Hilti Aktiengesellschaft v. Commission of the European Communities. Confidentiality Competition

Grounds

13 The Court of Justice has held (judgment of 18 May 1982 in Case 155/79 AM & S v Commission ( 1982 ) ECR1575) that Regulation No 17 of the Council of 6 February 1962, the first regulation implementing Articles 85 and 86 of the Treaty ( Official/Journal, English Special Edition 1959-62, p. 87) 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. In the same judgment the Court of Justice held that that protection must, in the administrative procedure before the Commission, be recognized as 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. The Court of Justice further held that that protection must be extended to earlier written communications which have a relationship to the subject-matter of that procedure.

18 In this case it appears that that legal advice was reported on in internal notes distributed within the undertaking so that it might be the subject of consideration by managerial staff. In such a case, and although the aforesaid legal advice was not received by way of correspondance, it must be held that the principle of the protection of written communications between lawyer and client may not be frustrated on the sole ground that the content of those communications and of that legal advice was reported in documents internal to the undertaking. Thus the principle of the protection of written communications between lawyer and client must, in view of its purpose, be regarded as extending also to the internal notes which are confined to reporting the text or the content of those communications. It follows that the request for confidential treatment made by the applicant must be allowed in so far as it refers to those documents.

Referring Principles:

XII.6 - Attorney-client privilege