

## Case T-369/03 R

### Arizona Chemical BV and Others v Commission of the European Communities

(Interim measures — Directive 67/548 — Urgency)

Order of the President of the Court of First Instance, 16 January 2004 . . . II - 208

#### Summary of the Order

1. *Applications for interim measures — Interim measures — Conditions for granting — Urgency — Prima facie case — Cumulative nature — Balancing of all the interests involved — Discretion of the court hearing the application for interim relief (Art. 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*

2. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Negative administrative decision — Urgency — Serious and irreparable harm — Burden of proof*  
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
  3. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable harm — Financial damage — Situation capable of endangering the existence of the applicant company — Assessment having regard to the situation of the group to which it belongs*  
(Arts 235 EC, 242 EC, 243 EC and 288 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
1. It is open to the judge dealing with such an application to order interim measures if it is established that such an order is justified, *prima facie*, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable damage to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action. Those conditions are cumulative, so that an application for interim measures must be dismissed if any one of them is absent. Where appropriate, the judge hearing such an application must also weigh up the interests involved.

Furthermore, in the context of that overall examination, the judge hearing the application enjoys a broad discretion and is free to determine, having regard to the specific circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of Community law imposing a pre-established scheme of analysis within which the need to order interim measures must be analysed and assessed.

(see paras 31-33)

The measure requested must further be provisional inasmuch as it must not prejudice the points of law or fact in issue or neutralise in advance the effects of the decision subsequently to be given in the main action.

2. In principle, there can be no application to suspend the operation of a negative administrative decision, since the granting thereof cannot have the effect of changing the position of the applicant.

Moreover, the urgency of an application for interim relief must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the relief. Particularly where harm depends on the occurrence of a number of factors, it is enough for that harm to be foreseeable with a sufficient degree of probability. However, the applicant is still required to prove the facts which are deemed to attest to the probability of serious and irreparable damage.

(see paras 62, 71, 72)

3. Damage of a purely financial nature cannot, save in exceptional circumstances, be regarded as irreparable, or even as being reparable only with

difficulty, if it can ultimately be the subject of financial compensation. Such damage that is not eliminated by the implementation of the judgment in the main proceedings constitutes an economic loss which may be made good by the means of redress provided for in the Treaty, in particular Articles 235 EC and 288 EC.

Where the applicant company alleges that the negative impact on its financial situation would endanger its existence, consideration must be given, for the purposes of assessing its economic circumstances, in particular to the characteristics of the group of which, by virtue of its shareholding structure, it forms part.

(see paras 75, 87)