

percentage of the investment or the cost of salaries was not set beforehand in no way precludes its being done subsequently with the aim of checking that it does not exceed the level of aid for a region authorised as part of overall regional aid.

- e. in the alternative to all the above pleas in law, the order requiring recovery of the aid (first sentence of Article 3 of the contested decision) infringes the last sentence of Article 14(1) of Regulation (EC) No 659/1999 given the exceptional circumstances of the present case (duration of the preliminary examination, which lasted more than 79 months). The fact that the Commission examined the fiscal scheme at issue in 1994 and did not find against it gave rise to a well-founded expectation that it was regarded as compliant with Community law, so that Article 3 of the contested decision is contrary to the principles of legal certainty and legitimate expectations.

- in the alternative, annul Article 3 of that decision;
- order the Commission to pay the costs.

#### *Pleas in law and main arguments*

The applicants contest Commission Decision C(2001) 4478 final of 20 December 2001 declaring State aid incompatible with the common market the exemption from company tax arising from Article 14 of Norma Foral (Regional Law) No 5/1993 of 24 June 1993 on urgent fiscal provisions to promote investment and economic activity (*Boletín Oficial de Bizkaia* No 154 of 7 July 1993), which provides for exemption from company tax for undertakings created between the entry into force of that Law and 31 December 1994, provided that they invest more than PTA 80 million (EUR 480 810), create more than 10 new jobs and have disbursed capital amounting to more than PTA 20 million (EUR 120 202).

The pleas in law and main arguments put forward by the applicants are identical to those put forward in Case T-86/02.

#### **Action brought on 26 March 2002 by Territorio Histórico de Bizkaia — Diputación Foral de Bizkaia against Commission of the European Communities**

(Case T-87/02)

(2002/C 144/105)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 March 2002 by the Territorio Histórico de Bizkaia — Diputación Foral de Bizkaia, Bizkaia (Spain), represented by Ignacio Saenz-Cortabarría and Marta Morales Isasi.

The applicants claim that the Court should:

- annul the Commission Decision of 20 December 2001 on the system of aid implemented by Spain in 1993 in favour of a number of newly-created undertakings in Bizkaia;

#### **Action brought on 26 March 2002 by Territorio Histórico de Gipuzkoa — Diputación Foral de Gipuzkoa against Commission of the European Communities**

(Case T-88/02)

(2002/C 144/106)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 26 March 2002 by the Territorio Histórico de Gipuzkoa — Diputación Foral de Gipuzkoa, Gipuzkoa (Spain), represented by Ignacio Saenz-Cortabarría and Marta Morales Isasi.

The applicants claim that the Court should:

- annul the Commission Decision of 20 December 2001 on the system of aid implemented by Spain in 1993 in favour of a number of newly-created undertakings in Gipuzkoa;