

?????? C?594/10

T.G. van Laarhoven

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Staatssecretaris van Financiën

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

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

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?????? ??? ?????????????? ??? — ?????? ?????????? ??? ??? — ??? ??????????
??? ??? — ?????????????? ??? ??? ?????????? ??? ???, ??? ??? ?????????????? ???
??? ??? ?????????? ???, ?????????? ??? ?????????? ??? ?????????? ???

(?????? 77/388 ??? ??????????, ????? 6 § 2, ?? 1, ??????? ?, ?? 11, A, § 1, ??????? ??)

?? ????? 6, ?????????? 2, ????? ????, ??????? ??, ??? ????? ?????? 77/388, ???
?????????? ??? ?????????? ??? ??????? ??, ??? ?????? ??? ?????? ??? ?????? ??????
??????, ??? ?????????????? ?? ??? ?????? 95/7, ?? ?????????? ?? ?? ??? 11, A,
????????? 1, ??????? ??, ??? ?????? ??????, ??? ??? ?????? ??? ?????????? ??? ?????? ???
????? ?????????? ?????????? ? ?????? ??????, ???' ?????, ?? ?????????? ???
????????? ??? ??? ?????? ?? ?????????? ?????? ?????? ?????????????? ??? ??????
???? ?????????? ?????????? ??? ??? ?????? ??? ??????, ??? ??????????, ??? ??????
????? ?????????? ?????? ??? ??? ??????, ??? ??????????, ??? ??????????, ??? ??????
??? ?????????? ?????????? ??? ??? ?????? ??? ??????, ???' ??? ?????????? ???????????, ???
??? ?????????? ??? ??? ?????? ?????????? ??? ?????????? ?????? ?????????????? ??? ???
????????? ?????????? ??? ?????, ?? ?????? ???' ?????? ?????????? ??? ?????? ???
????????? ??? ??? ?????????? ??? ??? ?????? ??? ?????? ??????, ? ?????? ??? ?????????? ???, ???'
????????? ????, ??? ?????????? ??? ?????.

(??. ????? 38 ??? ??????.)

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

?? 16?? ?????????? 2012 (*)

«???? ??????? ?? — ???????? ?????????? ?? ?????????????? ?????? ?? ?? ?????? —
????????????? — ?????????????? ??????, ?? ????? ?????? ? ??????????, ??? ?????? ??????
?? ?????????? ?? — ?????????? ?????????? ?? ?????????? ?????? ?????????? ??????
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???? ?????? C?594/10,

?? ?????????? ?????? ?????????????? ?????????? ?????? 267 ????, ???
????? ?? Hoge Raad der Nederlanden (????? ?????) ?? ?????? ??? 29?? ?????????? 2010, ?
????? ?????? ??? 17 ?????????? 2010, ??? ?????? ??? ????

T. G. van Laarhoven

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Staatssecretaris van Financiën,

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

????????? ?? K. Lenaerts, ??????? ???????, J. Malenovský, R. Silva de Lapuerta
(??????????), E. Juhász ?? D. Šváby, ???????,

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

?????????: M. Ferreira, ??????? ??????????,

????? ?? ?? ?????? ?????? ?????????? ?? ?????? ??' ?????????? ?? ?????????? ?? 10?? ????????,
2011,

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

- o ?. van Laarhoven, ?????????? ????????????,
- ? ?????????? ????????, ?????????????? ??? ??? C. Wissels ??? M. Bulterman,
- ? ?????????? ?? ????????, ?????????????? ??? ??? C. Murrell,
- ? ?????????? ????????, ?????????????? ??? ??? L. Lozano Palacios ??? W. Roels,

????? ?? ?????? ?? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??
?? 8?? ????????, 2011,

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1 ? ?????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 17, ?????????? 6,
??? ?????? ??????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ??? ??????????
??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? — ???
????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (?? ??. ???. 09/001, ?. 49),
???? ?????????? ?? ??? ?????? 95/7/?? ??? ??????????, ??? 10?? ?????? 1995
(?? L 102, ?. 18, ??? ????: ??? ??????).

2 ? ??????? ??? ??????????? ??? ??????? ??????? ??????? ??? M. van Laarhoven ???
??? Staatssecretaris van Financiën (?????????? ???????????) ?? ??????????? ??? ???
????????????? ??? (?? ???: ???) ??? ?????????? ??? ?? ?????????????? ??? ???
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3 ????? ?? ?????? 2 ??? ?????? ????????, «????? [?] ?????????????? ?? ?????????????? ?????? ???
?? ??????? ?????????? ??? ?????????????????? ?? ?????????? ?????? ??? ?????????? ???
????? ??? ?????????? ???, ??? ?????? ??? ??? ?????????? ??? ??????».

4 ?????? ??? ?????? 6, ?????????? 2, ????? ?????, ??????? ??, ??? ?? ??? ????? ??????,
?? ?????? ?? ???? ?????? ?????? ?????????? «? ?????????????? ??????, ?? ?????? ??????
? ??????????, ??? ??? ?????? ?????? ??? ?????????? ?????? ??? ? ??? ?????????? ???, ?
????????? ??? ?????? ?????? ??? ?????? ??? ??????????, ?????? ?? ?????? ??? ?????? ??????????
????????? ???? ???? ?????? ?????? [??]».

5 ????. ?? ?????? 11, ?, ??????????? 1, ?????????? ??, ??? ?????? ????????, ??? ??????????
???? ?????? ?????? «??? ?? ???? ?????? ?? ??????????? ?? ?????? 6, ??????????? 2, ?? ?????? ???
?????? ?? ???? ??????????? ?? ??? ??????????? ?? ??? ???, ??? ?? ???? ??????? ?? ??? ??????
??? ??????????».

6 ?? ?????? 17 ??? ?????? ????????, ???? ???? ?????????????? ?? ?? ???? 28, ????????
???, ????, ????, ????:

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

[...]

6. ?? ?????????? ??? ??? ??????? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ???????
???????, ?? ?????????? ??????? ??? ?????????? ?????????? ?????????? ??? ???????, ??
????? ??? ??????? ?????????? ??? ?????? ??? [??]. ?? ??? ?????????? ??????????????
??? ?? ??????? ??????? ?? ??????, ?? ?????? ??? ?????? ?????????? ???????
??????????????, ??? ?? ?????? ???????????, ?????????? ? ?????????? ???????????.

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

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7 ?? ????? 20, ?????????? 1 ??? 2, ??? ????? ?????? ?????? ???:

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

) ?? ? ?????? ?????? ?????? ?????? ? ??????? ?? ???????, ?? ?????? ?????????? ??
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) ?? ?, ?? ? ?????? ?????? ??? ???????, ?? ?????? ?????????? ?? ?????????? ??
????????? ??? ? ?????? ??? ???????, ?? ?????? ??? ?????????? ?? ???????, ??
????????? ??? ???????, ?? ?????????? ???????, ?? ?????? ??? ?????????? ?? ???????,
?? ?????????? ?????????? ???????, ?? ?????????? ???????, ?? ?????? ??? ?????? ?? ???????,
?? ?????? ??? ???????, ?? ?????????? ???????, ?? ?????? ??? ?????????? ?? ???????,
?? ?????? ??? ?????????? ??? ?????? ?????????? ???????, ?? ?????? ??? ?????????? ?? ???????,
?? ?????? ??? ?????????? ?????????? ???????, ?? ?????? ??? ?????????? ???????, ??
????? ??? ?????????? ?????????? ???????, ?? ?????? ??? ?????????? ???????, ??
????? ??? ?????????? ?????????? ???????, ?? ?????? ??? ?????????? ???????, ??
????? ??? ?????????? ???????, ?? ?????? ??? ?????????? ???????, ?? ?????? ??? ???????,
????? ??? ?????????? ???????, ?? ?????? ??? ?????????? ???????.

2. ?? ?????? ?? ?? ?????? ??????????, ? ?????????? ?????? ?????????? ?????? ?????????? ???
???? ?????????????? ??? ?? ???, ??? ?? ?????? ??? ?????? ??? ?????? ??????? ?
????????? ??? ?? ????. ???' ??? ? ?????????? ?????? ??? ?? ??? ?????? ??? ???????, ??
?? ?? ?????? ?????????? ?? ????. ? ?????????? ?????? ??? ?????? ?????????? ??????? ??
?? ?? ?????? ??? ?????????? ?? ??? ???????, ?? ?????? ?????????? ??????? ?? ??????? ??
????????? ??? ?? ?????? ??? ?? ?????? ?????? ???????, ?? ?????? ?????????? ??????? ??
????????? ??? ?? ?????? ??? ?? ?????? ???????, ?? ?????? ?????????? ??????? ??
????????? ??? ?? ?????? ??? ?? ?????? ???????.

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8 ?? ????? 2 ??? ?????? ?? 1968 ??? ?????? ?????? ?????? (Wet op de
omzetbelasting 1968, ??? ????: ?????? ????) ??????:

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

9 ?? ????? 15 ??? ?????? ??? ?????? ??? ??????:

«1. ? ????? ?? ?????? 2 ????? ??? ????? ?????????? ? ?????????????? ??????????:

?) ???? ???? ??? ??????????? ??? ???????????, ?????????? ??? ?????? ??? ??????????
?????? ??? ?????? ???????????????, ??? ???? ?????? ??? ?????? ? ??????, ??? ???? ???
????????? ??? ?????? ??? ??? ?????? ?????????? ??? ?????????????????? ??? ??? ???
?????????????.

[...]

6. ?????????? ??? ?????? ??? ??? ??????? ??? ??? ?????? ?????????? ?? ?????????? ???????
????? ?? ???? ??? ?? ??????? ?????????????? ??? ??? ?????????????? ??? ???
?????? ??? ?????? ??? ??? ?????????????? ?????? [...]. ?????????? ?????? ??? ???
?????? ??? ??? ??? ?????????? ?? ?????? ?????? ?????? ?????? ?????????????? ???
??? ?????????????? ??? ??? ??? ?????? ?????. ??? ?????? ???, ?????? ?? ?????????? ???
????????? ?????? ?????????????????? ??? ??? ?????????????? ??? ?????? ?????????? ???
????????? ??????.

[...]»

10 ?? ??? 15, ?????????? 1, ??? ?????????? ?????????? ??? ??? ?????????? ??? ???
??? 1968 ??? ?????? ?????? (Uitvoeringsbeschikking omzetbelasting 1968, ??? ???:
?????? ??? ???), ???' ???????? ??? ?????? 15, ?????????? 6, ??? ?? ??? ?????? ??????
???:

«? ?????? ??? ??? ?????? —????????????????? ??? ??????????— ??? ???
????????????? ??? ?????????? ??? ?????? ??? ?????????????? ??? ??? ??? ??? ?????? ???
????????????? (??? ????) ???' ???? ?????? ???, ?? ?? ???? ?? ?????????????? ???
????????????? ??? ??? ?????? ??? ??????????· ??????????, ?????? ??? ??? ???
?????, ?????????? ??? ?????? ?????????? ?? 12 %, ??????, ??? ??? ?????? ??? ??????? ??
?????, ??? ?????? ??? ??? ??????????, ?????????? ?? ?????????? ???, ?? ?? ????, ???
??? ??? ???, ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ???, ???
????????????? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ???
??? ?????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????? ?????? ?????????? ??????????, ??? ??? ?????????? ???
????? ??????????, ??? ?????????????? ??????. ? ?????? ??? ?????? ?????????? ??? ???
????????? ?????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ???.

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

11 ? M. van Laarhoven ?????? ?????????? ?????? ??? ?? ??? ?????? ????????

??????????. ?? 2006 ??? ?????????? ?????? ?????????? ?????????? ??? ?????? ?????????? ???
??????????. ? M. van Laarhoven ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??????
??? ?????????? ??? ??? ??? ??? ?????? ???.

12 ???? ?? ??????? ??? ?? ??? ?????, ? M. van Laarhoven ?????? ?? ?? ??????????
???? ?????????? ??? 500 ?????????? ??? ?????? ??????. ??? ?????? ??? ??? ??? ??????
??? ??? 1? ?????????? ??? ??? 31? ?????????? 2006, ?????? ?? ?? ?????????? ???
????? ?????? ??? ?? ??? ?????????? ??? ?????? ?????? ?? ?????? 15 ??? ??????????
???? ???, ?????? ??? 538 ??? ?? ?????????? ???, ??? ?????? ??? ??????.

13 ? M. van Laarhoven ?????? ??? ?????? ?????? ?????????? ?????? ??? ?? ?????????? ???
????? ????. ???? ??? ?????? ??? ?????????? ??? ?????? ?? ?????? ??? ?????????? ???

?????? ??????? ?????? ??? Rechtbank te Breda ??? ?? ???? ??????????????
?????????. ??????? ??? ??????????? ??? ?????????? ??? ??????? ?? ??????? ??? ??
????????????? ??? ?????? ?? ??????? ??? 3?? ??????? 2008, ? ??????????? ??? ??? ??
????? ?????????? ??? ??? ??????? ??? ?????? ?????? ??? Hoge Raad der Nederlanden.

14 ?? ?? ??? ??????????, ??????????? ??? ?????? 17, ?????????? 6, ??? ??? ?????? ???????,
?????? ?? ??????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ?????????? ?? ??????
????????? ??? ?????? ??? ??? ?? ?????????? ?????? ??? ?????????? ?????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????????????? ??? ?????????????? ??
????????? ???, ?? ?????? ?????????????? ??? ?????? 15, ?????????? 6, ??? ??? ??? ??
??, ?? ?????????? ?? ?? ?????? 15, ?????????? 1, ??? ?????????? ??? ???, ?????? ???, ?????????? ???
?? ? ?????? ?????? ??? ?????? ?????????? ?????? ???' ?????? ?????????? ?? ???
????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???' ?????? ?????????? ?? ???
????????????? ???, ?????????, ?????????? ??? ???' ??? ?????? ?????? ??? ?????? ??? ??
????? ??? ??? ??????. ?? ?? ??? ??? ?????????? ?? ??? ?????? ??? ?????? ?????? ??? ?????
???' ??????? ??? ?????? ??? ?????, ??? ?????? ?? ?????????? ???????????, ??????????
?? ?? ?????????????? ??? ?????? ??? ?????? ??? ?????????? ?????????????? ?????????????? ???.
??' ?????? ??? ?????? ??? ?????????? ?? ?? ?????? ??? ?? ?????? ?????? ??? ??? ?????? ??????????
? ??? ?????? ??? ??????????.

15 ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????????? ???
???? ?? ?????? ?????? ??? ?????? ??? ??????, ??? ?????? 15, ?????????? 1, ??? ??? ???????,
???? ???. ??????, ?? ?????????? ?????? ?????? ?????????? ?????????? ?????? ???,
????????? ?? ?????? ??? ?????????? ?????? ??? ?????? ?????? ?????????? ?????? ?? ??????
????????? ?????? ??? ?? ??? ?????? ?????????? ??? ?????? ?????? ?????????? ?????? ?? ???
????????? ?????? ??? ?? ??? ?????? ?????????? ??? ?????? ??? ?? ??? ?????? ??? ?????????? ???
????? ??? ??? ??? ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????????? ???,
?? ??????, ?? ??? ??? ?????? ??? ?????????? ??? ???.

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

«1) ?? ?????????? ?? ?? 17, ?????????? 6, ??????? ???, ??? ??? ?????? ??????? ??
????????? ?????????? ?? ?? ??????? ?????????? ??? ?????? ??????? ???, ??? ?????????? ??
?? ??????? ??????, ?? ??? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?? ??????? ??
????????? ??? ?? ?? ?????? ?????????? (?????????) ??? ?????????? ??
????????? ??? ?? ??? ?????? ?????????? ??? ?????? ?? ?????? ?? ??? ?????? ??? ?????????? ???
????? ??????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????? ???, ??? ? ????
?? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ??????????;

2) ?? ?????????? ?????????? ??? ??????? ??, ?????? ??? ? ??????
????????? ?? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?????? ??? ??
? ??? ?? ?? ?????? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ?????? ?? ?? ?????? ???
????????? ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ??????;»

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

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17 ??????????? ? ?????????? ?? ???? ??????, ??? ???? ?????? ?? ???? ?????? ???????????
??? ? ???? ?????? ??????????, ??? ???? ?????? ?? ???? 17, ?????????? 6, ??? ????
???????.

18 ?? ?????? ?????????? ?????????? ??? ???? ?????? ?????? ??? ???? ?????? ?????? ??????
?????? ???? ? ?????????? ?????????? ???????, ???? ?????? ?????? ?????????????? ??? ???? ??????
??? ?????? ????, ??? ???? 15, ?????????? 1, ??? ?????? ????, ??? ???? ??????
?????? ? ? ???? ?????? ?????????? ?? ?????? ??? ???? ?????? ??? ???? ?????? ??? ????
????????? ?????????? ?????? ??? ???? ?????? ??? ???? ?????????? ?????? ??? ???? ???? ????
????????? ??? ???? ?????? ??? ???? ?????? ??? ???? ?????????? ?????? ??? ???? ???? ????
????????? ??? ???? ?????? ??? ???? ?????? ??? ???? ?????????? ?????? ??? ???? ???? ????.

19 ?????????? ??? ?????????? ??? ???? ?????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ?
?????? ???? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ???? ?
?????? ???? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?
????? ? ? ?????? ??? ???? 15, ?????????? 1, ??? ?????? ?????? ??? ???? ???? ???? ???? ???? 17,
????????? 6, ??? ?????? ????.

20 ?????????? ??? ?????? ??? ???? ?????? ?????? 17, ?????????? 6, ??????
??????, ??? ?????? ?????? ?????? ?? ?????????? ??? ???? ?????? ??? ???? ???? ???? ?????????? ??? ?
????????? ?????? ??? ?????? ?????? ?? ??? ?????? ?????? ??? ???? ?????? ??? ???? ???? ???? ???? ?
????? ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ???? ?????? ??? ???? ???? ???? ???? ?
????????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ???? ?????? ??? ???? ???? ???? 6, ??? ?
????? (??., ?????????? ??? 14? ?????? 2001, C?345/99, ?????????? ??? ?????????? ?????? ?????? ?
2001, ?. I?4493, ????? 19, ????? ??? 11? ?????? 2008, C?371/07, Danfoss ???
AstraZeneca, ?????? 2008, ?. I?9549, ????? 28).

21 ?? ?????? ?????????? ??? ???? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ??????
????????? ?????? ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????? ?????? ?????? ??????, ????? ???? ?????????? ?????? ??? ???? ?????? ?????? ?????? ??????
????????? ??? ?????????? ??? ???? ?????? ?????? 17, ?????????? 6, ?????? ??????,
????????? ??? ?????? ????.

22 ?????? ?????? ?????????? ?? ?????????? ???, ??? ???? ???? 15, ?????????? 1, ??? ?
??????????, ??? ?????????? ???, ???? ???? ???? ???? ?????? ?????????? ??? ???? ???? ???? ?
????????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?
????????? ?????? ?????? ??? ???? ??? ???? ?????? ??? ???? ?????? ??? ???? ???? ???? ?
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?
????????? ??? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?
????????? ??? ????' ?????? ?????? ??????.

23 ?? ? ? ???? 15, ?????????? 1, ?????? ?????? ?????? ?????? ??? ???? ???? ?
????? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
??? ?????? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

24 ??????, ? ?????????? ?????? ?????? ??? ???? ?????? ?????? ?????? ?????? ??? ???? ?
????? ?????? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?
????????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ???? ???? ???? ???? ???? ???? ?
????????? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

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

25 ? ?? ??? ????? ??????????? ??????? ?? ?????????? ??? ????? ?????????? ?? ?? ??? ?????
?????????? ?? ???? ??????????? ????? ?? ??? ?????, ?? ?????????? ??? ?????????????? ?????
????????????????? ??? ?? ??? ?????????????? ??? ?? ??? ?? ?????????? ???????, ?
????????????? ??? ?? ??? ??????, ??? ?? ??? ?????? ?????????? ??? ?? ?, ??? ?? ??? ?? ?????? ??
????? ??? ?? ??????????? ??? ?????????? ??? ?????????? ???, ??? ?? ?? ?? ??????????
????????????? ??? ?? ?????????? ??? ??????????, ?????????? ?? ??? ?? ??? ?????? ??? ??
????? ??? ?? ???, ??? ?? ?? ?????????? ??? ?????????? ??? ?? ??? ?? ??? ?? ??? ?? ?? ?? ??
????? ??? ?? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? (?? . ?????????? ?? 14??
?????? 2005, C?434/03, Charles ??? Charles-Tijmens, ??????? 2005, ?. I?7037, ????? 23 ???
???? ?????????????? ??????????, ????? ?? ?? ?? 14?? ?????????? 2006, C?72/05, Wollny,
?????? 2006, ?. I?8297, ????? 21).

26 ?? ? ?????????????? ??? ???? ????? ??????? ?? ?????????????? ?? ???? ???? ??????????????
?? ?????????? ??? ???? ?? ?????????????????? ?????????? ?? ?????????????? ?? ?????????????? ??
?? ?????? ??????, ??? ?????? ?????? ?????? ? ?????? ??? ?????? ?????? ?????? ?? ??????????
?? ??? ?????? ??? ?????? ?????? ??? ??? ??? ?????? (?. ?????????????? ?????? ??
Charles ??? Charles-Tijmens, ????? 24, ????? ??? Wollny, ????? 22).

27 ???????, ?? ??? ?????? ??????????, ?? ?????????? ??? ?????? ??? ?????? ?????? ??? ???
??? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??????
??? ??? ??? ??? ?????? ?????????? ??? ?????? ??? ?????????? (?)
????????????? ??? ?????? Charles ??? Charles-Tijmens, ??? 30, ??? ??? Wollny, ???
24). ??? ???, ?? ??? 6, ??????? 2, ??? ?????, ??????? ?, ??? ??? ?????? ???
????????? ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?? ??? ?????? ???
??????, ??? ? ?????????? ??? ?????? ??? ?????, ??? ?? ??? 11, ?, ?????????? 1,
?????? ?, ?? ??? ?????? ?????? ?? ?????????? ?? ?????? ??? ?????????? ??? ??
????????? ??? ?? ??? ?????? (?) . ?????? ??? 8?? ??? 2003, C?269/00, Seeling,
?????? 2003, ?. I?4101, ?????? 42 ??? 43).

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

29 ?? ??????? ?? ???? ?????? ????????????, ??? ?????? ??????, ??????????? ?? ??????????????
????????? ??????????? ?? ??????? ?? ?????? ?????? ?????? ? ?????? ??????????? ??
????????????? ??????????? ??????????? ?? ?????????? ?? ?????? ??????????? ?? ???? ??????????? ??
?? ??????????? ?? ??????? ?? ?????? ?????? ??????????? ?? ?????? ??? ?????????? ??
????????? ?? ?????? ??? ???????????, ??????? ?? ?????? ??? ?????? ? ??? ?????? ??????????????
????????? ?? ??? ?? ??????????? ?? ??????????? ?? (??., ??? ??? ?????? ???, ??????? ??
15?? ??????? 2010, C?368/09, Pannon Gép Centrum, ??????? 2010, ?. I?7467, ????? 33 ??
???? ?????????????? ??????????).

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

30 ??????? ?? ??????? ???????, ??????? ??, ?? ?? ??? ?????????? ??, ?? ???????
?????? ?? ?????????? ?? ??????, ?? ?????? ?????????? ?????? ???' ????? ??
????????????? ?? ?? ?????? 6, ?????????? 2, ????? ??????, ????????? ??, ?? ??????
??????, ?? ??????? ?? ?? ?????? 11, ?, ?????????? 1, ??????? ??, ????, ???? ??

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

31 ??? ?????? ??? ???? ?????????? ??? ?????? ?????????? ??? ?????? 27 ??? ??????
????????? ?? ?????? 11, ?, ?????????? 1, ??????? ??, ??? ?????? ?????? ?????????? ??? ?
????? ?????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? (??., ??????????
Charles ??? Charles-Tijmens, ??????, ?????? 25, ?????? ??? ??? 23? ?????? 2009,
C?460/07, Puffer, ?????? 2009, ?. I?3251, ??? 41).

32 ?? ??? ?????? ?????????? ???, ?????????? ?? ?????????? ??? ?????? ?????? ??????????
????????? ??? ??? ?????? ?????????? ???, ?????????? ? ?????? ??? ?????? ??? ?????? «????
?? ?????? ??? ?????????? ??? ??? ?????? ??? ?????? ???, ??? ??? ?????? ???
????? ??? ??????», ??? ?????????? ?? ?? ??? ?????? 11, A, ?????????? 1, ????????
??.

33 ?????????? ??? ?????? ?? ?????????? ???, ??????, ??? ?????? ?????? ??? ????
????????? ??? ?????? 28 ??? 29 ??? ?????? ???, ?????? ?? ?????? ??? ??????????
????????? ??? ?????? ??? ??????, ?? ?????? ?????? ??? ?????? ??? ?????????? ???, ?? ??????
????, ?????? ???' ?????? ?????????? ???, ?????? ?????? ??? ?????????? ??? ?????????? ??? ?
????????? ??? ?????? ???' ?????? ?????? ??? ?????? ?????????? ??? ?????????? ??? ????
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????? ??? ?????????? ???, ??? ??? ?????? ??? ?????? ???' ?????? ?????????? ??? ?????????? ???
????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

34 ???????, ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????????, ?? ?????? ???
????????? ?? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? 11, A, ?????????? 1, ????????, ??,
?? ?????? ??????, ??? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????????
???? ?????? ?????? ??? ?????? ??? ?????? ???.

35 ???????, ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??? ?
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ???, ?
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,
(??., ??? ??? ?????? ???, ?????? Wollny, ??????, ??? 35).

36 ??? ??? ?????????? ??????, ?????????? ??? ?????? ???????????, ?? ?????? ?????? ?? ???
??????? ??? ?? ?????????? ??? ?????? ???????, ?? ??????????, ????? ?? ?????????? ??
??????? ?? ???????????, ?? ?? ?????? ??????????? ??? ?????? ?????????? ?? ??????????????
?? ?? ??? ?????????? ?????????????? ?????? ??? ?????? ?????????? ??? ??????????
??????????, ??? ?????????????? ??? ??? ?????????? ?????????, ?????? ?? ?????????? ??
????????? ??? ?? ?????? ??? «[?????] ??? ?????? ??? ??????????? ??? ??? ??????????
???? ???, ??? ??? ??????? ??? ?????? ??? ?????????», ??? ??? ?????? ??? ?????? 11,
A, ?????????? 1, ??????? ?, ??? ?????? ??????.

37 ???? ??? ?????? ????, ?????????? ??? ?????? ?????????? ?? ???????????, ???
????? ??? ???????, ?? ?????????? ??? ??????, ??? ?? ?????? ??? ?????????? ?? ???????
??? ?? ??? ?????? ???????, ?????????????? ?? ?????????????? ?? ?????????????? ?? ?????
?????????????, ?????????????? ??? ????? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ???
????????? ???????, ??? ?? ?????????? ??? ?? ????? ?????????? ??? ?????? ??? ?????????? ?? ?? ???
???????, ?? ?????????????? ?? ?????? ?????????????? ?????????? ?????????? ??? ?????????? ??????????
(?. ??????? ?? 22?? ?????????? 2008, C?414/07, Magoora, ?????? 2008, ?. I?10921, ???
44 ??? ??? ?????????????? ??????????).

38 ??????? ?? ??????? ??????????????, ?????? ?? ?????? ?? ?????????????? ???????????
????????? ?? ?? ????? 6, ??????????? 2, ????? ?? ?????, ????????? ??, ??? ????? ???????, ??
????????? ?? ?? ????? 11, A, ??????????? 1, ????????? ??, ??? ????? ???????, ??? ??
????? ?? ?? ?????????? ?? ????? ??????? ????? ?? ?????? ?????? ?? ?????? ???????, ???'
?????, ?? ?????????? ?? ????? ??????? ????? ?? ?????? ?????? ?? ?????????? ??????
????????????????? ?? ?????????? ?? ????? ?????????????? ?? ?????? ?? ?????????? ?? ??????? ??
????? ?? ?? ?????? ??????? ?? ?? ??? ?? ???????, ??? ???????????, ??? ?????????, ???
????? ?? ?? ??????? ?????????????? ?? ?????????? ?????, ???' ??? ????? ??????????
??????????, ?? ?? ?????????????? ?? ?????? ?????????? ?? ?????? ?????????? ?? ??????? ??
????????? ?????????? ??, ?? ?????? ???' ?????? ?????????? ?? ?????? ?? ?????? ??
????????????? ?? ?? ?????????? ?? ?? ??? ?????? ???????, ? ?????? ?? ?????????? ??, ???
????????? ??, ??? ?????????? ?? ?? ??????.

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

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

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

?? ?????? 6, ??????????? 2, ????? ??????, ????????? ??, ??? ?????? ??????? 77/388/???
?? ???????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ??????????? ???
????? ????, ??? ??????? ?? ??? ????? ?????? ?????? — ??? ???????
????? ?????????????? ????: ?????????? ?????????? ???, ??? ?????????????? ??
?? ?????? 95/7/?? ??? ??????????, ??? 10?? ?????? 1995, ?? ?????????? ?? ??
????? 11, A, ?????????? 1, ??????? ??, ??? ?????? ???????, ??? ??? ?????? ???
?? ?????????? ??? ?????? ?????? ?????????? ?????? ?????? ??? ?????? ???????, ???'
?????, ?? ?????????? ??? ?????? ?????????? ?????? ?????? ??? ?????? ?? ??????????
???????? ?????????????????? ??? ?????? ?????? ?????? ?????????????????? ??? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????????????? ???
?? ??? ??????, ??? ??????????, ??? ??????????, ??? ??????????, ??? ?????? ??? ?????????
????????????? ??? ?????? ?????? ??????, ???' ??? ?????????? ??????????????, ??? ??
????????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????????????? ???
?? ?????????? ??? ?????? ?????? ??????. ?? ?????? ???' ?????? ?????? ?????????? ???

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

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

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