Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

10 March 2016*

(Appeal — Competition — Market for 'cement and related products' — Administrative procedure — Regulation (EC) No 1/2003 — Article 18(1) and (3) — Decision requesting information — Statement of reasons — Clarification of the application)

In Case C-247/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 May 2014,

HeidelbergCement AG, established in Heidelberg (Germany), represented by U. Denzel, C. von Köckritz and P. Pichler, Rechtsanwälte,

appellant,

the other party to the proceedings being:

European Commission, represented by M. Kellerbauer, L. Malferrari and R. Sauer, acting as Agents,

defendant at first instance,

THE COURT (Third Chamber),

composed of M. Ilešič (Rapporteur), President of the Second Chamber, acting as President of the Third Chamber, C. Toader, and E. Jarašiūnas, Judges,

Advocate General: N. Wahl,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 3 June 2015,

after hearing the Opinion of the Advocate General at the sitting on 15 October 2015,

gives the following

Judgment

1 By its appeal, HeidelbergCement AG asks the Court to set aside the judgment of the General Court of the European Union of 14 March 2014 in *HeidelbergCement* v *Commission* (Case T-302/11, EU:T:2014:128) ('the judgment under appeal'), by which the General Court dismissed its action for

* Language of the case: German.

annulment of Commission Decision C(2011) 2361 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) ('the decision at issue').

Legal context

2 Recital 23 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1) states:

'The Commission should be empowered throughout the [European Union] to require such information to be supplied as is necessary to detect any agreement, decision or concerted practice prohibited by Article [101 TFEU] ...'

3 Article 18 of Regulation No 1/2003, entitled 'Requests for information', states in paragraphs (1) and (3) thereof that:

'1. In order to carry out the duties assigned to it by this Regulation, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.

...

3. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. It shall also indicate the penalties provided for in Article 23 and indicate or impose the penalties provided for in Article 24. It shall further indicate the right to have the decision reviewed by the Court of Justice.

...'

Background to the dispute and the decision at issue

4 The General Court described the background to the dispute as follows:

'1. In November 2008 and September 2009, the Commission of the European Communities — acting under Article 20 of Council Regulation [No 1/2003] — carried out a number of inspections at the premises of companies active in the cement industry, including those of the applicant HeidelbergCement AG. Those inspections were followed by the sending of requests for information under Article 18(2) of Regulation No 1/2003. The applicant was thus sent requests for information on 30 September 2009, 9 February and 27 April 2010.

2. By letter of 8 November 2010, the Commission notified the applicant that it intended to send the latter a decision requesting information under Article 18(3) of Regulation No 1/2003 and forwarded the draft questionnaire it planned to annex to that decision.

3. By letter of 16 November 2010, the applicant submitted its observations on the draft questionnaire.

4. On 6 December 2010, the Commission notified the applicant that it had decided to initiate proceedings against it under Article 11(6) of Regulation No 1/2003 as well as against seven other companies active in the cement industry for suspected infringements of Article 101 TFEU involving "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" ("the decision to initiate proceedings").

5. On 30 March 2011, the Commission adopted the [decision at issue].

6. In the [decision at issue], the Commission stated that, under Article 18 of Regulation No 1/2003, in order to carry out the duties assigned to it by that regulation, it may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information (recital 3 of the [decision at issue]). After pointing out that the applicant had been informed of the Commission's intention to adopt a decision under Article 18(3) of Regulation No 1/2003 and that the former had submitted its observations on the draft questionnaire (recitals 4 and 5 of [decision at issue]), the Commission, by decision, required the applicant — as well as its subsidiaries located in the European Union under its direct or indirect control — to answer the questionnaire set out in Annex I, comprising 94 pages and 11 sets of questions (recital 6 of the [decision at issue]).

7. The Commission also drew attention to the description of the alleged infringements, set out in paragraph 4 above (recital 2 of [decision at issue]).

8. Referring to the nature and volume of information requested, as well as the seriousness of the alleged infringements of the competition rules, the Commission considered it appropriate to give the applicant twelve weeks to reply to the first ten sets of questions and two weeks to reply to the eleventh set, concerning "contacts and meetings" (recital 8 of the [decision at issue]).

9. The enacting terms of the [decision at issue] read as follows:

"Article 1

[The applicant] (together with its subsidiaries located in the [European Union] under its direct or indirect control) shall provide the information referred to in Annex I to this decision, in the form requested in Annexes II and III thereto, no later than twelve weeks, for questions 1-10, and two weeks, for question 11, from the date of notification of this decision. All annexes form an integral part of this decision.

Article 2

This decision is addressed to [the applicant], together with its subsidiaries located in the [European Union] under its direct or indirect control."

10. On 18 April 2011, the applicant answered the eleventh set of questions. On 6 May 2011, it completed its response.

11. By letter of 26 May 2011, the applicant applied for an extension of 18 weeks to the time-limit for answering the first ten sets of questions. By letter of 31 May 2011, the applicant was informed that its application would not be granted. In that letter, the Commission did however note that a time-limited extension may be possible on the basis of a reasoned application relating to the relevant questions.'

The procedure before the General Court and the judgment under appeal

5 By application lodged at the Registry of the General Court on 10 June 2011, HeidelbergCement brought an action for the annulment of the decision at issue.

6 In support of its application, it relied on five pleas in law, alleging, first, infringement of Article 18 of Regulation No 1/2003, secondly, infringement of the principle of proportionality, thirdly, an inadequate statement of reasons for the decision at issue, fourthly, infringement of the 'principle of precision' and, fifthly, breach of its rights of defence.

7 The General Court held that each of those pleas was unfounded and, consequently, dismissed the application.

Forms of order sought

8 HeidelbergCement claims that the Court of Justice should:

— set aside the judgment under appeal;

— annul the decision at issue in so far as it concerns the appellant;

— in the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice; and

— order the Commission to pay the appellant's costs before the Court of Justice and the General Court.

9 The Commission contends that the Court should:

— dismiss the appeal;

— in the alternative, in the event the judgment under appeal is annulled, dismiss the action; and

— order the appellant to pay the costs.

The appeal

10 The appellant relies on seven grounds in support of its appeal. In the first ground of appeal, it alleges that the General Court did not adequately examine, and erroneously applied, the requirements relating to the indication of the purpose of the request for information set out in Article 18(3) of Regulation No 1/2003. In the second ground of appeal, the appellant claims that the General Court erred in law in its assessment of the obligation to state reasons for the choice of the investigating measure and in respect of the fixing of a time-limit for responding. The appellant alleges in its third ground of appeal that the General Court erred in its examination, interpretation and application of the 'necessity' of the information requested, within the meaning of Article 18(3) of Regulation No 1/2003. The fourth ground of appeal relates to infringement of Article 18(3) of Regulation No 1/2003, having regard to the lack of an obligation to prepare, present and process the information requested. The fifth ground of appeal is based on the contradiction between the grounds upheld by the General Court in its assessment of the head of claim relating to the brevity of the period allowed for a reply to the request for information. By its sixth ground of appeal, the appellant claims that the General Court erred in law by infringing the requirement for precision of legal acts and did not give sufficient reasons for the judgment under appeal with respect to the head of claim alleging the lack of precision. Finally, the seventh ground of appeal alleges breach of the rights of the defence as a result of the obligation to evaluate the information.

11 It is appropriate to start by considering the first ground of appeal.

Arguments of the parties

12 By its first ground of appeal, directed against paragraphs 23 to 43 and 47 of the judgment under appeal, the applicant claims that the General Court erred in law when reviewing compliance with the requirements relating to the indication of the aim of the request for information, as laid down in Article 18(3) of Regulation No 1/2003. The judgment under appeal is also insufficiently reasoned, since it does not adequately state the content of the decision to initiate proceedings and of the decision at issue to which it refers and since it does not mention whether it is possible to identify, in those decisions, one or more specific infringements.

13 The Commission contends that the statement of reasons on which measures of the institutions of the European Union are based must be adapted to the nature of the measure in question and to the context in which it was adopted, and that the requirement to state reasons must be adapted to the circumstances of the case. A request for information is an investigative measure which is generally used in the context of the preliminary investigation stage, at a stage at which the Commission does not yet have precise information about the alleged infringement, and that lack of information should be taken into account when assessing the legal requirements relating to the statement of reasons laid down in Article 18(3) of Regulation No 1/2003. The requirement to indicate the purpose of the information with sufficient precision does not therefore mean that it is necessary to describe in detail the nature, geographical scope and duration of, or type of products specifically concerned by, the alleged infringement. It is only at the stage of the statement of objections that an infringement which is determined and circumscribed in time is established.

14 The Commission submits that both the decision at issue and the decision to initiate proceedings include specific information as to the nature of the alleged infringement, its geographical scope and the products at issue. By virtue of the persons to whom it is addressed, the decision to initiate proceedings contains specific information as to the alleged participants in the infringement. It follows that the General Court correctly, and without infringing its obligation to state reasons, held in paragraph 42 of the judgment under appeal, that the decision at issue contained, in conjunction with the decision to initiate proceedings, sufficient guidance as to the purpose of the request for information. Furthermore, the Commission, in the decision at issue, limited the geographical scope of the investigation to the EEA, while referring more specifically, in the questionnaire, to certain target countries.

Findings of the Court

15 HeidelbergCement submits, in essence, that the General Court erred in law in holding that the plea alleging a failure to state reasons in the decision at issue was unfounded and had to be dismissed. That is a question of law subject to review by the Court of Justice on an appeal (see judgment in *Commission* v *Salzgitter*, C-408/04 P, EU:C:2008:236, paragraph 55 and the case-law cited).

16 According to settled case-law, the statement of reasons required under Article 296 TFEU 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 competent court to review its legality. The requirements to be satisfied by the statement of reasons depend on all the circumstances of each case, in particular, the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment

in *Commission* v *Sytraval and Brink's France*, Case C-367/95 P, EU:C:1998:154, paragraph 63, and in *Nexans and Nexans France* v *Commission*, C-37/13 P, EU:C:2014:2030, paragraphs 31 and 32 and the case-law cited).

17 As regards, in particular, the statement of reasons for a decision requesting information, it should be recalled that Article 18(3) of Regulation No 1/2003 defines the essential elements thereof.

18 That provision provides that the Commission 'shall state the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided'. Moreover, it states that the Commission 'shall also indicate the penalties provided for in Article 23', that it 'shall indicate or impose the penalties provided for in Article 24' and that it 'shall further indicate the right to have the decision reviewed by the Court of Justice'.

19 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 (see, by analogy, with respect to inspection decisions, judgments in *Dow Chemical Ibérica and Others* v *Commission*, 97/87 to 99/87, EU:C:1989:380, paragraph 26; *Roquette Frères*, C-94/00, EU:C:2002:603, paragraph 47; *Nexans and Nexans France* v *Commission*, C-37/13 P, EU:C:2014:2030, paragraph 34; and *Deutsche Bahn and Others* v *Commission*, C-583/13 P, EU:C:2015:404, paragraph 56).

20 With respect to the obligation to state the 'purpose of the request', this relates to the Commission's obligation to indicate the subject of its investigation in its request, and therefore to identify the alleged infringement of competition rules (see, to that effect, judgment in *SEP* v *Commission*, C-36/92 P, EU:C:1994:205, paragraph 21).

21 In that regard, the Commission is not required to communicate to the addressee of a decision requesting information all the information at its disposal concerning the presumed infringements, or to make a precise legal analysis of those infringements, providing it clearly indicates the suspicions which it intends to investigate (see, by analogy, judgment in *Nexans and Nexans France* v *Commission*, C-37/13 P, EU:C:2014:2030, paragraph 35 and the case-law cited).

22 That obligation may be explained, inter alia, by the fact that, as is apparent from Article 18(1) of Regulation No 1/2003 and recital 23 thereof, in order to carry out the duties assigned to it by that regulation, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide 'all necessary information'.

23 As correctly noted by the General Court in paragraph 34 of the decision at issue, 'the Commission is entitled to require the disclosure only of information which may enable it to investigate presumed infringements which justify the conduct of the investigation and are set out in the request for information'.

24 Since the necessity of the information must be judged in relation to the purpose stated in the request for information, that purpose must be indicated with sufficient precision, otherwise it will be impossible to determine whether the information is necessary and the Court will be prevented from exercising judicial review (see, to that effect, judgment in *SEP* v *Commission*, C-36/92 P, EU:C:1994:205, paragraph 21).

25 The General Court also correctly held, in paragraph 39 of the judgment under appeal, that the adequacy of the statement of reasons of the decision at issue depends 'on whether or not the putative infringements that the Commission intends to investigate are defined in sufficiently clear terms'.

26 With respect to the question whether the General Court's assessment that the decision at issue contains an adequate statement of reasons, set out in paragraph 43 of the judgment under appeal, is vitiated by an error of law, it should be noted, first of all, that the General Court, in paragraph 42 of the judgment, noted that the statement of reasons of the decision at issue was 'formulated in very general terms which would have benefited from greater detail and warrants criticism in that regard', but that 'nevertheless, it [could] be considered that the reference to restrictions on imports in the European Economic Area (EEA), to market-sharing and to price coordination in the cement market and related product markets, read in conjunction with the decision to initiate proceedings, [had] the minimum degree of clarity necessary to conclude that the requirements of Article 18(3) of Regulation No 1/2003 [had] been met'.

27 In that regard, it should be noted that, according to recital 6 of the decision at issue, the Commission asked the appellant to answer the questionnaire in Annex I to that decision. As noted by the Advocate General, in essence, in point 46 of his Opinion, the matters referred to in that annex are extremely numerous and cover very different types of information. In particular, the questionnaire in the annex requires the disclosure of extremely extensive and detailed information relating to a considerable number of transactions, both domestic and international, in relation to twelve Member States over a period of ten years. However, the decision at issue does not disclose, clearly and unequivocally, the suspicions of infringement which justify the adoption of that decision and does not make it possible to determine whether the requested information is necessary for the purposes of the investigation.

28 The first two recitals of the decision at issue only set out an excessively brief statement of reasons which is vague and generic, having regard in particular to the considerable length of the questionnaire appended to Annex I to that decision, which, as is stated in recital 6 of that decision, already takes into account the submissions made throughout the investigation by the undertakings being investigated.

29 Those two recitals read as follows:

> '1. The Commission is currently investigating alleged anti-competitive conduct in the cement, cement products and other materials used in the production of cement and of cement-based products industries ... in the European Union / European Economic Area (EU/EEA).
>
> 2. … The alleged infringements relate to restrictions on trade in the European Economic Area (EEA), in particular restrictions on imports into the EEA from countries outside of the EEA, market-sharing and price-coordination practices as well as other anti-competitive practices relating thereto in the cement and related products markets. If their existence were to be confirmed, those acts could constitute an infringement of Article 101 TFEU and/or Article 53 of the EEA Agreement.'

30 Recital 6 of the decision at issue states that 'additional information also required in order to assess the compatibility of the practices under investigation with EU competition rules by having full knowledge of the facts and their exact economic context is sought in Annex I'.

31 That statement of reasons does not make it possible to determine with sufficient precision either the products to which the investigation relates or the suspicions of infringement justifying the adoption of that decision. It follows that that statement of reasons does not enable the undertaking in question to check whether the requested information is necessary for the purposes of the investigation or the European Union judicature to exercise its power of review.

32 Admittedly, having regard to the case-law cited in paragraph 16 above, the question whether the statement of reasons relating to the decision at issue meets the requirements of Article 296 TFEU must be assessed in the light not only of its wording, but also of the context in which that decision was taken, which includes, as noted by the Advocate General in point 43 of his Opinion, the decision to initiate proceedings.

33 However, the statement of reasons for that decision does not offset the brevity or the vague and generic nature of the statement of reasons of the decision at issue.

34 First of all, the infringement alleged in the decision to initiate proceedings is also expressed in a particularly succinct, vague and generic manner, that decision referring to 'restrictions of trade flows in the European Economic Area (EEA) including restrictions on imports into the EEA from countries outside the EEA, market allocations, price coordination and related anti-competitive practices'.

35 Next, with regard to the products to which the investigation relates, the decision to initiate proceedings refers, like the decision at issue, to the cement market and related products markets. Although the decision states that 'cement and related products should be understood as including cement, cement-based products (for example ready-mixed concrete) and other materials used to produce, directly or indirectly, cement products (for example clinker, aggregates, blast furnace slag, granulated blast furnace slag, ground granulated blast furnace slag, fly ash)', it should be noted that the products concerned by the investigation are mentioned by way of example.

36 Finally, with respect to the geographical scope of the alleged infringement, the statement of reasons for the decision at issue, read in conjunction with the decision to initiate proceedings, is ambiguous. According to the decision at issue, the alleged infringement extends to the territory of the EU or of the EEA. However, the decision to initiate proceedings, adopted three months earlier, refers to alleged infringements whose geographical scope covers 'in particular' Austria, Belgium, the Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom. The ambiguity of the statement of reasons of the decision at issue, read in conjunction with the decision to initiate proceedings, is in that respect reinforced by the content of the questionnaire annexed to the decision at issue which, in addition to the above ten Member States, also relates to business transactions conducted in Denmark and Greece.

37 It is true, as noted by the Commission, that a request for information is an investigative measure that is generally used as part of the investigation phase preceding the notification of the statement of objections and that the sole purpose of the preliminary investigation procedure is to enable the Commission to obtain the information and documentation necessary to check the actual existence and scope of a specific factual and legal situation (see, to that effect, judgment in *Orkem* v *Commission*, 374/87, EU:C:1989:387, paragraph 21).

38 Furthermore, although the Court has held, with respect to inspection decisions, that, even though the Commission is obliged to indicate as precisely as possible what is being sought and the matters to which the investigation must relate, it is, on the other hand, not essential, in a decision ordering an inspection, to define precisely the relevant market, to set out the exact legal nature of the presumed infringements or to indicate the period during which those infringements were allegedly committed, the Court justified that finding by the fact that inspections take place at the beginning of an investigation, at a time when precise information is not yet available to the Commission (see, to that effect, judgment in *Nexans and Nexans France* v *Commission*, C-37/13 P, EU:C:2014:2030, paragraphs 36 and 37).

39 However, an excessively succinct, vague and generic — and in some respects, ambiguous — statement of reasons does not fulfil the requirements of the obligation to state reasons laid down in Article 18(3) of Regulation No 1/2003 in order to justify a request for information which, as in the present case, occurred more than two years after the first inspections, and even though the Commission had already sent a number of requests for information to undertakings suspected of involvement in an infringement and several months after the decision to initiate proceedings. Given those factors, it must be stated that the decision at issue was adopted at a time when the Commission already had information that would have allowed it to present more precisely the suspicions of infringement by the companies involved.

40 Accordingly, the General Court erred in law in finding, in paragraph 43 of the judgment under appeal, that the decision at issue contained an adequate statement of reasons.

41 In the light of all of the foregoing, the first head of complaint must be upheld.

42 Consequently, the judgment under appeal must be set aside inasmuch as the General Court found that the statement of reasons for the decision at issue satisfied the requirements laid down in Article 18(3) of Regulation No 1/2003 and it is not necessary to examine the alleged inadequacy of the statement of reasons in the judgment under appeal or the other pleas relied upon by the appellant.

The action before the General Court

43 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits. That is so in the present case.

44 It follows from paragraphs 27 to 40 of the present judgment that the first plea of the application at first instance is well-founded and that the decision at issue must be annulled as a result of an infringement of Article 18(3) of Regulation No 1/2003.

Costs

45 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well-founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

46 Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

47 Since the appellant applied for costs against the Commission and the latter has been unsuccessful, the Commission must be ordered to pay the costs relating both to the proceedings at first instance in Case T-302/11 and to the appeal.

On those grounds, the Court (Third Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 14 March 2014 in** *HeidelbergCement* **v** *Commission* **(T-302/11, EU:T:2014:128);**

2. **Annuls Commission Decision C(2011) 2361 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);**

3. **Orders the European Commission to bear its own costs and to pay those incurred by HeidelbergCement AG with respect to both the proceedings at first instance in Case T-302/11 and the appeal.**

[Signatures]