

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

JULIANE KOKOTT

??? 23?? ?????????? 2015 (1)

?????? C?40/15

Minister Finansów

????

Aspiro SA, ??? BRE Ubezpieczenia sp. z o.o.

[?????? ??? Naczelnego S?d Administracyjny (???????)
??? ??? ?????? ?????????????? ?????????]

«?????????? ?????????? — ??? ?????????????? ????? — ????? 135, ?????????? 1,
???????? ??, ??? ?????? 2006/112/?? — ?????????? ??? ??? ?????? ??? ??????????
????????? ??? ?????????? ?????????? ??? ?????? ?????????? ??? ??? ??????????
????????? — ?????????? ?????? ??? ?????????? ?????? ??? ??? ??????????»

1. ????????????? ??? ??? ?? ?????????? ??? ?????? ??? ?????????????? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ???
????? ? ?????? ??? ?????? ??? ?????? ?? ?????; ?? ??? ? ?????? ? ?????????? ???
????????? ?????? ??? ??? ?????? ??? ?????????? ?????????? ??? ??? (2) ???
????? ??? ??? ?????? ??? ??????.

1 – ?? ?????? ???????

? — ?? ?????? ??? ??????

2. ???? ?? ??? 2, ?????????? 1, ????????, ??? 28?? ?????????? 2006, ??????? ?? ???? ?????? ?????? ??????????????
????? (3) (??? ????: ?????? ????, ??? ??? ?????????? «?? ?????? ?????????? ???
????????????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ???
????? ??? ??? ?????? ?? ??? ?????? ??? ??????».).

3. ????, ??? ?? ??? 135, ?????????? 1, ????????, ??? ?????? ???, ?? ??? ?????? ???, ?? ???
???? ?????????? ??? ??? ??? ?????? ??? ?????? :

«?) ?? ?????????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ?????????????? ??
????????? ?? ?????? ?????? ?????????? ??? ?????????? ??? ?????? [?????????
?????????] ??? ??? ?????? ?????????? ??? ??????»..

4. ? ?? ??? ?????? ?????? ?????????? ??? ?????? 13, ?????? ?, ????????, ??, ??? ????????

????????? ??? 31 ?????????? 2006 ???? (4). ? ?????????? ??? ?????????? ???
?? ?? ?????? ?????? ??? ?????? ?????? ?? ?????? ??? ?? ?? ?????? ??? ??????.

5. ? ?????? 77/92/?? (5) ?????? ??? 14 ?????????? 2005 ??? ?????? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? 2,
????????? 1, ??? ?? ??? ?????? ?????? ?? ?????? ?????? ???, ?????? ???, ?? ???:

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

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

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

[...]».

6. ??? ??????, ? ?????? 2002/92/?? (6) ?????????? ??? ?????? 77/92. ?? ??? 2,
????? 3, ??? ?????? 2002/92 ?????? ??? ?????? ??? «????????? ??????????» ??
????:

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

[...]

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

? — ? ?????? ????

7. ?? ??? 43, ?????? 1, ??? 37, ??? Ustawa o podatku od towarów i usług, ???
11?? ?????? 2004 (??? ????: ?????? ????) ??????, ??? ?????? ???
?????? ??? ??? ??? ?????? ???, ?? ???:

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

8. ?? ???? 43, ?????????? 13, ??? ?????? ?????? ??? ?????? ??? ?????? ??????????????
?? ????:

«? ?????? ??? ??? ?????? ?????? ??? ??? ?????? ?????????? ??? ??????????
????????? ?????? ??? ??? ?????????????? ??? ?????? ?????????? 1, ?????? 7 ??? 37 ???
41, ???????, ?? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????????????? ???
????????? ??? ??? ?????? ?????? ?????????? ??? ?????????????? ??? ??? ??? ??? ???
????????? 1, ?????? 7 ??? 37 ??? 41.»

II – ? ?????? ??? ?????? ?????? ??? ???? ?????????? ?????? ??? ??????????

9. ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????????? ??? ?????????? ?????? Aspiro SA (??? ????: Aspiro) ?????????????? ??? ???
???. ? Aspiro ?????? ?? ?????????? ?????????? ?? ?????? ?????????????? ??? ???
????????? ??? ?????? ?????????? ?????????? ?????????? ?????????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????.

10. ??????????, ? Aspiro ?????????? ?????? ??? ?????????? ??? ?????? ??? ??????????
???????. ?????? ?? ??? ??? ???????????, ?? ??? ?????? ??? ??? ?????? ??? ???
??????????, ???, ??? ???????????, ?????????? ?????????? ?????????????? ??? ???
?????????? ??? ?????? ??? ?????? ?????? ??? ?????????????? ?????????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????????? ??? ?????? ??????????., ? Aspiro ????
????????? ?????????? ??? ?????????????? ?????????? ??? ??? ?????????????? ??????. ??
????????? ??? ??? ??? ?????????????? ? Aspiro ???? ??? ?????? ?????? ????
????????? ??? ?????? ??? ??????????.

11. ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??? ??? ???
?? ?????? ?????????? ??? ??? ?????? ??? ?????????? ?????????????? ??? ??? ??? ???
????????? ??? ??????????., ?????? ??? ?????????? ?????? ??? ?????????? ?????????? ??? ???
????????????? ??? ??? ?????????? ??? ?????? ?????????? ?????????????? ??? ??? ????
????????????? ??? ??? ?????? ??? ?????? 43, ?????????? 13, ??? ?????? ????
???? ???.

12. ?? Naczelnego S?d Administracyjny (????????? ?????????? ??????????) ?? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? 2 ?????????? 2015 ?????? ??? ??????????, ?????? ???
????? 267 ???, ?? ??? ?????? ?????????? ??????:

????? ?? ??? 135, ?????????? 1, ?????? ??, ??? ?????? ??? ??? ??? ?????????? ???
?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????, ?? ?????? ?????????? ???
????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????????? ??? ??? ?????? ??? ??????;

13. ?? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?

Aspiro, ? ?????????? ??? ???????, ?? ?????? ???????? ??? ?????? ?????? ?????????? ??? ??
?????? ?????????? ??? ? ?????????? ??????.. ??? ?? ?????????? ?????? ??? ?????? ???
?? ?????????? 2015 ?????? Aspiro, ? ?????? ?????????? ???, ? ?????????? ???
?????? ??? ? ??????.

III – ?????? ???????

14. ?? ?? ?????? ??? ?????? ?? ?????? ?????????? ?????? ??? ?????? ??
????????????? ?? ? ?????????????? ?????? ? ?????? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ? ?????? ??? ?????????? ?????????? ?? ??
????????? ?????????? ??? ??? ??? ??? ?????? ??? ?????? 135, ?????????? 1,
?????? ??, ??? ?????? ??? ??.

? — ??? ?? ??????????

15. ? Aspiro ?????????? ??? ?????? ?? ?????????? ??? ?????????????? ??????????????
?????????.

16. ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ??
????? ?????? ??? ?????? ?? ??? ?????? ??? ??, ?? ?????????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?? ??? ?????????? ? ??????
????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ?????? ?????? ?????? ??
??? ?????? ??? ??? ?????? ?????? ?? ?????????? ?????? ??? contra legem ??????. ??
?? ??????, ? ?????? ??? ?????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ??
??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

17. ?????? ???, ??? ?????? ??? ?????? 267 ???, ?? ?????????? ??????????
????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?????, ?????????? ? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? (7), ? ?????? ??? ?????? ??? ?????? ?????? ?????? (8), ??? ??????
??? ?? ??????????.

18. E? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????. ? ?????? ??? ??????
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??
?? ??????. ? ?? ??? ?????? ?????? ?????????? ??? ?? ?????? 135, ?????????? 1, ??????
??, ??? ?????? ??? ?. ??? ?????? ???, ?? ?????? ?????????? ?????? ??? ?????? ??
????? ??? ?????? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ??
????? (9). ??? ?????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ??????
????????? ??? ?????? ?? ?????? ??? ?????? . ??????????, ?? ?????? ??? ?????? ??
????? ??? 43, ?????????? 13, ??? ?????? ??? ?????? ??? ?????? ? Aspiro. ? ?? ??? ??????
????????? ??? ??????????, ?????????? ?????? ??? ?????? ??? ?????????? ?? ?????? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

? — ??? ?? ?????????? ??? ?????????? ?????? ??????????

20. ?????????? ??? ?????? ??? ?????? ???????? ? Aspiro ?????????????? ??? ??? ???
????? ??? ?????? 135, ?????????? 1, ????????, ??? ?????? ??? ?????? ??? ?????? ??????????
??? ?????????? ??? ?????????????? ?????? (????????? ??? 1) ? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??????????
(????????? ??? 2).

1. ?????????? ??? ?????????????? ??????

21. ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????? ?????????? ???
????? 135, ?????????? 1, ????????, ??? ?????? ??? ?????? ??? ?????? ?????????? ???
?????????. ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? (10).

22. ??? ?????? ??????????, ? ?????????? ?????? ?????????????? ??? ?? ?????????? ???
????????? ??????????, ?????? ?????????? ??????????, ?? ?????????? ???
????????? ???, ?? ?????????? ?????????? ??? ?????????? ??????????, ??? ?????? ???
????????? ??? ?? ?????? ??? ?????????? (11). ? ?? ??? ?????? ?????????? ??? ??
????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
?????????, ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????????????? ??? ??????
????????? (12). ?????? ?????? ?????? ?????? ??? ?????? ?????????????? ?????? ??????
????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ??? ?????? (13).

23. ?? ?? ??? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? . ??? ?????? ? Aspiro ???
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?????? ?????? ? ?????????? ?? ??? ?????? ?????? ?? ?????? ???

24. ?????? ?? ??? ?????????? ?????? ?????????? ?????????? ??? ?????????? ???
????? ?????????? ??? ??? ??? ??? ??? ??? ??? ? ?????????? ??? ??? Aspiro
?????????, ??????, ?????? «????????? ?????? ??????», ?? ??????, ??????, ??????????
?? «????????????? ??? ??? ?????? ?????? ??????» ??? ?????????? ?????? ???
????????????? ??? ??? ??? ?????? ??? ?????? 135, ?????????? 1, ????????, ??? ??????
???? ???.

25. ??????, ??? ?????????????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ???
????????? ?????????? ?????????????? ?????? ??? ??? ??? ??? ??? 135,
????????? 1, ??? ?????? ???, ??? ??? ?????? ??? ?????? ?????????? ??? ??? ??????????
????????????? ??? ??? ??? ?????? ?????? ?????? ?????????? ??? ??? ??????????????
?? ??? ??? ?????? ?????? (14), ?????? ?????????? ?????? ??? ? ?????????? ??????
????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? (15).

26. ??? ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????? 135, ?????????? 1, ????????, ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? (16) ? ?? ???
????????? ?????? (17) ??? ??? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??
stricto sensu ?????????? ?????? , ??? ?????????? ?????? ??? ?????? ?????? ???
????????? ?????? , ? ??? ?????? ?????????? ??? ? ?????? ?????? ?????????? ?????? ???
?? ?????? , ??? ?????? ?????? ?? ?????? ?????? ?????? ?????????? ?????? ???.

27. ??? ?????????? ??? ??? ?????? ?????? ?????? ??? ?????? ?? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ??? ?? ?????????? ??? ?? ?????? ???
????????? ??? ??? ?? ?????????? ??? ?????? ?? ?????? ?????? ?????????? ??????????

???? ?????????????? ????????????, ??? ?????? ?????????? ?????????????????? ????????????,
????????? ?????? ??? ??? ?????????????? ?????????? (19), ??? ?????? ?????? ?????????? ??? ??????
?????????. ??????? ??? ?????? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ?
?????? ??? ?????????? ??? ?????????? ??? ?????????? ?????? ?????????? ????????, ??? ?????? ??? ?? ?
????????? ??? ?????????? ??? ?? ??? ?????????? ?????? ?????????? ????????.

28. ?????, ??? ?????????? ?????????????? ?????????????? ?????? ??? ?? ??? ?????? ???
????????????? ?????????????? ??? ?????? ??? ?????? ?????????????? ? ?????????? ??? ?????? ???
????????????? ?????????????? ??? ?????????? ??? ?????? ??? (20). ??? ?? ??? ??????
????????????? Aspiro ?????????? ?? ?????????? ??? ?????????? ??? ??????????????
????????????? ??? ?????????????? ??? ?????? ??? ?????????? ?????????? ?????????????? ??????????
???? ?????????????? ??? ?????? ??? ?????? ?????????????? ?????????? ??? ?????? ??????????
????????????? ??? ?????? ??? ?????? ??? ?????? ?????????????? ?????? ?????????????? ???
?????????????, ? ?? ??? ?????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ?????????? ???
????????? ??? ??? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? (21).

29. ??????, ?? ?????????? ??? ??? Aspiro ?????????? ??? ?????????? ??? ?????? ???
????????????? ?????????? ??? 135, ?????????? 1, ?????????? ?, ??? ?????? ????.
??? ?????????? ?????? ??? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??????????
????????????? ?????? ?????????????? ?????????? ??? ?????? ?????????? ??? ?????? (22).

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

30. ????? ??????? ?? ?????????????? ??? ?????? ?????? ? ?????????????? ??? Aspiro
????????????? ??? ??? ?????? ?????? ?????????? ?? ?????????? ?????????? ?? ??????????????
????????? ??? ?????????????? ??? ?????? ?????????? ? ?????????????? ??????????.

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

31. ??? ?? ?????? 135, ?????????? 1, ?????????? ?, ??? ?????? ???, ??????????????
??? ??? ??? ?????? ?? «????????? ?? ?????? [????? ??? ?????????????? ??? ??????????????
?????????] ?????? ??????????». ?? ?????? ?????? ?????????? ?? ?????? ?????????? ???
??? ?????? ??? ?????? ?? ?????????????? ??? ?????? ??? ?????????? ?? ??? ?????? ??????????
????????? (23). ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????? ???
????????? ?????????????? ?????????????? ?????????? ?????????? ?????? ??? ??????????.

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

32. ? ?????? ?????????? ?????? ??? ?????? ?????? ?? ?????????? ??? ?????? ??????????
??? ?????????? ?????? ??? ?????? ??? ?????? ??? 135, ?????????? 1, ?????????? ?,
??? ?????? ????.

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

34. ? ?????? ?????? ???, ??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ?????????? ??? ??
????????? ? ?????? ??? ?????? ?????? ?????? ???, ??? ?????? ??? ?????? ?????? ???
????????????? ??? ?????? (24). ??? ??????, ?? ?????????? ?? ?????? ?????? ?????? ??
????????? ?? ?? ?????????? ??? ??? Aspiro ?????????? ??? ?????? ??? ??????????????

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

— ????? ?? ?????????? ??? ?????? ??????????

35. ??? ?? ??????????, ? ??????? ??? ?????? ?????????? ??? ?????? ??? «????? ?????» ???
?? ??? —??? ?????????? ??? ?????? ?????????? (25) — ?? ?????????????? ??????????
??? ?? ?????? ?????????? (26).

36. ??? ?????????? ??? ?????????? ??? Aspiro ????, ??????, ??? ?????? ?????? ??
??? ?????????? ???, ????????, ?????????? ?????????? ??? ?????? ??? ??????????????,
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ????. ?????? ????, ? ?????? ????
???? ?????????? —?? ? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??????
????????????? ?????????? ??? ??????????—, ?????? ??? ?????? ????.

— ?????? ??? ?????? ?????????????? ??? ?????? ?????????? ??? ?????? ??????????
?????????

37. ???????, ?? ?????? ? ??????? ??? ?????????? ??? ?????????? ??? ?????? ??????????
????????? ?? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ???/?
??? ?????????? ????. ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ???, ??? ??????
???????? Arthur Andersen, ??? «????????? ???» ???? ??? ?????????? ???, ?? ??????
????????? ??? ? ?????? (? ?????? ? ? ??????) ?????????? ?????? ??? ?? ???
????? ?? ?????? ?? ??? ?????????? ?? ?????? ??? ?????? ?????????? ?????????? (27). ?
????? ?????? ??? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????????? ???
????? ?????? ?????? ???/? ??? ?????????? ??????.

38. ??????, ??? ? ???????, ??? ??? ?????? ?????????? ??? ?? ?????? ? ?????????? ???
??? ??? ?????? ?? ?? ?????? ?????????? ??? ?????? 135, ?????????? 1, ?????????? ??, ???
????????? ??? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??????????
?????????, ?????? ?? ??? ?????? ?????? ?????????? ?????? ??? ?????? ?????????? ??
????????? ?? ??? ?????????? ??? ?????? ?????? (28).

39. ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????????????? ??????
????????? ??? ? ?????? ??? ?????????? (29), ?????????? ?? ?????????? ?????????? ???
????????? ??? ?????? ??? 135, ?????????? 1, ?????????? ??, ??? ?????? ??? ?????? ??? ?? ??
????? 401 ??? ?????? ??????. ? ?? ??? ?????? ?????? ?????????? ??? ?????? ??? ?? ??????????
?? ?????????? «????? ??? ??? ?????? ??????». ? ?????????? ??? ??????????
????????? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??? ?????????? ??? ?????? ??????????
????????? ??? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? (30).

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

41. ??? ?????????? ? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ?????????? ???, ??? ??????????
????? ??? ?????? ??????????, ?? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ????
?????????. ??? ??? ??? ?????? ?????????? ??? ?? ?????????? ???, ??? ?????? Arthur
Andersen, ??? ? ??? ?????? ?????? ??? ?????????????? ??? ?????????? ??? ?????? ??

?????????????? ?? ?????????????? ?????????????? ?????????? (31).

42. ??????? ??? ??????? ?????? ?????? ?? ?????? ??? ?????????? ??? ???? ??? ?????? ??????
??? ?????????????? ??? ?????? ?????????? ?????? ?? ??? ?????????? ?????? ?????????? ??? ????
????????????? ??? ?????? ??? ?????? ?????????? ?????? ?? ?????? ?????????? ?????? ??????, ???
????????????? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ??? ???? ?????? ?????????? ??????
??? ?????? ??? ?????? ??????, ?? ?????? ?????????? ??? ???? ?????? ?????????? ?????? ?????? ???
?? ?????? ?????? ?? ?????? ??? ???? ?????????? (32).

43. ? ?? ??? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????
?? ?????????????? ??? Aspiro. ? ?? ??? ?????? ?????????? ?????????????? ?????????????? ?? ???
????????????? ??? ?????? ?????? ?? ?????????? ?????? ?????????????? ?????????????? ?? ?????? ?????????? ??????
??? ?????? ?????????? ??????????.

44. ?????????????? ??? ?????? ??? ???? ?????????? ??? ?????? ??? ?????? ? Aspiro ??? ?????? ???
????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ???
????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ?????? ? Aspiro ??? ?????? ???
????? ?????????? ???.

- ?????? ??? ??? ?????? ?????????? ??? ?????????? ?????????? ?????????????? ??????????????

45. ??? ?????????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???? ?????? ??? ??????
?? ?????????? ??? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ???
????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
????? ??? ?????????? ?????????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??????????
????????????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? 2, ?????????? 1, ??? ?????? 77/92 ??? 2, ?????? 3, ???
????? 2002/92.

46. ?? ?????????? ??? ?????? ?????????? ?? ?????????? ?? ???? ?????????? ?????????????? ???
??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? 135, ?????????? 1, ??????? ??, ??? ?????? ??? ?????? ??? ?. ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????????? ?????????? ??? ?????????????? ??? ?????? ?????? 77/92 (33),
????? ?????? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ?????????? ??? ?????? ?????????? ?????????????? (34), ??? ? ?? ??????????
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? (35), ?????? ?????? ???
??? ??? ??? ???, ?? ?????????? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ??? ?????? ??? ?????? ??? (36).

47. ?? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? 77/92 ??? ??? ??? ??????
2002/92 ??? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
????? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? 135, ?????????? 1, ?????? ??, ???
????? ??? ???.

48. ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ???
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 77/92 ??? ??? ??????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? «?????????»
????????? » ??? ?????? 2002/92 ???????, ??? ??? ??? ?????? ???, ? ?????
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??

? ??????? ? ?????? ??????? ?????? ??? ?????????????? ?????? (37), ?????? ?? ??? ?????? ???
?????? ?????? ?????? ?? ?????????????? ??????????????, ? ?????? ?????????????? ??????
????? ?? ?????????????? ?????????? ?? ?????? ? ?????? ?????????? ?? ?????????? ??
????????? ?? ?? ??????????.

49. ??? ?? ??????? ??????? ?????? ?? ?????????????? ?????? ?? ?????????????? ??? ??????????????
?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????? ???
Aspiro. ??? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 2, ???
3, ??? ?????? 2002/92 ??? «? ??? ?????????? ?????????? ?????????? ?????????? ??? ??????
????????????? ??????????» ??? ?????????? ?? ?????????? ?????????? ?????????? ??? ???
????? ??? ?? ??? ??????.

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

50. ??? ?? ?????? ??? ?????? ?????????? ??? ? ?????????????? ?????? ?? ??????????
????????????? ??????????, ??? ????? ?????????? ??? Aspiro, ??? ??????????
??? ?? ??? ?? ?????? ?? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ???
??? ?????? 135, ?????????? 1, ?????? ??, ??? ?????? ???.

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

51. ?? ?????????? ?????? ?? ?????????????? ??? ?? ?????? ?????????? ?????????? ???
????????? ??? ?????? ??? ?????????????? ??????????????, ??? ?????? ?????????? ??????????
????? ??? ?????????? ???.

52. ??????? ??? ?? ??? ?????? ??????????, ?????? ???, ??? ?? ??????????????
?????? ?? ??????? ?? ?????????? ?? ?????????? ?????? ?? ?????, ??? ?????????? ??????????
?????, ??? ?????????? ??????, ??? ?? ?????????? ??? ?????? ?? ?????????? ?? ?????????? ??
????????? ??? ?? ??? ?????? ??? ?????? 135, ?????????? 1, ?????? ??, ??? ??????
????? ??? (38), ?????????? ??? ?????? ?????????? ??? ?????? ?? ?????????? ??? ?????? ??
??? ?? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??
????? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ????. ??? ? ?????????? ??????????
??? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???, ???
????????????? ??? ?? ??? ?????? ??? ?????? 135, ?????????? 1, ?????? ??, ??? ??????
????? ??? ?? ??? ?????? ??? ?????? ?????????? ???, ??? ?????? ?????? ??? ?????? ??
????????? ??? ?? ??? ?????? ??? ?????? ?????????? ???, ??? ?????? ?????? ??? ?????? ??
????????? ??? ?? ??? ?????? ??? ?????? ?????????? ???, ??? ?????? ?????? ??? ?????? ??
168, ?????? ??, ??? ?????? ???.

53. ?? ?? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ? ?????????? ??? ?? ??? ??
??? ?????? ?????????? ? ?????????? —????????? ??? ?????????? ?????? ?????????? ??????????
????? ?????? (39) — ??? ?????? ?????? ?????????? ?????? ?????? ?????? ??????????
????????? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????
????????? ??? ?????????? . ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????
????????? ??? ?????????? ?? ??? . ??? ?????????? ??? ? ?????? ?????? ?????????? ?. Poiares
Maduro, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? (40).

54. ??? ?? ?????? ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ? ?????? ???
??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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

55. ???????, ? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ??????
????? ??? ?????? ??? ?????? ??? ? ?????????? ?????? ?????????? ?????? ?????? ??????????
??? ??? ????. ????, ?? ???????, ?? ?????????? ??? ?????? ??? ?????? ??? ??????
??? ?????????? ??? ?????????? ??? ??? ????. ??? ?????? ?????? ?????? ?????? ??? ??? ??
?? ??? ?????? ??? ?? ??? ?????? ?????????? ??? ? ?????? ? ?????????? ?????? ??? ??????????
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ?????????????? ??? ??
????????? ??? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ??? ?? ??????
??? ??? ?????? ??? ?????? 135, ?????????? 1, ??????? ?, ??? ?????? ??? ??.

IV – ???????

56. ?????? ??? ????????, ???????? ??? ??????????? ?? ??????????? ??? ?????????????? ?????? ?????????????? ?????? ??? Naczelnego S?d Administracyjny ?? ????:

? ?????????????? ?????? ??? ?????????? ?????????????? ?????????????? ? ??????
????????????????? ??? ?????? ??? ?????? ??? ??? ?????????? ??? ??????????, ????? ?
????? ?? ?????????? ?????????? ?? ??? ?????????? ??? ?????? ? ?????????????? ???
????? ?? ?????????? ?? ?? ?????? ?????????? ?????????? ??? ?????? ?? ??? ?????? ??? ??????
?? ??? ?????????? ?? ??? ?????? ??? ?????? ?????????? ??????????, ??? ?????????????? ???
??? ?????? ??? ??? ??? ??? ??? 135, ?????????? 1, ?????????? ?, ??? ??????
2006/112/??.

1— ?????? ?? ??????????: ? ???????.

2 — ???. ??????? ?????????? CPP (C?349/96, EU:C:1999:93), Skandia (C?240/99, EU:C:2001:140), Taksatorringen (C?8/01, EU:C:2003:621), Arthur Andersen (C?472/03, EU:C:2005:135), ??????? ??? ???????? (C?13/06, EU:C:2006:765), Beheer (C?124/07, EU:C:2008:196), Swiss Re Germany Holding (C?242/08, EU:C:2009:647), BG? Leasing (C?224/11, EU:C:2013:15), ???? ??? Mapfre asistencia ??? Mapfre warranty (C?584/13, EU:C:2015:488).

3 — ?? L 347, ?. 1.

4 — ???? ?????? 77/388/??? ??? ????????????, ??? 17?? ????? 1977, ??? ??????????????
??? ?????????? ??? ?????? ??????, ??? ????????? ?? ??? ????? ?????? ?????? ?????? — ????
?????? ????? ?????????????? ?????: ?????????? ?????????? ??? (?? ????. ???.. 09/001 ?.
49).

5— ?????? 77/92/??? ??? ???????????, ??? 13? ??????????? 1976, ??? ?? ?????? ???
?????????? ??? ??????????? ??? ??????????? ????? ?????? ??? ??????????? ???????????
??? ??? ??????? ??? ??????? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ???
????? ??????? (ex ??? 630 ???), ??? ??? ?????? ??? ??????????? ?????? ??? ?????
??? ??????????? ??? (?? ??. ???. 06/001, ?. 243).

6— ?????? 2002/92/?? ??? ?????????? ?????????????? ??? ?? ????????????, ??? 9??
?????????? 2002, ?????? ?? ??? ?????????? ?????????????? (?? 2003, L 9, ? 3).

7 — ??., ????, ?????, ??????? Asociación Española de Banca Privada ??. (C?67/91, EU:C:1992:330, ???? 25), Aprile (C?125/94, EU:C:1995:309, ???? 16), PreussenElektra (C?379/98, EU:C:2001:160, ???? 38), Elshani (C?459/07, EU:C:2009:224, ???? 40), ??? Križan ??. (C?416/10, EU:C:2013:8, ???? 53).

8 — ???. ?????? ?????? ?????????? Bosman (C?415/93, EU:C:1995:463, ????? 61), PreussenElektra (C?379/98, EU:C:2001:160, ????? 39), Omega (C?36/02, EU:C:2004:614, ????? 20), ??? Balázs (C?251/14, EU:C:2015:687, ????? 26).

9 — ??., ????, ?????, ??????? Von Colson ??? Kamann (14/83, EU:C:1984:153, ????? 26), Pfeiffer ??. (C?397/01 ??? C?403/01, EU:C:2004:584, ????? 113), ????? ??? Ind?li? ir investicij? draudimas ??? Neman?nas (C?671/13, EU:C:2015:418, ????? 56).

10 — ???. ????????? CPP (C?349/96, EU:C:1999:93, ????? 15), Taksatorringen (C?8/01, EU:C:2003:621, ????? 37), ???????? ????. ??????? (C?13/06, EU:C:2006:765, ????? 9), BG? Leasing (C?224/11, EU:C:2013:15, ????? 56), ????? ??? Mapfre asistencia ??? Mapfre warranty (C?584/13, EU:C:2015:488, ????? 27).

11 — ????????? CPP (C?349/96, EU:C:1999:93, ????? 17), Taksatorringen (C?8/01, EU:C:2003:621, ????? 39), ????????? ???? ??????? (C?13/06, EU:C:2006:765, ????? 10), Swiss Re Germany Holding (C?242/08, EU:C:2009:647, ????? 34), BG? Leasing (C?224/11, EU:C:2013:15, ????? 58), ????? ??? Mapfre asistencia ??? Mapfre warranty (C?584/13, EU:C:2015:488, ????? 28).

12 — ???. ????????? CPP (C?349/96, EU:C:1999:93, ????? 22), BG? Leasing (C?224/11, EU:C:2013:15, ????? 59), ????? ??? Mapfre asistencia ??? Mapfre warranty (C?584/13, EU:C:2015:488, ????? 30).

13 — ???. ??????? Skandia (C?240/99, EU:C:2001:140, ????? 41), Taksatorringen (C?8/01, EU:C:2003:621, ????? 41), Arthur Andersen (C?472/03, EU:C:2005:135, ????? 22), BG? Leasing (C?224/11, EU:C:2013:15, ????? 58), ????? ??? Mapfre asistencia ??? Mapfre warranty (C?584/13, EU:C:2015:488, ????? 29).

15 — ???. ?????????? SDC (C?2/95, EU:C:1997:278, ????? 64), CSC Financial Services (C?235/00, EU:C:2001:696, ????? 23), Abbey National (C?169/04, EU:C:2006:289, ????? 67), ??? Ludwig (C?453/05, EU:C:2007:369, ????? 34).

16 — ??, ??????? ?? ?????? ??? ?????????? ??? ?????????? ??? ??, ??? ?????? ???.
135, ?????????? 1, ??????? ??, ??? ?????? ??? ??.

17 — ???. ?????????? ?? ??????? ??? ?????????? ??? ?????????? ??? ???. ??? ???????
135, ?????????? 1, ??????? ??, ??? ??????? ????.

18 — ???. ?????????? Skandia (C?240/99, EU:C:2001:140, ???? 36), ??? Taksatorringen
(C?8/01, EU:C:2003:621, ???? 43).

19 — ??????? ??????? ?? ?????????? ??? ?????????? ??? ?????????????? ??? ??????????
????????? ?? ?? ????? ?????? ?????? ?????????????? ?????, ??? ????? ?? ??????????????
????????????? ??? ?????????????? ?????? [COM (2007) 747 ??????]?? ???
????????????? ?? ?????????? ??? ?????? 135 ??? ?????? ??? ?? ?????????? 1? ?? ???
???? ??????????: «1?. ? ??????? ??? ?????????? ??? ?????????? ???? ???? ???? ?????????? 1
????????? ??? ?????? ?????????? ??? ?? ?????????? ?????????? ?????? ??????????????
????????????? ?????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ?????? ??? ??????????
????????????? ??? ?????? ?????????? ??? ?? ?????? ?????????? ?????? ??? ??????????»..

20 — ???. ?????? ?????? ?????????? Linneweber ??? ???????? (C?453/02 ??? C?462/02,
EU:C:2005:92, ???? 24), Rank Group (C?259/10 ??? C?260/10, EU:C:2011:719, ???? 32), ???
Zimmermann (C?174/11, EU:C:2012:716, ???? 48).

21 — ???. ?????????? Deutsche Bank (C?44/11, EU:C:2012:484, ???? 45) ??? Zimmermann
(C?174/11, EU:C:2012:716, ???? 50)? ???. ?????? ??? ??? ?????? ?????????? ??????????
????????????? ?????????? ?????????? ?????????? ??? ?????? (C?479/13, EU:C:2015:141,
????? 43), ??? ?????????? ??? ?????????????? (C?502/13, EU:C:2015:143, ???? 51).

22 — ???. ?????? Swiss Re Germany Holding (C?242/08, EU:C:2009:647, ???? 38).

23 — ???. ?????? ?????????? ??? ?????? ?????????? N. Fennelly ??? ?????? CPP
(C?349/96, EU:C:1998:281, ???? 31) ??? ??? ?????? ?????????? M. Poires Maduro ???
?????? Arthur Andersen (C?472/03, EU:C:2005:8, ???? 20).

24 — ???. ?????????? Arthur Andersen (C?472/03, EU:C:2005:135, ???? 32), ??? Beheer
(C?124/07, EU:C:2008:196, ???? 17 ??? 18).

25 — ???. ?????? Arthur Andersen (C?472/03, EU:C:2005:135, ???? 29).

26 — ?????????? Taksatorringen (C?8/01, EU:C:2003:621, ???? 44), Arthur Andersen
(C?472/03, EU:C:2005:135, ???? 33), ??? Beheer (C?124/07, EU:C:2008:196, ???? 20).

27 — ???. ?????? Arthur Andersen (C?472/03, EU:C:2005:135, ???? 36) ??? ???
????????????? ?????????? ???. ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? Taksatorringen
(C?8/01, EU:C:2003:621, ???? 45) ??? ??? ?????? ??????????.

28 — ???. ?????? ?????? ?????????? Stichting Uitvoering Financiële Acties (348/87,
EU:C:1989:246, ???? 13), Cimber Air (C?382/02, EU:C:2004:534, ???? 25), PFC Clinic
(C?91/12, EU:C:2013:198, ???? 23), ??? De Fruytier (C?334/14, EU:C:2015:437, ???? 18).

29 — ???. ?????? ?????????? ??? ?????? ?????????? ?. Poires Maduro ??? ??????
Arthur Andersen (C?472/03, EU:C:2005:8, ???? 13) ??? ??? ?????? ?????????? ?.
Jääskinen ??? ?????? Skandinaviska Enskilda Banken (C?540/09, EU:C:2010:788, ???? 22).

- 30 — ???. ????????? CPP (C?349/96, EU:C:1999:93, ????? 23), ??? BG? Leasing (C?224/11, EU:C:2013:15, ????? 67).
- 31 — ???. ??????? Arthur Andersen (C?472/03, EU:C:2005:135, ????? 38).
- 32 — ???. ??????? Beheer (C?124/07, EU:C:2008:196, ????? 18).
- 33 — ???. ????????? Taksatorringen (C?8/01, EU:C:2003:621, ????? 45), Arthur Andersen (C?472/03, EU:C:2005:135, ????? 31), ??? Beheer (C?124/07, EU:C:2008:196, ????? 19).
- 34 — ??? ????????? ???????? ??? ?????????? [COM (2012) 360 ??????] ??? ?????????????? ??? ??????? 2002/92 ? ????? ?????????????? ?????? ??? ?????????? ??? ?????????? ??? «????????????? ??????????????» ???????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? (???. ??? ?????????? ?????? 9 ?????? ??? ?? ?????? 2, ?????? 3, ??? ?????? ??? ?? ?????? ??? ?????????? ??? ??????????).
- 35 — ???. ???????, ?????? 39.
- 36 — ???. ??????? Unterpertinger (C?212/01, EU:C:2003:625, ????? 37).
- 37 — ???. ?????? 2, ?????????? 1, ???????? ?? ??? ?, ??? ??????? 77/92 ??? ?????? 2, ?????? 3, ?????? ??????, ??? ??????? 2002/92.
- 38 — ??????? Beheer (C?124/07, EU:C:2008:196, ????? 28).
- 39 — ???. ?????? 169, ???????? ??, ??? ??????? ????.
- 40 — ???. ?????????? ??? ?????? ?????????? ?. Poiares Maduro ????. ??????? Arthur Andersen (C?472/03, EU:C:2005:8, ?????? 39).