

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

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

GERARD HOGAN

??? 25?? ??????? 2020(1)

?????? C?459/19

The Commissioners for Her Majesty's Revenue & Customs

????

Wellcome Trust Ltd

{?????? ??? Upper Tribunal (Tax and Chancery Chamber)}

[????????? ??????????? ????????

(????? ??????????? ??? ????????????) (?????? ???????)]

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

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? – ?????? 2006/112 –
????? 43, 44 ??? 45 – ????? ?????? ?????????? ?? ?????????? ?????? ??? ?????? ? ?????? ?????? ??????
??? ??? ?????????? ??? – ????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ???
?????? ?????????????? ?????????? ?????????? ??? ?? ?????????? ?????????? ?????????? ???
????????????? ??? ?????????? ?????????????? ?????? ??? ?????????? ?????????? ?????????? ???»

I. ????????

1. ? ??????? ?????? ?????????????? ?????????? ??????, ?????? ?????, ??? ??????? ???
????? 44 ??? ??????? 2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006, ??????? ??
?? ????? ?????? ??? ?????????????? ?????? (2), ??? ?????????????? ?? ??? ?????? ??????
2008/?? ??? ??????????, ??? 12?? ?????????? 2008, ??? ??? ?????????? ??? ?????
2006/112/?? ??? ????? ?????? ??? ????? ?????? ?????? (3) (?? ?????: ?????? ??? ??? ???).

2. ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Commissioners for Her
Majesty's Revenue & Customs (???: HMRC) ??? ??? Wellcome Trust Ltd (???: WTL),
???? ?????????? ???, ?? ?????????? ??? ?????? ??? ?????? ?????????? ??????????
????????????? ?????????? ??? WTL ??? ??? ?????? ?????????? ?????????????? ???
????????????? ?????? (4).

3. ? WTL ??? ?????????????? ?????????? ?? ?????? ???????, ? ?????? ??????
????????????? ?????? ???????????????. ??? ?????? ???????????, ? WTL ?????????????? ???
????????? ?????????? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ???

??? ??????? ?????????????? ??????????????????. ?? ?????????????????? ?????? ?????????? ????
?????? ?????? ???????, ?? ????, ???????, ?????????? ??? WTL ??? ? ????
?????? ??? ?????? ??? ?????????? ?????.

4. ??????? ?? ??? ?????, ? WTL ?????????????? ??? ?????????? ??????????????
?????????? ??? ??????? ?????????????? ?????? ??? ?????????? ?????? ??? ??????????
?????????? ?????????????? ??? ??????, ??? ?????? ??? ?????? ?? ?????????? ?? ??????
?? ??????? ??? WTL, ??? ??????? ?????????? ?????????????? ?? ?????? ??? ?????? ??? (5).
??? ?????????????? ??? ? WTL ??? ?????????? ??? ?????????? ?????? ??? ??????????
?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 2, ?????????? 1, ?????????? ?, ??? ??????
??? ??? ???, ???' ?????? ?????? ??? ?????? ?????????? ??? ??? ???' ?????????? ??????.
?????? ??? ?????????? ??? ? WTL ??? ????? «????????????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????» ??? ??? ?????? ??? ?????? 2, ?????????? 1, ?????????? ?, ???
?????? ??? ??? ???, ??? ?????? ??? ?????? ?????????????? ??????????????.

5. ?? ?????? ?????? ??? ?????? ?? ?????? ?????????? ?????? ??, ??? ???
????????????? ??? ??????????, ? WTL ?????? ??? ????? «????????????? ??? ?????? ????
?????? ??? ??? ?????? ???» ??? ??? ?????? ??? ?????? 44 ??? ?????? ??? ??? ???,
???? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? 2, ??????????
1, ?????????? ?. ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ????
????? ?????? ??? ?????? ?????? ??? ?????? ??? ??? ?? ? WTL ?????? ?????? ??? ??? ???
????????????? ??????????.

6. ??? ?? ?????????? ??? ?????????? ???, ?? ?????????? ?????? ?? ??????,
?????? ????, ?? ? ????? «????????????? ??? ?????? ??? ?????? ?????????? ??? ??? ?????????? ???»
???? ?? ??? ?????? ??? ?????????????? ??? ?????? 2, ?????????? 1, ?????????? ?, ???
?????? ??? ??? ??? ??? ??? 44 ??? ?????? ????. ??????, ??? ??????????
?????????, ?????? ??? ?????? ?? ?????????? ?? ?????? ?????? ??????.

II. ?? ?????? ??????

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

7. ?? ?????? 2 ??? ?????? ??? ??? ??? ?????:

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

[...]

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

[...]».

8. ?? ?????? 9, ?????????? 1, ??? ?????? ??? ??? ??????????:

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

[...]»

9. ?? ??????? 3 ??? ?????? V ??? ?????? ??? ??? ??? ?????????? «????? ??????
?????????».

10. ?????? 1 ??? ????????, ????, ?????? «?????», ?????? ?? ???? 43, ??
????? ??????:

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

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

2. ?? ??????????? ???. ???. ?????? ??????? ???. ???. ?????? ??????? ???. ???. ??????? ???. ???.

11. ?? ?????? 2 ??? ??????????? ??????, ?????????????? «????????? ??????», ???????????;

«????? 44

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

????? 45

? ?????? ??????? ?????????? ?? ?? ?????????? ??? ?????? ?????? ? ?????? ??? ?????? ??
????????? ?????????????? ?? ?? ?????????? ??? ?????????? ?? ?????? ??????. ??????, ?? ?? ??????????
????? ?????????? ?? ?? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ??
????????? ?? ?? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??
????? ?? ?? ?????????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??
????????? .. ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??????????????, ?? ?? ?????? ?? ??????
????????? ?????????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??
?????????» (6).

12. ?? ?????? 196 ?? ??????? ??, ?? ?????? ?????????????????? ??, ?? ????? XI ?
?????? ??????????? «?????????? ?? ??????????? ??, ?? ?????? ??, ?? ?????? ??, ??
?????????? ??, ??, ??», ???:

13. ?? ?????? 19 ?? ?????????????? ??????????? (?) 282/2011 ??? ??????????, ??? 15??
?????? 2011, ??? ?? ?????? ?????? ?????????? ??? ?????? 2006/112/?? ??????? ?? ??
????? ?????? ?????? ??????????????? ?????? (8) (??? ????: ?????????????? ???????????), ??

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

«???? ????? ??????? ?? ??????????? ?? ??????? ?? ?????? ??????? ?? ?????? ??????? ?? ?????? ??????? ??
?????????? ?? ??????????????? ?? ????? 44 ?? 45 ?? ??????? 2006/112/?, ???
?????????? ?? ????? ???? ???? ???? ?????? ??????? ?? ??????????? ?? ?????? ??? ???? ???? ???????????
?? ??????????? ?? ????? ???? ?? ?????? ??????? ?? ??????? ?? ??????????????? ?? ??????????? ?? ?????,
?????????????????? ?? ?????? ?? ??????? ?? ??????????? ???, ??????????? ?? ?? ??????????? ?? ?????
????.

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

???? ???? ???? ? ???? ?????????? ?????????????? ?????????????? ??? ?????????? ??????,
????????????????????? ??? ?????? ??? ?????????? ??? ??????, ??? ??? ????? ?????? ???
????????????? ????????????????, ? ?????? ??? ?? ????? ?????????? ?????????? ?????????????? ???
?? ??? 44 ??? ?????? 2006/112/??, ?????? ??? ?????????? ?????????????? ??????????..»

2. ?? ?????? ?? ?????????? ??????????

14. ?? ?????????? ??????? ?? ?? ???? ?????? ?????????? ??????????????????, ?? ?? ?????? ?? ?? ?????? ?????????? ??????????????, ?? ?? Value Added Tax Act 1994 (????? ?? 1994 ??) ?? ?? ?????? ?????????????? ?? ??, ?? ???: VATA), ?? ?? ?????? ??????:

«?????? ??? ??????? ??????????

(1) ?? ?????? ?????? ?????????????? ?????????????? ?? ???????????, ??? ??? ?????????? ??
 ?????????? ??????, ?? ?????? ??? ?????????????? ?? ??????????.

(2) ? ?????? ?????????? ?????????????????????? ?? ??? ?????????????????????-

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

(b) ?? ???? ????????????, ??? ??????? ??? ?????? ?????? ?????? ?????????????????? ? ??????????.

[...]

(4) ????? ???? ??????? ???? ?????????? ???? , ???? ???? ?????????? ???? ???? ???? ???? ???? ????
????????????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? –

(a) ?????? ?????????????? ????. ????. ????. ????. ????. ????. ????. ????. ????. 9 ????. ??????. 2006/112/??
???. ????????????

(b) ?????? ?????????????????? ??? ??????? ??????? ??????? ?? ??? ??????? ???.

(c) ?????????? ??????? ?????? ??????? ??????? ?? ???? ?????????? ??????? ??????? ???????
????? ?? ???? ?????? ??????? ?

(d) ?????????? ?????? ?????????????? ?????????? ?????? ??? Act of Tynwald [????? ?? ????
??] ??? ??? ?????? ?????????????? ?????????????? ?????? ? ?????? ?????????????? ??? ??
????????????? ???,

??? ?? ?????????? ??? ?????????????? ??? ?? ?????? ?????? ??? ?????????? ?? ?????????? ??? ??
????????..»

III. ?? ?????????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????????? ??????????

15. ? WTL ?????? ? ?????????? trustee ??? ?????????????? trust, ??? Wellcome Trust, ??
????? ?????????????? ??? ?????? ??? ?????? ?????? ??????. ?? ?? ??? trust ??? ?????????? ???
??? ?????????? ??? ??? ?????? ?????????? ?????????? ?????? ?????? ??????????????, ??? ???
????????????? ?????? ???????, ?????????? ?????????? ?????? ?????? ?????????? ?????????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?? . ?? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
WTL ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ? WTL.

16. ??? ?????? Wellcome Trust, ?? ?????????? ?????? ??? ??? ?????? ???
????????? ?????????????? ??? ?? ??? 4, ?????????? 2, ??? ??? ?????? ?????? 77/388/??
?? ??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????? ?????????? ??? ?????????? ???
?????, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? – ?????? ?????? ???
????????? ?????? ?????: ?????????? ?????????? ??? (9) (??? ????: ??? ?????? ??? ???
??), ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????????
????????? ??? ?????? ?????? ??? ??? trustee ??? ?????? ??? ?????????? ??? ?????? ??? ??????????????
????????? ??? ?????????? trust.

17. ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ???, ??
????????? ??? ?????? Wellcome Trust, ?????????? ??? WTL ??? ??????????
?? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???.

18. ? WTL ??? ?? HMRC ?????????? ???, ???' ??????, ?? ?????????????? ??? WTL ???
????????????? ??? ?????? ??? ?????????? ??? ?????? ?????? Wellcome Trust. ???????,
????????? ??? ? WTL ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ??????
??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????????? . ? WTL ??? ?? HMRC ?????????? ??? ? WTL ??? ?????? ?????????? ??? ???
???? ??? ?????? ??? ?????? 2 ??? 9 ??? ?????? ??? ??? ??? ??? ??? ??? ??? ???
????????????? ??? ??? ?????? ?????????? ??? ?????????? , ??? ??????????????
????????????? . ??????, ??? ?????????? ??? ? WTL ??? ?????????? ??? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 2, ?????????? 1,
????????? ??, ??? ?????? ??? ??? ???.

19. ??? ?? ?????????? ??? Wellcome Trust, ? WTL ?????? ?? ??????????
????????? ??? ?????? ??? ?????????? ??? trust ??? ??? ??????????, ???
????, ?? ?????? ?????? ??? ?????????? ???.

20. ??? ?? 2010 ??? ???????, ? WTL ?????????? ??? ?? ??? ?????????? ??????????
???????? ?? ??? ?????????? ?????????? ??? ?????????? (10), ?? ??? ?? ??? ? ????? ??
???????? ?? ??? ?????? ???????.

21. ?????? ??????? ?? 2016 ??? ?????? ?? 2017, ? WTL ?????? ?????? ?????? ??????
????? ?????? 80 ??? VATA, ?????????????? ??? ?????? ?????????? ?????? ?????? ??????
????? ??? ?? ????? ??????????, ??????? ??? ?????? Wellcome Trust ?????? ??? ? WTL
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 2 ??? 9 ??? ?????? ??? ??? ???,
????? ??? ?????? ?????????? ??? ?????? ??? ? ?????? ?????? ??? ??? ?????? ??? ?????? ???
????? ??? ?????? 44 ??? ?????? ??? ?????? ??? ?????????? ?????????????? ???, ???'
?????, ?????????? ?? ??? ?????????????? ??? ?????????? ??? ?? ?????????? ??? ?????? ???
????? ??????.

23. 15 2019, ?? HMRC ?? Upper Tribunal (Tax and Chancery Chamber) [.....] First-tier Tribunal (Tax Chamber) [.....] ??? ??

24. ?? ?????? ?????????? ?????? ?? ?? ?????? ?????? ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ??, ??? ?? ?????????? ??, ?????? ?? ?????? ?? ? WTL ???.
«????????? ??, ??? ?? ? ?????? ??, ??? ?? ? ?????? ??, ??? ?? ? ?????? ??» ??, ??? ?? ???? ??, ??? ?? ???? ??,
????? 44 ??? ?????? ??, ??? ?? ?.

26. ? WTL ??????????? ???, ?????? ?? ?????? ?????????????? ??? «??? ??????? ??
??? ??????? ???, ???» ???? ??? ?????? ?? ?????? 2, ?????????? 1, ??? ?????? ???

???, ??? ?????? ??? ?????????????? ??? ?? «? ?????? ?????? ??? ?? ?????? ??? ??» ???
??? ?????? ??? ?? 44.

27. ??? ??? ?????????????? ???, ?? Upper Tribunal (Tax and Chancery Chamber) [?????????
????????????? ?????????? (????? ?????????? ??? ??????????????)] ?????????? ?? ??????????
?? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ?????????????? ??????????:

«1) ?????? ?? ??? 44 [?? ?????? ??? ??] ?? ?????????? ?? ?? ?????? ???,
???? ?????? ?????????? ??? ?? ?????? ??? ?????? ?? ?????????? ?????????????? ???
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????
??? ?????????? ?????? ?????? ?????? ?????? ?????? trust, ???????, ?????????? ??? ??
????? ??? ?? ?????????????? ?????, ??????? ?????????? ?????????????? ?????????? ???
????? ?????????????? ????? ?? ??????, ??????? ?? ?????? “????????? ??? ?? ??? ???? ?
????? ?????? ??? ?? ?????? ???”;

2) ?? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?? ?????? 46 ?? 49 ?? ??????
[?? ?? ??] ?? ?????? ??????, ??? ?? ?????? 45 ?? ?????? [?? ?? ??] ?????? ??
?? ?? ??? ?????? ?????? ?? ?????? ?? 44 ?? ?? 45 ?? ?????? ?????? ?????? ?????? ???
??? ?????? ??????;»

IV. ? ?????????? ?????? ??? ??????????

28. ?????? ?????????? ??? ?? ?????????? ?????? ??? Upper Tribunal (Tax
and Chancery Chamber) [????????? ?????????? ?????? (????? ?????????? ???
?????????????)] ?????????? ? WTL, ? ??????, ? ?????? ??????, ? ?????? ???
????????? ?????? ??? ? ?????? ?????? ??????.

29. ??? ?? ?????? ?????? ?????????? ??????????, ?? ??????????, ?? ?????? ??? 24??
?????? 2020, ?????? ??????? ?? ?????? ?????????? ?????????? ?????? ?????????? ???
????????????? ??????????. ?? ?????????? ??? ?????????? ?????? ?????????? ?????????? ??????????
?? ?? ?????????? ?????? ??? ?????????? ?????? ?????????? ?????? ??? ?????????? ???
????????? ??? ?? ??????????.

V. ?????????? ??? ??????????

30. ?? ?????? ?????? ?????? ??? ?? ?????????? ?????? ?? ?????? ??? ?????????? (??
????????? ???) ?? 31?? ?????????? 2020. ?????? ??? ?????? 86, ?????????? 2, ??
????????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??????????
????????? (?? ???: ?????? ??????????), ?? ?????????? ?????????? ?? ??????
????????? ?? ?????? ?????????? ?????????? ?????? ??? ?????? ?????? ??? ??????????
?? ?????????? ??? ?????? ?????????? ?????? ??? ?? ?????? ??? ?????? ??????????
???? ?????????? ??? ?? ?????? ?????????? 126 ??? ?? ?????? ??????, ?? ?????, ???' ???, ??? ? 31?
????????? 2020.

31. ??????, ?????? ??? ?????? 89 ??? ?????????? ??????????, ? ?????? ??? ???
????? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?????????? ?? ???
????????? ??? ?? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ???.

32. ? ?????? ?????? ?????? ?????????? ?????? ?????? ??? ?????????? ???
????????? ??? 13 ?????? 2019. ??????, ?? ?????????? ?????????? ?? ??? ??
????????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ?? ??
Upper Tribunal (Tax and Chancery Chamber) [????????? ?????????? ?????? (?????)

? ?????????? ??? ??????????????)] ?????????? ??? ??? ?????? ??? ?? ?????? ??
????????? ??? ?????? ?????????.

VI. ?????????????? ??????????????

1. ? ??????? C?155/94, Wellcome Trust

33. ??? ??? ??????, ? ?????? ?????? ?????????????? ?????????? ?????????? ???
???????? Wellcome Trust ??? ?? ?????????? ??? ?????? ??? ??? ??? ?????? ?? ??
????? 2 ??? ?????? 2008/8 ??? ?????? ?? ??? 1? ?????????? 2010.

34. ??? ?? ?????? ??? ?????? 2, ?????????? 1, ??? ?????? ??? ?? ??? ?????? ???,
??? ?? ?????? ??? ?????? ?? ???, ? ?????????? ??? ?????? ??? ?????? ?? ?????? «?? ??
????????? ??? ???» (12).

35. ??? ????? Wellcome Trust, ?? ?????????? ?????? ??? ?? ??????????
????????????? ??? WTL (13), ?? ?????? ?????????, ???' ??????, ??? ??????????
????? ??? ?????? ?????? ?? ?????? ?? ?????????????? ??? ?????????? ??? ??????????
??? ?????????? ??? ?????????????? ??? ??? ?????????? ??? ?????????? ??? ??????????
????????????? ?????????????? ??? ??? ?????? ??? ?????? 4, ?????????? 2, ??? ??????
????????? ??? ??? (??? ?????? 9, ?????????? 1, ??? ?????? ??? ??? ???). ?????????? ???
? WTL ??? ?????? ?? ?????? ?????????? ??????????????, ?? ?????????? ?????? ???,
«????????? ??? ?? ?? ?? ??? ?????? ?????????????? ?????????????? ?? ?????? ??? trust
????????? ??? ?????? ?????????????????? ???????, ?????????? ??? ??? trust ?????????? ??
????????? ?????? ?? ?????? ??? ?????????? ?? ?????? ?????????? ?????? [...] ?? ??????????
??? ?????????? ??? ?????? ??? ?????????? ?????????? ?????? ??? ?????? ??????
?????????» (14). ?? ?? ??????, ??? ?????? 41 ?? ?????????? ???????, ?? ?????????? ???
??? ? ?????? ??? ?????????? ?????????????? ??? ??? ?? ??? ?????? ?????? ???
????????? ?? ?? ?????????????? ?????????????? ??? ?????? ?????????? ??? ?????? ??????????
????????? ??? ?????? ?????? ??? trustee ??? ?????? ??? ?????????? ??? ?????? ??????????
????????? trust.

36. ???????, ??? ??? ?????? ??? ?????????? ??? 29?? ??????? 2004, EDM (C?77/01,
EU:C:2004:243, ?????? 60 ??? 70), ? ?????? ?????????? ??? ?????? Wellcome Trust, ???
????? ??? ? ?????? ??? ?????? ?????? ???????, ??? ?????? ?????????? ??? ?????? ?? ??????
????????? ?? ?????????? ???????, ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??
????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??
????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????????? ?????????????? ??? ?????? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? 2, ?????????? 1, ??? ?????? ??? ??? ??? (15).

2. ? ?????? 2008/8

37. ??? ?????? 28 ??? 29 ??? ?????????? ??? 13?? ?????? 2019, Srf konsulterna
(C?647/17, EU:C:2019:195), ?? ?????????? ?????????? ??? ? ?????? ??? ?????????? ???
????????? ??? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??
????????? ?????? ??? ???????, ??? ?????, ??? ?????????? ?????????????? ??? ?????? ??
????????? ?? ?????? ?????????? ???, ???????, ??? ? ?????????? ?????????? ??? ?????? ??
????????? ?? ??? ?????? ?????????? (16).

38. ??? ??? ??? ?????? ?????? ??? ?????? 2 ??? ?????? 2008/8 ??? 1? ??????????
2010 (?? ?????? ?????????? ?? ?????? 3 ??? ?????? V ??? ?????? ??? ??? ???), ??
????? ?????? ?????? ?????????, ??????? ?? ??? ?????? 43 ??? ?????? ??? ???

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

39. ??? ?????? ??? ?????????????? ??? ?????? ?? ???? 2 ??? ?????? 2008/8, ? ??????
???? ?????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????????????, ??? ?????? ??? ??????, ??? ?????? ?????????? (17).

40. ??? ??? ?????????????? ??? ?????? 3 ??? ????? V ??? ?????? ??? ??? ???
?????? ?? ???? 2 ??? ?????? 2008/8, ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ? WTL ?????????? ??? ??? ??? ?????? ??? ?????????? ??? ??? ?????????? ???
????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ??? ?????????? ???
????????? ?? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??
????? 196 ??? ?????? ??? ???, ?????? ??? ???? ?????? ?????? ??? ?????????? ???
????? ?? ?????? ?????? (18). ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? ??? 44 ??? ?????? ??? ??? ???.

41. ??? ??? ???, ? WTL ?????????? ??? ??? ?????????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ??? ?? ??????????, ? WTL ?????????? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? 44 ??? ?????? ??? ??? ???
????? 7? ??? VATA, ??????, ???????? ?? ?????? 44 ??? ?????? ??? ??? ???
????????? ??? ?????? ?????? ?????????, ?? ?????? ?????????? ?????? ?????????? ??? ??
????????? ?????????????, ?? ?????? 7? ??? VATA ?????? ??? ?????? ?????????? ???
????????, ??? ?????????? ?????? ?????????? ??? ?????????? ?????????? ??????, ? ??? ???
????? ?????? ??? ?????? ??? ??? ???.

42. ? WTL ?????????? ??? ? ??? «????????? ??? ???? ???? ? ?????? ?????? ??? ??
????????? ???» ??? ??? 44 ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ? WTL ?????????? ?? ?????? ??? ?????? ??? ?????? Wellcome
Trust ?? ?????????? ??? ? WTL, ??? ?????? ??? ?????? ??? ?????? ???
????????????, ??? ??? «????????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ????»
????? ??? ?????? ??? ?????? 2, ?????????? 1, ?????????? ?, ??? ?????? ??? ??? ??? (19).

43. ??? ??? ?????? ?? ?????????? ?? ?????????? ??? ? WTL ??? ?????????? ??? ?? ???
????????? ?????????? ??? ?? «????? ??????» ?????? ?? ??? ??? ?????? ???
?????????, ??? ?????? 3 ??? ?????? 3 ??? ?????? ??? ??? ???, ??? ??????????????
??? ??? 46 ??? 59? ??? ?? ??? ?????? (20).

44. ???????, ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????, ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 43 ??? ?????? ??? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ??? ???
????????? ?????? ?? ?????? ?????????????? ??? ?????? 44 ??? 45 ??? ?????? ??? ???
???.

VII. ?? ??? ??????

45. ?? ?? ??? ?????? ?????????????? ???????, ?? ?????? ?????????? ?????? ??? ??
?? ?????????? ?? ??? 44 ??? ?????? ??? ??? ?? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ??????, ???' ?????, ?? ?????????? ??? ?????? ??? ? WTL, ? ??????,
????????, ??? ?? ?????????? ?????? ?????????? ?????????????, ?????? ?? ?????????? ???
????? «????????????? ??? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ???» ??? ??? ???

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

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

46. ? WTL ?????????????? ??? ? ????? «????????????? ??? ????? ? ?????????????? ??? ???
????????? ???» ?????????? ??????? ?????? ??? ?????????? ??? ?????? ?? ??????
????????? ??? ?????????? ??????? ??? ??? ?? ?????????? ???????. ??? ??????, ??
????? 44 ??? ?????? ??? ??? ??? ??????, ?? ??? ???? ?? ????? ?????? ???, ?? ??????????
???? WTL ??? ? ?????????? ??????? ?????????? ?????????? ?????????? ??? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ??????????
?????.

47. ? WTL ??????????? ??? ?? ????? 43 ??? ?????? ??? ?? ??? ????? ??????????? ???.
????????? ???, ??????? ? ?????????????? ?????? ?????? ?????????????? ??? ? ??????????????
???? ??? ???? ?????? ????? ?????????????? ??? ?? ?????????? ?????????????? ??? ? ??????????????
????????? ??? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ? ?????? ?????????? ???
??? ?????????? ??? ?????????????? ??? ?????? . ? WTL ?????????????? ?? ?????????? ??? ? ??????
«?????? ??? ??? ?????????? ???» ?????? ??? ????? 43 ??? ??????? ??? ??? ??? ?. ???
?????????, ?? ????? 43 ??? ??????? ??? ??? ??? ????? ?????????????? ?? ?????????? ???
????????? ??? ??? ?????????? ?????? ?????????? ??? ?????? ?? ??? ?????????? ????. ?????????? ???
? ????? «?????? ??? ??? ?????????? ???» ?????????????? ??? ????? 44 ??? ??????? ???
?? ???, ? WTL ?????????? ??? ? ?????????? ??? ?????? ?????????? ??? ?? ??? ????? ??????
?? ?????????? ?? ??? ????? ??? ????? ?? ?????????? ??? ??????????. ? WTL ?????????? ????,
????????? ?? ?? ????? 18 ??? 55 ??? ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ???
???? ??? ??????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
??? ?????? ???????, ????? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
????????????? ????. ?????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????????? ????. ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????????? ????. ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???

48. ? WTL ?????????????? ??????? ??? ??? ?? ?????? 19 ??? ?????????????? ?????????????? ???
?????? ?? ???????? ???, ??? ??? ?????? ??? ?????? 44 ??? ???????? ??? ??? ???, ? WTL
?????? ?? ???????? «????????????? ??? ?????? ? ?????? ?????? ?????? ??? ??? ?????? ???»,
?????? ??? ?????? 19 ??? ?????? ?????? ??? ?? ?????? ?????? ??? ? ?????????? ???
????????? ?????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? «?????? ??? ??? ???
????????? ???».

49. ????????, ? WTL ?????? ??? ?????????? ?????? ??? ?????? 43 ??? 44 ???
?????? ??? ??? ??? ? ?????? ?? ??? ?????? ?? ?????? ?????? ?????????? ??? ??? ??? ????
????? ?????? ?????? Wellcome Trust. ?? ??? ??????????
?? ?????????? ?????????? ?????????, ?????? ? ?????? ??? ? ?????????? ??? ??? ??? WTL
?? ?????? ??? ?????? ??? ??? ???? ?????? ?????????? ??????????????, ??? ??? ?? ?
????????? ?????? ??? ?????? ?????? ??? ??? ?????? ?????? ?????????????? ?????????? ??
????? ??????. ??? ?????? ??? ??? ??? ?????? ?????? ??? ???? ?????? ?????????? ??? ??????
????? ? ?????????? ???' ?????? ??? ?????? ?? ?????????????? ??????????.

50. ????? ?? ?????? ??????????? ????? ?????????????? ?????????????? ?????????? ??? ??????????????
????????????? ??? ?? ?????? 44 ??? ??????? ??? ??? ??? ?????? ?? ?????????? ??? ??? ????
?????? ??? ??????????? ????, ???, ??? ? WTL, ? ?????? ?????? ?? ??????????
????????????? ?????????????? ?????? ?? ?????????? «????????????? ???? ???? ???? ? ??????
????????? ??? ?? ?????????? ???» ???? ??? ??? ?????? ??? ?????????????? ????
????????? ?????????? ??? ?????? ??? ?????????? ??????.

2. ???????

53. ??? ??????????????? ??? ?? ????? 46 ??? 59? ??? ??????? ??? ??? ??? ??? ?????
????????? ??? ?????? ??? ?????? ??????. ?? ?? ??????, ??? ??? ??????? ??? 13?? ??????
2019, Srf konsulterna (C?647/17, EU:C:2019:195), ?????????? ??? ??????? ?? ?????? ???????
???? ?? ????? 44 ??? ?? ????? 45 ??? ??????? ??? ??? ????. ??????????, ? WTL
??????????? ??? ??? ?? ????? 44 ??? ?? ????? 45 ??? ??????? ??? ??? ??? ?????
????????? ??? ??? ?? ?????? ??????? (21).

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

55. ????? ????????????, ?? ?????? ??????? ??? ?????? 43 ??? 45 ??? ??????? ??? ??? ???
?????? ??? ?????? 2006/112 ?? ?? ?????? 2 ??? ?????? 2008/8. ?????????????? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????, ?? ??????
??? ?????????????? ??? ??? ?????? 2006/112 ??? 2008/8 ??????, ?????????? ???'
?????, ?? ?????? ?? ?????? ???, ?????? ?? ? ?????????? ??? ?????? ??? ?????? ?????? ??????, ??
????????? ?????? ?????? ???, ?????????? ??? ?????? (22). ??? ???? ?? ?????? ?? ???,
????????? ??? ?? ?????? «????????? ??? ?????? ??? ? ?????? ?????? ??? ??? ?????? ???»
?? ?????? 2, ?????????? 1, ?????????? ??, ??? ??? ?????? 44, ??? ?????? ??? ??? ???, ??????
?? ??????, ??? ?????????? ? WTL, ?? ??? ?????? ??? ??????????.

56. ???????, ??? ???? ?????? ???, ?????????? ??? ??????? 44 ??? ??????? ??? ??? ???
?????????? ??? ??? «? ?????? ??????? ??? ??? ?????????? ???», ??????????? ??? ??
?????????????, ??? ??????? ?? ?????? ?????? (23) . ????????, ??? ?????? ???????????, ???
?? ?????? ??????? ??? ?? ?????? ??? ?? ?????? ??? ?????????????????? ?? ???????????
????? ?????????????? ?????? ???, ?? ??????, ?? ?????? ?? ?????? ???, ??? ???

57. ?? ?????? 44 ??? ??????? ?? ???? ?? ???? ?????????? ?????? ??? ?????? ?????? ?????? ??? ?? ???? ?????? ?????? 2008/8 ??
????? ??? ?????????????? ?? ???? ?? ?????????? ?? ???? ?????? ?????????? ?? ???? ?? ???? ?????? ??? ???? ?? ???? ?????? ???
????? ?? ???? ?????????? ?? ???? ?? ?????????? ?????? ?????? (25). ?????? ??? ?? ???? 44 ??? ?????? ?? ?????? ?????? 43
?? ???? ??????.

59. ????????, ?? ?????? ??????? ??????? ?? ??? ????? ?????? ?????????? ?? «????????? ??? ????», ??? ?????? ??????? ??????? ?? ??? ????? 43 ??? ?????? ??? ?? ???, ??? ?? «?? ?????????? ??? ????» (27) ?????????? ??? ????? 44 ??? 45 ??? ?? ??? ??????, ??????????. ????? ?? ?????? ?????? ??????? ?? ?????????? ?????? ??? ????? ?????????? ??????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? «????????? ??? ????» ??? ?????????? ??? ????? 43 ??? ?????? ??? ??? ???, ??? ?????? ??? ?????? ??? ??????? ?? ??? ?????? 44 ???, ??? ?????? ???, ??? ?????? 45 ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????.

60. ? ?????????????? ?????????? ?? ?????????????? ?????????????????? ??? ?? ??????????????
????? ???? ???? ?????? ???? ?????????????? ???? ???? ???? ???? ???? ???? «????» ???? ????
43 ???? ??????? ???? ???? ???? ?????????? ?? ??????? ???? ??????? ???? ??????? ???? ??????? ???? ??????????
????? ???? ?? ?????? ?????????? ?? ?????? ?? ?? ?????? ?????????? ???? «?????? ????
?????????» ???? ?????????? ???? ?????? 44 ???? ?? ?????? ??????.

61. ? ?????????????? ????? 4 ??? ?????? 2008/8 (28) ?????????????? ?????????? ?? ?????
????????? ?????? ??? ?????? 43 ??? ??? ?????? 44 ??? ?????? ??? ??? ??? ??
????????????? ??? ?? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????????????
????? ??? «??? ?? ?????? ?? ?????????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???

?????????? ??? ????? ??????? ??? ?????????? ??? ?????? ? ??? ?????????? ??? ????? ???
????????? ???».

62. ????????, ??? ?? ????????, ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ???, ??? ?????? ???
????????? ??? 43 ??? ?????? ??? ??? ???, ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ???????, ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????? ??? ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? 43, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???' ?????? ??? ?????? ??? ?????? ???
??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? 2, ??? ?????? 1, ??? ?? ??? ?????? (29).

63. ? ????????, ??? ?????? ??? ?????? ??? ?????? ?? ??? ?????????? 1 ??? ?????? 19 ???
????????? ???, ? ?????? ????, «[?]?? ??? ?????? ??? ?????????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???
44 ??? 45 [???, ??? ?????? ??? ??? ???], ??? ?????????? ??? ?????? ??? ? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ». ?????????? ?? ?????????? ??? ?????? ???
??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 19 ??? ?????? ??????????.

64. ????????, ??? ?????????? ??? ?????? 41 ??? ?????? ??? ?????? ??? ?????? ???
J. Mazák ??? ????? Kollektivavtalsstiftelsen TRR Trygghetsrådet (C?291/07, EU:C:2008:348)
??? ?????????? ??? 31 ??? ?????? ??? 6?? ??????
2008, Kollektivavtalsstiftelsen TRR Trygghetsrådet (C?291/07, EU:C:2008:609), ? ??????????
???? ?????? ?? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? (?????? ?? ??
????? 2, ?????????? 1, ?????? ??, ??? ?????? ??? ??? ???) ? ?? ?? ?????? ???
????????????? ??? ??? ?????? ??? ?????? ???, ? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (30).

65. ????????, ??? ?? ??? ?? 44 ??? ?????? ??? ??? ??, ?????????? ??? ??
????? ??? ?????? 43 ??? ??? ?????????? ??? ?????? 4 ??? ?????? ??? ?????? ??? ??
????? 19 ??? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? 43 ??? ?????? ???
??? ???, ??? ?????? ??? ?????? ??? ?????? «??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? » (31). ? ?????? ??? ?????? «????? ??? ?????? ???
????? » ??? ?????? 44 ??? ?????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
43 ??? ?? ??? ??????, «??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ». ? ?????? «????? ??? ?????? ??? ?????? ??? » ??? ?????? ??? ?? ?????? 44 ??? ??????
??? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ???.

66. ??? ?????? ??? ?????????? ??? WTL ?????? ?? ?? ??? 18 ??? 19 ???
????????? ???, ? ?????? ?????????? ??? ?????? 47 ??? 48 ??? ??????
????????? ???, ??? ??? ??? ?????? ??? ?????? 18 ??? 19 ??? ??????????

?????????? -?? ???? ???? ?????????? ?? ???? ?????????? ?????? ?????????? ?? ??????
 ?????? ?????????? ?? ???? ???? ?????????? ?? ???? ?????????? (32), ????, ??? ??????????,
 ?? ?? ?????????? ?????????????? ?? ?????? ?????? ?????? ?????? ?????? ?? ????- ???
 ??????, ???? ?? ???? ??????????, ?? ?????????? ?? ???? ?????????? ?????? ?????? ??
 ?????? 43 ??? 45 ??? ?????? ?? ???? ??? (33). ???????, ?????????? ?? ???? 44 ???
 45 ??? ?????? ?? ???? ?????????? ?? ???? ?????? ?????????? ?????????? ?? ???? ?? ??
 ????? ?????????? ?? ???? ?????? (34) ?? ???? ?????????? ?? ???? ?? ?, ?????? ?? ?,
 ???' ?????, ??? ?????????? ?????? ?????? ?????????? (35). ?? ??? ??????????, ??
 ?????????? ?? ???? ?????? ?????? ????? ?????? ?????? ?????????? ?? ???? ??????
 ??????.

67. ???? ?????? ??? ? WTL ?????????? ??? ?????? ?????? ?????? ?????????????? ??? ???? ???? ???? ????
????????????? ?????????????? -? ??? ???? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ???? -
????????????? . ? WTL ??? ?????????? ?? ?????????? ?????? ??? ?????? ??????????,
?????? ??? ?????????? ??? ?? ?????????? ?????? ?????????? ?????????? ?????????? ??? ??
????????? ?????????? ?????????? ?????? (36). ?????? ??? ?????? ?????? ?????? ??? ????
????? ??? ?????? ?? ??? ?????? ??? ?????? ?????? ?????????? ? ?????????? ??? ??? ??? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? , ??? ? ?????????? ??? ???
????? ?????????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????? , ? ?????? ??? ???
????????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????????? ?????? ?????????? ??? ???? (37).

68. ????????, ?? ?????????? ?????? ???????? ??? ?????? 30 ??? ?????????? ??? 3??
?????? 2019, The Chancellor, Masters and Scholars of the University of Cambridge (C?316/18,
EU:C:2019:559), ??? «[?]????????????? ? ?????? ?????????? ??? ?????????????? ??? ?????? ???
????? ??? ???????, ????? ??? ?? ??????? ?? ?? ?????????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???????????, ????? ?????? ??? ???, ?? ?? ?? ??????????
????????????? ??? ?????? ?????????? ? ?????????? ??? ??? ?? ?????? ?????? ??? ??????????
?? ?????. ??????????, ??? ?? ?????????? ??? Cambridge, ??? ?? ?? ?? ?? ??
??????, ??? ?????? ?????????????? ?????????????????? ?????????????? ??? ?????????? ???
???? ?? ?????? ?? ?????????? ?????????????? ??????? ??? ?? ?????? ??? ?????????? ???
????????????? ?? ??? ?????? ???, ??? ?? ??????, ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ??
????????? ???, ??? ?? ??????, ?????????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?? ??
??? ?????? ??????????????. ??????, ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
??? ?????? ?????????????? ?? ??? ??? ??? ?????????? ?? ?? ?? ?? ?? ?????? ?????????? ???
?????».

69. ??? ? ? ?????? ??? ???? ??????? ??????????, ??? ? ? ?????????? ??? ???? ?? ?
????? ??? ???? ?????????????? ?????? ??? ???? ?? ???? 44 ??? ?????? ??? ?? ????
????? ?? ?????????? ??? ???? ?????? ???, ??? ?????????????? ??? ???? ?? ???? ???? ??
????????? ?????????????? ??? ?????????? ??? ?????????? ?????? ?????? ??? ???? ??
??? ?????? ?????????? ??? ?????????? ?????? ?????????? ?????????? trust ??????
????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????? ??????????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??????, ??? ?? ?
????????? «????????? ??? ???? ? ???? ?????? ??? ??? ?????? ??? ????» ??? ???
????????? ??? ?? ???? ?????????? ??? ??????.

VIII. ?? ??????? ????????

70. ?????????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ????????,
????? ??? ?????? ? ?????? ??? ?????? ?????? ?????? ??????. ????????, ????????
??? ??? ?????????? ??? ? WTL ?????? ?????????? ??? ??? ???, ??? ?????? ???, ???

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

IX. ???????

71. ??? ????????, ????????, ?? ?????? ??? ?????????????? ?????????? ??? Upper Tribunal
(Tax and Chancery Chamber) [????????? ?????????? ?????????? (????? ?????????? ???
?????????????) (????? ??????)] ? ????? ??????:

?? ????? 44 ??? ?????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006, ??????? ??
?? ????? ??????? ????? ?????????????? ?????, ??? ?????????????? ?? ??? ??????
2008/8/?? ??? ???????????, ??? 12?? ?????????? 2008, ??? ??? ?????????? ??? ??? ??????
2006/112/?? ??? ????? ??? ????? ???????????, ??? ?????? ?? ?????????? ??? ??? ??????
???, ??? ?????????????? ??? ????? ??? ????? ?? ?????????? ?????????????? ??? ??????
????????? ??? ?????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????????
??? ?????????? ?????? ?????????? trust ?????? ?????????? ?????? ??? ??????
????????? ??? ?????????????? ?????? ?????????? ?????? ?????? ?? ?????????? ?????? ??? ??????
????????????? ?????? ??? ?????????? ?????, ?????? ?? ?????????? «????????? ??? ??????
? ?????? ?????? ??? ??? ?????? ?????» ??? ????? ?????? ??? ?? ??? ????? ?????? ???
??????.

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

2 ?? 2006, L 347, ?. 1.

3 ?? 2008, L 44, ?. 11.

4 ?? ??????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?? 13 113,822 ???
????????? (GBP) (?????? 14 550,00 ???). H WTL ?????? ?? ??? ?????????? ?? ???
?????? ??? ??? ?????? ??? ?????????? ??? ???????, ?????? ?? ??? ?????????? ???, ???
????????? ?????????????? ??? ?????? ??? ?????????? ???.

5 ?. ??????? ??? 20?? ?????? 1996, Wellcome Trust (C?155/94, EU:C:1996:243, ???
????: ?????? Wellcome Trust).

6 ? ?????????? ??? 4 ??? ?????? 2008/8 ??????? ???, «[?]?? ??? ?????????? ???
????????? ?? ?????????? ???, ? ?????? ?????? ?????? ?? ??? ?????? ??? ??????
?? ?????????? ?? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????
???? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????
????? ?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
????? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???».
????????? ??? 5 ??? ?????? 2008/8 ??????? ???, «[?]?? ??? ?????????? ?????????? ??
?? ?????????? ??? ???, ?????? ?????? ??? ?????? ?? ?????? ?????????? ?? ??? ?????? ???
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???

7 ???. ??????????? ???? 7 ??? ?????? 2008/8, ? ?????? ??????? ???, «[?]?? ?
?????????? ??? ???? ?????? ??????? ??? ?????? ?? ?????????????? ??? ??? ?????
?????, ??? ???? ?????? ??????????? ?? ?????????? ?????????? ? ?????????? ?????????? ???
??????????, ??? ???? ???? ?????????? ??? ?????? ?? ?????? ?? ?????????? ?????????? ???
?????????? ??? ???? ??? ??? ?? ?????? ??????».

8 ?? 2011, L 77, ?. 1.

9 ????. ??? 09/001, ?. 49.

10 ???. ????? 196 ??? ?????? ??? ??? ???.

11 Wellcome Trust Ltd [2018] UKFTT 0599 (TC).

12 ?????? ??? 4?? ??????? 1995, Armbrecht (C?291/92, EU:C:1995:304, ????? 16). ?
?????????? ??? ???? ????? «?? ??? ?????? ??? ???» ??? ??????????????
?????????? ??? ?????? ??? ?????????? ?????????????? ??? (?. ?????? ??? 12??
?????????? 2006, Optigen ??., C?354/03, C?355/03 ??? C?484/03, EU:C:2006:16, ????? 42).
? ?????????? ??? ???? ???? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????????? ??? ?????? ??? . ??? ??????, ?????? ???? ????? ??????????????
??? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? (?. ?????? ???
4?? ??????? 1995, Armbrecht, C?291/92, EU:C:1995:304, ?????? 17 ??? 18).

13 ?? ?????, ??????????, ?????????? ?????????? ?????????? ?????? ??????.

14 ???. ????? 36 ??? ?????? Wellcome Trust.

15 ??., ??????, ??? 30 ??? ??????? ??? 15?? ?????????? 2016, Landkreis
Potsdam-Mittelmark (C?400/15, EU:C:2016:687), ??? ???? ?????????? ?????????? ??? ??
????????? ?????????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ???
??? ???.

16 ??., ??????, ?????? ??? 22?? ??????? 2009, Swiss Re Germany Holding (C?242/08,
EU:C:2009:647, ????? 32).

17 ???. ?????????? ??? 3 ??? ?????? 2008/8, ? ?????? ??????? ???, «[?]?? ???? ???
????????? ???????, ?????? ?????????? ?? ??????, ???????, ?? ?????? ???? ?????? ??? ?????
????????????? ? ?????????? . ??? ?????? ??? ?? ?????????? ???' ?????? ??? ?????? ?
????????? ?????? ??? ?????? ?? ??? ?????? ?????? ???????, ?????????? ?????????? ??? ??
????? ??? ?????? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ??
??? ??? ??? ?????? ??????»..

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

19 ???. ?????? 19, ??? ii, ??? ?????????? ??? ?????????? ??? ?????? 7 ??? ??????
????????????? ??? ? WTL ?????? ??? ??????????.

20 ? ?????????? ??? 6 ??? ?????? 2008/8 ??????? ???, «[?] ? ??????????
??????????, ??? ?????????? ?? ?????? ?????? ?????? ?? ??? ??? ?????? ???

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

21 ? ?????????? ??????????? ??? ??? ? ?????????? ?????? ??? ?????? ?????????? ??????????
????? ??? ??? ?????? ?????????? ?????? ??? ?????????? ?? ?????? ?????? ?????? ?? ??? ???
????????? ?????????? ??? ?????????? ?????? ??? ???, ??? ??? ?????? ?????? ?? ???
????????? ??? ? ?????? ?????? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ..?
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ?? ??? ?????? ?????? ??? ??? ???
????????? ?????????? ??? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??
????? ??? ??? ??? ?????? ?????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????????? ??
(????? ??? ???????? ??? WTL) ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????????????? ?
???????. ? ?????????? ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????? 43, 44 ??? 45 ??? ?????? ??? ??? ??? ??? ??? ??? 19 ??? ??????????????
?????????. ?????????? ??? ? ??? ? WTL ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??? ???
? ??? ?????????? ??? ?????????? ??? ? ?????????? ??? ? ?????? ??? ?????? ??? ?????????? ???.
????????, ? ??? ??? WTL ??? ?? ?????? 44 ??? ?????? ??? ??? ??? ??? ??? ?????? ???
????????? ??? ?????? ?????????? ???, ??? ? WTL ?????? ?????? ?????? ??? ?????? ???
????? ??????, ??? ?? ?????? ?????????? ??? ?????? ?? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????????? . ? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??
????????? ?? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??
????????? ??? ?????? ??? ?????? ??????.

22 ??., ???' ?????????, ??????? ??? 31?? ??? 2016, Reha Training (C?117/15,
EU:C:2016:379, ??????? 28 ?? 34). ??., ?? ?????? ???, ??????? ??? 15?? ???????????
2016, Landkreis Potsdam-Mittelmark (C?400/15, EU:C:2016:687, ????? 37). ??., ??????, ???
31 ??? ??????? ??? 22?? ??????? 2009, Swiss Re Germany Holding (C?242/08,
EU:C:2009:647), ??? ?? ?????????? ?????? ??? ? ?????? ?????????? ??? ? ??????????
????????? ??? ?????? ?????????? ??? ??? ?????? ?? ?????? ??? «?????????» ??? ??
«????????????? ??????» ??? ?????????????? ??? ?????? 9, ?????????? 2, ????????? ??,
????? ????????, ??? 13, B, ??????? ??, ??? ?????? ?????? ?? ??? ??????
??????????, ??????? ??? ?? ?????????????? ??? ??? ? ??? ?????? ??? ?????? ???
????. ??????, ?????? ?? ?????????????? ??? ?? ?????????? ?????? ?????????, ??? ??????
32 ??? ??????? ??? «?? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ?????????? ???
????????? 2, ??????? ??, ?????? ???????, ??? ?????? ?????? ?????? ?????????? ??????????
??????, ?? ?????? ?????? ?? ?????????? ?????? ?????????? ??? ?? ?????????? ??????????
????????? ?????? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?????????? ???
????????? ?????? ????. ? ?????????? ??? ?????? ??? ?????? ???, ? ??????????
????????? ?????? ??? ?????? ?????? ???, ?????? ???, ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ???, ?????? ???, ?????? ???, ?????? ???.

23 ?????? ?? ?????????? ??? ? ??? ? ?????? ?????????? ?? ?????? ??? ?????? ??
????? ?????? ??? ?? ?????? ?????? ???» ??? ?????? 44 ??? ?????? ??? ??? ??? ?? «?????».
?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??????
??? ??? ?????? ??????. ?? ??? ?????? ?????? ???????, ??? ?????????, ??? ??????
????? («agissant en tant que tel»), ??? ?????? ?????? («che agisce in quanto tale»), ???
????????? ?????? («agindo nessa qualidade»), ??? ?????? ?????? («que actúa como tal»)
?? ??? ?????? ?????? ?????? («als solcher [...] erbringt/als solcher handelt»).

24 ?????? ??? 16?? ??????? 2014, Welmory (C?605/12, EU:C:2014:2298, ??? 41). ???

????? 50 ??? ?????????? ??????? ?? ?????????? ?????????? ??? ?? ?????? 44 ??? ??????
??? ??? ??? ??????? ?????? ??? ?????????? ??? ??? ????? ?????????? ??? ?? ??????
?????????, ?????????????????? ?? ?????? ??? ????? ?????? ?????? ???, ??????,
????????? ??? ?????????? ??? ?????? ?????.

25 ???. ?????????? ??? 2 ??? ?????? 2008/8.

26 ???????, ?? ??? 196 ??? ?????? ??? ?? ?????????? ??? ? ?? ?????????? ??? ? ?? ??????????
??? ??? ?????????? ??? ? ?? ?? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????? ???, ??? ?????? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ??????????
??? ?? ??? 44, ?? ?? ?????????? ??? ????? ?????????? ??? ?????????? ??? ?????? ???
????????????? ??? ?????????? ??? ?? ??? ?????? ??????.

27 ?????????? ??????? ?? ??? 43 ??? ?????? ??? ?? ?????? 3 ??? ????? V ??? ?? ???
????? ??? «?? ?????????? ???» ??? ??? ?????? ?????????? ??? ?????????? ??? ??????????
?? ??? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? 43 ??? ?????? ??? ?? ???, ? ?? ?????????? ??? ?????? ???
????????, ???' ?????, ?????? ? ?????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??????
?? ??? ??? ?????? ?????? ??? ?????? ??? ?????? 45 ??? ?? ??? ??????.

28 ? ?????????? ??? 5 ??? ?????? 2008/8 ?????????? ?? ??? ?????? ?????????? ???
????? 45 ??? ?????? ??? ??? ???.

29 ? ?????????? ?????????? ?????????? ??? ?? ??? 43, ?????????? 1, ??? ?????? ???
??? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????
????? ??? ??? ?????? ??? «????????? ???». ??????????, ?? ??? 43, ?????????? 2,
????????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? 44 ??? ?????? ??? ??? ?????? «????????? ??? ???
????????? ???» ?????????? ?? ?????????? ??? ?? ??? ?????? ?????????? ??? ?? ?????? ???
????????? ?? ??????. ?? ??? ?? ??????, ?? ??? 19 ??? ?????????? ??????????
????????? ??? ?????????? ??? ?????? ?? ?????? ?????????? ??? ?????????? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
?? ?????? ??? ?????? ??? ?????? ?????? (????? ? WTL) ?????? ??
????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ????. ? ?????????? ?????????? ???
?? ?????? ?????? ???, ??? ??????, ? ??? ?????? ??? ?????? 43 ??? ??????
?? ??? ??? ??? ???, ?????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ?????? ??????
????????? ??? ???, ?? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ??? 44 ??? ?? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??????.

30 ??? ?????? ?? ??????? ??? ? ??? ?????? ?????? ?????????? ?????? (????? 9,
????????? 2, ????????, ??, ??? ?????? ?????? ??? ???) ??? ?????????? ??? ??????
????????? ??? «? ?????? ?????? ??? ??? ?????? ???». ???????, ??
????????? ?????? ??? ?????? ??? ?????? ??? ?????? 29 ??? ?????????? ??? 6??
????????? 2008, Kollektivavtalsstiftelsen TRR Trygghetsrådet (C?291/07, EU:C:2008:609), ???
????? ?????????? ?? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
?????, ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? «? ?????? ??????????
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????? ?????? ???, ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????

? ?????????? ??? ???? ??? ??????? ???? ?????????????? ????, ?????? ??? ?? ?? ?? ????
????????? ?????????????????? ??? ???? ??? ?????? ??? ?????????????? ????
?????????????????». ??? ???? ??? ????? ??????????, ??? ???? ??? ????? ??????, ??? ???? ??????????
????, ??? ???? ??? ????? ????? ?????????? ?????????? ??? ???? ??? ?????? 43 ??? ???? ??? ??????
44 ??? ???? ?????? ??? ??????.

31 ??., ??????, ?????????? ??? 19 ??? ?????????????? ???????????, ? ?????? ??????????
???, «????? ?? ?????????? ??? ?????????? ?? ?????????? ??? ?????? ?????????????? ???
????????? ????, ?????????????????? ??? ?????? ?? ?????? ??? ?????????? ???, ?
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???».

32 ?????? ??? ?????????? ?????????????? ??? ???? ??? ??????????.

33 ? ??? ?????????? ??? ?????? ??? ???? ?? ?????????? ??? WTL ??? ??
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? 55 ??? ??????????????
?????????, ?????? ??? ????? «????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?????». ?? ????? 55 ??? ?????????? ?????????? ?? ?????? ?????? ?? ?????? ??? ?????????? ??? ??
????? ??? ?????? 44 ??? ?????? ??? ??? ???.

34 ??? ?????? ??? ?????? 43 ??? ?????? ??? ??? ???.

35 ??????, ? ?????????? ??? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ??
????????? ??? ?????????? ??? ???? ?????? ?????? ?????? ?????????? ?????????? ??? ??
????????????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ??? ???? ?????????? ??????
????????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? .? ??????
????????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.
(?? ??????????) ?????? ??? ?????? 43 ??? 44 ??? ?????? ??? ??? ???, ???
????????? ?????? 4 ??? ?????? 2008/8 ??? ??? ?????? 19 ??? ???????????.
????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.
????????? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??????
???? ?????? ??? ?????? 43 ??? ?????? ??? ??? ???, ??? ?????? ??? ?????? ??? ??????
?????????.

36 ? ?????????? ?????????? ??? ?????? ??? ???? ?? ?????? ??? ?????????? ??? ???? ? WTL «???
????? ?????????? ????, ??? ???? ?????? ? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ???.
????????????? ??? ???? ??? ?????? ?? ?????????? ?????? ?????? ?????????? ??? ?????? ??? (?,
?????, ?? ?? ?????????? ??? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??????????
????????? ???). ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ??? ??? ??????
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.
????????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???, ???
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? (?? ?????? ??????????
????????? ??? ??? ???? ??? ?????? ?????? ?????) ?????? ?????? ??? ?????? ?????? ??? ?????? ???.
???? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??
????????? ??? ??? [WTL] ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???.
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???.

37 ???. ??????? ??? 13?? ??????? 2008, Securenta (C?437/06, EU:C:2008:166, ??????? 30 ??? 31). ??., ??????, ?????????? ??? 12?? ??????????? 2009, Vereniging Noordelijke Land- en Tuinbouw Organisatie (C?515/07, EU:C:2009:88, ??????? 36 ??? 37), ??? ??? 15?? ??????????? 2016, Landkreis Potsdam-Mittelmark (C?400/15, EU:C:2016:687).