



LUXEMBOURG

ПЪРВОИНСТАНЦИОНЕН СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
SOUD PRVNÍHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS
ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT CHÉADCHÉIME NA GCÓMHPHOBAL EORPACH
TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU PIRMĀS INSTANCES TIESA

EUROPOS BENDRIŲ PIRMOSIOS INSTANCIJOS TEISMAS
Az EURÓPAI KÖZÖSSÉGEK ELSŐFOKÚ BÍRÓSÁGA
IL-QORTI TAL-PRIMISTANZA TAL-KOMUNITAJIET EWROPEJ
GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN
SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS
TRIBUNALUL DE PRIMĂ INSTANȚĂ AL COMUNITĂȚILOR EUROPENE
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLOČENSTEV
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

Press and Information

PRESS RELEASE No 73/09

9 September 2009

Judgments of the Court of First Instance in Joined Cases T-30/01 and others, Joined Cases T-227/01 and others, and Joined Cases T-230/01 and others

Territorio Histórico de Álava and Others v Commission

THE COURT OF FIRST INSTANCE UPHOLDS THE COMMISSION DECISIONS CONSIDERING CERTAIN BASQUE TAX RELIEF MEASURES TO BE STATE AID INCOMPATIBLE WITH THE COMMON MARKET

The measures at issue established a corporation tax exemption for certain newly established firms, a reduction in the tax base for corporation tax for newly established companies and a tax credit of 45% of the amount of investments

Under Spanish legislation, the Territorios Históricos of Álava, Vizcaya and Guipúzcoa (Spain) may, under certain conditions, organise the tax systems within their respective territories. In that context the Territorios Históricos adopted tax relief measures to benefit businesses. The Commission held that those measures were State aid incompatible with the common market.

The corporation tax exemption for certain newly established firms.

In 1993 the Territorios Históricos of Álava, Vizcaya and Guipúzcoa introduced corporation tax exemptions over ten years, for newly established firms. To qualify for the exemption, the firms had to satisfy certain conditions, in particular they had to start their business with a minimum paid-up capital of EUR 120 202, invest a minimum of EUR 480 810 in tangible fixed assets and create at least 10 jobs.

After a complaint was made in 1994, the Commission requested information from the Spanish authorities on the beneficiaries of the measures at issue. That request was never answered, although the Spanish authorities asked for an extension of the period allowed to reply on that point. On 28 November 2000 the Commission notified the Spanish authorities of its decision to initiate the formal investigation procedure in relation to the measures at issue.

On conclusion of that procedure, the Commission held, by three decisions of 20 December 2001¹, that the exemption measures at issue were State aid incompatible with the common market. The Commission therefore instructed Spain to abolish them and to recover from the beneficiaries aid already made available to them. The Territorios Históricos of Álava, Guipúzcoa and Vizcaya brought actions for, first, annulment of the decision to initiate the formal investigation procedure in relation to the exemption schemes and, second, annulment of the final decisions on the abovementioned tax exemption schemes.

The tax credit of 45% of the amount of investments and the reduction of the tax base for corporation tax for newly established firms

In relation to corporation tax, the tax legislation of Álava, Vizcaya and Guipúzcoa introduced a tax credit of 45% of the amount of investment in new tangible fixed assets exceeding EUR 15 025 303. Those provisions were applied in the Territorio Histórico of Álava for the tax years from 1995 to 1999, and in the Territorios Históricos of Vizcaya and Guipúzcoa for the tax years from 1997 to 1999.

In addition, in 1996 the Territorios Históricos of Álava, Vizcaya and Guipúzcoa approved a reduction in the tax base for corporation tax for newly established firms. Specifically, companies which were starting their business activity were to be entitled to a reduction of 99%, 75%, 50% and 25%, respectively, in the positive tax base for four consecutive tax periods following the first year in which, in the four years following the start-up of their business, they obtained a positive tax base. However, only firms satisfying certain conditions (in particular, investing a minimum of EUR 480 810, starting their business with a minimum paid-up capital of EUR 120 202 and creating at least 10 jobs) could qualify for the reductions in the tax base at issue. Those measures were repealed in 2000.

Having become aware, in 1996 and 1997, of the existence of the provisions establishing those tax measures, the Commission initiated a formal investigation procedure in 1999. By decisions of 11 July 2001 the Commission held that the tax credit measures² and the reductions in the tax base³ were State aid incompatible with the common market. The Commission therefore instructed Spain to recover that aid from the beneficiaries. The Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco – Gobierno Vasco together with the Confederación Empresarial Vasca (Confebask) brought actions for the annulment of the six Commission decisions of 11 July 2001 or, failing that, for the annulment of the recovery measures which Spain was required to take.

Individual decisions by the Commission in relation to State aid, concerning the 45% tax credit and the reduction in the tax base for corporation tax, were the subject of judgments of the Court of First Instance on 6 March 2002⁴. After appeals were brought before the Court of Justice against those judgments, **proceedings in the present cases were stayed pending the outcome of the appeals**. After the Court upheld those judgments of the Court of First Instance, the present proceedings were resumed.

¹ Decisions 2003/28/EC, 2003/86/EC and 2003/192/EC on State aid schemes in the form of corporation tax exemption implemented by Spain in 1993 for certain newly established firms in respectively Álava, Vizcaya and Guipúzcoa (OJ 2003, L 17, p. 20; OJ 2003 L 40, p. 11, and OJ 2003 L 77, p. 1)

² Commission Decisions 2002/820/EC, 2003/27/EC and 2002/894/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in respectively Álava, Vizcaya and Guipúzcoa in the form of a tax credit amounting to 45% of investments (OJ 2002 L 296, p. 1; OJ 2003 L 17, p. 1, and OJ 2002 L 314, p. 26)

³ Commission Decisions 2002/892/EC, 2002/806/EC and 2002/540/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in respectively Álava, Vizcaya and Guipúzcoa (OJ 2002, L 314, p. 1; OJ 2002 L 279, p. 35, and OJ 2002 L 174, p. 31).

⁴ Joined Cases T-127/99, T-129/99 and T-148/99 *Diputación Foral de Álava and Others v Commission* [2002] ECR II-1275 and Joined Cases T-92/00 and T-103/00 *Diputación Foral de Álava and Others v Commission* [2002] ECR II-1385.

In today's judgments the Court of First Instance dismisses in their entirety the pleas in law relied on by the applicants.

As regards the tax exemptions for certain newly established firms, the Court of First Instance rejects the plea in law that those measures were existing aid which therefore could not be the subject of a decision to recover aid already paid but only, should the situation arise, of a decision of incompatibility producing effects for the future. The Court of First Instance holds that the applicants did not prove that there was any decision by the Commission that the measures at issue were not State aid when they came into force. Further, the applicants did not produce any decision whereby the Commission authorised the measures and considered them to be compatible with the common market.

Moreover, the Court of First Instance holds that the Commission was correct to consider that the tax exemptions at issue, which free the beneficiary companies of charges which they would as a general rule have had to bear, constituted operating aid and could not be classified as investment or employment aid.

As regards the reductions in the tax base and the tax credits at issue, the Court of First Instance holds that the Commission was correct to classify them as State aid prohibited by the EC Treaty.

First, the Court of First Instance states that the concept of aid embraces not only positive benefits, such as subsidies, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect.

Second, the Court of First Instance considers that, in the present case, the tax credit measures and the reductions in the tax base were such as to affect trade between Member States and to distort or threaten to distort competition.

Third, the Court of First Instance considers that those tax measures amounted to a selective advantage, 'in favour of certain undertakings'. The tax advantage of the tax credit was restricted to firms which had significant financial resources at their disposal, while the possible granting of a reduction in the tax base was limited to newly established firms and, among them, to those with significant financial resources at their disposal, capable of making significant investments and generating substantial numbers of jobs.

Fourth and last, the Court of First Instance holds that the tax credits and the reductions in the tax base cannot be held to be justified by the nature or overall structure of the tax system taken into consideration by the Commission. In that regard, the Court states that the fact that the three Territorios Históricos have a fiscal autonomy which is recognised and protected by the Spanish Constitution does not exempt them from compliance with the provisions of the Treaty on State aid. Accordingly, the Court states that a specific tax measure escapes classification as State aid if it is justified by the internal logic of the tax system, but points out that objectives of economic policy extraneous to the tax system such as those relied on in the present case – namely, inter alia, the encouragement of investment, the creation of businesses and maintenance of the taxpaying capacity of businesses – cannot enable the measures at issue to escape classification as State aid. If that argument were accepted, it would be sufficient for public authorities to rely on the legitimacy of the objectives pursued by the adoption of an aid measure for the measure to be regarded as a general measure, escaping the prohibition on aid.

In addition, **as regards the statement of reasons for the decision on the incompatibility with the common market of the reductions in the tax base and the tax credits at issue**, the Court of First Instance considers that the Commission's analysis in this case cannot be regarded as overly abstract.

Further, the Court of First Instance considers that the Commission's analysis in relation to the compatibility of the measures at issue with the common market is not incorrect. In particular the Commission was correct to hold that the Territorios Históricos concerned did not qualify for the derogations in relation to regional aid, because the per capita GDP was too high. Further, in relation to one aspect of the tax credits, the Commission stated that the Territorios Históricos did not qualify for a derogation because the size of the tax credit exceeded the ceilings set by successive regional aid maps. Moreover, in relation to another aspect of the tax credits and the reductions in the tax base, the Commission held that they fell into the category of operating aid, which is as a general rule prohibited. Lastly, the Court observes that the Commission added that its decisions did not exclude the possibility that individual aid might be regarded, in full or in part, as compatible with the common market on its own merits.

Finally, as regards the length of the procedures followed in relation to the three types of measures, the Court of First Instance holds that the length was not unreasonable in light of the circumstances and taking account of the particular context. In particular, as regards the length of the preliminary examination phase for the tax exemption measures, the Court observes that more than six and a half years elapsed from the time when the Commission became aware of the aid schemes at issue until the initiation of the formal investigation procedure. However, the Court holds that, in light of the particular circumstances here, that length did not infringe the principles of legal certainty and sound administration. In particular, the Court took account of the fact that the length of the procedure was largely attributable to the national authorities who, having failed to notify the schemes at issue, then declined to provide the Commission with the appropriate information, requested in January 1996.

The Court of First Instance also held that the principles of protection of legitimate expectations, equal treatment and proportionality had not been infringed.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: ES EN FR

The full text of the judgments may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-227/01>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
Communications,*

L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249

or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956