

@import url(../../../../css/generic.css); EUR-Lex - 61995J0080 - EL

Avis juridique important

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61995J0080

?????? ?? ?????????? (???? ???) ??? 6?? ?????????? 1997. - Harnas & Helm CV ???
Staatssecretaris van Financiën. - ?????? ?? ?????? ?????????????? ??????????: Hoge
Raad - ??? ??????. - ??? - ???????? ?? ?????? 4, 13 ??? 17 ??? ?????? ?????? 77/388/??? -
????????????? ??? ????? - ???????? ?? ?????? ?????????? - ?????? C-80/95.

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????? 4 ??? ????? ?????? - ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
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(????? 77/388 ??? ??????????, ??? 4 § 2)

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? ???? 4, ?????????? 2, ??? ?? ?????? ?????? 77/388, ??? ?????????????? ??? ??????????
?? ???? ???? ?????, ??? ??????? ?? ??? ?????? ?????? ?????? ???????, ?????? ?? ??????????
?? ?? ?????? ??? ? ??? ?????? ?????????? ??? ? ??? ?????? ?????? ???????, ??? ??
????????????? ??? ?????? ??? ?????????????? ??????????????, ?????? ?? ? ??????
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?' ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????? ???.

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??? ??? ?? ??????????? ?????? ??? Hoge Raad der Nederlanden ??? ?? ???????????, ???'
?????????? ??? ?????? 177 ??? ??????? ??, ?? ??? ????? ???????, ??? ??????? ???
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Harnas & Helm CV

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Staatssecretaris van Financi?n,

? ?????? ??????????? ??????? ?? ??? ?????? ??? ?????? 4, ?????????? 2, 13,
????? ?, ??????? ??, ?????? 5, ??? 17, ??????? 3, ??????? ??, ??? ????? ??????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ??? ?????????? ???
????? ????, ??? ??????? ?? ??? ????? ?????? - ??? ?????? ????,
????????????? ????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49),

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

?????????? ??? ??? G. F. Mancini, ??????? ??????? (?????????), ?. ?. ???????, P. J. G.
Kapteyn, G. Hirsch ??? H. Ragnemalm, ???????,

?????? ??????????: N. Fennelly

?????????: H. A. R?hl, ?????? ??????? ??????????,

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

- ? ??????? ??? ???????, ?????????????? ??? ??? A. Bos, ?????? ??????? ??? ??????????
??????????,

- ? ??????? ???????, ?????????????? ??? ?? C. de Salins, ?????????????? ??? ??????????
?????? ?????????? ??? ?????????? ???????????, ??? ??? G. Mignot, ?????????? ??????????
????????? ??? ???????????,

- ? ??????? ??? ?????????? ???????????, ?????????????? ??? ??? B. J. Drijber, ?????? ???
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?? ? M. A. Fierstra, ?????? ?????? ??????? ??? ?????????? ???????????, ??? ???????
??????????, ?????????????? ??? ??? G. Mignot, ??? ??? ???????, ???????????????
?? ??? ?. J. Drijber, ??? ?? ?????????? ??? 1?? ??????? 1996,

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?? 7?? ??????? 1996,

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1 ?? ??????? ?? 15?? ??????? 1995, ?? ?????????? ?? ??????????? ?? 17 ??????? 1995,
?? Hoge Raad der Nederlanden ???????, ???' ?????????? ?? ??????? 177 ?? ??????? ??,
????????? ??????????? ?? ??????? ?? ??????? ?? 4, ??????????? 2,
13, ????? ? , ??????? ??, ?????? 5, ??? 17, ?????????? 3, ??????? ??, ??? ????? ??????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????? ?? ??????????? ??
????? ?????, ??? ??????? ?? ??? ????? ?????? - ??? ????? ?????? ??
????????????? ???: ?????????? ?????????? ??? (?? ??. ???. 09/001, ?. 49, ??? ???:
???, ??), ??????? ?? ?????????????? ?? ??????? ?? ?????????? ?????????????? ??
?? ?? ?????????? ?? ??????????.

2 ?? ?????????? ????, ????????, ??? ??????? ?????????? ???????, ??? ?????????????? ??????????
Harnas & Helm (??? ????: Harnas) ??? ??? ??????? ?????????? ??????????????, ??????? ??
?????????? ????, ??????????? ????, ?????????????? ????, ?????????????? ??? (??? ????: ???), ?? ??????? ??
Harnas.

3 ??????? ?? ?? ?????? 4, ??????????? 1 ??? 2, ??? ?????? ???????;

«1. ?????????? ?? ??????????? ????? ?? ????? ?????????????? ????? ?? ????? ????? ?????????? ??
????????????? ??, ??? ?? ???? ??????????? ?????????????????? ?? ????? ?? ?????????????? ??
????????? 2, ??????????? ?? ?????????????? ????? ?? ?????????????? ?? ????? ?? ?????????????? ??
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2. ?????????????? ????????????????, ??? ???? ?????? ??? ?????????????? 1, ?????? ??? ??
????????????????? ??? ????????????, ??? ?????? ? ??? ?????????????? ?????????? (...). ??
????????? ?????????????? ?????????? ?????? ? ?????????????? ?????????? ? \$\$\$\$? ??? ??????,
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4 ??????? ?? ?? ?????? 13, ?????? ?, ?? ?????? ????. ?????????????? ????. ????????????.
???????????????, ????. ?????? ??????:

«?) ??? ?????????? ?????????;

1. ?? ??????? ?? ???? ?????????????? ?????????? ????? ?? ?? ?????????? ??????????
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(iii)

5. ??? ????????, ?????????????? ??? ??? ????????????????, ???' ?????????? ???
????????? ??? ??? ????????????, ?? ?????? ?????? ?????? ??? ?????? ?????? ????
???????, ?????????? ??? ?????? ????????:

- ?????? ?????????????????? ?????????? (...),»

5 ??????? ?? ???? 17, ?????????? 3, ??????? ??, ??? ????? ??????, ?? ????? ??
?????? ?? ??? ?????????????? ??? ????? ?????? ? ?????????? ??? ??? ?????? ?? ?????? ??
?? ?????????? ?????????????????? ??? ??? ?????? ??? ?????? ??? ??? ??????????????
?????? ?? ?? ????? 13, ????? ?, ??????? ?? ??? ??, ?????? 1 ?? 5, ????? ? ?????? ??
????????????? ????? ?? ?????????????? ? ????? ?? ?????????? ?????? ?????????????? ??

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6 ??? ???? ?????????? ?????????? ??? ???? ?????? ??? ???? ??? ?????????? ?????? Harnas
???????, ?????????? ??? ???? ?????? ??? 1?? ?????????? 1987 ??? ???? 1? ?
?????? 1991, ?????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ???? ???? ???? 1?
????????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??? ???? ???? ?????. ?
Harnas ???????, ???' ??? ??? ?????? ???????, ??? ??? ?????? ???????, ???????, ??????? ?
??????.

7 ?? 1984 ? Harnas ??????? ??? ?????? All American Metals ??????, ?? ?????? ?????? ???
16 ??????? 1987. ??? 1? ?o????? 1992 ??????? ?????? ?? ??? ??? ???????, ??? Opticast
International Corporation. ??? ?????????? ??? ??????, ? Harnas ??????? ??? ??? ??? ???
?????? ??? ??? ??????? ?????.

8 ? ??????? ??????, ?????????? ??? ? Harnas ??? ??????? ?? ????????, ?????? ??? ??? 17
?????? 1987, ?????????????? ??? ?????? ??? ?????? ??? ?????? 7 ??? Wet op de omzetbelasting
1968 (????????? ??? ?????? ???), ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ???
????????? ??? ?????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?????? ?????? 17?? ??????? 1987 ??? 1?? ??????? 1991 ????????????????, ?????
124 517 ??????? ?????? (HFL).

9 ?? Gerechtshof te Amsterdam ??????? ??? ??????? ??? Harnas ??? ??? ??????? ???
??? ??? ??? ???, ??? ??? ?????? ??? ??????? ???? ?????????? ?????, ? ?? ??? ?????? ???????
??? ??????? ?????????? ?????????? ?????, ??? ??? ?????? ??? ?????? 4, ?????????? 2,
??? ??? ???????, ??? ??? ??? ??????? ?? ?????????? ?? ?????????? ??? ?????????? ??? ???, ???
??? ?????? ??? ?????????? 1 ??? ?????? ???????. ?? Gerechtshof ?????????? ??? ??? ?
????????? ?????????? ?????????? ?????????, ??? ??? ?????? ??? ?????? ??? ?????? ??????.
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10 ??? ???? ??????? ????, ? Harnas ?????? ??????? ?????? ??? Hoge Raad ?? ???
????????? ?? ?????????? ?? ??????? ?????????? ??? ?? ??????? ??? ?????????? ??
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«1) ?????? ???? ?????? ?????? ?????????? ??? ???? ?????? ?????????? - ??????? ???????
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????? ??? ?????????????? ?????? ?????????? ??? ???? ?????????? ???' ??? ??
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??? ??? ??????;

2) ?????? ???, ?? ?????????? ?????????? ?????????? ??? ?????? ???????, ??
????????????? ??? ?? ?????????? ?? ?????? ??? ???????, ??? ??? ?????? ??? ??????
????? ?, ??????? ??, ?????? 1 ? 5, ??? ?????? ???????, ?? ??????, ?????? ??????
????????? ??? ?????? ?????? ??? ?????????? ?????????????? ??? ?????? ??? ??????????
????????? ?????? ?? ?? ?????? 17, ?????????? 3, ??? ???, ??? ?????????? ?? ??? ??? ??????
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????????? ??? ??????;

3) ?????? ???, ?? ?????????? ?????????? ?????????? ??? ?????? ???????, ??? ?????? ?
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? 2?? ?????? 1993, C-333/91, Sofitam (1), ??? ?????????? ??? ??????
????????? ??? ?????? ?????? ???????, ? ?????????????? ?????? ??? ?????????? ???'

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?????????????? ??? ?? ?????? ??? ?????? ??? ?????? ??????;

4) ?? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ??? ?? ?????? ???,
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11 ?? ?? ?????? ?? ???????, ?? ?????? ??????????? ?????? ???' ?????? ?? ?????? ?? ?? ?????? ?? ?? ??????
4, ?????????? 2, ??? ?? ?????? ??????? ?????? ?? ?????????? ??? ?? ?????? ??? ?? ??? ?????? ??? ?? ??? ??????
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12 ??????, ???' ?????, ?? ??????????? ???, ??????? ?? ?? ????? 4, ?????????? 2, ??? ?? ???
??????, ? ?????? ??? ??????????? ??????????????? ???????????????, ?????? ???, ???
????????????? ?????????? ? \$??? ?????? ??? ?? ?????? ?????????? ?????? ??? ?? ??????
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13 ??????, ??? ???????, ?? ?????????? ???, ?????? ?? ?????????? ??? ?????? ???????????????
????????? (?. ?????? ?? 4?? ??????? 1990, C-186/89, *Van Tiem*, ?????? 1990, ?. ?-
4363, ??? 17), ?? ????? 4 ??? ?????? ?????? ?????????? ?????????? ??? ?? ??????
????????? ??? ?????? ??????????????? ?????? ??????????????? ??? ?? ?????? ??? ?? ??????
?????????, ??? ??????? ??? ?? ?????? ???????.

14 ??????, ??? ?? ?????????? ??? ??????????? ?????? ?????????? ??? ?? ?????? ???
«?????????», ?????? ?? ?? ?????? ??? ?????? 4, ?????????? 2, ??????????, ??????
?? ?? ?????????? ??? ?????? ??? ??????????? ??? ?????? ?????????? ??? ?? ??????
????????????? ???, ?? ??? ?? ?????, ??????????? ??? ?????? ??? ?????? ??? ?? ?????, ???
????????? ??? ?????? ??? ?? ??????????? ??? ?????? ?????????? ??? ?????? ??? ?? ??????
(????????? ??? *Van Tiem*, ??? 18).

15 ??????, ?? ?????????? ??? ?????? ?????? ??????????? ??? ?? ?????? ?????????? ??? ?? ???
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????? ??' ?????? ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????
????? ??? (?????? ?? 20?? ?????? 1991, C-60/90, *Polysar Investments Netherlands*,
?????? 1991, ?. ?-3111, ??? 13). ? ??? ?????????? ?????? ??? ?? ?????? ??????????
?? ?? ?????? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???,
????????? ??? ?? ?????? ?????? ??? ?????? (?. ?, ???, ??? ?? ?????? ???, ???
????????????? ??? ?????? ??? ?????? C-333/91, *Sofitam*, ??? 12).

16 ?????, ??????, ?????? ?? ?????????????? ??? ?? 13, ????, ?, ??????? ??, ??????
5, ??? ?????? ?????? ?????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?? ??? ?? ???
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Investments Netherlands, ??? 14, ???, ??? ?? ?????? ??? 20?? ?????? 1996, C-
155/94, *Wellcome Trust*, ??? 1996, ?. ?-3013, ??? 35, ??? ?? 11?? ?????? 1996, C-
306/94, *R?gie dauphinoise*, ??? 1996, ?. ?-3695, ??? 18).

17 ??????, ? ?????? ?????????? ?????????? ??? ?????? ?? ?????? ?????????? ?????? ??????
??? ?????????????? ?????????? ??? ?????? ???????, ??? ?????????? ??? ??????????
??? ?????????? ?????? Polysar Investments Netherlands, ??? ?????? ?????? ???
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18 ??????, ?????? ?? ?????????? ???, ??? ?????? ?????? ??? ? ?????????? ??????????, ?
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??? ?????? ?????? ??? ?????? ??????. ??? ??? ?????? ?????? ???, ?? ???' ?????? ???
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19 ??? ??????, ?????? ?????? ?????? ??? ? ?????? ?????????? ?? ??????
????????? ??? ?????????? ??' ?,?? ? ?????? ??????. ??' ?????? ?????? ??? ???,
????? 5 ??? ????? 13, ????, ???, ?????? ??, ?????????? ??? ??? ?????? ??? ??? ???
????????? ?? ?????????? ??????????.

20 ??? ??????, ??? ?????? ?????? ??? ? ?????? ?? ?????????? ??? ?? ?????? 4,
????????? 2, ??? ?????? ?????? ??? ? ?????????? ??? ?????? ??? ?????? ??? ? ?????? ???
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21 ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??????, ?? ?????? ??????????
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22 ?? ?????? ??? ?????? ?????????? ? ?????????? ??? ? ?????? ?????????? ?????? ??? ?
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????? ??? ?????? ??? ?????????? ?????????????? ??? ?????? ?????? ??? ??????
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(????? ???),

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Hoge Raad der Nederlanden, ??????????:

??.????? 4, ?????????? 2, ??? ?????? ??????? 77/388/???. ??? ???????????, ??? 17?? ???
1977, ??? ??????????? ???. ??????????? ???. ?????????? ??? ??????? ?????, ??? ??????? ???.
????? ??????? - ????. ?????? ??????? ?????? ?????????????? ?????: ?????????? ??????????
????, ?????? ?? ?????????? ??? ?? ?????? ??? ???? ?????? ?????? ?????????????? ??? ????
????? ??????????, ??? ?? ?????????? ??? ?????? ?????? ?????? ?????????????? ??????????????,
????? ??? ? ??????? ??? ?? ?????? ?????????? ?????? ??? ?????? ???. ?????????? ??? ????
????????? ?????????????? ?????????? ?' ?????? ??? ?????????? ??? ?????? ??? ????
????????? ??? ?????????? ???.

(1) - ??????? 1993, ?. ?-3513.