

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

5 July 2005\*

In Case T-117/05 R,

**Andreas Rodenbröker**, residing in Hövelhof (Germany), and the 81 other applicants whose names are set out in an annex to this order, represented by H. Glatzel, lawyer,

applicants,

v

**Commission of the European Communities**, represented by M. van Beek and B. Schima, acting as Agents, with an address for service in Luxembourg,

defendant,

\* Language of the case: German.

APPLICATION for suspension of operation of Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1),

THE PRESIDENT OF THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES

makes the following

**Order**

**Legal framework and background to the application for interim measures**

- 1 On 21 May 1992, the Council adopted Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7, 'the Directive').
  
- 2 Article 2(1) provides that the aim of the Directive is to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the territory of the Member States to which the EC Treaty applies.

3 Article 2(2) states that measures taken pursuant to the Directive are to be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

7

4 According to the sixth recital of the preamble to the Directive, in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, it is necessary to designate special areas of conservation in order to create a coherent European ecological network according to a specified timetable.

5 Pursuant to Article 3(1) of the Directive, that network, known as ‘the Natura 2000’ network, includes the special areas of conservation and the special protection areas classified by the Member States pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).

6 In Article 1(l) of the Directive a special area of conservation is defined as ‘a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated’.

7 Article 4 of the Directive establishes a three-step procedure for designating special areas of conservation. Article 4(1) provides that each Member State is to propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. The list is to be transmitted to the Commission within three years of the notification of the Directive, together with information on each site.

8 Under Article 4(2) of the Directive, on the basis of those lists and of the criteria set out in Annex III, the Commission is to establish, in agreement with each Member State, a draft list of sites of Community importance. The list of sites selected as sites of Community importance is to be adopted by the Commission in accordance with the procedure laid down in Article 21 of the Directive. Article 4(3) provides that that list is to be established within six years of the notification of the Directive.

9 Article 4(4) of the Directive provides that, once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned is to designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

10 Article 4(5) of the Directive provides that, as soon as a site is placed on the list of sites of Community importance drawn up by the Commission, it is to be subject to Article 6(2), (3) and (4).

11 Under Article 6 of the Directive:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

<sup>12</sup> Article 7 of the Directive provides that 'as from the date of implementation' of the Directive, the obligations arising under Article 6(2), (3) and (4) thereof shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409.

- 13 Site DE4118401 Vogelschutzgebiet Senne mit Teutoburger Wald is a protected area pursuant to Directive 79/409.
- 14 Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Directive 92/43, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1, 'the contested decision') was adopted on the basis of the third subparagraph of Article 4(2) of the Directive. That list includes the following sites:
- DE4117301 Sennebäche;
  - DE4117302 Holter Wald;
  - DE4118301 Senne mit Stapelager Senne.

**Procedure and forms of order sought by the parties**

- 15 By application lodged at the Court Registry on 9 March 2005, Andreas Rodenbröker and the 81 other applicants whose names are set out in an annex to this order brought an action, pursuant to the fourth paragraph of Article 230 EC for the annulment of the contested decision.

16 By separate document lodged at the Court Registry on 25 March 2005, pursuant to Article 104 of the Rules of Procedure of the Court of First Instance and Articles 242 EC and 243 EC, the applicants lodged this application for interim measures.

17 In their application, the applicants are divided into six groups:

- Andreas Rodenbröker, Bernhard Bröckling, Johannes Bröckling, Hedwig Bröckling, Josef Flüter, Karl-Heinz Fritze, Heinz Göke, Alwine Griffiths, Dieter Johannesmeier, Reinhard Jostwerner, Meinolf Kirchhoff, Ursula Klausfehring, Gerhard Korsmeier, Raimund Korsmeier, Mike Leuschner, Jürgen Linse, Martin Steffens, Hartwig Pollmeier, Anton Rampsel, Irene Rampsel, Franz-Josef Regenhard, Johannes Relard, Karl-Heinz Relard, Hubert Rodehutsord and Heinz Schlotmann ('the Haustenbach residents');
  
- Norbert Altemeyer, Beate Beckmann, Gerhard Benteler, Rainer Benteler, Carl-Stefan Biermeier, Josef Biermeier, Manfred Block, Ludwig Brinkmann, Karl-Heinz Deppe, Friedhelm Dirks, Siegfried Engels, Wilhelm Ennekens, Johannes Evers, Elke Furlkröger, Reinhard Furlmeier, Andreas Gutsche, Franz Hachmann, Heinz Meermeier, Barbera Meermeier, Heike Meuser, Ferdinand Brock, Maria Brock, Monika Plasshenrich, Heinrich Plasshenrich, Manfred Jürgenliemke, Ludwig Teichmann, Ute Teichmann, Senne Großwild Safari-Land GmbH, Renate Henning, Udo Henning, Karl-Heinz Kleinemeier, Hubert Sander and Elisabeth Kipshagen ('the Furlbach residents');
  
- Meinolf Benteler, Richard Berens, Hans-Josef Joachim, Inge Jostameling, Rudolf Jürgenliemke, Edmund Jürgenliemke, Kunigunde Jürgenliemke, Franz-Josef Kipshagen, Heidrun Kreyer, Werner Lienen, Ulrich Wend, Monika Winter, Christiane Füchtmeier and Frank Röllke ('the Wehr-Wapelbach residents');

- Gabriele Berenbrinker, Josef Delker, Josef Dresselhaus, Norbert Hunke, Heribert Rodenbecken-Schnieder and Josef Ewers ('the Rodenbach, Roden- and Wapelbach and Nördliche Moosheide residents');
  
- Gemeinde Hövelhof ('the Municipality');
  
- Bussemas & Pollmeier GmbH & Co. KG, Reinhard Goldkuhle and Meinolf Maasjost ('the Holter Wald applicants').

18 In these proceedings for interim measures, the applicants request the Court to order the Commission:

- first, to suspend — pending judgment in the main action — the operation of the contested decision in so far as concerns the classification of sites DE4117301 Sennebäche, DE4118301 Senne mit Stapelager Senne, DE4118401 Vogelschutzgebiet Senne mit Teutoburger Wald and DE4117302 Holter Wald ('the sites in question');
  
- secondly, to notify the Federal Republic of Germany of the suspension of operation of the contested decision in so far as concerns the sites in question;
  
- thirdly, to pay the costs.



- 19 In its written observations lodged at the Court Registry on 13 April 2005, the Commission claimed, in essence, that the Court should dismiss the application as unfounded and that the costs should be reserved.
- 20 On 21 April 2005, the applicants lodged at the Court Registry, on their own initiative, observations on the Commission's observations.
- 21 By decision of the President of the Court of 21 April 2005, the applicants' further observations were added to the documents in the case and the Commission was invited to present additional observations on those observations by 29 April 2005.
- 22 On 27 April 2005, the Commission informed the President of the Court that it had no observations to make on the further observations submitted by the applicants.

## **Law**

- 23 Under the combined provisions, first, of Articles 242 EC and 243 EC and, second, of Article 225(1) EC, the Court of First Instance may, if it considers that the circumstances so require, order suspension of the operation of the contested measure or order the necessary interim measures
- 24 Article 104(2) of the Rules of Procedure provides that an application for interim measures must state the subject-matter of the proceedings, 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 any one of them is absent (order in Case C-268/96 P(R) *SCK and FNK v Commission* [1996] ECR I-4971, paragraph 30).

- 25 Having regard to the documents in the case-file, the President considers that he has all the material necessary to decide the present application for interim measures, without there being any need first to hear oral argument from the parties.

### *Arguments of the parties*

#### Admissibility

- 26 The applicants maintain that their application for suspension of operation satisfies all the conditions laid down in Article 104(2) of the Rules of Procedure and that the main action is admissible. On the latter point, the applicants claim that their property rights are directly and individually concerned by the contested decision and that it cannot be described as a preparatory measure. They argue that, on the contrary, the publication of the contested decision shows the Commission's intention to give the decision a binding legal effect.
- 27 As regards the direct concern of the measure to them, the applicants assert that the application of the Community provisions in question leaves no room for discretion. Their legal effect stems automatically and exclusively from Community law. According to the applicants, that automatic effect follows clearly from the Directive itself, but also from the national provisions adopted in order to transpose it, which do not differ fundamentally from the Community provisions.

- 28 The legal effects of Article 4(5) of the Directive and, in particular, the banning of deterioration of natural habitats and the habitats of species laid down in Article 6(2) of the Directive and also the obligation, imposed in Article 6(3), to carry out an appropriate assessment of the implications of any plan or project on the site already apply directly to the applicants' land. For plans or projects relating to that land an appropriate assessment must be carried out, in accordance with Article 6(3), in order to preclude significant adverse effects. If it is not possible to preclude such effects, compensatory measures must be taken in accordance with Article 6(4) of the Directive.
- 29 Moreover, the applicants maintain that Article 6 of the Directive does not restrict application of the banning of deterioration and the obligation to carry out an appropriate assessment of the impact to properties within the special areas of conservation or the special protection areas, but also seeks to protect the surrounding areas. Therefore, their properties fall within the scope of application of the Directive.
- 30 In that regard, the applicants cite the example of Mr Jürgenliemke, one of the Furlbach residents. That applicant received a decision from the competent national authority on an application for permission to build a house on his land, which is approximately 85 metres south of one of the sites in question. According to the decision of the competent national authority, any act likely to lead to the destruction, damage, alteration, long-term disruption or deterioration of the protected site is prohibited.
- 31 Finally, the applicants point out that the wording of Article 6 draws no distinction, so far as concerns the application of the provision, between a right *in rem*, such as the right to property, and a contractual right, such as the right resulting from a lease. The applicants stress that leaseholders are affected in the same way as owners by the contested decision.

- 32 As regards the requirement that they should be individually concerned, the applicants maintain that they satisfy that condition, since the sites in question differ from the other sites covered by the contested decision, because they are the only ones which do not fulfil the criteria of the Directive. According to the applicants, not only the owners, but also the leaseholders, the Municipality and the Holter Wald applicants are individually concerned.
- 33 In reply, the Commission maintains that this application must be held inadmissible because it does not satisfy the conditions laid down in Article 104(2) of the Rules of Procedure and because the action for annulment of the contested decision to which the present application relates is itself manifestly inadmissible. Indeed, with the exception of the Municipality, none of the applicants is directly concerned by the contested decision. Nor are they individually concerned by the decision.
- 34 As regards the conditions laid down by Article 104 of the Rules of Procedure, the Commission contends that the applicants do not establish any link between the contested part of the decision and their claim that they are affected by it. The Commission considers that, owing to the lack of that link in the application for interim measures, it cannot be inferred that the applicants have a legal interest in bringing proceedings and concludes that the conditions laid down in Article 104 of the Rules of Procedure are therefore not satisfied.
- 35 The Commission maintains that the action of the applicants who invoke the legal effects of the decision so far as concerns site DE4118401 is *prima facie* inadmissible, since that site is not mentioned in the annex to the contested decision.
- 36 The Commission also points out that it is not possible to identify, from the application, which Haustenbach residents are claiming to be directly concerned because their properties are situated on site DE4118301, which is covered by the

contested decision, and those directly concerned because their properties are on site DE4118401, which is not covered by the contested decision. In those circumstances, the Commission concludes that it is not possible to determine *prima facie* which of the Haustenbach residents have standing to bring proceedings in the main action.

- 37 Under Article 7 of the Directive, obligations arising under Article 6(2), (3) and (4) thereof are to apply as from the date of transposition of the Directive or the date of classification or recognition by a Member State under Directive 79/409 if the latter date is later. According to the Commission, the contested decision has no legal effects on the applicants. It follows that the applicants' interpretation that the date of application of the Directive to area DE4118401 is the date of the adoption of the Community list is incorrect.
- 38 As regards the *locus standi* of the applicants, the Commission takes the view, first, that, with the exception of the Municipality, they are clearly not directly concerned.
- 39 The Commission points out that a distinction must be drawn between whether the provisions in question are directly applicable and whether they are of direct concern to individuals. In the present case, the provisions of the Directive in conjunction with the contested decision directly require the national authorities to act.
- 40 The Commission adds that the decisive criterion in that regard is whether or not the national authorities have any discretion, because there can be direct concern only if they do not.

- 41 In that regard, the Commission maintains that Article 6(2) of the Directive requires that deterioration and disturbance of the site be avoided. Article 6(3) and (4) of the Directive establishes an authorisation procedure for plans and projects which might affect the site. In both cases, the obligations lie on the Member States and not on individuals.
- 42 As regards, first, Article 6(2) of the Directive, that provision calls on the Member States to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Directive.
- 43 According to the Commission, that provision gives the Member States discretion in at least two respects, first, as to when a disturbance may have significant effects and, secondly, as to the appropriate steps to be taken to avoid deterioration and disturbance. The Commission points out that, until a Member State has exercised its discretion, it is impossible to determine if and how the applicants' legal situation may be affected.
- 44 Secondly, regarding the condition of individual concern, the Commission points out that the applicants are required to prove that the Directive is of individual concern to each of them, according to his situation.
- 45 According to the Commission, that proof is lacking.

46 In that regard, the Commission disputes the argument that leaseholders are affected in the same way as owners. The Commission points out that the applicants' observations are laconic and include no arguments relating to the impact on those applicants who are leaseholders. The Commission concludes that it is impossible to determine *prima facie* which applicants are individually concerned.

### Urgency

47 The applicants consider that, if suspension of operation of the contested decision is not granted, they will suffer serious and irreparable damage.

48 In the first place, the contested decision adversely affects the applicants' property rights, because they are no longer able freely to exploit their land. The applicants consider that, in the light of the current economic situation, the consequence of any impact on their freedom to exploit their land, whether owing directly to the banning of deterioration laid down in Article 6(2) of the Directive or to the constraints imposed, may be that farms, forestry plantations, fish-farms or light industry will no longer be profitable and will therefore have to be abandoned, with the risk that those activities will disappear and jobs will be lost.

49 Secondly, the contested decision adversely affects the planning powers of the Municipality, which are protected by German constitutional law.

50 Thirdly, the applicants maintain that it is necessary to suspend operation of the contested decision, having regard to subsequent proceedings, in order to enable them to adduce evidence of the fact that the protected animal and plant species are not currently found on the sites in question.

51 The Commission, for its part, considers that the applicants' first two arguments are formulated in general, hypothetical and vague terms and are not supported by evidence.

52 As regards the applicants' third and final argument, the Commission considers that it will be possible for them to adduce the evidence in question in the main action and that their arguments therefore do not establish the requisite urgency.

### *Findings of the President of the Court*

#### Preliminary observations on admissibility

53 First of all, it should be pointed out that, according to settled case-law, the conditions laid down in Article 104(2) of the Rules of Procedure require that the essential elements of fact and law on which an application is founded are set out in a coherent and comprehensible fashion in the application for interim measures itself (orders in Case T-306/01 R *Aden and Others v Council and Commission* [2002] ECR II-2387, paragraph 52, and Case T-303/04 R *European Dynamics v Commission* [2004] ECR II-3889, paragraphs 63 and 64).



- 54 In this instance, as the Commission rightly points out, the application contains few elements to enable the judge hearing the application to examine whether there is a prima facie case for granting the measures sought. Nevertheless, in spite of its lack of clarity and confused presentation, the application contains a series of pleas and arguments designed to prove that the conditions for establishing a prima facie case and urgency are satisfied, which have enabled the Commission to present its observations and now enable the judge hearing the application to reach a decision. In those circumstances, the application cannot be declared inadmissible on the ground that it fails to comply with Article 104(2) of the Rules of Procedure.

#### The admissibility of the main action

- 55 It is settled case-law that in principle the issue of the admissibility of the main action should not be examined in relation to an application for interim measures so as not to prejudge the substance of the case. Nevertheless, where, as in this case, it is contended that the main action to which the application for interim measures relates is manifestly inadmissible, it may prove necessary to establish whether there are any grounds for concluding prima facie that the main action is admissible (orders in Case T-1/00 R *Hölzland Others v Commission* [2000] ECR II-251, paragraph 21, and Case T-155/02 R *VVG International and Others v Commission* [2002] ECR II-3239, paragraph 18).

- 56 Under the fourth paragraph of Article 230 EC, 'any natural or legal person may ... institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'. Although the fourth paragraph of Article 230 EC makes no express provision regarding the admissibility of actions brought by individuals for annulment of a directive, it is clear none the less from the case-law that that fact alone is insufficient for such actions to

be declared inadmissible (Case T-135/96 *UEAPME v Council* [1998] ECR II-2335, paragraph 63; and order in Case T-223/01 *Japan Tobacco and JT International v Parliament and Council* [2002] ECR II-3259, paragraph 28).

57 Moreover, according to settled case-law, a measure is of general application if it applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract (Case T-482/93 *Weber v Commission* [1996] ECR II-609, paragraph 55, and order in Case T-113/99 *Galileo and Galileo International v Council* [2000] ECR II-4141, paragraph 45).

58 However, it is conceivable that a provision which, by nature and by virtue of its sphere of application, is of a general nature, may be of direct and individual concern to a natural or legal person (Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 19, and Case C-451/98 *Antillean Rice Mills v Council* [2001] ECR I-8949, paragraph 46).

59 Furthermore, it follows from settled case-law that, for an individual to be directly concerned by a Community measure, the latter must directly affect the legal situation of the individual and leave no discretion to the addressees of that measure, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (Case C-386/96 P *Dreyfus v Commission* [1998] ECR I-2309, paragraph 43, and the case-law cited therein, and order in Case T-139/02 *Instituto N. Avgerinopoulou and Others v Commission* [2004] ECR II-875, paragraph 62, and the case-law cited therein).

60 As regards individual interest, it should be pointed out that a measure of general application such as a directive cannot be of individual concern to natural or legal

persons unless it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (Case C-358/89 *Extramet Industrie v Council* [1991] ECR I-2501, paragraph 16; *Codorniu v Council*, paragraph 58 above, paragraph 20; *Antillean Rice Mills v Council*, paragraph 58 above, paragraph 49; and Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 36).

- 61 Furthermore, where an action is brought by several applicants, it is admissible if one of them has *locus standi*. In those circumstances, there is no need to consider whether the other applicants are entitled to bring proceedings (see, to that effect, Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, paragraphs 30 and 31).
- 62 In the present case, the situation of the applicants who are residents of Haustenbach, Furlbach, Wehr-Wapelbach, Rodenbach, Roden- and Wapelbach, Nördliche Moosheide and Holter Wald ('the residents') must be evaluated differently from the situation of the Municipality.
- 63 First, as regards the arguments put forward by the parties, it is very doubtful that the residents are directly and individually concerned by the contested decision. According to the case-law cited in paragraph 59, it is for the residents to show *inter alia* that the contested decision affects them directly. In this case, it is not *prima facie* apparent from the documents before the Court that the Directive on the basis of which the contested decision was accepted confers no discretion on the German authorities responsible for implementing the national legislation transposing the Directive.
- 64 Secondly, with regard to the Municipality, the parties agree that it is directly affected by the contested decision.

- 65 It follows that, if the Municipality can show that the contested decision affects it by reason of a factual situation which differentiates it from all other persons, the action will be admissible.
- 66 However, the Municipality has adduced no evidence to show that the contested decision affects it, for specific reasons in relation to the other applicants, in a way which differentiates it sufficiently for it to be regarded as individually concerned.
- 67 As regards the arguments presented on this point in the application, which relate to the applicants without distinction, it must be stated, first, that the fact that the sites in question are allegedly the only sites mentioned in the contested decision which do not fulfil the criteria laid down in the Directive is not *prima facie* sufficient for the Municipality to be regarded as individually concerned by that Decision.
- 68 Secondly, it should be noted that, according to settled case-law, the general interest which a legal person such as the Municipality, as an entity responsible for economic affairs within its territory, may have in obtaining a result that is favourable for its economic prosperity is not sufficient on its own to enable it to be regarded as being concerned for the purposes of the fourth paragraph of Article 230 EC (Case C-142/00 P *Commission v Nederlandse Antillen* [2003] ECR I-3483, paragraph 69).
- 69 Consequently, in the light of the arguments put forward by the parties at this stage of the proceedings, there is serious doubt as to whether the Municipality is individually concerned by the contested decision.

- 70 Moreover, the judge hearing the application considers that it is not necessary, in the circumstances of the case, to continue his examination of the prima facie admissibility of the action for annulment. In any event, the applicants have not shown that it is urgent that the interim measures sought be ordered

### Urgency

- 71 It should be pointed out that the urgency of an application for the adoption of interim measures must be assessed in the light of the extent to which an interlocutory order is necessary to avoid serious and irreparable damage to the party seeking the adoption of the interim measure (orders in Case 310/85 R *Deufil v Commission* [1986] ECR 537, paragraph 15, and Case T-13/99 R *Pfizer Animal Health v Council* [1999] ECR II-1961, paragraph 134). That party must furnish proof that he cannot await the conclusion of the main action without suffering damage of that nature (orders in Case C-356/90 R *Belgium v Commission* [1991] ECR I-2423, paragraph 23, and Case T-151/01 R *Duales System Deutschland v Commission* [2001] ECR II-3295, paragraph 187).
- 72 Although, in order to establish the existence of serious and irreparable damage, in proceedings for interim measures, it is not necessary for the occurrence of the damage to be demonstrated with absolute certainty, it being sufficient to show that damage is foreseeable with a sufficient degree of probability, the applicants are required to prove the facts forming the basis of their claim that serious and irreparable damage is likely, in order to enable the judge hearing the application for interim measures to assess the likelihood that the damage will occur (see, to that effect, the orders in Case C-280/93 R *Germany v Council* [1993] ECR I-3667, paragraph 34, and Case C-335/99 P(R) *HFB and Others v Commission* [1999] ECR I-8705, paragraph 67).

- 73 In the present case it is necessary, first of all, to distinguish between the adverse effect allegedly caused to the residents, who, according to the applicants, fall within the scope of the Directive pursuant to the contested decision, and the adverse effect allegedly caused to the Municipality.
- 74 As for the infringement of the residents' rights freely to enjoy their property, either as owners or as leaseholders, those are vague and hypothetical risks. The application contains no concrete evidence and does not explain in what those risks consist. Furthermore, the alleged circumstances do not constitute an actual risk, but a future, uncertain and contingent risk.
- 75 In so far as the applicants' argument relating to the alleged adverse effect of the contested decision on certain jobs may be taken to mean that the alleged harm would be suffered by persons other than the applicants, it must be stated that the applicants cannot validly invoke such damage, since damage deemed to establish urgency must be specific to the applicant (order in *Pfizer Animal Health v Council*, paragraph 71 above, paragraph 136).
- 76 In so far as the arguments concerning the infringement of the residents' rights, including loss of their own employment, may be taken to mean that the alleged damage is of a pecuniary nature, it need only be pointed out that damage of that kind 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 (see order in *Pfizer Animal Health v Council*, paragraph 71 above, paragraph 137, and the case-law cited therein). In this case, the applicants have not adduced any evidence which might be regarded as constituting exceptional circumstances.

77 The Municipality's claims that its planning powers will be adversely affected are hypothetical. As the Municipality itself points out, those claims relate to projects for future development. Furthermore, the application gives only rudimentary details of such projects. It contains no concrete evidence and does not state in what respect the alleged damage would be serious and, moreover, irreparable. Those claims do not establish the existence of an actual risk of damage, but of a future uncertain and contingent risk.

78 As for the applicants' third argument relating to the possibility of adducing evidence that there are no protected animal and plant species on the sites in question, the Commission rightly maintains that that argument cannot establish the likelihood of serious and irreparable damage.

79 In those circumstances, it must be considered that the information presented by the applicants, which, as has been stated above, is general, vague and hypothetical in nature and inadequately substantiated, does not prove to the requisite legal standard that if the interim measures sought are not granted the applicants will suffer serious and irreparable damage.

80 Accordingly, the applicants have been unable to establish that the condition for urgency is met. The application for interim measures must therefore be dismissed, without there being any need to consider whether the other conditions governing the grant of interim measures are satisfied.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

- 1. The application for interim measures is dismissed.**
- 2. The costs are reserved.**

Luxembourg, 5 July 2005.

H. Jung

Registrar

B. Vesterdorf

President



ANNEX

**Bernhard Bröckling**, resident in Hövelhof (Germany),

**Johannes Bröckling**, resident in Hövelhof,

**Hedwig Bröckling**, resident in Hövelhof,

**Josef Flüter**, resident in Hövelhof,

**Karl-Heinz Fritze**, resident in Hövelhof,

**Heinz Göke**, resident in Hövelhof,

**Alwine Griffiths**, resident in Hövelhof,

**Dieter Johannesmeier**, resident in Hövelhof,

**Reinhard Jostwerner**, resident in Hövelhof,

**Meinolf Kirchhoff**, resident in Hövelhof,

**Ursula Klausfehring**, resident in Hövelhof,

**Gerhard Korsmeier**, resident in Hövelhof,

**Raimund Korsmeier**, resident in Hövelhof,

**Mike Leuschner**, resident in Hövelhof,

**Jürgen Linse**, resident in Hövelhof,

**Martin Steffens**, resident in Hövelhof,

**Hartwig Pollmeier**, resident in Hövelhof,

**Anton Rampsel**, resident in Hövelhof,

**Irene Rampsel**, resident in Hövelhof,

**Franz-Josef Regenhard**, resident in Hövelhof,

**Johannes Relard**, resident in Hövelhof,

**Karl-Heinz Relard**, resident in Hövelhof,

**Hubert Rodehutscond**, resident in Hövelhof,

**Heinz Schlotmann**, resident in Hövelhof,

**Norbert Altemeyer**, resident in Hövelhof,

**Beate Beckmann**, resident in Schloß Holte Stukenbrock (Germany),

**Gerhard Benteler**, resident in Schloß Holte Stukenbrock,

**Rainer Benteler**, resident in Schloß Holte Stukenbrock,

**Carl-Stefan Biermeier**, resident in Schloß Holte Stukenbrock,

**Josef Biermeier**, resident in Schloß Holte Stukenbrock,

**Manfred Block**, resident in Hövelhof,

**Ludwig Brinkmann**, resident in Schloß Holte Stukenbrock,

**Karl-Heinz Deppe**, resident in Schloß Holte Stukenbrock,

**Friedhelm Dirks**, resident in Schloß Holte Stukenbrock,

**Siegfried Engels**, resident in Hövelhof,

**Wilhelm Ennekens**, resident in Hövelhof,

**Johannes Evers**, resident in Schloß Holte Stukenbrock,

**Elke Furlkröger**, resident in Hövelhof,

**Reinhard Furlmeier**, resident in Hövelhof,

**Andreas Gutsche**, resident in Hövelhof,

**Franz Hachmann**, resident in Schloß Holte Stukenbrock,

**Heinz Meermeier**, resident in Hövelhof,

**Barbara Meermeier**, resident in Hövelhof,

**Heike Meuser**, resident in Schloß Holte Stukenbrock,

**Ferdinand Brock**, resident in Schloß Holte Stukenbrock,

**Maria Brock**, resident in Schloß Holte Stukenbrock,

**Monika Plasshenrich**, resident in Schloß Holte Stukenbrock,

**Heinrich Plasshenrich**, resident in Schloß Holte Stukenbrock,

**Manfred Jürgenliemke**, resident in Schloß Holte Stukenbrock,

**Ludwig Teichmann**, resident in Schloß Holte Stukenbrock,

**Ute Teichmann**, resident in Schloß Holte Stukenbrock,

**Senne Großwild Safari-Land GmbH**, established in Schloß Holte Stukenbrock,

**Renate Henning**, resident in Schloß Holte Stukenbrock,

**Udo Henning**, resident in Schloß Holte Stukenbrock,

**Karl-Heinz Kleinemeier**, resident in Schloß Holte Stukenbrock,

**Hubert Sander**, resident in Schloß Holte Stukenbrock,

**Elisabeth Kipshagen**, resident in Schloß Holte Stukenbrock,

**Meinolf Benteler**, resident in Schloß Holte Stukenbrock,

**Richard Berens**, resident in Hövelhof,

**Hans-Josef Joachim**, resident in Schloß Holte Stukenbrock,

**Inge Jostameling**, resident in Schloß Holte Stukenbrock,

**Rudolf Jürgenliemke**, resident in Schloß Holte Stukenbrock,

**Edmund Jürgenliemke**, resident in Schloß Holte Stukenbrock,

**Kunigunde Jürgenliemke**, resident in Schloß Holte Stukenbrock,

**Franz-Josef Kipshagen**, resident in Schloß Holte Stukenbrock,

**Heidrun Kreyer**, resident in Schloß Holte Stukenbrock,

**Werner Lienen**, resident in Schloß Holte Stukenbrock,

**Ulrich Wend**, resident in Schloß Holte Stukenbrock,

**Monika Winter**, resident in Schloß Holte Stukenbrock,

**Christiane Füchteameier**, resident in Schloß Holte Stukenbrock,

**Frank Röllke**, resident in Schloß Holte Stukenbrock,

**Gabriele Berenbrinker**, resident in Schloß Holte Stukenbrock,

**Josef Delker**, resident in Schloß Holte Stukenbrock,

**Josef Dresselhaus**, resident in Verl (Germany),

**Norbert Hunke**, resident in Schloß Holte Stukenbrock,

**Heribert Rodenbecken-Schnieder**, resident in Verl,

**Josef Ewers**, resident in Schloß Holte Stukenbrock,

**Gemeinde Hövelhof**, established in Hövelhof,

**Bussemas & Pollmeier GmbH & Co. KG**, established in Verl,

**Reinhard Goldkuhle**, resident in Schloß Holte Stukenbrock,

**Meinolf Maasjost**, resident in Verl.