

## Case T-303/04 R II

**European Dynamics SA**

**v**

**Commission of the European Communities**

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

Order of the President of the Court of First Instance, 22 December 2004 . . . II - 4624

### Summary of the order

1. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Cumulative nature — Provisional nature of the measure — Weighing-up of the interests at stake — Discretion of the judge dealing with the application for interim relief*  
(Arts 225(1) EC, 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Variation or cancellation — Condition — Change in circumstances — Variation or cancellation when the application is dismissed — Not covered*  
(Rules of Procedure of the Court of First Instance, Art. 108)
3. *Applications for interim measures — Suspension of operation of a measure — Rejection of the application — Possibility of lodging another application — Condition — New facts — Meaning*  
(Rules of Procedure of the Court of First Instance, Art. 109)

1. Applications 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 those applications must be dismissed if any one of them is absent. The measures sought must also be provisional, in that they must not prejudice the points of law or fact at issue or neutralise in advance the effects of the decision subsequently to be given in the main action.

established scheme of analysis within which the need to order interim measures must be assessed.

(see paras 29-31)

In the context of that overall examination, the judge hearing the application must, where appropriate, balance the interests concerned. He enjoys a broad 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-

2. Article 108 of the Rules of Procedure of the Court of First Instance, which provides that, on application by a party, an order may at any time be varied or cancelled on account of a change in circumstances, is applicable in situations where an order prescribing interim measures is in place. It cannot be applied to situations where an application has been dismissed, such situations being governed by Article 109 of those rules.

(see para. 54)

3. According to Article 109 of the Rules of Procedure of the Court of First Instance, 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. It is for the applicant to show that the conditions allowing the making of a further application, set out in Article 109 of the Rules of Procedure, are met. 'New facts' within the meaning of that provision should be taken to mean facts which appear after

the order rejecting the first application was made or during the proceedings leading to the first order or which the applicant was not capable of invoking in the first application and which are relevant to the assessment of the case in question.

(see paras 55, 57, 60)