

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

??? 22?? ?????????? 2015 (*)

«????????????? ?????????? — ?????????? — ????? ?????????????? ????? — ??? ?????? —
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???? ??????? C277/14,

??. ?????????? ?????? ?????????????? ?????????? ??????? ?? ?????? 267 ????, ???
?????? ?? Naczelnego S?d Administracyjny (???????) ?? ??????? ?? 6?? ??????? 2014, ?
????? ??????? ?? ?????????? ??? 5 ??????? 2014, ??? ??????? ?? ??????

PPUH Stehcemp sp. j. Florian Stefanek, Janina Stefanek, Jaros?aw Stefanek

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Dyrektor Izby Skarbowej w ?odzi,

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

????????? ??? ??? T. von Danwitz (?????????), ??????? ??? ?????????? ????????, ??????????
????????? ??????? ??? ??????? ????????, D. Šváby, A. Rosas, E. Juhász ??? C. Vajda,
???????,

?????? ??????????: Y. Bot

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

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

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

– ? Dyrektor Izby Skarbowej w ?odzi, ?????????????? ??? ??? P. Szczerbiak ??? T.
Szyma?ski,

– ? ??????? ????????, ?????????????? ??? ??? B. Majczyna,

– ? ??????? ????????, ?????????????? ??? ??? G. Eberhard,

– ? ??????? ????????, ?????????????? ??? ??? L. Lozano Palacios ??? M.
Owsiany?Hornung,

?????? ??? ??????? ??? ??????, ??? ?????? ??? ?????? ???????????, ?? ??????? ???
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1 ? ?????? ?????????????? ?????????? ??? ?????? ??? ??????? ??? ??? ??????

77/388/???? ??? ????? ???????????, ??? 17?? ???? 1977, ????? ?????????????? ??? ?????????????? ???
?????? ??????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? — ????? ?????? ?????? ??????
????????????????? ?????: ??????????? ?????? ?????? ??? (?? ????. ????. 09/001, ?. 49), ????
?????????????? ?? ??? ?????? 2002/38/?? ??? ??????????, ??? 7?? ????? 2002 (?? L 128, ?. 41, ??? ?: ??? ?????).

2 ? ?????? ??? ??????????? ??? ?????? ?????????? ??????? ??? PPUH
Stehcemp sp. j. Florian Stefanek, Janina Stefanek, Jarosław Stefanek (???: ????: PPUH
Stehcemp) ??? ??? Dyrektor Izby Skarbowej w Odzi (?????????? ??? ??????????? ?????? ???
?ód?) ??? ?????? ??? ?????? ??? ?????????? ?????? ?? ??? ??????????? ??? ?????? ???
????????? ??? ?????? ?????????????? ?????? (???: ????: ???) ??? ??? ?????? ??? ??????
????????? ? PPUH Stehcemp ??? ?????? ?????????? ?? ??????.

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3 ??? ?? ????? 2, ?????? 1, ??? ????? ??????, ?????????? ??? «?? ??????????
?????? ?? ?????? ???????, ??? ?????????????? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?, ??? ?????? ??? ??? ?????? ??? ??? ?????? ???».

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

«1. ?????????? ?? “?????????? ????” ?????????? ????, ??? ?????? ??????????
??? ?? ?????????? ????, ??? ??? ??? ?????????? ?????????? ??? ??????????
???? ?????? 2, ?????????? ??? ?????????? ?????? [?] ??? ?????????? ????
????????????? ????.

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

5 ??? ?? ????? 5, ?????????? 1, ??? ?? ??? ????? ??????, ?? «????????? ??????» ??????? ?
????????? ??? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ».

6 ?? ????? 10, ?????????? 1 ??? 2, ??? ?????? ?????? ?????????? ?? ????:

«1. ?????????? ?:

?) ?????????? ??? ?????? ?: ?? ??????, ?? ?? ??? ?????? ?????????????? ?? ??????
??????????, ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ? ?????? ».

?) ?????? ??? ??????: ?? ??? ?????? ?????? ?????????? ??? ???????, ??? ??? ??????
?????? ??????, ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?
???? ?????? ? ??????.

2. ? ?????????? ?????? ?????? ?????? ??? ? ?????? ?????????? ??????????, ??? ??? ??????
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? [...] ».

7 ??? ? ? ?????? 17, ?????????? 1, ??? ???? ??????, «?? ??????? ??? ??????
????????? ??? ???? ?, ??? ? ???? ? ?????????? ??? ???? ?????? ?????? ??????».

8 ?? ?????? 17, ?????????? 2, ????????, ??? ?????? ??????, ??? ?????????????? ??
?? ?????? 28?, ?????? 1, ??? ? ???? ??????, ?????????? ?? ????:

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

?) ??? ?????????? ? ?????????? ??? ?????????? ??? ?????? [??] ??? ? ???? ?????? ??? ????
????????????? ? ?????????? ?? ??? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ????
? ?????????? ?? ??? ?????????? ??? ?????? ?????????? ??? ????..»

9 ?? ?????? 18, ?????????? 1, ?????????? ??, ??? ?????? ??????, ??? ?????????????? ??
?? ?????? 28?, ?????? 2, ??? ?????? ???, ?????? ???, ??? ?? ??? ???? ?? ??????????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? 17, ?????????? 2,
????????? ??, ??? ? ???? ??????, ? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ??????????
?? ?????? ??? ?????? ??? ?? ?????? 22, ?????????? 3, ??? ? ???? ??????.

10 ?? ? ? ? ???? 22, ?? ?????? ?????????????? ??? ?????? XLI ?? ???? ?????? ???, ?
????? ?????????? «????????? ??? ???? ?????? ??? ????», ?????? ??? ??????????
?? 1, ??????? ??, 3, ??????? ??, 4, ??????? ??, 5, ??? ?????????????? ?? ????
28? ??? ?????? ??????, ?? ????:

«1. ?) ??? ?????????? ??? ???? ?????? ??? ??????, ?? ?????????? ? ??? ?????? ???
????????????? ??? ???? ?????????? ??? ????.. ?? ?????? ???, ??? ? ???? ?????????? ???
????????, ?????????? ??? ?????????? ??? ???? ???? ???? ???? ???? ???? ???? ????
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3.

[...]

?) ?? ? ? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?????????? ???,
????? ?? ?????????? ?????????? ??? ?????????????? ??? ?????? ?????? ??? ??????
????????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???' ?????????? ???
????????? ??? ?????????? ??, ??????, ?????? ??? ?????? ?????? ??????.

- ? ?????????? ?????? ??? ??????????,

- ?????????????? ??????, ?????????? ?? ??? ? ???? ?????????? ???, ? ????

- ? ?????? ?????????? ???, ??? ?????????? ??? ?????? ?????????? 1, ?????????? ??,
????? ??? ?????? ? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ? ???
????? ??? ??????,

- ? ?????? ?????????? ??? ?????? ??? ??????, ??? ?????????? ??? ?????? ?????????? 1,
????????? ??, ?????? ??? ?????? ?????????? ?????????? ??? ?????? ? ??? ?????? ??????????
?? ? ???? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ?????? 28?,

?????? ?,

– ?? ?????? ??? ???? ? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??? ??? ??? ??? ???
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– ? ?????????? ??? ??? ??? ?????????????? ?????? ? ? ?????? ??? ? ??? ? ??? ???
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– ? ?????????? ??? ??? ??? ?????????????? ? ?????????? ??? ? ?????????? ???
????? ? ? ?????? ?????????? ? ? ?????????? ?????? ??? ?????? ?????????? ? ?????????? ???
??? ?????????? ??? ?????????? ??, ?????? ??????, ?????? ? ? ?????? ?????????? ???
????????? ??? ?????????? ??? ??? ?????????? ?????? ??? ??????????,

– ? ?????????? ??? ??? ??? ?????????? ? ?????? ??? ?????????? ??? ????
????? ??? ? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ????
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– ? ?????? ????????????,

– ?? ??? ???? ?????????? ??????, ?????? ??? ?????????? ?????? ?????? ?????? ???
????? ? ?????? ?????? ?????? ?????? ??? ?????? ????,

[...]

4.

?) ??? ?????????? ??? ??? ?????????? ?????? ??? ?????? ?????????????? ???
????????? ??? ?????????? ??? ? ???? ?????? ??? . ? ?????????? ??? ??? ?????? ??
????????? ??? ? ???? ?????? ??? ? ???? ?????? ??? ?????????? ?????? . ? ?????????? ???
????????? ??? ? ???? ?????? ??? ?????? ?? ?????? , ?????? ? ??????. ?????????? , ?? ???
????? ?????? ?? ?????? ?????? ?????????? ?????? , ??? ??? ?????????? ??? ???
??? ?????????? ?? ??? ??? . ?? ?????? ???, ??? ??? ?????????? ??? ???
????????? ??? ?????? ?????? ??? ???, ? ?????? ?? ?????? , ??? ?????? ??? ???
????? ?? ?????????? ???.

[...]

5. ??? ?????????? ??? ??? ?????????? ?? ?????? ??? ?????? ??? ????
????????? ??? ???? ??? ?????? ??? ?????????? ??? ?????? . ?? ??????, ?? ???
????? ?????? ?? ?????? ?????????? ?????????? ?????? ?????? ??? ????
????????? ??? ??? ??????»

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

11 ?? ??? 5, ?????????? 1, ??? 1, ??? ?????? ??? ??? ??? ??? ??? ???? ???
????????? (ustawa r. o podatku od towarów i usług), ?? 11? ?????? 2004 (Dz. U. ????. 54,
???? 535, ??? ???: ?????? ????), ?????? ??? ? ??? ?????? ??? ?????? ??? ???
??? ??? ?????????? ?????????? ??? ? ??? ?????? ?????? ?????? ??? ???
????????? ??? ??????.

12 ??? ???? 7, ?????????? 1, ??? ?????? ???, ?? «????????? ??????», ??? ??
????? ??? ???? ?????? 5, ?????????? 1, ?????? 1, ?????? ? ?????????? ??? ??????
?? ?????? ??? ?????? ??? ??????.

13 ?? ?????? 15, ??????????? 1 ??? 2, ??? ?? ??? ????? ?????? ?? ????:

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

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

14 ????? ?? ?????? 19, ??????????? 1, ??? ?????? ????, ? ??????????? ??????????
????????? ???, ??? ?????? ??????????? ??? ?????????????? ? ??????? ??? ??????????.

15 ????? ?? ?????? 86, ??????????? 1, ??? ?????? ??????, ??? ?????? ??? ???? ???? ?? ?????? ??? ??
????????? ?????????????????? ??? ?? ?????? ?????? ??? ?????????????? ??????? ???, ? ???' ??????
15 ?????????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?? ?????????? ??? ?? ??? ??
??? ?? ??????. ? ?????????? 2 ??? ?? ??? ?????? 86 ?????? ??? ?? ??? ?? ??? ??
??? ?????? ?????? ?? ?? ?????? ??? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??
????? ??? ?????? ?????? ? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ??????????.

16 ?? ?????? 14, ?????????? 2, ?????? 1, ??????? ??, ??? ?????????? ??? ??????
????????? ??? 27?? ??????? 2004, ??? ???? ?????????? ?????????? ?????????? ??? ????
??? ??? ??? ??? ??? ?????? ??? ?????????? (Dz. U. ????. 97, ??? 970), ??? ??? ??? ??????
??? ?????????? ?????????? ??? ?????? ?????? (?? ?????: ?????????? ??????? ??? 27??
?????? 2004), ??????? ???, ??? ??? ??? ?????? ?????? ???? ?????? ??? ?????? ???????
?????? ?????????? ? ?????????? ?????? ?????????? ??? ?????????? ?????????????? ? ??? ??????
??? ??? ?????????????? ??? ??? ?????? ?????????? ? ?????????? ?????????? (?? ?????:
????????? ??????????????), ?? ?????????? ??? ??? ??? ?????? ?????????? ?????????? ???
????????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ??? ?????????? ??????????
????????? ??? ??? ??? ?????????? ??? ?????? ??? ??????????.

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17 ????? ?? ?????????? ??? 2004, ? PPUH Stehcemp ??????? ?? ?????????? ??????? ??????? ???????
?????? ?? ????? ?????????????? ??? ??????? ?? ?????????? ?????????????? ?????????????? ??? . ??
????????? ?? ????? ?????????? ??? ?? ??? ????? ?????? ?????????? ?????????? ??? ?? Finnet sp. z
o.o. (??? ????: Finnet). ? PPUH Stehcemp ??????? ?? ??? ????? ?????? ??? ?? ??? ?????? ?? ?? ???
????? ???????.

18 ??????? ????????????, ? ???????????, ? ???????????, ???? 5??
????????? 2012, ?? ??? ???????????, ?? ?????????? ?????????? ??, ?? ???
????????? ??, ?? ?????????? ??, ?? ?????????? ??, ?? ?????????? ??, ?? ??????????
??, ?? ?????????? ??, ?? ???????????.

19 ? ?????????? ?? ?????????? ?? ?????? ?? ?6d? ?????????? ?? ?????? ?? ??????, ??
?????? ?? 29?? ?? 2012, ?? ?? ?????? ?? ? Finnet ?????? ?? ??????, ?? ??
?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? 27?? ?????? 2004,

«1) ?????? ?? ?????? 2, ??????? 1, 4, ??????????? 1 ??? 2, 5, ??????????? 1, ?????? ?? 10,
?????????? 1 ??? 2, ??? ?????? ?????? [...] ??? ?????? ??? ?????? ?????? ?????? ??????
????? ? ?????? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ?????, ??? ?????? ???
????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????????? ??? ?????????? ??? ?????????? ?????;»

2) ?? ?????????? ?????????? ?????????? ??? ?????? ??????, ??? ?????? ?? ?????? 17,
????????? 2, ??????? ?, 18, ?????????? 1, ??????? ?, ??? ?????? 22, ?????????? 3, ??
????? ?????? ??? ?????? ??? ?????? ?????? ?????, ? ?????????? ??? ?????? ??? ?????? ?? ??????
??? ??? ??? ??? ??????, ?????? ?? ?????????? ?????? ??? ?????? ?? ?????? ??? ??????
? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?????????? ?? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ??? ? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? 21, ?????????? 1, ??????? ?, ??? ?????? ??????, ??? ??? ?????? ?????? ??? ?????? ???
?????????;»

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

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

26 ??? ?????? ????????, ?? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? 17 ??.
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??? ??? ??? ??????
??????, ???' ????, ?? ??????????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ?????? (??., ??? ??? ?????? ???, ?????????? Mahagében
?? Dávid, C?80/11 ??? C?142/11, EU:C:2012:373, ?????? 37 ?? 38 ??? ??? ??????????
?????????, Bonik, C?285/11, EU:C:2012:774, ?????? 25 ?? 26, ?????? ??? Petroma
Transports ??., C?271/12, EU:C:2013:297, ?????? 22).

27 ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????? ? ??????????????
??? ??? ?????????? ??? ??? ??? ?????????? ? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? (??.. ?????????? Dankowski,
C?438/09, EU:C:2010:818, ?????? 24, Tóth, C?324/11, EU:C:2012:549, ?????? 25, ?????? ???
????????? Forwards V, C?563/11, EU:C:2013:125, ?????? 27, ??? Jagie??o, C?33/13,
EU:C:2014:184, ?????? 25).

28 ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? 17, ?????????? 2, ?????????? ?, ??? ?????? ??????
????????? ???, ?????????? ?? ?????????? ??? ?????? ?????????? ?? ?????? ???
??????, ??????, ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ???
??????, ???, ???????, ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ???

?????????? ??? ?????????? ?????? ?????? ?? ?????????????????? ?? ??? ?????? ??? ??
????????? ??? ???? ??? ?? ?????? ??? ?????? ?? ?????????????? ??? ?????? ???, ??
????????? ??????, ?? ?? ??? ????? ?????? ?? ?????????????? ?? ??? ?????????? ??? ?????? ??
????????? ??? ????? ?????????? ????? ?? (??., ??? ??? ?????? ???, ??????????
Centralan Property, C?63/04, EU:C:2005:773, ??? 52, Tóth, C?324/11, EU:C:2012:549, ???
26, ??? Bonik, C?285/11, EU:C:2012:774, ??? 29, ??? ??? ????? Jagie??o, C?33/13,
EU:C:2014:184, ??? 27).

29 ?? ??? ?????? ??? ?????????? ?????????????? ??? ?????????????? ??? ??????????, ?? ?????? 18,
????????? 1, ?????????? ??, ??? ?????? ?????? ?????????? ??? ? ?????????????? ??? ?????? ??
????? ?? ?????? ?????????? ?????????? ?????????? ?? ?? ?????? 22, ?????????? 3, ??? ??????
????. ??? ?? ?? ?????? 22, ?????????? 3, ??????? ??, ??? ?????????? ?????? ??
????????? ???, ?????? ?????, ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????? ?????? ?????? ??????????, ?? ?????? ?????? ??? ? ?????????? ???, ???
??? ? ?????? ??? ???? ?????????? ??????.

30 ??? ?????? ??? ?????? ??? ?????? ??? ?????, ??? ??? ?????? ??? ?????? ?????? ??????????
????????? ??? PPUH Stehcemp, ? ?????? ?????? ?? ?????? ?? ?????? ?????? ??????????,
???? ?? ?????? ??? ?????????? ??? ?????? ???, ??? ??? ?????? ??? ?????? ?????? ???, ???
????????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????, ??? ?????????????? ?? ??????, ?? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ? Finnet, ??? ??? ?????????????? ?? ?????? ???
?? ?????????? ??? ?????? ??? ??? ?????? ??? ?????????? ?????? ???.

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

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

33 ??????, ?????????????, ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????? ? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ?????? ??? ?????? 28 ?? 29 ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ?????? 2, ?????? ??, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

34 ????? ?? ?????? 4, ??????????? 1 ??? 2, ??? ????? ????????, ?????????? ?? ???????????
????? ??? ?????????????? ?????, ??? ?????? ????????????, ??? ??? ??? ???????????
????????????? ??? ????????????, ??? ??????? ? ??? ?????????? ????????????, ???????????
??? ?????????????? ?????? ? ??? ?????????????? ??? ?????????????? ??????. ???????
????????? ??? ? ?????? ??? «?????????? ?????? ???» ??????????? ??????, ???????????
????? ??? ??????????? ?????????? (???. ??????? Tóth, C?324/11, EU:C:2012:549, ???:
30).

35 ?????? ?????? ?? Finnet, ??? ??????? ?????????????? ?????????????????? ??? ??????????? ??
?????????????, ?????????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????????? ??
????????? ???? ?????? ?????? ?????? ?????????????? ??????????. ?? ?????????????? ???? ??? ?????? ??????????????????
??? ??? ?????????????? ???? ?? ?????? ?????????????? ?????????? ???? ??? ?????? ?? ??????????
??? ?????? ?????????? ? ???? ??? Finnet ?????? ?????????????? ???? ??? ?????????? ????
????????? ??????????????, ?????????? ???? ? ?????????? ???? ??? ?????????? ????
????????????? ???? ?? ?????????? ?? ?????????? ?????????? ???? ??? ?????? ????. ????
?????, ???? ? ?????? ?????????? ?????????? ?????????? ???? ?????????? ?? ?????????? ????
????????????? ???? ?????? ?????? ?????????? ?????????? ?????????? ????, ? ?????? ?????????? ????
????????? ???? ?????? ?????? ?????? ?????? ?? ?????????? ???? ?? ?????? ?????? ???? ??????
????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? (???. ??????????
Forwards V, C?563/11, EU:C:2013:125, ????? 34, ??? Jagie??o, C?33/13, EU:C:2014:184, ?????
32), ????? ?? ???' ?????? ? ?????? ?? ?????? ?????????????? ??? ?????????? ??? ?????????? ????
????????? ???? ?? ?????????? ???? ?????????? ???? ?????????? ??? ?????????? ???.

36 ???????, ? ??????????? ??????? ??????????????, ??? ?????? ??????????????
??????????, ?? ?? Finnet ?? ?? ??????? ?? ????? ?????????????? ?? ?????? ?? ??
?????????? ?? ?? ?? ???????, ??????? ?? ?? ?? ?? ????? ?????????? ?????? ?? ??
?? ??????? ?? ??????????? ? ?????????????? ?? ??????????? ?? ?????? ?? ?? ?? ??
?? ??????? ?? ??????? ? ??????? ?????????? ?????????????? ?? ?????? ?? ?? ??
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37 ????????, ??? ???????? ?? ?? ???? 4, ?????????? 1 ??? 2, ??? ????? ??????? ??
? ??????? ?? ?????????? ?? ????? ?????? ?? ?????????? ?? ?????????? ?????????? ??
?????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?????????????? (??., ??? ??
????? ??, ?????? Tóth, C?324/11, EU:C:2012:549, ??? 30).

38 ???????, ?? ??? 22, ?????????? 1, ??????? ?, ?? ??????? ?????? ?????? ?????????? ??
????? ?????????? ??? ???? ?????? ??? ??????, ?? ?????????? ? ??? ?????? ???
????????????? ??? ???? ?????????? ??? ?????? ??? ?????? ??? . ??????, ? ?????? ???,
????? ?? ?????? ??? ???? ??? ?????? ?????????? ??? ?????????? ??? ???, ??? ?????? ??
????????? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ???, ??? ??? ?????? ??? ?????? 4 ??? ?????? ??????, ?????????? ??? ?? ?????? 22
????????? ??? ?????? X??I ??? ?????? ???, ?????????? «????????? ???
??????? ??? ?????» (??., ??? ??? ?????? ???, ?????? Tóth, C?324/11, EU:C:2012:549,
????? 31).

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40 ??? ??????? ????, ?? ?????????? ????. ????? ???? ?????? ??? ? ?????? ?? ?????? ??? ?????? ??? ??
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???? ?????????????? ?????? ??? ?????? ??? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? .
?????????, ?? ??? ??? ????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
???? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ???, ????
?? ?????? ??? ?? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ?????? ?? ?? ?????? ??? ?????? 22, ?????????? 3, ?????????? ??, ??? ??????
????????, ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????????? ?????? (??., ??? ???
????? ???, ?????????? Dankowski, C?438/09, EU:C:2010:818, ?????? 33, 36 ?? 38, ??????
??? Tóth, C?324/11, EU:C:2012:549, ????? 32).

41 ?? ?????????? ?????????? ??? ?????? ??? ???? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?? ?????????? ??? ?????? ??? ?????? ??? ???? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ???
???? ?????????? ??? ?????? ?????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ???, ???????,
??? ?????????? ??? ?????? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???, ??? ??
????????? ??? ?????? ?????????????? ??? ?? ?????????????? ?????????? ??? ?????? ?????????? ??? ??
????? ??? 22, ?????????? 3, ?????????? ?? (??., ??? ??? ?????? ???, ?????? Tóth,
C?324/11, EU:C:2012:549, ????? 33).

42 ?? ??????????, ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ?????? ?? ??? ??? ?????, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ??? ??? ?????????? ???, ?????? ??? ? ?????? ??? ?????? ??? Finnet, ? ??????
????????? ??? ?????? ??? ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? 31 ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Finnet ??? ??? ??
????? ??? ?????????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? PPUH
Stehcemp ?????? ?????????? ??? ?????? ??? ?????? ???.

43 ???????, ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
???????, ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
???????, ?? ?????? ?????????? ??? ?????? 28 ??? ?????? ??? ?????? ???, ??? ??
???????, ?????? ??? Finnet, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 27??
???????, 2004.

44 ???????, ?????????? ??? ? ?????? ??? «????????? ???», ??? ?? ??? 5,
????????? 1, ??? ?????? ??????, ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? PPUH Stehcemp ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
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45 ???????, ? ??? ??? ?????? ?????? ?????? ? PPUH Stehcemp ??? ??? ??????

???? ?????? ??? ??????????? ????????, ??????? ?? ?? ??????? ????? ?????????????? ???????
??? ??????????? ???????????, ??? ????? «?????????? ? ??????????», ??? ??? ??????
??? ?????? 17, ?????????? 2, ??????? ??, ??? ????? ??????. ????????, ??? ?????
?????????, ? ??? ?????????? ?? ????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ? ?? ???????,
????????? ??? ?????? ??? ?????? ??? ????? ?????????? ?????????? ?? ?????? ??? ??????????
????????? ??? ?????????? ??? ??? (??., ??? ?????? ???, ?????????? Optigen ?.??., C?354/03,
C?355/03 ??? C?484/03, EU:C:2006:16, ????? 54? Kittel ??? Recolta Recycling, C?439/04 ???
C?440/04, EU:C:2006:446, ????? 49, ????? ??? Bonik, C?285/11, EU:C:2012:774, ????? 28).
???????, ?? ?????? ?? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????????
??? ??????? ?????? ??? ?????????? ??? ??? ?? ????? ?????? ?????? ??? ??? ??????????
?? ??????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ??? ??? ??????
(??., ??? ??? ?????? ???, ?????????? Optigen ?.??., C?354/03, C?355/03 ??? C?484/03,
EU:C:2006:16, ????? 54, ????? ??? Véleclair, C?414/10, EU:C:2012:183, ????? 25).

46 ??? ??? ?????? ?????????????? ?????????? ???, ??? ?? ?????? ???
?????????? ??? ?????????? ??? ??????? ???, ?? ?????? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? Finnet, ??? ??? ??? ?????
????????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?? ?????????????? ??? ?????? ??
????????????? ??? ?????? ??? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ???
????????? ???.

47 ??????, ?????????? ??? ? ?????????? ??? ?????????? ??? ??????????????, ??? ??????????????
??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
???? ??????. ????????, ?? ?????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ??? ??????, ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????????????
????????? ??? ? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ? ?????????????? (??.
????????? Bonik, C?285/11, EU:C:2012:774, ?????? 35 ??? 37 ??? ?????? ??????????????
?????????, ??? Maks Pen, C?18/13, EU:C:2014:69, ????? 26).

48 ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ? ?????????????? ??? ??,
?? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??
??? ?????? ??? ?????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?? ??? ??
???. ??? ??? ?????? ???, ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?? ?????? ??? ??????????
??? ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ? ??? ?? ?????????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ? ??? ?? ?????????????? ???
????????????? ??? ?????? (??. ?????????? Bonik, C?285/11, EU:C:2012:774, ?????? 38 ??? 39
??? ??? ?????????? ??? ??????, ??? Maks Pen, C?18/13, EU:C:2014:69, ????? 27).

49 ????????, ??? ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
???? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????, ??? ??????
????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ??? ??????, ?? ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????, ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? (??., ??? ??? ?????? ???, ?????????? Optigen ?.??., C?354/03,
C?355/03 ??? C?484/03, EU:C:2006:16, ?????? 51, 52 ??? 55, Kittel ??? Recolta Recycling,
C?439/04 ??? C?440/04, EU:C:2006:446, ?????? 44 ??? 46 ??? 60, ?????? ??? Mahagében ???
Dávid, C?80/11 ??? C?142/11, EU:C:2012:373, ?????? 44, 45 ??? 47).

50 ??????????? ?? ???? ?????????? ????, ???? ? ?????? ??? ???? ??????????? ?? ???? ? ??????? ??
?????????? ?? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
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Bonik, C?285/11, EU:C:2012:774, ?? 45, ?? LVK — 56, C?643/11, EU:C:2013:55, ?? 64).

51 ? ???????????, ?? ??????????? ???????, ??? ?????? ??? ?????? ? ??? ?????
?????? ?? ??????? ??? ?? ?????????? ??? ?????? ??? ? ?????? ??????? ?? ??????? ??
?????? ?? ?????? ??? ??????? ??? ?? ?????????? ?? ?????????????? ??? ?? ??????? ??
????? ??? ?? ?????? ??? ?????? ?????? ??????? ?? ?????????????? ?? ?????????? ???
????????? ???' ?????? ??? ?? ?????????? ??? ?????????????? ?????????? (?. ??????
Mahagében ??? Dávid, C?80/11 ??? C?142/11, EU:C:2012:373, ????? 59, ?????? ??? ??????
Jagie??o, C?33/13, EU:C:2014:184, ????? 37).

52 ?? ???? ??????? ??????????? ?????? ??? ???? ??????????? ???????????, ???? ???????
?????????? ??? ???? ?????? ??? ?? ???? ?? ??????????? ??? ?????? ??????????? ? ??????,
?? ?????? ??????????? ??? ?? ?????????????? ??? ?? ??????????? ??? ?????? ??????????? ?? ???????,
??????????, ??????????? ?? ??????????? ??? ?? ??????????? ??? ?????? ??????????? ??? ??????? ?
?????????? ?????? ?????? ?? ??????? ??????? ??? ?? ?????? ??????????? ??? ???????, ???????, ??
?????????? ??? ?? ??????? ??? ??????????? ??? ??????? ?? ??????? ??? ?????? ??????????? ??
?????? ?? ?? ?????? ??????? ? ??????? ??? ?? ??? ??????????? ??? ?????? ??? ??????? ??? ??
????????? ?????? ??? ?? ?????? ?? ?? ??????????? ??? ?? ??????????? ??? ?????? ??????????? ??? ??
?? ??????? ??? ?? ??????????? ??? ?? ?????? ??????????? ???, ??????????? ?? ??????????????? ???
?? ??????? ??????????? ??????????? ? ?????? ??? ??????????????? ??????????????????? ??? ??
?????????? ???????, ?, ???????, ?? ??????? ??????????????? ??????? ??????? ??? ?? ??
?? ??????? (??, ??? ?? ?????? ???, ??????? Mahagében ??? Dávid, C?80/11 ???
C?142/11, EU:C:2012:373, ??????? 60 ??? 61, Stroy trans, C?642/11, EU:C:2013:54, ??????? 49,
????? ??? ??????? Jagie??o, C?33/13, EU:C:2014:184, ??????? 38 ??? 39).

53 ??????? ???? ????????, ??? ?????????? ????????, ?????? ?? ???? ?
?????? ???? ?? ???? ??????? ???? ?????? ?????? ?????? ??? ?????? ??? ?????????????? ??
?????? ????????????, ??? ???? ???? ?????? ?????? ?????? ???, ? ?????? ??? ??????????? ??
????????? ??? ???? ?? ??????? ???? ?????? ??? ?????????? ???? ?????????? ??? ??? ??
????? ??? ??? ????????????, ??? ??? ??? ?? ?????????? ??? ?????????? ???? ?????????? ??? ??? ??
?????? ??????? ?? ??????????, ??? ?? ??????? ??? ?????????? ??? ?????????? ??? ?? ??? ??
????????? ???, ?? ?????????????? ?????? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??
????????????? ? ?????????? ??? ?????????? ?????? ?????????? ??? ???????, ?????? ?? ???
??????????, ?? ??? ?????????????? ?????? ??? ?????? ??? ?????????? ??? ?? ??? ??
????????? ??? ??? ?? ??????? ???? ?????? ??? ?????? ?????? ??? ?????? ?? ????????????,
??? ?? ??? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????????? ???
????????? ??? ?????? ?????????? ??? ?????? ??? ???, ?????? ??? ?????? ??? ?????? ?????????? ???
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54 ?????????? ??? ? ??????? ?????????? ??? ???? ???? ?????????? ??? ?????? ???? ?????????? ??? ?????? ????
???? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
???? ?????????? ?????????????? ??? ???????????, ??? ??? ???? ??????????, ??? ??????????.

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

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