

Vereniging Prodifarma and Others
v
Commission of the European Communities

(Competition — Omni-Partijen Akkoord — Admissibility —
Nature of contested act)

Judgment of the Court of First Instance (First Chamber), 13 December 1990 844

Summary of the Judgment

*Action for annulment of measures — Measures against which actions may be brought — Letter addressed by a Member of the Commission to a Member State expressing an opinion as regards the compatibility of an agreement between undertakings with the competition rules of the Treaty — No binding legal effects — Exclusion — Taking account thereof by addressee Member State when adopting national measures — Immaterial
(EEC Treaty, Arts 5, 85 and 173; Regulation No 17 of the Council)*

A letter addressed to the authorities of a Member State by a Member of the Commission which merely represents an initial evaluation, by the Commission's departments, of an agreement between undertakings with regard to Article 85 of the Treaty and confines itself to suggesting amendments thereto, without producing binding legal effects such as those resulting from a decision granting exemption, negative clearance, or a decision ordering interim measures, the procedural rights of the parties to the agreement and any person who has lodged a complaint against it being expressly reserved, cannot be regarded as an

act whose annulment may be sought in an action under Article 173 of the Treaty.

The fact that the said letter led the national authorities to which it was addressed to adopt measures of domestic law does not alter its legal nature. The Commission has no power either under Article 85 of the Treaty or Regulation No 17 or under Article 5 of the Treaty to address a binding decision to a Member State as regards the conduct to be adopted by the national authorities in connection with an agreement between undertakings falling under Article 85 of the Treaty,