3. Third plea in law, alleging an infringement of the principle of proportionality.

   — The applicants claim in this respect that the Commission requested the applicants to provide information whose collection or processing was not only unnecessary in many instances but also led to their incurring an excessive and disproportionate burden. Moreover, an extremely short time limit was imposed within which to reply and their applications to have that time limit extended were rejected.

4. Fourth plea in law, based on an infringement of Article 296 TFEU in that the Commission has not given sufficient reasons regarding the necessity and proportionality of the requested information.

5. Fifth plea in law, based on an infringement of the principle of legal certainty, in so far as the wording of the contested decision is uncertain and imprecise.

6. Sixth plea in law, based on a failure to have regard to Article 3 of Regulation (EEC) No 1/1958 which lays down the language regime of the European Economic Community.

   — The applicants submit in this regard that the Commission refused to transmit the contested decision to the subsidiaries to which it applies in the language of the Member States which have jurisdiction over them, thereby knowingly making the task of data collection more difficult.

Action brought on 9 June 2011 — Holcim (Deutschland) and Holcim v Commission

(Case T-293/11)

(2011/C 238/43)

Language of the case: German

Parties

Applicants: Holcim AG (Hamburg, Germany) and Holcim Ltd (Zurich, Switzerland) (represented by: P Niggemann and K Gaβner, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the defendant's decision of 30 March 2011, adopted in proceedings under Article 18(3) of Council Regulation (EC) No 1/2003 in Case COMP/39520 — Cement and related products;

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

Pleas in law and main arguments

In support of their action, the applicants rely on eight pleas in law.

1. First plea in law: there was no valid notification of the information decision

   Before issuing the information decision the defendant was provided with powers of attorney in respect of Holcim AG (the first applicant) and statements from all the Holcim group companies concerned agreeing to use English as the language of the case. However, the information decision was addressed to Holcim Ltd (the second applicant) and 'served on' Holcim AG (the first applicant), even though there was no power of representation to that effect. The working language of Holcim Ltd and of the vast majority of the other companies concerned of the Holcim group is English, with the result that it was not possible to take sufficient note of the decision.

2. Second plea in law: the time limit within which to reply was too short and the Commission refused to extend that time limit

   The information decision concerns a vast amount of detailed information on 15 group companies (such as transaction data, imports and exports, production data, market shares etc) over a period of 10 years. On the basis of the draft decision, thus at an early stage, the applicants gave the Commission detailed reasons why the 12-week time limit to provide the requested information was clearly too short. Given that the proceedings had already been underway for two and a half years and the applicants had already cooperated extensively with the Commission it was appropriate to extend the time limit. Moreover, the Commission itself delayed the data collection and made it more difficult by drafting the information decision in German, in spite of the applicants' consent to continue using English as the language of the case, thereby making it impossible for two thirds of the Holcim group companies to work with it.

3. Third plea in law: the Commission required Holcim to provide data and information which the latter did not have at its disposal

   To a large extent, the information decision requires data and information from the applicants which they do not have at their disposal in the required form. Moreover, data is required which the applicants could only have produced at an exorbitant cost in terms of staff and time as a result of a change in their IT system. Such efforts do not fall within the requirement to produce information in accordance with the decision.

4. Fourth plea in law: infringement of the duty to give reasons

   In the information decision, sufficient grounds are neither given for the investigation nor the choice of means of investigation, that it to say one which prescribes a penalty.

5. Fifth plea in law: infringement of the requirement that the means be necessary

   Thus far the applicants have complied extensively and in full with every request for information, with the result that there was no justification for adopting an information decision prescribing a penalty instead of the less drastic option of informal requests for information.

6. Sixth plea in law: infringement of the principle of precision

   In several respects, the information decision is not sufficiently clear in relation to the requested data and information, the burden of which is borne exclusively by the applicants.

7. Seventh plea in law: infringement of the general principle of proportionality

   Given that the proceedings have been under way for two and a half years the ambiguous and vague nature of the data and information collection on such a scale is disproportionate, particularly since the Commission has requested comparable information on various occasions in different formats. The Commission's refusal to extend the time limit is grossly disproportionate given the facts and that the proceedings have already been underway for two and a half years.

8. Eighth plea in law: the defendant did not have the authority to ask questions relating to Holcim (Česko) a.s. in respect of the period prior to the accession of the Czech Republic to the European Union

   Requesting data for the period prior to a country's accession to the European Union is not admissible.

Action brought on 9 June 2011 — Hellenic Republic v Commission

(Case T-294/11)

(2011/C 238/44)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias and S. Papaioannou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul the Commission implementing decision of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as the decision concerns financial corrections to the detriment of the Hellenic Republic, or alternatively vary it;

— Order the Commission to pay the costs.

Pleas in law and main arguments

By its action the Hellenic Republic seeks the annulment of the Commission decision of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified as C(2011) 2517, published in the official Journal of the European Union (OJ 2011 L 102, p. 33) and numbered 2011/244/EU, in so far as the decision concerns financial corrections to the detriment of the Hellenic Republic, in the areas of (a) olive oil production aid, (b) expenditure on setting up the olive cultivation-GIS, and (c) direct aid (arable crops).

As regards the correction in the area of olive oil production aid, the applicant maintains, first, that the Commission made an erroneous assessment of the facts since the weaknesses in the way the basic checks to the system are generally carried out are minimal and do not justify a corresponding correction of 10 % and 15 %, particularly when since 1/11/2003 there has been established a fully functioning and reliable olive cultivation geographical information system (Olive cultivation-GIS) in Greece, as the main control tool of the entire system of olive oil production aid, and the cultivation information is checked in detail, and checks are also made on the olive grove production and the entire operation of oil mills.

The applicant claims, secondly, that: (a) the Commission's decision has no valid and sufficient legal basis for the increase in the correction because of repeat offending, and the meaning which the Commission gives to that term is incorrect, given that it is clear that there are no recurrent weaknesses, and repeat offending, as assumed by the Commission, is based on a mistaken premise, because an incorrect meaning is given by the Commission to that term, and the consequence is a manifestly erroneous assessment of the allegedly recurrent weaknesses, since, moreover, the main control tool of the system, the Olive cultivation-GIS has been established and (b) the Commission made an erroneous assessment of the facts, since in any event there is no legal basis and no justification for the increase of the correction from 10 % for the period 2003-2004 to 15 % for the period 2004-2005, given that there were numerous improvements and continuous updating of the Olive cultivation-GIS in that period and indeed the control system not only did not deteriorate but substantially improved.

As regards the corrections in the area of expenditure in establishing the Olive cultivation-GIS, the applicant maintains, first, that there is no valid legal basis for the financial correction to the expenditure which relates to procedures for establishing the Olive cultivation-GIS, since the money which was made available for its development was deducted from aid to which the Greek producers were entitled, and the failure to recognise that expenditure invites an argument of unjustified enrichment of EAGGF and double financial penalty, since, in any event, all the expenditure which took place is ineligible, if it did not exceed the budget as determined by the Commission and the total amount which was deducted from Greek producers, since the critical time for the decision whether particular expenditure is or is not lawful is the time of acceptance of a legal commitment or the time when the expenditure is effected and not the time when the expenditure is declared.

The applicant secondly claims: (a) breach of the principle of proportionality as regards the expenditure amounting to 2 920 191,03 which ensued from the additional contracts and (b) the erroneous assessment of the facts as regards the expenditure which ensued from the contract 5190/ES/2003.