



PRESS RELEASE No 182/22

Luxembourg, 10 November 2022

Judgment of the Court in Case C-163/21 | PACCAR and Others

The disclosure of ‘relevant evidence’, within the meaning of EU law, includes documents that a party may be required to create by compiling or classifying information, knowledge or data in its possession

In accordance with the principle of proportionality, the national courts must, however, take into account the appropriateness of the workload and the cost that the creation of such documents may entail

Directive 2014/104¹ aims to facilitate the private enforcement of EU competition rules by means of, inter alia, rules on the disclosure of evidence before national courts in disputes seeking compensation for damages suffered as a result of conduct contrary to EU competition law.

On 19 July 2016, the Commission found² that 15 international truck manufacturers had participated in infringements of competition law by entering into arrangements on pricing and price increases between January 1997 and January 2011.

The persons that had acquired trucks covered by that decision applied to the Commercial Court No 7, Barcelona for access to the evidence held by the manufacturers in order to quantify the artificial price increase resulting from those infringements, in particular by carrying out a comparison of recommended prices before, during and after the cartel period.

The truck manufacturers argued that that disclosure of evidence went beyond mere research and selection of documents already in existence or the mere making available of the data concerned. According to the manufacturers, it involves bringing together in a new document, on a digital or other medium, the information, knowledge or data in the control of the party to whom the request to disclose evidence is addressed, which would place an excessive burden on them and be contrary to the principle of proportionality.

It is in that context that the Commercial Court No 7, Barcelona asks the Court whether, in accordance with Directive 2014/104,³ the disclosure of relevant evidence in the control of the defendant or a third party relates only to documents in their control which already exist or also relates to those documents that the party to whom the request to disclose evidence is addressed must create *ex novo* by compiling or classifying information, knowledge or data in its possession.

By its judgment delivered today, the Court holds that the disclosure of ‘relevant evidence’ **also covers** evidence that

¹ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2004 L 349, p. 1).

² Commission Decision of 19 July 2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (OJ 2017 C 108, p. 6).

³ In the first subparagraph of Article 5(1) thereof.

the party to whom the request to disclose evidence is addressed **must create *ex novo*** by compiling or classifying information, knowledge or data in its possession, **subject to** compliance with the obligation of the national courts seised to **restrict the disclosure of evidence to that which is relevant, proportionate and necessary**, taking into account the **legitimate interests** and **fundamental rights** of that party.

The Court goes on to interpret the provision at issue. First of all, the term 'evidence' referred to in that directive concerns 'all types of means of proof admissible before the national court seised, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored'. It follows that the evidence concerned **does not necessarily correspond to pre-existing 'documents'**.

Next, by referring to evidence 'in [the] control' of the defendant or a third party, the EU legislature confines itself to making a factual observation, namely that of the information asymmetry between the defendant or third party, on the one hand, and the claimant, on the other hand, from whom it requires merely the provision of reasonably available evidence that is sufficient, given the limited information generally available to the claimant at the time of lodging an action for damages.

The Court notes that, in adopting Directive 2014/104, the EU legislature started from the finding that combating anti-competitive conduct on an initiative taken by the public sphere was not sufficient to ensure full compliance with competition law and that it was important to **facilitate** the possibility, for the private sphere, of helping to achieve that objective.

The Court states that it was therefore necessary to implement tools to remedy the information asymmetry between the parties since, by definition, the infringer knows what it has been accused of doing and knows what evidence may have been used to demonstrate its participation in anti-competitive conduct, whereas the victim of the damage caused by that behaviour does not have such evidence.

In that regard, for the claimant to be provided only with unprocessed, pre-existing and possibly very numerous documents would correspond only imperfectly with its request. Moreover, to exclude the possibility of requesting disclosure of *ex novo* documents would make the private enforcement of EU competition rules more difficult, which would be contrary to the objective of Directive 2014/104 recalled above.

Finally, the Court adds that the EU legislature has established a mechanism for balancing the interests involved, subject to strict review by the national courts before which proceedings have been brought. **It is for those courts to assess whether a request for the disclosure of evidence created *ex novo* from pre-existing evidence in the control of the defendant or a third party is likely**, having regard, for example, to its excessive or too-general nature, **to impose a disproportionate burden on the defendant or the third party concerned**, whether as a result of the cost or the workload that that request would entail.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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