



Court of Justice of the European Union

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Judgments in Cases C-247/14 P HeidelbergCement v Commission, C-248/14 P Schwenk Zement v Commission, C-267/14 P Buzzi Unicem v Commission and C-268/14 P Italmobiliare v Commission

Press and Information

The Court of Justice annuls the Commission decisions relating to requests for information directed at cement manufacturers

The statement of reasons for the Commission decisions are inadequate

In November 2008 and September 2009, the Commission carried out inspections at the premises of several cement companies.

On 6 December 2010, the Commission initiated a procedure for alleged infringements against several of those companies. Those infringements consisted, according to the Commission, in 'restrictions on trade flows in the European Economic Area (EEA), including restrictions on imports in the EEA coming from countries outside the EEA, market-sharing, price coordination and related anti-competitive practices in the cement market and related product markets'. By decisions of 30 March 2011,¹ the Commission asked the undertakings concerned to answer a questionnaire concerning suspected infringements.

Several companies, in particular German companies HeidelbergCement and Schwenk Cement and Italian companies Buzzi Unicem and Italmobiliare, brought actions for annulment before the General Court. They criticised the Commission inter alia for not having adequately explained the alleged infringements and for having imposed on them a disproportionate burden having regard to the volume of information requested and to the particularly burdensome format of the response that had been imposed on them. By judgments of 14 March 2014,² the General Court confirmed, in essence, the lawfulness of the requests for information sent by the Commission to the cement producers.

The companies appealed to the Court of Justice to set aside the judgments of the General Court and the Commission decisions.

By today's judgments, **the Court of Justice finds that the General Court erred in law in finding that the Commission decisions were adequately reasoned.**

According to EU law, the statement of reasons for measures adopted by institutions must be appropriate to the measure at issue and must disclose clearly and unequivocally the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the EU Courts to review its legality. The requirement to state reasons must be assessed in the light of all the circumstances of the case and by having regard not only to the wording of the measure but also to its context and all the legal rules governing the matter at issue.

¹ Commission Decisions C (2011) 2356 final, C (2011) 2361 final, C (2011) 2364 final and C (2011) 2367 final of 30 March 2011 relating to a proceeding under Article 18(3) of Council Regulation (EC) No 1/2003 (Case COMP/39520 — cement and related products)

² Cases [T-292/11](#) Cemex and Others v Commission, [T-293/11](#) Holcim (Deutschland) and Holcim v Commission), [T-296/11](#), Cementos Portland Valderrivas v Commission, [T-297/11](#), Buzzi Unicem v Commission, [T-302/11](#) HeidelbergCement v Commission, [T-305/11](#) Italmobiliare v Commission and [T-306/11](#) Schwenk Zement v Commission. See also Press Release No [35/14](#)

As regards, in particular, the statement of reasons for a decision requesting information, the Commission must inter alia set out the legal basis and purpose of the request. It must also specify what information is required and fix the time-limit within which it is to be provided. That obligation to state specific reasons is a fundamental requirement, designed not merely to show that the request for information is justified but also to enable the undertakings concerned to assess the scope of their duty to cooperate whilst at the same time safeguarding their rights of defence.

The Court notes that the questions sent by the Commission to the companies are extremely numerous and cover very different types of information. However, the Commission's decisions do not disclose, clearly and unequivocally, the suspicions of infringement which justify their adoption and do not make it possible to determine whether the requested information is necessary for the purposes of the investigation. The statement of reasons is excessively brief, vague and generic, having regard in particular to the considerable length of the questions asked.

Furthermore, the Court of Justice considers that the background to the decisions does not compensate for the inadequacy of the statement of reasons.

Finally, the Court notes that a request for information, like an inspection decision, is an investigative measure that is generally used in the investigation phase of the case. The Court has already held, in relation to inspection decisions, that it was not essential to define precisely the relevant market, to provide the exact legal nature of the presumed infringements or to indicate the period during which those infringements were committed, since inspections occur at the beginning of an investigation, at a time when precise information is not yet available to the Commission.

However, an excessively succinct, vague and generic statement of reasons may not justify requests for information which, as in the present cases, occurred several months after the opening of the investigation and more than two years after the first inspections even though the Commission had already sent a number of requests for information to undertakings suspected of involvement in the relevant infringement. The Court notes that the decisions were adopted at a time when the Commission already had information that would have allowed it to present more precisely the suspicions of infringement weighing on the companies involved.

Consequently, **the Court concludes that the statement of reasons for the Commission decisions did not meet the requisite legal standard and sets aside the judgments of the General Court as well as the Commission decisions.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The full text of the judgments [C-247/14 P](#), [C-248/14 P](#), [C-267/14 P](#), [C-268/14 P](#) are published on the CURIA website on the day of delivery.

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