

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

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

??? 22?? ?????????? 2018 (*)

«????????????? ?????????? – ?????? 56 ??? 63 ??? – ?????????? ?????? ?????????? ???
????????? ?????????? ??? ?????????? – ?????????? ?????? – ?????? ?????????????? ???
????????? ?????? ?????? ?????????? ?????????????? ?????? ??? ?????????? ??? ?? ??????????????
????????????? ??? ?????????????? ??? ?????? ?????????? ?????????? ?????????? – ?????????????? ???
????????????? ?????? ?????????????? ?????????? – ?????????? ??? ?????? ??? ?????????? ???
????? ?????? ??? – ?????????? ?????? – ?????????? – ??????????»

????? ??????? C-625/17,

? ? ?????????? ?????? ?????????????? ?????????? ?????????? ??? ?????? 267 ????, ???
?????? ?? Verwaltungsgerichtshof (?????? ?????????? ??????????, ???????) ?? ???????
??? 18?? ?????????? 2017, ? ?????? ?????????? ??? ?????????? ??? 3 ?????????? 2017, ???
?????? ??? ???

Vorarlberger Landes- und Hypothekenbank AG

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

Finanzamt Feldkirch,

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

????????? ??? ??? R. Silva de Lapuerta, ?????????? ??? ???????????, ?????????????? ???
?????? ????????, J.-C. Bonichot (?????????), A. Arabadjiev, E. Regan ??? C. G. Fernlund,
???????,

?????? ??????????: P. Mengozzi

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

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

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

- ? Vorarlberger Landes- und Hypothekenbank AG, ?????????????? ??? ??? C. Nauer,
Rechtsanwalt,
- ? ?????????? ????????, ?????????????? ??? ??? G. Hesse,
- ? ?????????? ????????, ?????????????? ??? ??? R. Lyal, ????? ??? ??? ??? N.
Gossement ??? C. Tritz,

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

?????????? 0,055 %,

2. ??? ?? ?????? ?? ??????????? ?? 20 ?????????????????? ????, ?? ?????????????? 0,085 %.»

6 ?? ????? 3 ??? StabAbgG, ????? ??????????????? ?? ??? ?????????????? ??? BGBI. I,
13/2014, ???????? ?? ????:

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

1. ??? ?? ?????? ?????? ??? ?????????????????? ??? 20 ?????????????????? ???, ??
?????????? 0,09 %

2. ??? ?? ?????? ?? ??????????? ?? 20 ?????????????????? ????, ?? ?????????????? 0,11 %.»

7 ????? ?? ?????? 7a, ??????????? 1, ??? StabAbgG, ? ?????? ??????? ??? ??? ?????
????????????? ?????????????? ?? ??? ?????????? ??????????? ??? ??? ????? ??? ?????? ??
????????????? ?? ??? ????? ???????????.

8 ????. ?? .????? 7b, ??????????? 2, ??? StabAbgG, ?? ????. ??? ?????? ?????????????? ???
?? ????. 2014 ?????????? ??? ?? ??????????? ???????? ??? ?? ??? ??????????, ??? ???.
???? ???. ??? ?????????????? ??? ??????? ?? ??? ????? ?????????????? ?????? BGBI. I,
184/2013 ??? BGBI. I, 13/2014.

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

10 ?? ??? ?????????? ?? 20?? ?????????? 2015, ? ?????????? ??? ?? Feldkirch
????????, ??? ??????? ?? StabAbgG, ?? ??? ?? ????? ?????????? ??? ??
????????? ??????? ??????? ?? ?????????? ??? ?????????? ??? ?? Hypothekenbank ??? ?? ?? ??? 2014. ?
????????? ??? ?? ?????????? ??? ????? ?????????? ??? ?? Bundesfinanzgericht (?????????????
????????? ??????????, ??????) ?? ?????? ??? 1?? ??????? 2016.

11 ????? ??????? ????? ?????????? ????? ?????????? ?????? ?????? Verwaltungsgerichtshof
(????????? ?????????????? ??????????????, ??????), ? Hypothekenbank ?????????????? ??? ?? ???? ??
?????? ?? ?????????? ??????? ?????? ?????????????? ??? ??????? ??????? ???????, ??? ??
???? ?? ?? ????? ?????? ?????? ???????????, ??????, ??? ?? ????? ?????? ??????? ?????? ?????
?????????? ??, ???????, ??? ?? ?????????? ??????? ??????? ?????????? ??? ?? ??????????
?????????? ??? ??????????. ???????????, ?? ?? ??? ????? ?????????? ??????? ?????????????? ??? ??
????? 2 ??? StabAbgG ??????? ??????? ???????, ??? ?? ??? ?????? ??? ?????????? ?????????? ??????????????
?????????? ??????? ???????, ??? ?? ?????????? ??????? ??????? ??? ?????????????? ???
????????? ?????? ?????????????? ?????? ???????, ?????????? ? ??? ????? ?????????????? ???
???? ?????? ?????, ?? ??????? ?????? ?????? ?????? ?????? ?????????????? ?????? ??? ?? ??????????
??? ?????? ??????? ??? ??????? ??????, ?? ?????? ?????? ?????? ??? ?????????????? ???
????????? ??????? ?????????? ??? ??????? ?????? ??? ?????? ?????? ??? ?????????????? ???
??? ?????? ???????.

12 ????' ?????? ??? ??????, ???? ?????? ?????????? ?????????????? ?????????????? ??' ?,?? ???
????????? ? ?????? ??? ?????? ?? ??????. ??????????, ???? ?????????? ?? ??????, ??
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ???

????????? ??? ???????? ?????? ?? ?????????????? ??? ?????????????? ??? ?????? ?????? ??????????????????
?? ?????? ??? ????? ?????????????? ??? ?? ?????????????? ??? ??????????. ??? ?????? ?? ??? ????
????????? ?????????????? ?????????? ? ?????? ?????????? ? ?????? ? ?????? ??????????????????
????????? ?? ??? ????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??????
????????????????? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??? ??? ??? ?????? ??????
????? ?????????????? ??? ?????????? ?? ??????????. ? ?????????? ??? ?????? ?????? ??????????
???????, ?????? ??? ?????????? ??? ??? ?????????? ??? 5?? ?????????? 2014, Hervis Sport-
és Divatkereskedelmi (C?385/12, EU:C:2014:47). ? ?? ??? ?????????? ?????????? ??? ?????? ????
????????? ??? ?????? ?????????? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? .. ??
????????? ?? ?? ?????????? ?? ? ??? ?????? ?????? ??? ?????? ?????? ?????????????? ??? ??? ??? ??????????
????????? ?????????? ?????????????? ??? ??? ?????? ??? ?????????? ?????? ?????????????? ??????????????,
????????? ?????????? ?????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???.

13 ?? Verwaltungsgerichtshof (????????? ??????????? ???????????) ?????????? ??????????? ??
???? ?? ?? ??? ?? ??????? ?? 5?? ??????????? 2014, Hervis Sport- és Divatkereskedelmi (C-
385/12, EU:C:2014:47), ? ?????? ??????? ?? ??????????? ?????????? ?? ?? ???????????
??????????????, ????? ?? ?? ??? ?? ??????????? ?? 2?? ??????? 2005, ????????? ??
????????? (C?174/04, EU:C:2005:350), ??? 12?? ??????????? 2006, Test Claimants in the FII
Group Litigation (C-446/04, EU:C:2006:774), ??? ?? 24?? ????? 2007, C-157/05, Holböck
(EU:C:2007:297), ??????? ?? ??? ?????????? ??????????? ?? ???????????, ????????? ?? ?? ?
StabAbG ??? ????? ??????? ?? ?? ??????? ?? ?? ???????.

14 ???????, ??? ????? ?? ?????????? ??? ??????? ??? ?????? ?????????? ????????????, ??
?????? ?????????? ?????????? ???, ????? ??? ??? ?????? ??? 6?? ?????????? 2015,
Finanzamt Linz (C-66/14, EU:C:2015:661, ??? 21), ?????????? ??? ? ?????????? ??? ???
??? ??????, ?????????? ?? ?????????? ??? ??? ?????????? ?????? ??? ?? ?????? ?????? ???, ??
????????? ??? ??? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????? ?????????? ?????? ??????????
????????? ?????? ??????. ???????, ?? ?? ????? ?????????? ?????? ??? ??? ??????
????????? ? ?????? ?????? ?????? ?????????? ??????????.

«?????????? ?????? ? ?????? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ???
?????????? ??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ?????? 56
?? . ???? ???/? ???? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ???
?? ????? 63 ????, ??? ??? ????? ??? ?? ?????? ??? ?????????????? ??? ??? ?????? ??? ??
????????????? (?? ?????????????????????? ?? ?????????????? ?????????????? ??????????????)
??????????, ??? ?????????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??
?????????? ?? ?? ??? ????? ??? ?? ?????????? ?????????? ?? ?????????? ?? ?????? ??? ??????
?????????? ??????, ??? ??? ????? ??? ?????? ??? ?????????? ?????? ?? ?????? ??? ?????? ??
?????, ?? ?????? ?????? ?????? ?????? ?????????? ??????????, ?????????????? ??????
?????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ?????? ??? ? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????
?????????? ??? ??? ?????? ??? ?????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

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

16 ??? ??? ??????? ??? ??????????? ?????????? ??? ?? ??? ????? ?????????????? ??? ?
????????? ?????? ???????, ??? ?????? ? ?????????? ?????????????? ??? ?????? ???
????????? ??? ?????? ?????, ?????? ??? ?? ?????????????? ??? ?? ??? ?????? ??????????????
????????? ??? ??????, ?????? ??? ?? ?????????????? ??? ?? ??? ?????? ?????? ??????????????
???? «?????? ??? ?????? ?? ?????????????? ??????????» ??? ?????????? ?????????? ???
????? ?????????????? ??? ?????? ???, ??? ?????????? ??? ?????????????? ???
????????? ???????, ?????? ??? ?????????????? ??????????????. ? ??? ?????? ?????? ???
????? ?????? ??? ?? ?????? ?????????????? ??? ?? ?????? ?????? ?????? ?????????????? ???
??? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ???
????????? ?????? ??? ?????? ??????.

17 ??? ?????????? ?? ?????? ??????????, ?? ?????????? ?????????? ?????????????? ???
??? ?????? ??? ?????????? ??? ?????????? ?????????? . ??? ?????? ???, ?? ??? ?????? ???
????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ?????? ?? ??????
????????????? ??? ?????? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ???
????? ??? ?????????????? ????. ?? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ?????????? ?? ?????? ?????? ?????? ?????????????? ?? ??? ?????? ???
??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

18 ???????, ? ??????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????????? ???
??? ?????? ????? Hypothekenbank ?? ??????? ?????????? ??? ?????? ?????? ?????????????? ??
????? ?????? ?????? ??? ?????????? ??? ?????????? ?? ?? ?????????? ?? ????. ???
????????? ? ??? ?? ??? ?????? ?????????????? ???, ?????? ?????????? ?????? ?????? ??????
??? ??? ?????????? ?? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ???.

19 ?? ?? ?????????? ????, ?? ?????? ?????????? ??? ?????? ???' ?????? ??? ?? ??? ????
56 ??? 63 ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????
????? ??? ???? ? ?????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????????? ???
????? ?????? ?????? ??? ?????? ???, ?? ?????, ??? ?? ?????? ??? ?????? ???, ???, ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? «??????
??? ?????? ?? ?????????? ??????», ? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???,
??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
????.

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

20 ?????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????? ??? ?? ??? ????
56 ??? ??? ??? ??? 63 ???, ?????? ?? ?????????? ???' ?????? ??? ??? ??? ??? ???
??? ?????? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (???????
??? 21?? ?????? 2018, Fidelity Funds ?.., C?480/16, EU:C:2018:480, ??? 32).

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

22 ??????? ??? Verwaltungsgerichtshof (????????? ?????????????? ??????????????), ?
Hypothenbank ???????????? ??? ??? ? ???????????? ?????????????? ?????????????? ??????
????????? ??? ??? ???? ????? ?? ???????????, ??????, ??? ?????? ??????????? ?????????? ??
????? ??? ?????? ??? ?????????? ???, ???????, ??? ?????? ??????????? ??????????.

24 ???????, ?????????????? ??? ??? ?????????????? ??? ????? ?????? ?? ?????? ?????? ?????? ??????
????? ??? ?????????? ?????????????? ??? ??? ??? ?????????? ?????? ?????? ?????????? ?????? ??
?????????? ?????????? ?????????? ?? ??????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??
??? ??? ???????????, ?????? ?????????? ???, ??? ??? ?????????????? ??? ?????? ?? ??? ?????? ??? ?????? ??? ??
?????? ??????, ? ??? ?? ?????? ?????? ??? ?????????????? ?? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??
????????? ?? ????? [?????? ??? 26?? ??? 2016, NN (L) International, C-48/15,
EU:C:2016:356, ??? 39].

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

26 ?? ?? ??????, ?? ?????????? ??????? ??????? ?? ?????????? ?? ?? ?? ?????? ?? ?? ??
?????? 63 ??.. ????. ???. ????? ???. ?????????? ??????????? ???. ???????????, ????. ???. ?????? 56 ??..
???? ???. ?????????? ??????? ???. ??????????.

27 ?????????????? ???, ?????????? ??? ? ? ? ????? ?????????????? ??? ? ??????
?????? ?????? ??????? ?????? ? ?????? ? ?????? ?????, ?? ?????? ?????? ??? ?????? ??????????
?????????? ?????????????? ??? ??????? ??? ?????? ??? ?????? ???, ??? ??????????, ?????????? ???
?????????? ??? ?????? ?????, ?? ?????? ???????????????, ??? ?????? ?????? ?????????? ???
??????????, ?? ?????? ??? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? (???????
??? 1?? ?????????? 2011, ??????? ??? ??????????, C253/09, EU:C:2011:795, ????? 42).

28 ?? ?????? 56 ??? ???? ?????????? ?? ???? ?????????? ?????????????? ?????????? ?????????? ??
????? ?? ???? ?????????? ?? ???? ?????????? ? ?? ???? ?????? ?????????? ?????????? ?????????? ?????????? ??????????????

??" ?? ? ?????? ?????????? ??? ?????????????????? ?????????????? ??? ?????????? ???
????????? ??????. ????????, ??? ? ?????????? ??? ?????????? ??? ?????????? ?? ???? 56 ??? ????
??? ?????????? ??? ?????????????? ??? ?????????? ?????????? ?????????? ? ?????? ??????????
???? ??? ??? ? ?????? ?????? ?????????????? ?? ?????? ?????? ?????????? ??? ??????
??? ?????? ?????????? ? ?????? (?????? ?? 25?? ?????? 2018, TTL, C?553/16,
EU:C:2018:604, ??? 45 ??? ??? ?????????? ??????????).

29 ?? ?????????? ?????????????? ??? ?????????? ?????????? ?????????? ?? ?????? ??? ????
?????????????, ?????????? ? ?????????? ?????????? ?????????? ??? ?????? ??? ??????????
????? (?. ?????? ?? 25?? ?????? 2018, TTL, C?553/16, EU:C:2018:604, ??? 46 ???
???? ?????????? ??????????).

30 ?? ?????????? ??? ?????????? ?????????? ??? ?????????? ?????????? ?? ?????? 56
???? ?????? ?????????? ??? ?????? ?????? ?????????? ??? «????????» ?????????? ?????????? ???
?????????, ?????? ??? ?????????? ??? ?????????? ?????????? ?? ?????????? ?? ?????????? ?? ???
????? ?????? ??? ?? ????? ?????????? ??? ?????? ??? ??????????, ?????? ?? ?????????? ???
????????????? (?????? ?? 9?? ?????? 2017, Piringer, C?342/15, EU:C:2017:196, ??? 35).

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

32 ?? ???????, ?? ?????? ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??
????? ??? ?????????? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ??????????. ??? ??? ?????? ?? ?????????? ?? ?????? 56 ??? ???? ?? ?????????? ?? ???
??? ?????? ?? ??? ?????????? ??? ?????? ?? ?????????? ?????????? ?????????? ??
????????????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??????????
????? ?????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??????????
(????????? ?? 8?? ?????????? 2005, Mobistar ?? Belgacom Mobile, C?544/03 ??
C?545/03, EU:C:2005:518, ??? 31, ??? ?? 11?? ?????? 2015, Berlington Hungary ??.,
C?98/14, EU:C:2015:386, ??? 36).

33 ??? ?????? ?? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????????? ?????????? ?? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ???,
????????????? ??? ?? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ???
????? ?????????? ??? ?? ?????? 49 ?? 54 ???, ??? ?? ?????? ?????? ?????? ??????????
????? ?????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??????????
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 56 ???.

34 ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ? ?????? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??????
??? ?????? ???, ?????? ?? ?????????? ??? ? ?????????? ?????? ?????? ?????? ??????????
??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????????? ??? ?????? ???, ?????? ?????? ?????? ??? ?????? 49 ???, ??? ?????? ??? ??????
????????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? (??.,
??????, ?????????? ??? 11?? ?????????? 2003, Schnitzer, C?215/01, EU:C:2003:662,

?????? 28 ??? 29, ??? ??? 10?? ???? 2012, Duomo Gpa ?.?.?, C?357/10 ??? C?359/10,
EU:C:2012:283, ???? 30).

35 ???????????, ? ?????? ??? «?????????????», ??? ??? ?????????? ??? ?????????? ???
???? ?????????? ?????????? ?????????? ?????? ?????????? ?????? ?????? ?????????? ?????
????????????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?' ???????.
????????? ?????, ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????
(?????? ?? 12?? ?????????? 2006, Cadbury Schweppes ??? Cadbury Schweppes Overseas,
C-196/04, EU:C:2006:544, ????? 54).

36 ???????, ??? ?????????? ??? ?????? ? ?????? ? ?????? ?????????? ?????????? ?? ??????
????? ?????????? ??? ?????? ??? ?????? ?????? ??????????????, ?? ?????????? ??
????????? ?? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?? ????? 57, ????? ??????,
????, ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????????????? ???
????????? (????????? ??? 30?? ?????????? 1995, Gebhard, C-55/94, EU:C:1995:411, ?????
26, ??? ??? 11?? ?????????? 2003, Schnitzer, C-215/01, EU:C:2003:662, ????? 27).

37 ??' ?????? ??? ???????, ????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??? ?? ???
????????? ???, ??? ???????, ?? ?????????????? ???????????, ??? ??? ?????? ???
???????????, ??? ?????????????? ??? ?????? ??? ??? ??????????? ??? ?????? ???
???????????, ??? ?????????????? ?????????????? ? ??? ?????? ?????? ?????? ?????????? ???
???????????, ??? ??????, ?????????????? ?????? ??? ?????????? ??? ?????????? ??????????.

38 ???????, ?????? ?????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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39 ??? ?????? ??? ?????????? ??? ?????????? ?????????????? ?????? ?? ?? ??? ?????? ???
????? ?????? ? ?????? ??? 5?? ?????????? 2014, Hervis Sport- és Divatkereskedelmi (C-
385/12, EU:C:2014:47), ?????? ?? ?????? ?????? ?????? ??? ? ?????????????? ??? ??????
?????, ?????????????? ???, ??? ?????? 37 ??? 41 ??? ?? ??? ?????? ???????, ?????? ??? ???
????? 23 ??? ?????? ??? 26?? ?????? 2018, ANGED (C-234/16 ??? C-235/16,
EU:C:2018:281), ?? ?????????? ??? ?????? ??? ? ?????????? ?????? ??? ?????????? ??????????
????????????? ??????????????, ??? ?????? ?????????????? ???, ??? ?????????? ??? ?????? ???
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????????? ??? ?????? ?????? ??????????????, ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????????? ?, ?????? ?????????? ??? ?? ?????? 49 ??? 54 ???.

40 ??????, ??? ?????????? ??? ??? ?????? 18 ??? 26 ??? ?????? ??????????, ???
????????? ??? ?????? ???, ? Hypothekenbank ??? ?????? ?? ?????????? ?????????? ???
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41 ???????, ??? ?????? ??? ?????????? ??? ?????? 267 ???, ??????????
????????????? ??? ?????? ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????????? ?? ?????????? ?????? ??? ?????????? ??? ?????????? ???
????????? (?????? ??? 10?? ?????? 2018, Jehovan todistajat, C-25/17, EU:C:2018:551,
????? 28).

42 ???????, ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
Hypothekenbank ?????????? ???, ??? ?????, ?? ?????????? ?????? ?????????? ?????????? ???
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2014, Hervis Sport- és Divatkereskedelmi (C-385/12, EU:C:2014:47). ??????, ?? ??????
????????? ??? ?????????? ??? ??? Hypothekenbank ?????? ?? ??? ?????????? ?????? ???
????????? ??? ?????????? ?? ?????????? ?? ?????? ??? ?????????????? ???.. ?? ???
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43 ?? ?? ??????, ?????????? ??? ?? ?????????? ??? ? ?????? ?????? ??? ?????? ???
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?? ?? ?????? ?????? ?????? ?? ?????? 5?? ?????????? 2014, Hervis Sport- és
Divatkereskedelmi (C-385/12, EU:C:2014:47), ?????? ? ?????? ??? ?? ?????? ?????? ???'
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? 39 ??? ??????
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44 ?????? ??? ?? ???????????, ??? ?????????? ?????? ??? ?????? ?? ?????? ?
????????? ??? ?? ?????? 56 ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????????
?? ?????? ?????? ??? ? ?????? ?????? ???, ? ?????? ?????????? ??? ?????? ??????
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????????????? ??? ?????? ?????? ??? ?????? ???, ?? ?????????? ??? ?????? ??? ??????
??? ?????????? ??? «?????? ??? ?????? ?? ?????????? ??????????», ? ??????
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45 ?????? ??? ? ?????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????????, ?' ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ???, ?? ?????? ??? ?????? ??????????
???? ?????? ?????? ?????????? ??? ?????? ???, ??? ?? ?????? ??? ?????? ??? ?????? ???.

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

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

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