

Case T-198/03 R

Bank Austria Creditanstalt AG

v

Commission of the European Communities

(Application for interim measures — Admissibility — Competition —  
Publication of a decision to impose a fine — No urgency)

Order of the President of the Court of First Instance, 7 November 2003 . . . II-4882

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Prima facie case — Urgency — Cumulative requirements — Order of examination and method of verification — Discretion of the court hearing an application for interim measures*  
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Applications for interim measures — Suspension of operation of a measure — Conditions of admissibility — Admissibility prima facie of the main action*  
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(1))
3. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Burden of proof*  
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
4. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Pecuniary damage — Situation that could endanger the existence of the applicant company*  
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. An application for interim measures must state the circumstances giving rise to urgency; in addition it must be established that such an order is justified, prima facie, in fact and in law. Those conditions are cumulative, so that an application for interim measures must be dismissed if any one of them is absent.

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

(see paras 18-19)

In the context of its overall examination, the court hearing the application for interim measures 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. The issue of the admissibility of the main application should not be examined in proceedings relating to an application for interim measures, for fear of prejudging the substance of the case. It may nevertheless be necessary, when it is contended that the main application to which the application for interim measures relates is manifestly inadmissible, to establish whether there are any grounds for concluding prima facie that the main application is admissible.

(see para. 21)

3. 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 applicant. It is for that party to adduce proof that it cannot await the outcome of the main action without suffering such damage. It does not have to be established with absolute certainty that the harm is imminent; it is sufficient that the harm in question, particularly where it depends on the occurrence of a number of factors, should be foreseeable with a sufficient degree of probability.
4. Damage of a purely pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable or even as being reparable only with difficulty, since it may be the subject of subsequent financial compensation.

On the basis of that principle, suspension of operation would be justified only if, in the absence of such a measure, the applicant would be placed in a situation that could endanger its existence or irreversibly alter its market share.

(see para. 50)

(see paras 53-54)