

Case T-111/01 R

Saxonia Edelmetalle GmbH

v

Commission of the European Communities

(Application for interim measures — Suspension of operation of a measure — State aid — Interest in bringing proceedings — Urgency)

Order of the President of the Court of First Instance, 2 August 2001 . . . II-2338

Summary of the Order

- 1. Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Urgency — Prima facie case — Cumulative requirements — Balancing of all the interests at stake — Discretion of the court hearing the application for interim measures
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*
- 2. Applications for interim measures — Conditions for admissibility — Admissibility of the main application — Irrelevant — Limits
(Art. 242 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 relief — Conditions for granting — Serious and irreparable damage — Standard of proof*
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
4. *Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Serious and irreparable damage — Pecuniary damage — Situation liable to endanger the existence of the applicant company — Assessment in the light of the situation of the group to which it belongs*
(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 applications for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case (*fumus boni juris*) for the interim measures applied for. These conditions are cumulative, so that an application to suspend the operation of any measure must be dismissed if one of them is lacking. Where appropriate, the judge hearing the application for interim measures must also balance the interests involved.

In the context of that general 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.

(see paras 11-12)

2. The issue of the admissibility of the main action should not, in principle, be examined in proceedings relating to an application for interim measures in order to avoid prejudging that action. Where, however, it is contended that the main action 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 action is admissible.

(see para. 16)

3. 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 those measures. It is for that party to prove that it cannot wait for the outcome of the main proceedings without suffering damage of that kind. Whilst it is true that, 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, it being sufficient to show that the damage is foreseeable with a sufficient degree of probability, the applicant is still required to prove the facts forming the basis of its claim of serious and irreparable harm.
4. In the context of the examination of an application for suspension of operation of a measure by the judge hearing that application, damage of a financial nature cannot, in principle, be regarded as irreparable, or even as being reparable only with difficulty, if it can ultimately be the subject of financial compensation. Applying these principles, the suspension of operation of a measure would only be justified if it appeared that, without such a measure, the applicant would be placed in a situation likely to endanger its very existence. The assessment of the applicant's material circumstances may include consideration, in particular, of the characteristics of the group to which it is linked by way of its shareholders.

(see paras 21-22)

(see paras 23-24, 27)