

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

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

??? 15?? ??????? 2021 (*)

«????????????? ?????????? – ????? ?????? ?????? ?????????????? ?????? (???) – ??????
2006/112/?? – ????? 273 – ??????????????, ??? ?????????? ??????, ??? ?????? ???
????????? ??? ?? – ?????????? ?????? ??? ?????????? ?????? ??? ?? ?????? ???
????????? ?????? ??? ?????? – ?????????? ??? ?????????? ?????? ?????? ??? ?????? ???
????? – ?????? ??? ??? ?? 20 % ??? ?????? ??? ?? ?????? ?????????????? ?? ??? ???
????????? ??? ?? – ??? ??? ??????????»

???? ??????? C-935/19,

?? ?????????? ?????? ?????????????? ?????????? ?????? 267 ????, ???
?????? ?? Wojewódzki S?d Administracyjny we Wroc?awiu (?????????? ????????????)
????????? ??? ????????, ???????) ?? ??????? ??? 3?? ?????????? 2019, ? ?????? ????????
?? ?????????? ??? 23 ?????????? 2019, ??? ??????? ??? ??????

Grupa Warzywna sp. z o.o.

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Dyrektor Izby Administracji Skarbowej we Wroc?awiu,

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

????????? ??? ??? N. Pi?arra, ?????? ???????, S. Rodin ??? K. Jürimäe (??????????),
???????,

????????? ??????????: G. Pitruzzella

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

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

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

- ? Grupa Warzywna sp. z o.o., ?????????????? ??? ??? M. Pacyna, ??? K. Kocowski,
adwokaci, ?????????????? ??? ??? S. Z?bczyk, doradca podatkowy,
 - ? ?????????? ????????, ?????????????? ??? ??? B. Majczyna,
 - ? ?????????? ????????, ?????????????? ??? ??? J. Jokubauskait? ??? M. Siekierzy?ska,
?????? ??? ?????????? ??? ???, ??? ?????? ??? ?????? ??????????????, ?? ?????????? ???
?????? ??? ?????????? ??? ???,
- ????????? ??? ????????

???????

1 ? ?????? ?????????????? ?????????? ?????? ??? ?????? ??? ?????? 4, ?????????? 3,
???, ??? ?????? 325 ????, ??? ?????? 2, 250 ??? 273 ??? ?????? 2006/112/?? ??
??????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ????? ?????? ?????? ??????????????
????? (?? 2006, L 347, ?. 1, ??? ????: ?????? ????), ?????? ??? ??? ?????? ???
?????????????.

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? Grupa
Warzywna sp. z o.o. ??? ?? Dyrektor Izby Administracji Skarbowej we Wrocławiu (?????????
??? ?????????? ??? ?????? ?????????, ??????) ??????? ?? ??? ?????? ??? ?????? ???
????????? ?????? ?????? ?????????? ?????? ?????????? ??????.

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

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

3 ?? ?????? 2, ?????????? 1, ??????? ??, ??? ?????? ??? ?? ?????????? ?? ????:
«???? [???? ?????????????? ???] ?????????? ?? ?????????? ??????:

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

4 ?? ?????? 12, ?????????? 1 ??? 2, ??? ?????? ??? ?? ????:

«1. ?? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ??????????????
????????????? ?????????? ??? ?????? ?????????? ??? ?????????????? ??? ?????????????? ???
????? 9, ?????????? 1, ??????? ???, ??? ?????? ??? ??? ?????? ??? ?????????? ??????:

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

[...].

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

[...]

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

5 ?? ?????? 135, ?????????? 1, ??? ?? ??? ?????? ?????? ??? ?? ????:

«?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ???

[...]

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

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

[...]».

6 ??? ?? ????? 137 ??? ????? ??????:

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

[...]

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

[...].

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

[...]»

7 ?? ????? 250 ??? ?????? ??? ?????? ?? ??????:

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

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

8 ??? ?? ????? 273 ??? ??????:

«?? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? 3.»

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

9 ?? ????? 43, ?????????? 1, ?????? 10, ??? ustanawia o podatku od towarów i usług (?????
????? ??? ?????? ??? ?????? ??? ?????? ???), ??? 11?? ?????? 2004 (Dz. U 2017, ??? 1221),
????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
(??? ????: ?????? ????), ?????? ?? ????:

«????????????? ??? ??????: [...] ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???:

- a) ? ?????????? ?????????????????? ??? ??????? ??? ?????? ?????????????? ? ??? ? ??
?????,
- b) ?????? ??? ?????? ?????????????? ??? ??? ?????????? ??? ???????, ??? ??????????
? ??? ???????? ??? ????? ??? ?????????? ?????? ?????????? ??? ??? ??? [...]».

10 ?? ?????? 43, ?????????? 10, ??? ?????? ??? ?????? ??? ?????????? ?? ????:

«? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ??? ?????????? ??? ?????? ?????????? 1,
?????? 10, ?????????? ??? ?? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ???????,
????????? ? ??????? ????, ??? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ??? ? ?????????? ??? ???????, ??? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ???:

- 1) ??? ?????? ?????????????? ??? ?????? ?? ?????????? ??? ?????? ??? ????
- 2) ?? ??????????, ??? ??? ?? ?????????? ?????????? ??? ?????? ????, ???
????????? ??? ?????????? ??? ??? ?????????? ?????????? ????, ??? ?????? ????, ???
????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ??? ?????????? ???, ? ??? ??????????
?????..»

11 ??? ? ???? 112b, ?????????? 1?? 2, ??? ? ? ?????:

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

- 1) ?????? ??? ?????????? ??? ?????? ??? ??????:
- a) ?????????? ??? ?????? ?????????? ??? ??? ??????????
- b) ?????????????? ?????????? ?????????? ? ?????????????? ??? ?????? ?????????? ???
?????????????
- c) ?????????? ?????????? ????, ?? ?????? ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ?????????? ????, ?????????? ??? ?????????? ??? ?????????? ???
- d) ?????????????? ?????????? ?????????? ? ?????????????? ??? ?????? ?????? ? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ?????? ? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ????

2) ??? ?????? ?????????? ??? ?????? ??? ??? ?????? ??? ?????????? ??? ?????????? ????

— ? ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? 30 % ??? ?????? ??? ?? ?????? ? ?????????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ??? ?????? ??? ? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

2. ??? ??? ???? ???? ?????????? ?????????????? ??????? ? ?????????????-????????????? ??????? ????
?????????????????:

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

2) ??? ?????????? 1, ?????? 2, ? ?????????? ??? ?????? ?????? ?????????? ?????????? ???
??? ?????????? ?? ??? ?????? ?????????????? ????????

- ?? ??? ???? ?????? ?????????? ?????????????? ?????????????? ?????????? ?? 20 % ??? ???
????? ?? ?????? ? ?????????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ?????? ???
? ??? ?????? ??? ?? ?????? ? ?????????????? ??? ?????? ?????????????? ?? ??????????????
????????? ?????????? ? ?? ?????????????? ??? ?????? ?????? ?? ??? ?????????? ??????????
??? ?????? ?? ??? ?????? ?????????????? ??? ?????? ?????? ?????????? ?????????? ??????.»

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

12 ? Grupa Warzywna ??? ?????????? ??????? ?? ??? ?????? ?????????? ??? ??? ??? ???
???. ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?????? ?????????? ?? ??? ???
??? ?????????????? ???????, ?? ?????? ??? ?????????? ?? ??? ?????? ???,
??????????????, ?? ?? ??????, ??? ??? ???.. ???????, ? ??????? ??? ?? ??? ??? ??????????
????????? ?????????? ??? ?????? ?????????? ?? ??? ??? ??? ?? ??? ?????????? ?????? ??? ???
Grupa Warzywna ??????? ?? ??? ??? ??? ??? ?????? ??? ?????????? ??? ??? ??? ??? ???
?????? ?? ????, ?? ?? ??????, ??????? ?? ??????. ?? ???????, ? Grupa Warzywna
?????? ??? Naczelnik Urz?du Skarbowego w Trzebnicy (????????? ??? ?????????? ???
??? Trzebnica, ??????) ?????? ??? ??? ?????? ?????? ?????????? ?????????? ??? ??????????
??? ??????? ???.

13 ?????? ???????, ? ?????????? ??? Trzebnica ?????????? ???, ??????? ???
?????? 43, ?????????? 10, ??? ?????? ???, ? ??????? ??? ?????????????? ???????
??????????, ???' ????, ?????? ??? ??? ??? ??? ??? ??? ??? ?????????? ??? ???????
????????? ?????? ?????????? ??? ??? ?????? ????. ??? ???????, ? Grupa Warzywna
??? ??? ?????? ?????? ??? ??? ??? ??? ?????? ??? ?????????? ??? ?????????? ???
?????????.

14 ?? ???????, ? Grupa Warzywna ?????? ?? ??????? ??? ?????????? ??? ??????????
?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ? ?????????? ???.
??????, ? ??????? ??? ?????? ???, ??? ?????? ???, ?????????? ??? ??????? ???
????????? ??? ??? ??? ??? ?????? ??????.

15 ??? ? ?????????? ???, ? ?????????? ??? ?????????? ??? ?????? ??? Trzebnica ??????
????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????????? ??? ???????
???? ??????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? Grupa Warzywna ?????? ???
???? ?? 20 % ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???
??? ??????? ???????????. ? ??????? ??? ?????? ?????? ???, ??? ?????? ??? ??????????
??????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ? Grupa Warzywna.

16 ? Grupa Warzywna ?????? ??????? ??? ?????? ??? ?????????? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ??????. ?? ?? ??? ?????????? ??? ?????? ???

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

17 ?? ?????? ?????????? ?????? ??? ?????? ?????? ?????? ?????????? ?????? ?? ?? ?
????????? ??? ?????????? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????????? ??????
?? ?????? ??????. ??????, ? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? 112b, ?????????? 2,
??? ??? ???? ??? ???? ?????? ?? ?????????? ?? ?????????? ?? ?????? ??? ???? ?
????????? ??? ??? ?????????? ?? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ??
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????
????????? ?????? ?????? ???, ?? ??? ?????? ??????, ?????? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ??????, ?????? ??? ?????? ?? ?????????? ??? ?????? ??????
????????? ?????? ?????? ?????? ??? ?????? ?????? ?? ?????????? ?????? ??? ?????? ??????
????? ?? ??? ??? ???? ?? ?????????? ??? ?????? ?????? ??? ?? ?????? ??? ?????? ??????
??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
?????????.

18 ??? ??? ??????? ????, ?? Wojewódzki S?d Administracyjny we Wroc?awiu
(????????? ?????????? ?????????? ??? ???????, ??????) ?????????? ?? ??????????
?? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ?? ?????????? ?? ??????????
?????:

«????? ??? ?????? ?????? ?????????? ?????? 112b,
????????? 2, ??? ??? ??? ???, ?? ??? ?????? ??? [????? ???] (??
????????? ?? ?? ??? 2, ?? ??? 250 ?? ?? 273 ???), ?? ?? ??? 4,
????????? 3, [??], ?? ?? ??? 325 ??? ??? ?? ??? ??? ??????????;»

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

19 ????????????, ?????????? ??? ?? ?????? ?????????? ?????? ??? ?? ??????????
?? ?????? ??? ?? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??????
?? ??? 4, ?????? 3, ???, ?? ??? 325 ???, ?? ??? 2, 250 ?? 273 ?? ?????? ???
??, ??? ??? ?? ?? ??? ?????? ??? ?????????????? ??? ?? ??? ?????????????? ??? ??.

20 ?????????? ???, ?????? ?? ?????? ?????? ??? ?????? ?? ?????? ?????? ???
???????????, ??? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ???
????? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (????. ?????? ???
15? ?????? 2010, Pannon Gép Centrum, C?368/09, EU:C:2010:441, ????? 28 ??? ???
????????? ??????).

21 ???????, ??? ??? ?????? ??????, ?? ?????????? ?????? ?? ?????????? ??? ??
?? ??? ?????? ?????? ??? ?????? ?????, ?????????? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?? ?????? ?????????, ??? ?????? ?????????? ?? ?????? ???
????? ??? ?????? ?????? ?????? ?? ?? ?????? ??? ?????? ?????? (????. ?????? ??? 15? ???
2010, Pannon Gép Centrum, C-368/09, EU:C:2010:441, ????? 29 ??? ??? ?????????).

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

22 ??? ??? ?????? ??? ?????????? ?????????? ?????? ??? ?? ?????????????? ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???,
? ?????? ?????????? ??? ?????? 4, ?????????? 3, ???, ??? ?????? ?????????? ???
?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ??? ??????, ??? ?????? ???
????? 325 ????. ??????, ? ?????? ??? ?????? 2 ??? 250 ??? ?????? ??? ??????
????????? ??????, ?????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ???
????? ??? ?????? ??????, ?????????? ?? ?????? ?????? ?????? ??? ??????
??????, ?????????? ??? ?? ?????? ?????? ??????, ?????????? ??? ?????? ???
????? ??? ??? ??? ?????? ???.

23 ????????, ??? ?????? ?? ?????? 273 ??? ?????? ????, ?? ?????? ??????????
????????? ??? ? ?????????? ??? ?? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ?????? ??? ?? ?????? ???
??? ?????????? ? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??????, ?????? ?? ?????? ?????? ??? ?? ?????? ?????? ???
????????? ??? ?????? 273 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????????? ???.

24 ????????, ?? ?? ?????? ???, ?? ?????? ?????????? ????, ???' ??????, ??
????????? ??? ?? ?????? 273 ??? ?????? ??? ?????? ??? ?? ?????? ??? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?? 20 % ??? ?????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ??????????, ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??????, ??? ?????? ?????? ?????? ??? ?????? ???
??? ?? ?????????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???
??? ?? ?????? ???.

25 ?????? ??? ?????? 273 ??? ?????? ???, ?? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????? . ??????????, ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? (?????? ??? 8?? ?????? 2019, EN.SA., C-712/17,
EU:C:2019:374, ??? 38 ??? ??? ?????????? ???).

26 ????????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???
????????? (?????? ??? 26?? ?????? 2017, Farkas, C-564/15, EU:C:2017:302, ???
59 ??? ??? ?????????? ???).

27 ?? ?? ??????, ??????? ??????? ?????????? ??? ?????? ?? ??????? ?????? ???
????? ???????? ??? ?? ??????? ??? ?????? ?? ?????????????? ??? ?????? ?????????? ???
????? ??? ?? ?????????? ??? ??????. ?????????????? ?? ?????????? ?? ??? ?????? ?????? ???
??? ??? ?? ??????????????, ?????? ?? ?????????? ?????? ??? ???? ???? ???? ???? ???? ????
??? ?????????? ??? ??? ?????? ?????????? ? ?????? ?????? ??? ???? ???? ???? ???? ???? ????
????? ??? ?????? (????? ??? 26?? ?????? 2017, Farkas, C-564/15, EU:C:2017:302,
????? 60).

28 ??????? ?????????? ??? ?????? ?????????? ?? ?????????? ?? ?? ??? ?????? ??? ??????
????????? ?? ??????? ??? ?????? ??? ?????? ?? ?????? ??? ?????????? ??? ??????
????????? ??? ??????, ?????????? ??? ?? ?????????? ??? ?? ?????? ?????????? ??? ??????
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????????? (????. ?????? ???
26?? ?????? 2017, Farkas, C-564/15, EU:C:2017:302, ????? 61).

29 ??????, ?????????? ??? ?? ??? 112b, ?????????? 2, ??? ?????? ??? ???
????????? ?????????? ??? ?????? ?????????? ??? 30 % ??? ?????? ??? ?? ???
????????? ?? ??? ??? ?????????? ??? ???, ? ?????? ?????????? ??? 20 % ??? ???
?????, ???, ?????? ?????????? ???, ? ?????????? ??? ?????? ??? ?????? ??? ??????
??? ?????? ???, ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ???
?????, ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ???.

30 ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ???, ?? ??? ?????? ?????? ??? ?? ?????????? ???
????????? ??? ??? ?????????? ??? ?????, ?? ??? ?????? ?????????? ??? ?????? ???
??? ?????????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ???
????????? . ??????, ?????? ??? ?????? ?? ?????????? ??? ?????? ?????????? ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????????
?????????, ?? ?????? ??? ?????? ??? ??????, ?????????? ?? ?????????? ??? ?????? ???
??? ??????????, ?????? ??? ?? ?????? 273 ??? ?????? ??? ???, ??? ?????????? ??? ???
????????? ??? ???.

31 ??????, ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ??? ??????????
????? ?????????? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????????? ??
????? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
??, ?? ?? ??????, ?????????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????, ?? ??? ??? ?????? ?????????? ??? 50 % ??? ?????? ??? ??? ?????? ??? ??????????
?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????????? ???, ?????????? ???, ???' ???,
??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ?????? ?? ??? ?????? 273 ??? ?????? ??? ???, ??? ?????? ?????????? ???
????? (????. ?????? ??? 26?? ?????? 2017, Farkas, C-564/15, EU:C:2017:302, ?????? 62
??? 64).

32 ??????????, ??? ????? ???? ????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????
???? ???????, ?????????????? ???, ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ???
????????????? ??? 20 % ??? ?????? ??? ?????? ?????????????? ?? ?????????? ??? ??????????
??, ?? ?? ??? ?????? ??? ??????, ??? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ?????????? ?? ?????? ?????????? ?????????, ?? ?????? ?????????? ?????????? ???
????????? ?????????? ?????????? ??? ?????????? ??????????.

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

34 ??????, ? ?????????????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????? ?? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????? ??? ?????????? ???
??? ??????.

35 ??? ??????, ? ?????? ?????????? ??? ?? ??? ?????? ?????? ??? ?????? ??????????
?????????, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
??? ?????? ??? ?????? ?????? ??? ??????.

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

37 ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??????????
????????? ? ?????? ??? ?? ?????? 273 ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? 20 % ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
??? ? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?, ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
??? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

38 ?????? ??? ? ?????? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ?????? ???
??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???, ?' ???
????????? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????.

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

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

?? ?????? 273 ??? ??????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006,
????????? ?? ?? ?????? ??????? ?????? ??????????????? ?????? ??? ???? ???
????????????????? ?????? ??? ?????? ??? ?????????????? ?? ?????? ?????? ??????? ???
????????? ?? ??????????? ?????? ??? ???? ???? ?????????? ?????????????? ??? ??????? ???
????????????? ??? ??? ??? ?????????????? ?????? (???) ?? ?????? ??????????? ???
?? ??? ???? ?????? ??? ?? 20 % ??? ?????? ??? ?????? ?????? ?????????????? ???
???? ??? ??????????? ??? ??? ??? ?????????? ???????????????, ??? ?????? ??? ????
???? ??????????? ??????????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ????
????????? ?? ??????????? ?????????? ??? ???????, ? ?????? ??????????????? ??? ??? ???????
????????? ?????? ??? ??? ?????????? ?????????? ?????? ??? ?? ?????????? ???????,
?? ??? ???? ?????????? ??? ??? ?????? ??? ?????? ??? ?????????? ??????? ???????
??????????.

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

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