

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

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

??? 19?? ?????????? 2018 (*)

«????????? ??????? - ????????? - ????? ?????????????? ????? (???) - ?????
2006/112/?? - ????? 2, ?????????? 1 - ?????????? ?????? ???? ?????????????? ???
????????? ??? ????? ?????? ??? ?????????? ????? ??? ?????????? ?????????????? ???
????????? ?????????? ????? ???»

???? ?????? C?51/18,

? ? ?????????? ?????? ??? ?????????? ?????? ??? ?????? 258 ????, ? ?????? ??????
???? 29 ?????????? 2018,

????????? ???????, ?????????????? ??? ??? N. Gossement ??? ??? B.?R. Killmann,

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

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????????????? ??? ???????, ?????????????? ??? ??? G. Hesse,

?????,

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

????????? ??? ??? ?. ??????, ?????? ??? ?????????? ???????, ?????????????? ??? ??????
?????????, J. Malenovský (?????????) ??? M. Safjan, ????????,

????????? ??????????: M. Watheler

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

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

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

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

???????

1 ?? ??? ??????? ???, ? ?????????? ?????? ?????? ??? ?? ?????????? ?? ??????????
??? ? ?????????? ??? ???????, ?????????? ?????? ????? ?????????????? ????? (???) ???
?????? ??? ?????????? ??? ?????? ?????????????? ?????????????? ????? ??????????
????????? ????, ?????? ??? ?????????? ??? ?????? ??? ?? ?????? 2, ??????????
1, ??? ?????? 2006/112/?? ??? ???????, ??? 28?? ?????? 2006, ?????? ?? ?? ???
?????? ??? ?????? ?????????????? ?????? (?? 2006, L 347, ? 1, ??? ????: ?????? ??? ??).

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

? ?????? ????

«(3) ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ??
?????????? ??, ?????? ?? ???? ?? ???? ?? ???? ?? ??????????? ?? ???????????, ?????? ?? ???? ??
?????????? ?? ???? ?? ??????????? ??, ?????? ?? ???? ?? ??????????? ??' ?? ???? ??
?????????? ?? ???? ?? ???? ?? ??????????? ?? ??????????? .. ?????? ?? ???? ?? ??????????? ??
?????????? ?? ???? ?? ??????????? ?? ???? ?? ??????????? ?? ??????????? ?? ???? ?? ???? ??
?????????? .. ?? ??????????? ?? ??????????? ??, ?????? ?? ??????????? ?? ??????????? ??
?????????? ?? ???? ?? ??????????? ?? ???? ?? ??????????? ??.

[...]

(5) ?? ??????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ??????????? ?? ?
????? ?????????????? ?? ??? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ??? ?????? ?? ?????? ?? ??????????
??? ??????????? ?? ??? ?? ?????? ?? ?????? ?? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????? ?? ??? ?? ???
?????? ?? ??????. ?? ??? ?????? ?? ??? ?? ?????????? ?? ??? ?????????? ?? ??? ?????????? ?? ??? ?????? ?? ??? ?? ???
?????? ?? ??? ?? ?????????? ?? ??? ?????? ?? ??????, ? ?????????? ?? ??? ??????? ?? ??? ?????????? ?? ??? ??????????
?? ??? ?????? ?? ??????..»

3 ?? ?????? 2, ??????????? 1, ??? ?????? ?????? ????:

«????? ??? ??????????? ?? ?????????? ???????;

[...]

[...] ».

4 ?? ?????? 24. ??????????? 1. ?? ? ? ????? ??????? ????? ?? ?????????;

«?? “?????? ??????????” ??????? ?????? ?????? ? ?????? ??? ?????????? ?????????? ??????? »

5 ????? ?? ?????? 25 ??? ?????? ????????:

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

?) ???? ???????? ?????????? ??????? ?????????? ??? ?????????? ?????? ? ??? ?????? ??? ? ??
????????? ????.»

6 ?? ?????? 73 ??? ??????? ???? ??? ??????? ?? ????:

«???? ??? ??????????? ?????? ??? ??? ??????? ??????????, ?????? ?????? ??? ?????????????? ???
????? 74 ??? 77, ? ??? ?????? ?????? ??? ????? ?????????????? ?????????? ?????????? ???
??????????, ??? ?????? ?????? ? ?????????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ? ?????????????? ?
? ?????? ??? ???????, ??? ??? ??????????, ??? ?????? ??????????, ??? ?????? ??? ?????? ???????,
????????????????? ??? ??????????? ??? ?????????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ??????»

? ?????? 2001/84/E?

7 ? ??????????? ?? 3 ??? ?????? 2001/84/??. ??? ?????????? ?????????????? ??? ???.
???????????, ??? 27?? ??????????? 2001, ??????? ?? ?? ??????? ?????????????? ??? ???.
?????????? ???. ??????????? ?????? ?????? (?? 2001, L 272, ?. 32), ??? ???.

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

8 ????? ?? ?????? 1 ??? ????????, ?? ????? «????????????? ??? ??????????????
?????????????»:

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

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

9 ?? ?????? 3 ??? ?? ??? ????????, ?? ?????? ?????? ?? ?????????? ????, ?????????? ??
?????:

2. ? ?????????? ??? ??????? ?????????? ??????? ?? ?????????? ?? 3 000 ????.»

10 ??? ? ???? 4 ??? ????? ??????, ??????? ?? ??? ??????????:

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

?) 4 % ??? ?? ????? ??? ????? ?????? ??? 50 000 ????

?) 3 % ??? ?? ????? ??? ????? ?????? ?????? 50 000,01 ??? 200 000 ????

?) 1 % ??? ?? ????? ??? ????? ?????? ?????? 200 000,01 ??? 350 000 ????

?) 0,5 % ??? ?? ????? ??? ????? ?????? ?????? 350 000,01 ??? 500 000 ????

?) 0,25 % ??? ?? ????? ??? ????? ?????? ??? ?????????? ?? 500 000 ????.

??????, ?? ?????????? ??????? ?? ?????? ?? ?????????? ?? ?????? ?? 12 500 ???.

2. ????? ??????????? ???. ??? ?????????? 1, ?? ?????? ??? ?????? ?????? ?? ?????????? ?????????? 5 % ???. ?? ?????? ??? ?????? ?????? ?????? ???. ?????????? ???. ?????????? 1 ?????? ?).

3. ??? ??????? ?? 3 000 ????, ?? ????,
????? ?????? ?? 3 000 ?????? ?? ???? ????
????? ?? 3 000 ?????? ?? ???? ???? ????
4 %.»

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

? Urheberrechtsgesetz

11 ? Urheberrechtsgesetz (?????? ????? ?????????????? ??? ??????????), ??? 9?? ???????
1936 (BGBI. 111/1936), ??? ?????????????? ??? ?? ?????? ?????? (?? ?????: UrhG),
?????????, ??? ?? ??? III, ?? ?????????? ??? ???????????, ??? ?????? ?????????????? ??
????????? ???????????????, ?????????????? ??? ?????????? ??? ??????.

12 ?? ?????? 16 ?? UrhG, ?? ????? «????????? ???????», ??????? ?? ??????????:

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

(3) ?? ??? ?????????? ??? ?????? 16a, ?? ?????????? ?????????? ??? ?????????????? ?? ???
????? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????????? ??? ?????? ??????
????? ??? [?????] ? ?????? ?????? ??? ?????????? ?????????????? ?????????? ?? ??
????????????? ??? ??????? ??? ??????????.

[...]

????????????? ? ?????? ?????? ?????? ?????? ?????????????? ?? ?????????? ?????? ? ???????????
????? ?? ?????????????? ??? ?????????????? 1 ??? 3.»

13 ?? ?????? 16b ??? UrhG, ?? ????? «????????? ?????????????????», ?????? ?? ??????:

«(1) ?? ????? 16, ?????????? 3, ?????????? ??? ?????????? ?????????? ?????? ??????
????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ??? ??????????, ??? ??
????? ??? ? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ??
????? ?????????? ?????? (????? ?????? ??? ?????????? ??????????????),
????? ?? ?????? ???:

4 % ??? ?? ?????? ??? 50 000 [????],

3 % ??? ?? 150 000 [????] ??? ?????????? ?? ??? ?????? ??? ?????? ????????,

1 % ??? ?? 150 000 [????] ??? ?????????? ?? ??? ?????? ??? ?????????? ????????,

0,5 % ??? ?? 150 000 [????] ??? ?????????? ?? ??? ?????? ??? ?????????? ????????,

0,25 % ??? ?? ?????? ??? ?????????? ?? ??? ?????? ??? ?????????? ????????

?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??? 12 500 [????].

(2) ? ?????? ?????? ??? ?????????? ?????????????? ?????????? ?????? ??? ????
????????? ?????????? ?????????? ?? 2 500 [????] ??? ?????????? ??? ?????? ???
??????, ??? ?????? ?????????? ??? ?????? ?????? ? ?????? ?????? ??????, ?????????? ???
????????? ?? ?????? ??? ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ?? ?????? ???
??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? . ??? ?????? ?? ??? ?????? ??? ?????? ???
??? ?? ?????? . ?????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????? ??? ?????? ???
????????? ?????????? ??????, ?? ?????? ??? ?????? ?????? ?????????? . ?? ??????
23, ?????????? 1, ?????????? ???' ??????.

(3) ?????????? “????????? ???” ??? ?????? ??? ?????? ??? ?????????? 1:

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

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

3. ?? ?????????? ???' ?????? ???? ?? ????????.

(4) ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????????????? ??? ? ?????? ???
????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? 10 000 [????].»

? Umsatzsteuergesetz 1994

14 ?? ??? 1 ??? Umsatzsteuergesetz (????? ???? ??? ?????? ?????? ?????????), ??? 23??
????????? 1994 (BGBl. 663/1994), ??? ?????? ??? ?????? ?????? (??? ????: UStG
1994), ?????????? ?? ???:

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

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

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

[...]».

15 ???? ?? ????? 3 ??? UStG 1994:

«(1) ?????????? ??? ???? ???? ?????? ?? ??? ?????? ? ?????????????? ?????? ??? ??????, ?
?? ?????? ?????? ???' ?????? ??? ???????, ??? ?????? ?? ?????? ?????? ??? ?????? ???
?????. ? ?????? ?????? ?????? ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ???.
????????????? ?, ???' ?????? ???, ??? ?????? ??????.

[...]»

16 ?? ????? 3a, ?????????? 1, ??? UStG 1994 ?????????? ?? ???:

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

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

17 ???? 17 ?????????? 2014, ? ?????? ?????? ?????????? ??? ?????????? ??? ??????????
????????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ?? ?????????? ?????????? ???
????????? ??? ?????? ?? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ?????? ??? ?????? ???.

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

19 ? ?????????? ??? ?????? ?????? ??? ? ?? ??? ?????????????? ?????????? ?? ??
?? 16 ?????????? 2014 ??????.

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

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

22 ? ????????, ????????, ?? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????????? ???
???????, ????????, ??? ?? ??? ?????? ?????? ???, ??? 25 ?????? 2016, ?????????????? ???
????? ??? ?????? ?????????? ??? ? ?????? ??? ?????????? ??? ?????????? ?????? ??? ??????????
????????????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ?????? ??? ??????
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????, ??? ??????
?? ?????????? ?????????????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ?? ?????????? ???
?? ?????????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?? ?????????? ???
????????? ??? ??? ??? ? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ??? ?????? ???.

23 ? ?????????? ??? ????????, ?????????? ??? ?????????? ?????? ?????????????? ?????? ?? ????????, ??? 22??
????????? 2016, ?????????????? ?? ???, ???' ??????, ??? ?????? ?????? ?? ??????????
?? ?????? ??? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????? ?????????? ???.

24 ?????????? ???, ??? ??????? ??? ?????????? ?????????????? ?????????????? ???, ? ??????????
?????? ?????????? ?????????? ?? ?????????? ??? ??????. ?????? ? ?????????? ???,
????????? ??? ??? ??? ??? ??? ?????????? ?????????? ??? ?????? ???, ??????????,
????? ??? ?????? ???, ?? ?????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ???,
???? ?????????? ??? ?????? ???, ?????? ??? ?????? ??? ? ?????? ??? ?????? ??? ?????? ?????????? ???
????? ?????????? ?? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???,
??? ? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????????? ?? ?????????? ???
????? ???.

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

26 ? ????????, ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
?????????????, ?????????? ?? ?????? ??? ?????? ??????.

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

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

27 ? ?????????? ?????? ??? ? ?????????? ?????? ?????? ?????????????? ??? ?????????????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????????? ??? ???
??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
???. ??? ? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??? ?????? ??????????
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?? ??? ??? ??????????
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??? ?????? ??????????

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

28 ??????????, ???????, ??? ??? ?????? ??? 18?? ?????????? 2017, SAWP (C?37/16,
EU:C:2017:22, ?????? 25 ?? 26), ??? ??? ?????? ?????? ? ??? ?????? ??????????
????????????????? ?? ?????????? ??????, ??? ??? ?????? ??? ?????? ??? ??? ???, ???
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ????. ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??????, ????, ???, ??? ?????? ???, ???, ?? ?????????? ???,
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

29 ?????? ?????????? ??? ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ??????????
????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??? ??
?????????, ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??
????????? ??? ???, ?? ??? ??? ??? ?????? ??? ?????? ?? ?????????? ??? ??? ?????? ???.
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????????? ? ?? ??? ??? ?? ???
?? ?????? ?? ?????????? ??????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???.
? ?????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 2 ???
????? ???.

30 ??????, ??? ?????? ???, ??? ?? ?????????? ???, ? ?????????? ??? ?? ??????
????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?? ?????? ???' ???, ?? ??????????
?? ??? ?????? ?????????? ??? ??????, ??? ?????? ?? ?????? ??? ?????? ??? ?? ??? ??????????
????????? ?????? ?????????? ?? ?????????? ????. ??? ??????, ?? ??????
????????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????? ???.

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

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

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

34 ?? ??? ??? ?????????? ??? 3?? ?????????? 2015, Asparuhovo Lake Investment
Company (C?463/14, EU:C:2015:542, ??? 35), ??? ??? 29?? ?????????? 2015, Saudaçor
(C?174/14, EU:C:2015:733, ??? 32), ? ?????????? ??? ?????????? ?????????????? ???
?????? ??? ??? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ?????? ?????? ?????? ??????
??? 3?? ?????? 1994, Tolsma (C?16/93, EU:C:1994:80, ?????? 14 ??.), ??? ??? 29??
????????? 2015, Saudaçor (C?174/14, EU:C:2015:733, ??? 32), ?????? ?????? ??????
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ?????????? ???
? ?????? ??? ?????????? ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

35 ???????, ??? ?? ??? ??, ? ?????? ??? ?????????? ?????? ??? ?????????? ???
????????????? ??? ?????? ?? ?????????? ?? ??? ?????? ?????????? ?????????? ?????? ???
?????? ?????? ??????. ?? ?????????? ?????? ?????? ?????? ??? ?????? ?????????? ?? ??????????.

36 ??? ???, ?????????, ??? ?????? ?????????? ??? ?????? ?????? ??? ? ?????? ???
18?? ?????????? 2017, SAWP (C?37/16, EU:C:2017:22), ??? ?????? ???????, ?????? ??
????????? ??? ?????????? ?? ?????????? ??? ?? ?????? ??? ?????? ?? ?????? ?? ?????????? ???
????????? ??? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?? ?????????? ??? ?????? ???, ? ?? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????? ???, ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???
????? ?????? ??? ?????? ???, ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???
????????? ??? ?????? ???, ? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???
????, ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???
????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ???

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

38 ? ?????????? ??? ?????? ??? ?????????? ??? ???????, ?? ?????????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ???

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

39 ????????, ? ?????????? ??? ???????? ?????????? ???, ????? ?? ???? ????
??? ? ?????????? ?????? ??? ?????????? ?????????????? ?????? ??? ??????
????????? ??? ?? ?????????? ?????, ? ?????? ??? ?????, ?? ??? ?????????? ??
???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????????? ??
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??

40 ???????, ? ?????????? ??? ???????? ?????????? ??? ?????????? ??? 3 ???
?????? 2001/84, ??? ???? ?????? ?? ?????????? ?????????????? ?????????????? ???
????????? ??? ??????. ??? ?????? ???, ?????????? ??? ?????????? ?????????? ??? ??????
????????? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ? ?????????? ??? ?????? ??? ??????,
?? ?????????? ?????????? ???, ??? ?????????? ???, ??? ?????? ???, ? ?????? ??? ??????
????? ??? ?????????? ?????????????? ?????? ?? ?????? ? ?????????? ? ?????????? ??? ??????????
????? ?? ??? ?????? ??? ?????? ??????, ? ?????? ??? ?????????? ?????? ??? ??????????
????????????? ??? ?????????? ?? ?????????? ?? «????????? ??????????» ??? ???
????????? ??? ?????? ???.

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

41 ?? ??? ?????? ???, ? ???????? ?????????? ??? ?????????? ??? ?????????? ??? ??????
??? ?????????? ??? ?????? ??? ?? ?????? 2, ?????????? 1, ??? ?????? ???,
????????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??????????????
??? ?????????? ?????? ??? ?????? ???.

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

43 ???????, ?????? ?? ?????????? ?? ?????????? ??, ??? ??? ?????? ??? ??????????
?????, ? ???????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??????????????
?????? ?? ?????????? ?? «????????? ??????» ? «?????? ??????????», ?????? ?? ??????
?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? (??., ??????, ?????? ??? 18?? ?????????? 2017,
SAWP, C?37/16, EU:C:2017:22, ??? 24).

44 ???????, ??? ?????? ??????????, ??? ???????? ?????? ? ?????? ? ?????? ??????????
????????????? ??? ?????? ??? ??????, ??? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??? ??
????????? ????, ????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ??????
????????? ????, ??? ?????????? ?? ?????? ? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (??., ??????, ?????? ??? 18??
????????? 2017, SAWP, C?37/16, EU:C:2017:22, ??? 25 ??? ?????? ??????????).

45 ? ?????????? ??? ?????? ??????, ????, ??? ? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ????. ??? ??? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

46 ??????, ?????? ?? ??????????? ???, ???????, ?????? ?? ?? ????? 25, ??????? ??,
??? ??????? ???, ? ?????? ?????? ?????? ?? ???????????, ?????? ???, ?? ???
?????? ? ???????????.

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

48 ??????, ??????, ?? ?????????? ?? ?????? ?????????? ?????????? ?????????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??
????????? ? ??????????, ??? ?? ?????????? ?? ?????????? ? ?? ??????????????, ?? ??
?? ? ?? ??? ?????, ??? ?????????? ?? ?????? ?????.. ? ?? ?????????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????????? ???, ????? ?????????? ?? ?????????? ??
????????? ??? ?? ?????? ??? ?????? ???.

49 ??????, ? ?????????? ?????????????? ?????????? ?????? ?????? ??????????,
????? ??? ?????? 1, ?????????? 1, ?? ?????? 2001/84, ??? ?????? ??? ?????? ??
????????? ??? ?????? ???, ? ?????? ??? ?????? ?????? ?????? ???' ?????? ??? ??????.
?????, ??? ?????? ??? ?? ?????? ?????????????? ??? ?????? ??? ??????????, ?? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??
?? ? ?? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????????
?????, ??? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ???.

50 ???, ?????? ?? ?? ?????? ??? ?????? ??? ??????, ? ??? ?????? ?????????? ???
????????? ??? 3, ??? ?????? ???, ?? ?????? 2001/84, ?????? ??? ??????????
????????? ??? ?? ?????? ??? ?????? ??????, ??? ?????? ?????? ?????????? ????, ??????????
????????? ??? ?????? ??? ?????? ?????? ?????? ????. ??? ?? ?????????? ??? ?????????? ???
? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ??? ?????? ???, ??? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????????? ??? ?????? ???, ???' ?? ??????
????? ??????????.

51 ??? ???? ?????? ???, ?????? ?? ?????????? ?? ?????????? ??? ?????????? ???
??????, ??? ? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ?????? ???
?????????, ??? ?????? ?????? ???, ??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?
????????? ?????? ??? ?????? ???.

52 ????????, ? ?????????? ??? ?????????? ?????? ???, ??? ??????? ??? ??????????????
???????????????, ? ?????????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????????????? ???
????? ?? ?????? ?????????? ??? ??? ?????? 2001/84 ?????????? ??? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ????. ?????????? ??? ??
????????? ??? ?????? ?????????? ?? ???, ?????? ?? ?????????? ??? ??? ?????? ?????? ?????? ???
????????? ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ???
????????? ?????? ??????????.

53 ???????, ??? ?????????? ?? ???? ?????????????? ?????? 3, ??????? ??????????, ???
?????? 2001/84, ? ?????????? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?? ?????????? ?? ?????????? ?????? ?????? ?????????? ??????, ??????, ??? ??????
?? ?????? ??????????, ???????, ?????????? ?? ?? ???????, ?? ?????????? ?? ???
??????, ??????????? ?? ??? ?? ?????????? ?????????????? ??? ?????? ???.

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

55 ???? ?????? ?????????? ??? ????????????, ? ??? ???? ??? ?????????????? ??? ??????, ?
????? ??? ???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ???? ??? ???? ????
?????????????, ?????????, ?????? ?????, ?? ??? ?????????????? ??? ?????? ?????????? ??? ???? ???? ????
????????????? ??????????????, ?????? ?? ? ?????????????? ??? ?????????????? ??? ?????????????? ???
(??., ???????, ?????? ?? 19?? ?????? 2012, Lietuvos geležinkeliai, C?250/11,
EU:C:2012:496, ?????? 44 ?? 45 ?????? ??? ??? ?????????????? ??????????).

56 ?????????? ???, ?????????????? ?????? ??? ?????????????? ??? ?????? 54 ??? ?????
??????????, ?? ?????? ??? ?????????? ?? ???? ?? ?????? ??? ?? ?????????? ?????? ?????? ???
????????????? ?????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????????????? ??????????????.

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

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

59 ????????, ??? ?????? ?? ???? 73 ??? ?????? ??? ??, ? ??? ?????? ??
????? ?? ???? ?????? ?????????? ?????????????? ?????????? ?????????? ??
?? ???????????. ??????, ???, ??? ?????????? ?? ?? ?????? ??????, ?
????????? ?? ?????? ??? ?????? ?? ?????????? ?????????? ?????? ??
????????? ?? ?? ?????? ??? ?????? ?? ?????????? ?? ?? ?????? ??

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

60 ??? ?? ?????? ??? ??????? ?????? ??????? ???, ?????????? ??? ? ?????? ???
????????? ??? ?????? ??? ?????????? ?????????????? ??? ?????????? ?????????????? ???
?????? ??? ??????? ??? ?????? 2, ?????????? 1, ??? ?????? ??? ?, ? ?????????? ???
??????, ?????????? ??? ? ?????? ??? ?????????? ?? ???, ?????? ??? ?????????? ???
????? ??? ?? ??????? ???.

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

61 ??? ?? ?????? 138, ?????????? 1, ??? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ???
??? ?????????? ????. ?????????? ??? ? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ? ?????? ?????? ?????? ?????? ??????, ?????? ?? ??????????
??? ?????? ???.

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

1) ? ?????????? ??? ???????, ?????????? ??? ? ?????? ??? ?????????? ???
??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ???
????????? ?? ??? ?????????? ????, ?????? ??? ?????????? ??? ?????? ???
?? ?????? 2, ?????????? 1, ??? ?????? 2006/112/?? ??? ??????????, ??? 28??
????????? 2006, ?????? ?? ? ?????? ?????? ?????? ?????????????? ???.

2) ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???.

(?????????)

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