

**Action brought on 2 December 2008 — Diputación Foral de Álava v Commission**

(Case T-529/08)

(2009/C 32/90)

*Language of the case: Spanish***Parties**

*Applicant:* Territorio Histórico de Álava — Diputación Foral de Álava (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Declaration that the letter from the Directorate General of Competition of the European Commission D/53778 [COMP/H4/NM/ed D(2008) 247], of 2 October 2008, is null and void, in so far as it requires the interest referred to in Decisions 2002/820/EC and 2002/892/EC, of 11 July 2001 (infringement file 2007/2215), to be recovered on a compound basis; and
- An order that the Commission should pay the costs.

**Pleas in law and main arguments**

The purpose of the present action is to challenge the decision in which the defendant takes the view that, in implementing the decisions of 11 July 2001, on the State aid scheme implemented by Spain for firms in Álava in the form of a tax credit amounting to 45 % of investments (Decision 2002/820/EC) and on the State aid scheme applied by Spain to certain newly established firms in Álava (Decision 2002/892/EC) <sup>(1)</sup>, the rate of interest to be applied in the recovery is a compound rate of interest.

In the applicant's view, that decision constitutes a clear *de facto* modification of the decisions of 11 July 2001, which, in turn, represents a manifest abuse of power and an infringement of the principle of sound administration. In that connection, it should be pointed out that the application of a compound rate of interest was introduced into Community law for the first time by Article 11(2) of Commission Regulation (EC) No 794/2004 of 21 April 2004, laying down detailed rules for the application of Council Regulation (EC) No 659/1999 of 22 March 1999, laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 140, p. 1). However, that provision is not applicable *ratione temporis* to the Decisions of 11 July 2001.

Similarly, the change to the actual contents of those decisions made by the Commission, in terms of the rate of interest applicable, is an infringement of the principle of equal treatment, since both the authorities charged with implementing the Decisions of 17 July 2001 and the companies affected have been placed in a different position from that of the competent authorities in the Member States (and companies) affected by decisions for the recovery of aid contemporaneous with or prior to July 2001 which have not been required to pay compound interest in the aid recovery process.

Finally, the applicant submits that, by requiring compound interest, the Commission is imposing a penalty not provided for in Community law.

<sup>(1)</sup> Both decisions were challenged before the Court of First Instance (Cases T-227/01 *Diputación Foral de Álava and Gobierno Vasco v Commission*, and T-230/01 *Diputación Foral de Álava and Gobierno Vasco v Commission*, still *sub judice*).

**Action brought on 2 December 2008 — Diputación Foral de Guipúzcoa v Commission**

(Case T-530/08)

(2009/C 32/91)

*Language of the case: Spanish***Parties**

*Applicant:* Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Declaration that the letter from the Directorate General of Competition of the European Commission D/53778 [COMP/H4/NM/ed D(2008) 247], of 2 October 2008, is null and void, in so far as it requires the interest referred to in Decisions 2002/894/EC and 2002/540/EC, of 11 July 2001 (infringement file 2007/2215), to be recovered on a compound basis; and
- An order that the Commission should pay the costs.

**Pleas in law and main arguments**

The pleas in law and main arguments are those put forward in Case T-529/08 *Diputación Foral de Álava v Commission*.