

Case T-193/04 R

Hans-Martin Tillack

v

Commission of the European Communities

(Application for interim measures — Application for interim relief and for suspension of operation of a measure)

Order of the President of the Court of First Instance, 15 October 2004 . . . II - 3578

Summary of the Order

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

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2. *Procedure — Intervention — Applications for interim measures — Interested persons — Representative association having as object the protection of its members — Entitlement to intervene in cases raising questions of principle liable to affect those members — Conditions*
(Statute of the Court of Justice, Arts 40, second para., and 53, first para.)
3. *Applications for interim measures — Conditions of admissibility — Admissibility of the main application — Irrelevance — Limits*
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
4. *Actions for annulment — Actionable measures — Definition — Measures producing binding legal effects*
(Art. 230 EC)

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 interim measures must be dismissed if either of them is not fulfilled. Where appropriate, the judge hearing such an application must also weigh up the interests involved.

by virtue of the first paragraph of Article 53 of the Statute, representative associations whose object is to protect their members in cases raising questions of principle liable to affect those members are allowed to intervene. More specifically, an association may be allowed to intervene in a case if it represents an appreciable number of undertakings active in the sector concerned, its objects include protection of its members' interests, the case may raise questions of principle affecting the functioning of the sector concerned and the interests of its members may therefore be affected to an appreciable extent by the forthcoming judgment or order.

(see para. 21)

2. Under the second paragraph of Article 40 of the Statute of the Court of Justice, applicable to the Court of First Instance

Also, the adoption of a broad interpretation of the right of associations to intervene is intended to facilitate assessment of the context of cases whilst

avoiding multiple individual interventions which would compromise the effectiveness and proper course of the procedure.

The abovementioned conditions are met by an international trade union organisation representing more than 500 000 members in 109 countries which has the objects of protecting and strengthening the rights and freedoms of journalists and of respecting and defending freedom of information, media freedom and the independence of journalism, since the position which the President of the Court might adopt on the questions before him potentially concerns the scope of the principle of the protection of journalists' sources.

(see paras 24, 25, 28-30)

3. In principle, the admissibility of the action before the court adjudicating on the merits should not be examined in proceedings for interim measures, so as not to prejudge the main action. It may nevertheless appear necessary, when it is contended that the main application to which the application for interim measures relates is manifestly inadmissible, to establish whether there are any grounds for concluding *prima facie* that the main application is admissible.

(see para. 32)

4. A measure which produces binding legal effects such as to affect the interests of an applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for annulment under Article 230 EC.

(see para. 38)