

Case T-245/03 R

Fédération nationale des syndicats  
d'exploitants agricoles (FNSEA) and Others

v

Commission of the European Communities

(Interim proceedings — Competition — Payment of fine — Bank guarantee —  
Prima facie case — Urgency — Balancing of interests —  
Partial and conditional suspension)

Order of the President of the Court of First Instance, 21 January 2004 . . . II - 275

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Urgency — Cumulative nature — Balancing of all the interests involved*  
(Arts 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 — Conditions for granting — Jurisdiction of the court hearing the application for interim measures — Conditions for allowing, in order to determine the ceiling to be complied with when setting the amount of a fine for infringement of the competition rules imposed on an association of undertakings, the turnover of its members to be taken into account — Not included*  
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2); Council Regulation No 17, Art. 15(2))
3. *Applications for interim measures — Suspension of operation of a measure — Exemption from the obligation to provide a bank guarantee as a condition for the fine not being recovered immediately — Conditions for granting — Exceptional circumstances*  
(Art. 242 EC)
4. *Applications for interim measures — Suspension of operation of a measure — Exemption from the obligation to provide a bank guarantee as a condition for the fine not being recovered immediately — Conditions — Serious and irreparable damage — Association of undertakings — Taking into account the financial situation of its members — Condition — Merging of the objective interests of the association and those of its members*  
(Art. 242 EC)
5. *Applications for interim measures — Suspension of operation of a measure — Exemption from the obligation to provide a bank guarantee as a condition for the fine imposed for infringement of the competition rules not being recovered immediately — Balancing of all the interests involved*  
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
6. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Variation or cancellation — Condition — Change in circumstances — Meaning*  
(Rules of Procedure of the Court of First Instance, Art. 108)

1. Under Article 104(2) of the Rules of Procedure of the Court of First Instance, an application for interim measures must state 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 absent. Where appropriate,

the judge hearing such an application must also weigh up the interests involved.

(see para. 13)

2. As regards a fine for infringement of the competition rules imposed on an association of undertakings, the conditions for allowing the turnover of its members to be taken into account when applying the 10 % ceiling laid down in Article 15(2) of Regulation No 17 warrant detailed examination and assessment solely by the court adjudicating on the substance.

dence that it is objectively impossible for it to provide such guarantee.

(see paras 77, 78)

(see para. 47)

3. An application for an exemption from the obligation to provide a bank guarantee as a condition for the fine not being recovered immediately will only be granted in exceptional circumstances. The possibility of requiring the provision of a financial guarantee is expressly provided for with regard to applications for interim relief by the Rules of Procedure of the Court of Justice and of the Court of First Instance and is a general and reasonable way for the Commission to act.

4. The judge hearing an interim application for an exemption from the obligation to provide a bank guarantee as a condition for a fine imposed on an association of undertakings not being recovered immediately is required to assess the damage to that association having regard to the financial situation of its members, where the objective interests of the association are not independent of those of the member undertakings. In order to determine the extent to which the objective interests of an association are independent of those of its members, the existence of internal rules enabling the association to hold its members liable may be taken into account. However, the objective interests of the association may merge with those of its members as a result of other circumstances, regardless of the existence or absence of such rules.

The existence of such exceptional circumstances may, in principle, be regarded as established where the party seeking exemption from providing the requisite bank guarantee adduces evi-

(see paras 84, 87)

5. When hearing an application for suspension of operation of the obligation under which an association of undertakings must provide a bank guarantee in order for the recovery of a fine for infringement of the competition rules to be postponed, it is for the judge to weigh the association's interest in avoiding — in the event that they are unable to arrange a bank guarantee — immediate payment of the fine against the Community's financial interest in being able to recover that sum and, more generally, against the public interest in preserving the effectiveness of Community competition rules and the deterrent effect of fines imposed by the Commission.
6. Under Article 108 of the Rules of Procedure of the Court of First Instance, the judge hearing an application for interim measures may at any time vary or cancel an interim order on account of a change in circumstances. By a 'change in circumstances', what are especially envisaged are factual circumstances capable of altering the assessment of the judge. Furthermore, according to the Court of Justice, that possibility reflects the fundamentally precarious nature in Community law of measures granted in interim relief proceedings.

(see para. 119)

(see para. 129)