

The Court of Justice annuls a request for information from the European Commission deemed insufficiently motivated

🔗 [Case C-247/14 of the Court \(Third Chamber\), HeidelbergCement AG v. European Commission , March 10, 2016](#)

In its ruling dated March 10, 2016,¹ the Court of Justice of the European Union (the “Court”) annulled the request for information addressed by the Commission to various cement manufacturers as part of an investigation covering potential restrictions on imports, market sharing and pricing coordination.² The Court overruled the decision of the General Court of the European Union³ adopted on 2014 pursuant to which the General Court had rejected the cement manufacturers’ appeal.

The disputed measure, which consisted of a 94-page questionnaire, was sent out within a very specific procedural context. In 2008 and 2009, the Commission conducted two series of unannounced inspections at cement manufacturers, premises located in various Members States. In 2009 and 2010, the Commission addressed three requests for information to cement manufacturers before

sending out this fourth disputed and very burdensome request for information at the end of 2010.

The Court ruled that the Commission had not complied with its duty of motivation considering that the requests were drafted in a broad and imprecise manner. The decision to open formal proceedings against cement manufacturers, which was taken by the Commission only one month after the disputed information request, was also vague and generic, including regarding the products and the geographic scope concerned.

The Commission’s duty to state the reasons for its requests not only ensures that a request is justified but also provides companies with an indication on the information sought. Failing to state reasons appropriately and with precision prevents companies from interpreting the scope of their duty to collaborate with the Commission, and raises issues of legal certainty.

The Commission defended itself by invoking precedents where unannounced visits had been deemed legal by the Court even though the Commission had not set out

¹ Court, March 10, 2016, cases C-247/14, *HeidelbergCement AG/Commission*, C-248/14, *Schwenk Zement/Commission*, C-267/14 *Buzzi Unicem/Commission*, C-268/14 *Itamobiliare/Commission*.

² Commission, Decision n° C (2011) 2361 dated March 30, 2011 (case COMP/39.520 - Cement and related products).

³ General Court, March 14, 2014, case T-302/11, *HeidelbergCement AG/Commission*.

the exact legal nature of the presumed infringements. The Court discarded this justification on the ground that a certain level of imprecision may be acceptable only when the Commission is in the very early stages of its investigation. In the present case, the Commission had already conducted two series of inspections and had been working on the case for more than two years, which should have allowed the Commission to be more precise in its requests.

This ruling gave the Court the opportunity to reaffirm that the duty to state reasons for requests is an essential guarantee of the rights of defense, in particular as it protects companies from self-incrimination. A request lacking a state purpose is indeed comparable to what the Court has considered in other cases to be a “fishing expedition”.⁴ One can expect that this decision will encourage the

Commission to be more cautious in drafting requests for information, which should strengthen legal certainty. However, the impact of this decision is not as broad as one might have expected. Indeed, the Court referred to and ruled on the basis of only the first plea of seven brought forward by the applicant. The Court did not rule on the other pleas concerning, among other things, the deadline for responding to the questionnaire, the extent to which the requested information was necessary and the requirement for precision of legal acts.

Lastly, one cannot ignore that this annulment took place after the Commission eventually decided in 2015, more than a year after the applicant’s appeal, to close the case.

⁴ The decision quotes decision *Roquette Frères*, C-94/00, point 47, itself quoting decision *Dow Benelux/Commission*, 85/87 dated October 17, 1989, point 27; decision *Deutsche Bahn e.a./Commission*, C-583/13, points 56 & 57.