ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
6 December 2002

Case T-275/02 R

D
v
European Investment Bank

(Procedure for interim relief – Extension of probationary period – Admissibility of the main action – Urgency – No urgency)

Full text in French . . . . . II - 1295

Application for: suspension of operation of the European Investment Bank's decisions respectively extending the probationary period of the applicant and dismissing the applicant.

Held: The application for interim measures is dismissed. The costs are reserved.

Summary

1. Applications for interim measures – Suspension of operation of a measure – Interim measures – Conditions for granting – Urgency – Prima facie case – Cumulative nature
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. Applications for interim measures – Criteria for admissibility – Admissibility of the main action – Irrelevance – Limits
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(1))

3. Officials – Actions – Disputes between the European Investment Bank and members of its staff – Criteria for admissibility – Prior referral to the Conciliation Board – Excluded – Optional nature of the conciliation procedure
(Art. 236 EC; Staff Regulations of the European Investment Bank, Art. 41)

4. Officials – Actions – Disputes between the European Investment Bank and members of its staff – Time-limits for bringing actions – Requirement of a reasonable period – Point from which time starts to run
(Art. 236 EC; Staff Regulations, Arts 90 and 91)

5. Applications for interim measures – Suspension of operation of a measure – Interim measures – Conditions for granting – Serious and irreparable damage – Burden of proof – Strictly pecuniary damage
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. Article 104(2) of the Rules of Procedure of the Court of First Instance provides that an application for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. Those conditions are cumulative, so that an application for suspension of the operation of a measure must be dismissed if any one of them is absent.

(see para. 20)

See: C-268/96 P(R) *SCK and FNK* v *Commission* [1996] ECR I-4971, para. 30; T-73/98 R *Prayon-Rupel* v *Commission* [1998] ECR II-2769, para. 25; T-198/01 R *Technische Glaswerke Ilmenau* v *Commission* [2002] ECR II-2153, para. 50

2. In principle the issue of the admissibility of the main application should not be examined in proceedings relating to an application for interim measures so as not to prejudge the substance of that case. Where, however, it is contended that the main application from which the application for interim measures is derived is manifestly inadmissible, it may prove necessary to establish the existence of certain factors which would justify the *prima facie* conclusion that the main application is admissible.

(see para. 21)

See: 376/87 R *Distrivet* v *Council* [1988] ECR 209, para. 21; T-222/99 R *Martinez and de Gaulle* v *Parliament* [1999] ECR II-3397, para. 60

3. The conciliation procedure provided for in Article 41 of the Staff Regulations of the European Investment Bank is purely optional and takes place independently of the action brought before the Court. Consequently, any failure to refer a matter first to the Conciliation Board is not such as to render the action for annulment of a decision inadmissible.

(see para. 29)

See: T-7/98, T-208/98 and T-109/99 *De Nicola* v *EIB* [2001] ECR-SC I-A-49 and II-185, paras 96, 101 and 102; T-192/99 *Dunnett and Others* v *EIB* [2001] ECR II-813, para. 54

4. The need to weigh the entitlement to effective protection by the courts, which is one of the general principles of Community law and implies that those subject to the courts' jurisdiction must have a sufficient period of time available to them to assess the lawfulness of the act adversely affecting them and if necessary prepare their case, against the need for legal certainty which requires that, after a certain time, measures taken by Community bodies become definitive, requires that disputes between the European Investment Bank and members of its staff should be brought before the Community judicature within a reasonable period.

In order to determine whether an action has been brought within a reasonable period, account must be taken of the conditions on time-limits for bringing actions laid down by Articles 90 and 91 of the EC Staff Regulations. Thus, a period of three months should, in principle, be considered reasonable.

As regards the commencement of the limitation period for bringing actions, where a matter has been referred to the Conciliation Board, that period begins to run from the day on which the employee concerned is notified, where appropriate, of the failure of the conciliation procedure. Where the matter has not been referred to the Conciliation Board, the time-limit for bringing an action in disputes between the European Investment Bank and members of its staff begins to run from the date of notification of the Bank's decision to the person concerned or, in any event, from the day on which he becomes aware of it, at the latest.

(see paras 31-35)

See: T-33/99 *Méndez Pinedo* v *ECB* [2000] ECR-SC I-A-63 and II-273, paras 32, 33 and 34; *De Nicola* v *EIB*, cited above, paras 101, 107 and 119; *Dunnett and Others* v *EIB*, cited above, paras 52 and 54; T-20/01 *Cerafogli and Others* v *ECB* [2001] ECR-SC I-A-235 and II-1075, para. 63

5. The urgency of an application for interim measures must be assessed in relation to the necessity for an interim order to prevent serious and irreparable damage to the party applying for them. It is for that party to prove that it cannot wait for the outcome of the main proceedings without suffering damage of that nature. Although in order to establish the existence of such damage it is not necessary for the occurrence of the damage to be demonstrated with absolute certainty, the applicant is none the less required to prove the facts forming the basis of his claim that serious and irreparable damage is likely.

Purely pecuniary damage cannot, in principle, be regarded as irreparable or even as difficult to repair since it may be the subject of subsequent financial compensation.

(see paras 59-60, 65)

See: T-45/90 R *Speybrouck v Parliament* [1990] ECR II-705, para. 23; T-111/99 R *Samper* v *Parliament* [1999] ECR-SC I-A-111 and II-609, para. 38; T-373/00 R *Tralli* v *ECB* [2001] ECR-SC I-A-19 and II-83, para. 24; T-192/01 R *Lior v Commission* [2001] ECR II-3657, para. 49; T-300/01 R *De Nicola* v *EIB* [2002], not published in the ECR, para. 52