

ORDER OF THE PRESIDENT OF THE FIFTH CHAMBER (EXTENDED
COMPOSITION) OF THE COURT OF FIRST INSTANCE

10 January 2006 *

In Case T-227/01,

Territorio Histórico de Álava — Diputación Foral de Álava,

Comunidad Autónoma del País Vasco — Gobierno del País Vasco,

represented initially by R. Falcón Tella, and subsequently by M. Morales Isasi and
I. Sáenz-Cortabarría Fernandez, lawyers,

applicants,

supported by

Confederación Empresarial Vasca (Confebask), established in Bilbao (Spain),
represented by M. Araujo Boyd, lawyer,

intervener,

* Language of the case: Spanish.

v

Commission of the European Communities, represented by J. Buendía Sierra, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION 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),

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makes the following

Order

Procedure

- 1 By application lodged at the Registry of the Court of First Instance on 25 September 2001, the applicants brought an action under the fourth paragraph of Article 230 EC for the 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).

- 2 By document lodged at the Court Registry on 4 January 2002, the *Círculo de Empresarios Vascos*, the *Cámara Oficial de Comercio e Industria de Álava* and the *Territorios Históricos* of Vizcaya and Guipúzcoa applied for leave to intervene in support of the form of order sought by the applicants.

- 3 This application to intervene was served on the parties in the case on 10 January 2002 in accordance with Article 116(1) of the Rules of Procedure of the Court of First Instance. By contrast with the applicants, the Commission contended that the requests for leave to intervene from the *Círculo de Empresarios Vascos* and the abovementioned *Territorios Históricos* should be refused. The request to intervene from the *Cámara Oficial de Comercio e Industria de Álava* on the other hand was unopposed.

Law

- 4 Under the second paragraph of Article 40 of the Statute of the Court of Justice, which applies to proceedings before the Court of First Instance by virtue of the first paragraph of Article 53 of the Statute, any person establishing an interest in the result of a case, save in cases between Member States, between Community institutions or between Member States and Community institutions, shall have the right to intervene in that case.

- 5 The *Círculo de Empresarios Vascos* states that it is an association of undertakings defending the interests of the economy and industry in the Basque country, and that those interests would be seriously affected if the Court of First Instance were to uphold the repayment of aid required by the contested decision. It also states that it took part in the formal review procedure instigated by the Commission under Article 88(2) EC.

- 6 It is settled case-law that intervention is permissible by representative associations whose object is to protect their members in cases raising questions of principle liable to affect those members (orders in Joined Cases C-151/97 P(I) and C-157/97 P(I) *National Power and PowerGen* [1997] ECR I-3491, paragraph 66, and in Case T-53/01 R *Poste Italiane v Commission* [2001] ECR II-1479, paragraph 51).
- 7 In the present case, it should be noted that a notarial act is annexed to the application for leave to intervene, establishing that the authority granted to the lawyer of the *Círculo de Empresarios Vascos* was properly given by a representative authorised for the purpose. This document states that the association is governed by statutes approved by a constituent general meeting of 20 January 1982 and recorded before a notary, under a notarial act of 8 February 1982.
- 8 Although the abovementioned document indicates that the *Círculo de Empresarios Vascos* is indeed a duly registered association with legal personality, the fact remains that it has not produced its statutes.
- 9 Accordingly, it is impossible for the Court to determine the precise composition of the applicant for leave to intervene, whether it is representative and whether its object is indeed to protect the interests of its members.
- 10 Furthermore, merely claiming to have taken part spontaneously in the formal review procedure instigated by the Commission is insufficient to establish the interest required by Article 40 of the Statute of the Court of Justice as interpreted in the case-law cited in paragraph 6 above.

- 11 Finally, while its name suggests that it is an association of natural persons, the applicant for leave to intervene has failed to establish that members have actually benefited from the aid. This finding means that the members of the applicant for leave to intervene cannot have an individual, direct and established interest in the ruling on the specific measure the annulment of which is sought (see, to this effect, *National Power and PowerGen*, paragraph 53, and the order in Case T-253/03 *Akzo Nobel Chemicals and Akcros Chemicals v Commission* [2004] ECR II-1603, paragraph 23). Moreover, the interest is just as indirect and uncertain as regards the economic operators claimed to be members of the *Círculo de Empresarios Vascos* who are contractually bound to the companies benefiting from the aid referred to in the contested decision and in respect of whom the applicant for leave to intervene is invoking the possible repercussions of an obligation to repay the aid.
- 12 The request made by the *Círculo de Empresarios Vascos* for leave to intervene must therefore be refused.
- 13 The *Cámara Oficial de Comercio e Industria de Álava* is a body governed by public law entrusted by Article 1 of Ley 3/1993 of *básica de las Cámaras Oficiales de Comercio, Industria y Navegación* (Law 3/1993 relating to the official chambers of commerce, industry and navigation of 22 March 1993, BOE, 23 March 1993) with defending the interests of trade and industry in the *Territorio Histórico* of Álava. It is not in dispute that these interests might be affected by the challenge to the tax scheme entailed by the contested decision. Its request for leave to intervene must therefore be granted.
- 14 Since the notice referred to in Article 24(6) of the Rules of Procedure was published on 24 November 2001, the application by the *Cámara Oficial de Comercio e Industria de Álava* for leave to intervene was submitted within the period prescribed in Article 115(1) of the Rules of Procedure.

- 15 Regarding the requests for leave to intervene of the Territorios Históricos of Vizcaya and Guipúzcoa, it must be remembered that an interest in the result of the case for the purposes of Article 40 of the Statute of the Court of Justice means a direct, present interest in the grant of the particular form of order sought that the application to intervene is designed to support, and not an interest in relation to the pleas or arguments raised (orders in Case 111/63 *Lemmerz-Werke v High Authority* [1965] ECR 716, at 717 and 718; Joined Cases 116/77, 124/77 and 143/77 *Amylum and Others v Council and Commission* [1978] ECR 893, paragraphs 7 and 9; and *National Power and PowerGen*, paragraph 53). The word ‘result’ is to be understood as referring to the operative part of the final judgment which the parties ask the Court to deliver. It is necessary, in particular, to ascertain whether the intervener is directly affected by the contested measure and whether his interest in the result of the case is established. A distinction should moreover be drawn between prospective interveners establishing a direct interest in the ruling on the specific measure whose annulment is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties (orders in Case C-186/02 P *Ramondín and Ramondín Cápsulas v Commission* [2003] ECR I-2415, paragraph 14, and Case T-15/02 *BASF v Commission* [2003] ECR II-213, paragraphs 26 and 27).
- 16 In the case in question, the Territorios Históricos of Vizcaya and Guipúzcoa base their requests for leave to intervene firstly on the fact that they have themselves introduced tax schemes comparable to the Normas Forales that the contested decision held to be incompatible with the common market, and secondly on the fact that they have also brought actions for annulment of similar decisions taken by the Commission in respect of those schemes.
- 17 They are therefore relying merely on an indirect interest in the result of the case by virtue of similarities between their situation and that of the applicants in this case (see, to that effect, *Ramondín and Ramondín Cápsulas v Commission*, paragraph 16). The status of being an applicant in judicial proceedings parallel to this case is not capable of establishing the existence of an interest in the result of the case for the purposes of Article 40 of the Statute of the Court of Justice.

18 It follows from the above that the request by the Territorios Históricos of Vizcaya and Guipúzcoa for leave to intervene must be refused.

Costs

19 By virtue of Article 87(1) of the Rules of Procedure, a decision as to costs is to be given in the final judgment or in the order which closes the proceedings. The present order closes the proceedings as far as the Círculo de Empresarios Vascos and the Territorios Históricos of Vizcaya and Guipúzcoa are concerned. A decision should accordingly be made on the costs relating to their request for leave to intervene.

20 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In the present case, since no application has been made for costs, the Círculo de Empresarios Vascos and the Territorios Históricos of Vizcaya and Guipúzcoa should bear their own costs. As regards these interventions, the applicants and the defendant must also bear their own costs.

On those grounds,

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hereby orders:

- 1. The Cámara Oficial de Comercio e Industria de Álava is granted leave to intervene in Case T-227/01 in support of the form of order sought by the applicants.**

- 2. A copy of all procedural documents shall be served by the Registrar on the Cámara Oficial de Comercio e Industria de Álava.**

- 3. A period shall be prescribed for the Cámara Oficial de Comercio e Industria de Álava to set out in writing the pleas in law in support of the form of order which it seeks.**

- 4. The requests of the Círculo de Empresarios Vascos and the Territorios Históricos of Vizcaya and Guipúzcoa for leave to intervene are refused.**

- 5. Costs are reserved so far as concerns the intervention of the Cámara Oficial de Comercio e Industria de Álava.**

- 6. The Círculo de Empresarios Vascos and the Territorios Históricos of Vizcaya and Guipúzcoa shall bear their own costs relating to their requests for leave to intervene. The applicants and the defendant shall also bear their own costs relating to these requests for leave to intervene.**

Luxembourg, 10 January 2006.

E. Coulon

Registrar

M. Vilaras

President