— reduce the fine there stated, as appropriate; and

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging

   — an error of law and reasoning by failing to demonstrate any legitimate interest in pursuing an investigation and in adopting an infringement decision regarding historic conduct;

2. Second plea in law, alleging

   — that Article 2 of the contested decision contravenes Article 6 of the European Convention of Human Rights ('ECHR') and/or Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), by determining a criminal charge by an administrative body, namely the Commission, instead of an independent court complying with the guarantees of Article 6;

3. Third plea in law, alleging

   — that Article 2 is null and void as the Commission failed to respect the applicant's rights of defence during the administrative procedure by failing to set out its position on aggravating and attenuating circumstances for the calculation of the fine;

4. Fourth plea in law, seeking

   — reduction in the level of the fine on the grounds that the Commission erred in its assessment of the gravity of the infringement and breached the principle of proportionality when determining the basic amount of the fine:

     (a) failure to take account of the fact that the infringement involved different practices with different durations and intensities;

     (b) errors of assessment in the finding that the infringement had an actual negative impact on competition and consumers in the relevant market.

5. Fifth plea in law, seeking

   — a reduction in the level of the fine on the grounds that the Commission improperly and unfairly failed to take account of mitigating circumstances:

     (a) failure to give credit for the compensatory measures undertaken by the applicant in the way of substantial investments to improve the broadband infrastructure in Poland for the benefit of competitors and consumers;

     (b) failure to recognise the voluntary termination of the infringement;

     (c) failure to give credit for the commitments offer made by the applicant.

Action brought on 9 September 2011 — Banco Privado Português, S.A. and Massa insolvente do Banco Privado Português v Commission

(Case T-487/11)

(2011/C 340/57)

Language of the case: Portuguese

Parties

Applicants: Banco Privado Português, S.A. — em liquidação ('BPP') and Massa insolvente do Banco Privado Português, S.A. — em liquidação ('assets in the insolvency') (Lisbon, Portugal) (represented by: C. Fernandez, F. Pereira Coutinho, M. Esperança Pina, T. Mafalda Santos, R. Leandro Vasconcelos and A. Kéri, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision No 2011/346/EU of 20 July 2010 on the State aid C 33/09 (ex NN 57/09, CP 191/09) implemented by Portugal in the form of a State guarantee to BPP ('the contested decision'); ([1])

— Or, alternatively, annul the contested decision in so far as it declared the State aid involved in the guarantee to be unlawful and incompatible for the period between 5 December 2008 and 5 June 2009;

— Alternatively, annul the contested decision in so far as it ordered the recovery of the (alleged) aid under Articles 2 to 4 thereof;

— Alternatively, annul the contested decision in so far as it ordered recovery between 5 December 2008 and 5 June 2009;

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on the following pleas in law.

1. First plea in law: lack of reasoning:

   — The Commission did not explain to what extent the grant of the guarantee was likely to affect trade between Member States and consequently distort competition. The method of calculating the amount of the alleged aid is not adequately reasoned. The Commission failed to state reasons — or at least it put forward reasoning that was obscure and/or contained an irreconcilable contradiction — so far as the duration of the alleged aid and hence the calculation of the relevant amount was concerned.

2. Second plea in law: infringement of Article 107(3) TFEU:

   — The Commission failed to have regard to the fact that the State guarantee granted to BPP was justified under Article 107(3)(b) TFEU concerning State aid '*to remedy a serious disturbance in the economy of a Member State*'.

3. Third plea in law: manifest error of assessment of the facts and consequently infringement of Article 107(1) TFEU

   — The Commission applied the law incorrectly to the facts and did not have regard, in particular, to the fact that BPP was no longer trading or that the purpose of the guarantee was exclusively to provide funding to meet certain balance-sheet liabilities predating the grant of the guarantee. The guarantee granted did not confer an advantage on BPP, did not affect trade between Member States, did not distort competition, nor was it likely to produce those effects, and accordingly it could not be regarded as incompatible with the internal market.

4. Fourth plea in law: infringement of Article 108(2) TFEU

   — The contested decision ordered the alleged aid, which is not incompatible with the internal market, to be recovered on purely procedural grounds. The method of calculating the amount to be recovered did not have regard to the principles laid down by the Commission's Guidelines.

5. Fifth plea in law: infringement of the right to sound administration:

   — The Commission imposed an exorbitant requirement having no legal basis, in that Portugal must notify the extension of the guarantee in an identical manner to the formal notifications required for new aid.

6. Sixth plea in law: infringement of the principles of legal certainty and of the protection of legitimate expectations:

   — The contested decision infringes the principles of legal certainty and of the protection of legitimate expectations in so far as it orders the recovery of the alleged aid.

7. Seventh plea in law: infringement of the right to fair treatment:

   — The contested decision infringes the right to fair treatment, in so far as the present case was treated differently from similar situations.

(1) OJ 2011 L 159, p. 95.

Action brought on 15 September 2011 — United Kingdom v ECB

(Case T-496/11)

(2011/C 340/58)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: K. Beal, barrister, and S. Ossowski, Treasury Solicitor)

Defendant: European Central Bank

Form of order sought

Annulment of the Eurosystem Oversight Policy Framework of the European Central Bank ('ECB') dated 5 July 2011 (1), in so far as it sets out a location policy to be applied to central counterparty clearing systems ('CCPs') established in Member States which do not form part of the Eurosystem.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging

   — that the ECB lacked competence to publish the contested act, either at all or alternatively without recourse to the promulgation of a legislative instrument such as a Regulation, adopted either by the Council or alternatively by the European Central Bank ('ECB') itself.

2. Second plea in law, alleging

   — that the contested act either *de jure* or *de facto* will impose a residence requirement on central counterparty clearing systems ('CCPs') that wish to undertake clearing or settlement operations in the Euro currency whose daily trades exceed a certain volume. The contested act infringes all or any of Articles 48, 56 and/or 63 TFEU, in that:

     (a) CCPs established in non-Euro area Member States, such as the United Kingdom, will be obliged to relocate their centres of administration and control to Member States which are members of the Eurosystem. They will also be obliged to re-incorporate as legal persons recognised in the domestic law of another Member State;

     (b) in the event that such CCPs do not relocate as required, they will be precluded from access to the financial markets in the Eurosystem Member States, either on the same terms as CCPs established in those territories, or at all;