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;

(c) 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;

(d) 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 act infringes Articles 101 and/or 102 TFEU, read in conjunction with Article 106 TFEU and Article 13 TEU, since:

(a) it effectively requires all clearing operations proceeding in the Euro currency exceeding a certain level to be conducted by CCPs established in a Euro area Member State;

(b) it effectively directs Euro area 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 amounts to 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 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.

(1) Made publicly available through publication on the ECB's website on 5 July 2011.

Action brought on 26 September 2011 — Sanofi Pasteur MSD v OHIM — Mundipharma (Representation of a device of crossing sickles)

(Case T-502/11)

(2011/C 340/59)

Language in which the application was lodged: English

Parties

Applicant: Sanofi Pasteur MSD SNC (Lyon, France) (represented by: T. de Haan and P. Péters, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Mundipharma AG (Basel, Switzerland)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 July 2011 in case R 1904/2010-4;

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

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark representing a device of crossing sickles, for goods in class 5 — Community trade mark application No 5164561

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: French trade mark registration No 94500834, of the figurative mark representing a device of ribbons, for goods in class 5; International trade mark registration No 620636, of the figurative mark representing a device of ribbons, for goods in class 5; International trade mark registration No 627401, of the figurative mark representing a device of ribbons, for goods in class 5

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 76 and 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly held that the enhanced distinctiveness of the earlier marks was no longer raised in the appeal proceedings, and did not properly assess the likelihood of confusion.