

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.

⁽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