

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

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

??? 21?? ?????????? 2017 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? – ?????? 2006/112/?? –
????? 132, ?????????? 1, ??????? ?? – ?????????? ?????????? ?????????????? ??????
????????????? – ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????? – ?????????? ?? ?????????? ?? ?????????? ??»

???? ?????? C?605/15,

? ? ?????????? ?????? ?????????????? ?????????? ?????? ??? ?????? 267 ????, ??
?????? ?? Naczelnego S?d Administracyjny (?????? ?????????? ??????????, ???????) ??
?????? ?? 26?? ?????????? 2015, ? ?????? ?????????? ?? ?????????? ?? 17 ??????????
2015, ?? ??????? ?? ???

Minister Finansów

????

Aviva Towarzystwo Ubezpiecze? na ?ycie S.A. w Warszawie,

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

????????? ??? ??? T. von Danwitz, ??????? ????????, E. Juhász, C. Vajda (?????????), K.
Jürimäe ??? ?. ????????, ????????,

?????? ??????????: J. Kokott

?????????: C. Strömholm, ?????????? ??????????,

?????? ??? ??? ?????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???
??? ?????????? 2016,

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

– ? Minister Finansów, ?????????????? ??? ??? T. Tratkiewicz ??? L. Pyszy?ski ???
??? ??? ?? B. Rogowska-Rajda,

– ? Aviva Towarzystwo Ubezpiecze? na ?ycie S.A. w Warszawie, ?????????????? ??? ??
J. Martini, doradca podatkowy,

– ? ?????????? ????????, ?????????????? ??? ??? B. Majczyna ??? ?? B. Majerczyk-
Graczykowska,

– ? ?????????? ????????, ?????????????? ??? ??? T. Henze ??? J. Möller,

– ? ?????????? ????????, ?????????????? ??? ??? M. K. Bulterman ??? M. Noort,

– ? ?????????? ??? ??????? ????????, ?????????????? ??? ??? D. Robertson ??? ??

S. Simmons, ?????????????????? ??? ??? O. Thomas, QC,

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

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

????????

1 ? ??????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 132, ??????????
1, ??????? ??, ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ?????????? 2006,
?????? ?? ?? ????? ?????? ?????? ?????? ?????????????? ??? (?? 2006, L 347, ?. 1).

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

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

? ???? ??????

3 ? ???? ??????? 77/388/??? ??? ???????????, ??? 17?? ????? 1977, ??? ?????????????? ????? ?????????? ??? ???????, ??? ?????????? ?? ??? ?????? ?????? ?????? ?????? ?????? – ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49, ??? ????: ??? ?????) ?????????? ??? ??????????????, ??? 1?? ?????????? 2007, ??? ??? ?????? 2006/112. ?? ????? 13 ??? ????? ?????? ?????? ?? ????:

«?. ?????????? ?????????? ?????????????? ?????? ?????????? ??????????»

1. ?? ??? ?????????? ???, ?? ???????????, ?? ???????????, ?? ???.
 ?? ??????????? ??, ?? ??????? ??, ?? ??????????? ??, ?? ??????? ??, ?? ??????? ??,
 ?? ??????????? ??, ?? ??????? ??, ?? ??????????? ??, ?? ??????? ??, ?? ??????????? ??,
 ?? ??????????? ??, ?? ??????? ??:

[...]

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

[...]»

? ?????????? (???) 2137/85

4 ?? ????? 3, ?????????? 1, ??? ?????????? (???) 2137/85 ??? ??????????, ??? 25??
?????? 1985, ??????? ?? ??? ????? ?????????? ?????? ?????????? ?????? (????) (??
1985, L 199, ?. 1), ?????????? ?? ????:

«?????? ??? ?????? ?????? ? ?????????????? ? ?????????? ??? ?????????????? ?????????????????? ???
????? ???, ?????? ??? ? ?????????? ? ? ?????? ??? ?????? ??? ?? ?????????????? ??? ??? ??? ???
? ?????????????? ??? ??? ??????.

? ?????????????? ??? ?????? ?? ?????????? ?? ??? ?????????? ?????????????? ??? ???
??? ??? ?? ??? ????? ?????????? ?? ?????? ?? ????.»

? ?????? 2006/112

5 ?? ?????? 2006/112 ?????????? ??? IX, ?????????? «?????????», ?? ?????? 1
??? ?????? ?????????? «????????? ??????».

6 ?? ????? 132, ?????????? 1, ?????????? ???, ??? ?????? 2006/112, ???
????????????? ??? ?????????? «????????? ?????????? ?????????? ?????????? ????

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

[...]

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

[...]»

7 ?? ????? 135, ?????????? 1, ??? ?????? 2006/112, ??? ?????????????? ???
????????? «????????? ??? ????? ??????????» ?????? 3 ??? ????? IX ??? ?? ???
??????, ?????????? ?? ????:

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

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

[...]»

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

8 ?? ????? 43, ?????????? 1, ?????? 21, ??? ?????? ??? ?????? ?? ????:

«???? ??? ??? ????? ?????????????? ?? ??????? ?????????? ??? ?????????????? ??????? ?????? ???
????? ??? ?????? ?????????????? ?????????????? ??? ?????? ? ?????????????? ??? ???
????? ??? ?????? ?????????? ?? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ???
????? ?????? ?????????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ???
????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???
????? ?????? ?????? ??? ?????? ??????..»

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

9 ? Aviva ?????? ??? ????? Aviva ??? ?????????????? ??? ?????? ???
????????????? ?????????? ??? ??? ?????????? ?????????????? ?????????????? ??? ?????? ????.
????? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ???.

10 ??? ?????? ?????????? ?????????? ??? ?????????? ???, ? ?????? Aviva ??????
?? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??????
????? ????. ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ????
????? ?????? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?????????????, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?????????, ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?????? ??????.

11 ? Aviva ?????????? ?? ?????? ?? ?????????? ??? ?????? ?????? ?????? ?????? ??????
????????? ?????? (?? ?????: ???), ? ?????? ??? ?? ?????? ?????? ??? ?? ??????????????
??, ?????? ?? ?? ????? 3 ??? ?????? 2137/85. ??? ?? ?????? ?? ?????? ?????? ??????????
????????? ??? ?????? Aviva, ?????????????????? ??? Aviva, ?? ?????? ?????? ??????????
????????????? ??? ?????? ?????? ??????.

12 ??? ?????? ???, ? Aviva ?????????? ??? ?????? ?????? ??????????, ?????????? ??
????????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?? ?????????? ??? ??? ????
????????????? ??? (??), ?????? ??? ?????? 43, ?????????? 1, ?????? 21, ??? ?????? ???
???. ? Aviva ?????? ??? ? ?????????? ??? ?????? ??? ?????? ?? ?????? ??? ???, ???
????????, ?? ?????????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ?????? ??? ??????
????? ?????????? ?????????? ??? ?????? ?????? ???, ?? ?????? ?? ?????? ??? ??????
????????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?? ?????? ??? ???
????????? ? ???.

13 ?? ?????? ??? 14?? ?????? 2013, ? ?????? ?????? ?????????? ??? ?????? ??? ? ?????? ???
Aviva ?????? ??????. ?????? ??? ?????? ?????? ? ?????? ??? ? ?????? ??? ? ?????? ???
????? ??? ??????????, ??? ??? ?????? ?????? ? ?????? ??? ? ?????? ??? ? ?????? ??? 43,
????????? 1, ?????? 21, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ? ?????? ???
????????? ?????? (?? ?????: ???) ?????? ??? ?????? ??? ? ?????? ??? ? ?????? ???
????? ????, ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????? ????
????? ??????, ? ?????? ??? ?????? ???, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ???, ? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ??????.

14 ? Aviva ?????? ?????????? ???????? ??? Wojewódzki S?d Administracyjny w Warszawie
(?????????? ?????????? ??? ?????????? ??? ???????????, ???????), ????????, ??????
?????, ??? ??????? ??? ?????????? ?????? ??? ?????????? ??????????????. ?????????? ??? ? ??
????? ???????, ??????? ?? ??? ????? ?? ?????????? ??? ?????????? ? ??? ?????? Aviva ???
????????? ?? ?????????? ??? ??? ?????? ???, ??????? ?????????? ??? ?????? 43,
????????? 1, ?????? 21, ??? ?????? ????.

15 ?? ??????? ??? 30?? ??????????? 2013, ?? Wojewódzki S?d Administracyjny w Warszawie
(?????????? ??????????? ??? ??????????? ??? ???????????) ??????? ??? ??????? ???
????????? ??????????? ??? 14?? ??????? 2013. ?????? ??? ? ?????????????? ??? ??????????
?? ?????? ??? ??????????? ??? ??????????? ??? ?? ?????????? ? ?????????????? ???
????? 43, ??????? 1, ????? 21, ??? ????? ??? ??????? ?? ??????. ?? ?????????? ???
????????? ??? ??????????? ??? ??????????? ?? ?????????? ?? ??????????? ??? ???
?????????, ??? ????? ??????????? ???????, ??? ????? ?????????? ??? ??? ??????? ???,
????????? ?? ?????????? ?????????? ?????????? ??? ????? ?????? ??? ?????? ? ?? ??? ????? ???
??, ??? ????? ???, ?? ?????????? ?????????? ??? ?????????, ?? ?????? ??? ????? ???
?????, ?????????????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ???
?? ??? ??????. ??? ?? ?????????? ???, ??????? ?? ?????????? ?? ?????????? ??? ?????????? ???
????????? ??????? ? ???, ?????????????? ?? ?????? ??? ?????????? ?????? ?????????? ???
????????? ??????? ?? ?????????? ??? ?????????????? ?? ?????? ??? ?????? ???, ?????? ??
????????? ??????? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ???
?? ?????????? ??? ??????? ??? ?????????? ??? ?????????? ??? ?????? ???, ?????? ??

16 ? ?????????? ??????????? ?????? ?????? ?????????? ?????????? ??? Naczelnego S?d Administracyjnego (????????? ??????????? ???????????, ??????). ?? ?????????? ????? ?????????? ??? ???? ?????? ?????? ?? ?????????? ?? ?????????? ?????? ?????????? ?????? ?????????? ?????? ?????? ?????? 2006/112, ?????? ??? ?????? 132, ?????????? 1, ?????????? ???, ??? ??? ???? ?????? ??????, ?????? ??? ?????????? ??? ???????????, ?? ?????? ??? ?????????? ??????.

17 ????? ??? ????????, ?? Naczelnego S?d Administracyjnego (????? ??? ????????)
????? ???????, ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????? ???????, ?? ?????????? ?? ?????????? ?? ?????????? ??:

«1) ??????? ?????? ??????? ??? ?? ?????????? [??] ??? ??, ? ?????? ??? ??????????
????? ? ?????????? ?????? ?? ??? ?????? ??? ?????????????? ??? ??????????
????????????? ??? ??? ??? ??????????????, ??? ?? ????? 132, ?????????? 1, ?????????? ?,
??? ?????? [2006/112], ?? ?????????? ?? ?? ?????? 131 ??? ?????? 2006/112, ?????? ??
??? ??? ?????? ??? ??????????????????, ??? ?????????? ??????? ??? ??? ?????????? ???
????????????? ??? ??????????;

2) ?????? ?????? ?????????? ?????????? ?? ?????????? ? ?????????? ?????? ?????? ??????????
????????????? ??? ?????? ??? ?????????????? ??? ?????????? ?? ?????? 132, ?????????? 1,
????????? ???, ??? ?????? 2006/112;

3) ???? ??????? ?? ???? ??????? ?? ???? ??????? ?? ???? ??????? ?? ???? [?] ??????? ?? ???? ??????? ?? ???? ??????? ?? ???? ??????? ?? ????;»

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

18 ????????????????, ?????? ?? ?????????????? ??? ? ?????? Aviva ?????????? ??
????????????? ??? ???, ?? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? Aviva ??? ??????

????????????? ?????????????? ???? ?????????? ?????? ??? ? ?????? ?? ?????? ?????????? ??????????
????? ?????????? ??? ??? ?????? ??? ?????????? ?????.

19 ?????????? ???, ?? ?????????????? ??????????? ?????????? ??? ?????????? ??? ?????? 132,
?????????? 1, ?????????? ???, ??? ??????? 2006/112, ?? ?????? ?????????? ??? ?????????? ??????????
?? ?????? ?????????? ?? ?????? ?????????????????? ??? ?????????? ?????????? ?????????? ??????????,
??? ?????? ?????????????? ??? ?????????? ??? ?????? ? ??? ??? ?????? ?? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ?????????? ??? ??? ?????? ??? ?????????????? ???.

20 ??????????? ?? ????? ??????? ?? ?????????? ??? ?????????? ???, ??????????? ?? ??????????,
??????????, ??? ???? ? ? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ???? ???? ????
????????? ??? ?????? ???, ? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??? ???? ???? ????
????? ?????? ?????????? ?????????? ??? ?????? ?????? ???.

21 ????? ???? ?????? ???????????, ??? ??????? ?? ?????????????? ?????????????? ?????? ???
????????? ?????????????? ??? ??? ?????????????? ??? ?????? ?????????? ?? ?????? 267 ????, ???
?????????? ?????????????? ?? ?????????? ??? ??????? ?????????? ??? ?? ?????????? ??????????
??? ??????? ??? ?????? ??? ?????? ?? ?????? ??????? ??? ??? ?????????? ??? ?????????? ???
????? ??? ??????????, ??????????? ??? ?? ??? ?????? ?????????? ?????????? ??? ?????????? ?? ???
????? ?? ?????????? ??? ?????????? ??? (????????? ??? 20?? ?????????? 2016, Danqua,
C?429/15, EU:C:2016:789, ??? 37 ??? ??? ??????????? ??? ??????????).

22 ??? ??? ?????????? ??????, ?????? ?? ?????????????? ??? ?????? ?????????? ?????????? ???
????????? ??????? ?? ???? ?????? ?? ?????? 132, ?????????? 1, ??????? ???, ???
?????? 2006/112 ??????? ?????????? ??? ?????????????? ??? ??? ??? ??? ?????? ?? ???
????? ?????????? ?????????????? ??? ?????????????? ??? ????? ??????????, ?? ?????? ???
????? ?????????? ??? ??? ?????? ??? ?????????????? ????.

23 ????????, ?????? ?? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ?????, ???
?????????? ?? ?????????????? ??? ?????? ?????????????? ??? ?????? ???, ??? ?????? ??????
?? ?????????? ?? ?????????? ?? ?????? ?????????? ???? ?????? ?????? ??? ?????? ?????? ??????
??? ?????? ?? ??? ?????? ?????? ?????????? ?????????????? ??? ?????? ?????????? ?????, ??? ??????
??? ?? ??? 135, ?????????? 1, ??????? ??, ??? ?????? ?????? ?????? ?????????? ???
?????????? ???????.

24 ???????, ??? ??????????????????, ??? ??? ?????????? ?????????? ??? ??????? ??? ??????? ?????????
?????? ?? ?????????? ??? ?????? ?? ?????? ?? ?????? ???, ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
??????????, ??? ?????? ?? ?????? ??? ?????????????? ?? ??? ?????? ?????? ?????? (????????? ???
26?? ??????? 2012, Able UK, C?225/11, EU:C:2012:252, ??? 22, ??? ??? 4?? ???????
2017, Fahimian, C?544/15, EU:C:2017:255, ??? 30 ??? ??? ?????????????? ??????????).

25 ????? ?????? ?? ??????? ?????????? ?? ?????? ?????????????? ?? ?????? 132, ?????????????? 1, ??????????
???, ??? ??????? 2006/112, ??????? ?? ?????????????? ?? ???? ? ??????? ??? ?????????????? ??
???? ??????? 2, ?? ?????? ?????????? «????????? ?????????? ?????????????? ?????????? ??????????
?????????», ??? ?????? IX ??? ?? ??? ??????. ? ?????? ??? ?????????? ?????
????????? ??? ? ?????????? ??? ?? ??? ?????? ?????? ?????? ?????? ??? ??? ???
????? ?? ??? ?????? ?????????? ?????? ?????? ??????????.

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

27 ?? ????????????, ??? ?? ??? ?????????? 3 ????????????????, ??? ??? 135, ????????????,
1, ??????? ??, ??????? ?? «??????????[?] ??? ?????????????[?] ?????[?]». ???
?????????, ??? ?? ?????? ?????????? ??? ?????? 2006/112 ?????????? ??? ? ????????????
??? ??? 132, ?????????? 1, ???????? ???, ??? ?????? 2006/112 ???????? ???
?????????? ??? ?????????????? ??? ?????????????? ?????? ???, ???????, ??? ??
????????? ??? ??????? ??? ??? ?????? ?? ??? ????? ?????????????? ??? ??? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

28 ????? ???? ???? ???? ???? ???? ???? ???? 132, ??????????? 1, ?????????? ???, ??? ??????? ???
????????? 2006/112, ?????? ?? ??????????? ? ?????? ??? ??????? ??? ?????????? ??? ?????????? ??? ??????
132 ??? ??????? ????, ? ?????? ??????? ??? ?????????? ??? ?????????? ??? ??? ??? ??? ??????????
????????????? ?????? ??????????, ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ??????????
????????? ?????????? ??? ? ?????????? ?????????? ???, ??? ??? ?????????? ???
????????? ?????? ??? ?? ??????? ??? ??? ?????? ??? (????????? ??? 5?? ?????????? 2016,
TMD, C?412/15, EU:C:2016:738, ??? 30 ??? ??? ?????????? ??? ??????????).

29 ???????, ?? ??????????? ??? ?? ?????????? ?????????? ?????????? ??? ?????????????? ?? ?
????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112 ??????? ?? ???? ?????? ??
????? ?? ?????????? ?????????? ?????????? ?????????? ?????? ?????? ?????? ?????????????? ??
???????????, ??? ?????? ?????? ?? ?????? 132 ??? ?????? ?????? (??., ???' ???????,
?????? ?? 5?? ?????? 2016, TMD, C?412/15, EU:C:2016:738, ?????? 31 ??? 33).

30 ?????? ??????, ?????? ?? ??????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ???
?????? 132 ??? ??????? 2006/112 ?????? ?? ??????????? ???, ?????????? ??? ??
????????? ??? ?????? ?????????? ??????????? ??? ?? ?????? ??? ???? ??? ?????????? ??? ??
???? ?????? ?????????? ??? ?????????????????? ?? ?????????? ?????? ??? ?????????? ??? ??
???? (??., ??????, ?????? ?? 5?? ??????? 2016, TMD, C?412/15, EU:C:2016:738, ????)
34 ??? ??? ??????????? ???).

32 ????? ??????????, ?? ?????? 132, ??????????? 1, ?????????? ???, ??? ??????? 2006/112
?????? ?? ??????????? ???. ??? ?????? ????? ? ?????????? ???. ??? ?????????? ???. ??? ?????? ???.
????? ?????? ???. ??? ?????? ???. ??? ?????? ???. ??? ?????? ?????????? ???. ??? ?????? ?????????? ???.
????????????? ???. ??? ?????? ???. ??? ?????? ??????. ??????????, ?? ?????????? ???. ??? ?????? ???.
??? ?????? ?????? ?????????? ?????????? ???. ??? ?????? ?????? ???. ???, ? ?????? ???.
????? ?????? ?????? ?????????? ???. ??? ?????? ??????????, ???. ??? ?????? ???. ??? ?????? ???.

33 ???????, ?????? ?? ??????????? ???, ?? ??????? ?? ?,?? ??????? ??? ??????? ??
??? ????? ???????, ?? ???????, ?? ??? ??????? ?? 20?? ??????? 2003,
Taksatorringen (C?8/01, EU:C:2003:621), ??? ??????? ?? ???? ??????? ?? ??? ??????? ??
?????????? ?? ??? 13, A, ??????? 1, ??????? ???, ??? ????? ?????? [??
?????????? ?? ??? 132, ??????? 1, ??????? ???, ??? ??????? 2006/112] ???????

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????????????? ??????? ??????????.

34 ??????????, ??? ?? ??????? ?? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?????????? ??? ? ?????????? ??? ?????????????? ??? ?????? 13, ?, ?????????? 1,
????????? ???, ??? ?????? ??????? ??????????, ??? ?????? ?????? ?? ?????????? ?? ?????????? ?? ???
????????? ??? 20?? ?????????? 2003, Taksatorringen (C?8/01, EU:C:2003:621), ???????
????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????????? ??? ??????????.

35 ?? ???? ?? ??????? ????, ??????, ??????, ?? ??????????????? ??? ?? ??????? ?????? ???
?????? ?? ????????????, ????? ?? ?????? 132, ?????????? 1, ??????? ??, ???
?????? 2006/112, ??? ?? ??????????? ?? ?? ?????? 32 ?? ??????? ????????,
?????????? ??????? ?? ?????? ?????? ??????? (??, ??' ???????, ??????? ?? 6??
????????? 2009, Asturcom Telecomunicaciones, C?40/08, EU:C:2009:615, ??? 37, ??? ??
?? 21?? ??????? 2016, Gutiérrez Naranjo ??., C?154/15, C?307/15 ?? C?308/15,
EU:C:2016:980, ??? 68).

36 ????? ?????? ??? ?????????????? ???????? ??? ?????? ?????? ?????? ?????? ????????, ??????
?? ?????????? ???, ??? ?????? ????????, ?? ?????? ?????? ?????? ??? ?????? ?????? ??????????
??? ?????? ??? ??????? ???, ????????, ??? ?????? ?????? ? ?????????? ?????? ????????
????? ?????? (??., ?????? ?????, ?????? ??? 19?? ??????? 2016, DI, C441/14,
EU:C:2016:278, ????? 30 ??? ??? ?????????????? ?????????). ???????, ?? ??????? ?????
??? ??????? ?? ?????????????? ?? ?????? 132, ?????????? 1, ???????? ???, ??? ??????
2006/112, ??? ?????? ?????????? ?? ?? ??? 32 ??? ?????? ?????????, ?????????? ??
????????? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???, ???
?????????, ?????????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
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37 ?????? ??????, ? ?????????? ?? ??????? ?????????????? ?? ?????????? ??? ?????????????? ?? ?????????????? ?? ??????????????
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contra legem ??????? ?? ?????? ?????? (?????? ?? 15?? ??????? 2008, Impact,
C?268/06, EU:C:2008:223, ??? 100).

38 ????? ????????, ? ?????? ?? ???? ?????? ?????? ?????? ?? ?????? ?????? ?? ???? ??
????? ?? ???? 132, ?????? 1, ?????? ??, ??? ?????? 2006/112, ??? ????
????? ?? ?????? ?? ?????? ????????, ?????? ?? ?????? ?? ?????? ?? ?????? ??
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39 ??????? ?? ????????, ?????????? ? ?????????? ?? ????????, ?????????? ?? ????????.

40 ?????????????? ?????? ??? ??????????????????, ??? ?????? ?????????????????? ??????????
?????? ?? ?????? ? ??????? ??? ?? ?????? 132, ?????????? 1, ??????? ???, ??? ??????
2006/112 ???? ??? ?????? ??? ? ?????????????? ??? ?????? ??? ?????????? ?????? ????
??? ?? ???? ??? ?????? ?????? ?????????????? ?????? ?????????? ??? ?????????? ????
????? 132 ??? ?????? ????, ????, ?? ?????????? ??? ?????????? ???, ??? ?? ??
????? ??? ?????? ?????? ?????????? ?????????????? ??? ?????????? ???, ??? ?????? ???
????? ?????? ?????? ?????????? ?????? ???, ??? ?????????? ??? ?????????? ???.

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41 ?????????? ??? ? ??????? ?????????? ??? ???? ?? ???? ??? ?????????? ??? ?????? ?????
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??????????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ????? ??????????????
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???? ????? ??????? ???????, ?? ?????????????? (????????? ??????) ??????????????:

?? ?????? 132, ?????????? 1, ??????? ??, ??? ?????? 2006/112/? ?? ???? ??????????,
?? 28? ??????? 2006, ??????? ?? ?? ?????? ?????? ?????? ?????? ?????????????? ??,
????? ?? ???? ?????? ?? ? ?????????????? ?? ?????? ?????? ?????? ?????? ?????? ??
????????????? ?????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????????????? ??
????????????? ?? ?????????????? ?? ?????? 132 ?? ?????? ?????? ?? ???, ??????,
?? ?????????? ?? ?????????????? ?? ?????? ?????? ?????? ?????? ?? ??? ?? ??
????? ?????? ?????????? ?????????????? ?? ?????? ?????????? ?? ???, ? ?????? ??
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(???????????)

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