

**Judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 9 September 2009 – Diputación Foral de Álava and Others v Commission**

**(Cases T-230/01 to T-232/01 and T-267/01 to T-269/01)**

State aid – Tax advantages granted by a territorial entity within a Member State – Reduction of the tax base for corporation tax – Decisions declaring aid schemes incompatible with the common market and requiring recovery of aid paid out – Trade association – Admissibility – Withdrawal of a plea in law – Classification as new aid or as existing aid – Principle of the protection of legitimate expectations – Principle of legal certainty – Principle of proportionality

1. *Procedure – Subject-matter of the dispute – Alteration once proceedings have been started – Prohibition (Rules of Procedure of the Court of First Instance, Art. 48(2)) (see paras 80-88)*
2. *Procedure – Intervention – Admissibility – Reexamination after an earlier order acknowledging admissibility (Statute of the Court of Justice, Art. 40, second para.) (see para. 91)*
3. *Procedure – Intervention – Persons having an interest – Representative association having as its object the protection of its members – Admissibility in cases raising questions of principle liable to affect those members (Statute of the Court of Justice, Arts 40, second para., and 53, first para.) (see paras 93-100)*
4. *Procedure – Application to intervene – Formal requirements (Rules of Procedure of the Court of First Instance, Art. 116(4), second para.) (see paras 104-107, 110-111)*
5. *Actions for annulment – Natural or legal persons – Measures of direct and individual concern to them – Commission decision declaring an aid scheme incompatible with the common market – Action brought by a trade association set up to protect and represent its members (Art. 230, fourth para., EC) (see paras 117-128)*
6. *State aid – Concept – Grant by the public authorities of a tax exemption to certain undertakings – Included (Art. 87(1) EC) (see paras 134-136, 140, 195)*
7. *State aid – Examination of complaints – Obligations of the Commission – Statement of reasons (Arts 87(2) EC and 253 EC) (see paras 146-148)*
8. *State aid – Effect on trade between Member States – Adverse effect on competition – Criteria for assessment – Examination of an aid scheme taken as a whole (Art. 87 EC) (see paras 152-153)*

9. *State aid – Effect on trade between Member States – Adverse effect on competition – Aid of limited importance – Temporary Aid– No effect (Art. 87(1) EC) (see para. 158)*
10. *State aid – Concept – Selective nature of the measure – National legislation establishing a tax credit (Art. 87(1) EC) (see paras 169-173, 177-178)*
11. *State aid – Concept – Aid granted by regional or local bodies – Included (Art. 87(1) EC) (para. 189)*
12. *State aid – Concept – Specific tax measure – Selective nature of the measure – Justification based on the nature or arrangement of the tax system – Not included (Art. 87(1) EC) (see paras 190-191, 195-196)*
13. *State aid – Prohibition – Exceptions – Aid which may be considered compatible with the common market – Discretion of the Commission (Art. 87(3) EC) (see paras 210-211)*
14. *State aid – Prohibition – Exceptions – Aid capable of benefiting from the derogation under Article 87(3)(c) EC – Operating aid – Not included (Art. 87(3)(c) EC) (see paras 219-222)*
15. *State aid – Existing aid and new aid – Classification as existing aid – Criteria – Measure substantially amending an existing aid scheme – Not included (Arts 87 EC and 88 EC) (see paras 239-246)*
16. *State aid – Existing aid and new aid – Classification as existing aid – Criteria – Evolution of the common market (Arts 87 EC and 88 EC; Council Regulation No 659/1999, Art. 1(b)(v)) (see paras 251, 253, 257)*
17. *State aid – Administrative procedure – Right of the parties concerned to submit their comments (Art. 88 EC; Council Regulation No 659/1999, Art. 6(1)) (see paras 266-279)*
18. *Procedure – Intervention – Application to support the form of order sought by one of the parties (Statute of the Court of Justice, Art. 40, fourth para.; Rules of Procedure of the Court of First Instance, Art. 116(3)) (see paras 301-303)*
19. *State aid – Examination by the Commission – Examination procedure prior to the entry into force of Regulation No 659/1999 – Not subject to specific time-limits – Limit – Compliance with requirements of legal certainty – Obligation to conclude the preliminary examination undertaken following a complaint within a reasonable time (Art. 88 EC; Council Regulation No 659/1999) (see paras 305-315)*
20. *State aid – Recovery of unlawful aid – Aid granted in breach of the procedural rules of Article 88 EC – Possible legitimate expectation of the beneficiaries – Protection – Conditions and limits (Art. 88(2), first para., EC) (see paras 316-320)*
21. *State aid – Planned aid – Examination by the Commission – Preliminary review and main review – Duty to act within a reasonable time (Art. 88(2) and (3) EC) (see paras 339-344, 349)*
22. *State aid – Recovery of unlawful aid – Breach of principle of proportionality – None (Art. 88(2), first para., EC) (see paras 374-377)*

**Re:**

APPLICATION in Cases T-230/01 and T-267/01 for annulment of Commission Decision 2002/892/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Álava (OJ 2002 L 314, p. 1); application in Cases T-231/01 and T-268/01 for annulment of Commission Decision 2002/806/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Vizcaya (OJ 2002 L 279, p. 35), and application in Cases T-232/01 and T-269/01 for annulment of Commission Decision 2002/540/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Guipúzcoa (OJ 2002 L 174, p. 31).

**Operative part**

The Court:

1.

Joins Cases T-230/01 to T-231/01, T-232/01, T-267/01, T-268/01 and T-269/01 for the purposes of judgment;

2.

Dismisses the actions;

3.

In Cases T-230/01 to T-232/01:

– orders the Territorio Histórico de Álava – Diputación Foral de Álava, the Territorio Histórico de Vizcaya – Diputación Foral de Vizcaya, the Territorio Histórico de Guipúzcoa – Diputación Foral de Guipúzcoa and the Comunidad autónoma del País Vasco ? Gobierno Vasco to each bear their own costs and to pay the costs of the Commission and the Comunidad autónoma de La Rioja;

– orders the Confederación Empresarial Vasca (Confebask), the Cámara Oficial de Comercio e Industria de Álava, the Cámara Oficial de Comercio, Industria y Navegación de Vizcaya and the Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa to each bear their own costs;

4.

In Cases T-267/01 to T-269/01 orders Confebask to bear its own costs and to pay the costs of the Commission and the Comunidad autónoma de La Rioja.