

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

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

??? 9?? ??????? 2020 (\*)

«????????????? ?????????? – ?????????? – ????? ?????? ?????? ?????????????????? ?????? (???) –  
?????? 2006/112/?? – ????? 288, ????? ??????, ?????? 4 – ?????? ?????????? ???????  
????????????? – ??????? ?????????? ??? ?????? ?????? ?????? ?????? ? ?????? ??????????  
?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? –  
?????? ??? “?????? ??? ?????? ? ?????? ??? ?????? ?????? ?????? ?????? –  
?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????»

???? ??????? C?716/18,

? ? ?????????? ?????? ?????????????? ?????????? ??????? 267 ????, ???  
?????? ?? Curtea de Apel Timi?oara (?????? Timi?oara, ???????) ?? ??????? ??? 1??  
????????? 2018, ? ?????? ??????? ??? ?????????? ??? 14 ?????????? 2018, ??? ???????  
??? ????

**CT**

????

**Administra?ia Jude?ean? a Finan?elor Publice Cara?-Severin – Serviciul Inspec?ie  
Persoane Fizice,**

**Direc?ia General? Regional? a Finan?elor Publice Timi?oara – Serviciul Solu?ionare  
Contesta?ii 1,**

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

? ? ?????????? ??? ??? E. Regan, ??????? ???????, I. Jarukaitis, E. Juhász (?????????), M.  
Ileši? ??? ?. ???????, ???????,

? ? ??????????: J. Kokott

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

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

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

– ? CT, ?????????????? ??? ??? N. ?vidchi, avocat,

– ? ?????????? ??????????, ?????????????? ?????? ??? ??? E. Gane, L. Li?u ??? O.-C.  
Ichim, ??? ??? ??? C.-R. Can??r, ??? ??????? ??? ??? ?????? ??????,

– ? ?????????? ????????, ?????????????? ??? ??? A. Armenia ??? J. Jokubauskait?,

????? ?????? ?? ?????? ??????????? ??? ???????? ??? ?????? ?? ???????????  
?? 6?? ??????????? 2020,

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

??????

1 ? ?????? ?????????????? ?????????? ??? ?????? ??? ?????? 288, ????  
??????, ?????? 4, ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006,  
?????? ?? ?? ????? ?????? ????? ?????????????? ??? (?? 2006, L 347, ?. 1), ???  
????????????? ?? ??? ?????? 2009/162/?? ??? ??????????, ??? 22?? ?????????? 2009 (??  
2010, L 10, ?. 14, ??? ????: ?????? ???).

2 H ?????? ??? ?????????? ??? ?????? ?????????? ???????, ??????, ??? CT  
???, ????????, ??? Administra?ia Jude?ean? a Finan?elor Publice Cara?-Severin – Serviciul  
Inspec?ie Persoane Fizice (????????????? ?????????? ?????????? ?????????? ??? Cara?-  
Severin – ??????? ?????????? ?????????? ?????????? ??????????, ??? ????: AJFP Cara?-Severin)  
??? ??? Direc?ia General? Regional? a Finan?elor Publice Timi?oara – Serviciul Solu?ionare  
Contesta?ii 1 (????????????? ?????????? ?????????? ?????????? ?????????? ??? Timi?oara –  
????????? ?????????? ?????????? ?????????? ????. 1), ??????? ?? ?? ?????? ??????????  
??? ??????? ?????? ?????????? ??? CT ??? ??? ???????, ?? ??? ?????? ???, ??? ??????  
????????? ?????? ?????????????? ??? ?????????? ??? ??? ??????? ???.

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

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

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

«1. ??? “????????? ?? “????????? ??” ?????????? ???, ??? ?????? ?????????? ???  
?? ?????????? ???, ?????????? ?????????? ???, ?????????? ??? ??? ?????????? ???  
????? ??? ?? ?????????? ??? ?????????? ???.

?? “????????? ?????????? ???” ?????????? ??? ?????????????? ??? ?????????? ???  
????????? ??? ?????????? ???, ?????????????? ??? ??? ??? ?????????? ???  
????????? ??? ?????????? ??? ?????????? ??? ??? ??? ?????????? ??? ??? ??????????  
????????? ??? ?????????? ??? ?????????? ???, ???, ? ?????????? ???  
????????? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

[...]»

4 ??? ?? ??? 135, ?????????? 1, ??????? ???, ??? ?????????? 2, ??? ?? ???  
?????????:

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

[...]

??) ??? ?????? ?????? ?????????? ?????????.

2. ??? ??? ?????????? ??? ?????????? ??? ?????? ??? 1, ??????? ???) ?????????? ??  
????????? ??????:

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

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

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

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

?) ?? ?????????? ????????????????.

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

5 ?? ????? 174, ?????????? 2, ??? ?? ??? ?????? ?????? ?? ????????:

«????? ?????????? ??? ??? ?????????? 1, ??? ?????????? ?????? ??? ?? ?????????? ??  
????????? ??? ?????????? ?? ?????????? ???:

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

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

?) ?? ??? ?????? ??? ?????? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??  
????? 135, ?????????? 1, ??????? ?) ??? ?), ??? ?????????? ??? ?????????? ?????? ????.»

6 ? ?????? ??? ????????????, ??? ??? ?????? XII, ??? ?????????? «????? ??????»,  
??? ??????? 1, ??????? ?? ?? «????? ?????? ?????? ?????? ??????????». ??? ?????? 2 ???  
????????? ????, ?? ?????? «????? ?????? ?????? ?????? ??????», ?????????????? ??  
????? 282 ??? 292 ??? ?? ??? ??????.

7 ??? ?? ????? 282 ??? ?? ??? ?????? ???????, ?? ?????????? ??? ?? ?????????? ??  
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????? ??  
????????? ??? ?????????????????? ??? ?? ??? ?????? ?????? ??????????.

8 ?? ????? 287 ??? ?????? ?????? ??? ?? ????:

«?? ??? ?????? ??? ?????????? ??? 1? ?????????? 1978 ?????? ?? ?????????? ???  
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?? ??? ?????? ??? ?? ???  
????????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ???, ?? ?????? ?? ?????????? ??  
????????? ??? ?? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???:

[...]

18) ? ??????: 35 000 [????]?

[...]».

9 ?? ????? 288 ??? ?????? ??? ?????? ?? ???????:

«? ??????? ???????? ?? ??????????? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?????????????? ???  
????????????? ??? ?????? ?????? ?????? ?????????????? ??? ?? ?????????? ??? ?????? [?????  
????????????? ??? (???)]:

1)    ?? ???? ??? ?????????? ?????? ??? ?? ?????? ?????????? ?????? ?? ?????? ??? ?????  
???????????,

2)    ?? ???? ?? ???? ?????? ?? ???? ?????????????? ?? ???? ?????? ?? ???? ?????? ?? ???? ?? ????  
????????????? ?? ???? ?? ???? ?????????? ?? ???? ?????? ?? ???? ?? ???? 110 ?? 111, ?? ???? 125,  
????????? 1, ?? ???? 127 ?? ???? ?? ???? 128, ?????????? 1,

3)    ?? ???? ???. ?????????????? ???. ???. ???. ???. ???. ???. 146 ???. 149 ???. ???. ???. 151,  
152 ???. 153,

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

10      ????. ?? ?????? 1 ??? ?????????????? ?????????? 2012/181/?? ??? ??????????, ??? 26??  
?????? 2012, ??? ?????????? ??? ???????? ?? ?????????? ????? ?????????????? ??? ?? ??? ????  
287 ??? ??????? 2006/112 (?? 2012, L 92, ?. 26), «[?]?? ?????????? ??? ?? ??? 287 ??????  
18 ??? ?????? [??], ?????????? ??? ???????? ?? ?????????? ??? ?????????? ??? ?? ??? ??? [??]  
????????????? ??? ?????? ??? ?????? ? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??  
????????? ??? ?? 65 000 [??] ?? ?????? ??????, ?? ??? ?????? ?????? ?????????? ??????????  
?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??????».

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

11 ?? ?????? 127 ??? lege nr. 571 privind Codul fiscal (????? 571 ??? ?????????????? ??????), ??? 22?? ??????????? 2003 (*Monitorul Oficial al României*, ???? I, ????. 927 ??? 23?? ??????????? 2003), ????. ??????????????? ?? ??? lege nr. 343 pentru modificarea ?i completarea Legii nr. 571 privind Codul fiscal (???? 343 ??? ?? ?????????????? ?? ?????????????? ?? ?????? 571 ??? ?????????????? ??????), ??? 17?? ??????? 2006 (*Monitorul Oficial al României*, ???? I, ????. 662 ??? 1?? ?????????? 2006) (??? ????: ??????????? ???????), ?? ????? «????????????? ??? ?????? ??? ?????????? ?????????????? ??????????????», ?????????? ?? ??????????;

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

12 ?? ????? 141 ?? ??????? ??, ?? ?????? «?????????? ?? ???? ??????  
????????????????????? ?? ???? ??????? ?? ????», ?????? ?? ???? ?????????? 2 ?? ???:

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

[...]

e) ?? ??????? ?????????? ? ? ?????????? ??? ??????? ??????? ?? ??????? ???????, ?  
?????? ?? ? ?????????????? ??????? ??????? [...]».

13     ?? ?????? 152, ?????????? 1, ??? ?? ??? ??????, ?? ?????? «?????? ????????

«1. ? ??????????? ???. ???? ? ?????? ?????? ?????????????????? ??? ?????????? ?????? ???.  
????? 1251, ?????????? 2, ??????? a, ??? ?????? ? ?????? ? ?????????????????? ??????  
????? ?????? ?????? ?????? ?????????? ??? ?? ??? ?????? 65 000 ??? ? ?? ?????????? ??.  
[????????? ??? (RON)] ??? ?????????? ?? ??? ??? ?????? ??? ?????????? ?? Banca  
Na?ional? a României [(????? ?????? ??? ??????)] ??? ??? ?????????? ?????????? ???  
??? ?????????????? ??? ?????? ?????? ??????, ??? 220 000 RON, ?????? ??  
????? ?????? ??? ??? ??? [...] ??? ??? ?????? ??? ?????????????? ??? ?????? 126,  
????????? 1, ?? ?????? ??? ?????????????? ?????????? ?????????? ?????????? ??????????  
?????, ?????? ?? ?? ?????? 143, ?????????? 2, ??????? b.»

14     ?? ?????? 152, ?????????? 2, ??? ????? ?????? ?????????? ??? ?????? ??? ?????? ?  
????????? ????, ??? ????? ?? ??????????????????, ?????????? ?? ?????? ?????????? ??? ????  
????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ????? ?? ?????? ?????? ?? ????? ?????????? ?? ?????? ?? ??? ????? ??????????????  
?? ?????????????? ????.

15     ?? ????? 153 ??? ?????????? ??????, ?? ????? «??????? ??? ?????? ???», ??????????  
?? ??????:

«1. ? ?????????????? ????. ????. ????. ????. ?????? ?????????? ?????????????? ????. ?????????? ????.  
????????? ? ?????????? ?? ?????????? ?????? ?????????? ?????????? ?????????? ????. ?????????? ????.  
????? ?????????? ????. ???/? ?????????? ?????? ????. ????. ????. ????. ????. ?????? ?????? ?????? ????.  
?? ?????? ????. ????. ????. ?????? ?????? ?????? ????. [...] ????. ?????? ????. ????. ????. ????. ????.  
?????????: [...]»

b)    ???, ????. ?? ??????? ???? ?????????????? ?????, ?????????????? ? ?????????????? ??  
????????? ????. ?????????????? ????. ?????????????? ????. ?????? 152, ?????????????? 1, ?????? ??????????????  
????? ??????? ????. ?? ?????? ????. ?????? ????. ?? ?????????? ????. ?????? ?????? ?????????????? ? ?????????? ??  
?? ?????? ??????? ????.

[...]».

16 ?? normele metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal (?????? ?????????? ??? ???? 571/2003 ??? ?????????? ???) ??? ?????????? ?? ?? hot?râre nr. 44 pentru aprobarea Normelor metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal (????????? ??? 44 ??? ?? ?????? ??? ?????? ?????? ??? 571/2003 ??? ?????????? ???), ??? 22?? ?????????? 2004 (*Monitorul Oficial al României*, ??? I, ????. 112 ??? 6?? ?????????? 2004), ??? ?????????? ?? ?? hot?râre nr. 670 pentru modificarea ?i completarea Normelor metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal, aprobat prin Hot?rârea Guvernului nr. 44/2004 (????????? ??? 670 ??? ??? ?????????? ??? ?? ?????????? ??? ?????? 571/2003 ??? ?????????? ???, ??? ?????????? ?? ?? ?????????? ??? 44/2004), ??? 4??

?????? 2012 (*Monitorul Oficial al României*, ?? I, ????. 481 ?? 13?? ?????? 2012),  
??????, ??? ?????? 47, ?????????? 3, ?? ???:

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

a) ? ?????????? ??? ?? ??? ?????? ?????? ?????????? ?????????????????? ?????????? ???  
????? ??? ?????????? ??? ??? ?????????? ??????????

b) ? ?????? ??? ?????????? ??? ?? ??? ?????? ?????????????????? ??? ?????????? ???  
????? ???

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

17 ?? ?? ??? ?????? ?????????? ???????, ??? ?????? 61, ?????????? 1, ??? ?????? ??  
????? 152 ??? ?????????? ??????, ?? ??????:

«????? ??? ?????? ??? ?????? 152, ?????????? 2, ??? ?????????? ??????, ??? ?????? ???  
????????? ??? ?????? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??????????  
????????? ?? ?????????????? ??? ?????????? ??? ?????? 47, ?????????? 3.»

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

18 ? ?????? ??? ?????? ?????, ?????????? ??????????????, ?????? ?????? ?????????? ??????????  
????? ??? ?????? ??????????, ??? ?? ?????????? ??? ?????????? ??????, ??? ??????????  
?????????, ??? ?????????? ?????? ?????????? ?????????????? ?????? ??? ??? ??????????,  
????????? ??, ???????, ?????????? ?? ?????????? ?????? ??? ?????? ??? ??????. ?? 2008  
????????? ??? ??????????, ?? ?????? ??????, ?????? ?????????? ?????? ??? ?????? ???  
«????????????? ??????», ??? ?????????????? ?? ?????????????? ??? ?????? ?????? ?????? ???  
?? ?????????? ??? ?????????? ?????? ??????.

19 ? ?????? ??? ?????? ?????, ? ?????? ?????? ?? ??? ?????? ?????????? ??? ??????????  
????? ??? ?????????????? ??? ?? ??? ?????????? ??? ?????????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????????? ??? ?? ??? ?????? ?????? ??? ?? ??? ?????? ??????????  
????? ??? ?????? ?? ?????????? ??????, ??? ?????? ??? ?????? ?????? ?? ??? ??? ??  
??????????????????. ? ?????? ???, ?????????????? ??? ?????? ???, ??? ??? ??  
????????? ??? ??? ??? ?? ??? ?????? ??????, ??? ?? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????????? ?????? ?????? ??? ?????????? ?????? ??? ?????????? ??????,  
????? ??? ?????????? ???????. ?? ?????? ?????????? ?????????????? ??? ?????? ??? ??????  
?? ??? ?????? ??? ?????? ?? ??????: «????? ?????????????? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ??????????».»

20 ?? 2016 ? ?????? ??? ?????? ?????? ?????????? ?? ?????????? ?????? ??? ??????  
?? ??? ?????????? ??? ?????????????? ?? ?????? ??????, ?????? ??? ?????? AJFP  
Cara?-Severin ?????????? ???, ??? ?? ?????????? ??? ?????? 2012, ? ?????? ?????? ???  
????????? ?? 220 000 RON (?????? 65 000 ???), ??? ??? ??? ?????? ?????? ??? ??? ??  
????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????, ? ?? ??? ?????????? ??? ?????? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ??????, ??? ?????? ? ?????????? ??? ?????? ???

?????????? ??? ?? ??????????? ??? ?? ????? ?? ????? ?????????????? ?? ??????? ???????  
?????????? ???, ??? ???? ?? 1? ??????????? 2012.

21    ??????????? ?? ?????????????? ?? ???? ?????? ?????? ?????? ?????????? ?? ?????????????? ??  
????? ?????? ??? ?????? ?? ???? ?????? ?? ???? ?????? ?????? 2012, ? AJFP Cara?Severin ???  
????? ?? ??????????? ??? ?????????????? ??? ?????????????? ??? ?????? ??? ?? ?????? ???  
????? ?????? ?????????? ?????????????? ??? ?? ?????? ?????? . ? ???? ?????? ??? ?? ???? ?????? ??????  
??? ??????????? ?? ?????????? ??? ?????????? ???? ?????????? ???? ?????????????? ?? ??????????  
?????????????, ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????????? ??? ??????????  
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ??????????  
????????????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ??????????

22    ??????????, ? AJFP Cara?-Severin, ??? ?????????? ???, ?? 2012, ?? ?????? ??  
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?? ??????  
??? ?????? ?????????? ??? ?????? ?????????? ?????? ?????? 69 % ??? ??  
????????????? ??? ?????????? ?????? ?????????? ?????? ??????????????, ??? 17 % ??? ?? ??????  
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? 14 % ??? ?? ??????????  
??? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??????????????  
??? ?????????????? ???, ??? ?? ?????? ??? ?? ??? ?????? ?????, ? ?????????????? ???  
????????? ?????? ?????????? ?????? ?????? «????????? ?????» ?? ?????? ?? ??? ?? ??? ??  
????? ??????????, ??? ?? ?????? ??? ?????? 152, ?????????? 2, ??? ??????????  
?????, ??? ?? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?? ??  
????????????? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?????? ?????????? ??? ??  
????????????? ??? ?????? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????????? ???.

23    ? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ??? ?? ?????? ??????????  
????? ??? ?? ?????? ?????????? ?????? ??? AJFP Cara?-Severin. ?? ?????? ??? 22?  
????????? 2017 ? ?????????? ?????? ?????? ?????????? ?????????? ??? Timi?oara –  
????????? ?????? ?????????? ?????????? ????. 1 ?????? ??? ?????? ??? ?????? ???.

24    ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??????????  
????????? ??? ?? ?????????? ????. ?? ?????? ??? 26? ?????? 2018 ?? Tribunalul  
Timi? (????????? Timi?, ??????) ?????? ??? ?????? ???.

25    ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ??????????????  
?? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????  
????????? ??? ?????? ?????? ?????? ?????? 152, ?????????? 2, ??? ?????????? ???  
??? ??? ?? ?? ?????? ?????????? ??? ?????? ?? ?????????? ?????? ?????? ?????? ?????? ???  
??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
????????? Timi?oara, ??????), ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ???  
????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???:  
????????:

«1)    ?? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????????? ???, ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 288, [?????  
?????], ?????? 4, ??? ?????? [?] ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???,  
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???  
??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,

? ? ?????????? ?????????? ??????????, ?????? ?????? ?????????? ?????? ?? ?????????????? ?  
?? ??? ?????? ?????????? ?, ? ?????? ?? ?? ??? ?????????? ?? ?????????? ??? ??  
?????? ??? ?? ?????? ??? ?????????????? ?????????????? ??? ?? ?????? ??????????????  
? ?????????? ?????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? “?????  
?????????????;”

2) ??? ?????????? ??? ?? ??????? ?? ?????? ??? ?????? ?????????????? ??? ?????? ?????? ??  
????????? ??? ?????????? ??? ?? ?????????????? ??? ?? ?????? ?????? ??? ??????  
????????????? ?????????????? ??? ?? ??? ?????? ??????, ??? ?????????? ??? ?? ??? ??  
????? ?????? ?? ?????????? ?????? ??? ?? ?????? ?????????? ?????? ?????? ??? ?? ??????  
??? ?????????? ?????????? ??? ?? ??? ?????? ??????, ?????? ?? ?????????? ??? ??  
??? ?????? 288, [????? ??????], ?????? 4, ??? ?????? [?] ?????????? ??? ??????????  
??? ?????????? ?? “????? ??? ?????? ?????? ?????????? ??????”, ?? ?????????? ??  
????????? ?? ?? ??? ?????????? ??? ?? ??? ?????????? ??? ?????? ?????????? ??? ??????????  
?? ?????? ?????? ??? ?? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ??  
?????????;”

3) ??? ?? ??? ?????????? ??? ??????? ??????????, ?????? ?? ?????????? ??? ??  
????????? ??? ?? ?????????? ??? ?????? ?????????? ?? “????? ??? ?? ??? ??????????  
?????????” ?? ?????? ??? ?? ?????????????? ??? ?? ?????? ?????? ?????? ??????  
??? ?????? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????????? ??? ??  
????? ?????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ??  
????????????? ?????????????? ??? ?? ?????? ?????? ??? ?? ?????????? ?????????? ??? ??  
??? ?? ??? ?????? ??????;»

**??? ?? ?????????? ??????**

26 ?? ?? ?????????? ????????, ??? ?????? ?? ?????????? ??? ??????, ?? ??????  
????????? ??? ?? ?????????? ???, ???' ??????, ?? ?? ?????? 288, ?????? ??????, ?????? 4,  
??? ?????? ??? ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ?????? ??  
????????? ? ?????????? ?????????????? ??? ?????? ?????????? ??? ?????? ??????  
????????? ?????????? ??? ?? ?????? ?????? ?????? ??????, ??? ?????? ?????? ??????  
«????? ?? ??? ?????? ?????? ??????» ??? ?? ?????? ??? ?????????? ?????? ??  
????????? ??? ?????? ?????????? ?????? ?????? ??????????.

27 ??????????, ????, ??? ?? ?????????? ???, ?? ?????? ?????????? ????  
????????? ??? ?? ?????? 281 ??? 294 ??? ?????? ???, ?? ?????????? ??? ??  
????? ??? ?? ?????? ???, ??? ?? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ??  
????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? (????. ?????? ??? 2?? ??  
2019, Jarmušien?, C-265/18, EU:C:2019:348, ??? 27 ??? ?????? ?????????? ??????).

28 ??????, ??? ?????? ?? ?????? ????????, ?? ?????????? ??? ?????? ???  
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????  
??, ?????? ? ??? ?????? ?????? ?????????? ?????????? ?? ?????? ??? ?????? ?????? ??????  
?????????, ?????? ?? ?? ?????? 9, ?????????? 1, ?????? ??????, ??? ?? ??? ??????  
(????. ?????? ?? 27?? ?????????? 2000, Heerma, C-23/98, EU:C:2000:46, ??? 19 ??  
???? ?????????? ??????).

29 ??????, ??? ?????? ?? ?????? ?????????? ??? ?????? 30 ??? 31 ??? ?????????? ???,  
? ?????? ?????? ?????? ?? ?????? «????? ??? ??????», ??? ?????? ?????? ??? ??????  
288, ?????? ??????, ?????? 4, ??? ?????? ???, ?????? ?????? ?????????? ??? ??????  
????????????? ??? ?? ???, ?????? ?? ?????? ?????????? ??? ?????? ?????????? ??  
????????????? ??? ?? ?????? ??? ?????? 135, ?????????? 1, ?????????? ???, ??? ?????????? 2,

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

30 ?????????????? ?????? ??? ?? ??? ?????????????????? ??????????????, ?????? ?? ??????????  
???, ??? ?? ???? 288, ????? ??????, ?????? 4, ??? ?????? ??? ?? ?????????????? ???.  
????????? ??? ?????? ??? ?????? ?????, ? «????? ??? ????? ?????????????? ??????????» ????.  
??? ?????? ??? ?????????? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ????  
????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????, ?????????? ???  
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????, ?????????????? ?????? ??? ?????? ???  
????????? ??? ?? ??? ??????????, ??? ?? ??? ?????? ??? ?????? ?????? ??????????, ??? ?? ???  
??? ?????? ??? ?????? ?????????? ? ?????? [????. ?????? ??? 5?? ?????????? 2020,  
Staatssecretaris van Justitie en Veiligheid (????????????? ??? ?????????? ??? ?????? ???  
?????????), C-341/18, EU:C:2020:76, ????? 40 ??? ??? ?????????????? ??????????].

31      ????? ???? ?? ??????? ??? ?????? 288, ?????? ???????, ??????? 4, ??? ??????? ???,  
????????????? ??? ?????? ??? ?????????????? ?? ?????? ?? ??????? ?? «????? ??? ???  
?????????? ???????» , ?????? ? ?????? ??????? ??? ??????? ?? ?????? ??? ?????? ??? ??? ??????  
?????????? ??? ??????? ???.

32      ?????? ?????? ?? ?????????? ??? ?????? ?????????????? ?? ?????? 288, ?????? ??????, ?????? 4,  
???? ??????? ???, ?????? ?? ?????? ?????? ??? ?????? 174, ?????????? 2, ??????? ??, ???  
?????? ?? ?????? ?? ?????? ?????????????? ??? ?????????? 2, ?????????? «?????????  
?????????», ??? ?????? X, ? ?????? ?????????? «?????????», ??? ?? ??? ??????, ??? ??  
????? ?????? ??? ?? ?????????? ????, ??? ?? ?????????? ??? ?????????? ??????, ??  
????? ?????? ?????? ?????????? ?? ?????? ?????????? ??? «????????? ?????? ??? ??????  
??? ?? ?????????? ?????????? ?????? ??????».

33 ? ?????????? ????. ?????? ????????????, ???' ??????, ??? ?? ????? 19, ?????????? 2,  
??? ????? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ??????????  
??? ?????????? ??? ?????? ?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? – ????  
?????? ????? ?????????????? ?????: ?????????? ?????????? ??? (?? ??. ??. 09/001, ?.  
49, ??? ?: ??? ?????), ?? ??. ?????? ? ?????????? ??? ?????? ?????? ?? ?????????? ???  
??? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ??????  
?????? ?????????? ?? ??? ?? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ??  
(????. ??????? ??? 6?? ?????? 2008, Nordania Finans ??? BG Factoring, C-98/07,  
EU:C:2008:144, ??? 24).

34 ???????????, ?????????? ??? ????? ???? ?????????? ??? «????????????? ??????» ??? ???.  
?????? ??? ?????????? ???, ?? ?????????? ?????? ?????? ?????????????? ??? ?????? ?????? ???  
????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ???  
?????, ??? ?????????? ?? ??? ?????? ?????? ?????? ?????? – ?????? ?????? ???  
????????????? ????: ?????????? ?????????? ???, ??? ?????????? ??? ??? ?????? ?????? ???  
????????? ??? ?????????? ?????? 29 ?????? 1973 [COM(73) 950 final] (  
*Bulletin des Communautés européennes*, ?????????? 11/73, ?. 20) (???: ????: ?????? ???  
?????). ????: ????: ??? ?????? ?????????? ????, «[?] ?????? ??? ?????? ?????????? [??  
????? 19, ?????????? 2, ????: ??? ?????? ??????????] ?????? ?? ?????????????? ????: ???  
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??????????????  
?? ??????????, ????: ??? ?????? ??? ?????????? ??? ?????? ??? ?????????????? ???  
????????????? ?????????????? ??? ?????????? ??? ?????? ???». ?. ????: ?????????????? ???  
????????????? ??? «[?] ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ????: ???  
????????????? ?????? ??? ?????????? ??? ?????????????? ?????????? ???, ????: ??? ?????? ???  
????????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????????????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????????????? »?. ????: ?????????????? ??? ?????? ??????????????

???, «[?]??????, ?? ??????? ?????? ?????????????? ?????? ?????? ?? ?????????? ?? ?????? ?????????????? ?????? ?????????????? ?????? ?????????????? ?????? ?????????????? ??? ?????????????? ?????? ?????? ??????» (????????? ?? 29?? ?????????? 2009, NCC Construction Danmark, C-174/08, EU:C:2009:669, ????? 30).

35 ??????? ?? ?????????? ??? ?? ?????? 288, ?????? ??????, ?????? 4, ??? ?????? ???  
?????? ??? ????? ??????. ???????, ? ?????? ??? ??????????? ??? ?? ?????? 25,  
?????????? 2, ??? ?????????? ??? ?????? 77/388, ??? ??????? ?? ?????? 24, ??????????  
4, ??? ?????? ??????. ??? ?? ?????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ???  
??????, «[? ?? ??? ??????] ?????????? ??? ?????? ?????????????? ??? ?? ?????? ???  
????????? ?? ?????? ?????????? ??? ?? ?????? ?????????? ??????????». ??? ?? ?????? ???,  
«[? ??????] ?????????? ??? ?????? ??? ?????? ?? ??? ?? ?????? ?????????? ?????????? ???  
????? ?????? ?? ?????????? ??? ?????????? ???, ??? ?? ??? ?????? ??? ???, ??? ?????? ??? ?????? ???  
??? «????????? ?????? ??? ?????? ?? ??????, ??? ? ?????? ?????????? ??? ?????? ???  
????????? ??? ?????????? ??? ?????????? »..

36 ???????, ??????????? ?? ?????????? ?????????? ?????????? ??? ??????? ???, ???  
????? ??? ??????????, ?? ???????, ??? ??????, ??? ??????, ??? ??????, ??? ?????? ??? ?  
????????? ??????, ??? ??? ?????????????? ??? ?????? ?????? ????? «????????????? ??????» ???  
????? 174, ?????????? 2, ??? ??? ?????? 288, ?????? ??????, ?????? 4, ??? ?????? ????.

37 ??????, ????????????, ?????? ??? ????????????, ??? ?????? 34 ???  
35 ??? ???????, ??????????, ?????????? ?? ?????????? ??? ?? ??????? ???  
????????????????? ??? ?? ??? ??????????, ?????????? ?????????????????? ?? ??????????  
???????, ??? ?? ??? ????????????.

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

40 ? ?????????? ??? 288, ?????? ??????, ?????? 4, ??? ??????? ???  
????????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ?? ?????? ?????????? ??????  
??????????. ??????, ?? ?????????? ??? ?????????? ??? ?? ??? ???? ?????? ??????  
????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ??????????  
????? ?????????? , ??? ?????????? ??? ??? ?????????? ?????? ??? ?????????? ??? ??????????  
?????, ?????? ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???  
????????? ? ?????????? ??? ?????? ??? ??? ?????? ?????????? ?????? ??? ?????????? ??  
??????????. ??????, ?????? ??? ??? ?????? ?????????? ?????? ?? ?????????? ??? ??  
????????? ??? ??? ??? ??? ?????? ?????????? ??? ??? ??? ??? ?????????? ???  
(????????? ??? 26?? ??????? 2010, Schmelz, C-97/09, EU:C:2010:632, ?????? 63 ??? 68,  
??? ??? 2?? ??? 2019, Jarmuškien?, C-265/18, EU:C:2019:348, ?????? 37).

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

42 ?????????????? ?? ?????????? ???, ?? ?????? ?? ??? ?????????? ???  
????????????????? ?????? ??? ????? 174, ?????????? 2, ??? ?????? ???, ?? ??????????  
???? ?????? ??? ?????????????? ?????????????? ??? ?????? ?? ?????????????? ??  
«?????????» ???, ????, ?????? ???, ?????? ??? ?????? ?????? ?????????? ???  
????????????? ?????????????? ??? ?????????????? ?????????? (????. ?????? ??? 29??  
????????? 2009, NCC Construction Danmark, C-174/08, EU:C:2009:669, ??? 31).

43 ?? ?????? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ?????????? ???,  
????????????? ?????????? ??? ???? ???? ???? ?????? ?????????? ?????????? ???? ???? ???? ????  
??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???, ?????????? ???  
????? ?????? ?? ?????????? ?? ?????????? ??? ?????? ???, ?????????? ???, ?? ?????? ?????????? ???.

44 ?????????? ??, ?? ?????????? ??? ?????? ??? ?? ?????? ?????????? ?????? ?? ??????????  
????? ?? ?????????? ??? ?????????????? ???, ?????? ?? ?????? ??? ?????? ???  
????????, ??? ?????????? ??? ?????? ?? ?????? ?????? ?????????????? ??? ?????? ???  
????????? ?????? ??? ?? ?????? ???.

45 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????????  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? 51 ??? 52  
??? ?????????? ???, ????, ???, ?? ??? ??? ?????????? ??? ?????? ?????????? ??? ??????  
????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??????  
????????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ?????????, ?? ?????????? ???,  
??? ?????????? ??? ?????? ??????, ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????  
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? - ???????????. ?????????, ?? ?? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???.

46 ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????????? ??????????  
????? ?? ?????? ??? ?????? ??? ?? ?????? 288, ??? ?????? ???, ?????? 4, ??? ?????? ???  
????? ?? ?????? ???, ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????  
????? ?? ?????? ??? ?????? ??? ??????, ? ?????? ??? ?????? ??? ?????? «????? ?? ?????? ??? ??????  
?????????» ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???.

## ??? ?? ?????????? ????

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

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

? ? ?????? 288, ?????? ???, ?????? 4, ??? ?????? 2006/112/?? ??? ?????????? ???  
28? ?????????? 2006, ?????? ?? ?? ?????? ?????? ??? ?????? ?????????? ???,  
????? ?????????? ?? ??? ?????? 2009/162/?? ??? ?????? ???, ??? 22??  
????????? 2009, ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ?????? ??? ?????? ???  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ??????  
????? ??? ?????? «????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

(?????????)

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