

?????? C-414/07

Magoora sp. zo. o.

????

Dyrektor Izby Skarbowej w Krakowie

(?????? ??? Wojewódzki S?d Administracyjny w Krakowie ??? ??? ?????? ??????????????)

«???? ?????? ??? – ??? 17, ?????????? 2 ??? 6 – ?????? ?????????? ?????? –
??????? ??? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ???
????? ??? ?????? ??? – ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???
– ?????????? ?????? ?????? ?????? ??? ??? ?????? ?????? ?????? ??? ??? ???
????? ?????? ??? ??????»

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

????????? ?????? – ?????????? ??? ?????????? – ??? ?????? ?????? ?????? – ???
????? ??? ?????? ?????? ?????? – ?????? ??? ?????? ??? ??? ?????? – ??????????
????????? ??? ?????? ?????? ??????

(?????? 77/388 ??? ??????????, ??? 17 § 6, ?? 2)

?? ??? 17, ?????????? 6, ??????? ??????, ??? ??? ?????? ?????? 77/388, ??? ??????????
?? ?????????? ??? ?????? ?????, ??? ??????? ?? ??? ?????? ?????? ????????,
????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ????????, ??? ?? ?????? ??? ??????
????? ??? ?????? ?????, ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ??????
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? «?????»
????? », ??? ?? ??? 17, ?????????? 6, ?????? ??????, ??? ??? ?????? ??????,
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ?????? ??? ?????? . ? ?????? «standstill» ??? ?????? 17, ??????????
6, ??????? ??????, ??? ??? ?????? ?????? ??? ??? ?? ??? ?????? ??? ?????? ??? ??? ???
????? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ???
????????? ????, ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ???
????? ????. ?? ?? ??? ?????? ?????? ??????, ?? ??? ?????? ?????? ??? ??? ??? ??? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ???
????? ??? ??? ?? ??? ?????? ??????, ??? ??? ??? ?????? ??? ?????? ??? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ???.

(???. ??????? 38-39, 45 ??? ???????.)

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

?? 22?? ?????????? 2008 (*)

«???? ?????? ??? – ??? 17, ?????????? 2 ??? 6 – ?????? ?????????? ?????? –
?????? ??? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??? ???
????? ??? ?????? ??? – ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ???
– ?????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ??? ?????? ?????? ???
????? ??? ?????? ??? ??????»

???? ?????? C-414/07,

?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ??? ?????? 234 ??,
?? ?????? ?? Wojewódzki S?d Administracyjny w Krakowie (??????) ?? ?????? ??? 17??
????? 2007, ? ?????? ?????? ??? ?????????? ??? 10 ?????????? 2007, ??? ?????? ???
?????

Magoora sp. zo. o.

????

Dyrektor Izby Skarbowej w Krakowie,

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

????????? ??? ??? K. Lenaerts, ?????? ??????, R. Silva de Lapuerta, E. Juhász, ?.
????? (???????) ??? J. Malenovský, ???????,

??????? ??????????: M. Poiares Maduro

?????????: M.-A. Gaudissart, ?????????? ?????????? ????????,

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
25?? ?????????? 2008,

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

- ? Magoora sp. zo. o., ?????????? ??? Z. Liptak ??? J. Martini, pe?nomocnicy
 - ? ??????? ????????, ?????????? ??? M. Dowgielewicz ??? H. Majszczyk,
 - ? ??????? ??? ?????????? ??????????, ?????????? ??? ?. ????????????
- ?????? ??? ?????????? ??? ??????, ??? ?????? ??? ?????? ??????????, ?? ?????? ???

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

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

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

?????????

1 ? ?????? ??????? ?????????????? ?????????????? ?????? ??? ?????????? ??? ?????? 17,
????????? 2 ??? 6, ??? ????? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977,
???? ?????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ??????
????????? – ????. ?????? ?????? ????? ?????????????? ?????: ?????????? ?????????? ??? (??
???. ??. 09/001, ?. 49, ??? ?: ??? ?????).

2 ? ?????? ??? ??????????? ??? ?????? ??????? ??????? ?????? ??? Magoora sp. zo.
o. (??? ????: Magoora) ??? ??? Dyrektor Izby Skarbowej w Krakowie (?????????? ???
?????????? ??? ?????? ??? ??????????) ?? ??? ??? ??????? ??? ??? ???????????
?????????? ??? ?????? ??????????? ??? ?????? ??? ?????? ??? ??????? ??? ???
????????????? ??? (??? ????: ???) ??? ??? ?????? ?????????? ??? ??? ??? ????
????????????? ? Magoora ??? ?????? ?????????? ?????????????? ??????????.

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

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

3 ?? ?????? 17, ?????????? 2, ??????? ??, ??? 6, ??? ?????? ???????, ??? ?????????? ?? ?? 95/7/?? ?? ??????????, ??? 10?? ??????? 1995, (?? L 102, . 18) ????????, ??? ?? ????? ??? ?????????? ?????????? ??? ?????????? ??? ???????, ?? ???:

«2. ????? ?? ?????? ??? ?? ?????? ? ?? ??????????? ?????????????????? ??? ??
?????????????? ?? ???? ?????????????? ?????? ???, ? ??????????? ??? ?? ??? ?????????? ??
????????? ??? ?? ??? ????? ?? ??? ?????? ?????? ?????? ??????:

[...]

6. ?????????? ??? ?? ??????? ?????????? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ??? ?? ?????? ?????????? ??????, ?? ??????????, ??????? ?? ??????????, ?????????? ?????? ?????????? ?????? ?????????? ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????? [??]. ?????????? ?????????????? ?? ?????????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??????.

?????? ?? ??????? ?? ??? ???? ?????? ?????????????????? ????????, ?? ?????? ??? ??????????? ??
?????????? ?? ??? ???? ?????????? ?? ??? ?????? ?????????? ? ??????? ?????????? ??? ??? ??? ??
????? ??????? ?? ?????? ??? ??????? ??????? »

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

4 ?? ?????? 25, ?????????? 1, ?????? 3a, ??? ?????? ??? 8?? ?????????? 1993, ??? ???? ???.
????? ??? ???? ?????? ??? ?????????? ??? ???? ?????? ?????????? (Dz. U ????. 11,
????????? 50), ??? ?????? ??? 30 ?????????? 2004 (??? ????: ??? ?????? ??? 8?? ??????????
1993), ?????????? ?? ????:

«??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???? ???.
? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ???? ?, ?? ?????????? ???.
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???.
?? ?????? ?????????? ??? ?????? ??? 500 kg.»

5 ??? ??????, ?? ?????????? ??? ?????? ?????????? ?????????? ??? ?????????? ??? ?????????? ????.
?? ??? ??? 11?? ?????? 2004, ??? ??? ?????? ??? ??? ?????? ??? ?????? (Dz. U
????. 54, ?????? 535, ??? ????: ??? ?????? ???).

6 ??? ?? ?????? 175 ??? ?????? ???, ? ?????? ??? 8?? ?????????? 1993 ???????????.
??? 1?? ?????? 2004.

7 ?? ?????? 86, ?????????? 3 ??? 5, ??? ?????? ???, ?? ?????? ??????, ?????? ?? ????:

«3. ?? ?????????? ??? ?????? ?????????? ?????????? ???? ?????? ?????? ???.
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
?? = 357 kg + n x 68 kg

?????:

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

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

?? ??? ??? ?????? ??? ?????? ?????? ??? 50 % ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? -????? ????.
????????? ?? ??? ??? 5 000 PLN.

[...]

5. ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ???? ?????? ??? ??????
(?????????), ??? ??? ?????? ??? ?????? 3, ?????????? ??? ?????? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 3.»

8 ?? ?????? 88, ?????????? 1, ?????? 3, ??? ?????? ???, ?? ??? ??????, ??? ???.
?????:

«??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? [...] ? ??????, ?? ??????
? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

????? ??????? ?? ?????? 86, ?????????? 3 ??? 5.»

9 ??????? ?? ?? ?????? 176, ?????? 3, ??? ?????? ??? TVA, ?? ?????? 86 ??? 88 ??? ??????
????? ?????? ???????? ?? 1?? ?????? 2004, ?????????? ??? ? ?????? ??? ?????? ?????? ?????? ??
?????:

«? ?????? ??????? ?? ?????? 14 ?????? ??? ?????????????? ?????????????? ??? [????? ??? 20
?????? 2004], ????????????:

3) ??? ?????? 1 [??] 14, ??? ?????? 15, ?????????? 1 [??] 6, ??? ?????? s 16 [??] 22 [...], ??? ?????? 42 [??] 95, ??? ?????? ???????? ??? 1?? ???? 2004.»

10 ? ?????? ??? 21?? ???????? 2005 (Dz. U. ????. 90, ??????? 756), ? ?????? ?????? ?? ?????? ??? 22 ???????? 2005, ??????????? ??? ?????? ??? ???, ????, ?? ?????? ??? 86 ??? 88.

11 ?? ?????? 86, ?????????? 3 ??? 4, ??? ?????? ????, ??? ?????? ??? 22
????????? 2005. ?????? ?? ???:

«3. ?????????????? ??????? ?????????????? ?????????????? ? ?????? ?????????? ?? ??????????
????????????? ?????? ??? ?? ?????????????? ??? 3,5 ??????, ? ?????? ??? ?? ??????????
????????? ??? 60 % ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ? ??? ?????? ???
????? ??? ?????????? ??? ?????? ??? ?????????????? ?????? ?????? ?????? ? ??? ?????? ???
????????????? ??? ?????? ??? ??? ?????????? ?????? ??? ?????? ?????????? ?????? ? ??????????????
????? ??? -????? ?????? ?? ?????????? ?? ?????? ??? 6 000 PLN.

4. ? ?????????? 3 ??? ????:

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

3. ?? ??????? ?? ?????? ?? ?????????????? ?? ?? ??????? ?????????????? ?? ?? ????????

?????????

5. ?? ??????? ?? ??? ?????????? ?????? ???????, ??? ?? ?????? ??? ?????? ??? ?????? ??????
?????????????, ??? ?????? ?? ?????? ?????????????????? ??? ?????????? 9 ??? ??????
?????.

6. ?? ??????? ?? ??? ??????????????, ?? ?? ??? ?????????????? ???, ??? ?? ???????
?????????? 10 ???????, ?????????????????? ?? ?????? –?? ? ??????????? ??????
????????? ??? ?? ?????? ??? ?????????? ??????? ?? ??? ?????????? ??? ?????? ??????
??????????.

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

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

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

12 ?? ??? 88, ?????????? 1, ??? 3, ??? ?????? ???, ??? ?????? ??? 22
????????? 2005, ?????? ?? ???:

«??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???
? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? [...] ? ??????, ?? ??????????
? ?? ?????? ??? ?????????????? ??? ??? ?????? ??? ?????????? ?????????????? ??? ???
????? ?????? ??? ?????? 86, ?????????? 3.»

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

13 ? ?????? ?????? ??? ?????? ??? ?????????? ?? Wojewódzki S?d Administracyjny w
Krakowie (????????? ?????????? ??? ?????????? ??? ?????????? ??? ??????????) ?????? ?? ??????????
??? Magoora ?? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????? ???,
????????? ?????????? ?????????????? ???.

14 ??? 25 ?????? 2005, ? Magoora ?????? ?????? ?????????????? ??????????????
????????? ??? ?????????????, ?????????????? ??? ?????? ??? Urz?d Skarbowy
(????????? ??????) ??? 13 ?????? 2005. ?? ?????? ?????????? ??? ?????? ???
????????? ?? ??? ?? ?????? ??? ?? ?????? ?????????????? ??? ?????????? ???.

17 ?? ??????? ?? 3?? ?????????? 2005, ? Naczelnik Urz?du Skarbowego Kraków-Pr?dnik
?????? ??????? ?? ???? ?? Magoora, ?????????? ?? ?? ?? ?? 17, ?????????? 6, ??
????? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??????????.

18 ???? 15 ?????????? 2006, ? Dyrektor Izby Skarbowej w Krakowie ??????? ???
?????? ?? Magoora ??? ??????? ?? ? ???? ??????, ?? ??? ?????????? ?? ?
????????? ?? ???? ?????? ?????????? ?? ?????????? ?? ???? ?????? ?????? ?????????? ?? ?
?????? ?? ???? ?????? ?????? ?? ???? ?????? ?????? ?? ???? ?????? ?????? ?? ???? ?????? ?? ?
????????? ?? ???? ?????? ?????? ??????. ???????, ??????? ?? ? ???? ?????? ?? ? 22
????????? 2005 ??????? ?????????? ?????? ?? ???? ?????? ?????? ?????? ?????? ?? ?
????? ?? ???? ?????? ?????? ?? ???? ?????? ?? ???? ?????? ?????? ?????? ??????.

19 ? Magoora ?????? ??????? ?????? ??? Wojewódzki S?d Administracyjny w Krakowie
???? ?? ???????? ??? Dyrektor Izby Skarbowej w Krakowie.

20 ?? Wojewódzki S?d Administracyjny w Krakowie, ??????????? ??????????? ?? ??? ??
????????? ?? ???? 17 ??? ????? ??????, ?????????? ?? ?????????? ?? ?????????? ??
?? ??????? ?? ?????????? ?? ?????????? ?????????? ?????????? ??????????:

2) ?? ?????????? ?? ?????????? ?? ?????????? ?? ???????, ?? ??????, ?? ?????, ?? ?????, ?? ????? 17,

?????????? 6, ??? ????? ?????? ??????? ?? ???? ?????? ??? ?????????????? ??? ??????????
?????????? ??? ?????????????????? ??????????, ??? ????? ?????? ??? ?????????????? ?? ???
????????? ?? ?????? ?????????? ??? ?????????? ??? [??] ??? ??? ?????? ?????????? ?? ?????????? ???
??? ?????????? ??? 30 ??????? 2004 ?????? ?????????? ?????????? ???? ?????? ?? ??? ??????
????????? ??? ?????? ??? ??? ?????????? ??? ?????????? ?????????? ??? ?????????? 22 ???????
2005; ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? 17,
????????? 6, ??? ????? ??????, ?????????? ??? ? ?????????????? ?? ?????????? ?? ??? ??????,
???? ?????? ??? ?????? ??? ?? ?????????????? ??? ?????????? ?????????? ?????????? ?????????? ??
????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? [??], ??? ?????? ?????? ?????????? ??
????????? ?????????? ??? ?????? ??? 30 ??????? 2004 ??? ?????????? ??? ?????? ??
????????? ???;

3) ??????????? ?? ??? 17, ??????????? 6, ??? ??? ????? ???????? ??? ?? ?????? ???
?????????? ?? ???????, ?????????????? ??? ?????????????? ??? ?? ?????? ???
?????????? ?? ?????? ??? ?? ?????????? ??? ?????????? ??? [??] ??? ?????? ???
????? ??????? ?????????????? ??????????, ??? ?? ?????? ???????????, ?????????? ?
?????????? ??????????, ?????????? ??? ?????????? ??? [??] ??? ??? ??????, ??
????????? ?? ??? ?????????? ??? ?????????? ??? 30 ??????? 2004 ??????, ??? ?????
????? ??? ?? ?????????? ? ?????? ??? [??] ??? ??? ?????? ??? ?????? ??? ?????
????????? ??? ?????????? ?????????? ? ??? ?????? ??? ?????? ??? ?????? ??????????
????? 3,5 ????, ??????????? ??? ?????????? ??? ?????? 86, ?????????? 4, ??? ??? [??]
??], ?? ??? ??? ?? 22 ??????? 2005;»

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

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

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

22 ???????, ?????????????? ???, ??? ?????? ??? ?????????? ??? ?????? 234 ??,
????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ???
????? ??? ?????????? ??? ?????? ??????, ??? ?????? ?????????? ??? ?????? ??????????
????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?????????? ??? ??????????. ??????, ?????? ?? ?????????? ?????? ?????? ???
????????? ??? ?????????? ??????, ?? ?????????? ?????????? ???' ?????? ?? ??????????
(??., ?????? ???, ?????? ??? 18? 2007, C?119/05, Lucchini Siderurgica,
??????, 2007, ?. I-6199, ??? 43, ??? 15? ?????? 2007, C-162/06, International Mail
Spain, ?????? 2007, ? I-9911, ??? 23, ??? ??? 4? ?????? 2008, C?221/07, Zablocka-
Weyhermüller, ??? ??? ??? ?????? ?????????? ??? ??????, ??? 20).

2006, ?. I-11421, ????? 25, ??? 7?? ??????? 2007, C?222/05 ??? C-225/05, van der Weerd
???, ??????? 2007, ?. I-4233, ????? 22, ??? 8?? ??????? 2007, C-379/05, Amurta, ???????
2007, ?. I-9569, ????? 64, ??? Zablocka-Weyhermüller, ???????????????, ??? 21).

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

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

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

26 M? ?? ?????????? ???, ?? ?????? ??????? ?? ?????????? ??? ???????, ?? ??????
?????????? ???, ???' ?????, ?? ?? ????? 17, ?????????? 2 ??? 6, ??? ????? ???????
?????????? ??? ?? ?????? ??????? ??????? ????? ???????????, ??? ??? ??????????? ???????
?????? ??? ??????? ??????? ??? ??????? ???, ??? ??????? ??????????? ??? ??????? ???
????????????? ??? ??????? ??????? ??? ??????? ??? ??????????? ??? ??????? ??? ??????? ?
?????? ??? ??????? ??????? ??? ??????????? ??? ??????????? ??? ??????? ??? ??????? ?
?????? ??? ??????? ??????? ??? ??????????? ??? ??????? ??? ??????????? ??? ??????? ???
?????????? ??? ??????????? ??? ??????? ??? ??????? ??? ???????????, ??? ??? ??? ?? ???
????????????? ??? ??????????? ??? ??????? ??? ??????? ??? ??????? ??? ??? ??????? ???,
???? ??? ?? ??????????? ?? ??????????? ????. ?? ??????????? ??????????? ???????????,
?? ?? ??? ??????????? ??? ????? ?? ??????????? ??? ????? ?? ??????????? ?? ??????? ???
????????? ??? ??????? ??????? ??? ????? ?? ??? ??????????? ??? ????? ?? ???????????.

27 ??????????? ???, ?? ???????????, ? ??? ?????? ??????? ??? ??????? ??? ???????
???? ??? ??????????? ??????????? ??? ??????????? ??? ??????????? ??? ??????????? ???
???? ??? 1? ??? 2004. ???????, ? ??????????? ??? ??????????? ??? ??????????? ??? ???
?????? 17, ??????????? 6, ??????? ???????, ??? ????? ??????????? ??? ??????? ?? ??????? ???
???? (??., ??? ??? ??????? ???, ??????? ??? 8?? ??????????? 2002, C-409/99, Metropol ???
Stadler, ??????? 2002, ?. I-81, ????? 41).

28 ??????? ?? ?? ?????????? ??? ????? ?? ??????? ?? ?????? ?????? ??? ?? ?????? ??????? ?? ?? ???????
??? ?? ?????? 2 ??? ?????? ??????? 67/227/??? ??? ??????????, ??? 11?? ??????? 1967,
????? ??? ?????????????? ??? ??????????? ??? ?????? ?????, ??? ??????? ?? ??? ?????? ??????
?????? ??????? (??. ????. ??? 09/001, ?. 3), ??? ??? ?????? ???????, ? ??? ??????????? ??
????? ??? ?????? ???????, ??? ?????? ???????, ??? ?????? ?????? ??? ?? ?????? ?????? ???
?????? ??????. ??? ?????? ???????, ?? ??????? ?????????? ??? ?????????? ??? ?????????? ??
17 ???. ??? ?????? ??????? ??????? ?????????? ?????? ??? ?????????? ??? ??????? ???, ???'
?????, ??? ?????? ?? ??????????. ??????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ??????
??? ??????? ??????. ??? ??????????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ??????? ??
????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ??????? ??
????? ????. ??? ???????, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? (?. ?????????? ??? 19?? ?????????? 2000, C-177/99 ??? C-
181/99, Amprafrance ??? Sanofi, ??????? 2000, ?. I-7013, ????? 34, Metropol ??? Stadler,
??????????????, ??? 42, ??? ??? 11?? ?????????? 2008, C-371/07, Danfoss ???
AstraZeneca, ??? ??? ??? ?????? ?????? ?????????? ??? ???????, ??? 26). ???????, ??
????????? ??? ?????????? ?????????? ??? ???????, ??? ??? ??? ?????? ?????????? ?????????? ???
??, ?? ?????? ??????? ??? ?????????? ??? ???????, ??? ?????? ???, ?????? ?? ??????????
????????? (????????????? ?????? Metropol ??? Stadler, ????? 59).

29 ????? ?????? 17, ??????????? 2, ??? ?????? ???????? ?????????????? ?????? ???? ???? ???? ??
?????? ??? ?????????????? ?????????? ??? ?????? ??? ?????????????? ?? ??? ??? ??? ?? ???
?? ?????? ??? ?????????????? ? ??? ?????????? ?? ?????? ??? ??????????, ?????? ?? ?? ???
????? ? ?????????? ?????????????? ??? ??? ?????????????? ??? ?????????????? ??????????????
???. ? ??? ??? ?????????? ??? ?????? ??? ??? ?????????? ?????????? ??? ??????????
????????? ?????? ??? ?????? 17, ?????????? 6, ??? ?????? ?????? ???, ??????????, ???
????????? ?????? ??? ?????????? ??? (???. ?????????????? ?????? Metropol ???
Stadler, ?????? 43 ??? 44, ??? Danfoss ??? AstraZeneca, ?????? 27 ??? 28).

30 ??????? ?? ?????? 17, ??????????? 6, ??? ????? ???????, ?? ????? ????? ??
?????????? ?? ??????????? ?? ??? ?? ?????????? ????? ??????? ?? ??? ??????????? ??
????????? ?????????? ? ?????? ?????? ??? ????? ?????????? ?????????? ?????? ??? ??
???????, ??? ??? ?? ?????????? ???????? ??? ?????????????? ??? ?? ?????????? ???
?????????.

31 ????????, ??? ?????????? ?????????? ?????????????? ?? ?????????? ?? ??????????
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? 14?? ??????? 2001, C-345/99, ??????? ??????????, ??????? 2001, ?. I-
4493, ????? 20, Metropol ??? Stadler, ??????????????, ????? 44, ??? ?? 8?? ??????????
2005, C-280/04, Jyske Finans, ??????? 2005, ?. I-10683, ????? 23).

32 ?????????????? ??? ? ??????? ?? ?????????? ??????????, ?????????? ??
????????????? ?? ?????????? ??? ???? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
??? ?? ?????? ?? ? ??????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????????, ??? ?? ?????? ??
????? ?? ?????? ?? ??????, ?? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ?????? ??
???' ?? ??? ?????? ?? ?????????? ?? ?????? ?? ?????????? (?? . ?????????? ?? ??????)
Metropol ??? Stadler, ??? 47).

33 ???????, ??????????? ??, ??? ?????? ?? ??????????? ?? ??????? 234 ??, ???
?????????? ?? ??? ?????? ??????? ?? ??????????? ?? ??????? ?? ??????? ?? ??????????? ?? ??

?????????????, ??? ?????????? ??? ?????????? ?????????????? ?????????? ??? ?????????????? ???
????????? ?????????????? (??., ?????? ????, ?????? ??? 14?? ?????????? 2008, C-450/06,
Varec, ?????? 2008, ?. ?-581, ??? 23 ??? ??? ?????????? ?????? 2008). ??????, ??? ??
??? ?????? ??? ?????? ?????? ??????, ?? ?????????? ??????, ?? ?????? ?????????? ?? ??
????? ??????????, ?? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? (??., ??????
?????, ?????? ??? 1?? ?????? 2008, C-49/07, MOTOE, ??? ??? ??? ?????? ??????????
??? ??????, ?????? 30).

34 ?? ??????????, ??? ?????????? ?????????? ?? ?????????? ??? ?????? ?????????? ??
????????? ?????????? ??? ?????????? ??? «????????? ??????», ??? ??? ?????? ???
????? 17, ?????????? 6, ?????? ????, ??? ??? ?????? ???, ??? ?? ?????? ?? ??? ??
???? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ???
??? ?????? ?????? ??? ?????? ?????? ?????? (?. ?????????????? ?????? Metropol ???
Stadler, ??? 47).

35 ??????????, ?? ??? 17, ?????????? 6, ?????? ????, ??? ?????? ??????
????????? standstill, ?????????? ?? ?????????? ??? ?????????? ??? ?????????????? ??? ?? ???
????? ?????????? ?????????? ??? ?? ?????????? ?????? ??? ?? ?????? ??? ?????? ??? ??
??? ?????? ?????? ??? ?????? ?????? (????????????? ?????? Ampafrance ??? Sanofi,
????? 5). ??????, ?????? ??? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ??????
????, ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ??????????
????????? ??? ?? ?????????? ?????? ??? ??, ?? ?????????? ?????? ?????????? ??? ??????
????????? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
??? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
(?. ?????????????? ?????? Metropol ??? Stadler, ??? 48, ??? Danfoss ???
AstraZeneca, ??? 30 ??? 31).

36 ??? ??? ? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????????,
?????????, ?? ??? ?????? ?????? ??? ?????? ?????? ?????????? ??????????, ??? ??
????? ?????? ??? ?????? ??????, ??? ??????????, ??? ??? ?????? ???, ??? ?????? ???
?? ??? ??????, ??? ??? ?? ?????? ??? ? ?????? ??? ?????? ?????? ??? ?? ?????? ???
??? ?????? 17, ?????????? 6, ?????? ????, ??? ?? ??? ?????? ??? ?? ??? ??
????????? ??? ??? 17, ?????????? 2, ??? ?????? ??? (?. ??????????????
????????? ?????? ??? ??????, ??? 22, Metropol ??? Stadler, ??? 45, ??? Danfoss
??? AstraZeneca, ??? 32).

37 ?????????? ???, ??? ?????? ?????????? ??? ?????? ?????? ?????? ??????????, ? ?????? ??????????
?????? ??? ?????? ?????????? ?????????? ??? ?? ??? 17, ?????????? 6, ??????
?????, ??? ?????? ??????, ?? ??? ?? ?????? ??? ?????????? ?? ??????????, ??? ??? ?????? ??????
??? ?????? ???, ?? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ???' ?????? ??? ?????? ??? ?????? ??? ?????? ?????? (?. ?????????? ???
14?? ?????? 2001, C-40/00, ?????? ??? ?????? 2001, ?. ?-4539, ??? 17, ???
11?? ?????????? 2003, C-155/01, Cookies World, ?????? 2003, ?. ?-8785, ??? 66, ???
Danfoss ??? AstraZeneca, ??????????, ??? 33).

38 ??????, ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??????, ? ?????? ???
«????? ??????», ??? ?? ??? 17, ?????????? 6, ?????? ????, ??? ?????? ??????,
????????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ?????????? ??????
???? ?? ?????? ?????? ??? ?????? ??? ?????? ???.

39 ??????, ?????????? ???, ??? ?????????? ??? ?????? ?????? ?????? «standstill» ???
????? 17, ?????????? 6, ?????? ????, ??? ?????? ?????? ??? ?? ??? ?? ??? ??
????????? ?? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???

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

40 ??? ??????? ????, ?? ?????? ?????????? ?????????? ?? ?? ??????? ??? ? ???????????
??? ??????? ?????????? ??? ?????? ?? 8?? ?????????? 1993 ??? ??? ??????????
????????? ??? ?????? ?????????? ?????? ??? ?????????? ?? ??????????, ??? ?????? ???
?????????, ?????????? ?????????????? ?????????????? ??? ?????????? ?????????? ???
????????????? ??? ??? ??? ???????, ? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????
????????????? ??? ??? ?????? ?????????? ?????????? ?????????? ??? ??????.

41 ??? ?????? ? ???????, ??? ?????? ?????????? ?????? ??? ?????? ?????????? ?????? ??? ??????
?????? ??? ?????? ?????? ?????? ???, ?????????? ?????????? ??? ? ??????????????
????, ??? ??? ??? ?????? ??????????, ??? ?????? ?????????? ?????????? ??? ?????????? ???
????????? ??? ?? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ???
????????? ??? ?? ?????? ?????? ?????????? ??? ?????????? ??? ??? ??? ?????? ??? ??????.. ??? ???
????? ?????????? ??? ??????????, ??? ?????? ?????? ?????? ?? ?????????? ?????????? ???
????? 17, ?????????? 6, ??????? ??????, ??? ?? ?????? ??????, ??? ??? ?????? ??????,
?????, ??? ? ?????????? ??? ??? ??? ?? ?????????? ?? ?????????? ??? ?????????? ??? ??? ?? ???
?????????, ??? ?????????????? ?????? ??????.

42 ??? ?????? ??? ?????? ????, ?????????? ??? ?????? ?????????? ?? ?? ???, ???
????????? ??? ?????? 32 ??? ??????? ??????????, ?????? ?? ??? ?????? ?????????? ??? ???
????????? ??? ?????? ??? ??????, ?? ?????????? ?? ?? ?????????????? ??? ???????????,
???? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ??????, ?? ??? ??? ?????? ??? ?????? ??
????????? ??? ??????????, ?? ?????? ?? ??? ?????????????? ?????????? ??????????, ?? ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????????? ??? ??? ??? ??
????? ? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????????? ??? ??? ???
????? ?????????? ??????.

43 ???, ?????????? ???, ?????????????? ???, ??????? ?? ??? ?????? ?????????? ??????????????
?????????, ? ?????????? ??? ?????? ??? ??? ?????? ?????? ?????? ??? ?????? ??? 21??
????????? 2005, ? ?????? ?????? ?? ?????? ??? 22 ?????????? 2005, ???? ?? ?????????? ??
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????????? ???
????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ?????????? ???
?????????, ?????? ?? ???, ?????????????? ?????? ??? ?????????? ??? ?????????? ???
????? 36 ??? ??????? ??????????, ?????????? ??? ?????? 17, ?????????? 6, ??????
?????, ??? ?? ??? ??????.

44 ?? ?????? ?????????? ??????? ?? ??????????, ??? ?????? ??? ??????, ?? ???????
??? ??????, ??? ?? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ??????, ??????????
?? ?????????? ?? ?????????????? ??? ?????? ??????????????, ?????????????? ??? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???, ??? ?? ?????????? ???
?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? (??., ??? ??? ?????? ???,
????????? ??? 4?? ?????? 2006, C-212/04, Adeneler ??., ?????? 2006, ?. I-6057, ????? 124),
?? ?????????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? (??., ??
?? ?????? ???, ?????? ??? 22?? ?????????? 2005, C-144/04, Mangold, ?????? 2005, ?. I-
9981, ????? 77).

45 ??? ??? ?????????? ????, ??? ?????????? ?????? ?????? ?? ??? ?????? ? ?????????? ???
?? ?????? 17, ?????????? 6, ?????? ??????, ??? ?????? ?????? ?????????? ??? ?????? ???
?????? ?????? ?????? ??????????, ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ???
??????, ??? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ?????? ???

??? ?????????????? ??? ??? ??? ?????? ? ?????? ?????? ??? ?????? ?????? ?????? ???
????????????? ??? ??? ?????? ?????????????? ??? ??? ??? ?????? ?????? ?????? ??????
????????????? ??? ??? ?????? ??????, ??? ?????? ?????? ??? ??? ?????? ?????? ?????? ??? ??
????? ?????? ?? –????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? –
?? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??????
??? ?? ??? ?????? ??????. ?? ??? ?????? ??????, ?????????? ??? ?? ?????? ??? ?????? ??? ?? ???
????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?? ??? ?????? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

46 ??? ?????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???, ?' ???
????????? ?? ?????? ??? ?????? ?????? ?????? ??????. ?? ?????? ??? ?????? ?????? ??????
????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

?? ??? 17, ?????????? 6, ?????? ??????, ??? ?????? ?????? 77/388/??? ???
?????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????? ?????? – ??? ?????? ??? ??????
?????, ??? ?????? ?? ??? ?????? ?????? ?????? ?????? – ??? ?????? ??? ??????
????????? ?????: ?????????? ?????????? ???, ?????????? ??? ?? ??????
????????? ?????? ?????? ??????, ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??????, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?? –????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? –
?? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?? ??? ?????? ??????. ?? ??? ?????? ??????, ?????????? ??? ??
????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.
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(?????????)

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