

?????? C-184/05

Twoh International BV

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Staatssecretaris van Financiën

(?????? ??? Hoge Raad der Nederlanden

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«????? ?????? ?? — ?????? 28?, A, ??????? ??, ?????? ?????? — ??????????????????
?????????? ?????? — ?????? — ?????? ?????????????? ?? ?????????????? ?????? ??
????????? ?????????? — ?????? 77/799/??? — ?????? ?????????? ?? ?????????? ?????? ??
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? — ?????????? (???) 218/92 —
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(?????? 77/388 ??? ??????????, ?????? 28?, A, ??????? a?, ??, 1)

?? ?????? 28?, A, ??????? ??, ?????? ??????, ??? ?????? ?????? 77/388 ??? ??????????????
?? ?????????? ??, ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????, ???
????????????? ??, ??? ?????? 95/7, ?? ?????????? ??, ??? ?????? 77/799 ??? ??? ??????????
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ???
????????????? ??, ??? ?????? 92/12, ??? ??, ??? ?????? 218/92 ??????? ?? ??
????????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
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?????, ??? ??? ?????? ??? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????
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????? ??? ?????????? ????. ???????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
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????????? ??, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??.
????????? ?????????? ??? ?????? ??? «????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
????????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??? ?????????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??

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

(?? ??????? 30-31, 33-34, 38 ??? ??????.)

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

??? 27?? ?????????? 2007 (*)

«???? ?????? ??? – ??? 28?, A, ??????? ??, ????? ????? – ?????????????? ??????????
– ??????? – ??????? ?????????? ??? ?????????? ????? ?? ??????? ?????????? –
?????? 77/799/?? – ??????? ??????? ??? ?????????? ????? ?? ??????? ?????? ?????? ???
??? ?????? ??? ??????? ??? – ?????????? (???) 218/92 – ?????????? ?????????? ???
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?? ?????????? ??? ?????? ??????? ?????????????? ?????????? ??? ?????? 234 ??,
??? ?????? ?? Hoge Raad der Nederlanden (???? ??) ?? ?????? ??? 22?? ???????
2005, ? ?????? ??????? ??? ?????????? ??? 25 ??????? 2005, ??? ?????? ???
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Twoh International BV

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Staatssecretaris van Financiën,

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

????????? ??? ??? A. Rosas, ??????? ???????, A. Borg Barthet, J. Malenovský, U. Lõhmus
(???????) ??? A. Ó Caoimh, ????????,

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

?????????: L. Hewlett, ????? ?????????? ????????????

?????? ??? ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ??? ?????????? ???
15?? ?????? 2006,

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

– ? Twoh International BV, ?????????????? ??? ??? J. H. Sassen, advocaat,

- ? ?????????? ??? ??? ?????, ??????????????? ??? ??? H. G. Sevenster ??? M. de Mol ??? ??? ??? P. van Ginneken,
- ? ??????? ????????, ??????????????? ??? ??? G. de Bergues ??? ??? C. Jurgensen-Mercier,
- ? ????????, ??????????????? ??? ??? D. O'Hagan, ??????????????? ??? ??? E. Fitzsimons, SC, ??? B. Conway, BL,
- ? ????????, ??????????????? ??? ??? I. M. Braguglia, ??????????????? ??? ??? G. De Bellis, avvocato dello Stato,
- ? ????????, ????????????, ??????????????? ??? ??? T. Nowakowski,
- ? ????????????, ????????????, ??? ??? L. Fernandes ??? ?? C. Lança,
- ? ????????, ??? ????????, ????????????, ????????????, ??? ??? R. Lyal ??? A. Weimar,

????? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ??????????? ?? 11?? ?????????? 2007,

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1 ? ?????? ??? ??? ????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 28?, A, ????????, ??, ?????? ??????, ??? ?????? ?????? 77/388/???, ??? ???????????, ??? 17?? ?????? 1977, ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? – ??? ?????? ?????? ??? ?????? ?????????????? ????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?. 49), ??? ?????????????? ??? ??? ?????? 95/7/??, ??? ??????????, ??? 10?? ?????????? 1995 (?? L 102, ?. 18, ??? ????: ??? ??????), ?? ?????????? ?? ??? ?????? 77/799/E?? ??? ??????????, ??? 19?? ?????????? 1977, ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (?? L 336, ?. 15), ??? ?????????????? ?? ??? ?????? 92/12/???, ??? ??????????, ??? 25?? ?????????? 1992 (?? L 76, ?. 1, ??? ????: ??? ?????? ??? ?????? ??? ?????????? ??? ??????), ??? ??? ?????????? (E??) 218/92 ??? ??????????, ??? 27?? ?????????? 1992, ??????? ?? ?? ?????????? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? (???) (?? L 24, ?. 1, ??? ????: ?????????? ??? ??????????????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? Twoh International BV (??? ????: Twoh) ??? ??? Staatssecretaris van Financiën (????????? ??????????) ??????? ?? ?? ?????????? ?????? ?????? ?????? ?????? ?????? (??? ????: ???) ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? 1996 ??????? ?? ?? ??????????????? ??????????????.

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3 ?????? ?? ?? ?????? 2 ??? ?????? ??????, ?????????? ?? ?? ?? ??????????

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

4 ?? ?????? 28?, A, ?????????? ?, ????? ??????, ??? ?????? ?????? ?????????? ?????????? ?? ????:

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

?) ??? ?????????? ????, ??? ?? ?????? ??? ?????? ??? ?????? 5 [...], ?? ?????? ?????????????? ?
??????????, ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????, ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? 3 ??? ?????? ??? ?????????? ???
????????????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????????, ??? ?????? ???' ??? ?????? ??? ?????? ???, ?? ?????? ?????? ?????????? ??? ??
?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????.

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5 ?? ?????? 1, ?????????? 1, ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??
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«?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?? ??? ?????? ?????? ???,
????????? ??? ?????????? ?? ??? ?????? ?????????? ??? ?????? ?????????? ??? ??????
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6 ?? ?????? 2, ?????????? 1, ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ?????????? ??
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«? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
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????????? 1, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?? ???
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ???, ?? ?????? ?? ?????? ??? ?????? ??
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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

7 ??? ?? ?????? 4, ?????????? 3, ??? ?????????? ??? ?????? ??? ?????? ?????????? ??????????:

«?? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ??? ?????? 1 ??? ?? ??? ?? ???
?????????, ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
[????????], ?????????? ??? ??????, ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????.

– ????? ?????????? ?????????????? ?????????? ??? ???? ?????????? ??? ?????????????????? ???
????????? ??? ?????????????? ??? ?????????????? 2, ??????? ??????????,
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– ?? ?????????? ??? ???? ??? ?????????????? ?????????? ?????? ??? ?????? ???
????????????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??????????, ??? ???? ???? ?????? ??? ?????? ?????? ?????????? ?? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
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8 ?? ????? 5 ??? ?????????? ??? ?????? ??? ?????????????? ?????????????? ??? ?? ????:

«1. ??? ?????? ?? ?????????? ??? ?????? ??? ?????? 4 ?????????? ??? ?????? ??????????, ???
????? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ?????? ??? ?????????? ?????? ?????????? . ? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
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2. ??? ?????????? ??? ?????????? ??? ?????? ?????? 1, ? ?????????? ??? ?????? ???
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????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
?????..»

9 ?? ????? 6, ?????????? 4, ??? ?????????? ??? ?????? ??? ?????????? ?????????? ????:

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

10 ?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? III ???
????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ?????? 7, ?????????? 1,
????? ????, ??? ?? ????:

«1. ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? 5, ?????????? 2, ??? ???
????? ????:

– ? ?????? ??? ???? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
?? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??????
????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???,

– ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
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– ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?? ??? ?????? ?? ?????? ???
????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ..»

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

11 ????, ??, ?????? 9, ??????????? 2, ??????? ??, ??? Wet op de omzetbelasting 1968 (??????
????? ??? ?????? ??????? ???????), ??? 28?? ??????? 1968 (*Staatsblad* 1968, ?????. 329), ??
????? ??? ?????? ??? ?????? ??? ?????????????? ?????????????? (??? ????: ?????? ??? 1968), ?
????????????? ??? ?????????????? ?????????????? ??? ?????????? ??????????, ??? ????
?????? ??? ?????????????? ??? ?????? ??? ?????? II, ??????????? ?????????????? ??????
?????????, ?? ?????????? ?? ?????????????? ??? ?????????? ?????? ?????? ?????????? ??????????
?????????????.

12 ? ??????? 6, ??????? a, ??? ?? ??? ?????? || ?????????? ??? ?????????????? ??
????????? ?????????? «?? ??? ?? ??? ?????????? ?? ??? ?????? ??????, ??? ??????????
?? ??? ?? ??? ?????????? ??????.»

13 ?? ?????? 12, ?????????? 1, ??? ???????? ??? ??????????? ??? ?????? ??? 1968
(Uitvoeringsbesluit omzetbelasting 1968) ?????? ?? ???:

«?? ???????? ???????? ???????? ???????? ?????? ??? ?????????????? ??? ?????????????? ???
????????????? ??? ??? [?? 1968] ?????? ?????? ?????? ??? ?? ?????????????? ???
????? ?????????? ? ?????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ???
?????????????..»

14 ?? ?????? 4, ?????????? 3, ??? ???????? ??? ?????????? ?????????? ?????? ???
????????? ??? ?????????? ?????? (Besluit van de Staatssecretaris van Financiën),
??? 20?? ??????? 1995, ?????????? ?? ???;

«???? ?????????? ?????? “????????? ??? ??????” ? “????????? ??? ???
?????” (????????? ?????????? ??? ??????) ?? ?????????? ??????, ?
????????????? ?????????? ??? ?????????? ??? ??????? ??? ?????????? ??? ?? ??????????
?? ?????????? ?????????? ??? ?????? ??? ??????????.

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

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

????????? ??????? ??? ???????? ?????? ??? ?? ?????????????? ?????????? ???
?????????, ??? ?? ???? ?????????? ??? ?? ?????, ??? ?? ??? ?? ?????? ??' ?????? ???
????????? ??? ?? ?????? ?????? (??? ?? ??? ?????????? ? ?????????? ?????? ??? ??
?????????), ??? ?? ?????? ?????? ??? ?? ?????? ??? ?? ?????? ?? ?????????? ? ??????????????
????????? ??? ?? ?????????? ? ?????????? ??? ?? ?????? ?????? ?? ?????????? ? ??????????????
??? ?? ??? ?????? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?? ?????????? ? ??????????????
????????? ??? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????? ?????? . ? ?????????? , ??? ?? ?????? ?? ?????????? ??? ?? ?????????? ???
????????? ??? ?? ?????? , ?? ?? ?????? ?? ?????? ?????? ?????? ??? ?? ?????????? ?????? ?????? ???
????????? . ?? ?? ?????? ??? ?? ?????? ?????? ?????? ?? ?????? ??? ?? ?????????? ?????? ?????? ???
???.»

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

15 ?? 1996 ? Twoh, ??????? ?? ??? ?? ??? ?? ???, ?????????? ?? ?????????? ??
????????? ?????? ?????????? ?????????? ?????? ??????. ?? ?? ?????????? ?????????? ??
????????? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ?????????? ???
????????? ??? «????????? ??? ?? ?????????? ??????????» («ex-works» ? EXW), ? ???
????????? ?????? ?? ?????? ?? ?????? ?????? ?????? (????????????? ??? «Incoterms
2000») ??? ?????????? ?? ?????? ?????? ?????? ?????? . ? ?????? ??? ?????? ???
????????? ??? ? Twoh ?????? ?????? ?? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????????? ??? ?? ?????? , ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ??????.

16 ? Twoh ??? ?????? ??? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?????? ??? ??
????????? , ??? ?? ?????? ? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ?? ??
????? , ?? ?????????? ?? ?????????? ?????? ??? ?? ??? ?? ??? ?? ??? ?? ??? ?? . ? ?????? ???
????????? , ??? , ?? ?????? ??? ?? ?????????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??
????????? ?????? ?????? ?????? , ??? ?????? ?????? ?????? ?? ?????? ??? ?????? ?????? ?????? ??
????????? ??? . ?? ?? ?????? , ?????? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ??
?? ?? ??? , ?????? , ??? ?????? ??? ?? ??? ?? ??? ?? ?????? ??????.

17 ?????? ?????????? ?????? , ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ??
???? ?????????? ??? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
??, ?????? , ??? ?? ?????????? ??? . ?? ?? ?????? , ?????????? ??? ?? Twoh
????????? ?????? ?????? ?????? ??? ?? ??? ?????? ??? 1?? ?????????? ??? 31?? ??????????
1996 ??? ??? 1 466 629 ?????????? ?????? (NLG) ?? ?????? ??? ?? ?????????? ??? ??
?? 100 % ??? ?????? ???.

18 ? Twoh ?????? ?????????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? ??? ?????????? ?????? , ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ???
?? ?????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ???
?? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ???
????????? ?????? ??? ?? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ?? ?????? ?????? ??? ?? ?????? ?????? ??? ?? ??? ??
????????? ??? ?????? ?????? ???.

19 ? Twoh ?????? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ??? Gerechtshof te
Arnhem, ?? ???, ?????? ??? ?????????? ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ???
????????? ?? ??? ?????? ?????? , ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???
????? ?????? ??? ?? ?????? ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? . ??
????????? ??? ?????? , ?????? , ??? ?? ?????? ?????? ?????? ?????? ??? ?? ?????? ???

????????? ??? ?? ??????? ??????? ??? ?? ?????????????? ?????? ??? ?????? ?????? ??????
?????????? ?????????????? ?? ?????????????? ?? ?? ?????? ?????????????? ?????? ?????? ??????
?????????? ??? ?????? ??? . ? Twoh ?????? ??????? ?????? ??? Hoge Raad der
Nederlanden ??? ?? ??????? ??? Gerechtshof te Arnhem.

20 ?? Hoge Raad der Nederlanden, ?????????? ??? ? ??????? ??? ?????????????? ??? ?? ???
?? ??????? ?????? ?????? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ? ??? ?????????? ??? ??????????????, ??? ?? ?????? ??? ?????? ??? ?????? 28?, ?,
????????? ?, ????? ??????, ??? ????? ??????, ?????????? ?? ?????????????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ?? ?????????? ?????????????? ??? ?????? ???:

«???? ?? ????? 28?, A, ?????????? ??, ??? ????? ?????? – ? ?????????? ?? ??? ?????? ???
[77/799/??] ??? ?? ?????????? [218/92]– ??? ?????? ???, ??? ?? ?????? ??? ??????????
????????? ??? ?? ?????? ?????? ?????? ?????? ?????????? ??????????????, ?????? ?? ??????
????? ?????????????? ??? ?????????? ? ??? ?????????? ??? ?????????????? ?? ?????????? ??? ??
????????? ?? ?????? ?????? ??? ?????????? ?????????????? ??? ?? ?????????? ?? ?????????????? ???
????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??
????????? ??? ??????????;»

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

21 ?? ?? ?????? ???, ?? ?????? ?????????? ???, ???' ??????, ?? ?? ?????? 28?, A,
????????? ??, ??? ?????? ???????, ?? ?????????? ?? ?? ?????? ??? ?????? ??? ??????????
????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??????????????, ?????? ?? ??????????
??? ?? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ?????? ?????????????? ??? ??????????
? ??? ?????????? ?????????????? ??? ?????? ?????????? ?????????????? ?????????? ??? ??
????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?? ?????????? ?? ?????????? ??? ??
????? ??? ?? ??? ?????????? ??? ?????????? ??? ?????????? ?? ?????????? ?? ?? ??????????
????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??

22 ???????, ?????????????? ???, ??? ?????? ??? ?????????? ?????????????? ??? ?? ??? ??
?????????? ??? ?????????????? ??? ?????? ??? ?????????? ??? ?? ??? ?????? 91/680/?? ??
??????????, ??? 16?? ?????????? 1991, ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ??
????????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??
??????, ??? ?????? 77/388 (EE L 376, ?. 1), ? ?????????? ??? ?????????? ?????????? ??? ??
????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??
??? ?????? ?????? ??? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ??????. ??????????
????????????? ??? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????????????? ??? ?????? ?????????????? ??? ?????? ??? ?????????? ??? ?????? 28?, ??????????
1, ??????? ??, ?????? ??????, ??? ?????? ?????? ??? ?? ?????????? ??? ?????? ??? ??
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ??
????? ?????????? ???' ?????????? ??? ?????? 28?, A, ?????????? ??, ?????? ??????, ??? ??????
?????? (?. ?????????? ??? 6?? ?????? 2006, C?245/04, EMAG Handel Eder, ??????
2006, ?. I?3227, ????? 29, ?????? ??? ?? 27?? ?????????? 2007, C?409/04, Teleos ?.., ???
?? ????? ?????????? ??? ?????? ??? ??????, ?????? 22 ?? 24).

23 ??? ?????? ??? ?????????????? ??? ?? ?????? ?????? ?? ?????????? ?????????? ??? ??
?? ?????????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? 28?, A, ??????????
??, ?????? ??????, ??? ?????? ??????, ?????????? ??? ?????????? ??? ?? ?????????? ??? ??????, ?? ??
????? 42 ??? ?????????????? ??? ?????? ??? Teleos ?.., ??? ?????? ?????????? ??? ??
?? ????? ?????????? ?? ?????????? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??
????????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?? ??
????????? ??? ??, ?????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ?? ??

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

24 ?? ??????????? ??????????? ??????, ?? ?? ????? 44 ??? ?????????????????? ??????????
Teleos ???., ???, ??? ???? ?????????? ??? ??????? ??? ?????? ??? ?????? ?????? ????, ??
????????????? ??? ????? ?????????????? ?? ?? ?????????? ?????????????????? ??? ?? ?????? ???
????????? ?????? ?????????? ?????? ?????? ??? ?????????? ??? ?????????? ?? ?????????? ?? ??????????
????? ??? ?????? ??? ?????????? ??? ??????????.

25 ????? ?????? ??? ??????????? ??? ?????????? ?? ?????????? ?? ?????????????? ??? ????,
????????????? ??? ?????? ??????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
?????. ? ?????? ?????? ?????, ?? ?? ?????? 28?, A, ?????? ??????, ??? ??? ?????? ???
????????? ?? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????? ?????????? ??? ??
??? ?????????????? ?????????? ?????????? . ??????, ?????????????? ???, ??? ??? ??
????? ??? ?????? ??? ?????? ?????????? ?? ?????????? ???????, ?? ?????? ??? ??????????
?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??????
?????, ??? ?? ??? ?????? ??? ?????????? ??? ?????? ??? ??? ?????????????? (??., ??? ??
????? ????, ?????????? ??? 18?? ?????????? 1997, C?286/94, C?340/95, C?401/95 ???
C?47/96, Molenheide ??., ?????? 1997, ?. I?7281, ????? 48, ?????? ??? ?? 11?? ???
2006, C?384/04, Federation of Technological Industries ??., ?????? 2006, ?. I?4191, ??????
29 ??? 30).

26 ???????, ?????? ?? ????? ????? ???, ??? ????? ?????????????? ? ?????????? ???
?????????? ??????????, ? ??? ?????? ??? ?????? ?? ?????? ?????????????? ??? ??????????????
????????????? ?????????????? ? ?????????? ?????? ?????? ?????? ?? ??? ?????????????? ??
????????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??????. ???????, ???
????????? ??? ?????? 28?, ?, ????????, ??, ?????? ??????, ??? ?????? ??????, ???
?????????? ?????????? ?? ?????????? ??? ?????????? ?? ?????????????? ??? ?????????????? ???
????? ?????? ?????? ?????? ??? ?????? 23 ??? ?????????? ??????????.

27 ?????????? ?????, ?????????????? ???, ?? ?? ????? 50 ??? ??????????????????
?????????? ??? Teleos ?.?., ?? ?????????? ?????? ??? ?? ?????????? ??? ?? ??? ????
?????????? ??????? ? ??????? ?????? ?????? ?? ????? ?????????? ??? ??????????????
?????????? ??????? ?????????? ?????????????? ?????????? ??? ??? ???, ?????????????? ???
????? ??????? ??? ??????? ??? ?????? ?? ?????????? ??? ?????????????? ??? ?????? ???,
????? ??????? ?? ??????? ??? ?????????? ?? ?????????? ? ?????????? ?? ?????????????? ???
?? ?????????? ???????, ?? ?????????? ?? ?????????????? ?????? ???, ??? ?????????????? ???, ???
????????? ??? ??????? ?? ??? ??????? ??? ?????????? ???, ??? ?????????????? ???, ??? ??????
????????????? ??? ??? ??? ??????? ??? ?????? ??? ?????????? ??? ??? ?????????? ?? ??????????
??????????, ?? ?????? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????????? ??? ??
????? ??? ??????? ??????? ??????????.

28 ???????, ???????, ??? Teleos .?., ? ?????? ??? ?????????? ???. ?????? ?????? ?????? ???? ?????? ?????? ????
????????????? ?????? Teleos .?., ? ?????? ??? ?????????? ???. ?????? ?????? ?????? ???? ?????? ?????? ????
????????????? ??? ?????? ??? ?????? ??? ?????? ??? Twoh ??? ??? ?????? ???. ?????? ?????? ????
????????? ??? ?????? ?????? ????. ?? ????????, ?? ????????, ???????, ?????? ??? ?
Twoh, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ??
?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ?? ???????, ??
????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ???' ???????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ??? ???????, ???
?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

29 ? ?????????? ??? ??????? ??? ?????? ?? ???????? ??? ?? ?????? ??? ?? ?????? ??? ?? ???????????
???? ??????? ??? ?? ??????? ?????????? ?????? ??? ?? ?????????? ??? ?? ?????? ???.
????????????? ???????????.

30 ??????, ??? ?????? ?? ?????? ?? ?????? ?? ?????? ??????????? ????????, ?????????????? ??
??? ??? ?????? ??? ?? ??????? ??????????? ?????? ??? ??????? ?????? ??? ?????? ??
??????????, ????? ?? ?? ??? ????? ??????????? ?????? ??? ??????????? ?????? ???
?????????? ???????????, ?????????? ?? ?????? ??? ?????? ??????????? ?????? ??? ???????
??? ??? ??????????? ??? ? ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ?????? [??., ???' ????????, ??????? ?? 13?? ??????? 2000, C?420/98,
W. N., ??????? 2000, ?. I?2847, ??????? 15 ?? 22, ????? ??, ??? ?????? ??? ??????????
(?) 1798/2003 ??? ??????????, ??? 7?? ??????? 2003, ??? ?? ?????????? ???????????
????? ??? ??? ????? ?????????????? ?????? ??? ??? ?????????? ??? ?????????? 218/92 (?)
L 264, ?. 1), ??????? ??? 26?? ?????????? 2006, C?533/03, ??????? ??? ???????????,
?????? 2006, ?. I?1025, ??????? 49 ??? 52].

31 ????????, ??? ?????? ?? ?????????????? ??? ?? ??? ????? ??????????? ????????, ??? ???
????? ??? ??????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?? ??? ?????????? ??? ?? ???
????????????? ?????????????? ?????????? ??? ?? ?????????????? ?? ??? ?????? ?? ?????????? ?? ???
??? ?????????? ??? ?? ?????? ??????. ??? ?????? ?????????????? ??? ?? ??? ?????? ?? ???
??? ? ?????? ?????????????? ?? ?? ?????? 23 ??? ?????????? ???, ?????? ?? ?????? ??????
??? ?????????? ?????? ?????????? ??? ?????????????? ?????? ??? ?????????????? ?????????????? ???
????????????? ??? «?????? ?????????????? ?????? “???” ?????????????? ??????????», ??????
?? ?? ?????? 6, ?????????? 4, ??? ?????????? ??? ?? ?????????? ?????????????? ??????????.

32 ????????, ? ?????? ?????? ??? ??????????? ??????????? ??????????? ??? ??????? ??????????
?????????? ?????, ??? ?????? ??? ??????????? ?? ???????????, ?? ??????????? ?? ???????
?????????? ??? ?????? ??? ??????? ?? ??????? ??????. ?? ?? ??????, ?? ??????? ??? ??? ??
????? 2, ?????????? 1, ??? ?????? ??? ?????? ?????? ??? ??? ?????? 5, ?????????? 1, ???
????????? ??? ?????? ?????? ??????????? ??????????? ? ?????????? ?????????? ?????????? ??????????
???? ????? «??????» ??? «?????», ??????????, ?????????? ???, ?????????? ?? ?? ???
???? ?????? ?????? ?? ?????????? ?? ??????? ?????????? ??? ?????? ?????????? ??? ?????? ??????
????????? ??????, ?? ?????? ??? ??? ?????????? ?????????? ?????? ?????? ??????????. ?? ???
????????? ?????? ?????????? ?? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ?????? ???
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????
????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ??????

33 ????????, ?? ?? ??? ?????????????? ??????? ?????????????? ??????? ?? ?????? ?? ??????????

? ?????????????? ?? ?????????? ??? ?? ??? ?????????????? ?? ??? ?????????????? ?????????????? . ?????????????? ??
????? 7, ??????????? 1, ????? ?????, ????? ???????, ????? ???????, ??? ?????????? ??? ?????????? ??? ??
????????????? ?????????????? ??????????? ??? ? ??????? ??? ? ??? ?????? ??? ?????????? ???????
????????????? ??? ?????????????? ??? ?? ?????????? ?????????????? ?????????? ??? ??????? ??
????????????? ?????????????? ?????????????? ??? ?? ?????? ??? ?????? ??????. ???????, ? ???????
????????? ??? ?????? ?????????? ??? ?? ?????? 2, ?????????? 1, ??? ?????? ??? ??
????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????????? , ??? ?????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????????? ??? ?????? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??.

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

35 ??? ?? ?????????? ??? ?????? ?????????? ? ?????? ??? ?????? ?? ??? ?????????? ??? ??
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ?????????? , ? ??????
????????? ???' ??????? ??? ?????? ??? ?????? ??????. ??? ? ?????????? ???, ??? ??????
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ??
????? ??? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
????????? ??? ?????? ?????????? . ??????, ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
?? ?????????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
????????? ??? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ??? (??., ??? ??? ?????? ???, ?????????? ??? 28?? ?????????? 1999,
C?55/98, Vestergaard, ?????? 1999, ?. I?7641, ????? 26, ????? ??? ??? 3?? ?????????? 2002,
C?136/00, Danner, ?????? 2002, ?. I?8147, ?????? 49 ??? 50).

36 ???????, ?? ??????????, ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? , ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ,
?? ?????? ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? .. ? ??????
????? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ?? ??????????
?? ?????????? ??? ??? ?????? ? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ??? (??., ???' ?????? , ?????????????? ?????? Vestergaard, ????? 28).

37 ?????????? , ???, ???, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ? ?????????? ???
?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????????? ???
?? ? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??????
????????? ?? ?????????? ???, ? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? (?. ?????????? ?????? ?????? Teleos ?.?, ?????? 71 ?? 72).

38 ?????? ??? ?????? ?????? , ??? ?????????? ?????? ??? ?????? ??? ?????? ?? ?????? ? ??????
?? ?? ??? 28?, ?, ?????? ??, ??? ?????? ???, ??? ?????? ???, ??? ?????? ?????? , ?? ?????????? ?? ??
????? ??? ??? ?????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ??????????
????????? , ?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ??? ?????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???.

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

39 ?????????? ??? ? ??????? ?????????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ?????
??? ??????? ?????????????? ??? ?? ?????? ??????? ??? ?????? ??? ?????? ?????????? ???, ?' ????
????????????? ?? ?????????? ??? ?? ?????????? ??????. ?? ?????? ??? ?????? ?????? ??????????
????? ?????????? ?????????????? ??? ?? ??????????, ???? ??? ?? ??? ?????????? , ??? ??????????.

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

?? ?????? 28?, A, ?????????? ??, ????? ??????, ??? ????? ?????? ??????? 77/388/??? ??
??????????, ??? 17?? ????? 1977, ??? ?????????????? ??? ?????????????? ??? ??????
????? ??? ?????????? ?? ??? ????? ?????? ?????? ?????? - ??? ????? ?????? ????
????????????? ????: ?????????? ?????? ?????, ??? ?????????????? ?? ???
????? 95/7/?? ??? ??????????, ??? 10?? ?????? 1995, ?? ?????????? ?? ???
????? 77/799/E?? ??? ??????????, ??? 19?? ?????????? 1977, ??? ??? ??????????
????????? ??? ?????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ????,
???? ?????????????? ?? ??? ?????? 92/12/?? ??? ??????????, ??? 25?? ??????????
1992, ??? ?? ??? ?????????? (E??) 218/92 ??? ??????????, ??? 27?? ?????????? 1992,
?????? ?? ?? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ????, ?????? ??
????????? ??? ??? ?????? ??? ?? ?????????? ?????? ??? ?????? ??? ?????? ????
????????? ??? ?????????? ? ??? ?????????? ?????????????? ??? ?????? ??? ??????
????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??? ??
????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ?????? ??????????

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

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