ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

13 October 2006 *

In Case T-420/05 R II,

Vischim Srl, established in Cesano Maderno (Italy), represented by C. Mereu and K. Van Maldegem, lawyers,

applicant,

v

Commission of the European Communities, represented by B. Doherty and L. Parpala, acting as Agents,

defendant,

APPLICATION for suspension of the deadline of 31 August 2006 set by Article 3 of Commission Directive 2005/53/EC of 16 September 2005 amending Council Directive 91/414/EEC to include chlorothalonil, chlorotoluron, cypermethrin, daminozide and thiophanate-methyl as active substances (OJ 2005 L 241, p. 51),

* Language of the case: English.

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

makes the following

Order

Legal context

1 Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) establishes the Community system of authorisation and withdrawal of authorisation for placing plant protection products on the market.

2 Article 4 of Directive 91/414 provides that 'Member States shall ensure that a plant protection product is not authorised unless ... its active substances are listed in Annex I'.

3 Commission Directive 2005/53/EC of 16 September 2005 amending Directive 91/414 to include chlorothalonil, chlorotoluron, cypermethrin, daminozide and thiophanate-methyl as active substances (OJ 2005 L 141, p. 51; 'the contested directive') amends Annex I to Directive 91/414 so as to add chlorothalonil with a purity level for hexachlorobenzene of 0.01 g/kg. The contested directive entered into force on 1 March 2006.

4 Article 2 of the contested directive provides:

'Member States shall adopt and publish by 31 August 2006 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 September 2006 ...'

5 Article 3 of the contested directive provides:

'1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing chlorothalonil ... as active [substance] by 31 August 2006.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to chlorothalonil ... are met ...

2. ... Following that determination Member States shall ... in the case of a product containing chlorothalonil ... as the only active substance, where necessary, amend or withdraw the authorisation by 28 February 2010 at the latest ...'

Facts

6 On 8 July 1993 Vischim Srl, an Italian company which produces chlorothalonil, notified the Commission that it wished to secure the inclusion of that substance in Annex I to Directive 91/414, and for that purpose submitted to the Rapporteur the dossiers provided for by Article 6(2) and (3) of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Directive 91/414 (OJ 1992 L 366, p. 10).

7 Although the version of the active substance notified by the applicant has a purity level for hexachlorobenzene of 0.072 g/kg, the applicant stated in the course of the oral procedure (see paragraph 20 below) that it would be able to produce chlorothalonil with a purity level for hexachlorobenzene not exceeding 0.04 g/kg.

8 At the end of the procedure provided for by Directive 91/414, the Commission adopted, on 16 September 2005, the contested directive, which adds to Annex I to Directive 91/414 chlorothalonil with a purity level for hexachlorobenzene of 0.01 g/kg, thereby concurring with the standard approved at the time by the Food and Agriculture Organisation of the United Nations (FAO).

9 On 26 April 2006 the Rapporteur Member State designated in accordance with Article 5(2)(b) of Regulation No 3600/92 concluded in its report that the applicant's product was equivalent to the reference product described in Directive 91/414, except as regards the purity level for hexachlorobenzene.

10 In December 2005 the FAO had adopted a new standard for chlorothalonil, with a purity level for hexachlorobenzene of 0.04 g/kg.

11 The Commission, prompted by the adoption of this new FAO standard, initiated the necessary procedures for the adoption of a new directive amending the contested directive, in order that a purity level for hexachlorobenzene of 0.04 g/kg should be laid down.

12 Finally, on 22 September 2006, the Commission adopted Directive 2006/76/EC amending Directive 91/414 as regards the specification of the active substance chlorothalonil (OJ 2006 L 263, p. 9) which, in accordance with Article 3 thereof, entered into force on 23 September 2006. This directive lays down a purity level for hexachlorobenzene of 0.04 g/kg.

Procedure and forms of order sought

13 By application lodged at the Registry of the Court of First Instance on 25 November 2005, the applicant brought an action under the fourth paragraph of Article 230 EC for the partial annulment of the contested directive and the chlorothalonil review report and, in the alternative, under Article 232 EC for failure to act. In its application, the applicant also made a claim for compensation under Article 288 EC.

14 By separate document lodged at the Registry on 12 December 2005, the applicant brought an application for interim measures ('the first application for interim measures').

15 By order of 4 April 2006, the President of the Court of First Instance dismissed the first application for interim measures, after finding that the applicant had not proved to the requisite legal standard the need to order the interim measures sought in order to avoid the suffering by it of serious and irreparable damage ('the order of 4 April 2006').

16 By separate document lodged at the Registry on 21 August 2006, the applicant brought the present application for interim measures. In this application, the applicant asked the President of the Court to rule, pursuant to Article 105(2) of the Rules of Procedure of the Court of First Instance, before the Commission submitted its observations.

17 On 28 August 2006 the Commission lodged its observations on this fresh application for interim measures.

18 At the request of the President of the Court, the applicant lodged on 4 September 2006 its observations on the Commission's observations.

19 At the request of the President of the Court, the Commission lodged on 13 September 2006 a copy of a preliminary draft of a directive amending the contested directive.

20 On 14 September 2006 oral argument was heard from the parties.

21 By letter lodged at the Registry on 26 September 2006, the Commission informed the Court that it had adopted Directive 2006/76 on 22 September 2006.

22 The applicant claims that the President of the Court should:

— declare the application admissible and well founded;

— find that the applicant is liable to suffer serious and irreparable damage if the deadline of 31 August 2006 set by the contested directive takes effect;

— suspend the deadline of 31 August 2006 set by the contested directive, as far as the applicant's products are concerned, until the dispute in the main proceedings is fully resolved or, alternatively,

— suspend the deadline of 31 August 2006 set by the contested directive until the Commission has presented to the Standing Committee on the Food Chain and Animal Health a proposal setting a new time frame for compliance with the new Annex I listing conditions and such time frame becomes effective;

— order the Commission to pay the costs.

23 The Commission contends that the President of the Court should dismiss the application as inadmissible or as unfounded and order the applicant to pay the costs.

Law

Arguments of the parties

Admissibility

24 The Commission disputes the admissibility of the application for interim measures. First, the application, in breach of Article 104(1) of the Rules of Procedure, is not linked to the main proceedings.

25 Second, the application contains nothing to support the conclusion that there is a prima facie case.

26 Finally, the Commission submits that, contrary to the requirement laid down by Article 109 of the Rules of Procedure, the fresh application for interim measures has not been made on the basis of new facts.

27 The applicant submits that the application is admissible. First, Community case-law has established the principle that provisions regarding admissibility must be interpreted broadly, in order to safeguard the legal protection of individuals.

28 Second, since the order of 4 April 2006 was made a number of new facts have arisen which justify the making of a fresh application.

Prima facie case

29 First, the applicant repeats the arguments already referred to in the first application for interim measures which are designed to establish (i) that the main action is admissible and (ii) that the contested directive is prima facie unlawful.

30 Second, the applicant adds that the Commission, in view of the requests made by the applicant and a fresh equivalence assessment made by the Rapporteur Member State, intends to amend the contested directive and to authorise a purity level for hexachlorobenzene of 0.04 g/kg, in accordance with the new FAO standards. This fact confirms, at least prima facie, that the purity level laid down by the contested directive is not correct.

31 The Commission submits that the applicant has not demonstrated that the present application for interim measures is well founded.

Urgency

32 The applicant submits that, by virtue of Article 3 of the contested directive, it will lose its existing authorisations after 31 August 2006 and, since it will no longer be able to sell its products containing chlorothalonil, it is at risk of suffering serious and irreparable damage.

33 In particular, in order to demonstrate that the national authorities, here the competent United Kingdom authorities, have already begun the procedures for withdrawal of national authorisations, the applicant annexes to its application a letter of 28 July 2006, addressed to it, and letters of 2 and 17 August 2006, addressed

to certain of its customers, in which those authorities give notice of their intention to revoke the authorisations because the applicant has been unable to produce a complete dossier containing all the information and studies required by Annex II to Directive 91/414.

34 In this connection, the applicant also adduces a letter of 13 July 2006, by which it seeks to show that its competitor Syngenta has refused to act on a request for access to its dossier, made under Article 13 of Directive 91/414.

35 Also, the applicant alleges that it will suffer serious and irreparable damage which will take the form of, first, loss of market share, second, closure of its manufacturing plant and, third, risk to its very existence.

36 First, with regard to the loss of market share, the applicant asserts that, as a consequence of withdrawal of the authorisations, (i) it will be impossible for it to continue to sell its products in the European Union, (ii) it will no longer be able to supply its products to its customers, (iii) it will be exposed to actions for breach of contract because of its inability to honour its contractual obligations vis-à-vis its customers and (iv) it will lose its market share to Syngenta, the only undertaking which holds the authorisations needed in order to market chlorothalonil and products containing chlorothalonil.

37 Second, the applicant asserts that it will be unable to maintain its manufacturing plant in Italy because it is specifically designed to produce only chlorothalonil. 80% of its production capacity is destined for the European market and it is not technically feasible to switch production from chlorothalonil to another product under the current industrial setting of the plant and without significant investment.

38 Finally, pending a decision bringing the main proceedings to an end, the applicant is at risk of disappearing as a company, because it produces and sells only chlorothalonil-based products and 80% of its turnover is achieved in the European Union. Given that its sole assets are, it submits, the marketing authorisations for its only product, the loss of these assets would inevitably bring the applicant to bankruptcy.

39 The Commission contends that the applicant has not succeeded in demonstrating to the requisite legal standard that there is evidence justifying the conclusion that it would be at risk of suffering serious and irreparable damage if the measures sought by it were not granted.

Balance of interests

40 According to the applicant, the balance of the interests tilts in favour of granting the measures requested.

41 First, the suspension sought would merely maintain the status quo with regard to chlorothalonil and the applicant's products.

42 Second, the applicant has invested substantially in the European market and anticipates the inclusion of its product in Annex I to Directive 91/414. It therefore has a legitimate interest to be protected.

43 Third and finally, the suspension applied for will not harm human or animal life or the environment since the assessment made by the Rapporteur and validated by the Standing Committee confirmed that the applicant's product is safe and the contested directive is to be amended to reflect this assessment.

44 In the Commission's submission, the applicant has not proved that the balance of interests tilts in favour of granting the measures sought.

Findings of the President of the Court

45 Under Articles 242 EC and 243 EC and Article 225(1) EC, the Court of First Instance may, if it considers that circumstances so require, order that application of the contested act be suspended or prescribe any necessary interim measures.

46 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 not satisfied. The judge hearing the application will also, if necessary, balance the interests at stake (orders in Case C-149/95 P(R) *Commission* v *Atlantic Container Line and Others* [1995] ECR I-2165, paragraph 22, and Case C-364/98 P(R) *Emesa Sugar* v *Commission* [1998] ECR I-8815, paragraphs 43 and 47).

47 Also, in the context of that overall examination, the judge hearing the application has a wide 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 (*Commission* v *Atlantic Container Line and Others*, cited in paragraph 46 above, paragraph 23, and *Emesa Sugar* v *Commission*, cited in paragraph 46 above, paragraph 44).

48 Here, the application for interim measures follows a similar application also made in the context of Case T-420/05, which was dismissed by order of the President of the Court of First Instance.

49 In the order of 4 April 2006, the President of the Court concluded that the applicant had not succeeded in showing to the requisite legal standard that adoption of the interim measures sought was urgent (paragraph 91).

50 In particular, so far as concerns the first of the two heads of damage pleaded by the applicant, the President of the Court concluded that the damage which, in the applicant's submission, was linked to the withdrawal of the national authorisations held by it depended not on the act suspension of whose operation was sought, but on the possible taking of a decision by a Member State (paragraphs 70 to 72). Moreover, the damage which, in the applicant's submission, was linked to its loss of market share, first, was not caused by the contested directive and, second, could not be regarded as irreparable (paragraphs 75 and 76). Finally, the damage linked, in the applicant's submission, to the endangering of its very existence did not follow from the contested directive, nor had the applicant produced any evidence to show its seriousness, having regard in particular to its material situation assessed taking account of the characteristics of the group to which it is linked by way of its shareholders (paragraphs 77 to 82).

51 So far as concerns the second of the two heads of damage pleaded by the applicant, which was linked to an alleged breach of Article 13 of Directive 91/414, and in particular to the applicant's inability to have access to Syngenta's dossier, the President of the Court concluded that the applicant had merely (i) mentioned this without providing any evidence and (ii) referred to the circumstance that Syngenta was a competitor. That fact alone could not suffice to rule out the possibility that Syngenta might have been prepared to grant access to its dossier (paragraphs 83 and 87).

52 In view of the fact that the order of 4 April 2006 dismissed the application for interim measures and no appeal against the order was brought before the Court of Justice, it must be stated, first, that Article 108 of the Rules of Procedure is not applicable here (see, to this effect, the orders in Case C-440/01 P(R) *Commission* v *Artegodan* [2002] ECR I-1489, paragraphs 62 to 64, and Case T-303/04 R II *European Dynamics* v *Commission* [2004] ECR II-4621, paragraph 54) and, second, that the present application can be declared admissible only if the conditions in Article 109 of the Rules of Procedure are met (see, to this effect, *European Dynamics* v *Commission*, paragraph 56, and the order of 17 February 2006 in Case T-171/05 R II *Nijs* v *Court of Auditors*, not published in the ECR, paragraph 27).

53 Article 109 of the Rules of Procedure states that 'rejection of an application for an interim measure shall not bar the party who made it from making a further application on the basis of new facts'.

54 'New facts' within the meaning of that provision should be taken to mean facts which appear after the order dismissing the first application for interim measures was made or which the applicant was not capable of invoking in the first application or during the proceedings leading to the first order and which are relevant to the assessment of the case in question (*European Dynamics* v *Commission*, cited in paragraph 52 above, paragraph 60, and *Nijs* v *Court of Auditors*, cited in paragraph 52 above, paragraph 28).

55 It must therefore be established whether, in the present application, the applicant has adduced new facts capable of calling into question the assessment by the President of the Court with regard to the conditions, set out in paragraph 46 above, which are to be met if the operation of an act is to be suspended or other interim measures are to be granted (see, to this effect, the orders in Case 51/79 R II *Buttner and Others* v *Commission* [1979] ECR 2387, paragraph 4, Case T-236/00 R II *Stauner and Others* v *Parliament and Commission* [2001] ECR II-2943, paragraph 49, *European Dynamics* v *Commission*, cited in paragraph 52 above, paragraphs 65, 73 and 75, and Case T-201/04 R *Microsoft* v *Commission* [2004] ECR II-4463, paragraph 325; see also, by analogy, with regard to 'change in circumstances' within the meaning of Article 108 of the Rules of Procedure, the orders in *Commission* v *Artegodan*, cited in paragraph 52 above, paragraphs 63 and 64, Case T-198/01 R *Technische Glaswerke Ilmenau* v *Commission* [2002] ECR II-2153, paragraph 123, and Case T-245/03 R *FNSEA and Others* v *Commission* [2004] ECR II-271, paragraph 129).

56 In the order of 4 April 2006, the President of the Court did not consider it necessary to examine the condition of a prima facie case and to balance the interests at stake (paragraph 91). It is therefore appropriate to establish first whether the applicant has adduced new facts capable of calling into question the assessment by the President of the Court with regard to urgency.

Facts expressly contended by the applicant to be new

57 In its observations of 4 September 2006, the applicant puts forward three facts which it expressly classifies as new. It submits, first, that on 26 April 2006 the applicant's products were assessed and regarded by the Rapporteur as equivalent in terms of purity to the product included in Annex I to Directive 91/414. Second, the Commission has adopted a new directive in order to amend the contested directive. Third, after expiry of the deadline on 31 August 2006 the applicant's sole product is being withdrawn from the market.

58 First, it must be stated that the report of 26 April 2006 is subsequent to the order of 4 April 2006 and is relevant for assessing the present case.

59 However, contrary to the applicant's assertion, the new assessment of its product by the Rapporteur Member State does not conclude that it is equivalent to the reference product described in Annex I to Directive 91/414 as regards the purity level for hexachlorobenzene laid down by the contested directive.

60 Finally, even if that new assessment had concluded that Vischim's product was equivalent to the reference product described in Annex I to Directive 91/414, that circumstance would not be capable of affecting the assessment of urgency contained in the order of 4 April 2006, which, as stated in paragraph 50 above, was based on the fact that the applicant, first, had not demonstrated a causal link between the contested act and the alleged damage and, second, had not adduced evidence from which it could be concluded that the damage alleged was serious or irreparable, in particular having regard to its financial position (see, to this effect, *European Dynamics* v *Commission*, cited in paragraph 52 above, paragraph 76).

61 Thus, although the report is subsequent to the order of 4 April 2006 and is relevant for assessing the present case, it does not call into question the assessment by the President of the Court regarding the need to grant the interim measures sought.

62 Second, as regards the adoption of a new directive amending Directive 91/414, the new directive (2006/76) was not adopted until 22 September 2006, that is to say after the applicant had lodged its final observations. In those observations, the applicant thus refers only to the preliminary draft of that act.

63 It is to be observed that the Commission consistently refused to send a copy of the preliminary draft to the applicant, which accordingly would not have been able to invoke it in the first application for interim measures or during the proceedings leading to the order of 4 April 2006. It was only at the request of the President of the Court that the Commission, on 13 September 2006, lodged a copy of the preliminary draft.

64 It follows that, in so far as it is relevant for assessing the present case, the preliminary draft constitutes a new fact within the meaning of Article 109 of the Rules of Procedure.

65 However, as is apparent from paragraph 72 of the order of 4 April 2006, the President of the Court had already assessed the possibility, acknowledged by the applicant itself, that the Commission would amend the contested directive, regarding as acceptable a purity level for hexachlorobenzene above that laid down by the contested directive. In the present application for interim measures, the applicant has not adduced any matter to justify a finding that the preliminary draft of Directive 2006/76, in itself, calls into question the assessment of urgency contained in the order of 4 April 2006.

66 Third, the risk of withdrawal of the applicant's authorisations has already been assessed in paragraphs 70 to 72 of the order of 4 April 2006. In the present application for interim measures, the applicant does not put forward any new matter which could justify amendment of that assessment.

67 It must therefore be found that none of the facts expressly relied upon by the applicant as new is capable of calling into question the assessment by the President of the Court concerning the urgency for granting the interim measures sought.

Other facts adduced for the first time in the present application

68 While it does not expressly plead that they are new, the applicant also refers to four matters which it did not set out in the first application for interim measures. First, the applicant contends that, by a letter of 13 July 2006, hence subsequent to the order of 4 April 2006, Syngenta refused to grant the applicant access to its dossier. Second, the applicant alleges that, by a letter of 28 July 2006, addressed to it, and by letters of 2 and 17 August 2006 addressed to certain of its customers, the competent United Kingdom authorities expressed their intention to revoke the national authorisations from which it benefits. Third, the applicant invokes for the first time in the present application the circumstance that it may lose its manufacturing plant in Italy because of the adoption of the contested directive. Finally, in support of its claims concerning the risk that its very existence is endangered and in order to show the financial position of the group of undertakings to which it is linked by way of its shareholders, the applicant has adduced the quarterly report of one of its shareholders relating to the second quarter of 2006.

69 First, in the order of 4 April 2006 (paragraph 87) the President of the Court held as follows:

'As regards the applicant's inability to gain access to Syngenta's dossier, on the one hand, the applicant has merely asserted this without providing any evidence and referred to the circumstance that Syngenta is a competitor. That fact alone cannot suffice to rule out the possibility that Syngenta might be prepared to grant access to its dossier.'

70 It must therefore be stated that Syngenta's letter of refusal, dated 13 July 2006, is subsequent to the order of 4 April 2006 and relevant for assessing the damage

allegedly linked to the applicant's inability to secure access to Syngenta's dossier. It follows that that letter constitutes a new fact within the meaning of Article 109 of the Rules of Procedure.

71 It must therefore be determined whether the letter of 13 July 2006, by which Syngenta refuses to grant the applicant access to its dossier, calls into question the assessment by the President of the Court contained in the order of 4 April 2006.

72 The applicant submits that Syngenta has 'refused to initiate discussions on data sharing unless and until the applicant can show that the specification in the contested measure has been amended' and that the applicant was therefore unable to 'start and conclude the arbitration process provided for in [regulation] 16 of the Plant Protection [Products] Regulations 2005'. It submits, moreover, that 'under the terms of these Regulations such arbitration would have to be preceded by a mediation period of 21 days, bringing the applicant well beyond the 31 August deadline'.

73 It need merely be stated that the applicant, first, has not initiated the domestic procedures laid down by legislation in the United Kingdom in order to obtain the sharing of information and, second, has merely pleaded that it was unable to invoke such procedures without, however, putting forward reasons substantiating its inability.

74 In this instance, regulation 16(4) of the Plant Protection Products Regulations 2005, which is annexed to the application, provides:

'Where a person who intends to apply for approval of a plant protection product and holders of previous approvals of the same product cannot reach an agreement on the

sharing of information, the Secretary of State may direct that person and holders of previous approvals located within England and Wales to share the information with a view to avoiding duplicative testing on vertebrate animals and determine both the procedure for utilising information and the reasonable balance of the interests of the parties concerned.'

75 Nothing in that regulation precludes the applicant from having been able to request Syngenta to share information and, in the event of a refusal, even on the basis of the reasons put forward by Syngenta in its letter of 13 July 2006, from having been able to refer the matter to the Secretary of State in order to reach an agreement.

76 It is thus clear that the applicant has not demonstrated to the requisite legal standard that it was unable to rely on the information-sharing procedures laid down by the United Kingdom.

77 Accordingly, it must be found that, while Syngenta's letter of 13 July 2006 constitutes a matter subsequent to the order of 4 April 2006 and relevant to the present case, it does not call into question the assessment by the President of the Court contained in the order of 4 April 2006.

78 Second, although the letters from the United Kingdom authorities bear a date subsequent to the order of 4 April 2006 and are relevant for assessing the present case, it is to be noted that they state (i) that those authorities intend to revoke the applicant's national authorisations in view of the fact that it has not demonstrated that it has access to a complete dossier satisfying the requirements of Annex II to Directive 91/414 and (ii) that the person to whom the letter is addressed may contest the authorities' assessment before those authorities.

79 Therefore, such letters are not capable of calling into question the assessment of urgency by the President of the Court contained in the order of 4 April 2006, since they merely confirm that the alleged injury constituted by withdrawal of the national authorisations would result not from the contested directive but from a possible decision by the national authorities, which have a certain discretion.

80 Third, the circumstance that the applicant may lose its manufacturing plant in Italy because of the adoption of the contested directive was first pleaded by the applicant only in the application. However, this was not an unforeseeable eventuality or, in any event, one which was not capable of being raised at the time of the first application for interim measures.

81 It follows that this claim cannot be regarded as identifying a new fact within the meaning of Article 109 of the Rules of Procedure.

82 Finally, in support of its claims concerning the risk that its very existence is endangered and in order to establish the financial position of the group of undertakings to which it is linked by way of its shareholders, the applicant has adduced the quarterly report of one of its shareholders relating to the second quarter of 2006.

83 However, although the quarterly report refers to data which, at least in part, are subsequent to the order of 4 April 2006 and relevant to the present case, first, it is not a certified document and, second, it does not in any way enable the financial situation of the applicant's other shareholder to be assessed.

84 It follows that the report does not enable the applicant's material situation to be assessed with regard to the characteristics of the group to which it is linked by way of its shareholders. Consequently, the report does not call into question the assessment by the President of the Court contained in the order of 4 April 2006.

85 It follows from all of the foregoing that the applicant has not succeeded in establishing to the requisite legal standard that in the present case new facts exist calling into question the assessment by the President of the Court, contained in the order of 4 April 2006, concerning the need to adopt the interim measures sought.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed.

2. Costs are reserved.

Luxembourg, 13 October 2006.

E. Coulon — B. Vesterdorf

Registrar — President