????????? ??? ??? E.ON ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????? ??? ??????? ??? ?????????? ??? ??????????.

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

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

H ?????? 2006/112/??

3 ? ?????? 2006/112/? ???? ??????????, ??? 28?? ????????? 2006, ??????? ?? ?? ???
?????? ????? ?????????????? ????? (??. L 347, ?. 1), ??? ?????????????? ?? ??? ?????
2007/75/? ???? ??????????, ??? 20?? ?????????? 2007 (??. L 346, ?. 13, ??? ????: ??????
???? ??), ?????? ?? ??? ?? 1? ?????????? 2007.

= ?????????? ???? ??? ?????????? ??????????

4 ????? ?? ?????? 15, ??????????? 1, ??? ??????? ????? ??, ? ?????????? ????????
????????????? ?? ??????? ??????, ??? ??? ?????????? ??? ??.

5 ?? ?????? 38 ??? ??????? ???? ??? ?????? ?? ????:

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

2. ??? ??? ?????? ??????? ?? 1, ?? "????????????? ?????????????? ??? ??"
?????? ? ??????????? ?? ??? ??? ???? ???? ???? ???? ???????????, ??? ???? ??
????? ???? ???? ???? ?????????? ??????????, ??? ???? ???? ?????? ??? ?????? ???
??? ???? ???? ???? ?????????? ??? ?????????? ????? ???? ?????? ?????? ???»

6 ??? ?? ??? 39 ??? ?????? ????:

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

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

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

7 ???' ?????????? ??? ?????? 63 ??? ?????? ???, ? ?????????? ?????? ??? ?????? ??????????
??? ???? ?????????? ?????????? ??? ???? ??? ?????? ?????????? ?????? ??? ?????????? ???
? ??? ?????? ??????.

8 ?? ??? ?????? ?????? ?????????? , ??? ?????? ??? 193, ??? ? ?? ?????????? ??? ??
????????? ??? ???? ???? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ???? ????
????????? , ??? ???? ?????????? ??? ???? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????? 194 ??? 199 ??? 202 ??? ?? ?????? ??????.

9 ?? ?????? 195 ??? ?????? ??? ?????? ??? ?????? ?? ????:

«? ??? ?????????? ??? ?? ?????? ?? ?????? ?????????? ?????? ?????????? ?????????? ???
????? ??? ?????? ?????? ??? ?????? ?????????? ???? ???? ??? ?????? ?????? ?????????? ???
????? ?? ??? ?????? ??? ?????????? ??? ?????? 38 ? 39, ?????? ?? ??????????
????????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ????.»

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

10 ?? ?????? 168, ??????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ??
????? ??? ?? ?????????? ?????????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??????????
??, ? ?????????? ??? ?????? ??? ?? ?????? , ??? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???? ??????????
??? ?? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ???? ?????????? ?? ??
????????? ??? ??? ??? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ???? ?????????? ?? ??
??? ?????? ?????????? ??? ??? ??? ??????.

11 ?? ?????? 169, ??????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ??
?????? ??? ?????????? ??? ?????? 168, ? ?????????? ??? ?????? ??? ?????? ?????? ??????????
??? ??? ??? ?????????? ??? ?????? ???, ?????? ?? ?????? ??? ?????? ??? ??????????
????????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????????????

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

12 ?? ?????? 170 ??? ??????? ???? ??? ????? ?? ????:

?) ??????? ??? ?????? 169,

?) ??????? ??? ?? ?????? ?????????? ??? ?????? ?????? ?????? ?????????????? ? ???????? ?? ???
? ? ?????? ??? ?????????? ??????? ?? ?? ????? 194 ??? 197 ??? ?? ????? 199.»

13 ?? ?????? 171, ??????????? 1, ??? ??????? ????? ??? ????? ?? ????:

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

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

14 ? ?????? ??????? ?????????????? ??? 1?? ?????????? 2010 ?? ??? ?????? 2008/?? ???
??????????, ??? 12?? ??????????? 2008, ??? ??? ?????????? ?????????? ??????? ??????
?? ??? ??????? ??? ??? ????? ??????????? ????, ??? ??????????? ??? ???????
2006/112/??, ?? ??????????? ??? ??? ?? ?????????????? ??? ?????? ?????? ??????????
???? ?????????????? ?? ??? ?????? ??? (EE L 44, ?. 23). ?????????? ?????? ???
????? ??? ??????? ??? ?????? ??? ?????? ?????? ??????, ? ?????? ??????, ? ??????
????? ??? ?? 31 ?????????? 2009, ?????? ? ??? ?????? ??? ?????????? ??? ?????? ????.

15 ?? ?????? 1 ??? ?????? ???????? ?????????? ?? ????:

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

16 ??? ?? ??? 2 ??? ?????? ???????, ??? ?????? ??? ?????? ??????????? ?? ???
????????? ??? ??? ? ?????? ??? ?????? ?????????????? ??? ?????????? ??? ??? ??? ??
????????? ??? ??? ? ??? ?????? ??????, ??? ??? ?????? ??? ?????????? ??? ??? ??? ??
??????, ??? ??? ??? ?????????? ?????????? ?? ?????? ??? ?????????? ??? ??? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ??? ??? ??
????? ??? ??? ?? ?????????? ?????????????? ??? ??? ?????? ?????? ??? ??? ??? ??
????????? ??? ?????????? ??? ?????? 169, ??????? ??, ??? ?????? ??? ??? ??.

17 ?? ??? 3 ??? 4 ??? ?????? ??????? ?????????? ?????????? ?????????? ??? ??? ??
?? ??? ? ?????????? ??? ??? ??? ?????? ?? ?????? ??? ?????????? ??? ??? ?????????? ???
??.

18 ??? ?? ??? 6 ??? ?????? ???????, ?? ?????? ??? ?????? ??? ?????? ?? ?????????? ???
????????? ??? ??? ? ?????? ?????????? ??? ?????? 2 ????, ??? ?????? ??? ??????????
??? ?????????? ??? ??? 3 ??? 4 ??? ?? ?????? ???????, ????? ?????????? ??? ??? ??
?????????, ?? ?????? ??????????, ??? ?????? ??? ?????? ?????????? ?????????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??????.

?? ????????

19 ?? ??? 571/2003 ??? ?????????? ?????? (Monitorul Oficial al României, ??? I, ????.
927 ??? 23?? ?????????? 2003, ??? ????: ?????????? ????) ?????????? ??? ??????????
?? ?????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????.

20 ?? ??? 132, ?????????? 1, ??????? e, ??? ?????????? ??????, ?? ??? ??
????????? ???' ?????? ?????????? ?? ??? ??? ?????? 38 ??? ?????? ????,
????? ??? ?? ?????? ?????????? ?????????? ?????????? ?? ?????????? ?????????? ???
????? ?????????? ? ?????? ??? ??? ??? ? ?????????? ??? ?????? ??? ??????????.

21 ?? ??? 150, ?????????? 1, ??????? d, ??? ?????????? ?????? ?????????? ???
????????? ??? ?????? 195 ??? ?????? ??? ??? ??? ?????????? ?????? ??? ?????????? ???'
?????? ???, ?? ?????????? ?????????? ?????????? ?????????? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???, ???
????????? ??? ?????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
?????????.

22 ?? ??? 147ter ??? ?????????? ??????, ?? ??? «????????? ??? ?????? ???
????????? ??? ??? ??? ??? ?????? ?????? ?????? ?????????? ?????? ??? ??? ??
?????», ????, ??? ?????????? ??? 1, ??????? a, ??? ?????? ?? ?????? ???
????????? ??? ?????????? ???, ??? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? «????????? ??? ??? ?????? ?????? ?????? ?????????? ??? ??? ??
????? ??? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??? ??

???

23 ?? ???? 49, ?????????? 3, ?? ???? ?????? ??? ?????????? ?????????? 44, ?? 22??
????????? 2004, ??? ???? ?????? ??? ?????? ?????????? ??? ?????????? ??????
(*Monitorul Oficial al României*, ??? I, ???? 112, ?? 6?? 2004), ?? ???? ???
?? ???? ??? ?????????? ?????????? ??? ?????? ?????, ?????????? ??? ?????
????????? ??? ?????????? ?????? ??? ??????????:

«? ??? ???? 147ter, ?????????? 1, ?????? a, ?? ?????????? ?????? ??????????
???? ???? ?????? ?????????? ?????? ?????? ??????, ??? ???? ?????????? ?????? ??????????
1 ?????? ???????, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????????
????????? ??? ??? ?????? [...], ? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ?????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????????? ??? ?
??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????:

[...]

b) ?? ?????????? ???/? ?????? ??????????, ?? ?????????? ??? ?? ?????? ????/?
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ?????? ???/?
????????? ??????????, ???????, ?? ?? ?????? 150, ?????????? 1, ?????? [...] d [...], ???
????????? ????.»

24 ?? ???? 151, ?????????? 3, ?? ???? ?????? ??????, ?? ???? ?????? ??? ??
31 ?????????? 2006, ?? ?????????? ?????? ?????? ?????? ?????? ??? ?????????? ??????
?? ?????????? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????????? ?????? ?????? ???
????????? ?? ?????? ?????????? ?????? ?????? ??? ?? ?????? ?????? . ? ?????? ???
????????? ?? ??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ???.

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

25 ? E.ON, ??? ?????????????? ??? ?????????? ?????? ??? ?? ?????????? ??? 2005,
????? ?????????????? ?????? ??????????.

26 ?? ???? ?????????? ??? ?????????? ??? ???? ?????? ??????, ?? ???? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? 1? ?????????? 2007, ?????????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ???
????????? , ? E.ON ??? SC Haarmann Hemmelrath & Partner Management Consulting
SRL, ??? RSM Hemmelrath Consulting SRL (??? ????: Haarmann), ?? ?????????? ??????????
?? ??????.. ? Haarmann ??? ?????? ?????? ?????????? ?????? ?? ??? ??
????????? ??? ?????? ?????? ?????????? ?????? ??? ?? ??????.

27 ?? ???? ?????? ??? ?????????? ??? ?????????? ??? E.ON, ? Haarmann ??????
????????? ?? ?????? ?????? ?????????? ???????. ??? ?? ?????? ?????????? ??? 15
????????? 2005 ?? 31 ?????????? 2006, ? Haarmann ??????, ?? ?????????? ??? E.ON,
????????????? ??? ?? ?????? ?????? ??? ?????????? ?????? ?????????? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ?????????? ?????????? ??? ??
????? ?????? ?????? ??????????.

28 ?????????? ??? ???? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?
????????? ?????? ??? ?????? ?, ? Haarmann ?????????? ?? ?????? ??????????
????????? ??? ?????????? ??? E.ON ?? 1?? ?????????? 2007. ? Haarmann ??????
????????? ?? ?????????? ??? E.ON ?? ?????? ?????? ?????? ??? ??????????.

?????.

29 ?????? 1? ??????????? ?? 31?? ?????????? 2007, ? E.ON ????????? ?? ??????? ??
??? ?????? 5 118 071 ?????????? ??? (RON) ??? ??? ?????????????? ?????? ??? ?????????????? ???
????? ??????? ?? ?????????? ??????? ???, ?????????? ?????? ??????, ??? ??? ??????????
????? ?? ?????????? ??????????. ?? ??? ?????? ?????????? ?? ???:

- 2 466 611 RON ??? ?? ?????????? ?????????????? ?????? ??? ?????????? ?????????? ??
??? ?????????? ?????????????? ????????

- 2 612 888 RON ??? ?? ?????????? ?????????????? ?????????? ?????????? ???
????????? ?????????? ????????

- 97 RON ??? ?? ?????????? ????????, ??

- 38 475 RON ??? ?? ?????????? ?????????? ?????????? ?????????? ??? ??????
????????? ?????????? ????????

30 ? Haarmann, ??? ?? ??????? ?? ?????????? ?? E.ON, ??????? ??? ???????????
????? ??????? ??????? ??, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ???
2007, ??? ???????, ???????????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ???
????????? ??? 2007, ??????????? ?? ??? ?????? ??? ??????? ??? ??? ??? ?????????????? ??? ??
???? ???.

31 ??????? ?? ??????? ?? ???????, ? Haarmann ??????? ?? ???????????
?????? ??????????? ?? ??? ?? ??????? ?? ??????? ??? 19 ??????? 2005 ?? 31
?????? 2007.

32 ?? ?????????? ?? ???????, ?? ??? ?????? ?? ?????????? ?? 21 ??? 2008,
?? ?????? ?? ?????? ?? 5 118 071 RON ?????? ?? ??? ?????? ??
????????? ?? 1?? ??????? 2007. ??????, ???' ??????, ???, ?????? ?? ??? ??????
150, ??????? 1, ??????? d, ??? ?????????? ??????, ??? ?????? ?? 1?? ???????
2007, ? E.ON ??? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ??? ??? ?????? ??????????
?????????, ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ??? ??? ??????????
????? ?? ??? ?? ?? ?? ?? ?? ?????? ?? ???????, ?????? ?? ?????????? ?? ??? ??? ??????,
??? ?? ?????????? ?? ??????, ? ?????????? ?? ?????????? ?? ?????????? ?? ??? ??????????
??? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??? ?????????? ?? ??? ??? ??????????
????????? ?? ?????????? ?? ?????? ?? ?????? ?? ??? ?????? ?? ?????????? ?? ??? ??? ??????????
????????? ?? ?????????? ?? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??? 1 ?? ??????????
????????, ? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??? ?? ?????????? ?? ??? ??
????????? ?? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??? ?????????? ?? ??? 1??
????????? 2007.

33 ????? ?? ??????? ?? ?????????? ?? ???????, ?? ?????????? ?? ??? ???
?? 2008, ??? ??????? ?? ??????? ???.

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

34 ? E.ON ?????????? ??? ???? ?????? ?????? ??????. ??? ???? ?????????? ???
?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????????????? ??????, ? E.ON ??????
????????? ?????? ??? Curtea de Apel Bucure?ti, ? ?????? ?????? ?????.. ? ?????? ??????
????? ?????????? ??? ?????? ??? 5 118 071 RON ??? ?? ?????????? ?????? ???
????????????? ??? ?????????? ?? ?????? ??? E.ON.

35 ?????? ?????? ?????????? ?????????? ?? ?????? ??? ?????????? ?????, ?? Înalta Curte de
Casa?ie ?i Justi?ie ?????????? ??? ?????? ??? Curtea de Apel Bucure?ti ??? ??????
?????????, ?? ?????? ??? 8?? ?????????? 2011, ??? ?????? ??? E.ON ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ? ?????? ?????????? ??????????, ??
????????? ??? ?????????? ??? ?????? ?????? ?????? ??????.

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

36 ?????????? ??? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ??? ???
????????? ???, ? E.ON ??????, ??? 30 ?????? 2008, ?????? ?????????? ??? ???
????? 5 118 071 RON, ?????? ??? ?????? ??????, ?????? ??? ??? ?????? 147ter, ??????????
1, ?????? a, ??? ?????????? ???, ?? ??? ?????? ?????????? ? ?? ??? ?????? ???
????????? ???, ? ?????? ?????? ?? ?????????? ??? 2007.

37 ?? ?????? ??? 29?? ?????????? 2009, ?? ?????????? ?????? ?????? ?????????? ???
????? ?????????? ?? ?? ?????????? ???, ??? ?? ?????? ?????? ?????? ?????????? ???
????? ?????? ?????????? ??? ?????? 2007, ? E.ON ??? ??? ?????????? ???
??? ?????????? ??? ??? 147ter, ?????????? 1, ?????? a, ??? ?????????? ???,
????????? ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ???
????? ?????????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ???, ??? ? E.ON ?????? ?? ??????????
????????? ??? ?????? ??? ?? Haarmann ???, ??? ??????, ? E.ON ??????, ?? ???
?????????, ??? ?????? ?????????? ??? ?????? ??? ??????.

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

39 ? E.ON ?????? ?????? ??? ?????? ??? ?????? ??? 29?? ?????????? 2009 ?????? ???
Curtea de Apel Bucure?ti, ?????????? ???' ?????? ???, ?? ?????? ?? ???
????????? ??? ?????? ???, ? ?????? ?????? ??? ?????? ?????? ?????????? ???
????? ? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ???
????? ?????????? ??? ?????? ?????????? ???, ?? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

40 ??? ??? ?????? ???, ?? Curtea de Apel Bucure?ti ?????? ?? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????:

«1) ?????? ?? ?????? “????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ???
?????”, ??? ?? ?????? 1 ??? [????? ??????], ?????????? ??? ?????? ?? ?????? ???
????? ?????? ??? [...] ?????? ?????? ?????? ???, ? ?????? ?????? ?????? ???
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???

? ?????????? ? ?????????? ??? ?????? ??? ???? ?????????? ??? ?????????? ??? [...]
?????;

2) ? ?????? ? ?????????? ?? ???? ?????? ?? ?????? ?????? ?????? ?????????? ?????? ????
???, ??? ?????????? ?? ?????????? ??? ?????? 147 ter, ?????????? 1, ?????? a, ???
????????? ??????, ? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
[?????] ??????, ?????? ?????????? ?? ?????? ?? ??? ?????? ?????????? ??? ?????? 3
??? 4 ??? ?????? ??????, ?? ?????????? ?? ?????????? ?????????? ?????? ?????? ?????? ???
????? ?????? ?????? ?????????? ??? ?? ?????? ??? ?????? 6 ??? [?????] ??????;

3) ? ?????? ?? ?????????? ?? ?????????? ??? ?????? 3 ??? 4 ??? ?????? ?????? ???
???????????, ????????, ?? ?????????? ?? ?????????? ?????? ??? ?????? ??? ?? ???
????????? ??????????, ??? ??? ?????? ??? ?????? ??? ?????? 1 ?? ?????????? ???
??? ?????????? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??, ?????????? ???
????? ??? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????;»

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

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

42 ? ??????, ??? ?? ?????????? ??? ?? ?????? 1 ??? ?????? ?????? ??????????, ???'
??????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
??? ?????? 2 ??? ?????? ????. ????, ? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ??????., ??? ??????, ?? ??? ?????? ?????? ??? ?????? ?????? ???
????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????? ???, ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

43 ? ?????? ?? ?????????? ???, ??? ?? ?????? 6 ??? ?????? ??????, ?? ?????? ??? ??
????????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? 2 ??? ?????? ???,
????? ??? ?????????? ??? ?????????? ??? ?????? 3 ??? 4 ??? ?? ??? ??????, ???
????????? ??? ?????? ??? ??????????, ?? ?????? ?????????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

44 ? ?????? ?? ?????????? ?? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? 42 ???
????????? ??????.

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

45 ? ??? ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ???
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????????? ??????????????? ?????? ??? ??????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 1
??? ?????? ??????.

46 ???????????????, ??? ????? ??????????? ??????????? ??? ?????? ???????????????, ??? ?? ??????
?? ??????? ??????????? ??????????? ?? ??????????? ?????? ? ??????? ??????????? ??????? ???
?????????? ????, ????, ????? ??????????? ?? ??? ????? ??????????? ?????? ??????????? ??? ??
??????????, ??? ??????? ??????????? ??? ??????????? ?????? ???????, ??? ?? ??????????? ??????? ?
?????????? ??????????? ??? ??????????? ?????? (??., ???? ??? ?????? ???, ???????????
?? 17?? ??????? 1997, C?190/95, ARO Lease, ??????? 1997, ?. I?4383, ????? 16, ??? ??
?? ????? 1998, C?390/96, Lease Plan, ??????? 1998, ?. I?2553, ????? 24).

47 ?????, ????, ? ??????? ??????????? ??????????? ??? ?????? ??? ? ???????
?????????? ??? ?? ??????? ??? ??????????? ??? ?????? ??? ?????? ??????????? ???????
?????????? ??? ?? ????? ??????????? ??????????? ?? ?? ??????????? ??? ??????????? ???
??????????????.

48 ??????? ??????????? ??? ?????? ??????????? ??? ??????????? ??? ??????? ???
?????????? ??????????? ?? ??????????? ??? ??????????? ??? ?????? ??? ?????? ??? ??????? ???
?????? 1 ??? ?????? ??????? ??? ?????? ??????? ??? ?????? ??? ??????????? ??? ?????? ???
??????????.

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

49 ??? ?? ??????? ??? ?????? 1 ??? ?????? ???????, ??? ??????????? ??? ?????? 42 ???
?????????? ???????, ??????????? ??? ??????????? ??? ??????????? ?????? ??????????? ???
?????????? ??? ?????? ??? ??????? ??? ??????????? ?????? ??? ?? ??????? ???, ??? ??
?????????? ??? ??????? ??? ??????? ???????????, ? ?????? ??? ??????????? ??? ?? ??? ??
?????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????????? ??? ?????? ??? ?? ??? ??
?????????? ??? ??????? ??? ??????? ??? ??????? ??? ??????????? ??? ?????? ??? ?? ??? ??.

50 ??????????? ?? ??????????? ?? ?? ??????????? ??? ? ??????? ??? ?????? ???
?????????? ? ??????????? ???, ?????? ?? ??????? ??????????? ???, ??????? ??? ??????? 38,
?????????? 1, ??? ??????? ???, ?? ??????? ??????????? ??????????? ??????????? ???
«?????????? ??????????? ??? ??» ???? ??? ?????? ??? ??????????? 2 ??? ?????? ???,
?? ?????? ??? ??????????? ??????????? ? ?????? ??? ? ??????????? ??? ?????? ??? ???????????
????? ??? ??? ??? ??????????? ??????????????? ???.

51 ?? ???????, ? ??????? ???????, ???' ??????????? ??? ?????? 15, ??????????? 1, ???
????????? ???, ??????????? ?? ??????????? ??? ?????? ??? ?????? ??? ??????? ??? ??, ?????? ???
????????? ?? ??????????? ??? ?? ??????????? ??? ?????? ??? ??????????? ??? ?????? 1 ??? ?????? ???
????????? ??? ??????????? ???.

52 ?????, ???' ??????????? ??? ?????? 171, ??????????? 1, ??????? ????, ??? ???????
????? ???, ?? ??????????? ???, ??? ??????????? ??? ?????? 1 ??? ?????? ????, ??? ???????
??? ?? ??????? ??? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ???
??? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?? ??????? ??? ?????? ??? ?????? ??? ?????? 195 ??? ??????? ??? ??,
?????????? ???, ??? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ??? ?????? ??
?????????????? ??? ?? ??? ?????? ??? ?????? ????. ??? ?????? ?? ?????? 195 ???????????
?????????????? ??? ??????????? ??????????? ??????????? ??? ?????? ??????????? ??????????? ???
????? ??? ??????????? ??????? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????? ? ?????? ??? ?????? ??????? ?? ?????? ??????????? ??? ?????? ??? ??????????? ???
?????????? ?? ?????? 38 ??? ??????? ??? ??.

53 ?????????? ??? ????? ???? ?????????????????? ??? ?????????? ? ?????????? ???????????, ?
????????? ?????????? ?????? ??? ??? ?????? ??? ?????? ?????? ? E.ON ????
????????? ?????? ?????????? ??? ?????? ?????? ?? ?????????????????? ??? ??? ?????? ??????
????? ?? ?????????? ??? ???? ? ?????? ??? ?????????????? ?????????? ?????? ? ??????
????????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 1 ??? ??????
????????.. ????????????, ??? ?? ?????? ??? ?????? ???, ?????? ??? ?? ??? ?????? 171 ???
????????? ???, ?????????? ???, ?????????? ?? ?????????? ?? ?????????? ?? ??????????
????????? ??? ?????? ??? ?????? ???????, ?????? ?????? ?? ?????????? ?? ?????????? ?
????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?
????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??????????.

54 ?????????????? ?????? ??? ????????????????, ?????????????? ??? ?????? ?????? ?????????????? ??
????????????? ??, ???? ?????? ??? ?????? ??? ?????? ?????? ?????? ? E.ON ?????? ?????????? ??
????????? ??? ??? ?????????????????? ?????????????? ?????? ? ?????? ?????? ?????????? ??????????????
?? ?????????? ??? ????????, ???? ??? ?????? ??? ?????? 1 ??? ?????? ??????.

55 ??????????, ??? ????? ???? ????? ???? ?????????? ? ?????????? ?????????? ???
??' ?????????? ???????, ??? ?? ?????? ???? E.ON, ?????????? ??? ?????????? ???
?????????, ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ?????
???? ??, ?????? ?? ??o?????? ??, ?? ?? ?????? ?????????? ?????????? ??????????
???? ?? ?????????? ?? ?????????? ?????????? ??? ?????? ??????, ? ?????? ??? ??
??? ?? ?????? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ?? ??????????
??????????, ??? ?? ?? ? ?????????? ??? ?????? ??? ?????? ?????????? ??????????
???????????. ???????????, ? ??? ?? ?????????? ?????????? ?????????? ??? ?????
??? ?????? ?????? ?? ?????? ?????????? ??? ?? ?????? ??? ?????????? ??? ??????????
? ??? ?????? (?. ?????? ?? 12? ?????? 2012, C?284/11, EMS-Bulgaria Transport,
?????? 71 ??? 77? ?. ??????, ???' ???????, ??????? ??? 29?? ?????????? 2007,
C?146/05, Collée, ?????? 2007, ?. !?7861, ????? 31).

56 ??????????, ??????, ??? ?????????????????? ??? ?????? ?? ??????? ?????????????? ??? ??????
??? ?????? ?????????????? ???????????, ?????? ?? ?????????? ???, ??? ?????? ?????????? ???
??????????, ?? ???? ?????????? ??? ?? ?????????? ??? ?????? ??????? ??????, ??? ??????
??????????, ?????????? ??? ??????? ??? ??????? ???????, ?? ??????? ??????? ??
??? ?????????? ??? ?????? ??? ??????? ??????? ??? ??????? ???????????, ??? ?????? ??
????? ??? ?????????? ?? ??????? ?????????? ??? ??????? ??????? ??? ??????? ??????? ???
????? ??????? ?? ??????? ??????? ??? (??.. ??????? ??? 19?? ?????????? 2012,
C?549/11, Orfey Bulgaria, ????? 51 ??? ??? ?????????????? ??????????). ?????????????? ???
?? ??????? ?????????? ???????, ?????????? ?? ?????? 1, 3 ??? 4 ??? ?????? ??????
????? ??? 171 ??? 195 ??? ??????? ???, ??????? ??? ??????? ??? ?? ?????? ???????????.

57 ??????? ?? ??????? ??????????????????, ??? ?????????????? ??????????? ??????? ??
????? ? ??????? ?? ??????? ??????? ?????????????, ?? ?????????? ?? ?? ?????? 38, 171
??? 195 ??? ??????? ????, ????? ?? ?????? ??? ? ?????????????? ??? ????? ?? ??????
????????????? ?????? ?????? ?????????? ?????? ??? ? ?????? ?????? ?? ?????????? ??????????
????????? ??? ?????????????? ??? ?????? ?????????????? ?????????????????? ?????? ???
????????? ?????? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??????
????????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????. ?? ?????????? ???
??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???
?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ???
????? ??? ?????????? ??????

58 ?????????? ??? ? ??????? ?????????? ??? ?? ??? ????? ????? ?????????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
???? ?????????? ?????????????? ??? ??????????, ??? ??? ?? ??? ??????????, ???
?????????.

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

?? ?????????? ?? ?????? ???????? 79/1072/???, ??? ????????????, ??? 6?? ???????????
1979, ??? ?????????????? ?? ?????????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ???
?????? ??????? ????????? — ?????? ?????????? ??? ?????? ?????????????????? ???
????? ?????????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????????????? ???
????????? ??? ?????, ?? ?????????? ?? ?? ?????? 38, 171 ??? 195 ??? ??????
2006/112/?? ??? ????????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ?????? ???????
????? ?????????????? ????, ??? ?????????????? ?? ?? ?????? 2007/75/?? ??
??????????, ??? 20?? ?????????? 2007, ?????? ??? ?????? ??? ? ?????????? ???
???? ??? ??? ????? ?????????????? ????, ????? ?????? ?????? ??? ? ?????? ?????? ??
????????? ?????????? ?????? ?????? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??
????????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ??
????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ??
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ??
????????? ? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ??
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ?????????? ??.

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

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