

Case T-303/04 R

European Dynamics SA

v

Commission of the European Communities

(Public service contracts — Community tender procedure — Interim measures —
Application for suspension of operation — Urgency — None)

Order of the President of the Court of First Instance, 10 November 2004 . . II - 3891

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Burden of proof — Causal link between the alleged damage and the contested act*
(Art. 242 EC)
2. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Financial loss*
(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 — Conditions for granting — Serious and irreparable damage — Non-financial loss*
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. The urgency of an application for interim measures must be assessed in relation to the need for an interim order in order to avoid serious and irreparable damage being caused to the party seeking the interim measure. It is for that party to adduce proof that it cannot await the outcome of the main action without suffering such damage. Therefore, if the applicant does not show a link between the alleged damage and the acts suspension of whose operation is sought, the interim measures cannot be regarded as relevant and necessary for avoiding the occurrence of the alleged damage.
2. Pecuniary damage cannot in principle be regarded as irreparable, or even repairable only with difficulty, if it may be the subject of subsequent compensation by means, for example, of an action for compensation under Article 288 EC.

(see para. 72)
3. The decision not to award a public contract does not necessarily have the consequence of causing irreparable harm to the reputation and credibility of the tenderers which are not successful. Taking part in a public tender procedure, by nature highly competitive, necessarily involves risks for all the participants and the elimination of a tenderer under the tender rules is not in itself in any way prejudicial.

(see paras 65-66, 70)

(see para. 82)