

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 7(1)(c) and (j) of Regulation No 207/2009.

Action brought on 7 November 2006 — Hércules Club de Fútbol v Commission**(Case T-766/16)**

(2017/C 006/60)

*Language of the case: Spanish***Parties**

Applicant: Hércules Club de Fútbol, SAD (Alicante, Spain) (represented by: S. Rating and Y. Martínez Mata, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul European Commission Decision C (2016) 4060 final; and
- order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision, in so far as it relates to Hércules, concerns a loan of EUR 18 million granted by a private body to the Fundación de la Comunidad Valenciana Hércules de Alicante, another private body, which used a substantial share of the amount loaned to subscribe for shares in Hércules CF in the context of a capital increase. That loan was guaranteed by a public financial body, namely the Institut Valencià de Finances.

The Commission claims that, as a result of that transaction, Hércules CF benefitted from State aid, amounting to the difference between the actual costs of the guaranteed loan and the costs which it would have incurred under ostensible market conditions, that difference being updated from the date on which the loan was issued to the date of the decision.

In support of the action, the applicant invokes three pleas in law.

1. First plea in law, alleging misapplication of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees.
 - The applicant claims in this respect that it was not ‘a firm in difficulty’ within the meaning of the 2004 Guidelines and that the loan granted took into account the risk of default and the collateral of the loan.
2. Second plea in law, raised in the alternative, alleging the lack of effect on competition and trade between Member States.
 - Hercules CF claims in this respect that it was unable to compete in Europe and that the alleged aid did not confer upon it any competitive advantage.

3. Third plea in law, also raised in the alternative, alleging an incorrect valuation of hypothetical aid.

Action brought on 31 October 2016 — BNP Paribas v ECB

(Case T-768/16)

(2017/C 006/61)

Language of the case: French

Parties

Applicant: BNP Paribas (Paris, France) (represented by: A. Champsaur and A. Delors, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

- annul, on the basis of Articles 256 and 263 TFEU, decision ECB/SSM/2016 — ROMUWSFPU8MPRO8K5P83/136 adopted by the European Central Bank on 24 August 2016;
- order the European Central Bank to pay the entirety of the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Central Bank (ECB) committed an error in law in the interpretation of the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1; 'Regulation No 575/2012').

Accordingly, the applicant in particular criticises ECB decision of 24 August 2016 for rejecting the request which it had made in order to obtain the authorisation to exclude the exposure of public sector entities to the calculation of the leverage ratio ('the contested decision'):

- as being contrary to the intention of the European legislature and to the objectives pursued by Regulation No 575/2013;
 - as rendering Article 429(14) of that regulation wholly ineffective;
 - as constituting an encroachment by the ECB on the powers of the European legislature.
2. Second plea in law, alleging that the contested decision is marred by a manifest error in the assessment of the prudential risk relating to the regulated savings, inasmuch as the ECB failed to take account of the legal framework and the empirical data relating to those savings as well as the relevant reports of the European Banking Authority, and made such an error of assessment both as regards the leverage risk and the other prudential risks relating thereto.
 3. Third plea in law, alleging infringement of the principle of proportionality which mars the contested decision, in so far as it, first, infringes the general principle of proportionality laid down in Article 5 of the Treaty on the European Union, and second, it does not comply with the specific requirements of the principle of proportionality with regard to prudential supervision, requiring that the prudential requirements be adapted to the bank's business model and to the risks associated with it for the financial sector and for the economy.