

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

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

??? 30?? ??? 2018 (*)

«????????????? ?????????? – ?????????? ?????????? ??? ?????????????? ?????????????? –
????????????? ??? ?????????? ?????????? ?????????? – ?????????? (??) 883/2004 – ???'
???? ?? ??? ?????????? – ?????? 3 – ?????? ??? ?????? ?????? ?????? ?? ?? ??? 9 –
????????? ?????? – ?????????? – ?? ??? ?????? ?????????? ?????? ?????????? ?????? 66»

???? ??????? C-517/16,

?? ?????????? ?????? ?????????????? ?????????? ??????? 267 ????, ???
?????? ?? S?d Apelacyjny w Gd?sku III Wydzia? Pracy i Ubezpiecze? Spo?ecznych (??????
Gd?sk, 3?????? ??????? ?????????? ??????? ??? ?????????? ???????????, ???????) ??
?????? ??? 20?? ?????????? 2016, ? ??? ?????? ??? ?????????? ??? ?????????? ??? 4 ??????????
2016, ??? ??????? ??? ????

Stefan Czerwi?ski

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Zak?ad Ubezpiecze? Spo?ecznych Oddzia? w Gd?sku,

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

????????? ??? ??? A. Borg Barthet, ?????????? ???????, M. Berger ??? F. Biltgen
(????????), ???????,

?????? ??????????: E. Tanchev

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

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

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

- ?? Zak?ad Ubezpiecze? Spo?ecznych Oddzia? w Gd?sku, ?????????????? ??? ??? A. Bo?truczyk, radca prawny,
- ?? ?????? ????????, ?????????????? ??? ??? B. Majczyna,
- ?? ?????? ????????, ?????????????? ??? ??? J. Nyman-Lindgren, M. N. Lyshøj ???
C. Thorning,
- ?? ?????? ????????, ?????????????? ??? ??? A.-M. Dumbr?van ??? A.
Posp?ilová Padowska,
- ?? ?????? ??? ?????????? ???, ?????????????? ??? ??? A. Norberg ??? K.

Ple?niak,

– ? ?????????? ????????, ?????????????? ??? ??? D. Martin ??? ??? A. Szmytkowska,
?????? ??? ?????????? ??? ?????, ??? ?????? ??? ?????? ??? ?????? ???????????, ?? ?????????? ???
?????? ??? ?????? ????????,
?????? ??? ??????

???????

1 ? ?????? ?????????????? ?????? ??? ??????? ??? ?????? 1, 3 ??? 9 ???
??? ?? ??? 66 ??? ??????? (?) 883/2004 ??? ??????? ???????????
??? ?? ???????????, ??? 29?? ??????? 2004, ??? ??? ?????????? ??? ??????????
?????????? ??????? (?) 2004, L 166, ?. 1, ??? ??????? ?? 2004, L 200, ?. 1), ???
?????????? ?? ??? ??????? (?) 465/2012 ??? ?????????? ??????????? ??? ???
??????????, ??? 22?? ????? 2012 (?) 2012, L 149, ?. 4) (?? ????: ?????????? 883/2004).

2 ? ?????? ??? ??????? ??? ?????? ??? ?????? ??? Stefan Czerwi?ski ???
??? Zak?ad Ubezpiecze? Spo?ecznych Oddzia? w Gda?sku (????????? ??????????
??????????, ?????? Gda?sk, ??????) (?? ????: ZUS) ?????? ?? ??? ?????? ???
?????????? ?? ?????? ???, ??? ?? ??????? ??????????? ???????????, ??? ??????????
????????? ??? ??????????? ??? ?????????????? ??? ?????? ? ?????????????? ?? ???
????? ??? ??? ?????????? ?????? ? ??? ?????????? ?????????? ?????? (??).

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

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

3 ??? ?? ??? 29 ??? ??????? ??? ?? ?????????? ??????????? ???, ??? 2?? ???
1992 (?) 1994, L 1, ?. 3):

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

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

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

4 ??? ?????? I ??? ?????????? VI ??? ??????? ??? ?? ?????????? ??????????
????, ??? ?? ?????????? ??? ?????????????? ?? ??? ?????? 76/2011 ??? ??????
????????? ??? ??, ??? 1?? ?????? 2011 (?) 2011, L 262, ?. 33), ?? ?????? ?????? ??? ?????
«?????????? ?????? ?????????? ?????????? ??????????», ?????? ?????? ??? ??????????
883/2004 ??? ??? ?????????????? ??????????? ???.

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

5 ??? ??? ?????????? ??? 33 ??? ?????????? 883/2004:

«????? ?????????? ?? ?????????????? ?? ?? ??? ????? ?????????????? ?????????? ???????????
????????????? ??? ????? ?????????? ??? ?????????? ??????????????, ??? ???? ???? ??????????????, ???'
???? ??? ?????, ? ??? ?????????????? ??? ???? ?????????? ?????????? ??? ?????????? ??????????????
????? ??? ? ?????????? ?????????????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ?????
????????????? ??? ??????????????, ??????? ???? ?????????? ??? ?????????? ??? ?????????? ??????????????
??????, ? ??????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????????
????????? ??? ?? ??? ????? ?????????????? ?????????? ?????????? ?????????? ?????????? ??? ??
???? ?????????????? ?????? ?????? ?????..»

6 ?? ?????? 1 ??? ?????????? ????, ?? ?????? ?????? ??? ????? «?????», ??? ?????:

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

[...]

??) “????? ??????????”: ??? ???? ?????? ?? ????, ?????? ??? ?????? ?????????? ?????????? ?
??? ?????? ?????? ??????, ?? ?????? ?????????? ??? ?????? ?????????? ?????? ?????????????? ?????? ??
????????????? ??? ?????? ??????, ?????? ? ?????????? ??? ?????????? ?????? ?????????????? ?????????????? ???
????????????? ???, ??? ??? ?????? ??? ?????????? ?????? ?????? ?????? ? ?????? ?????????? ? ??????
????????????? ???, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??
????????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????? ?????????? ??
????????? ?? “????? ?????? ??????” ?????? ???? ?????? ???? ?????? ?????????? ?????? ??? ?????? ??
????????? ??? ?????????? ?????? ?????????? ?????????? ?????? ??? ???? ?????? ?????? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????????? ??? ?????? ??????
?????????

[...]».

7 ?? ?????? 3 ??? ?? ??? ??????????, ?? ?????? ?????? ??? ????? «????? ??????
?????????», ?????????, ??? ?????????? 1, ?? ????:

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

[...]

??) ?????? ???????

[...]

??) ?????? ????????????

[...]».

8 ?? ?????? 6 ??? ?????? ?????????? ??? ?? ????:

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

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

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

- ??? ??????? ?? ? ??? ?????? ??? ?????????? ??? ?????????? ?????????? ? ?????????? ???????

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

9 ?? ?????? 9 ??? ?????????? 883/2004 ?????? ?? ????:

«1. ?? ?????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ??? ?????????? ???
????????? ?????????? ?? ???? 1, ?????? 1, ?? ?????????? ??? ?? ?????????? ???
????????? ??? ?????? 3, ??? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????????? ???
????????? ??? ?????? 8, ?????????? 2, ??? ?????????? ?????? ?? ?????? ?????????? ???
??? ?????? 58 ??? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? 65?,
????????? 1, ?????? ??? ??? ?????????? ?????????? ??????. ?? ???? ?????? ??????????
????????? ??? ?????????? ??? ??? ?????? ?????? ?????? ?????????? ?????? ?? ?????????? ???
????????? ??? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???.

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

10 ?? ?????? 66 ??? ?????????? ??? ?????? ?????? ???, «[?]?? ? ?????????? ?????????? ?????? ???
?? ?????????? ?? ?????? ?????????? ??? ??? ?????????? ?????? ?????? ?????????? ??????????,
????????? ? ?? ?????? ?????????? ?????? ??? ?????? 6».

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

11 ??? ???? 3, ?????????? 1, ??? ustanowiona o emeryturach pomostowych (????? ???
????????? ?????????), ??? 19?? ?????????? 2008, ??? ?????????? ?????? ??? (Dz. U.
??? 2015, ??? 965) (??? ????: ??? ?????? ?????? ?????????? ??????????), ?? ?????? ???
????????? ?????????? ?????? ? ?????????? ?? ?????????? ?????? ?????????? ?????? ? ?????? ?? ???
????? ??? ?????? ?????????? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ??? ??????,
????????? ?? ??? ?????? ?????? ?????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??????,
??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???.

12 ?? ?????? 3, ?????????? 3, ??? ???? ?????? ?????? ?????? ??? ?????? ?????????? ??????
?? ??? ???? ?????? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

13 ?? ?????? 4 ??? ?????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ???
????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???.

?????????????, ??????:

- «1) ? ??????????? ?? ???????? ??? 31? ?????????? 1948,
- 2) ?? ??? ?????????????? ?? ??????? ??? ??????? ?????????? ?? ?? ??????? ???????????
?????? ??? ??????? ??????????? 15 ????,
- 3) ?? ??? ?????????????? ??????????? ?? 55? ??? ?? ?? ??????? ??? ?? 60? ??? ??
???? ???,
- 4) ?? ??? ?????????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??????????
[...] ?????????? ?????????? ?? 20 ??? ?? ?? ??????? ??? ?? 25 ??? ?? ?? ????????,
- 5) ?? ??????????????, ??? ?? 1? ?????????? 1999, ?? ?????? ?????????? ?????? ?????????? ??
?????? ??? ?????? ???????, ??? ?? ?????? ??? ?????? 3, ?????????? 1 ?? 3, ??
????? ??? ?????????? ?????????? ? ??? ?????? 32 ?? 33 ??? [ustawa o emeryturach i
rentach z Funduszu Ubezpiecze? Spo?ecznych (????? ??? ?????????? ?????? ??? ??????
????????? ??? ?????????? ??? ?? ?????? ?????????? ?????????? ??????????), ??? 17??
????????? 1998 (Dz. U. ??? 2016, ??? 887)],
- 6) ?? ??????????????, ??? ?? 31? ?????????? 2008, ?? ?????? ?????????? ?????????? ??
?? ?????? ??? ?????? ???????, ??? ?? ?????? ??? ?????? 3, ?????????? 1 ?? 3 ???
????? ??? ?????????? ????????,
- 7) ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ????.»
- 14 ??? ?????? ?? ?? 8 ??? ?????? ??? ?????????????? ??????????, ? ?????????? ??
?????? ?????????? ?? ??????? ??? ?? ?????? ?????? ?????????? ??? ?????????? ??? ??????????
20, 22 ?? 32 ??? ?????????? I ??? ?? ??? ?????, ??? ?? ?????? ?????? ??? ?????????? ??? ??????????
??? ?????? 4, ?????? 1 ??? 4 ??? 7, ??? ?????? ????, ?????????? ?????? ?????????? ??? ??????????
?????????, ?????? ??? ?????????? ?????????? ?? 50? ??? ?? ?? 55? ??? ?? ?? 10 ???.
- 15 ??? ?? 16 ??? ?????? ????, ? ?????? ?? ?????????? ?? ?????????? ?? ??????????
?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??????????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??????????
?????????, ??? ?? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?? ??? ?? ??????
?????????????, ??? ?? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ?? ??? ?? ??????.
- 16 ?? ??? 6, ?????????? 1 ??? 2, ?? ??? ?????? ??? ?????????? ?????? ?? ??? ??
????????? ??? ?????????? ??? ?? ?????? ?????????? ?????????? (??? ????: ???
??? ?????????? ????) ?????? ?? ???:
- «1. ?? ?????? ?????? ?????? ?? ??????????:
- 1) ?? ?????? ?????? ????????,
- [...]
2. ?????????? ?????? ?? ?????? ?????? ?? ?????? ?? ?????????? ?????? ?? ??????
????????? ??? 15? ?????? 1991 ??? ?? ??? ?????? ?????? ?????????? ?????????? ?? ??????
????????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????

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

1) ??????? ?????????????? ??? ?? ?????????? ??? 15?? ??? ?? ??????:

[...]

d) ??????? ??????? ??? ??????: ?????????????? ?? ?????? ?????????? ??????????,
?????? ??? ?? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ??????
????????? ??? ?????? [...]».

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

17 ? S. Czerwi?ski, ???????? ??? 1? ?????????? 1951, ?????????? ?????????? ??????????
??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? 23 ??? 6 ???.

18 ???????, ??? ?? ??? 2005 ??? 2011, ?????????? ?? ?????? ?????????? ?? ???????
??? ?????????? ?? ?? ?????? ?????????? ?? ?????? ??? ??????. ??? ?? ?????????? ??
????????? ???, ?????????? ??????, ??????????, ?? ?????????? ??? ?????????? ???
????????? ?????? ??????????.

19 ??? 12 ?????? 2013, ? ?????????? ?????? ??? ZUS ?????? ??????????
????????? ??????.

20 ?? ??????? ??? 31?? ?????? 2013, ?? ZUS ??????? ?? ?????? ??? ?????? ??? ?? ?
????????????? ?? ??????? ??? ??? ?????????? ??? 1? ?????????? 2009, 15??
????????? ?????????? ?? ?????? ?????????? ?????? ? ?????? ??? ?????? ??????????
???? ?? ?????? ??? ?????? 3, ?????????? 1 ?? 3, ?? ?????? ??? ?????????? ??????????
???? ?? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??????????
????????? ?????? ?????????? 25 ???.

21 ? S. Czerwi?ski ?????? ??????? ??? ?? ?????????? ???.

22 ?? ??????? ??? 28?? ?????????? 2015, ?? S?d Okr?g? w Gd?sku VII Wydzia? Pracy i
Ubezpiecze? Spo?ecznych (????????? ?????? Gd?sk, 7? ??? ?????? ?????????? ??????????
????????? ??? ?????????? ?????????? ??????) ?????????? ?? ?????????? ????. ??? ??
????????? ???, ? S. Czerwi?ski ??????? ??? ?????????? ??? ?? ?????????? ??? ??
15????? ?????????? ??? ?????? ??????, ??? ?????????? ??? ?? ?????????? ??? ??
????????? 25??? ?????? ??????, ?????????? ??? ?? ?????????? ?????????? ??? ??
??? ?????????? ?? ?????? ??? ?????? ??? ?? ?????? ???.

23 ??????? ??????? ??? ?????? ? S. Czerwi?ski ??? ??? ?????????? ????, ?? S?d
Apelacyjny w Gd?sku III Wydzia? Pracy i Ubezpiecze? Spo?ecznych (????? Gd?sk, 3?
????? ??????? ?????????? ??? ?????????? ?????????? ??????) ??????????
????????? ?? ??? ??? ?????????? ??? ?????????? ???.

24 ?????? ? ?????? ??? ?????????? ????, ??????? ?? ?? ?????? 9 ??? ??????????
883/2004, ??????? ?? ?????????? ?????? ?????????? ?????????? ?????? ?????????? ??? ??????
????????? ?? ?????? ?????? ??????, ??? ?????? ???, ??? ?????? ???, ??? ?????? ?? ?????????? ??
????????? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? 3 ??? ??????????
883/2004 ?????? ?????????? ??????????, ??? ?????? ?????? ?????? ? ?????? ?????? ??? ??
?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? 9 ??? ??
????????? ???, ?????? ?????????? ?? ?? ?????????? ??? ?????? ??? ?????? ???.

25 ?? ??????? ??????????? ?????????????? ??? ??? ? ??????????? ??????? ??????????????????
?????? ???????, ?? ??????????? ? ?????????????? ??? ??????? 6 ??? ??????? 883/2004
?????? ??? ?????????????? ??? ??????? ??????????.

26 ??????????, ??? ? ?????????? ?????? ?????? ?? ?????? ??? ?????????? ???
?????? ??????????, ?? ?????? ?? ?????? ??? ? ?? ?????? ??? ?????? ??
????????????? ??? ?????? ??????????, ??? ?????? ??? ? ?? ?????? 66 ???
????????? 883/2004, ?????? ?? ??? ????? ?????????? ??? ?????? ??? ??????????
????????? ? ?????? ?????? ??? ?? ????? 48, ?????? ??, ???.

27 ??? ??? ??????? ???, ?? S?d Apelacyjny w Gda?sku (?????? Gdańsk) ?????????? ??
????????? ??, ?? ?????? ??, ?? ?????????? ??, ?? ?????????? ??, ?? ?????????? ??, ?? ??????????
????????? ??, ?? ??????????:

«1) ?????????? ? ??????? ??????? ?? ?????????????? ??? ?????????????????? ??? ????? 3
??? ?????????? 883/2004 ??????? ?????????? ??????????, ? ?????? ?????????? ??? ??????
??? ?????????? ?? ?????? ?????? ???' ??????? ??? ?????? 9 ??? ? ???? ??????????,
?????? ??? ??????? ??? ?????? ??? ?????? ?????????? ?????? ? ??? ??????
??????????;

2) ?????????? ? ?????????? ??????? ??? ?????????? [? ?????? ??? ?????????????
?????????] ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 3, ?????????? 1, ?????????? ?, ???
????????? 883/2004;

3) ??????????? ? ?? ???????, ?? ?????? ?? ??? ??????????????????, ??? ?????? ???
????????????? ??? ??????? ?????????? (????? 66 ??? ?????????? ??? 33 ???
????????? 883/2004), ??? ?????????????? ?????????? ??? ?????? ??? ??????????
????????? ??? ??????? ??? ?? ?????? 48, ??????? ?, [????];»

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

28 ?? ?? ?????? ?? ???????, ?? ?????? ??????????? ??????, ???' ??????, ??
?????????????? ?? ? ??????? ??????????? ??????? ?? ??????????? ?? ????
?????????????? ?? ???? 3 ??? ?????????? 883/2004 ??????? ??????????? ???????????,
???? ???? ?????????? ? ??????? ?????? ??? ?? ? ?????? ??? ??????????? ?? ???? ???? ??
?????? ?? ???? 9, ?????????? 1, ??? ?? ??? ???????????, ????? ??????????? ? ??
???????? ?? ??? ????? ?? ?????? ???????????.

29 ????? ?????? ??? ?????????????? ???' ?????????? ??? ??????? 9, ??????????? 1, ???
?????????? 883/2004 ??????, ?? ?????????? ?????? ??? ?? ?????? ??? ?????? ???
????????? ?? ?????????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????? ?????????? ??? ?????? ?????????? ??? ?? ??? ?????????? ??? ?????? ??? ??????????
??? ?? ?????? ????, ?? ?????? ?????????? ??? ?? ?????????????? ??????? ?????? ??? ?????? ???
????????? ??? ?????? 4, ?????????? 3, ??? (??., ???????, ??????? ??? 3?? ?????? 2016,
????????? ??? ??????, C?12/14, EU:C:2016:135, ??? 36).

30 ??????????????, ? ??? ? ?? ?????????????? ??????????????, ??? ? ?????????????? ??? ???
4, ?????????? 3, ???, ?????????? ?? ??? ?????? ?????? ??? ?????? ?? ?????????? ??????????, ??? ??????
??? ?????????? ??? ?????? ?????????????? ?? ??? 9, ?????????? 1, ??? ?????????? 883/2004,
??? ?? ?????????? ?? ??? ?????????? ?????????? ?????????? ???, ?????? ?? ??????
??????????, ??? ?? ??? ?????? ?????????? ??????, ?? ?? ?????? ?? ?????????? ??? ?????????? ??? ??
????? ?????????? ??? ?? ??? ?????? ?????????? (??., ???????, ??????? ??? 3?? ?????? 2016,

????????? ????, ?????, C?12/14, EU:C:2016:135, ??? 37 ??? ?????????????????????????????).

31 ?????, ? ??????? ????? ?????????????? ?????????? ??? ?? ??????? ?????????????? ?????????? ??
?????? ?????? ??????? ??????? ??? ?????? 9 ??? ?????????????? 883/2004 ?????????? ??? ???'
???? ?????? ?????????? ??? ?? ??? ????? ?????????? ??? ??????????, ???' ????, ?? ???? ?????? ????
???? (??????? ??? 3?? ??????? 2016, ??????? ??? ??????, C-12/14, EU:C:2016:135, ????
38).

32 ??????????, ?? ??????? ??? ??? ??? ????? ?????? ?????? ?????? ? ?????? ? ?????????? ???????
?????????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? 9 ??? ?????????? 883/2004 ???
??????????, ??? ???????, ??? ? ?????????? ?????? ? ? ?????????? ?????? ???
??????? ??? ????? ?????? ??? ?? ??? ?????????? (??., ??????, ??????? ?? 11??
?????? 1996, Otte, C-25/95, EU:C:1996:295, ????? 20 ??? ??? ?????????? ????????,
????? ??? ??? 19?? ?????????? 2013, Hliddal ??? Bornand, C-216/12 ??? C-217/12,
EU:C:2013:568, ??? 46).

33 ??????????????, ?? ?????????? ?????? ?????????????????? ??? ? ????????? ??????
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????????? 883/2004 ??? ?????? ???
????????? ??? ?????? ????? ?????????????? ?????????????? ??? ?????????? ?????????? ??? ??????,
????? ??? ?????? ??? ????? ?????????????? ?????????????? ???, ??? ??? ??? ??? ?? ??? ?????
????????????? ??? ??? ??? ??? ?????? ?????????? ?? ?????? ?????????? ?????????? ??????????
(????????? ??? 27?? ??????? 1985, Scrivner ??? Cole, 122/84, EU:C:1985:145, ????? 18, ???
11?? ??????? 1996, Otte, C-25/95, EU:C:1996:295, ????? 21, ????? ??? ??? 5?? ??????
1998, Molenaar, C?160/96, EU:C:1998:84, ????? 19 ??? ??? ?????????????? ??????????).

34 ?? ???? ????????????, ?????? ??????????? ????????, ??? ?? ????????, ??? ?????? ?????? ??? ?????
????????? ??? ?????????? 883/2004, ?????? ?? ??????????? ?? ??? ????? ??? ????? ??????????
??? ????? ?????????????? ??? ?????? 3, ?????????? 1, ??? ?? ??? ????? ?????????? (??.,
??????, ?????????? ??? 27?? ??????? 1985, Scrivner ??? Cole, 122/84, EU:C:1985:145, ???
19, ??? ?? ??? 11?? ??????? 1996, Otte, C-25/95, EU:C:1996:295, ??? 22).

35 ?? ???????????, ?????????? ??? ?? ?????? ?????????? ?????????? ?? ? ?????? ??
?????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?????????????? ?? ?????? ?????????? ?? ??
?????? ???????, ??? ?????????????? ??? ?? ?????? ?????? ?????? ?????? ?? ??? ?? ??
????????? ?? ?????????????? ??? ?????? 3, ?????????? 1, ??? ?????????? 883/2004.

36 ???????, ????, ?????????? ??????????? ?? ??? ???? ??? ?????????????? ??????????? ?????????
????? ?????? ?????????? ? ??????? ?????? ?? ???? ?????? ??? ?????? ?? ?????? ?????????????? ?????????? ??
????? 9 ??? ?????????? 883/2004, ?????????? ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ??
????? ?????? ?? ?????????????? ?? ??????? ??? ???, ???????????, ?? ??? ??????????????
(??., ???' ???????, ??????? ??? 3?? ?????? 2016, ??????? ??? ??????, C-12/14,
EU:C:2016:135, ????. 39).

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

883/2004, ??????? ?? ?????????????????? ??? ?? ??????? ??????? ??????????? ?????????????? ???
????????? ??? ?????????? ?????????? ??? ??????? ?????????? ???????, ???????????????, ??
?????? ????????, ?????????????? ?????????? ??? ???????????, ??? ??????? ?? ??????
?????????? ? ??????? ??? ?????????? ?????????? ??? ?????? ?????????? ? ??????? ???????
???? ?? ?? ?????? ??? ?????????? ??????? ??? ?????? 9 ??? ?? ??? ???????????.

39 ????????, ?? ??????????? ?? ?????? ?????? ?????? ? ?????? ??????? ??? ???????????
883/2004, ? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ???????????
????????? ?????????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ???????????
????????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???????
?????? ??????????, ?? ??? ?????? ?????? ??? ?????? ??? ???????, ??????????????? ??
????????????? ?????????? ?????????? ??? ?????? ??? ?????? ?, ??????????,
????????????????? ???, ?? ?????????? ???' ?????? ?????????? ?????????? ??? ??????? ?? ???
????????? ??? ?? ??? ???????????.

40 ????????, ??? ??? ?????? ??????? ??????? ?? ?????? ? ?????????? ??? ? ??????? ???????????
????????? ?? ??????????? ??? ?????? ?????????????? ??? ?????? 3 ??? ?????????? 883/2004
????????? ?????????? ??????????, ??? ??? ?????? ?????????? ? ??????? ?????? ??? ?? ??
?????? ??? ?????????? ?? ?????? ?????? ?????? ??? ?????? 9, ?????????? 1, ??? ?? ?? ???
?????????, ??? ??? ?????? ??????????. ??? ?????????????? ?????????? ?????????? ??????? ??
?????? ?? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????
??? ?????????? ???????, ???????????, ?? ?? ?????? ???????, ?????????????? ?????????? ???
?????????.

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

41 ?? ?? ?????? ??????? ???, ?? ?????? ?????????? ?????? ?? ?????????????? ?? ?
????????? ??????? ?? ?????? ?? ?????? ?? «?????? ??????», ??? ?? ?????? ??? ??????
3, ?????????? 1, ??????? ??, ??? ?????????? 883/2004, ? ?? «?????? ??????????», ???
?? ?????? ??? ?????? 3, ?????????? 1, ??????? ??, ??? ?????? ??????????.

42 ??????????????, ??????????, ??? ? ??????? ?????? ??? ?????? ?????? ??????????????
?? ?? ?????? ??? ??????? ?????????? ?????????? ?????????? ???????????, ?? ?
????????? ??? ?????? ?? ?????? «?????? ??????» ??? ?????????? ??? ? ??????????
????????? ?? ?????? ?????? ?????? ??? ?? ?????????? ?????????? ???????????,
????????? ??????????????, ?? ?????? ?????????? ?????????? ??? ?????????? ?, ?????????? ??????
????????? ?????? ?????? ?? ??????? ??????, ??????? ?? ?? ?????? 6 ??? ??????????
883/2004, ??? ?? ?????????? ??? ?????? ?????????????? ??????? ?? ?? ?????????? ???
????? ??????? ??????, ??? ?? ?????? ?????? ?????? ?????? ??? ??, ??? ?? ??????????
??? ?????????? ??? ?????? ?????????????? ??? ?????? ?????? ??? ?????? ?????????? ? ??????
????. ??????????, ?? ? ?????? ??? ?????????????? «?????? ??????????», ?? ????? 66 ???
????????? 883/2004 ?????????? ??? ??????? ??? ?????????????? ??? ?????? 6 ???
????????? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ??????????.

43 ??? ?????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ??????
????? ??????, ??? ?? ?????????? ???, ??? ?????? ???????, ?? ?????? ??????????
????????? ??? ?? ??????????, ?????????? ??? ?????????? ??? ?????????? ?????????????? ???
????????? ??????? ??????????, ??? ?????? ??????, ??? ?? ?????????? ??? ?????? ?????? ???
????? ??? ? ??? ?????????? ??? ?? ?????? ?????????? ?????????? ??? ?????? ???
?????????????. ??????????, ?????????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ?????????? ??? ?? ?????????? ??? ?????? (??., ???????,
????????? ??? 5?? ?????? 1983, Valentini, 171/82, EU:C:1983:189, ??? 13, ??? 18??
?????? 2006, De Cuyper, C:406/04, EU:C:2006:491, ??? 25, ??? ??? 11?? ????????????

2008, Petersen, C?228/07, EU:C:2008:494, ?????? 21).

44 ?? ??????????? ??????????? ???, ??? ?????? ?? ????? ??????? ??????? ???
????????? ?????????? ??????? ?????????? ???????????, ?????? ?? ?????????? ?????? ?
????????? ??? ????? ?????? ?????? (????????? ??? 18?? ?????? 2006, De Cuyper,
C-406/04, EU:C:2006:491, ????? 27, ????? ??? ??? 19?? ?????????? 2013, Hliddal ???
Bornand, C-216/12 ??? C-217/12, EU:C:2013:568, ????? 52).

45 ?? ??????????, ?? ?????? ??????? ??? ?????? ?????? ?? ?????? 3, ?????????? 1,
????????? ??, ??? ?????????? 883/2004 ?????????????? ?????????? ??? ?? ?????? ???
????????? ??? ?? ?????????? ?? ??? ?????? ?????????? ??? ?????? ??? ?????? ??
?????????????, ??? ?????????? ?????? ???????, ??? ??? ?????????? ?????? ??
????????? ??? ?????? ??? ?????? ?????? ?????????? (?????? ??? 5?? ?????? 1983,
Valentini, 171/82, E?:C:1983:189, ????? 14).

46 ????????, ?? ?????? ???????????, ?? ??? ?????????? ?????????? ?????????? ??
?? ?????? ?????? ??? ?????? ?? ?????? ?????????? ?????? ??? ?????? ???, ??? ???????????,
????? ???, ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ???, ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ??? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ???,
????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
(??., ???????, ?????? ??? 5?? ?????? 1983, Valentini, 171/82, EU:C:1983:189, ?????? 16 ???
17). ??????, ?? ?????? ?????? ?????? ?????????? ?????????? ?????????? ??????????, ?
????????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? (??., ???' ????????,
??????? ??? 11?? ?????? 1996, Otte, C-25/95, EU:C:1996:295, ????? 31).

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

48 ????????, ?????????????? ??? ???, ??? ??? ?????? ?????? ??? ?????? ???
883/2004, ?? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ??????????
????????? ??? ?????????? ??? ?????? «????? ??????» ?????? ?????? ??? ?????? ??? ??????
1, ?????? ???, ??? ?????? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ???.

49 ?????? ?? ??? ??? ?????? ??? ??????, ? «????? ??????» ?????????? ??? ??
«????? ??????» ?? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ??????
?? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????.

50 ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? «????? ??????», ??? ?? ??? ??????
??? ?????? 3, ?????????? 1, ?????????? ?, ??? ?????????? 883/2004, ? ?? «?????»

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

51 ??????????, ????????, ?? ???????????, ??? ???????????, ??? ???? ?????? ??? ?????????? ??? ?????????? ???
?????? ?????? ???????, ??? ?? ?????? 3 ??? ?????? ??? ??????????? ???????????, ???
?????????? ??? ?????? ??? ??????????? 1 ??? 3, ?????????? ??? ???? ?????????? ?????????? ???
???? ??????????? ??? ?????????????? ?? ?????????????? ?? ??????? ??? ?????????? ?????????? ?????????? ??
?????????? ??????? ? ?????? ?????? ?? ?????????? ?????? ?????? ??? ??????? ? ???????, ???
???? ?? ???????????, ???????????, ?????????? ??? ?????????? ?????????? ?????????? ?? ???????????, ?? ???????,
???? ?? ???????????, ???????????, ?????????? ?? ?????????? ?????? ??? ?????? ??? ?? ??????????? ???
???? ?????? ?????????? ???????????, ?????????? ?????? ??? ?????????? ?????????? ?????????? ?? ???????
???? ?????? ??????? ??? ?????? ?????????? ??? ???????????, ? ?????? ??? ?????? ?????????????? ??
????? ??? ??????? ??? ?????? ?????????? ??? ???????????, ??? ?????? ?????????? ?????????? ???????, ???
????? ??? ??????? ?????????? ??? ?????? ??? ?????????? ???????????, ??? ?? ?????? ???
????????? ?????? ?? ??? ??????????? ??? ?????? ??? ?????????? ???????????, ??? ?? ?????? ???
????????? ?????? ?? ??? ??????????? ??? ?????? ??? ?????????? ???????????, ??? ?? ?????? ???
??? ?????? ???????, ?????????? ??? ??????????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?? ???
????? ??? ???????.

52 ?????? ??? ?, a priori, ? ??????????? ??? ??????????? ?????????? ????, ??? ?
?????????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 1, ???????
???, ??? ?????????? 883/2004, ?????? ? ?????????? ??? ?????????????? ???
????????????? ??? ??? ?????? ??? ?????????????? ??? ??????????, ??????? ??????????
??? ? ?????????? ?????? ??? ?????????? ?? ??? ?????? ??? ?????? ?????????? ??
????????? ?????????? ??? ?????? ??? ?? ??? ?????????? ?????????? ??? ?????????? ???
????????? ????????????, ??? ?????????? ??? ??? ??? ??? ??????????, ? ???
????? ?????????? ?????? ? ?????????? ??? ?????? ??????.

53 ???????????????, ??? ?????? ??? ? ??????? ?????? ?????????? ??????? ?????????? ?????????? ?????????? ?????????
????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????? ?????? ?????????? ?????????? ??????
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? , ? ?????? ??? ?????? ??????
??? ?????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?? ??? ?????? ?????? ??????.

54 ??????????, ????. ???? ?? ????. ?????????????? ????. ?????????? ????. ?????????? ????. ?????????? ????.
????? ???????, ??? ???. ??????? ????. ?????????????? ?????? ???????????, ???' ??????, ??? ???. ??? ???. ????.
????????????? ?????????? ?????????????? ?????? ????. ?????? ????. ?????????? ???????, ??????????
??? ???. ????. 14, ?????????? 3, ??? ???. ????. ?????? ?????? ?????????????? ?????????? ?????????????? ????.
?? ???. ????. ?????????? ?????????? ????. ?????? ???. ????. ?????? ?????????? ?????????? ????.
????????? ?????????? ???????, ????. ????. ?????? ?????????? ????. ????. ????. ?????? ?????? ?????????? ????.
??????. ???????, ?? ???. 18, 19 ???. 20 ???. ?????? ????. ?????? ?????????????? ?????????? ????.
????????? ?????????? ???. ?????????? ???????????, ???. ????????. ?????????? ????. ???. ???. ????????.
???. ?????? ???????, ??? ???. ?????? ?????? ?????? ???. ?????? ????. ?????????? ????. ?????? ????.
????????? ???????.

55 ??????, ????, ?????? ??, ??????????????? ??????????? ??, ?????????? ??, ?????????? ??
?????? ?????? ???????, ??????????????? ??, ??, ?????? 4 ??, ?????? ??, ?????? ?????? ?????
?????????? ?????? ??????? ??????? ??????????????? ??????? ??, ??, ??, ?????? ???????, ??, ???????????
????? ??????????? ?????? ??, ??, ??????????? ???????, ??????????? ??????? ??, ??????????? ??, ?????
????????? ???????, ??, ??????? ?????, ??, ?????? ?????, ??????????? ??????? ??, ??, ???????
?????? ???????, ??????????? ??, ??, ??????????? ???????, ??????????? ??, ??, ??????? ??, ??, ?????
??, ??, ???????, ???????????.

56 ????? ??????, ???????????, ??? ??????? ?? ?????????????? ?????????????? ???????????,
?????? ?? ??????????????? ???, ???????? ?? ?? ?????? 16 ??? ????? ??? ??????????????

?????????? ?????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ???
?????????? ??? ?????? ?????????? ??? ?????????? ?????, ??????? ?
?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ??????? ??????? ???
?????? ?? ?????? ??????? ?? ?????????? ??? ?????????? ??? ?????? ??????? ???????
???? ?? ?????? ??? ?????? 1, ??????? ???, ??? ?????????? 883/2004, ??????? ?
?????????? ??????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??????????
?????? ?????????????? ???, ? ??????? ? ?????????? ??????? ??
????????????? ??? ??? ?????? ???????.

57 ???? ???? ?????????? ??????, ?????????????? ??? ????? ???? ?? ?????????????? ??? ??? ?????
???? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??? ??? ?? ????? ??????????
???? ??? ??? ?????????? ?????? ??? ?????? ?????? ??? ??? ?????? ?????? ?????? ??????????
????? ?????????? ??? ?????? 3, ?????????? 1, ?????????? ??, ??? ?????????? 883/2004
?????? ?????? ??? ???, ???????, ??? ?????? ??? ??? ?????? ?????? ?????? ? ?????? ???
????????????? ??? ?????? ??????????.

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

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

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

60 ?????????? ??? ? ??????? ?????????? ??? ?? ????? ????? ?????????? ??? ?????? ?????? ??????????, ?' ????
?????????? ?? ??????? ?? ??????? ?????? ??????. ?? ????? ?? ????? ???????????
???? ??????? ?????????? ??? ??????????, ??? ????? ?? ??? ??????????, ??? ???????????.

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

1) ??????? ?????????? ??????? ?? ?????????? ??? ?????????? ?????? ??? ?????????????? ???
????? 3 ??? ?????????? (?) 883/2004 ??? ?????????? ?????????? ??? ?????? ???
?????????, ??? 29?? ??????? 2004, ??? ??? ?????????? ??? ??????????
????????? ???????, ??????? ?????????? ??????????, ??? ?????? ?????????? ?
?????? ?????? ???, ?? ?? ?????? ??? ?????????? ?? ??????? ??? ?????? ?????? ???
????? 9, ?????????? 1, ??? ?? ??? ??????????, ??? ?????? ??????????. ???
????????? ?????????? ?????????? ?????? ?? ?????? ?? ?????? ?????? ?????? ??????????
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ?????????? ??????????
??????, ???????????, ?? ?? ?????? ???????, ?????????? ?????? ???
?????????.

2) ?????? ???? ? ??????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?? ??????????
«?????? ??????», ??? ???? ?????? ??? ?????? 3, ?????????? 1, ?????????? ?, ???
?????????? 883/2004.

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

* ?????? ?????????????; ? ???????.