

Judgment of the Court of First Instance of 9 September 2009 — Diputación Foral de Álava and Others v Commission

(Joined Cases T-227/01 to T-229/01, T-265/01, T-266/01 and T-270/01) ⁽¹⁾

(State aid — Tax advantages granted by a territorial entity within a Member State — Tax credit of 45 % of the amount of investments — Decisions declaring aid schemes incompatible with the common market and requiring recovery of aid paid out — Trade association — Admissibility — Classification as new aid or as existing aid — Principle of the protection of legitimate expectations — Principle of legal certainty — Principle of proportionality)

(2009/C 256/33)

Language of the case: Spanish

Parties

Applicants in Case T-227/01: Territorio Histórico de Álava — Diputación Foral de Álava (Spain); and Comunidad Autónoma del País Vasco — Gobierno Vasco (Spain) (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-228/01: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya (Spain); and Comunidad autónoma del País Vasco — Gobierno Vasco (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-229/01: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (Spain); and Comunidad autónoma del País Vasco — Gobierno Vasco (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicant in Cases T-265/01, T-266/01 and T-270/01: Confederación Empresarial Vasca (Confebask) (Bilbao, Spain) (represented initially by: M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Defendant: Commission of the European Communities (represented initially by: J. Buendía Sierra, and subsequently by F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Interveners in support of the applicants in Case T-227/01: Cámara Oficial de Comercio e Industria de Álava (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz,

and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Interveners in support of the applicants in Case T-228/01: Cámara Oficial de Comercio, Industria y Navegación de Vizcaya (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Interveners in support of the applicants in Case T-229/01: Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and Confederación Empresarial Vasca (Confebask) (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers)

Intervener in support of the defendant: Comunidad Autónoma de la Rioja (Spain) (represented initially by: A. Bretón Rodríguez, J. Criado Gámez and I. Serrano Blanco, lawyers)

Re:

Application in Cases T-227/01 and T-265/01 for annulment of Commission Decision 2002/820/EC 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 (OJ 2002 L 296, p. 1); application in Cases T-228/01 and T-266/01 for annulment of Commission Decision 2003/27/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Vizcaya in the form of a tax credit amounting to 45 % of investments (OJ 2003 L 17, p. 1), and application in Cases T-229/01 and T-270/01 for annulment of the Commission decision 2002/894/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Guipúzcoa in the form of a tax credit amounting to 45 % of investments (OJ 2002 L 314, p. 26).

Operative part of the judgment

The Court:

1. Joins Cases T-227/01 to T-229/01, T-265/01, T-266/01 and T-270/01 for the purposes of judgment.
2. Dismisses the actions.
3. In Cases T-227/01 to T-229/01:
 - 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-265/01, T-266/01 and T-270/01 orders *Confebask* to bear its own costs and to pay the costs of the Commission and the *Comunidad autónoma de La Rioja*.

(¹) OJ C 331, 24.11.2001.

Judgment of the Court of First Instance of 9 September 2009 — *Diputación Foral de Álava and Others v Commission*

(Joined Cases T-230/01 to T-232/01 and T-267/01 to T-269/01) (¹)

(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)

(2009/C 256/34)

Language of the case: Spanish

Parties

Applicants in Case T-230/01: Territorio Histórico de Álava — *Diputación Foral de Álava* (Spain); and *Comunidad autónoma del País Vasco — Gobierno Vasco* (Spain) (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-231/01: Territorio Histórico de Vizcaya — *Diputación Foral de Vizcaya* (Spain); and *Comunidad autónoma del País Vasco — Gobierno Vasco* (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicants in Case T-232/01: Territorio Histórico de Guipúzcoa — *Diputación Foral de Guipúzcoa* (Spain); and *Comunidad autónoma del País Vasco — Gobierno Vasco* (represented initially by: R. Falcón Tella, and subsequently by M. Morales Isasi and I. Sáenz-Cortabarría Fernández, lawyers)

Applicant in Cases T-267/01 to T-269/01: *Confederación Empresarial Vasca (Confebask)* (Bilbao, Spain) (represented by: M. Araujo Boyd, L. Ortiz Blanco and V. Sopena Blanco, lawyers)

Defendant: Commission of the European Communities (represented initially by: J. Buendía Sierra, and subsequently by F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Interveners in support of the applicants in Case T-230/01: *Cámara Oficial de Comercio e Industria de Álava* (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and *Confederación Empresarial Vasca (Confebask)* (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopena Blanco, lawyers)

Interveners in support of the applicants in Case T-231/01: *Cámara Oficial de Comercio, Industria y Navegación de Vizcaya* (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and *Confederación Empresarial Vasca (Confebask)* (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopena Blanco, lawyers)

Interveners in support of the applicants in Case T-232/01: *Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa* (Spain) (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers); and *Confederación Empresarial Vasca (Confebask)* (Bilbao) (represented initially by: M. Araujo Boyd and R. Sanz, and subsequently by Araujo Boyd, L. Ortiz Blanco and V. Sopena Blanco, lawyers)

Intervener in support of the defendant: *Comunidad Autónoma de la Rioja* (Spain) (represented initially by: A. Bretón Rodríguez, J. Criado Gámez and I. Serrano Blanco, lawyers)

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 the Commission decision 2002/894/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 of the judgment

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: