

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

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

??? 13?? ??????? 2018 (*)

«????????????? ?????????? – ?????????? – ????? ?????? ?????? ?????????????????? ?????? (???) –
?????? 2006/112/?? – ????? 2, ??????????? 1, ?????????? ?? – ????? ?????????? – ??????
????????????? ??? ????? – ?????????? ?????? ??? ?????????????????? ?? ?????????? ?????? –
??????????, ??? ?????? ???????, ??????? ?? ?????? ?????? ?????? ?????? ??? ?????? ???»

???? ??????? C-421/17,

?? ??????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???
?????? ?? Naczelnego S?d Administracyjny (?????? ?????????? ???????????, ???????) ??
?????? ??? 22?? ?????? 2017, ? ????? ?????? ??? ?????????? ??? 13 ?????? 2017,
??? ??????? ??? ???

Szef Krajowej Administracji Skarbowej

????

Polfarmex Spó?ka Akcyjna w Kutnie,

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

?????????? ??? ??? A. Rosas, ??????? ????????, C. Toader (??????????) ??? A. Prechal,
???????,

?????? ??????????: M. Campos Sánchez-Bordona

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

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

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

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

– ? ??????? ????????, ?????????????? ??? ??? N. Grünberg,

– ? ??????? ????????, ?????????????? ??? ??? G. Palmieri, ?????????????? ??? ??? G.
De Socio, avvocato dello Stato,

– ? ??????? ????????, ?????????????? ??? ??? R. Lyal ??? ??? M. Owsiany?Hornung,

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

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

???????

1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 2, ?????????? 1,
????????? ?, ??? ?????? 2006/112/?? ??? ??????????, ??? 28? ?????? 2006, ??????
?? ???? ?????? ?????? ????? ?????????????? ????? (?? 2006, L 347, ?. 1, ??? ????: ??????
???? ???).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Szef Krajowej
Administracji Skarbowej(????????? ??? ?????? ?????????? ?????, ??????) ??? ??
Polfarmex Spó?ka Akcyjna w Kutnie (??? ????: Polfarmex), ?? ?????????? ??????????
????????? ??? Minister Finansów (????????? ??????????, ??????, ??? ???:
?????????), ?????????? ??? ?????? ?????, ?? ??? ?????? ?????????? ?????? ???
????????? ?? ??? ?????????????? ????? (??) ??? ?????????? ??? ?????? ??? ??????
Polfarmex ??????? ?? ?????????? ?????? ?? ?????????? ?????????? ?????????? ??????
???? ?????? ??? ?????? ??? Polfarmex, ?? ?????????? ??? ??? ?????? ??????, ???
????????? ?????????? ?????? ?????? ?????????? ?????? ??? ??? ?????? ??????????.

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

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

3 ?? ?????????? 7 ??? 35 ??? ?????? ??? ?????? ?? ????:

«(7) ?? ?????? ?????? ??? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ???
????????? ??? ?????? ?? ?? ?????????? ?? ?????? ?? ?????? ?? ?????????? ?? ??????
?? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????????? ??????????, ?????????? ??? ?? ?????? ? ?????? ???
????????? ?????? ??? ??????.

[...]

(35) ???? ?????? ?? ?????????? ?? ?????????? ?????? ?????? ?????????? ?? ??? ?????? ??? ??????????
????????? ??? ?????? ?????? ?? ??? ?? ?????? ????.»

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

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

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

[...]».

5 ?? ?????? 9, ?????????? 1, ??? ?? ??? ?????? ?????? ?????????? ?? ????:

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

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

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

6 ????? ?? ?????? 12, ??????????? 1 ??? 2, ??? ????? ??????:

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

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

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

2. ??? ??? ?????????? ??? ??????????? 1, ???????? ?), ?? “??????” ??????? ??? ??????????? ??? ?????????? ??????? ?? ?? ??????.

7 ????? ?? ?????? 14, ??????????? 1, ??? ??????? ????? ??, ?? «????????? ??????» ??????? ? ??????????? ?? ??????????? ?? ??????????? ?? ???????????, ?? ???????, ????????? ??.

8 ?? ?????? 135, ?????????? 1, ??? ??????? ??????, ?? ????? ?????????????????? ???
????????? 3, ?? ????? «????????? ?????? ?????? ??????????????», ?????? ?? ????:

«?? ???? ???? ?????????????? ??? ?????????? ??????»

[...]

??) ??? ???????, ??????????????? ?? ???? ??????????????, ?? ??????? ?? ?????? ??
?? ???????, ?? ?????? ??????? ??????? ?? ?????? ?????????? ?? ???????, ???????
?? ??????? ???????, ?? ??????? ?? ??????? ?? ?????????????????? ??????????? ??
?????????? ? ??? ??????? ?? ?????? 15, ??????????? 2,

[...]

) ??? ??????????? ??????? ? ??????? ?????? ?????? ??? ?? ??????????? ?? ??? ????????,
 ?????? ?????? ??? ??????????? ??? ?????? 12, ?????????? 1, ???????? ?),

[...]]>.

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

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

9 ????? ?? ?????? 206, ??????????? 1, ??? Przepisy wprowadzaj?ce ustaw? o Krajowej Administracji Skarbowej (????? ?? ??? ?????? ??????? ?? ??????? ?? ?????? ??????? ?? ????)

?????? ??????????? ????), ??? ???? ?????????????? (Dz. U. ??? 2016, ??? 1948), ?? ??????
?????? ??? 1? ??????? 2017, ??? ?????????????? ?????????????? ??? ??????? ?????????? ??? ??
?????? ?????????????? ?????????????? ??????????, ??? ?????? ??????? ?????? ? ?? ?????????? ??
?????? ? ??????? ??????? ?????????? ?????????? ????? ?????????????? ?????????????? ???????,
?????????? ??? ??????? ?????????? ?????? ?????????????? ??? ?????????????? ??? ?????????? ??? ??
??????????, ??? ???? ?? ??????? ??? ???????????.

? ?????? ????

10 ?? ??? 2, ?????????? 1, ??????? ??, ??? ??????? ??? ?????? ??? ?????????????? ???
????????? ??? ?? ?? ??? 5, ?????????? 1, ?????? 1, ??? usta o podatku od towarów i
us?ug (????? ??? ?????????????? ?????? ??? ??????????), ??? 11? ?????? 2004 (Dz. U. ????.
54, ??? 535), ??? ?????????????? (Dz. U. ??? 2011, ????. 177, ??? 1054) (??? ????:
????? ??? ??), ??? ???? ?????????? ?? ??? ???? ?????????? ??? ?????? ??? ???? ???
??????????, ?? ??????? ??????, ??? ???????.

11 ?? ??? 6, ?????????? 1, ??? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ???
????? ??? ?????????? «????? ?????? ?????????? ?????????? ? ?????????? ? ??????????».
????????????? ??? ??????????».

12 ?? ??? 14, ?????????? 1, ??? ?????? ??? ?????? ??? ?????????? ??? ?? ?????????? ???
?? ?? ??? 7, ?????????? 1, ??? ??? ????, ?? ??? ?????? ??? «?? ?????? ???
????? ??? ?????? ??? ?????? 5, ?????????? 1, ?????? 1, ?????? ? ?????????? ???
????????? ?? ?????? ?????? ??? ?????? ??? ??????».

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

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

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

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

14 ?? ??? 359 ??? Kodeks spó?ek handlowych (????? ?????????? ???????), ??? 15??
?????????? 2000, ??? ?????? ?????????? (Dz. U. ??? 2016, ??? 1578, ??? ????: ???????
????????? ??????), ?????? ?? ????:

«1. H ?????? ?????? ?????? ?????????? ?????? ?????? ?????????? ??? ?? ?????????? . ?
????????? ?????? ?????????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?? ??????
??? ??? ??? ?????? (????????? ??????) ? ??? ?????? ?? ?????? ?????? ??? ?? ??????
(????????? ??????). ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ??
????????? ?????. ?? ??? ??? ???? ?????? ??? ?????? ?????? ?????????? ?????? ??? ??
?? ??????????.

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

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

15 ?? ??? 360, ?????????? 1, ??? ??? ???? ?????? ?????? ?????? ??? ?? ???? ???? ???? ?
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? . ? ?????? ??? ?????? ?????? ??? ?
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ?
??? ?????? ??? ??????.

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

16 ? Polfarmex, ?????? ?????? ?????? ??? Kutno (?????), ?????? ?????????? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ???? ?
??? ?????? ??? ????.

17 ? Polfarmex ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?
????????, ?????? ?? ??? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?
????? «?????», ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???? ?
????????? ????. ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?
?????????, ?' ??? ??? ?????? ?????? ?????? ?????? ???, ??? ?????? ?????? ?????? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???.

18 ??? ???? ????, ? Polfarmex ?????? ??? ???? ?????? ?? ?????? ?????? ?????? ?
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ???, ???, ?
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???, ???, ???, ?,
????????? ??? ?????? ??? ?????? ???.

19 ?? ??? ?????? ???, ? Polfarmex ?????????? ??? ???? ?????? ?????? ??? ?????? ?
????????? ???, ??? ?????? ???, ??? ?????? ???, ??? ?????? ???, ??? ???? ???? ???? ?
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???
??? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???.

20 ?? ??? ?????????? ?????????? ???, ? ?????? ?????? ??? ???? ???? ?
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?
????? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? 5, ?????? 1, ?????? 1, ???
????? ??? ?. ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????, ?????? ??? ? Polfarmex ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????? ??? Polfarmex ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

21 ? Polfarmex ?????? ??????? ??? Wojewódzki S?d Administracyjny w ?odzi
(?????????? ?????????? ?????????? ??? ?odz, ??????) ??????? ?? ?????? ???
?????? ??? ?? ??? ?????????? ?????????? ??????????.

22 ?? ??????? ??? 10?? ??????? 2015, ?? ?????????? ??? ?????? ?? ??????????????
????????? ?????????? ??????????, ?????????? ??? ?????? ??? ? ?????????? ??? ?????? ??
????????? ? Polfarmex ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??
??? ??????????????, ??? ?? ??? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??
????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??
????????? , ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????? ?????? ?????????????? ?? ?????? ??? ?????? ?????????????? ??????. ? ?????????? ??
????????? ?????????? , ??????, ?????? ?? ? ?????????? ??? ?????? ?????????? ?????? ??
????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??
????????? ? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??
????????? ? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??
????? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???
????????? , ?????? ?? ??? ?????? ??? ?????? ???, ? ?????? ?????? ?????? ??? ?????? ?????????? ???
?????.

23 ? ?????????? ?????? ??????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ??? ??????????
??????????, ?????? ??? Naczelnego S?d Administracyjny (????????? ???????????
??????????, ??????).

24 ?? ??? ?????? ??? ?????????????? ??????????, ?? ?????????? ??? ?????? ?????????????? ???,
????? ?? ?????????? ??? ??? ?????? ??? ?????? ?????????????? ??????, ? ??????????
????????? ??? ??? ?????? ?????? ?? ?????? ?? ?????????? ??? ??? ?????? ??????????
????????? ??? ? ?????? ?????? ??? ?????? ???, ?????? ?????????? ???, ??? ??? ?????? ??????????
????? ??? ??? ?????? 5, ?????????? 1, ?????? 1, ??? ??? ?????? 7, ?????????? 1, ??? ???
????? ??? . ?????????? ??? ?????? ??? ?????????? ???, ?? ?????? ?????????? ?????????? ???
??, ??? ??? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??? ??????????
????????? , ? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??????????
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??????, ??? ?????? ???, ??? ??? ?????? ??????, ??? ?????? ?????? ?????? ??? ?????? ???
Polfarmex ??? ?????? ?????? ?????? ?????? ??????????, ??? ?? ?????? ??? ?????? ?????? ???
????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?? ??? ?????? ??? ?????? ?????? ???
????????? ??????.

25 ??? ??? ??????? ???, ?? Naczelnego S?d Administracyjny (????????? ???????????
??????????) ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ???
????????? ?? ?????? ?????????? ??????:

«????????? ?? ??? ??? ?????? ??? ?????? ??? ?????????? , ?????? ??? ?????? 2, ?????????? 1,
????????? ??, ??? ?????? 2006/112, ? ??????????, ??? ?????? ?????? ?? ??????, ???
????????? ?????? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???;»

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

26 ?? ??? ?????? ???, ?? ?????? ?????????? ???, ???' ??????, ?? ?????????????? ???
?? ?????? 2, ?????????? 1, ?????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? , ??? ?????? ?????? ?? ?????? ??? ?????? ?????? ???, ??? ??????????
????????? , ? ?????, ??? ??? ?????? ??? ?????? ???, ?????????????? ??? ?????? ???
??? ??? ?????? ??? ??? ?????? ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ???

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

27 ???????????, ??? ?? ??????, ? ??????? ??? ? ?????? ??? ?? ??????????? ?????
?????? ??? ?? ?????? ???????????, ?????? ???, ?? ?????? ?????? ??? ???????????
?????? (?????? ??? 20?? ?????? 2013, Newey, C-653/11, EU:C:2013:409, ??? 39 ???
???? ??????????? ???????).

28 ??????????, ??? ?? ??? 2, ???????? 1, ??????? ??, ??? ??????? ??? ??,
????????? ??? ?? ?????????? ?????? ??? ?????????????????? ?? ?????????? ??????
?? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ??? ?????? ?????? ????.

29 ??? ?? ?????? 9, ?????????? 1, ??? ?????? ???, ?? «????????? ??? ??»
?????? ?????????? ???, ??? ?????? ?????????? ??? ?? ?????????? ???,
????????? ?????????? ???, ?????????? ??? ?? ?????????? ??? ?? ?????????? ???
?? ?????????? ????. ?? «????????? ??????????» ?????? ?????? ????.
????????? ?????? ???, ?? ?????? ??? ?????? ?????? ?????? ??????
?????????.

30 ?? ??? 14, ?????????? 1, ??? ?????? ??? ?? ?????? ?? «????????? ???» ??
????????? ??? ?????????? ?? ???????, ?? ??????, ??????? ????.

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

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

33 ??????, ? ?????????? ?????? ?? ??? ?????? ?????????? ??? ?????? ??????
????????? ???????????, ?????????? ??? ? ?????? ?????????????? ??? ?? ??? ??
?????? ??????, ??? ?? ??????.

34 ??? ??, ???????, ?? ?????? ?? ??????? ??? ?? ??????? ?????? ?
??????????, ??? ?????? ?????? ?? ??????, ??? ?????????? ??????? ?? ?????????? ???
?? ?????? ?????? ?? ?????? ?????? ?? ?????? ??????, ??? ?????? ?????? ??????
????????????? ??? ?? ?????? ?????? ???????, ?????? ?? ?????????? ??? ?? ?????????? ???
????????????? «?? ?????? ??????», ??? ?? ?????? ??? ?? ?????? 2, ?????????? 1,
?????? ??, ??? ?????? ???, ?????? ?? ?????? ?????? ??? ?? ?????? ??? ?? ?????????? ??? ??
????????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????????? ??????????
??????, ?? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????????????? ?????? (????????? ??? 27?? ?????? 1999, Kuwait
Petroleum, C-48/97, EU:C:1999:203, ??? 26, ??? ?? 21?? ?????? 2013, Dixons Retail, C-
494/12, EU:C:2013:758, ??? 32).

35 ??????, ??????? ?? ?????????? ???, ??????, ?????????? ??? ? ?????????? ???
????????? ?????? ??? ?????????? ???, ??? ?????? ??? ?? ?????????? ??? ??
????????? ??? ?????? ??? ??????, ? ?????? ?????????????? ??? ?? ??????
????????? ??? ?????? ??? ?????? ??? ?? ??? ?? ??? ?????? ??? ??

?????? ?? ??????? ??, ?????????? ??????, ?????????????? ?????? ??? ?????????????? ?????????? ??? ???????
????????? ?????? (?????? ?? 11?? ???? 2017, Posnania Investment, C-36/16,
EU:C:2017:361, ?????? 35 ??? 36), ?????????? ? ?????????? ???, ?? ??????????,
????????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? ??? ?????? ? Polfarmex ?????????? ??? ?????????? ?????????? ??? ?????????? ???
?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??????????,
????????????? ??? ?????? ?????????? ?????????? ??????????, ?? ??? ?????????????? ??? ?????????? ??
????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ?? ??? ?????? ??? ?????????? ??? ??????????.

37 ????? ??????, ???????, ??? ?????????? ??? ? ?????????? ????? ??
????????? ?? ??? ?????????? ??? ???? ??????? ??? ??????????????, ??????? ??
?????????? ?? ??? ? ?????????? ??? ???? ?????, ??? ?????? ?????? ??? ?????? 9, ?????????? 1,
????????? ??????, ??? ??????? ??? ???, ??????? ?????????? ?? ??? ?????????? ????? ??
????????? ??? ??????? ??? ?????????? ?????????????? ??? (??., ???????, ??????? ?? 4??
????????? 1995, Armbrecht, C-291/92, EU:C:1995:304, ??? 17).

38 ????? ?????? ??? ??????? ??? «????????????? ??????????????????», ?? ???????????
?????????? ??? ?????? ?? ?????? ?????? ??? ? ?????? ??? ?????????????? ??? ???
?????????????? ??? ???????????, ??? ??????? ? ??? ?????????????? ??????????. ? ??????? ???
????????? ??? ?????? ??????? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????? ? ???
???? ??? ??? ?????????????? ?????????? ???, ??? ??? ?????? ??? ? ?????????????? ???
?????????? ???????, ??????????? ??? ?????? ??? ?????? ? ??? ?????????????? ??? .???????, ???
?????????? ?????????? ?????????? ??? ?????? «?????????» ??? ?????????? ??????
????????? ??? ?????????????????? ?????? ?????? ??? ?????? ?????????? ? ?????????? ???
??? ?????? (??????? ??? 20?? ?????? 2014, Gmina Wroc?aw, C-72/13, ?? ???????????,
EU:C:2014:197, ??? 16 ??? ??? ?????????????? ??????????).

39 ????????, ?? ??? 9 ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ??? (??., ???????, ??????? ?? 29?? ?????????? 2015, Saudaçor, C?174/14,
EU:C:2015:733, ??? 31 ??? ??? ?????????????? ??????????).

40 ?? ???????????, ??? ??????? ??? ??????????? ??????? ??? ??????????? ??????, ?
Polfarmex ?????????? ??? ?? ??? ??????? ??????? ??????? ?????????? ?????? ??????
??????????, ??????????? ??? ?????????? ??? ??????? ??? ??????? ??? ?????? ?????? ??????????????? ???
??? ?????? ???, ?????? ??? ??????? ??? ??????? ??? ??????.

41 ??????????, ??? ?????????? ??? ?? ??? 36 ??? ?????????? ??????????, ?????????????
????? ??? ?????????????? ??? ?????????????? ?????? ?????? ??? ??? ?????????? ??? ???
????? ?????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ???, ??
??????????, ??????, ??? ?? ??????????, ???????, ?????? ?? ?????? ?????????? ?????? ???
?? ??????.

42 ????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ??????????, ??? ??????
????????????? ??? ???? ?????? ???, ??? ?????? ? ?????????? ?? ?????????????? ??? ??? Polfarmex
?? ?????????? ??? ?? ?????????? «?????????», ?????????? ?????? ??? ?????????? ???
??? «????????? ??????????» ??? ?????????? ???, ??? ?????? ??????, ??? ?????????? ???,
??? ?? ?????????? ??? ?????????? ??? ?????? 38 ??? 39 ??? ?????????? ??????????,
????????? ?? ?????? ?????????? ??? ?????? ?????????? ?? ?????????? ??? ?????????? ??

????????? ??? ? ?????? ??? ??????????? ????. ?? ??? ?????? ??????????, ?? ??????? ???
????? ??? ? ?????? ??? ?????????????? ?????????????? ?????????? ?????? ? ??????? ???
????????? ??? ? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????????? ???
Polfarmex ??? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ? ?????? ?????????? ??? ?????? 2, ?????????? 1, ?????????? ?, ??? ??????
???? ???.

43 ?? ??????? ???????, ????????, ??? ??? ?????????? ??? ?????? 135, ?????????? 1,
????????? ?, ??? ??????? ???, ?? ?????? ?????? ??? ?????? ?????????? ?????????? ??? ??? ??? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? 12, ?????????? 1, ?????????? ?, ???
??????? ????, ?? ?????? ?????????? ??? ?????? ?????????? ?????? ?????? ?????? ?????? ??? ???
????????? ?? ??? ?????? ?????? ? ?????? ?????????????? ??? ?????? ??? ??? ?????? ?????????? ???
?? ????. ???????, ???????????, ?????? ???, ? ?????? ??? ? ?????????? ??? ? ?????????? ???
????????? ?????? ?????? ?????? ?? ?????? ?????????? ?? ?????? ?? ?????????? ?????? ?????? ??? ???
???????, ?????????? ??? ?????? ?????? ?????? ??? ???????, ????????, ?? ??? (??.,
?????? ????, ?????????? ??? 12? ?????? 2012, J. J. Komen en Zonen Beheer
Heerhugowaard, C-326/11, EU:C:2012:461, ??? 21, ??? ??? 16? ?????? 2017, Kozuba
Premium Selection, C-308/16, EU:C:2017:869, ??? 30). ?????????? ??? ?? ??????????????
????????? ??? ?????? ??? ?? ?????? ?????????? ??? ?? ?????????? ??? ?????????? ?????? ?????? ??????
?????????, ?????????? ?????? ?????? ?????? ?????? ??? ???????, ????????, ?? ???
????????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ???????.

44 ??? ?????? ??? ?????? «?????????» ??? ??????, ??? ??? ?????? ?????????? ???
????????? ?????? ??? ? ?????? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ??? ??????
?? ?????????? ?? «?????????» ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???.
?????????, ? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ????????
????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??? ??? ??? ?? ?????????? ???????, ?????? ??? ?????????? ?????, ?????????? ??? ???
???? ?????????? ??? ?????? ??? ??? ?????? ?? ?????????? ?????? ?????? ??????????
????????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? (????????? ??? 26? ??? 2005,
Kretztechnik, C-465/03, EU:C:2005:320, ??? 19 ??? ??? ?????????? ??? ???????).

45 ?? ? ?????????? ?????????? ?? ?????? ?????????????? ??? ?????? ???, ??? ??????,
????????? ?????????????? ??? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ???
?? ?????? ??? ?????????? ??? ?????? ?????? ?????? (????????? ??? 20??
?????? 1996, Wellcome Trust, C-155/94, EU:C:1996:243, ??? 33).

46 ?????? ??? ??????????????, ??? ?????????????? ?????? ??? ?????? ?? ?????? ? ??????????
?? ???? 2, ?????????? 1, ?????????? ?, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
?????????, ??? ?????? ?????? ?? ??? ??? ?????? ?????? ???, ??? ??????????
????????? ????, ??? ??? ? ?????? ??? ?????? ???, ?????????????? ??? ??????????
??? ??? ?????? ??? ??? ??? ?????? ?????? ?????, ??? ?????? ?????? ?????? ?????? ???
????????? ?????????????? ??? ??? ?????? ?????? ?????, ??? ?????? ??? ? ?????? ???
????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ???, ?????? ??? ?? ??? ?????? ?????? ?????????? ??? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ???.

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

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

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

* ??????? ??????????????: ? ??????????