

?????? C-434/05

**Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College)**

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**Staatssecretaris van Financiën**

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

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«????? ?????? ??? — ?????????? — ????? 13, A, ?????????? 1, ?????????? ?, ??? 2 —  
????????? ?? ?????????????? ?????? ?????????, ?????? ??????, ??????????????  
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1. ?????????????? ?????????? — ?????????? ??? ?????????? — ?????? ?????? ?????????—  
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(?????? 77/388 ??? ??????????, ??? 13, A, § 1, ?????????? ??)

2. ?????????????? ?????????? — ?????????? ??? ?????????? — ?????? ?????? ?????????—  
????? ?????? ??? ?????????????? ??? — ?????????? ?????????????? ??? ??? ??? ???  
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(?????? ??? ?????????? 77/388, ??? 13, A, §§ 1, ?????????? ?, ??? 2)

1. ?? ??? 13, ?, ?????????? 1, ?????????? ?, ??? ?????? ?????? 77/388 ???  
????????????? ??? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??? ?????? ???  
????? ?? ?????????? ??? ??? ?????? ??? ???? «??? ?????? ??? ?????? ???? ??? ??? ???, ??  
????? ? ?????????????? ?????? ?????????? ???, ??? ?????????? ?????? ?????????? ???, ?????????? ?  
?????????????» ??? ?????? ??? ?? ?????????? ?????? ?????????? ?????? ??? ??? ??? ? ?? ???  
????????????? ???, ??? ??? ?????? ??? ?????????? ?????, ??? ?????? ??? ??? ??? ? ?? ???  
????????? ??? ?? ?????????? ??? ?????????????? ?????? ??? ??? ??? ??? ???  
????????? ???, ??? ??? ?? ?? ?????? ??? ?? ?????? ?????????? ?????? ??? ??? ??? ???  
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????????? ?????? ??? ??? ???  
????????? ??? ???, ??? ??? ??? ?? ?? ?????? ??? ?? ?????? ?????????? ?????? ??? ??? ??? ???.

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????????? ?????????? ?????????? ?????????? ??? ?????????????? ?????????????? . ??????, ?  
????????? ??? ?????, ??' ??????, ??? ?? ?????????????? ?? ?????????? ?  
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????? ?? ?????? ?????????? ?????? ??? ?? ?????? ??? ?? ?????? ?????? .  
????????, ? ?????????? ?????? ?????????? ??? ?????? 13, ?, ?????????? 1, ?????????? ??, ???  
????? ?????? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? , ?????? ???  
????????? ??? ?????? ?????? ?????????? ??? ?????? , ??? ?????? ??? ?????????? ??  
????????? ?????? ?????? ?????? ?????? ???:

(???. ?????? 18-20, 24, ??????. 1)

2. ?? ????? 13, ?, ?????????? 1, ????????, ??? ?????? ?????? 77/388, ?? ??????????  
?? ??? ??????? 2 ??? ?????? ?????, ?????? ?? ?????????? ??? ??? ?????? ??? ??  
????????? ?????? ?????????? ?????????? ?? ?????????? ?????? ??? ?????? ??? ??  
????????? ??? ?????????? ?????????? ?? ?????? ??? ?????? ??? ?????????? ?????? ???  
????????????? ?????????? ??? ?????? ?????????? ?????, ??? ?????? ???  
????????? ??? ?????? ?????? «????? ??????» ?? ??? ?????????? , ??? ??? ?? ??????  
?? ?????? ?????? ?????????? , ?????? ?????? ??? ?????? ??? ?????????? ?? ??????  
????????? ?????????? ??? ??? ?????? ?????? , ??? ??? ??, ?????? , ??? ?????? ???  
????? ?????? ??? ?????? ?????? , ???:

— ??? ? ?????? ?????? ??? ?? ? ?????????? ??? ?????????? ?????? ?? ???  
????????????? ??? ?????????? ?????? ?????????????? ??? ?? ??? ?????? 13, ?, ??????????  
1, ????????, ??? ?????????? ?????, ?????????? , ??? ?????????? ??? ?????????? ??  
????? ?????? ???' ?????? ??? ?????????? 2, ????????, ??? ?????? ???,  
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— ? ??? ? ? ?????? ??? ?? ? ?????? ?????????? ??? ?????? ?????? ???, ?????? ?? ?????????? ??  
????????? ???, ??? ?????? ?? ?????????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??  
????????? ?????? ???, ?? ?? ?????? , ? ?????????? ??? ?????????? ?? ?????????? ??  
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?? ?????????? ?? ??? ?????? ?????????? ???.

(???. ?????? 46, ??????. 2)

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

?? 14?? ?????? 2007 (\*)

«???? ??????? ??? – ???????? – ??? 13, A, ?????????? 1, ???????? ??, ??? 2 – ???????? ??  
?? ?????????? ?????? ???????, ?????? ??????, ?????????????? ?????????????? ??  
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???? ?????? C2434/05,

?? ?????????? ?????? ??????? ?????????????? ?????????? ?????? ??? ?????? 234 ??,  
?? ?????? ?? Hoge Raad der Nederlanden (???? ???) ?? ?????? ??? 2?? ??????????  
2005, ? ?????? ??????? ??? ?????????? ??????????, ??? ?????? ??? ??????????

**Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College)**

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**Staatssecretaris van Financiën,**

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

????????? ??? ??? A. Rosas, ??????? ???????, J. Klu?ka, J. N. Cunha Rodrigues, A. Ó Caoimh (????????) ??? P. Lindh, ???????,

?????? ??????????: E. Sharpston

?????????: R. Grass

????????? ??? ?? ??????? ?????????? ??? ??????? ??? ??' ?????????? ??? ?????????? ???  
14?? ?????????? 2006,

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

– ?? Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College), ?????????? ??? G. C. Bulk, advocaat, ??? A. van Dongen, adviser,

– ? ??????? ??? ???, ?????????????? ??? ??? H. G. Sevenster ??? P. van Ginneken,

– ? ??????? ???????, ?????????????? ??? ??? E. M??????, O. ?????????? ??? .  
??????, ??? ??? ??? ??? K. ?????????? ??? . ???????????,

– ? ??????? ??? ?????????? ?????????? ??? ?????????? ??? ??? . ??????????????  
??? A. Weimar,

???? ?????? ?? ?????? ?????????? ??? ??????? ??? ?????????? ??? ??? ?? ??????????  
??? 8?? ?????? 2007,

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

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1 ? ?????? ??? ??? ?????? ?????????????? ?????????? ?????? ??? ?????????? ??? ??????  
13, ?, ??????? ??, ??? ?????? ?????? 77/388/??? ??? ??????????, ??? 17?? ??? 1977,  
???? ?????????? ??? ?????????? ??? ??????? ??? ?????? ???, ??? ?????????? ?? ??? ??? ?????? ??????  
????????? – ??? ?????? ?????? ?????? ?????????????? ????: ?????????? ?????????? ??? (??

???. ???. 09/001, ?. 49, ??? ?????: ????? ??????).

2 ? ?????? ??? ??????????? ??? ?????? ???????? ?????? ??? Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College), ?? ??? ?? Alkmaar (????-?????) (???: Horizon College), ??? ??? Staatssecretaris van Financiën (?????????? ???????????), ?????? ??? ??????????? ??????????? ?????????? ??? ?????????????? ??? (???: ???) ??? ? ?????????? ?????????? ??? ?????? ??? ?????? ???.

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3      ?? ?????? 13 ??? ?????? ??????? ?????? ?? ????:

«A. ?????????? ?????????? ?????????????? ?????? ??????????????

[...]

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

2. ?) ?????? ??? ??????? ?? ???????, ??????? ??? ??? ??????????, ???  
????????? ?? ???????????, ????? ??? ?????????? ??????? ???????, ??? ??? ??? ???  
????????? ??? ??????????? ??? ??????????? 1, ??????? ?, [...], ?????????? ???,  
????? ??? ? ??????????? ??? ??? ?????? ???????????:

– ?? ?? ????? ??????????? ?? ?? ?????? ?? ?????? ?? ?????? ?? ??????????? ?? ??????? ??  
???????, ?? ??????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????? ?? ???????????,  
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- ? ??????? ?? ?????????? ?????? ?????? ?? ?????? ??????? ?????????? ?????? ?????, ???  
?????? ?? ?? ???????, ???? ???? ?? ??, ???? ???? ?????? ??????? ??????????, ???? ? ??????  
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– ?? ?????? ?? ?????? ?????????? [?? ?? ??? ??????????] ?????? ?? ??? ?????? ??????????  
?? ?? ?????? ?? ?????? ?? ?? ?? ?????????? ?????????? ?????????? ?????????? ?????? ?,  
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ,  
????????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

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— ??? ????? ???????????? ??? ?? ??????????? ??? ??????? ??? ?????????????? ??? ???,  
— ???????????? ??? ?? ?? ??????????? ??? ??????? ??? ?????????????? ??? ?? ?? ???  
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4      ?? ?????? 11, ?????????? 1, ??? ?????? ??? 1968 ??? ???? ?? ?????? ?????? ?????? (Wet op de omzetbelasting 1968), ??? 28?? ?????? 1968 (*Staatsblad* 1968, ??. 329), ?????? ?? ?:

«1. ??????????????? ??? ????, ??? ??????????? ??? ??????? ?? ?????????? ????????????

[...]

o. ? ??????:

1° ?????????? ?????????????? ?????????? ??? ?????????? ?????????????? ?????? ??????, ???  
????????? ?? ??? ????? ?????? ??? ?????? ??? ??????????, ? ?????? ??????, ??? ??????????,  
????? ?????????? ????, ??? ?????????? ?????? ??? ?????????? ? ?? ??? ?????? ???  
????? ??? ?????????? ??? ???? ?????? ?????????????? ??????? ??????????:

[...]»

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

5 ??????? ?? ??? ??????? ??? ???????????, ?? Horizon College ??????? «????????????? ??????»

6      ????? ??? ??????? ?? ???? ?????? ?? ?????? ?????? ?????? ??????, ?????????? ?? ?? ??  
????????? ?? Horizon College ?????????????? ?? ??? ????? ?????????????? ?????? (?? ???:  
????????? ???????), ??? ??? ????? ?????? ?? ?????????????? ????? ?? ?? ?? ?? ?????? ??  
????????? ????.

7      ??? ????? ?????????? ?????????? ?????? ??? Horizon College, ??? ???????  
????????? ??? ??? ?????????? ??????. ??????? ?? ??? ????? ??? ??????????, ??? ??????  
????????? ???????? ?? ?????????? ?? ?????????? ??? ?????????? ?????????, ?????????????? ???  
?? ???????? ??? ?????????? ??? ??? ?????????? ??? ??? ?????????? ??? ??? ?????? ?????????? ? ?? ???  
????????? ??? Horizon College. ?? ?????? ???????, ???????, ?? ??????? ???  
????????? ??????? ??????? ??? ??? ?????? ??? ??? ?????? ??? ??? ?????? ?????????? ???????  
?? ????????. ? ?????? ??? ?????????????? ?? ??? ?????????????? ??? ?? Horizon College. ??  
?????? ??????? ?????? ?? ?????????? ?? ??? ???????, ??? ????? ??????????, ??? Horizon  
College, ?? ?????? ??? ?????? ??? ???.

8      ? ?????????? ?????? ???????????? ??? Horizon College ?????????? ?????????? ??????????  
???? ??? ??? ?? ??? 1995 ??? 1999, ??? ??? 463 828 ?????????? ?????????? (NLG), ?? ???  
????????? ?? 299 308 NLG ?? ??????? ??? ?????? ?????? ?????????? ??? ?? ???  
?????????.

9      ?? Horizon College ?????? ??? ?????? ?????? ??? Gerechtshof te Amsterdam, ?? ?????? ???  
????????? ?? ?????? ?? ?????? ??? 3?? ?????? 2003, ?? ??? ?????????? ?? ??  
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?? ??? 13, ?,  
????????? 1, ??????? ??, ??????? ??? ???.

10     ?? Horizon College ?????? ?????? ?????? ??? Hoge Raad der Nederlanden (???????  
??????????).

11     ?? Hoge Raad der Nederlanden, ?????????? ??? ? ?????? ??? ?????????? ??? ??????????  
????? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ?????? ?????????? ???, ??????????, ???  
???????? «?????????» ??? ?????????????? ??? ?????? 13, A, ?????????? 1, ????????? ??,  
??? ?????? ????, ?????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?? ??????  
??? ?????????? ?? ?????????? ?????????? ??????:

«1)    ?????? ?? ??? 13, ?, [????????? 1, ??????? ??], ??? ?????? ?????? ?? ??????????  
?? ??? ?????? ??? ??? ?????? ?????????????? ?????? ??? ?????? ?????????? ?????? ??? ??????????  
[????????] ?????????????? ?? ?????????????? ?????? ?????????????? ?????? ??? ?????????? ???  
?? ?????????? ??? ?????? ??? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ??????  
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???;

2)    ?? ??? ?????? ??? ?????? ?? ?????? ?????????? ???????, ??????? ? ?????? “?????  
????????????? ?? [?? ??????????] ?????? ??????????” ?? ?????????? ??? ?????????? ???  
????? ?? ?????????? ??? ?????? ??? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????  
??????;

3)    ??? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??????? ?? ?????? ??? ??????  
??? ?????????????? ??? ?????? ??? ?????? ?????????????? ?????????? ??? ?????? ??? ? ???  
????????????? ???;»

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12     ?? ?? ?????? ?????? ???, ?? ?????????? ?? ?? ???, ?? ?????? ?????????? ????,  
??' ??????, ?? ?? ??? 13, ?, ?????????? 1, ??????? ??, ?? ?????? ?????? ??? ??  
????????? ??? ??? ?????? ??? ? ?????? «?? ?????? ??? ?????? ? ?? ???, ?? ?????? ???  
????????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?  
????????????? » ??? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????????? ???  
????????????? ??? ??????, ??? ??? ?????? ??? ?? ??? ?????? ?????????, ?? ?????? ??? ??  
?????????, ?? ?????????? ????, ??? ?????? ?????????? ?????????? ??? ?????? ? ??????????  
????? ???? ?? ?????????? ??? ?????????? ?????? ?????????? ??? ??? ?????? ??? ??????????  
????? ??????.

13     ?? Horizon College ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ??????????  
????????, ?????????? ??? ? ?????????????? ?????? ?????? ??? ?????????? ??? ??  
????????? ?????????? ??? ?????? ?????? ? ???????, ?????????? ??? ?????? ??? ?????? ???,  
????????? ?? ??? ?????? ??? ?????? ???????????. ? ?????? ?????? ?????????? ??? ? ?????????? ???  
????? ????, ??? ??? ? ?????? ??? ?????????? ??? ?????????? ?????????? ??? ??? ??? ???

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

14 ???????, ?????????????? ??? ?? ????? 13, ?, ??? ????? ??????? ?????? ???  
????????? ?????????? ?????????????? ?????? ?????????? ?????? ??? ???. ??????, ?  
????????? ??? ?????? ??? ?????? ??? ?????????????? ?????? ?????????? ?????? ???  
????????? ??? ?????????????? ?????? ?????????? ?????? (?. ??????????  
??? 12?? ?????????? 1998, C?149/97, Institute of the Motor Industry, ?????? 1998, ?. I?7053,  
????? 18, ??? 1?? ?????????? 2005, C?394/04 ??? C?395/04, ?????, ?????? 2005, ?.  
I?10373, ????? 16, ??? ??? 14?? ?????????? 2006, C?401/05, VDP Dental Laboratory, ??? ??  
???? ?????????? ??? ?????? ??? ???????, ????? 24).

15 ??? ?? ?????????? ??? ???????????, ?? ?????????? ??? ?????? 13 ??? ????? ??????  
????????? ?????????? ?????? ??? ?????????? ?????, ?? ?????? ?????? ??? ??????  
??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ??? ??? ?????? ??? ???  
(?. ?????????? ??? 25?? ?????????? 1999, C?349/96, CPP, ?????? 1999, ?. I?973, ?????  
15, ??? 8?? ?????? 2001, C?240/99, Skandia, ?????? 2001, ?. I?1951, ????? 23, ???  
????????????? ???????, ????? 15).

16 ?? ??? ?????? ??? ?????????????? ??? ??? ?????????? ??? ?? ??? ????? ?????????? ?????? ??  
????????? ???, ?????????? ??? ?? ?????????? ??? ?????? ?????????? ?????????? ??? ??  
????? ??? ?? ? ?? ?????????? ?? ??? ?????? ?????? ?????? ?????????? ??? ?? ?????????????? ??  
????????? ??? ?? ?????????? ??? (?. ?????????? ??? 20?? ?????? 2002,  
C?287/00, ?????? ??? ??????????, ?????? 2002, ?. I?5811, ????? 43, ??? ??? 20??  
????????? 2003, C-8/01, Taksatorringen, ?????? 2003, ?. I?13711, ????? 36). ??????, ?  
????????? ??? ?? ?????? ?????? ?? ??? ?????? ?????? ?? ??? ????? ?????????????? ??? ??  
???? ?????????? ?????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??  
?????????????, ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? (?.  
????????? ??? 6?? ?????????? 2003, C?45/01, Dornier, ?????? 2003, ?. I?12911, ????? 42,  
??? 26?? ?????? 2005, C?498/03, Kingscrest Associates ??? Montecello, ?????? 2005, ?.  
I?4427, ????? 29, ??? ??? 8?? ?????? 2006, C?106/05, L.u.P., ?????? 2006, ?. I?5123, ?????  
24). ????? ?????? ? ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?? ?????? ???  
????????????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?? ?????? ?????? 13 ?????? ??  
????????????? ??? ?????? ?????? ??? ?????? ??? ?????????????? ?? ?????????? ??? ??  
????????? ??? ?????? ?????????? (?., ??? ??? ?????? ???, ?????????? ??? 18?? ??????????  
2004, C?284/03, Temco Europe, ?????? 2004, ?. I?11237, ????? 17, ????? ???, ??? ??????  
?? ?????????????? ???????????, ?????????????? ?????? ?????? ?????? ?????? ??????????,  
????? 47).

17 ?? ????? 13, ?, ?????????? 1, ??????? ??, ??? ?????? ?????? ??? ?????????? ??? ??????????????  
????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???.

18 ??? ?????????? ???, ??? ?????????? ?? Horizon College, ? ?????????? ??????  
??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ?????????? ???  
????????????? ??????????.

19 ??????, ?????????? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? 14 ???  
16 ??? ?????? ??????, ? ?????? ??? ?????? ??? ?????, ??' ??????, ??? ?? ??????????????  
?? ?????????? ?????????? ? ?????? ?????? ?????? ?? ?????????? ??? ?????????? ??????  
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20 ??????, ??? ???' ?????? ?????????? ? ???????, ??? ??? ??' ??????????  
??????, ? ?????????? ?????? ?????????? ??? ?????? 13, ?, ?????????? 1, ??????? ??, ???

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

21    ??? ?????????????? ?? ?? ?????? 7 ??? ?????? ?????????? ??????????, ???? ??? ???? ???  
????????? ??? ?????? ??? ?????????? ??????????, ??? ?????? ?????????? ?????????? ??  
????????? ?? ?????????? ??? ?????????? ?????????? ?????????? ?????? ?? ?????????? ??  
????????? ??? ?? ?????????? ??? ?????????? ?????? ??? ?????? ?????????? ??? Horizon College ? ??  
???? ??????????. ???????, ?? ?????? ?????????? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??  
????????? ??? ??? ?????? ?????????? ?? ??????.

22    ???????, ? ??????? ?????????? ??? ?????? ?????????? ???? ??? ?????????? ?????? ???  
?????? ?? ???????, ??' ??????, ?? ?????????????? ?????????? ??? ?????? ??? ??  
«?????????» ???' ??? 13, ?, ?????????? 1, ??????? ??, ??? ?????? ??????. ???  
??????????, ???' ??????, ? ?????????? ??????????, ? ?????????? ??? ?????? ?????? ???  
????????, ? ??????? ??? ?????? ?? ?? Horizon College, ?? ?????? ?????????? ??? ??? ??????  
????????? ?????? ??? ?????? ??? ?????????????? ??? ?????????????? ??? ?????????? ?? ??????  
?????????.

23    ? ??????? ??? ?????? ??? ?????????? ??? ?? ??????? ??? ?????????? ?? ??????????? ???  
?????? ?????????? ??? ?????????? ???????????, ???? ?? ??? ?? ?????? ??? ??  
??????????, ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ?????? ???  
????? ?? ?????? ??? ?????? 13, ?, ?????????? 1, ??????? ??, ??? ?????? ??????.  
????????, ?? ??? ?????????? ??? ?????? ??? ?????????? ?????? ?????? ???  
«?????????», ?? ??? ?????????????? ??? ?????????? ?????????? ?????? ???  
?????????? ?????????? ? ??? ??? ?????????? ??? ?? ?????? ?????? ?????????? ???  
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? ???.

24    ???????, ??? ?????? ???????, ?? ?????????? ?? ?? ?????? ???????, ?????? ?? ?????? ?  
????????? ?? ?? ?????? 13, ?, ?????????? 1, ??????? ??, ??? ?????? ??????? ??????? ??  
????????? ?? ?? ?????? ??? ?????? «??? ?????? ??? ??????? ? ??? ???, ?? ??????? ?  
????????????? ??????????, ??? ?????????????? ??????????, ?????????? ?  
?????????????» ??? ?????? ??? ?? ?????????? ?????? ?????????? ?????????? ?? ???  
????????????? ??????, ??? ??? ?????? ??? ?????????? ?????? ?????????? ??? ??  
????????? ?????? ?? ?????????? ?????? ?????????????? ?????????? ??? ?? ?????? ???  
????????? ?????? ?? ?????? ??? ?? ?? ?????? ??? ?? ?????? ?????????? ?????????? ???  
????????? ?????? ?????????? ?? ?????????? ?????????? ?????? ??? ?? ?????? ??? ??  
????? ?????? ?????????? ??? ?????????? ?????? ???.

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

25    ?? ?? ??????? ??????? ???, ?? ?????????? ?? ?? ??????, ?? ?????? ?????????? ??????,  
???' ??????, ?? ?? ?????? 13, ?, ?????????? 1, ??????? ??, ??? ?????? ??????? ??????? ??  
????????? ??? ?????? ??? ?????? ??? ?? ?????? ?????????????? ??????????, ???? ??? ??????  
??? ?????????? ????, ?????????? ???????, ?? ?????????? ??????, ?? ?????? ??????????, ???  
????? ?? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ?????????? ??? ??  
????? ??? ?????????? ????, ?????????????? ??? ?? ??? ?? ?????? ?????????? «?????  
?????????» ?? ??? ??????????, ???? ??? ?????? ??? ?????? ???.

26 ??? ??? ??????? ??? ?????????? ?????????? ??? ?? ??????? ??? ?????? ?????? ?????? ???  
????????? ??? ???? ?????? ? ?????? ?????? ?????????????? ?????? ?????? ?????????????? ??? ??  
????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??  
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

27 ?? ????? 13, ?, ?????????? 1, ????????, ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???  
??? ?????? ??? «????? ??????????» ?? ??? ?????? ?????? ?????? ?????? (?).., ???  
????? ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? 46). ????????, ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ? ?? ???  
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ? ?? ???  
????????? ?????? ??? «?? ?????? ??? ?????? ? ??? ?????? ??, ?? ?????? ?  
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?  
????????? »..

28 ?? ?????? ?????????? ??? ?? ?????????? ?????? ?????? ?? ?????? ?? ?????????? ?? «?????  
?????????» ?? ??? ??????????, ??? ?? ?????? ??? ?????? ?????? ?????? ??????????  
????????? ??? 13, A, ?????????? 1, ????????, ??? ?? ???  
???????, ??? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?? ??? ??  
????????? , ? ??? ?????? ?????? ??? ?????? ?????? (?).., ???' ?????? , ?????? ??? 11??  
????????? 2001, C?76/99, ??????? ??? ?????? , ?????? 2001, ?. I?249, ?????? 27 ??  
30, ??? ?????????? ?????? Dornier, ?????? 34 ?? 35, ??? ?????, ?????? 17 ??  
18).

29 ??? ?? ?????????? ??? ?????????? ?????? ???, ?????? ?????????? ??? ??????  
????????? ???, ??? ?????? ?????? ?? ?????????? ?????????? ??? ?????? ?????????? , ??? ??  
????????? ?????? ??? ?? ??? ?? ??? ?????? ???, ?????? ??? 22?? ?????? 1998, C-308/96 ??? C-  
94/97, Madgett ??? Baldwin, ?????? 1998, ?. I-6229, ?????? 24, ?????? ??? ??????????????  
????????? CPP, ?????? 30, Dornier, ?????? 34, ??? ?????, ?????? 19).

30 ??? ?????????? ???' ?????? ?? Horizon College ??? ? ???????, ? ???????  
????????? ??? ?? ?????????? ??? ?????? ?? ??? ?????? ?????????? ?? ?????? ?? ??????????  
???? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??????  
????? ? ???, ???????, ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????????? ??????  
????????? ?? ??? ?????????? ?????? , ?? ?????? ?????? ?????? ?????? ?????? ??????????  
????????? ?? ?????? ?????? ?????????? ?????? , ? ?????? ?????? ?????????? ?????? ??????  
???? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

31 ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?????????? ?? ??????????  
????????? ??? ? ?????????? ??? ?????? ???, ??? ?????? ? ?????? ??? ?????? ??? ??????  
????????? ?????? ?????? ?????? ??? Horizon College ??? ??? ?????? ??? ?????????? ???  
?????????. ?????? , ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???, ??? ??????  
? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
?? ?????? ?? Horizon College ??? ?????????? ??? ?? ?????? ?? ?????????? ???.

32 ?????????? , ??? ?? ?????? ?? ?????? ??? ?????????? ??? ?????? ?????? ?? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? , ??? ??????  
????????? ?? ?????? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????? ?? ??????????  
????????? ?????? ?? ??? ?????? ?????? . ?????? , ? ?????? ?????? ?????? ?????? ?????? ??????  
?? ?????? ?????????? ??? ?????? ?????? ??? ?????? ?????????? ??? ?????? ?????? ??????

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

33 ?????, ? ???????, ? ?????????? ??? ?????????? ??? ??????? 13, ?, ?????????? 1, ?????????? ??, ???  
????? ??????? ?????????? ??? ?????????? ?????????????? ?? ?????? ?????????? ??? ?? ???  
????? ????.

34 ?????, ??? ? ?????? ?????????????? ??? ?????????? ??? ???? ? ?????????? ?????? ?  
? ?????? ?????????? ??? ?????????? ?????? ?? ?? ?????????? ?????? ??? ?????? ??  
????????????? ??? ??? ???? ?????? ?????? ?????? ?????? 13, ?, ?????????? 1,  
????????? ??, ??? ?????? ??????.

35 ?????, ??? ? ?????????? ??? ???? ?????????? ??? ???? ?????? 13, ?, ?????????? 1,  
????????? ??, ??? ???? ?????????? ???? ?????? ?????????? ?????????? ?? ?????????? ?????? ???  
????????? ??? ???? ?? ?????????? ???, ????? ???? ?????? ???? ?????? ?? ?????????? ?????????? ???  
????????? ?????????? ?????? ?? ?????????? ?????? ?????????? ?????????? ???? ?????? ?????????? ???  
????? ?????? ?????? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??????. ??? ??????????  
??? ??? ?????? ??? ?????????? ???, ??????????, ??? ???? ?????? ?????????? ?????????? ???  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ??? ??????.

36 ?????, ??? ???? 13, ?, ?????????? 2, ?????????? ??, ?????? ??????????, ??? ????  
????????? ?????????? ??, ??? ???? ?????????? ?? ?????????? ?????????? ??? ?? ??????????  
????? ??? ???? ?????????? ??? ?????????? 1, ?????????? ??, ??? ?????? ??????, ? ????  
????????????? ?? ??? ?????? ?????????? ?????? ???? ?????? ?????????? ?????? ?????  
????????? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ?????????? (???. ??????? ?? 9??  
????????? 2006, C?415/04, Stichting Kinderopvang Enschede, ?????? 2006, ?. I?1385,  
????? 22).

37 ?????, ?????????????? ???, ??? ???? ?????? ??? ?????????? ?? ??????????, ?? ??????  
????????? ?????????? ?????? «????????? ?????? ??? ???? ?????? ??? ?????? ?? 13, ?,  
????????? 1, ??????? ??, ??? ?????? ??????».

38 ?????, ??? ? ?????????? ??? ???? 13, ?, ?????????? 2, ?????????? ??,  
????? ??????????, ??? ???? ??????, ?? ?????? ?????????? ??? ???? ?????????? ?????? ???  
????????? ??? ???? ?? ??? ?????? ?????????????? ??? ?????? ?????????? ?????? ??????,  
????? ?????????? 1, ?????????? ??, ??? ?????? ?????? ??? ?????? ?????????? ??? ???? ?????? ???  
????? ?? ?????? ?????????? ??? ??? ?????? ??? ?????????? ?????? ?????? ?????????? ??????  
(??., ??????, ??? ??? ?????? ???, ?????????????? ?????? ?????????? ?????? ?????? ??????,  
????? 48, ????, ??? 26, ??? Stichting Kinderopvang Enschede, ??? 25).

39 ??? ???? ?????????????? ???' ?????? ??? ?????? ??? ?????????? ?????????? ??????????????  
????? ??? ???? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ??????, ?? ?????? ? ????  
? ? ?????????? ??? ???? ?????? ??????, ?????? ?? ?????????? ??? ?????????? ??????, ??? ??  
????????? ?? ?????????????? ??? ???? ?????????? ??? ?????????? ?????? ??? ?????????? ??????  
??, ?? ???? ??????, ? ?????????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ???  
????? ?????? (??., ???' ??????, ?????????????? ?????? Stichting Kinderopvang Enschede,  
?????? 27, 28 ??? 30).

40 ?????, ?????????????? ???, ??? ?????????? ? ?????????? ??? ?????? ??????, ???  
????????? ?? ?????????? ?????????? ?????????? ?????????? ?????????? ??????, ??? ?????? ??  
????????? ??? ?????????????? ??? ???? ??? ???? ?? ?????? ?????? ?? ?????? ?????????? ??????????  
????? ?????? ??? ?????? ???, ??? ???? ?????????? ??? ?????????? ?????????? ?????? ???

Horizon College ??? ?????????? ??? ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?? ?????? ??  
????? ??????? ?????? -????, ??? ??????????, ??? ?????????? ??? ?????????? ??? ?????????? ?????????? ?  
??? ?????????? ??? ??? ?????????? ???- ??? ?? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?? ???  
????? ??? ? ??? ?????????? ?????????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?? ??? ??????  
????? ??? ??????.

41 ??? ?????? ?????????? ?????????? ?? ?????????? ?????????? ?? ?????????? ?????? ?? ?????? ??  
????????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??, ?? ?? ??????????  
??? ?????? ?? Horizon College ??? ??????????.

42 ??????, ??? ??? ?????? 13, ?, ?????????? 2, ?????????? ??, ?????? ?????????? ???  
????? ???????, ?? ?????? ?????????? ??? ?? ?????????? ?????? ?????????? ?????????? ??? ???  
????? ??? ?????????? 1, ?????????? ??, ??? ?????? ?????? ?????, ?? ?????? ?????? ???  
????????? ?????????? ?????? ?????? ?????? ?????? ??? ?? ??? ?????????? ?????? ???  
????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ???.

43 ? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
?????????????, ? ?????? ??? ?????????, ?????? ???, ?? ?????????????? ?????? ??????????  
??? ?????? ??? ?????????, ?????? ?????????? ?????? ???, ?????? ?????? ??????  
(?. ?????? ??? 23?? ?????????? 2003, C?109/02, ?????? ??? ?????? ?????? 2003,  
. I?12691, ??? 20, ??? ?????????? ???, ??? 32).

44 ??? ?????? ??? ?????? ?????, ?????????, ??? ?????? ?????????? ?????????? ??  
????????? ?? ? ?? ?????? ??? Horizon College ?????? ?????????? ?? ?????? ??????????  
??? ?? ??? ?????????? ?????? ?????????? ???, ??? ?????? ???, ??? ?????? ??????  
????????????? ?????? ??? ?????? ?????????? ?????? ?????? ?????? ??????????????  
??? ?????? ?????? ?????????? ??? ?????? ???, ??? ?????? ???, ??? ?????? ???  
????????? ?????? ?????? ?????? . ??????, ?? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?? ??? ?????? ???  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??'  
?????, ??? ? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.

45 ???, ?????????? ??? ?? ?????? 13, ?, ?????????? 2, ?????????? ??, ??? ???  
????? ?????? ??? ?????? ??? ?? ?????????? ?? ?????????? ??? ?????????? ?? ??????????  
??? ?????????? ??? ?????? ?????? 1, ?????????? ??, ??? ?????? ?????? ?????? ?????? ??  
????? ?????????? ???, ??? ??? ?????????? ?????? ?????? ?????? ??? ??? ?????? ??? ?  
????? ?? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ?? ??? ?????? ?????? ?? 2, ?????????? ??.  
??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ???  
????? ??? ???, ?? ?????????? ?????? ?????? ???, ?? ?? ?? ??? ?????? ?????? ??????.

46 ??????, ??? ?????? ??? ?????? ?????????? ?????? ?????? ?? ?????? ?? ?????? ? ??????  
??? ?? ??? 13, ?, ?????????? 1, ?????????? ??, ??? ?????? ?????? ?? ?????????? ?? ?????? ?? ???  
????????? 2 ??? ?????? ??? ??????, ?????? ?? ?????????? ?? ??? ?????? ???  
????????? ?????? ?????? ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?  
????????? ??? ?????? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???  
????????? «????? ??????????» ?? ??? ?????????, ??? ??? ?????? ??? ?????? ??? ??????  
????????, ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
????????? ??? ??? ?????? ??? ??????, ??? ??? ???, ??????, ??? ?????? ??? ?????? ??? ??????  
????? ?? ?????????? ? ?????? ?????? ???:

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

? ?????????????????? ??? ??????????? ?????????????????? ??? ?? ??? ???? 13, ?, ???????????  
1, ??????? ??, ?????????????? ????, ???????????, ??? ??????????? ??? ??????????? ??  
?????? ?????? ????' ??????? ??? ??????????? 2, ??????? ??, ??? ?????? ????  
??????,

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

- ? ?????????? ??? ?? ?????? ?????? ??? ?????????????? ?????????????????? ?????? ???  
?? ?????????????????? ?????? ?????? ?????????????? ??? ?????? ?????? ??????????  
????????????? ??? ?????????? ?? ???.

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

47 ??? ?????????? ??? ?? ??????? 12, 23, 24, 25, 34 ??? 35 ??? ?????????? ??????????, ?  
????????? ??? ????? ?????????? ?????? ?????????? ?????????? ?????? ??? ?????????? ???  
??? ?????? ??????????, ????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ????.  
??????, ??????? ? ?????? ?????????? ??? ?????? ???.

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

48 ??? ?????????? ??? ? ??????? ?????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ???  
?? ?????????? ?????????????? ??? ?????? ?????? ?????? ??? ?????? ??????????????, ?' ???  
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????  
??? ?????????? ?????????????? ??? ?????????? ??? ?????? ??? ??? ??????????, ??? ???????????.  
??? ??? ?????? ??????, ?? ?????????? (????? ????) ???????????:

1) ?? ????? 13, ?, ?????????? 1, ??????? ??, ??? ?????? ??????? 77/388/??? ???  
??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ??? ?????????? ???  
?????, ??? ??????? ?? ??? ?????? ?????? ?????? ?????? - ??? ?????? ??????? ????  
????????????? ?????: ?????????? ?????????? ????, ?????? ?? ?????????? ??? ??  
????? ??? ? ????? «??? ??? ??? ?? ?????? ??? ?????? ? ??? ???, ?? ?????? ?  
????????????? ??????????, ??? ?????????????? ?????????? ??????????, ?????????? ?  
????????????? » ??? ????? ?? ?? ?????? ?????? ?????? ?????????? ?????????? ?? ???  
????????????? ?????, ??? ??? ?????? ??? ?????? ?????? ?????????? ????, ??? ?????? ? ?? ???  
????????? ??? ?? ?????????? ??? ?????????????? ?????? ?????????? ??? ?? ??? ?????? ???  
????????? ???, ??? ??? ?? ?? ?????? ??? ?? ?????? ?????? ?????????? ??? ?????????? ???  
????????? ?????? ?????? ??? ?????????? ??? ?????????????? ?????????? ??? ?????????? ???  
????? ??? ?????? ?????? ?????????? ??? ?????????? ?????????? ?????????? ??? ??????????.

2) ?? ?????? 13, A, ?????????? 1, ??????? ??, ??? ????? ?????? 77/388, ??  
????????? ?? ?? ?????????? 2 ?? ?????? ?????? ??????, ?????? ?? ?????????? ??  
?? ?????? ??? ? ?? ?????????? ?????? ?????? ?????? ?? ?????????? ??  
?? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ??? ??????  
?? ?????? ?????? ?? ?????? ?????? «????? ??????» ?? ??? ??????????, ???  
?? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?? ?????? ?????? ??  
?? ???, ??????, ??? ?????? ??? ?????? ?????? ?? ?????? ?????? ? ??????  
?????????, ???:

- ??? ? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??, ??? ?????? ??  
????????????? ??? ?????? ?????? ?????? ?????? ??, ??? ?? ?????? 13, ?,  
????????? 1, ??????? ??, ?????????? ?????, ??????????, ??? ??????????  
?? ?????????? ?? ?????? ?????? ?????? ???' ?????? ??? ?????? ?????? 2, ??????  
??, ??? ?????? ?????? ??????,

- ? ??? ? ? ?????? ??? ?? ?????? ?????? ?????? ?????? ???, ??? ??  
????????? ??? ?????? ?????, ??? ?????? ?? ?????? ?????? ??? ? ?????????? ???  
????????? ??? ?????? ??? ?????? ?????? ???, ?? ?? ??????, ? ?????????? ???  
????????? ?? ?????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ???.

(?????????)

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