— Partially annul the Guideline of the European Central Bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (Guideline ECB/2012/27) (OJ 2013 L 30, p. 1);

— Order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB lacked competence to publish the contested acts, 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 ECB itself;

2. Second plea in law, alleging that contested acts either *de jure* or *de facto* impose a residence requirement on Central Clearing Counterparties ('CCPs') that wish to undertake clearing or settlement operations in the euro currency whose daily trades exceed a certain volume. Further or alternatively they restrict or impede the nature and/or extent of services or capital which may be supplied to CCPs located in non-euro area Member States. The contested acts infringe all or any of Articles 48, 56 and/or 63 TFEU, in that:

   — 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;

   — 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;

   — Such non-resident CCPs will not be entitled to facilities offered by the ECB or the National Central Banks ('NCBs') of the Eurosystem, either on the same terms or at all;

   — As a result, the ability of such CCPs to offer clearing or settlement services in the euro currency to customers in the Union will be restricted or even prohibited in its entirety.

3. Third plea in law, alleging that the contested acts infringe Articles 101 and/or 102 TFEU, read in conjunction with Article 106 TFEU and Article 13 TEU, since:

   — They effectively require all clearing operations proceeding in the euro currency exceeding a certain level to be conducted by CCPs established in a euro area Member State;

   — They effectively direct the ECB and/or euro-area and/or NCBs not to supply euro currency reserves to CCPs established in non-euro area Member States if they exceed the thresholds set in the decision.

4. Fourth plea in law, alleging that the requirement for CCPs established in non-euro area Member States to adopt a different corporate personality and domicile is direct or indirect discrimination on grounds of nationality. It also offends the general EU principle of equality, since CCPs established in different Member States are subject to disparate treatment without any objective justification for the same.

5. Fifth plea in law, alleging that the contested acts infringe relevant provisions of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4July 2012 on OTC derivatives, central counterparties and trade repositories (OJ 2012 L 201, p. 1).

6. Sixth plea in law, alleging that contested acts infringe all or any of Articles II, XI, XVI and XVII of the General Agreement on Trade in Services (GATS).

7. Seventh plea in law, alleging that, without assuming the burden of establishing that a public interest justification for such restrictions is not available (the onus being on the ECB to advance its case for a derogation if it so chooses), the United Kingdom contends that any public policy justification advanced by the ECB would not satisfy the requirement of proportionality, since less restrictive means of ensuring control over financial institutions resident within the Union but outside the euro area are available.

Appeal brought on 17 February 2013 by Ioannis Ntouvas against the judgment of the Civil Service Tribunal of 11 December 2012 in Case F-107/11 Ntouvas v ECDC

(Case T-94/13 P)

(2013/C 114/62)

Language of the case: English

Parties

Appellant: Ioannis Ntouvas (Agios Stefanos, Greece) (represented by: V. Kolias, lawyer)

Other party to the proceedings: European Centre for Disease Prevention and Control (Stockholm, Sweden)

Form of order sought by the appellant

The appellant claims that the Court should:

— Set aside the judgment of the Civil Service Tribunal of 11 December 2012 in Case F-107/11 *Ntouvas* v *ECDC* dismissing the action for annulment of the appellant's appraisal report for 2010 and ordering him to pay all costs;

— Annul the decision contested at first instance; and

— Order the defendant to pay all costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

In support of the appeal, the appellant relies on fourteen pleas in law.

1. First plea in law, alleging infringement of a rule of law relating to burden, and administration, of proof, insofar as the Civil Service Tribunal granted the respondent's request for an extension of the time-limit for lodging its defence at first instance although the respondent had not provided evidence of the circumstances it claimed justified such extension.

2. Second plea in law, alleging substantial error in the finding of fact, insofar as the Civil Service Tribunal found that the date of service, on the respondent, of the application at first instance was 7 November 2011 and not 4 November 2011.

3. Third plea in law, alleging erroneous appraisal of fact, insofar as the Civil Service Tribunal erroneously read, and appraised, the documents in the file disproving the arguments advanced by the respondent in support of its request for an extension of the time-limit for lodging its defence at first instance.

4. Fourth plea in law, alleging erroneous legal classification of fact, insofar as the Civil Service Tribunal erroneously considered as 'exceptional' the circumstances which the respondent invoked when requesting the extension of the time-limit for lodging its defence at first instance.

5. Fifth plea in law, alleging error in the finding, subsidiarily in the legal classification of fact, insofar as the Civil Service Tribunal erroneously found that the appellant had not applied for a judgment by default, subsidiarily that his statements did not constitute an application for a judgment by default.

6. Sixth plea in law, alleging erroneous appraisal of documents on the case-file, insofar as the Civil Service Tribunal held that two positions in the respondent's services were significantly different from each other.

7. Seventh plea in law, alleging error in the establishment of the burden of proof, insofar as the Civil Service Tribunal rejected, for lack of evidence, the appellant's plea that at least one of the members of the respondent's Joint Committee for Appraisals was in conflict of interest, although said evidence consisted in documents identified in the application at first instance and readily available to the respondent; in the alternative, the Tribunal failed to observe its duty, as an administrative court of law adjudicating an employment dispute, of ordering the necessary measures of organisation of procedure in order to obtain said documents. Moreover, the Tribunal misread the legal basis of the appellant's plea and misinterpreted Article 9(6) of the Implementing rule No 20 on Appraisals ('the Implementing rule'), adopted by the director of the ECDC on 17 April 2009.

8. Eighth plea in law, alleging misinterpretation of, and failure to examine, a plea in law alleging the lack of rules of procedure for the ECDC Joint Committee for Appraisals.

9. Ninth plea in law, alleging distortion of evidence, subsidiarily legal classification of fact, insofar as the Civil Service Tribunal considered unsubstantiated the appellant's plea that the ECDC Joint Committee had failed to verify the elements it was obliged to verify under Article 9(4) of the Implementing rule.

10. Tenth plea in law, alleging erroneous appraisal, subsidiarily legal classification, of fact, insofar as the Civil Service Tribunal considered sufficient the reasoning of the opinion of the ECDC Joint Committee for Appraisals.

11. Eleventh plea in law, alleging misinterpretation of a plea in law, and error in the legal classification of fact, insofar as the Civil Service Tribunal misinterpreted the appellant's plea of insufficient reasoning of the opinion of the respondent's Joint Committee for Appraisals as being one of manifest error of assessment; and viewed said reasoning as sufficient.

12. Twelfth plea in law, alleging erroneous appraisal of fact, insofar as the Civil Service Tribunal held that the contested appraisal report was not vitiated by a manifest error of assessment as to the appellant's efficiency in terms of workload.

13. Thirteenth plea in law, alleging erroneous legal classification of fact, insofar as the Civil Service Tribunal considered proportional the criticism in the contested appraisal report, even though the respondent had not, during the appraisal period, brought to the appellant's notice the supposed problems in his conduct.

14. Fourteenth plea in law, alleging erroneous appraisal of fact, insofar as the Civil Service Tribunal viewed the appellant's workload as being less significant than it actually was.

Action brought on 20 February 2013 — Toshiba v Commission

(Case T-104/13)

(2013/C 114/63)

Language of the case: English

Parties

Applicant: Toshiba Corp. (Tokyo, Japan) (represented by: J. MacLennan, Solicitor, J. Jourdan, A. Schulz and P. Berghe, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Article 1(2)(d) of the Commission's Decision of 5 December 2012, in Case COMP/39.437 — *TV and Computer Monitor Tubes*;

— Annul Article 1(2)(e) of the Commission's Decision of 5 December 2012, in Case COMP/39.437 — *TV and Computer Monitor Tubes*;

— Annul Article 2(2)(g) of the contested decision or alternatively reduce the fine as the General Court finds appropriate;

— Annul Article 2(2)(h) of the contested decision or alternatively annul Article 2(2)(h) in so far as Toshiba is held jointly and severally held liable or alternatively reduce the fine as the General Court finds appropriate;

— Make such other order as may be appropriate in the circumstances of the case;

— Award the applicant its costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision erred in finding Toshiba Corporation liable for the infringement of Article 101 TFEU for the period 16 May 2000 until 11 April 2002.

2. Second plea in law, alleging that the contested decision erred in finding Toshiba Corporation liable for the infringement of Article 101 TFEU for the period 12 April 2002 until 31 March 2003;

3. Third plea in law, alleging that the contested decision erred in finding Toshiba Corporation liable for the infringement of Article 101 TFEU for the period 1 April 2003 until 12 June 2006.

4. Fourth plea in law, alleging that the contested decision erred in finding Toshiba Corporation jointly and severally liable for Matsushita Toshiba Picture Display Co., Ltd. 's ('MTPD') participation in the infringement for the period 1 April 2003 until 12 June 2006.

5. Fifth plea in law, alleging, in the alternative to the fourth plea, that the contested decision erred in finding MTPD liable for participating in the infringement for the period 1 April 2003 until 12 June 2006.

6. Sixth plea in law, alleging that the contested decision erred in imposing a fine in Articles 2(2)(g) and 2(2)(h) or, in the alternative, erred in calculating these fines.