

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

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

??? ?? ???? 2019 (*)

«????????????? ?????????? – ?????????? – ????? ?????????????? ????? (???) – ??????? ???
????? ??????? – ??? ?????? 77/388/?? – ?????? 17, ?????????? 2 ??? 6 – ??????
2006/112/?? – ?????? 168 ??? 176 – ?????????? ??? ?? ?????????? ?????????? – ?????? ??????????
????????? ??? ??????? – ????? standstill – ?????????? ??? ?????????? ?????»

???? ??????? C-225/18,

? ? ?????????? ?????? ?????????????? ?????????? ??????? ??? ?????? 267 ????, ???
?????? ?? Naczelný Šéf Administracyjny (?????? ?????????? ???????????, ???????) ??
?????? ?? 23?? ??????? 2017, ? ????? ?????? ??? ?????????? ??? 28 ??????? 2018,
??? ??????? ??? ??????

Grupa Lotos S.A.

????

Minister Finansów,

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

?????????? ??? ??? F. Biltgen, ??????? ???????, J. Malenovský ??? L. S. Rossi
(??????????), ???????,

?????? ??????????: M. Bobek

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

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

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

- ? Grupa Lotos S.A., ?????????????? ??? ??? B. Wolniewicz, radca prawny,
- ? ??????? ????????, ?????????????? ??? ??? B. Majczyna,
- ? ?????????? ????????, ?????????????? ??? ??? J. Jokubauskait? ??? M. Owsiany-Hornung,

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

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

??????

1 H ?????? ?????????????? ?????????? ??? ?????? ??? ??????? ??? ?????? 168, ????????

??, ??? ?? ?????? 176 ??? ??????? 2006/112/?? ??? ???????????, ??? 28?? ?????????? 2006, ??????? ?? ?? ??? ????? ??????? ?????? ?????? (?? 2006, L 347, ?. 1, ??? ?????: ?????? ???).

2 ? ??????? ??? ?????????????? ??? ??????? ?????????? ?????????? ?????????? ?????? ??? Grupa Lotos
S.A., ??????? ??? ??????? ??? ??????? ?????? ?????? ?????? ?????????? ?????????? ?????? ?????????? ?
?????? ??????????????????, ?????? ?????, ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ??????????
??? ??? Minister Finansów (????????? ????????????, ???????) ??????? ?? ??????????
?????? ??? «tax ruling», ?? ??? ????? ? ??????? ?????????? ??? ?????????? ??? ?????????? ??????????
?????? ??? ????? ?????????????? ??? (???) ?? ??? ????? ?????????????? ? Grupa Lotos
???? ??? ????? ?????????? ?????????? ??? ?????????? ??? ?????????? ? ?? ??? ????? ?????????? ??????????
??, ?? ?? ?????, ?????????????? ?? ?????? ?????????????? ?? ???.

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

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

3 ?? ?????? 17, ??????????? 2 ??? 6, ??? ?????? ??????? 77/388/??? ??? ???????????, ???
17?? ????. 1977, ??? ??????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??
????? ?????? ?????? ??????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????: ??????????
?????????? ??? (?? ????. ??? 09/001, ?. 49), ??? ?????????????? ?? ??? ??? ?????? 95/7/???
?? ??????????, ??? 10?? ??????? 1995 (?? 1995, L 102, ?. 18) (??? ????: ??? ??????),
????? ?? ????:

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

?) ??? ?????????? ? ?????????? ??? ?????????? ??? ????? [??] ??? ?? ????? ??? ???
????????? ? ?????????? ?? ??? ?????????? ??? ????? ??? ?????? ??? ??? ??????????
? ?????????? ?? ??? ?????????? ??? ????? ??? ?????? ??? ?????

[...]

4 ? ???? ?????? ?????????????? ??? ?????????????????? ??? ??? ?????? ???, ? ?????? ??????
?? ???? ??? 12 ??????????? 2007

5 ?? ?????? 168 ??? ??????? ?? ?????? ?? ??????

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

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

[...]».

6 ?? ????? 176 ?? ?????? ??? ?????? ?? ???:

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

????? ?? ?????? ?? ??? ?? ????????, ?? ?????? ??? ???????, ?? ?????? ??? ??????? ??
?????????? ??? ?? ????????, ?? ??????? ? ?????? ??? ?????? ????? ??????????? ??? ??
1? ?????????? 1979 ?, ??? ?? ?????? ??? ?? ??????????? ??? ?????????? ??? ?? ?? ??
???? ???????????, ??? ?????????? ??????????? ???..»

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

7 ?? ????? 25, ?????????? 1, ?????? 3b, ??? ustanawia o podatku od towarów i usług oraz o
podatku akcyzowym (????? ???? ??? ?????? ?????? ?????? ???????????), ??? 8? ??????????
1993 (Dz. U. ??? 1993, ????. 11, ??? 50), ??? ?????? ??? ?????? ??? ?????????? ??? ?? 1? ???
2004, ?????????? ?? ???:

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

3b) ?????????? ??????? ?? ???????, ????:

a) ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?? ?????? ??? ???????
?????????? ??? ???????, ?????? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ???????????
??? ??????? ??? ?????? ??? ?????????? /??/ ??? ???????,

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

8 ?? ????? 8, ?????????? 2?, ??? ustanawia o podatku od towarów i usług (????? ???? ???)
??? 11? ?????? 2004 (Dz. U. ??? 2011, ????. 177, ??? 1054), ??? ?????? ??? ?? ???
??? ??????? ??? ?????? ??? (??? ????: ??? ?????? ???), ?????? ?? ????:

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

9 ?? ????? 86, ?????????? 1, ??? ?????? ??? ?????? ??? ?????? ?? ????:

«????? ?? ?????? ??? ?? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ???????, ?
???????? [...] ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????????? ??? ?? ??? ???????, ??
??? ?????????? ??? ?????? 114, 119, ?????????? 4, 120, ?????????? 17 ??? 19, ??? 124.»

10 ?? ????? 88, ?????????? 1, ??? ?????? ??? ?????? ???, ??? ?????? ??? ?? ??? 1? ??????????

2008, ?????????? ?? ???:

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

4) ?? ?????????? ?????????? ??? ??????????, ?? ?????????:

a) ??? ?????????? ??? ?????? ?????? ??? ?????????????? ??? ?????? ??? ?????? ?? ?????? ?????????
????????????? ??????????, ?????? ?? ?????? ??? ?????????????? ??????????, ?? ??????
????????????? ?????? ?????????????? ?????????? ??? ?????? ??? ?????? 119, ??????????????????
?? ?????????? ?????? ?????????? ?/??? ??????????,

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

11 ?? ????? 88 ?????????? 1, ??? ????? ???? ???, ??? ?????? ??? 1? ??????????
2008. ?????? ?? ???;

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

4) ?? ?????????? ?? ??????? ?? ?? ???????, ?? ?? ???????;

a) [?????????????],

b) ??? ????? ??????? ?????????? ??? ??????? ??? ?????????????? ??? ????? ?? ?????
????????? ?????????? ?????????? ?????????? »

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

13 ? Grupa Lotos ?????? ??? ?? ?????????? ??????????? ?????? ?? ??????????, ?? ??
?????? ?????????? ??????? ?? «tax ruling», ???, ?? ? ?????? ?? ??????????
????????? ??????? ?? ??????? ?? ?????? ?? ?????? ?? ?????????? ?????????????????? ??
?????? ?????????? ?? ??, ??? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????????? ??
?????? ?? ?? ?????? ??????? ?? ?????? 86. ?????????? 1. ??? ?????? ???.

14 ??? ???? Grupa Lotos, ?????????? ???, ??????, ??? ?? ??? 8, ?????????? 2a, ???
????? ??? ???? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??????
????????? ?? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ???, ???????, ??
????????? ?????? ??? ?????? ?????? ?????? ??? ?? ??? ??? ?? ?????????? ??? ?? ???
Grupa Lotos, ? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ?? ???
?? ??????, ?????? ?? ?? ??? 86, ?????????? 1, ??? ?????? ??? ?? .. ??????????, ?
????????? ??? ?????????? ?? ?? ?????? 88, ?????????? 1, ?????? 4, ??? ?????? ???, ???
????????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ?????? ?????? ???
?????????, ??? ?????? ?? ?????????? ?????????, ?????????? ??? ? Grupa Lotos ???
????????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??????????, ??? ??
????????? ??? ?? ??? ?????????? ??????????

15 ??? ?????????? ????. «tax ruling» ??? ??????? ?? ?????????? ????.
????????? 2015, ??? ?????? ????. ?? ????. ??? Grupa Lotos, ?? ??? ?????????? ????.
????????? ??? ?????????? ????. ??? ?????? ????. ? ?????? ?????????? ????. ??? ?????? 88.

? ?????????? 1, ???? 4, ??? ???? ???? ??? ???? ?????? ?????? ?????? ?????? ?????? ???? ? ?
????????? ???? ? ???? ???? ???? ???? ? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ???? ???? ? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? .

16 ? ?????????? ?????????? ??? ?????? ? Grupa Lotos ??? ???? ?????? ??????????????
????????? ?????? ??? Wojewódzki S?d Administracyjny w Gd?sku (?????????????)
????????????? ?????????? ??? Gd?sk, ???????) ?????????? ??? ?????? ?????????? ??
????? ??? ?????? ??? ?????????? ??? ?????????? ???.

17 ?? ?????????? ? Grupa Lotos ?????? ?????? ?????? ??? Naczelnego S?d Administracyjny
(????????? ?????????????? ??????????????, ???????), ?????????????? ???' ?????? ?? ??? ???
????????? ??? ?????? 14 ??? ?????? ?????? ??????.

18 ?? ?????? ?????????? ?????????? ??? ???? 86, ?????????? 1, ??? ?????? ??? ???? ?
????? ??? ??? ???? ?????????? ?????????? ??? ?????? ??? ??????, ??? ?????????? ??? ????
168, ??????? ?, ??? ?????? ????. ?????????? ??? ???? ?????????? ??? ?????? 88, ?????????? 1,
????? 4, ??? ?????? ??? ??????????, ??? ??? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????????? ??? 1? ?????? 2004 ??? ??? ??? 1? ?????????? 2008, ???
????????? ??? ?????????? ??? 25, ?????????? 1, ?????? 3b, ??? ?????? ??? 8?
????????? 1993 ??? ??? ??? ?????? ?????? ?????????? ??? ?????????? ??? ??????
standstill ??? ?????? 17, ?????????? 6, ??????? ????, ??? ?????? ?????? (? ????
????????? ??? ?????? 176, ??????? ????, ??? ?????? ???).

19 ????????, ????, ??? ?????? ??? 1? ?????????? 2008 ??? ?????? 88, ?????????? 1,
????? 4, ??? ?????? ??? ?????????????? ?????? a ??? ???? ? ???? ? ?????????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???? ?????? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???
????????? . ??????, ??? 1? ?????????? 2008 ? ?????? ?????????? ?????????? ??? ??????
??? ?????? 88, ?????????? 1, ?????? 4, ?????? a, ?? ?????????? ?? ??????????, ?? ???
?? ,?? ?????? ??? ??? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ??????.

20 ?? ?????? ?????????? ??? ???? ?????????? ??? ???? ?????????? ??? ?????? ??? ???? ?
????????? ??? ???? 88, ?????????? 1, ?????? 4, ??? ?????? ??? ???? ?????????? ???
??? ??? ? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???? ?????????? ???
????? ???? ?????? ?????????? ??? ?????? ?????? ???? ?????? ?????? ??? ?????????? ???
????????? , ?????? ??? ?????? ?????? ??? ?????? ?????? ???? ?????? ??? ?????? ??? ???? ?
????? ?????? ??? ???? ?????????? , ?? ?????? ?????????? ?????????? ??? ??????
????? ?????????? ?????? ?????????? , ??? ?????????? ?????? ??? ?????????? ????
????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????????? ???.

21 ??????, ??? ???? ???????????, ? ?????????? ??? ?????, ??? ???????, ??? ???????????
???? ??????? ??? ?????? ???, ?? ?????????????? ??? ????? ?????????????? ??? ????? ?? ?????
????????? ??? ?????? ??? ?????????? ??? ????? ?????????? ??? ????? ?? ?????????? ??? ?????
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ??? ?????
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ??? ?????? ???
???? ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 176 ??? ?????? ???.

22 ?? ?????? ?????????? ???????????, ???????, ??? ???????, ?????? ?????, ???
?????? ??? 19?? ?????????? 2000, Ampafrance ??? Sanofi (C-177/99 ?? C181/99,
EU:C:2000:470, ?????? 56 ?? 61), ??? ??? ????? ?????????? ??? ?????? ??? ??????????, ???
????, ?? ?????? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????? ??? ??????????
????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?? ?????? ?? ? ?????? ?????????? ???????, ? ??????
????????? ?????? ??? ?????? ?????? ?????? ?????? standstill, ? ????? ?????????? ???
????? 176, ??????? ??????, ??? ?????? ???, ??? ?? ?????????? ?????? ?????? ?????? ?? ??????
????????? ??? ?????? ??? ?????? ??? ??????????.

23 ??? ??? ??????? ????, ?? Naczelnny S?d Administracyjny (?????? ??????????)
????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?????????? ??????:

«????? ?????? ??? ?? ?????? 168 ??? ?????? [??] ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????????? ?????? ??? ?????? ??? ?????? 88, ?????????? 1,
????? 4, ??? ????? [??] ???, ??? ??? ?????? ?? ?????????? ??? ?????? ?????????? ???
????????? ?????? ?????? ??? ??????, ?????????? ??? ?????? ?????? ?????? ??????
??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ??????
????????, ?????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ???
????????? ??? ?????? ??? ??????, ?????? ??? ?? ?????????? ?????? ?????? ?????????? ???
????? ??? ?????? ??? ?????? 17, ?????????? 6, ??? ?????? ?????? [...]»

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

24 ?? ?? ?????????? ??? ?????? ?? ?????? ?????????? ????, ???' ??????, ?? ?? ?????
168, ??????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ??????
????????? ??????, ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ? ?????, ??????,
????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????
????????? ???, ??? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????, ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
??? ??? ?? ??? ?????? ?????????? ? ??? ?????? ?????????? ??? ?????? ??? ??????
?? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ??????
176, ??????? ??????, ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???

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

25 ????, ?????, ?????????? ?? ?????????? ???, ??? ????? ??????????, ?? ??????
????????? ??? ?????????? ??? 168, ?????? ??, ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????????? ??? ??? ?????? ?????? ???' ??? ??
??????????. ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?? ?????? ??? ?? ??????
?? ?????? ?????? (???. ??????? ?? 18?? ?????? 2013, AES-3C Maritza East 1, C-
124/12, EU:C:2013:488, ??? 25, ??? ?? 14?? ?????? 2017, Iberdrola Inmobiliaria Real
Estate Investments, C?132/16, EU:C:2017:683, ??? 25).

26 ???????????, ?? ?????? ??? ?????????? ?????? ?? ?????????? ?????? ??
????????? ??? ?? ?????? ??? ??? ?????? ? ?? ?????? ??? ?????? ?? ?????? ??
????????? ?????????? ????. ?? ?????? ?????? ??? ?????????? ??? ?????? ?? ?????? ??
?? ???????????, ?? ??? ?? ?????????? ?????????, ??? ?? ???????????
??????????????, ?????????? ??? ?????? ? ?? ?????????????? ???, ??? ?? ???????????
?? ?? ??????????? ?????? ?????????? ?????? ??? (???. ?????? ?? 14??
????????? 2017, Iberdrola Inmobiliaria Real Estate Investments, C-132/16, EU:C:2017:683,
????? 26 ??? ??? ?????????????? ??????????).

27 ??????, ? ?????????? ??? ???? ???? ? ?????? ?????? ??? ???? ?????? ??????
????????? ?? ??? ?????? ??? ?????????? ??? ?????????, ?????????, ?????? ??????????
???? ?? ?????? ? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????????? ??? ??,
????? ??? ??? ??? ?????? ? ?? ?????? ??? ?? ?? ??? ?????? ??? ? ??? ?? ??? ?????? ???,
(???. ?????? ?? 14?? ?????? 2017, Iberdrola Inmobiliaria Real Estate Investments, C-
132/16, EU:C:2017:683, ??? 27 ??? ??? ?????????? ??????????).

28 ???, ?????????, ??? ?????????? ?????? ??? ?? ?????????, ?????????????? ??? ??
????????? ??? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?????????? ??? ??
?? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??? (???. ?????? ?? 19??
????????? 2000, Ampafrance ??? Sanofi, C?177/99 ?? C-181/99, EU:C:2000:470, ??? 34,
????? ??? ?? 8?? ?????? 2002, Metropol ??? Stadler, C-409/99, EU:C:2002:2, ???
42, 44 ??? 58) ??? ?????????? ??? (????? ??? 22?? ?????? 2008, Magoora, C-
414/07, EU:C:2008:766, ??? 28).

29 ??? ?????????? ??? ????? ?????????? ?? ?????? 176, ?????? ??????, ???
????? ???, ??? ?? ?????? ?? ?? ?????? 17, ?????? 6, ?????? ??????, ??? ??
?????, ??? ?????? ? ?????? ??? ?????? ?? ?????? ?????? ?? ?? ?????? ??? ??
????? ??? (???. ?????? ?? 30?? ?????? 2010, Oasis East, C-395/09,
EU:C:2010:570, ?????? 17 ?? 27).

30 ??? ? ? ?????????? ?????? 17, ?????????? 6, ?????? ??????, ??? ?? ?????? ??????,
?? ??? 176, ??????, ???, ??? ?????? ??? ?????????? ??? standstill ? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?? ?????????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? 176, ??? ?? ?????? ??? ?????? ??? ??
????? (???. ?????? ?? 15?? ?????? 2010, X Holding ??? Oracle Nederland, C-538/08
?? C-33/09, EU:C:2010:192, ??? 38 ??? ??? ?????????? ???, ??? ?? ??? ??
18?? ?????? 2013, AES-3C Maritza East 1, C-124/12, EU:C:2013:488, ??? 43 ?? 44).

31 ??? ??????, ? ?????? ??? ?????????? ??? ?????? ??? ?? ?????????? ???

????????? ??????????? ??? ??????????? ?????????? ??? ???, ???' ?????????? ??? ??? 176,
????????? ????, ??? ??????? ???, ??? ?????? ??????. ?? ?????????? ??? ?????? ???' ??????
??? ?????? ??? ????? standstill ??? ????? ?? ?????????? ?? ??? ??? ?????? ?????? ??
?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????????
?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ? ??????
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ?? ?????? ??????
????? ?? ??? ?? ?????? ??? ?? ?????? ??? (????. ??????? ??? 22?? ?????????? 2008,
Magoora, C-414/07, EU:C:2008:766, ?????? 37 ??? 39).

32 ??? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ?? ??????????
???????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
??? ??? ?????? ???, ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???
???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????????? ??? ?????? ???, ??? ?????? 4,
????????? 3, ??? (????. ??????? ??? 2?? ????? 2018, Scialdone, C-574/15, EU:C:2018:295,
????? 26 ??? 27 ????? ??? ????? ?????????? ??????????).

33 ?? ?????????? ???????????, ??????, ??? ??? ?????? ?????????? ?????????? ??
????????????? ??? ?????? ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??????????
(????. ??????? ??? 18?? ?????? 2013, AES-3C Maritza East 1, C-124/12, EU:C:2013:488,
????? 41 ??? ??? ?????????????? ??????????).

34 ??? ?????? ??? ?????? ??? ?????, ??? ?????????? ??? ??? ?????? ?????????? ??????????????
?????????, ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????? ?? ?????? 88, ?????????? 1, ?????? 4, ??? ?????? ??? ?????? ??? ?????????? ??? ?? ??????????
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????????
??? ???????, ?? ???????, ?????? ?????, ??? ?????? ?????? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? a, ??? ?? ?????? ???????, ??? ?????????? ??? ?????? ?????????? ??? ??????????????
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ??????????
?????????.

35 ??????, ??? ?????????? ??? ?????? 19 ??? ?????? ???????, ??? ?? ??????
?????????, ??? ??? 1? ?????????? 2008 ???, ????????, ??? ??? ?????????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ?? ?????? ???
????? 88 ?????????? 1, ?????? 4, ?????? a, ??? ?????? ??? ?????? ???, ?????????? ???
????????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ??? ?????? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??????????
?????????.

36 ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? 30 ??? 32 ???
????????? ???????, ??? ?????? ??????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??????? ??? ???, ??? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
?????, ??? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ??? ? ?????? ?????? ?????? ?????????? ?????????? ??? ?????????? ??? 1??
????????? 2008 ?? ??????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????
????? ??? ??? ?????? ??????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??? standstill
?? ?????????? ??? ?????? 176, ??????? ??????, ??? ?????? ??? ?????? ??? ??????, ??? ??????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ???, ???
????????? ??? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ???, ???

????????? ??? ???? 168, ??????? ??, ??? ??????? ???.

37 ????, ??? ???? ?????? ?? ??????????, ?????? ?? ?????????????? ?????? ? ????????,
????? ????, ??? ??????? ?????????? ??? ??????? ??? ?????????? ??? ?? ?????????? ????????
??? ??, ??? ???? ?? ???? ?????? ??? ??????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? (????.
?????? ?? 18?? ?????? 2013, AES-3C Maritza East 1, C-124/12, EU:C:2013:488, ???? 51).

38 ?? ??? ???? ?? ?????? ???, ?? ??? ?????????? ??? ?????????? ?????????????? ??? ?? ??????
??????????, ?????????????? ???, ??? ?????????? ? ?????????? ??? ?????????? ??? ??
??????????, ??? ?????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??
????????? ??? ??, ??? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??, ???
?? ??? ??????? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????????? ?? ????. ????????, ???
?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??
?????? ??? ?????? ?????????? ? Grupa Lotos ??? ?????? ?????????? ??? ?? ?????? ??? ??
?????? ?????? ?????????? ??? ?????????? ?? ?????????? ?????? ?????????? ?????????? ??????????,
????? ?????? ?????? ?????????? ??? ??.

39 ?????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ?????????? ? ??????????
????? ??? ???????, ? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ?? ? ?????? ???
??? ?????, ?? ?????? ?????????? ??? ?????? ??? ? Grupa Lotos, ?????????? ?????????? ???
????????? ?? ?????? ?? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ?????????? ???
????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????????? ???
????, ??? ?????? ?????????? ??? ?????? standstill ??? ?????? 176, ??????? ??????, ???
?????? ????. ???????, ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
????, ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? 88,
????????? 1, ?????? 4, ??? ?????? ???, ?????? ???' ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????.

40 ?? ??? ?????? ?????????? ??? ?? ??? ?????? ??????, ?????????? ?????? ?? ??????,
????????? ?? ?? ??????????, ?? ? ?????? ?????????? ??? ?????????? ?????? ?????????? ??????
????????? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ?????? ?? ?????? ?? ?????????? ???
????????? ?????? ?????????? ?????? ?????? ?????????? ?????? ?? ?????? ?????? ?? ?????????? ???
????? ??? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ?????? ?????????? ??? ??, ??? ??
????????? ??? ?? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ???
??? ?? ?????????? ?????? ?????? ?????????? ??? ?? ?????????? ??? (????. ??????? ???
15?? ?????? 2010, X Holding ??? Oracle Nederland, C-538/08 ??? C-33/09, EU:C:2010:192,
?????? 44 ??? 45 ??? ?????? ?????????? ??????????).

41 ???????????, ??' ????, ??? ??? ?????? ??? 15?? ?????? 2010, X Holding ???
Oracle Nederland (C-538/08 ??? C-33/09, EU:C:2010:192, ?????? 50 ??? 51), ?? ??????????
????? ?????? ??? ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
?????????, ?? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??????????
??? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ?? ?????? ?????? ?????? ??????????
??? ?????? standstill ??? ?????? 17, ?????????? 6, ??????? ??????, ??? ?????? ??????.

42 ?? ??????????, ??????? ? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??????????
????????? ??? ?????? ??? «????????? ?????? ??? ??????» ?????????? ??? ?????? ?????? ??????
??????, ??????? ???, ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????????, ???
????????? ?? ?????? ???????, ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ??
?????????.

43 ?? ??? ?????? ?????? ??????, ??????, ?? ?????????? ??, ??? ?????????? ?

? ????????, ? ?????? standstill ??? ?????? 176, ??????? ???????, ??? ??????? ??? ????????
????? ??? ?????????? ??? ?? ??????? ??????? ??? ?? ?????? ?? ??????? ?? ?????????? ??
?????????? ??? ?? ?????? ??????? ??? ?????????? ?????? ??? ?????? 176, ????
?????, ??? ?????? ???.

44 ???????????, ? ??????? ??????????? ??? ?? ??????? ?????????? ??? ??????? 176
??? ??????? ??? ?????????? ??? ?? ?????? ????? ?????????????? ??????? ??? ?? ???????,
????? ?????? ?????? ?????????????????? ??? ?????? ?????????? ?????? ??????????????,,
????? ??????? ?? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????????? ???
????????????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????, ?????? ?????????? ?????? ?????????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????.

45 ?? ?????????? ??? ?????? ?? ??????????.

46 ???????????, ??????, ?? ??? 176, ????? ?????, ??? ??????? ??? ??????? ???
??? ?? ?????????? ?? ?????????? ??? ??????? ?? ?????? ??? ?? ??????? ?????????? ??????????
??? ?? ??? ??, ?? ??? ???????, ?????????????? ??? ?? ?????? ?????? ?????????? ?? ???????
?? ?????? ??? ?????? ?????????? ??????? ??????????????,, ????? ?? ?????? ??????????????,,
????????? ?? ?????????? ???????????. ? ?????? ??? ?????? ??? ?????????? ?????????? ??
????????? ?? ??????????,, ?? ?????? ???, ??? ?? ?????? ?????? ?????????? ?????????? ??
????????? ?????? ??????.

47 ???????, ?? ??? 176, ?????? ??????, ??? ?????? ??? ?????? ?? ?????????? «??[??
??] ???????[??]» ??? ????? ?????????????? ??? 1?? ?????????? 1979 ?, ??? ?? ?????? ???
??? ?????????? ??? ?? ??? ?????? ??????????,, ?????????????? ??? ??????????
????????? ????. ?????????????? ??? ?? ?????????? ??? ?????? ?????? ???, ??? ?????????? ???
5?? ?????????? 1999, Royscot ??. (C-305/97, EU:C:1999:481, ??? 20), ??? ???????
????????? ??? ?????????? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ??????????????
????????? ??? ? ?????? «???? ?? ??????????» ??? ?????????????? ??? ?????? 17,
????????? 6, ?????? ??????, ??? ?????? ??????, ?????????????? ?????? ??? ?????????? ???
??? ?????????? ?????? ??? ?????? ??????, ?????????????? ??? ??? ?????? ??? ?????? ???
????? ?????? ?????????????? ??????.

48 ??? ???????, ? ????? standstill ??? ?????? 176, ?????? ??????, ??? ??????? ???
????????? ??? ?????? ??? ?? ?????????? ??? ?? ??????? ?????????? ??? ?? ?????? ??????????
????? ??? ?????? ?????????? ??? ???????, ??? ?? ?????? ?????? ??? ?????????? ??? ??
????????? ??? ?? ?????? ???????, ??? ?? ?????? ?????? ??? ?????????? ???

49 ??? ? ??????? ??? ?????? 176, ?????? ??????, ??? ?????? ??? ?? ??? ??????????
??? ?? ?????? ??? 19?? ?????????? 2000, Ampafrance ??? Sanofi (C-177/99 ??? C-181/99,
EU:C:2000:470), ??? ?????? ?????????? ??? ?????? ??????????.

50 ???????????, ? ??????? ??? ?? ?????? ?????????? ? ?? ??? ?????? ?????????? ??????????
????????? ??? ?? ??????? ?????????? ??? ?? ?????? ?????????? ??????????,, ??????????
??? ??????? ? ?????? ??? ?????????? ??? ?? ?????????? ?????? ?????? ??? ??????
????? ??? ?????? ?????? ??? ?? ?????? ?????????? ?? ?????? ?????? ?????????? ???
????????? ??? ?????? 17, ?????????? 6, ??? ?????? ??????. ??????, ???, ?? ??????????
?????, ??? ?????? 58 ??? 61 ??? ?????? ??? 19?? ?????????? 2000, Ampafrance ???
Sanofi (C-177/99 ??? C-181/99, EU:C:2000:470), ??? ? ?????? ??? ?????????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ??? ??????????.

????????? ?? ????????????, ??? ???? 39 ??? ?????? ????????, ?????? ?????????? ????????,
??? ?? ?????? ?????????? ?????????? ??? ?? ?????? ????????, ?? ?????? ????????,
???? ?? ?? ?????? ????????, ??? ?????? ????????, ??? ?????? ????????, ?? ?????? ????????,
????? ?????? ????????, ?? ?????? ?? ????????, ??? ?????????? ??? ?????????? ??? ?? ????? standstill
??? ?????? 17, ?????????? 6, ??????? ??????, ??? ?????? ??????.

51 ???????, ??? ?????? ??? ??????? ??? ?????? ??????, ?????? ??? ?? ?? ??????
?????????? ??????????? ??? ? ?????????? ??? ?????????? ??? ?????? 88, ??????????? 1,
?????? 4, ??????? a, ??? ?????? ??? ??? ?????? ?????????? ??? ?????????? ??? Grupa Lotos, ?
?????????? ??? ?????????? ??? ?????????? ??? ??? ??? ?????? ??? ?????? ??????????
????????? ??? ???????, ? ?????? ?????? ??? ??? ?????????? ??? ?????? ??? ??????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ???????????, ?????????? ??? ?????
standstill ??? ?????? 176, ??????? ??????, ??? ?????? ??? ???, ?? ?? ??????, ???
????????? ??? ?????????? ??? ?????? 168, ??????? ???, ??? ?????? ??????.

52 ?????????????? ?????? ??? ???????, ??? ?????????????? ??????? ?????? ?? ?????? ?
????????? ??? ?? ?????? 168, ????????, ??, ??? ??????? ??? ?????? ?? ?????? ?? ?????? ???:

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

— ??? ?????????????? ?? ?????? ?????????????? ??????? ?????? ? ??????? ?????? ?????? ?????? ?????? ?????? , ?
????? ?????????? ?? ?????????? ?? ?????????? ?????? ?????????? ?????? ?????? ?? ?????? ?????? ?????? ??????????
????? ??? ?????? ?????????? ?????????? ?? ????????, ? ?????? ?????????? ?????? ??? ?????? ??? ??????
????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????????? ?? ?????? ?????? ??? ??????
????????? ???, ??????? ?? ?? ??? 176, ?????? ??????, ??? ?????? ???, ??? ???? ?? ?????????? ??????????????
????????? ??? ?????????????? ?????? ??? ? ?????? ??? ?????? ?????? ?????????? ?????????????? ??????????
????????? ?? ?????????? ?? ?????? ??? ?????? ??? ?? ?????? ?????? ?????????????? ?? ?????? ??????
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????????????? ?? ??????
????????? ?????? ??? ?????? ???.

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

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

?? ????? 168, ??????? ??, ??? ?????? 2006/112/?? ??? ??????????, ??? 28??
????????? 2006, ??????? ?? ?? ????? ?????? ?????? ????? ?????????????? ????, ???
?? ??????? ???:

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

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

- ??? ??????????? ?? ?????? ?????????????? ?????? ??? ???? ? ??????? ?????? ???
????, ? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ???? ???
????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? ?, ? ??????
?????????? ??? ??? ??? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ???
?????????? ?? ?????? ??? ??? ??? ?????????? ???, ?????? ?? ?? ?????? 176,
????????? ??????, ??? ?????? 2006/112, ??? ? ?????? ?????????? ??? ?????????? ???
????? ??? ? ?????? ??? ?????? ?????????? ?????????? ?????????? ?? ?????????? ??
????????? ??? ??? ?? ??? ?????? ?????????????? ? ?????? ?????? ?????????? ?????????? ?????
??? ?????????? ??? ?????? ?? ?????? ?????? ?????? ?????????????? ?? ?????? ?????????? ?????
????? ????.

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

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