

@import url(../../../../css/generic.css); EUR-Lex - 61999J0142 - EL

Avis juridique important

/

61999J0142

?????? ??? ?????????? (????? ?????) ??? 14?? ???B???? 2000. - Floridienne SA ???
Berginvest SA ??? ?????? ????????. - ?????? ??? ?? ?????? ?????????????? ??????????:
Tribunal de première instance de Tournai - ??????. - ??? ?????? ??? - ?????? ???
????B????? ??? ?? ?????? ??? - ?????????? ?????? ?????????? ??? ?????? ???
????????? ??? - ?????????? ?????? - ?????????? - ?????? holding ?????????? ??? ??
????????? ??? ?????????? ?????? ??? ?????? ?????? - ?????? ??? ?????????? ???
??????????. - ?????? C-142/99.

?????? ??? ?????????? ??? ?????????? 2000 ?????? I-09567

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????????????? ?????????? - ?????????? ??? ?????????? - ?????? ?????? ?????????? - ??????
????????? ??? ?????????????? ????? - ?????? ??? ?????????????? ??? ??? ?????? ?????????? ??????
????????????? ?????????? ??? ??? ?????????? ?????? ?????? ?????? - ?????? ???' ?????????? -
????????????? - ?????????? ?????????? ?? ?????? ?????????? ?? ?????????? ??? ?????????? ???
????????? holding ??? ?????????? ??? ?????????? ??? - ?????????? - ?????????? ???
????????? - ?????????? - ??????????

(?????? 77/388 ??? ??????????, ????? 4 § 2 ??? 19)

?????????

\$\$\$\$\$????? ??? ?????? 19 ??? ?????? ?????? 77/388/??? ??? ??????????, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ??????
????????, ??? ?????????? ??? ??? ?????????? ?????? ?????? ?????? ?????????????? ?????? ??? ??
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
??????, ??? ?????? ? ?????????? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ???
??? ?????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???
????? ??????. ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ???
????????? ??? ?????? ?? ?????????????? ?????? ??? ?? ?????????? ?? ??? ?????? ??????????
?? ?????????? ??? ?????? ??? ?????? ?????? holding, ??? ?????????? ?? ?? ??? ??????

? ?????????????? ??? ??????? ??? ?? ??? ?????????? ?????????????? ?????????? ???????, ??????
? ?????????? ??????????, ??? ?? ??????? ??? ?????? ?????????? ?????? ?????? ?????????? ?????
????????????????, ??? ??????? ??? ?? ?????? ?????????? ??? ??, ?????????? ?? ?? ?????? ?????
????? ?????????? ??? ?????? holding ?? ?????????? ??? ?? ?????? ??? ?????? ??? ?????
??? ?????????? ???, ??? ?? ??????? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????
??? ?????? 4, ?????????? 2, ??? ?????? ??????, ?????????? ?????????????? ??? ?? ???
????????? holding.

(???. ??????? 21, 32 ??? ??????.)

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???? ?????? C-142/99,

??? ??? ?? ?????????? ?????? ??? Tribunal de première instance de Tournai (??????) ???
?? ??????????, ???' ?????????? ??? ?????? 177 ??? ??????? ?? (???. ?????? 234 ??), ?? ???
????? ?????????, ??? ??????? ??? ??????? ??? ??????? ?????? ??? ?????????? ??? ??????????
????????? ??????

Floridienne SA,

Berginvest SA

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

? ?????? ?????????????? ??????? ?? ??? ?????? ??? ?????? 19 ??? ?????? ???????
77/388/??? ??? ??????????, ??? 17?? ??_?? 1977, ??? ?????????????? ??? ?????????? ???
????? ?????, ??? ??????? ?? ??? ?????? ?????? ?????? ?????? - ??? ?????? ?????? ???
????????????? ?????: ?????????? ?????????? ??? (?? ????. ????. 09/001, ?. 49),

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

????????? ??? ??? L. Sevón (??????), ??????? ???????, P. Jann ??? ?. Wathelet,
???????,

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

?????????: H. A. Rühl, ?????? ?????????? ??????????,

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

- ? Floridienne SA ??? Berginvest SA, ?????????????? ??? ??? P. Malherbe, D. Waelbroeck
??? P.-P. Hendrickx, ?????????? ????????,

- ? ?????? ??????, ?????????????? ??? ??? A. Snoecx, ?????????? ??? ??????????
??????????, ?????????? ??? ?????????? ??? ?????????? ??? ??? ???????, ?????????????? ???
??? B. van de Walle de Ghelcke, ??????? ????????,

- ? ?????? ??? ?????????? ??????????, ?????????????? ??? ??? E. Traversa, ??????
???????, ??? ??? H. Michard, ?????? ??? ?????? ????????,

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

???? ??????? ??? ??????????? ??????????????? ??? Floridienne SA ??? Berginvest SA, ???
????????? ??????????? ??? ??? ?????????, ??? ?? ??????????? ??? 17?? ??????????? 2000,

???? ??????? ??? ?????? ??????????? ??? ??????? ??? ??????????? ??? ??? ?? ??????????? ???
??? 4?? ??????? 2000,

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

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

1 ?? ??????? ??? 31?? ??????? 1999, ??? ??????? ??? ??????????? ??? 21 ??????? 1999,
?? Tribunal de première instance de Tournai ???????, ???' ??????????? ??? ??????? 177 ???
????????? ?? (??? ?????? 234 ??), ??????????? ??????? ?? ??? ??? ??????? ??? ???????
19 ??? ????? ??????? 77/388/??? ??? ???????????, ??? 17?? ??_?? 1977, ??? ??????????????
??? ??????????? ??? ?????? ?????, ??? ??????? ?? ??? ????? ?????? ?????? ??????? - ???
?????? ????? ??????????????? ?????: ?????????? ?????????? ??? (?? ????. ??? 09/001, ?.
49, ??? ????: ??? ?????).).

2 ?? ??????? ??? ??????? ??? ??????? ?????????? ?????? Floridienne SA (??? ????:
Floridienne) ??? Berginvest SA (??? ????: Berginvest) ?????? ??? ??????? ???????
?????????, ??????? ?? ?? ???????????, ??? ??? ????? ????? ?????????????? ?????? (?? ????:
??), ??? ??????????? ??? ??? ????? ????? ????? ????? ?????????????? ??? ???????, ??? ???
????????? ??? ?? ??????? holding, ??? ??? ?????????? ??? ???????.

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

3 ?? ?????? 2, ????. 1, ?????????? ?? ?? ??? ??????????? ??????? ??? ?? ??????? ???????????,
?? ?????? ?????????????? ??? ??????????? ??? ??????? ??? ?????? ??????????? ??? ??, ??? ???????
?? ??? ?????????? ??? ?????- ??? ???????????, ????? ?????? ?????? ?????????? ??? ?? ???
????? ??? ?????????????? ??? ??? ????? ??????????? ?????????? ??????? ??? ?? ??????? 4,
?????????? 1, ??? ???????, ?? «?????????? ??? ???» ?????????? ?????????????? ???,
???? ??? ????? ?????????, ??? ??? ??? ??????????? ?????????????? ??? ?????????????? ???
?????????? 2 ??? ??? ?????? ??????. ? ?????? ??? «?????????? ??????????????» ???????, ???
????? 4, ?????????? 2, ?? ??????????? ??? ??? ?????????????? ??? ???????, ??? ???????????, ???
????????? ? ??? ??????????? ?????????, ??? ????? ?????????????? ??? ? ??????????? ???
????????? ? ??? ?????? ?????, ??? ??? ??? ????? ?????????? ?????? ??????? ???????????.

4 ?? ????? 17 ??? ????? ???????, ??? ??????????? «?????? ??? ?????? ??? ???????????
???? ??????», ??????, ??? ??????????? 2, ??? ? ??????????? ??? ??? ??? ???????
????????? ??? «???? ?? ????? ??? ?? ?????? ?? ?????????? ?????????????? ??? ?? ???
????????????? ??? ?????????????? ??? (...)». ??? ?????? ?? ?????? ??? ???
????????? ??? ??????????? ??? ??????????? ??? ??? ??? ??? ???????????
????????????? ??? ?????????? ??? ?????????? ?????? ??????? ??? ??? ??????????? ???
??? ?????????? ??????? ??? ???????, ? ?????? ???????, ??????? ?? ??? ??????????? 5 ???
????? ???????, ??? ??? ?? ??? ?????? ??? ?? ??? ?????????? ????? ?????????????? ???????.

5 ? ?????????? ??? ????????????, ?? ? ?????? ?? ??????? ?? ???? ?????? ?????????????? ?
????????????? ??? ?, ??????? ?? ? ?????? 19 ??? ????? ???????, ?? ????? ??????????
???? ?????????? 1 ??? 2, ?? ????:

«1. ? ?????????? ?????????? ?? ?????????? ?? ???? 17, ?????????? 5, ?????? ????,
????????? ??? ?? ?????? ??? ??????????:

- ??? ??????? ?? ??????? ?? ?????? ?? ?????? ?????? ???????, ??? ??????
????????????? ????, ??? ?????????? ??? ???????, ?? ?????? ?????????? ???????
???? ??????, ??????? ?? ???? 17 ??????? 2 ??? 3,
- ??? ?????????? ?? ??????? ?? ?????? ?? ?????? ?????? ???????, ??? ??????
????????????? ????, ??? ?????????? ??? ??????? ?? ?????? ?????????? ?????? ???????,
????? ??? ??? ?????? ?? ?????? ?????? ?????? ?????? ???????, ?? ?????? ??? ??????
?? ?????? ?? ?????????? ??? ?????? ?????? ?? ?????? ??? ?????????? ??????, ??? ??
????????? ??? ?? ???? 11, ??? ?, ?????????? 1, ?????????? ?_.

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

2. ??? ?????????? ?? ?????????? 1, ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ????, ?? ??? ???? ?????? ??????? ??? ?????????? ??? ?????????? ???
????? ?????????? ????, ??????, ?? ??? ??? ?????? ???????, ?? ?????? ?????????? ??
????????? ????, ??????, ?? ??? ??? ?????? ???????, ?? ?????? ?????? ??? ??????????
?? ?? ?????? 13, ??? ?, ?????????? ?_, ??? ?????????? ??? ?????????? ??????. ??? ??
????? ??? ?????? ?????? ??? ?????????? ??? ?? ?????? ?????????? ??????. ??? ??
?? ??? ?????? ?????? ??? ?????? ?????? ?????? 20, ?????????? 5, ??????????
????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ?????? ?? ?????????? ??
????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??????.

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

6 ??? ?????? ?????????? ?????????? ??? ? Floridienne, ?????? holding, ??????????
????? ?????? ??? ?????? ??? ?????? ??? ???????, ??? ?????????? ??? ??? ??????????
????????? ??????????, ??? ? Berginvest, ?????????? ?????? holding, ??????????????
????? ??? ??? -????? ??? ??????????, ?????????? ??? ?????????? ??? ?????????? ???
??? ?????????? ??? ?????????? ???, ?????????? ??? ?????? ?????????? ??? ??????????
??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??????
?????????, ? Floridienne ??? ? Berginvest ?????????? ??? ??? ?????????? ??? ??????????
????????? ??? ?? ?????? ?????? ?????????? ??? ??? ?????? ?????????? ??? ?? ?? ???
?????.

7 ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ???, ?
Floridienne ??? ? Berginvest ?????????? ?? ?????? ?????????? ?? ??, ?? ?????? ??????
????????? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?????? ??? ?????? ?????????? ???
????? ?????????? ??? ?????? ??? ?????? ?????? ? ?????? ?????????? ??? ?????? ??????????
??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??????
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??????
????????? ?? ?? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ??????
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????

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

8 ??' ?????? ??? ????????, ? ?????????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ????????
??? ?? ??? ?????? ???????, ??' ????, ?? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ????
?????? ???? ?? ??? 1990 ?? 1994. ?? ?????????? ??? ?????????? ?????? ?????????? ??? 13
812 839 BEF ?? ?? Floridienne ?? 17 598 876 BEF ?? ?? Berginvest. ?? ?????????? ???
?????? ??????? ??? ?? ??? ?????????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??
??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ??.

9 ??????? ??? ????????, ? Floridienne ?? ?? Berginvest ?????????? ???
??? ? ??????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??? ?????? ???
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
??? ?????? ??? ??????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???.
??????, ?????? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??.

10 ?????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ???, ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?? ??? ?????? ??? «?????
?????», ?? Tribunal de première instance de Tournai ?????? ?? ?????????? ??
????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????? ???:

«????? ?? ??????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ??? ? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ??? ??????;»

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

11 ?? ?? ?????????? ??? ???????, ?? ?????? ??? ?????? ???, ??' ??????, ?? ?? ???
19 ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ?? ?? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? holding ???
????? holding ???, ? ?????? ?????????? ?? ?? ??? ?????? ?????????? ??? ?????? ???
???? ?????????? ??? ?????????? ?????????? ???, ?????? ?? ?? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????? holding, ??? ?????? ??? ?????? ??? ?????? ???
?????????.

12 ??? ?? ?????? ??????? ??? ?????? ???, ?????? ?? ?????????? ?????????? ?? ?? ??
???? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??, ?????? ??? ?????????? ???
????????? ?????????? ?? ?????????? ?????????? ??? ?????? ??? ??.

13 ????, ????, ?? ???????, ? Floridienne ?? ?? Berginvest ?????????? ??? ??
??? ??????? ??????? ?????????? ?????????? ?????????? ?????????? ??? ???????, ???
????? ??? ??????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ???, ???????, ??? ???????
??? ?????? ??????? ??? ??, ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ???.

14 ??? ?? ?? ? ?????? holding ?????????? ?? ?? ??? ?????? ??? ?????????? ???
??????????????, ?? ?????????? ??? ?????? ??? ?????? ???' ????, ??? ?????? ?? ??????????
????? ???, ?????? ??? ?? ?????????? ??? ?????? ?????????? ?? ?? ?????????? ??? ??

? ??????????????. ?????? ??????????, ????, ??????? ??????? ?? ??????, ?????????? ??? ????
?????? ?????????? ????, ?????????? ?????????? ?????????? ??? ?????????? ??? ???? ??? ????
????? ??? ??????? ?????????? ?????????? ?????????? ??? ???????, ??? ?????? ??????
????? ??????? holding ????. ?????? ?? ? ?????? ??? ?????? ???, ? Floridienne ??? ?
Berginvest ?????????????? ??????? ?, ?????? ??? ? ?????????? ??? ??? ?????????? ??? ???? ????
?????.

15 ? ??????? ?????????? ??? ? ???????, ??????????, ?????????????? ??? ? ??????? ????
????????? holding ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ?? ??????????
???????????????, ?????????? ??? ?????????????? ??? ?????????? ?? ?????? ??? ??????
?????? ??? ?????? ??????????. ??? ?????? ?? ?????????? ?????????? ?????????? ???
????????? ??? ?????????? ?????? ?????????????? ??? ?????????? ??? ?????? ??? ?????????? ???
??? ?? ?????????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????
?????????, ??? ?????? ??? ?????????????? ???, ?????? ??? ?????????????? ??? ??? ??????
????????? ?????.

16 ? ??????? ?????????? ?????????? ??? ??????? ?????????? ??? ?????? 19 ??? ???
?????? ?? ??????? ??? ??? ?????????? ??? ??, ?????? ?? ??????? ??????????
????????????? ?????????? ??? ?? ??? ????? ?????????? ??? ?? ?????????????? ??? ??
????? holding ????. ??? ???????, ??? ?? ?????? ??? ?? ?????????? ??? ??
????????????? ??? ?? ??? ?????? ?????????? ??? ?? ??? ?????? ??? ?????????? ?? ?????????? ??
????????? ???.

17 ??????, ?????????????? ? ??? ?????????? ??? ?????????? ??? ????????????, ??? ???? ??? ?????? ??? ???
?? ??????? ??? ?????????? ?? ?? ??? ?????? ?????????? ??? ?? ?????? 17 ??? ???
?????? ??? ?????? ??????????????, ??? ?????? ?? ??????? ?????????? ?????? ??? ??
????????? ?? ??? ??????????????, ?????? ?? ??????? ??? ?? ?????????? ?????? ??? ??
?? ?????????? ??? ??????????????, ?? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
???? ??????? ?????????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ??
???? ??????????, ????, ??? ?????????? ??? ?? ?????? ?????? ?????????? ??? ?? ?????????? ??? ??
????????? ??? ?????????? ?????????? ?????????? ??? ?? ?????? ??? ?????? ??? ??
????? (????????? ??? 20?? ?????? 1991, C-60/90, *Polysar Investments Netherlands*,
?????? 1991, ?. ?-3111, ??? 17, ??? ?? 22?? ?????? 1993, C-333/91, *Sofitam*, ???????
1993, ?. ?-3513, ??? 12).

18 ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??????? ??? ?????? ???? ? ?????? ??????????
?? ??????? ?????????? ?? ??? ?????? ??? ?????? ??????? ??? ?????????? ??? ?????????? ???
?????? ????????????, ?? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????? ??? ??????????
?? ??? ?????????? ??? ?? ??????? ??? ?????? (????????????? ?????? Polysar Investments
Netherlands, ?????? 14).

19 ??????, ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?? ?????????? ??
????????? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? 4, ?????????? 2, ??? ???
??????, ??? ?? ?????? ??? ?????????? ?? ?????????? ?????? ???, ?????? ??? ?????? ?? ?????? 2
?? ???????, ?????????? ?? ??, ??? ? ?????? ?????????? ???, ?????????? ??? ??
????????????? ??? ?????????? ??? ?? Floridienne ??? ?? Berginvest ??? ?????????? ???.

20 ??? ?? ???????, ???, ??? ?????? ?????????? ??? ?? ? ??????? ?????????? ??? ??????
????????? ?? ?????????? ?????? holding ???? ?????? holding ????, ? ????
????????? ???' ?????? ??? ?????? ??? ?????????? ???, ?????? ??? ?????? ?? ??????????
???? ?? ??????? ?? ?????????? ?? ?????????? ??? ?? ?????? ?????????? ???????????????,
????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ?? ?????? ?? ?????? ?????????? ?? ??
????????? ?????? (??., ?????? ???, ?????????? ??? 5?? ?????????? 1981, 154/80,
Coöperatieve Aardappelenbewaarplaats, ?????? 1981, ?. 445, ??? 12, ??? ?? 24??

????????? 1996, C-288/94, Argos Distributors, ?????? 1996, ?. ?-5311, ????? 16).

21 ???????, ?? ?????????? ??? ?????? ??? ? ??????? ?????????????, ?????????? ??? ???
????????? ??? ?????????? ??????? ?????????????? ???????????????, ??? ?????????? ??? ???
????????? ??? ?? ??? ??, ??? ??????, ?? ?????????? ??? ?????????? ??? ??? ??? ??????
????????? ?????????? ?????? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??????????
(????????????? ?????? Sofitam, ????? 13).

22 ? ?????????? ??? ?????? ??? ???? ?????? ?????? ??? ?? ?????????? ?????? ??? ???????
????????????? ??? ??????????. ???' ????, ??????? ?????? ?????? ??? ???? ???????,
????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????? ??? ?????????? ??? ??????????,,
????????, ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ??????? ??? ?????????? ??? ??????????
????????????? ?????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ?????????? ??? ??????
??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????, ???, ???
?? ?????????? ???????????????, ?? ?? ??? ?????? ???, ????? ?? ?????????? ??? ?????????? ???
????????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ???
(????????????? ?????? Polysar Investments Netherlands, ????? 13).

23 ???????, ?????? ??????? ?? ??? ?????? ??? ?????????? ?????????, ??? ?????????????, ??
????? ?? ?????????? ??????????, ?? ?? ??????? ??? ?????????? ????? ?????????? ?????????? ??????????
???? ?????????? ??? ?????? ?????????? ?????, ??? ?????????? ?????? ?????????? ?????????? ???
????????? ??? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???, ? ??????????
????? ?????????? ??? ?? ?????? ??? ?????????? ?????????? ??? ?????????? ??? ??? ??????????.

24 ??? ??????, ???????, ??? ?????? ??? ?????? ??? ??????? ?????????? ??? ??????? holding ???
????? ?? ?????? ??? ?????????? ??? ?????????? ???, ? Floridienne ??? ? Berginvest
????????????? ??? ??????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???
????????????? ??? ?????????? ??? ???????????, ??? ?? ?????????? ??? ?????? ??? ?????????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?????, ????? ?? ?????????? ??? ?????????? ???
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

25 ? ??????? ?????????? ??? ? ???????, ?????????, ?????????????? ??? ??
????????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ????? ??????????
????????? ???, ?????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ??? ?????? ??? ?????? ??? ?????????? ???, ??? ?? ?????, ?? ?????????? ??? ?????? ???
?? ?????????? ??? ?????? ??? ?????????? ???, ?? ?? ?????, ?? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???

26 ??????, ?????????? ??? ?? ?????????? ??? ?????? - ?????????? ??? ??
????????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ???
????????????? ??? ?????? ??? ?????????? ???, ?????? ??? ?????? ??? ?????????? ??? ?????????? ???
?? ?????? - ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??, ?????? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ??? ?????????? ??? ?????? (????? ??? 11?? ?????? 1996,
C-306/94, Régie dauphinoise, ?????? 1996, ?. ?-3695, ????? 17).

27 ?????????? ??? ?? ?????? 2, ????. 1, ??? ?????? ?????? ?????? ?????? ?????? ??????
????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

?????????????, ? ??????? ?? ?? ??????? ??????????, ???? ?? ?????????? ???? ?????? ????,
????????????? ?? ????? ?????????? ???? ?????????? ????? ?????????????? ?? ??????????????,
??? ?????? ???? ?? ????? 4, ?????????? 2, ??? ?????? ??????, ???? ????, ?????? ????
????????? ?????????? ???? ?????????? ?????????????? ?????? ?????? ?? ?????? ??????????
????? ???? ??? ?????? ??? ?????? 19, ?????????? 2, ??? ?? ???? ?????? (??., ??? ??
????? ????, ?????????????? ?????? Régie dauphinoise, ??? 18).

28 ??? ?? ?????? ? ?????????????? ???? ?????? holding, ??? ?????????? ??? ??
????????? ?????????? ???? ?????????? ???, ?? ?????? ?? ?????????? ??????????
?????????????, ?????????? ???? ?????????????? ???? ?????????? ???? ?????? ?? ?????? ???
????????? ?????? ?????????? ?????????? ???? ?????? ?????, ?????? ?????????? ? ??????????????
????? ?? ??? ?????? ?????????? ???? ??????, ???? ?? ?????????? ???? ?????????? ???
????????? ???? ?? ?? ?????? ?????? ?????? ?????? (??., ??? ?? ???? ?????? ????,
????????? ??? 20?? ?????? 1996, C-155/94, Wellcome Trust, ?????? 1996, ?. ?-3013, ???
36, ??? ?? 26?? ?????????? 1996, C-230/94, Enkler, ?????? 1996, ?. ?-4517, ??? 20),
????? ?? ?????????????? ??? ?????? ?????????????? ? ?????????? ??????, ? ??????
????????????? ???? ?? ?????? ???? ?????????? ???? ?????????? ?????? ?????????????? ??????.

29 ??????, ? ??????? ?????? ?? ??????????, ???? ?????? ? ?????? holding ??????
??????????, ?????????, ?????????????? ???? ?????????????? ?? ?????? ??????????, ???
????????? ?? ?? ???? ???? ???? ???? ?????? ???? ??????, ?????? ???? ?????????? ??????????
?? ?? ???? ?????? ?????????? ???? ???? ?????? ???? ?????????????? ?????????? Régie
dauphinoise. ??????, ?????? ?????? ??? ?????? ???? ?? ?????????? ???? ?? ??????
????????? ???? ?? ?????????? ?????? ??????.

30 ??????, ?????????????? ???? ?? ?????? ??????????, ?? ?????? ?????? holding, ???
????????? ?? ???? ?????? ?????????? ???? ?? ?????????? ??? - ??? ?? ???? ?????? ?????????? ???
????????? ?? ??- ???? ???? ?????? ???? ???? ?????????? ?????? ?? ??????
????????? ?? ?????? ?????????? ?????????? ?????????, ?? ?????? ?? ???? ??????
????? ?????? ?? ?????????? ?? ?????? ?????? ???? ?????????? ???? ?? ?????????? ???,
??????, ?????????? ???? ?????????? ???? ??????.

31 ??? ?????? ?????????? ?????????? ?? ?????????? ??, ??? ?????? ??? ?????? ???, ??
????????? ?????? ?????????? ??????, ?????? ?? ?? ?????? ??? ?????????? ??? ?????????? ???
?????? 27 ??? 31 ??? ?????? ??????, ??? ?????????? ?????? ??? ?????? ????.

32 ?? ???? ??? ??????????????, ??? ?????????? ?????? ?????? ?? ?????? ? ?????? ???
?? ??? 19 ??? ?????? ?????? ???? ???? ?????? ???? ?????? ?????? ?????? ??? ?????? ???
????????? ???? ??? ?????????? ???? ?????????? ?????? ?????? ??? ?????? ?? ?????????? ????:
- ?????? ???? ?? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ??????
holding, ??? ?????????? ?? ?? ???? ?????? ?????????????? ??? ?????? ?????? ??? ?? ????
????????? ?????????????? ?????? ????,
- ?????? ?? ?? ???? ?????? ?????? ?????? ?????????? ??? ?????? ?????? holding ?? ?????????? ???
????? ??? ?????? ???? ???? ?????? ?????? ??????, ???? ?? ?????? ?????? ?????? ?????? ???
?????????, ???? ??? ?????? ???? ?????? 4, ?????????? 2, ??? ?????? ??????, ??????????
????????? ???? ?? ???? ?????? holding.

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33 ?? ?????? ??? ?????? ?????????????? ? ??????? ?????????? ??? ? ??????????, ??? ??????????
????????????? ??? ??????????, ??? ??????????. ?????????? ??? ? ??????? ??????????
???? ?? ??? ??? ????? ?????????? ??? ?????? ?????? ??? ?????????? ?????????????? ???
????????? ??????? ??? ?????? ?????????? ??????????, ?' ??? ?????????????? ?? ?????????? ??? ???
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????????? ??? ??? ?????????? ??? ??? ?????? ?? ?????? ??? 31?? ?????? 1999 ??
Tribunal de première instance de Tournai, ??????????:

?? ????? 19 ??? ????? ?????? 77/388/???, ??? ??????????, ??? 17?? ??_?? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ??????
????????? - ??? ?????? ?????? ????? ?????????????? ?????: ?????????? ?????????? ???, ???
??? ?????? ??? ??? ????? ?????????? ??? ?????????? ??? ?????????? ??? ??? ?????????? ???
????????? ?????????? ??? ?????? ??? ??????????????:

- ?????? ??? ?? ?????????? ?? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ??????????
holding, ??? ?????????? ?? ?? ??? ????? ?????????? ??? ?????????? ??? ?? ???
????????? ?????????????? ??????????,

- ?????????? ?? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????? holding ?? ?????????? ???
???? ?? ?????? ??? ?????? ?????? ?????? ?????? ???, ??? ?? ?????? ?????? ?????? ?????????? ???
?????????, ??? ??? ?????? ??? ?????? 4, ?????????? 2, ??? ?????? ??????, ??????????
????????????? ??? ?? ??? ?????? holding.