

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

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

??? 20?? ?????????? 2022 (\*)

???? ??????? C?295/21,

?? ??????????? ?? ?????? ??????????????? ?????????? ??????? ?? ?????? 267 ????, ???  
?????? ?? cour d'appel de Bruxelles (???????, ????????, ??????) ?? ??????? ?? 29??  
?????? 2021, ? ?????? ??????? ?? ?????????? ?? 10 ????? 2021, ??? ??????? ??  
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Allianz Benelux SA

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État belge, SPF Finances,

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

?????????? ??? ??? M. Safjan, ?????? ???????, N. Jääskinen ??? M. Gavalec (?????????),  
???????,

????????? ??????????????: ?, ??????

?????????: M. Krausenböck, ?????????? ????????,

????????? ?????? ??? ??????? ?????????? ??? ?????? ??? ??' ?????????????? ?????????????? ???  
3? ???????????? 2022,

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

- ? Allianz Benelux SA, ??????????????? ??? ?? V.?A. De Brauwere, avocate,
  - ? ??????? ????????, ?????????????? ??? ??? S. Baeyens ??? J.?C. Halleux, ????? ??? ??? C. Pochet, ?????????????? ??? ??? D. Delvaux, ?? ??????????????,
  - ? ?????????? ????????, ?????????????? ??? ??? W. Roels ??? V. Uher, ????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? 28?? ?????? 2022,  
?????? ??? ???????

????????

1 ? ??????? ???????? ?????????????? ?????????? ?????? ??? ?????????? ??? ?????? 4,  
????????? 1, ??? ??????? 90/435/??? ??? ??????????, ??? 23? ?????? 1990, ??????? ??  
?? ????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????????? ??? ??? ??????????  
????????? ?????????? ??? ?????? (?? 1990, L 225, ?. 6), ?? ?????????? ?? ??? ??????  
????? 78/855/??? ??? ??????????, ??? 9? ?????? 1978, ?????????? ??? ?????? 54,  
????????? 3, ??????? ??, ??? ???????, ??? ??? ?????????? ??? ?????? ??????????  
(?? ??. ??. 06/002, ?. 38), ????? ?? ?? ??? ????? 82/891/??? ??? ??????????, ???  
17? ?????????? 1982, ?????????? ??? ?????? 54, ?????????? 3, ?????????? ??, ??? ???????,  
??? ?? ??????? ??? ??????? ?????????? (?? 1982, L 378, ?. 47).

2 ? ?????? ??? ???????????? ??? ?????? ??????? ??????? ?????? ??? Allianz Benelux  
SA ??? ??? État belge, SPF Finances (????????? ????, ??????????????? ???????  
????????? ??????????) ??????? ?? ??? ?????????? ??? ?????????????? ?????????????? ???  
?? ??? ?????????? ??? ??????? ??? ?????????? ??? ?????? ?????? ??? ?? ?????????? ??? 2004  
??? 2007.

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

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

? ?????? 90/435

3 ??????? ?????? ?????????? ?????????????? ?????? ?????? ?????? ?????? 90/435 ?????????? ?? ????:

???? ????? ??? ??????? ????????, ?? ??????? ??? ?????????? ???, ??????? ??? ?????????? ?????, ?? ??????? ??? ?????????? ?????  
?????, ?? ?????? ??? ??? ?????? ??? ?????????? ?????????? ??????:

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

4      ?? ?????? 1, ??????????? 1, ????? ??? ??????? ??????????, ??? ??????? ??????? ???  
?? ????:

«????? ??????? ?????? ??????????? ??? ??????? ??????:

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

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

5 ????? ?? ?????? 4, ?????????? 1 ??? 2, ??? ???? ?????????:

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

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

- ????? ?? ??????????, ?????????????? ??? ?????????? ??? ?????? ?????????? ?????? ?? ??????  
?? ?? ??? ??? ?????? ??? ?? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????????? ???  
????? ????, ??????????, ?? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??  
????? ?????? ??? ?????? ?????????????? ? ?????????? ?????????? ???' ?????????? ???  
????????? ?????????? ??? ?????? 5, ?????? ??? ?????? ??? ?????????????? ?????????? ???  
?????.

2. ?? ?????? ??? ?????????? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ??? ?? ????  
????????? ??? ?? ?????????? ??? ?? ?????????? ?????? ??? ?????????? ??? ?? ?????????? ???  
????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ???  
????????? ??????????. ???, ??? ?????????? ???, ?? ????? ?????????? ??? ?????? ??? ?????? ???  
?? ?????????? ?????????? ?? ??? ???' ?????????, ?? ??? ?????? ??? ?????? ??? ?????????? ??  
????????? ?? 5 % ??? ?????? ??? ?????????? ? ?????????? ??????????.

6 ? ?????? 90/435 ????????????, ?????? ????, ?? ??? ?????? 2003/123/?? ??  
???????????, ??? 22?? ?????????? 2003 (?? 2004, L 7, ?. 41). ??? ???? 4, ?????????? 1,  
??? ?????? 90/435, ??? ?????????????? ?? ??? ?????? 2003/123:

«????? ? ??????? ?????????? ?? ?????? ?????????? ???, ?????? ??? ?????????? ??? ??????????  
????????? ?? ?? ?????????? ???, ?????? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??  
????????? ??? ?????????? ?????????? ?? ?????? ??? ?????? ?????? ?????????? ? ??????????  
????????? ??? ?? ?????? ??? ?????? ?????????? ? ?????? ?????????? ???,

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

- ????? ?????????? ?? ?????? ???, ?????????????? ??? ?????? ?????????? ??? ?????????? ??????????  
?? ?? ?????? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?? ??????  
?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?? ?????? ?????????? ??? ??  
????????? ?????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ?????????? ???,  
?? ??? ??????, ? ?????????? ??? ? ?????????? ?????? ?????????? ?????????? ??? ?????? ???  
????????? ??? ?????????????? ??? ?????? 2 ??? 3, ?????? ??? ?????? ??? ?????????????? ???  
????????? ???.

7 ? ?????? 90/435 ?????????? ??? ?? ?????? 2011/96/?? ??? ??????????, ??? 30??  
????????? 2011, ?????? ?? ?? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ??  
????????? ??? ?? ?????????? ?????????? ?????????? ?????????? ??? (?? 2011, L 345, ?. 8),  
? ?????? ?????? ?? ??? ??? 18 ?????????? 2012. ???????, ?????????? ??? ?????? ???  
????? ??? ?????? ?????? ?????????? ?? ?????????? ?????????? ??? ?????? ???, ??????????  
ratione temporis ?????? ? ?????? 90/435.

8      ?? ?????? 19, ??????????? 1, ??? ??????? 78/855 ?????? ?? ????:

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

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

[...]».

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

9      ?? ?????? 202, ?????????? 1, ??? ?????? ?????????? ?????????? ??? 1992, ???  
????? ??? ???? ?? ?????? ??? ?????????? ?????????? ??? ?????? ??? (?? ?????: ??? ???  
1992), ?????????? ?? ????:

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

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

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

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

[...]]».

10     ?? ?????? 204, ?????? ???????, ??? ??? ?? 1992 ????:

«?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?? ?????? 202 § 1, 1°, 3° ??? 4°,  
?????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????????????? ?? ?????????? ?? ?? ?????? 95 [%]  
?? ?????????????? ?? ? ?????????????? ?? ??????, ?? ?????????????? ?? ?????????????? ?? ?? ?? ??  
?? ?????????? ?? ? ?????????? ?? ?????????????? ?? ?????? ?? ?????? ?? ?????? ?? ??????????, ?? ??  
????????? ?? ?? ?? ?? ?? ?? ?? 202, ?????????? 1, 4° ??? 5°, ??????????, ?? ?? ??  
????????????? ?? ?????? ?? ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?? ??  
????????? ?? ?? ?????????? ?? ??????»

11     ?? ?????? 205, ?????????? 2, ??? ??? ??? 1992 ?????? ?? ???????;

«? ?????????????? ??? ??? 202 ??????? ?????????????? ??? ??? ??? ??? ?????? ???  
????????????? ????, ??? ???? ??? ??? ??? ??? ?????? ??? ??? ?????? 199, ?????????? ????:  
[...].».

12    ?? ?????? 206 ??? ??? ??? 1992 ????

«§1 ?? ??????????????? ?????? ??????????????? ??????????????? ??? ??????????????? ?????? ??

§ 2. [...]

?? ?????????? ?????????????? ?? ?????????????????? ???' ?????????? ?? ?????? 211,  
????????? 1, ?? ??? ???? ?????????????? ?????????????????? ?????? ?? ??????????????  
????????? ?????????????? ?? ?????????? ??? ?????? ?????????????? ?????????? ???' ?????????? ???  
?? ????? ?? ?????????????? ??, ??? ?? ??????????????, ?????? ?????????? ??????????  
?? ?????????????? ?????????? ?? ?????????????? ?????????? ??, ??? ?? ?????????? ???.

?????????????????, ??????? ?????????? ?????????????? ?????????????? ??? ?????????????? ?????????? ???  
??? ??????? ?????????? ??? ?????? ??? ?????????? ?????? ??????????. ?? ?????????? ??????????  
????????? ???' ?????????? ??? ?????? 211, ?????????? 1, ? ?????????? ?????? ??????????  
????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ?? ?????????? ?? ???  
????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??????  
????????? ?????? ??? ?????? ?????? ?????? ?????? »

**? ??????? ??? ?????? ??? ?? ?????????? ?????? ??????**

13    ??? 16 ?????????? 1995 ? AGF l'Escaut SA ?????????? ??? ?????????????? ??????????  
????? 15 ?????????? 1999 ? ??? ? AGF l'Escaut SA ??? ??? ?????? ?????? ??????????????  
????????? ?????????? ??? Assubel-Vie SA.

14    ?? ?????????? ??? AGF l'Escaut ??? ??? ??? Assubel-Vie ???????, ??? ???  
????? ??? ?????? ?????? Allianz Benelux, ??????? ?????????? ??? ??????????  
????????? ??? (??? ????: ???) ?? ????? ??????? ?? ?????????? ??? ??????????  
????????? ??? ?????? ???, ? Allianz Benelux ??????? ?? ?????????? ?? ?? ???  
????????? ??? ??? ??? ??? ?????????? ??? 2004 ??? 2007. ? ??????? ?????????? ???  
????????? ??? ??? ?????????? ?????????? ??? ??? ??? ???.

15    ?????? ?????????? ??? ?????? ??? ?????? ? Allianz Benelux ??? ??? ??????  
?????????, ? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ???  
?????, ?? ?????? ??? 19?? ?????????? 2012, ???, ?????? ?????????? ???  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???  
????? ??? ?????? ???, ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ??? ???  
????????? ???, ??? ?????? ??? ?????? ??? ?????????? ? Allianz Benelux, ???  
????????? ?? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? 206,  
????????? 2, ??? ??? ??? 1992 ??? ?????? ??? ?????????? ??? ??????.

16    ? Allianz Benelux ?????? ?????? ??? ?????? ??? ?????????? ?????? ?????? ??? tribunal de  
première instance francophone de Bruxelles (????????? ?????????? ??????????, ??????).  
?? ?????? ??? 20?? ?????? 2016, ?? ?????? ?????????? ?????? ?? ?????? ??? ??  
????????? ?????? ??? ?????????? ??? ?????????? ??? ??? ???.

17    ? Allianz Benelux ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ??????????  
?????????. ? ?? ??? ?????? ?????? ?????????? ??? ?????????? ?? ?????????? ??????????  
????? ??? ?????????? ??? ?????? ??? ?????????? ?? ?????????? ??? ??? ?????? ???  
????????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????????? ??? ??????????  
?????, ??? ?????? ???, ??? ?????? ??? ?????? 4, ?????????? 1, ??? ?????? 90/435 ???,  
????? ???, ??? ?????? ??? ?????? ??? ?????????? ??? ??????????.

18    ??? ??? ?????? ???, ?? cour d'appel de Bruxelles (????????? ??????????, ??????)  
????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ??  
????????? ??????:

«????? ?? ??? 4, [?????????] 1, ??? ?????? [90/435], ?????????? ?????????? ? ??  
????????? ?? ??? ?????? ??? ?????? [78/855] ??? [82/891] ??? ?????? ?????????? ???, ???  
????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?? ?????? ?????????? ??? ?? ??????????  
????? ?? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?? ??????????  
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? 95 % ??  
????? ??? ???, ??? ??????, ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???, ??? ???,  
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??????.

????????????????? ??? ?????????? ?? ?????????? ??? ?? ??? ?????? ??? ?????? ?????? ?????????????? ???  
????????? ??? ?????? ?????????? ?? ?????????? ??? ?????? ??????, ??? ?? ???????  
??? ?????? ?????????? ??? ?????? ?????? ???' ?????? ??? ?????????? ??? ?????????? ?????? ?????????? ???  
????????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???  
??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ???  
????????? ??? ?????? ???, ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????;»

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

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

19 ???' ????, ?????????????? ???, ????????, ??? ?????????? ??? ???????, ?? ??????  
????????? ?????????? ??? ?????? ??? ?????? 4, ?????????? 1, ??? ?????? 90/435 ???  
???? ?????? 78/855 ??? 82/891, ??? ?????????? ?????? ?????? ?????? ??? ??? ??????????  
????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?????? ??? ?????? ?????.

20 ??????, ??? ??????, ? ??? ?????? 82/891 ??????, ?????? ?? ?? ?????? ??? 1, ???  
??? ?????????? ??? ?????????? ?????? ?????? ?????? ??????/? ??? ?????????? ???  
?????????, ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????, ? ?????? ???  
?????????, ? ??? ?????? ?????? ??? ?????? ?????? ?????? ??????.

21 ??? ??????, ??? ? ?????? 78/855 ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???,  
????????? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????? ??? ??????????????, ???  
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???  
????????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ??????????  
????????????? ??? ?????? ??? ?????? ??? ?????? 90/434/??? ??? ??????????, ??? 23??  
????????? 1990, ?????? ?? ?? ?????? ?????????? ?????? ??? ?????? ??? ??????????????  
?????????, ?????? ?????? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????  
????????? ?????? ?????? (?? 1990, L 225, ?. 1).

22 ??? ??????, ??? ??????, ??? ?????? 90/435, ?????? ?? ??????????, ??????, ???, ???  
????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ??????, ??? ??????????  
???? ?????????? ??? ??????, ??? ?????????? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???' ???  
??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????????? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? 4, ??????????  
1, ??? ?? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? (????. ?????? ??? 19?? ??????????  
2019, Brussels Securities, C?389/18, EU:C:2019:1132, ?????? 35 ?? 36 ??? ???  
????????????? ??????). ??????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ? ?????? ???  
????? ???.

23 ??????, ?? ??? 1 ??? ?????? 90/435 ??? ?????? ??? ?????? ??? ?????? ?? ??????  
????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????  
???? ?????? ??? ?????? ??? ?????? ??? ?????? ????. ??????, ??? ?? ?????? ???  
????????? ??? ?????? 4, ?????????? 1, ?????? ??????, ??? ?????? ?????? ???

????????? ??? ?????????? ??? ???? ???? ? ???? ??? ?????????? ?? ? ?????????? ?????????  
????????? ??? ???? ?????? ?????? ?? ?????? ??? ?????????? ?????????? (????????? ??? 4??  
?????? 2009, KBC Bank ??? Beleggen, Risicokapitaal, Beheer, C?439/07 ??? C?499/07,  
EU:C:2009:339, ??? 57).

24 ?? ???????????, ????, ? ?????? ??????????????? ?????????? ??? ?????????? ???  
????????? ?????? ?? ??? ?????????? ??? ?????????? ??? ?????? ?? ??????????????  
?????????, ????, ??? ?????? ?????? ?? ?????????????? ?? ?? ?????????? ??? ?????? ???  
????????? ?????????? ?? ?? ?????? 90/435 ?, ??, ?????????, ?????????? ????  
????????? ?????????? ??? ?????? ?????????????? ?????????? ??? ?????? ?????????.

25 ??????????, ??????, ??? ?????? ???????????, ?? ??????? ?? ??? ?????????? ??? ??????  
??? ?????? ??????????? ?????? ?????????? ?????????? (????. ?????? ??? 7??  
?????????? 2022, Cilevi? s ???., C?391/20, EU:C:2022:638, ????? 42 ??? ???  
????????????? ??????). ???????, ?? ?????????? ??? ?????????? ??? ?? ??????  
????????? ?????? ??????????, ??? ????? ?? ?????? ??? ???, ??? ?????? 90/435 ???, ??  
?? ??????, ??? ?????? ?????????? ?????? ?????????? ?????????? ?????? ???  
????????? ???, ??????? ???, ?????????? ??? ? ?????????? ??? ?????????? ???  
????????? ???, ??????? ???, ?????????? ??? ?????? ?????? ??? ?????????? ???  
????????? ???, ??????? ???, ?????????? ??? ?????? ?????? ??? ?????????? ???  
????? ?? ??? ?????? ??????? ??? ?? ?????? ??? ?????, ?????????? ??? ? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? (????.  
?????? ??? 18?? ??????? 2012, Punch Graphix Prepress Belgium, C?371/11,  
EU:C:2012:647, ?????? 26 ??? 27 ??? ??? ?????????? ??????????).

26     ?? ????????????, ????. ?????????? ? ??????? ?????????????? ????. ?????? 33 ????. ????????????  
???, ????. ????. ?????? ?????????????? ?????????? ?????????? ?????????? ????. ? ?????? ?????????? ??????  
???????. ?????? ????. ?????? ?????? ????. ?????? ?????? ?????? ?????? ?????? ????. ?????? ?????? ????.  
????. ????.

27 ??????? ??, ???????, ?????????? ? ?????????? ?? ?? ?????????? ?????? 90/435.

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

28 ?? ?? ?????????? ??????? ??, ?? ?????? ??????????? ??????, ???' ??????, ?? ??  
?????????? ?? ??????????? ?? ?? ?????? 4, ?????????? 1, ??? ?????? 90/435 ??? ??  
?????? ?? ??????????? ?? ??????? ??????? ??????? ???? ?? ????? ?????????? ?? ??  
????????????? ?? ?? ??????? ??????? ?????????????? ?? ?? ?????????? ?? ?? ?? ??  
?????? ?? ??????? 95 % ?? ?? ????? ?? ?? ???? ??, ?? ????? ??????? ??, ?? ?? ???????,  
?? ??????? ?? ?? ?? ?? ??????? ?? ??????? ?????????? ??, ?? ?? ??, ?? ????????  
?????????? ?? ?? ??????? ?? ?? ??????? ??????? ???????????, ??????????? ?? ?? ??????????  
?? ?? ??????? ?? ?? ??????? ?? ?? ?? ?? ??????? ??????? ?? ?? ??????????? ?? ?? ??' ??  
?????????? ?? ?? ?? ?? ??????? ?? ?? ??????? ??????????? ?? ?? ??????? ??????????? ?? ??  
?????????? ?? ?? ?? ?? ??????? ?? ?? ?? ?? ??????? ??????????? ?? ?? ??????? ?? ?? ??.

29 ??????????????, ???????, ??? ?? ???? 4, ?????????? 1, ??? ?????? 90/435, ???  
????????????? ?? ?? ?????? 2003/123, ?????????? ???, ??? ? ?????? ?????????? ? ? ??????  
????????????? ?? ????????, ??????? ??? ?????????? ??? ?????????? ?????????? ?? ??  
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30 ???????, ? ?????? 90/435 ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

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(?????? ??? 19?? ?????????? 2019, Brussels Securities, C?389/18, EU:C:2019:1132, ??? 31

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31 ??????? ?? ?? ?????????? ??? ?????????????? ??? ?????? ?????? ?????????????? ???

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

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32 ???????, ?? ?????????? ??? ?????? ??????, ??????, ??? ? ?????????? ??? ?????? ??? ?????? ???

??? ??? ?????? ?? ?????? ?? ?????? ??? ?????? 4, ?????????? 1, ????? ?????? ???, ??? ??????

90/435 ?? ?? ?????????? ?? ?????? ??? ?????? ?????? ? ?????? ?????? ??? ?????? ??? ?????? ???

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????????? ??? ?????????? 2 ??? 3 ??? ?????? ??????, ?????? ??? ?????? ?????? 1, ??????????

2, ??? ?????? ??????, ???, ???????, ??? ? ?????? ?????????? ??? ?????? ?????? ?????? ??? ??

??? ?????? 4, ?????????? 1, ????? ?????? ???, ?????????? ??? ?????? ?????? ?????? ?????? ???,

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C?389/18, EU:C:2019:1132, ??? 33 ??? 37 ??? ?????? ?????????? ??????????).

33 ??? ?????? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ??????

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??? ?? ??? ?????? ?????? ?????? ??? ?? ?? 95 % ??? ?? ?????? ?????? ???, ??? ?????? ???

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??? ??? ?? ?????? ??? ?????? (????. ?????? ??? 19?? ?????????? 2019, Brussels

Securities, C?389/18, EU:C:2019:1132, ??? 39).

34 ???????, ?????? ??? ?????????? ??? 12? ?????????? 2009, Cobelfret (C?138/07,

EU:C:2009:82), ?? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ???, ?????? ?? ??

????? 205, ?????????? 3, ??? ??? ??? 1992, ?? ?????? ??? ?? ?????? ??? ?????? ???

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????? ?????? (????. ?????? ??? 19?? ?????????? 2019, Brussels Securities, C?389/18,

EU:C:2019:1132, ??? 40).

35 ?? ?????????? , ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????? ???

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36    ??? ??????, ?????????? ? ?????????? ??? ???? 4, ?????????? 1, ??? ??????  
90/435 ??? ?????????? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????????????? ???  
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???? ?????? 29 ??? 30 ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
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37    ??? ??????, ?? ??? ?????? ??? ?????? ?????? ?? ??????????, ?? ??? ?????? ??? ??????  
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????????? ?? ??? 4, ?????????? 1, ?????? ??????, ??? ?????? 90/435 (????????? ???  
4?? ?????? 2009, KBC Bank ??? Beleggen, Risicokapitaal, Beheer, C?439/07 ??? C?499/07,  
EU:C:2009:339, ??? 50).

38    ??? ??????, ??? ? ?????? 90/434 ??? ?????? ??? ?????????? ??? ?????? ???  
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????? ?? ?????? ??? ?????? ??? ?????? 36 ??? ?????? ??? ??????, ??? ???  
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????????? ? Allianz Benelux.

39    ??? ??????, ??? ? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ???  
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?? ?????? ??? ???? 4, ?????????? 1, ?????? ??????, ??? ?????? 90/435.

40    ??????, ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????? ???  
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41    ??????, ??? ?????? ??? ?????? ?????????? ??? ?????? ?????????? ???  
?????????, ??? ?????, ??? ?????? ??? ?????? 32 ??? ?????? ??? ??????  
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42 ????????, ?????? ?? ??????????? ???, ?? ??? ?????? ??? 19?? ??????????? 2019,  
Brussels Securities (C?389/18, EU:C:2019:1132), ? ????? ??????? ?? ????? ?? ??? ?????  
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?? ??????????? ?????, ????? ?? ??????????? ???????, ?? ??????????? ??? ??????? ??  
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43      ?????, ????, ??????????? ???? ? ??????? ?????????? ??? ?? ? ????????, ?  
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44 ????????, ?????? ?? ?????? ?????????? ??? ?????????????? ??? ? ??????? ?????? ?????? ?????  
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45      ????? ?????????? ? ??????? ?????????????? ??? ?????? 57 ??? ?????????? ???, ??? ??  
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46      ????? ?? ??????, ???? ?????????? ? ????????, ?? ?? ?????????? ????? ?? ?? ??  
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????????? ?? ?? ??' ?????????? ???? ?????????? ?????, ??  
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47 ??????????, ?? ?????????? ?? ?????????????? ??? ?????????? ??? ?????????? ?????????? ?????  
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?????? 90/435 (????. ?????? ??? 12? ?????????? 2009, Cobelfret, C?138/07,  
EU:C:2009:82, ????? 61, ??? ?????? ??? 4? ?????? 2009, KBC Bank ??? Beleggen,  
Risicokapitaal, Beheer, C?439/07 ??? C?499/07, EU:C:2009:339, ?????? 50 ??? 53 ??? ???  
????????????? ??????????).

48 ?????????????? ?????? ??? ??????????????, ??? ?????????????? ??????? ?????? ?????? ????  
????????? ??? ?? ????? 4, ?????????? 1, ??? ?????? 90/435 ??? ?????? ?????? ??? ??  
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????????? 95 % ??? ?????? ??? ???? ?????? ?????????? ???, ??? ??????????, ?? ??????????  
??? ?????????? ?????? ?? ?????? ?????????? ???, ??? ?????, ?? ?????????? ?????????? ???  
??? ?????????? ?????? ?? ?????? ?????????? ???, ?????????? ?? ?????????? ??? ?? ???  
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49 ?????????? ??? ???? ?????? ?????????? ??? ?? ??? ?????? ?????? ?????????? ??? ?????? ???  
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????????????? ?? ?????????? ??? ?? ?????????? ??????. ?? ?????? ??? ?????? ??????????  
???? ?????????? ?????????????? ??? ?????????? ???, ??? ??? ?? ??? ?????, ??? ??????????.

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

? ???? 4, ?????????? 1, ??? ?????? 90/435/?? ??? ??????????, ??? 23?? ??????  
1990, ??????? ?? ?? ?????? ?????????? ?????????? ?? ?????? ?????? ??? ?? ??????????  
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??? ??? ?????? ??? ?????? 95 % ??? ?????? ??? ???? ???? ?????? ?????????? ???,  
???? ???????, ?? ?????? ??? ?????????? ?????? ?? ?????? ?????? ?????? ??? ??????  
???? ???????, ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ??????  
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\*?????? ??????????: ? ??????.