— In the third part, the applicant claims that the Civil Service Tribunal's statement of reasons is vitiated by inaccuracies of fact, linked to distortion of, or failure to take account of, evidence put before it (paragraphs 80, 81, 85, 88 and 90 of the judgment under appeal).

Action brought on 6 June 2011 — Gooré v Council

(Case T-285/11)

(2011/C 238/38)

Language of the case: French

Parties

Applicant: Charles Kader Gooré (Abidjan, Côte d'Ivoire) (represented by: F.L. Meynot, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul in part Council Regulation (EU) No 330/2011 of 6 April 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire, as regards the inclusion of the name of Mr Charles Kader Gooré in the list in Annex II thereto (and declare that it is inapplicable to him);

— order the Council of the European Union to pay damages to Mr Charles Kader Gooré in the amount of fifty thousand euros (EUR 50 000) by way of compensation for the harm suffered;

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The applicant puts forward two pleas in law in support of his action:

1. The first plea in law alleges infringement of essential procedural requirements. The applicant criticises the Council of the European Union, first, of failing to provide a statement of reasons and, second, of infringing the principle of proportionality, in that the restrictive measures go beyond what is necessary for achieving the objectives pursued by the Council of the European Union.

2. The second plea in law alleges infringement of the treaties. The applicant criticises the Council of the European Union, first, of infringing the rights of the defence in that all of the evidence in support of a measure were never communicated to the applicant and, second, of infringing the right to property.

Action brought on 6 June 2011 — Heitkamp BauHolding v Commission

(Case T-287/11)

(2011/C 238/39)

Language of the case: German

Parties

Applicant: Heitkamp BauHolding GmbH (Herne, Germany) (represented by: W. Niemann, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the Commission's decision of 26 January 2011, as amended on 15 April 2011, which, to the applicant's knowledge, is yet to be published in the *Official Journal of the European Union*;

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

Pleas in law and main arguments

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

— The *Sanierungsklausel* (Scheme on the fiscal carry-forward of losses in the case of restructuring of companies in difficulty) in Paragraph 8c(1a) of the German Law on Corporation Tax (Körperschaftssteuergesetz; 'KStG') is not State aid for the purposes of Article 107 TFEU. In classifying the system of reference the Commission erred in considering that system to be 'the rules on … loss carry-forward for companies subject to change in their shareholding'. On the contrary, the applicant claims that the system of reference is actually the indefinite carry-forward of losses; the carry-forward is also used for the purposes of corporate taxation as a corollary of the objective net principle.

— The loss of carry-forwards provided for in Paragraph 8c KStG must therefore be classed as an exception, whilst the *Sanierungsklausel* in Paragraph 8c(1a) KStG, for its part, constitutes an exception to the exception which merely reinstates the general rule, thereby rendering the principle that taxable persons should contribute to State financing in accordance with their means (the Leistungsfähigkeitsprinzip) applicable in cases of corporate restructuring.

— It is true that the defendant acknowledges that 'the system of reference is the KStG in its current form', but it fails to appreciate that the legal situation in the Federal Republic was changed by the introduction of the Law on acceleration of growth (the Wachstumsbeschleunigungsgesetz). Since the introduction of the provision on hidden reserves in Paragraph 8c KStG, in healthy undertakings losses can still be deducted and carried forward where the changes made to the shareholding do not exceed the amount of the hidden reserves. Thus, for healthy undertakings, the provision

on hidden reserves can be understood as the counterpart of the *Sanierungsklausel* for undertakings in difficulty, since otherwise, undertakings in need of restructuring would be disadvantaged in structural terms.

— Contrary to the Commission's complaint, the *Sanierungsklausel*, which treats economically sound undertakings and those in need of restructuring unequally, is not a selective measure, but the concretisation of the principle that taxable persons should contribute to State financing in accordance with their means, which is a constitutional principle which has always been recognised by the German Basic Law (Grundgesetz). In the applicant's view, it thus forms part of the internal logic of the system of reference. The *Sanierungsklausel* is thus in conformity with the basic or guiding principles of the German tax system.

— In any case, on the basis of those guiding principles, the introduction of the *Sanierungsklausel* in Paragraph 8c KStG is a measure which is 'justified by the nature and the logic of the [German tax] system' and which, to an extent, revalidates that internal structure.

Action brought on 7 June 2011 — Deutsche Bahn a.o. v Commission

(Case T-289/11)

(2011/C 238/40)

Language of the case: German

Parties

Applicants: Deutsche Bahn AG (Berlin, Germany), DB Mobility Logistics AG (DB ML AG) (Berlin, Germany), DB Energie GmbH (Frankfurt-am- Main, Germany), DB Schenker Rail GmbH (Mainz, Germany) (represented by: W. Deselaers, J.S. Brückner and O. Mross, lawyers)

Defendant: European Commission

Forms of order sought

The applicants claim that the Court should:

— annul the Commission's inspection decision of 14 March 2011 notified on 29 March 2011;

— annul all measures taken on the basis of the inspections, which took place on the basis of that unlawful decision;

— in particular order the Commission to return all the copies of documents made during the inspections, on pain of the annulment of the future Commission decision by the General Court; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2011) 1774 of 14 March 2011 (Cases COMP/39.678 and COMP/39.731), ordering, in accordance with Article 20(4) of Council Regulation (EC) No 1/2003 [1], inspections of Deutsche Bahn AG and all legal persons directly or indirectly controlled by the latter by reason of a possible preference of subsidiary undertakings by means of a rebate system in the supply of electromotive power.

In support of their action, the applicants make five pleas in law.

1. First plea: infringement of the fundamental right to inviolability of one's premises by reason of lack of prior judicial authorisation.

2. Second plea: infringement of the fundamental right to an effective legal remedy by reason of the lack of possibility of prior judicial review of the inspection decision, both from the factual and the legal point of view.

3. Third plea: infringement of defence rights by reason of a disproportionately wide and non-specific subject-matter of the inspection ('fishing expedition').

4. Fourth plea: infringement of the principle of proportionality. The inspection decision is disproportionate, since the rebate system for electromotive power has been practised by the applicants for years and has been monitored by the authorities and the German courts many times and found compatible with competition law, and since the answer to the question whether the rebate system is 'objectively justified', which the Commission regards as the decisive question, could have been answered by a less invasive measure, namely a request for information.

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[1] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 7 June 2011 — Deutsche Bahn and Others v Commission

(Case T-290/11)

(2011/C 238/41)

Language of the case: German

Parties

Applicants: Deutsche Bahn AG (Berlin, Germany), DB Mobility Logistics AG (DB ML AG) (Berlin, Germany), DB Netz AG (Frankfurt am Main, Germany), Deutsche Umschlaggesellschaft Schiene-Strasse mbH (DUSS) (Bodenheim, Germany) DB Schenker Rail GmbH (Mainz, Germany), DB Schenker Rail Deutschland AG (Mainz, Germany) (represented by: W. Deselaers, J.S. Brückner and O. Mross, lawyers)

Defendant: European Commission