

**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.