

Case T-30/89  
(Publication by way of extracts)

Hilti Aktiengesellschaft  
v  
Commission of the European Communities  
(Confidentiality)

Summary of the Order

- 1 *Procedure — Intervention — Communication of pleadings to interveners — Derogation — Confidential treatment — Conditions*  
(Rule of Procedure, Art 93(4))
- 2 *Procedure — Intervention — Communication of pleadings to interveners — Derogation — Confidential treatment — Scope — Written communications between lawyer and client — Internal notes reporting such communications*  
(Rules of Procedure, Art 93(4); Regulation No 17 of the Council)
- 3 *Procedure — Intervention — Request by an original party to the proceedings for the interveners' use of the pleadings to be solely for the purpose of the proceedings — Absence of applicable provisions — Request rejected*  
(Rules of procedure, Art 93)

1 Article 93(4) of the Rules of procedure lays down the principle that interveners are to receive a copy of every document served on the parties. It is only by way of derogation from that principle that the second sentence of Article 93(4) enables the Court to make certain documents in the case the subject of confidential treatment and thus to exclude them from the obligation of communication to the interveners.

For the purpose of determining the conditions under which recourse may be had to that derogation, it is necessary to ascertain, in respect of each document on the Court's file for which confidential treatment is claimed, the extent to which a reconciliation will in fact be effected between the applicant's legitimate concern to prevent substantial damage to its business interests and the interveners' equally legitimate concern to have the

necessary information for the purpose of being fully in a position to assert their rights and to state their case before the Court. Lastly, in considering this matter, account must also be taken of certain general principles of law and certain essential principles such as that of the protection of confidentiality of written communications between lawyers and client.

- 2 Regulation No 17 must be interpreted as protecting the confidentiality of written communications between lawyer and client provided that, on the one hand, such communications are made for the purposes and in the interests of the client's right of defence and, on the other hand, they emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment. That protection must, in the administrative procedure before the Commission, be recognized as automatically covering all written communications exchanged after the initiation of the administrative procedure which may lead to a decision on the application of Articles 85 and 86 of the Treaty or to a decision imposing a pecuniary sanction on the undertaking. That protection must be extended to earlier written communications which have a relationship to the subject-matter of that procedure.

A letter sent to an undertaking by an independent lawyer after the initiation of the administrative procedure before the Commission, for the purposes and in the interests of that undertaking's right of defence, falls within those criteria and must accordingly be regarded as confidential within the meaning of Article 93(4) of the Rules of Procedure.

The protection of written communications between lawyer and client must, in view of its purpose, be regarded as also extending to internal notes which are confined to reporting the text or the content of those communications for the purpose of distributing them within the undertaking and submitting them for consideration by managerial staff.

- 3 A request by a party that the Court make it clear to the interveners that the documents in the case are made available to them purely for the purposes of the proceedings must be rejected, since the rules governing the procedure before the Court do not contain any provision on which such a direction could be based.