

Case T-102/96

Gencor Ltd
v
Commission of the European Communities

(Intervention — Confidentiality)

Order of the President of the Fifth Chamber (Extended Composition) of the
Court of First Instance, 3 June 1997 II - 881

Summary of the Order

Procedure — Intervention — Service of copies of the pleadings on the interveners — Derogation — Confidential treatment — Conditions — Examination of information covered by a confidentiality agreement between the applicant and a person not party to the proceedings
(Rules of Procedure of the Court of First Instance, Art. 116(2))

Article 116(2) of the Rules of Procedure of the Court of First Instance lays down the principle that a copy of every document served on the parties must be served on the interveners. It is only by way of derogation

from that principle that the second sentence of that provision permits certain documents to be treated as confidential, thereby exempting them from the said requirement that copies must be served.

For the purpose of determining the conditions under which confidential treatment may be given to certain documents in the file, it is necessary, in respect of each document, to balance the legitimate concern of the party concerned to prevent substantial damage to its business interests and the intervenor's equally legitimate concern to have the necessary information for the purpose of being fully in a position to assert its rights and to state its case before the Court.

Although natural or legal persons other than the parties to the dispute are entitled to protection in respect of confidential information concerning them, the fact that a confidentiality agreement has been concluded between the party concerned and a third party cannot mean that confidential treatment is automati-

cally to be accorded to the information covered by that agreement. The existence of such an agreement cannot justify derogation from the rule laid down by Article 116(2) of the Rules of Procedure.

It is only once an examination has been carried out to determine the confidentiality or otherwise of each document in respect of which an application for confidential treatment, duly supported by reasons, has been submitted and, as the case may be, once the interests of the third party and of the interveners have been weighed in the balance, that the Community judicature can rule on the merits of the application, since the existence of a confidentiality agreement between the party concerned and the third party in question cannot preclude such an examination.