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# The European Court of Justice Rules against Overreaching Requests for Information by the European Commission

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Last week, the Court of Justice of the European Union (ECJ) ruled that the General Court of the European Union (GCEU) had been wrong when deciding that the European Commission's requests for information sent to eight cement manufacturers during the course of a cartel investigation were adequately reasoned (see judgments in casesC-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*).

Under Article 18 of EU Regulation 1/2003, the Commission may send requests for information to companies in order to obtain specific information. The Commission may require companies to respond to a request for information by issuing a specific decision. In such a case, the Commission must state the legal basis and the purpose of the request. If companies supply incorrect, incomplete or misleading information or do not supply information within the required time-limit, companies may be imposed a fine up to 1 percent of their turnover.

In the present case, the Commission carried out inspections at the premises of cement manufacturers in 2008 and 2009. This was a procedure that the Commission had decided to open *ex officio*, *i.e.,* of its own motion, without having been informed of alleged practices by a leniency applicant. The Commission then initiated proceedings against several of those companies. As part of its investigation, the Commission requested that the companies respond to a questionnaire concerning the suspected infringements. This questionnaire was a very lengthy, broad and all-encompassing request for information that covered very diverse types of information. Several companies brought actions for annulment criticizing the Commission for having not adequately explained what behavior was alleged against them and for having imposed a particularly heavy burden on them. The GCEU ruled on 14 March 2014 that the requests for information were lawful.

On 10 March 2016, the ECJ ruled that the Commission's requests for information were not adequately reasoned. In brief, the ECJ made this decision on the basis of two general principles of EU law: (1) the statement of reasons for measures adopted by EU 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, and (2) investigative measures may not be justified by excessively succinct, vague and generic statement of reasons.

The ECJ's decision highlights that in carrying out investigations in Europe, the European Commission does not have an unlimited ability to gather information. Rather, information requests must disclose, without ambiguity, the reasons for the Commission's investigation and the information requests must be tailored to that investigation. The ECJ ruling gives respondents the ability to try and probe into the reasons for the Commission's investigation that could enable counsel to better advise clients on strategies for dealing with the Commission.

The judgment will hopefully serve a reminder for the Commission in future investigations. That said, respondents are better off checking with antitrust counsel how to handle such requests for information, as part of their overall defense strategy.



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