

Case T-3/90

Vereniging Prodifarma

v

Commission of the European Communities

(Competition — Omni-Partijen Akkoord — Withdrawal of immunity from fines — Action brought by a complainant against a Community institution for failure to act — Inadmissibility)

Order of the Court of First Instance (First Chamber), 23 January 1991 2

Summary of the Order

Action against a Community institution for failure to act — Natural or legal persons — Omissions against which actions may be brought — Failure to take a decision withdrawing immunity from fines from the parties to a notified agreement between undertakings — Inadmissibility

(EEC Treaty, Art. 85 and the third paragraph of Art. 175; Regulation No 17 of the Council, Art. 15(5) and (6))

An action brought by a natural or legal person, who is the complainant in a procedure pursuant to Article 85 of the Treaty, for a declaration that the Commission, in infringement of the Treaty, has failed to act by not taking a decision pursuant to Article 15(6) of Regulation No 17 to withdraw from the parties to an agreement properly notified the immunity from fines provided for in Article 15(5) is inadmissible.

Natural or legal persons may only bring proceedings before the Court of First Instance pursuant to the third paragraph of Article 175 of the Treaty for a finding that an institution has, in breach of the Treaty, failed to adopt acts of which they are the potential addressees. It is clear from the terms of Article 15(6) of Regulation No 17 that the decision which the Commission is empowered to take must necessarily be addressed to the parties to the agreement notified whereas that is not prescribed for the complainants.

Moreover, on the one hand, the complainants are not directly or individually concerned by the Commission's failure to act because withdrawal of immunity would not affect their legal position at all either in the context of the procedure before the Commission or in proceedings before the national courts and, on the other, they have no legitimate interest in that withdrawal.

ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
23 January 1991 *

In Case T-3/90,

Vereniging Prodifarma, whose registered office is in Amsterdam, represented by M. van Empel and A. J. H. W. M. Versteeg, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 8 rue Zithe,

applicant,

v

Commission of the European Communities, represented by B. J. Drijber, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

supported by

Nederlandse Associatie van de Farmaceutische Industrie 'Nefarma', whose registered office is in Utrecht, represented by B. H. ter Kuile, of the Hague Bar, and E. H. Pijnacker Hordijk, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 8 rue Zithe,

intervener,

* Language of the case: Dutch.