Cases T-227/01 to T-229/01, T-265/01, T-266/01 and T-270/01

Territorio Histórico de Álava – Diputación Foral de Álava and Others

v

Commission of the European Communities

(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)

Summary of the Judgment

1. *Procedure – Intervention – Admissibility – Re-examination after a previous order holding intervention admissible*

(Statute of the Court of Justice, Art. 40, second para.)

2. *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.)

3. *Procedure – Statement in intervention – Formal requirements*

(Rules of Procedure of the Court of First Instance, Art. 116(4), second para.)

4. *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)

5. *State aid – Meaning – Tax exemption granted by public authorities to certain undertakings – Included*

(Art. 87(1) EC)

6. *State aid – Examination of complaints – Obligations of the Commission – Statement of reasons*

(Arts 87(2) EC and 253 EC)

7. *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)

8. *State aid – Effect on trade between Member States – Adverse effect on competition – Small amounts of aid – Temporary aid – No effect*

(Art. 87(1) EC)

9. *State aid – Meaning – Selective nature of the measure – National legislation establishing a tax credit*

(Art. 87(1) EC)

10. *State aid – Meaning – Aid granted by regional or local bodies – Included*

(Art. 87(1) EC)

11. *State aid – Meaning – Specific tax measure – Selective nature of the measure – Justification based on the nature or overall structure of the tax system – Not included*

(Art. 87(1) EC)

12. *State aid – Prohibition – Exceptions – Aid which may be considered compatible with the common market – Discretion of the Commission*

(Art. 87(3) EC)

13. *State aid – Existing aid and new aid – Classification as existing aid – Criteria – Measure substantially altering an existing aid scheme – Not included*

(Arts 87 EC and 88 EC; Council Regulation No 659/1999, Art. 1(b)(ii))

14. *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))

15. *State aid – Administrative procedure – Right of the parties concerned to submit their comments*

(Art. 88 EC; Council Regulation No 659/1999, Art. 6(1))

16. *Procedure – Intervention – Application to intervene in support of 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))

17. *State aid – Examination by the Commission – Examination procedure prior to entry into force of Regulation No 659/1999 – Not subject to specific time-limits – Limit – Compliance with requirements of legal certainty – Obligation to complete within a reasonable period the preliminary examination commenced following a complaint*

(Art. 88 EC; Council Regulation No 659/1999)

18. *State aid – Recovery of unlawful aid – Aid granted contrary to the procedural rules laid down in Article 88 EC – Possible legitimate expectation on the part of the beneficiaries – Protection – Conditions and limits*

(Art. 88(2), first subpara., EC)

19. *State aid – Planned aid – Examination by the Commission – Preliminary phase and adversarial phase – Duty to act within a reasonable time*

(Art. 88(2) and (3) EC)

20. *State aid – Recovery of unlawful aid – Breach of principle of proportionality – None*

(Art. 88(2), first subpara., EC)

1. The fact that the Court of First Instance has, by a previous order, granted a person leave to intervene in support of the forms of order of a party does not preclude a fresh examination of the admissibility of the intervention.

(see para. 81)

2. The adoption of a broad interpretation of the right to intervene of representative associations whose object is to protect their members in cases raising questions of principle liable to affect those members is intended to facilitate assessment of the context of such cases whilst avoiding multiple individual interventions which would compromise the effectiveness and proper course of the procedure.

Accordingly, where actions for annulment are directed against Commission decisions declaring tax exemption schemes illegal and incompatible with the common market and ordering recovery of aid paid out, a trade organisation which is a cross-sectoral confederation set up, inter alia, to represent and defend the interests of undertakings some of which are the actual beneficiaries of aid granted in accordance with those tax schemes and which, moreover, took part in the administrative procedure which led to the adoption of the decisions at issue, has an interest to intervene in such actions.

(see paras 83-90)

3. The statement in intervention, which must, in accordance with the second subparagraph of Article 116(4) of the Court's Rules of Procedure, contain a summary of the pleas in law and arguments relied on by the intervener, must, in exactly the same way as an application initiating proceedings, be sufficiently clear and precise to enable the defendant to prepare its defence and to enable the Court to give judgment in the action without the need to seek further information.

In order to guarantee legal certainty and sound administration of justice, it is necessary, as it is for an application initiating proceedings, that the basic legal and factual particulars on which the statement in intervention is based be indicated, at least in summary form, but coherently and intelligibly, in the text of the statement itself. In that regard, although specific points in the text of the statement can be supported and completed by references to passages in annexed documents, a general reference to other documents, even those annexed to the statement, cannot compensate for the lack of essential elements of legal arguments which must be included in the statement. Furthermore, it is not for the Court of First Instance to seek and identify in the annexes the pleas and arguments on which it may consider the statement to be based, since the annexes have a purely evidential and instrumental function.

Those requirements are not met by a statement in intervention which makes a general reference to statements made in cases joined to that in which the intervention in support is made, when none of the essential material of fact and law on which the intervention is based, either substantially or even summarily, are to be found in the statement in intervention itself.

(see paras 94-97, 100-101)

4. An association which is responsible for defending the collective interests of undertakings, is, as a rule, entitled to bring an action for annulment against a final decision of the Commission in matters of State aid only if those undertakings or some of those undertakings themselves have *locus standi* or if it can prove an interest of its own.

Natural or legal persons can claim to be individually concerned only if they are affected by the measure in question by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee. In that regard, while the potential beneficiaries of an aid scheme cannot, solely by virtue of that capacity, be regarded as individually concerned by the Commission decision declaring that scheme incompatible with the common market, an undertaking is however in a different position if it is not only concerned by the decision at issue as an undertaking which is a potential beneficiary of the aid scheme in question, but also as an actual beneficiary of individual aid granted under that scheme, the recovery of which has been ordered by the Commission. Moreover, since the decision obliges the Member State to take the measures necessary to recover from the beneficiaries the aid at issue, the undertakings which received the aid must be regarded as directly concerned by the decision.

An association is thus entitled to bring proceedings against Commission decisions declaring aid schemes illegal and incompatible with the common market and ordering their abolition and the recovery of aid paid out where that association is responsible for protecting the interests of undertakings of whom it has been proved, albeit in the oral procedure, that they are actual recipients of individual aid granted under aid schemes and that they would, as such, have standing themselves to bring proceedings.

(see paras 107-118)

5. The concept of aid, within the meaning of Article 87(1) EC, 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.

A measure by which the public authorities of a Member State grant to certain undertakings a tax exemption which, although not involving a transfer of State resources, places the persons to whom

the tax exemption applies in a more favourable financial situation than other taxpayers constitutes State aid within the meaning of Article 87(1) EC.

That applies to tax credits intended to encourage investment, which, by providing to the beneficiary firms a reduction in their tax burden by an amount equivalent to a percentage of the eligible investment, thereby allowing them not to pay their final tax liability in full and placing them in a position which is more favourable than that of other taxpayers. The fact that those tax credits are intended to encourage investment, with the objective of generating future revenue, is, in that regard, immaterial, since the objective pursued by a measure cannot enable it to escape classification as State aid within the meaning of Article 87(1) EC.

(see paras 124-126,130,184)

6. The statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations.

A Commission decision declaring an aid scheme in the form of tax credits incompatible with the common market contains a sufficient statement of reasons relating to the effects of that aid on trade and competition when it is stated that, because it is characteristic of the economy of the Member State concerned that it is open to the outside and its production is geared to exporting, that aid, first, strengthens the position of beneficiary firms vis-à-vis other firms which are their competitors in intra-Community trade and thereby affects trade, and, second, improves the profitability of those beneficiary firms because of the increase in their net profit (profit after tax) and enables them to compete with firms which are not eligible for the tax credit.

(see paras 136-138)

7. Where the result of State aid or aid granted through State resources is that the position of an undertaking is strengthened compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by the aid, even if the beneficiary undertaking is itself not involved in exporting. The Commission is required not to establish that the measure has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether the measure is liable to affect such trade and distort competition.

In the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies, and, in particular, where the tax system at issue was not notified, it is not necessary that the reasoning in that regard contain an up-to-date assessment of its effect on competition and on trade between Member States.

(see paras 142-143)

8. The classification of tax advantages as State aid within the meaning of Article 87(1) EC cannot be affected by the fact that those tax advantages are temporary, that their influence is small and not decisive, or even that they are not the only factor to be taken into account, since there is no requirement in case-law that the distortion of competition, or the threat of such distortion, and the effect on intra?Community trade, must be significant or substantial.

(see para. 148)

9. The specific nature of a State measure, namely its selective application, constitutes one of the characteristics of State aid within the meaning of Article 87(1) EC. In that regard, it is necessary to determine whether or not the measure entails advantages accruing exclusively to certain undertakings or certain sectors of activity.

Tax systems which grant advantages in the form of tax credits constitute a selective advantage ‘favouring certain undertakings’, within the meaning of Article 87(1) EC, where those tax credits benefit only undertakings which make investments exceeding a certain threshold and therefore have at their disposal significant financial resources, to the exclusion of all other undertakings even when they invest, and, moreover, where those tax systems grant to the authorities a discretion enabling them to vary the amount of the tax advantage according to the characteristics of the investment projects submitted for their assessment.

(see paras 158-162, 166-168)

10. The fact that an intra-State entity has autonomy in taxation matters which is recognised and protected by the constitution of a Member State does not however exempt that entity from complying with the provisions of the Treaty concerning State aid. Article 87(1) EC, by referring to aid granted by ‘a Member State or through State resources in any form whatsoever’ is directed at all aid financed from public resources. It follows that measures adopted by intra-State entities (decentralised, federated, regional or other) of the Member States, whatever their legal status and description, fall, in the same way as measures taken by the federal or central authority, within the ambit of Article 87(1) EC, if the conditions of that provision are satisfied.

(see para. 178)

11. When assessing whether a State measure constitutes State aid, the selectivity of that measure may, in certain circumstances, be justified ‘by the nature or overall structure of the system’. If that is the case, the measure is outside the scope of Article 87(1) EC. Thus, a specific tax measure which is justified by the internal logic of the tax system – such as the progressiveness of the tax which is justified by the system’s aim of redistribution – will be outside the scope of Article 87(1) EC.

The fact that tax measures are based on objective criteria and are horizontal cannot affect their classification as selective and cannot permit the conclusion that they are measures justified by the internal logic of the tax system concerned, when they benefit only undertakings which make investments exceeding a certain threshold and therefore have at their disposal significant financial resources, to the exclusion of all other undertakings even when they invest. Likewise, the objective pursued by the measures at issue cannot prevent their classification as State aid within the meaning of Article 87(1) EC, and it is not 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, outside the scope of Article 87(1) EC. That provision does not distinguish between measures of State intervention by reference to their causes or aims but defines them in relation to their effects.

(see paras 179-180, 184-185)

12. The Commission has wide discretion in matters falling under Article 87(3) EC. Judicial review must therefore be limited to establishing whether there has been compliance with the rules governing procedure and the statement of reasons, whether the facts have been accurately stated and whether there has been any manifest error of assessment or a misuse of powers. The Court is not entitled to substitute its own economic assessment for that of the Commission.

In the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies.

(see paras 198-199)

13. The Treaty establishes different procedures according to whether the aid is existing or new. Whereas new aid must, under Article 88(3) EC, be notified in advance to the Commission and cannot be implemented before the procedure has culminated in a final decision, existing aid may, under Article 88(1) EC, be duly implemented as long as the Commission has not found it to be incompatible. Existing aid may therefore only be the subject, should the situation arise, of a decision of incompatibility producing effects for the future.

Article 1(b)(i) of Regulation No 659/1999, on the application of Article 88 EC, defines existing aid as, inter alia, ‘all aid which existed prior to the entry into force of the Treaty in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the Treaty’.

A tax system granting tax credits set up after the entry into force of the Treaty in the Member State concerned cannot be considered as existing aid where the eligibility conditions for those tax credits, the range of beneficiaries, the taxable base, the percentage and the duration of those tax credits are clearly a substantial alteration of a system existing prior to the entry into force of the Treaty.

(see paras 228-234)

14. The concept of ‘evolution of the common market’ in Article 1(b)(v) of Regulation No 659/1999, on the application of Article 88 EC, can be understood as a change in the economic and legal framework of the sector concerned by the measure in question. Such a change can, in particular, be the result of the liberalisation of a market initially closed to competition.

On the other hand, that concept does not cover the situation where the Commission alters its

appraisal on the basis only of a more rigorous application of the Treaty rules on State aid.

It follows that, even if it were established, a change in the Commission's rules made after the adoption of the measure at issue, in relation to the selectivity criteria applied in the Commission's appraisal of that measure in the light of Article 87(1) EC cannot be held to constitute an 'evolution of the common market' within the meaning of Article 1(b)(v) of Regulation No 659/1999

(see paras 245, 247, 250)

15. Article 6(1) of Regulation No 659/1999, on the application of Article 88 EC, provides that, within the formal investigation procedure, interested parties have the opportunity to submit their comments to the Commission. That provision provides that those comments must be submitted within a specified period, which may, in duly justified cases, be extended, but it does not provide that an interested party may lodge further comments with the Commission on his own initiative and after expiry of the period provided for that purpose.

It follows that the fact that the Commission did not take into consideration additional comments made by an interested party, on the grounds that they had arrived out of time and that the party concerned had at no time requested an extension of the time-limit pursuant to Article 6(1) of Regulation No 659/1999, cannot, in the absence of precise assurances that any additional comments, even late, would be taken into consideration in the absence of a request for extension of the time-limit, constitute an infringement of the principles of the protection of legitimate expectations and good administration.

The right to rely on the principle of the protection of legitimate expectations extends to any individual in a situation where a Community authority has caused him to entertain expectations which are justified, and a person may not plead infringement of the principle unless he has been given precise assurances by the administration.

Moreover, among the rights guaranteed by the Community legal order in administrative procedures is the principle of good administration, to which is attached the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case. Article 6(1) of Regulation No 659/1999 constitutes an expression, in the procedure for reviewing State aid, of those principles. In the procedure for reviewing State aid, interested parties other than the Member State responsible for granting the aid therefore cannot themselves claim a right to debate the issues with the Commission in the same way as may that Member State, and cannot rely on rights as extensive as the rights of the defence as such. General principles of law, such as the principle of good administration, cannot enable the Community courts to extend the procedural rights which the Treaty and secondary legislation confer on interested parties in procedures for reviewing State aid.

(see paras 259-272)

16. Whilst the fourth paragraph of Article 40 of the Statute of the Court of Justice, which applies to the Court of First Instance by virtue of Article 53 of that statute, and Article 116(3) of the Rules of Procedure of the Court of First Instance do not preclude an intervener from using arguments different from those used by the party it is supporting, that is nevertheless on the condition that they do not alter the framework of the dispute and that the intervention is still intended to support the form of order sought by that party.

A complaint made by the intervener, which, though different from that of the applicant, is connected with the subject-matter of the dispute, as defined by the applicant, and does not therefore alter the framework of the dispute is admissible.

(see paras 292-294)

17. Whilst until the entry into force of Regulation No 659/1999, on the application of Article 88 EC, the Commission was not bound by any specific time?limits as regards its review of aid measures, the fundamental requirement of legal certainty nevertheless had the effect of preventing the Commission from indefinitely delaying the exercise of its powers.

Since the assessment of the compatibility of State aid with the common market falls within its exclusive competence, the Commission is bound, in the interests of sound administration of the fundamental rules of the Treaty relating to State aid, to conduct a diligent and impartial examination of a complaint alleging the existence of aid that is incompatible with the common market. It follows that the Commission cannot prolong indefinitely its preliminary investigation into State measures that have been the subject of a complaint. Whether or not the duration of the investigation of a complaint is reasonable must be determined in relation to the particular circumstances of each case and, especially, its context, the various procedural stages to be followed by the Commission and the complexity of the case.

A period of 38 months between the time when the Commission became aware of the aid schemes at issue and the time when it initiated the formal investigation procedure provided for in Article 88(2) EC does not, having regard to the background to those aid schemes, constitute an unreasonable delay which vitiates the preliminary examination procedure by infringing either the principle of legal certainty or, consequently, the principle of good administration, since, first, the measures at issue required a thorough examination of the national legislation at issue, and, second, the length of the procedure is, at least in part, attributable to the national authorities who, in particular, asked for extensions of the period allowed to reply to requests by the Commission for information.

(see paras 296-309)

18. A legitimate expectation that aid is lawful cannot be invoked unless that aid has been granted in compliance with the procedure laid down in Article 88 EC. In fact, a regional authority and a diligent businessman should normally be able to determine whether that procedure has been followed. Furthermore, since Article 88 EC makes no distinction between aid schemes and individual aid, those principles are equally applicable to aid schemes.

However, recipients of aid which is granted unlawfully, because it was not notified, as is the case of the aid schemes at issue in the present case, are not precluded from relying on exceptional circumstances on the basis of which they legitimately assumed the aid to be lawful, in order to oppose repayment of the aid.

(see paras 310-314)

19. The reasonableness of the length of the procedure for review of State aid, whether that relates to the preliminary examination or the formal investigation procedure, must be appraised in the light of the circumstances specific to each case and, in particular, its context, the various procedural stages followed by the Commission, the conduct of the parties in the course of the procedure, the complexity of the case and its importance for the various parties involved.

An examination procedure with an overall duration of five years one month (38 months for the preliminary examination procedure and 23 months for the formal investigation procedure) cannot, taking into account the context, the complexity of the measures at issue and the importance of the case, and having regard to the fact that the national authorities contributed, at least in part, because of their conduct, to the lengthening of the examination procedure, be regarded as unreasonable. That length does not represent an exceptional circumstance capable of justifying a legitimate expectation that the aid was lawful.

(see paras 336-342, 347)

20. Abolishing unlawful aid by means of recovery is the logical consequence of a finding that it is unlawful. Consequently, the recovery of State aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the provisions of the Treaty relating to State aid.

By repaying the aid, the beneficiary forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored. It also follows from that function of repayment of aid that, as a general rule, the Commission will not, save in exceptional circumstances, exceed the bounds of its discretion, if it asks the Member State to recover the sums granted by way of unlawful aid, since it is only restoring the previous situation.

It is true that the principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued, and of course, when there is a choice between several appropriate measures, the least onerous measure must be used.

However, the recovery of unlawful aid, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the Treaty in regard to State aid. Such a measure, even if it is implemented long after the aid in question was granted, cannot constitute a penalty not provided for by Community law.

(see paras 372-375)

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber, Extended Composition)

9 September 2009 (*)

(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)

In Joined Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01,

Territorio Histórico de Álava – Diputación Foral de Álava (Spain),

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?227/01,

supported by

Cámara Oficial de Comercio e Industria de Álava (Spain), represented by I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers,

and by

Confederación Empresarial Vasca (Confebask), established in Bilbao (Spain), represented initially by M. Araujo Boyd and R. Sanz, and subsequently by M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers,

interveners,

Territorio Histórico de Vizcaya – Diputación Foral de Vizcaya (Spain),

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?228/01,

supported by

Cámara Oficial de Comercio, Industria y Navegación de Vizcaya (Spain), represented by I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers,

and by

Confederación Empresarial Vasca (Confebask), established in Bilbao, represented initially by M. Araujo Boyd and R. Sanz, and subsequently by M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers,

interveners,

Territorio Histórico de Guipúzcoa – Diputación Foral de Guipúzcoa (Spain),

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,

supported by

Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa (Spain), represented by I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers,

and by

Confederación Empresarial Vasca (Confebask), established in Bilbao, represented initially by M. Araujo Boyd and R. Sanz, and subsequently by M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers,

interveners,

Confederación Empresarial Vasca (Confebask), established in Bilbao, represented by M. Araujo Boyd, L. Ortiz Blanco and V. Sopeña Blanco, lawyers,

applicant in Cases T?265/01, T?266/01 and T?270/01,

v

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

defendant,

supported by

Comunidad autónoma de La Rioja (Spain), represented initially by A. Bretón Rodríguez, and subsequently by J.M. Criado Gámez and I. Serrano Blanco, lawyers,

intervener,

APPLICATIONS 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); APPLICATIONS 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 APPLICATIONS in Cases T?229/01 and T?270/01 for annulment of 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),

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES (Fifth Chamber, Extended Composition),

composed of M. Vilaras, President, M.E. Martins Ribeiro, F. Dehousse (Rapporteur), D. Šváby and K. Jürimäe, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 January 2008,

gives the following

Judgment

Legal context

I – *Community legislation*

1 Article 87 EC provides:

‘1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

…

3. The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

…

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

…’

2 Article 88 EC provides:

‘1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 87, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

…

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.’

3 Article 1 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1) provides:

‘For the purpose of this Regulation:

…

(b) “existing aid” shall mean:

(i) … all aid which existed prior to the entry into force of the Treaty in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the Treaty;

(ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council;

…

(v) aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the common market and without having been altered by the Member State. Where certain measures become aid following the liberalisation of an activity by Community law, such measures shall not be considered as existing aid after the date fixed for liberalisation;

(c) “new aid” shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

…

(f) “unlawful aid” shall mean new aid put into effect in contravention of Article [88](3) [EC];

…’

4 Under Article 2(1) and Article 3 of Regulation No 659/1999, ‘any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned’ and cannot be put into effect ‘before the Commission has taken, or is deemed to have taken, a decision authorising such aid’.

5 In relation to measures which are not notified, Article 10(1) of Regulation No 659/1999 provides that, ‘where the Commission has in its possession information from whatever source regarding alleged unlawful aid, it shall examine that information without delay’. Article 13(1) of the same regulation provides that that examination is to result, where appropriate, in a decision to initiate a formal investigation procedure. Article 13(2) of that regulation states that in cases of unlawful aid the Commission is not bound by the time-limits applicable in relation to the preliminary examination and the formal investigation procedure in cases of notified aid.

6 Article 14(1) of Regulation No 659/1999 states:

‘Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary … The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.’

7 The Commission notice on the application of the State aid rules to measures relating to direct business taxation (OJ 1998 C 384, p. 3; ‘the 1998 notice on tax aid to businesses’) contains, inter alia, provisions relating to the distinction between State aid and general measures. Paragraphs 13 and 14 of that notice provide:

‘13. Tax measures which are open to all economic agents operating within a Member State are in principle general measures … Provided that they apply without distinction to all firms and to the

production of all goods, the following measures do not constitute State aid:

– tax measures of a purely technical nature …,

– measures pursuing general economic policy objectives through a reduction of the tax burden related to certain production costs …

14. The fact that some firms or some sectors benefit more than others from some of these tax measures does not necessarily mean that they are caught by the competition rules governing State aid. Thus, measures designed to reduce the taxation of labour for all firms have a relatively greater effect on labour intensive industries than on capital intensive industries, without necessarily constituting State aid …'

8 As regards aid connected with an investment, that is defined in footnote 1 to Annex I to the guidelines on national regional aid (OJ 1998 C 74, p. 9), as amended (OJ 2000 C 258, p. 5: 'the 1998 Guidelines'), as follows:

'Tax aid may be considered to be aid connected with an investment where it is based on the amount invested. In addition, any tax aid may be connected with an investment if it is paid up to a ceiling expressed as a percentage of the investment …'

II – *National legislation*

9 The tax arrangements in force in the Basque Country of Spain are governed by the Economic Agreement established by Spanish Law 12/1981 of 13 May 1981, as last amended by Law 38/1997 of 4 August 1997.

10 Under that 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, they have adopted various tax relief measures and in particular the tax credits of 45% at issue in the present actions.

A – *Tax credit established by the tax legislation of the Territorio Histórico of Álava*

11 The Sixth Additional Provision of Norma Foral No 22/1994 of 20 December 1994, implementing the 1995 budget of the Territorio Histórico of Álava ('the Sixth Additional Provision of Norma Foral No 22/1994 of Álava') provides:

'Investments in new fixed assets made between 1 January 1995 and 31 December 1995 which exceed ESP 2 500 million [Spanish pesetas] shall, by decision of the Diputación Foral de Álava, receive a tax credit of 45% of the amount of investment determined by the Diputación Foral de Álava, to be applied to the final amount of tax payable.

Any tax credit not used up because it exceeds the amount of tax liability may be applied in the nine years following the year in which the decision of the Diputación Foral de Álava was adopted.

The decision of the Diputación Foral de Álava shall lay down the time-limits and restrictions applicable in each case.

The advantages granted under this provision may not be combined with any other fiscal advantage in respect of the same investment.

The Diputación Foral de Álava shall also determine the length of the investment process, which may include investments made during the preparation of the project which generates the

investment.’

12 The validity of that provision was extended, for the year 1996, by the Fifth Additional Provision of Norma Foral No 33/1995 of 20 December 1995, as amended by point 2.11 of the single derogating provision of Norma Foral No 24/1996 of 5 July 1996, which deleted the reference to nine years in the second paragraph of the Sixth Additional Provision of Norma Foral No 22/1994 of Álava. For 1997 the measure was extended by the Seventh Additional Provision of Norma Foral No 31/1996 of 18 December 1996.

13 The tax credit of 45% of the amount of the investment was retained, in an amended form, for the years 1998 and 1999 respectively by means of the Eleventh Additional Provision of Norma Foral No 33/1997 of 19 December 1997 and the Seventh Additional Provision of Norma Foral No 36/1998 of 17 December 1998. Those provisions state inter alia:

‘… any investment process commenced after 1 January [1998/99], exceeding ESP 2 500 million, shall be entitled to a tax credit of 45% of the amount of the investment. That tax credit shall be applied to the final amount of tax payable.

…

The investment process shall include those investments made during the preparatory phase of the project which generates the investments and with a necessary, direct link to that process.

The application of the tax credit to which this general provision refers shall be notified by the taxpayer to the Diputación Foral de Álava, using the form approved for that purpose by the Provincial Commission for Tax, Finance and Budgets.’

14 That tax credit was not extended to years subsequent to 1999.

B – *Tax credits established by the tax legislation of the Territorios Históricos of Vizcaya and Guipúzcoa*

15 The Fourth Additional Provision of Norma Foral No 7/1996 of Vizcaya of 26 December 1996, extended by the Second Additional Provision of Norma Foral No 4/1998 of 2 April 1998, and, in similar terms, the Tenth Additional Provision of Norma Foral No 7/1997 of Guipúzcoa of 22 December 1997 provide:

‘Investments in new fixed assets made after 1 January 1997 which exceed ESP 2 500 million shall, by decision of the Diputación Foral de [Vizcaya/Guipúzcoa], receive a tax credit of 45% of the amount of investment determined by the Diputación Foral de [Vizcaya/Guipúzcoa], to be applied to the final amount of tax payable.

Any tax credit not used up because it exceeds the amount of tax liability may be applied in the five tax years following the year in relation to which the decision to grant the tax credit was adopted.

The date from which the time-limit for using the tax credit starts to run may be postponed until the first year during the limitation period in which profits are made.

The decision referred to in the first paragraph shall lay down the time-limits and restrictions applicable in each case.

Advantages granted under this provision may not be combined with any other tax advantage in respect of the same investments.

The Diputación Foral de [Vizcaya/Guipúzcoa] shall also determine the duration of the investment process, which may include investments made during the preparatory phase of the project which generates the investment in respect of which the tax advantage is granted.'

16 Those provisions were repealed by Norma Foral No 7/2000 of 19 July 2000 in the Territorio Histórico of Vizcaya and by Norma Foral No 3/2000 of 13 March 2000 in the Territorio Histórico of Guipúzcoa.

The facts in the main proceedings

17 When certain proceedings were initiated following complaints lodged in June 1996 and October 1997 in relation to the application, in the Territorio Histórico of Álava, of a tax credit of 45% to Daewoo Electronics Manufacturing España SA (Demesa) and to Ramondín SA and Ramondín Cápsulas SA (Ramondín), the Commission became aware of the existence of the provisions establishing that tax credit. The Commission so states in paragraph 1 of each 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); 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 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) (together, 'the contested decisions'). The Commission also received informal information that similar measures existed in the Territorios Históricos of Vizcaya and Guipúzcoa (paragraph 1 of Decisions 2003/27 and 2002/894).

18 On 17 March 1997, the Commission met representatives of the Government of La Rioja (Spain) and of management and labour in La Rioja.

19 By letters of 15 March 1999 sent to the Permanent Representation of the Kingdom of Spain, the Commission requested information on the measures adopted by the Territorios Históricos of Vizcaya and Guipúzcoa.

20 By letters of 13 April and 17 May 1999 from their Permanent Representation, the Spanish authorities asked for successive extensions of the period allowed to reply. By letter of 25 May 1999, the staff of the Commission refused to grant a second extension.

21 By letter of 2 June 1999 from their Permanent Representation, the Spanish authorities sent information on the tax credits at issue.

22 By letters of 17 August 1999, the Commission informed the Kingdom of Spain of its decision to initiate the formal investigation procedure in relation to the three schemes providing for the tax credits at issue. Those decisions to initiate the formal investigation procedure (Commission decisions concerning the tax credit provided for by legislation of the Territorios Históricos of Vizcaya and Guipúzcoa (OJ 1999 C 351, p. 29) and concerning the tax credit provided for by legislation of the Territorio Histórico of Álava (OJ 2000 C 71, p. 8)) were subject to actions for annulment which were dismissed by the Court (Joined Cases T?269/99, T?271/99 and T?272/99 *Diputación Foral de Guipúzcoa and Others* v *Commission* [2002] ECR II?4217).

23 In its decision to initiate the formal investigation procedure in relation to the tax credit provided for in the legislation of the Territorio Histórico of Álava, the Commission requested that the Kingdom of Spain provide, inter alia, information on any tax aid in the form of tax credits in force between 1986 and 1994, on decisions to grant aid between 1995 and 1997 and on

declarations by the firms concerned on the official form for the period from 1998 to 1999. The Commission thereby requested details of at least the nature of the investment expenditure qualifying for aid, the amount of the tax credit granted to each beneficiary, the aid paid to each beneficiary and any balance which remained outstanding, whether any beneficiary might be a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, details of any cumulation of aid (amount, eligible expenditure, any aid schemes applied, and so forth) and precise and detailed definitions of the terms ‘investment’ and ‘investments made during the preparatory phase’.

24 By letter from their Permanent Representation of 9 November 1999, registered on 12 November 1999, the Spanish authorities submitted their comments, to the effect that there was no State aid involved, and that it was unnecessary to supply the information concerning decisions to grant the tax credits requested by the Commission in their decisions to initiate the formal investigation procedure.

25 Following publication of the decisions to initiate the formal investigation procedure in the *OfficialJournal of the European Communities* (see paragraph 22 above), the Commission received, in January 2000, comments from third parties in relation to the measures adopted by the Territorios Históricos of Vizcaya and Guipúzcoa, and in March and April 2000 in relation to the Territorio Histórico of Álava.

26 By letters of 1 March 2000 concerning the Territorios Históricos of Vizcaya and Guipúzcoa and by letter of 18 May 2000 in relation to the Territorio Histórico of Álava, the Commission sent those comments to the Kingdom of Spain and gave it the opportunity to comment on them. Although the Spanish authorities made a request for an extension of the period of 20 days allowed to reply, they did not send any comments.

The contested decisions

27 By the contested decisions, the Commission classified as State aid incompatible with the common market the 45% tax credits for investments, established by the Territorios Históricos of Álava, Vizcaya and Guipúzcoa.

28 In the contested decisions, first, the Commission holds that the tax credits at issue constitute State aid. The Commission states that, in effect, they provide to their beneficiaries an advantage consisting of a reduction of the charges normally borne from their budgets and imply a loss of tax revenue by the public authority concerned. That advantage affects competition and trade between Member States. The tax credits at issue are selective, in that they favour certain firms which make investments exceeding the threshold of ESP 2 500 million. In the alternative, the tax credits are selective because, in addition, the tax authority had a discretionary power in relation to implementing the schemes in question and a discretion in determining the size of investments and the investment process, in the absence of any precise definitions of the concepts. The Commission states further that the tax credits pursue an economic policy objective which is not inherent in the tax system concerned and that they are not justified by the nature or overall structure of the Spanish tax system.

29 Secondly, the Commission finds that the tax credits constitute illegal aid. The Commission considers that the *de minimis* rule is not applicable and that existing aid is not involved. The Commission also rejects the argument that the principles of the protection of legitimate expectations and legal certainty were infringed, since the tax credits were new aid which was not notified and no specific assurance was considered to have been given by the Commission capable of creating justified expectations as to the legality and compatibility of the aid at issue.

30 Thirdly, the Commission considers that the aid schemes at issue are incompatible with the common market. The Commission maintains that the tax credits are capable of fulfilling, at least partly, the conditions laid down by the 1998 Guidelines (see paragraph 8 above), because, first, they are based on investment expenditure and, secondly, the amount does not exceed 45% of the amount invested. The tax credits cannot however qualify for one of the regional derogations in Article 87(3) EC. The Territorios Históricos of Álava, Vizcaya and Guipúzcoa are not eligible for the derogation in Article 87(3)(a) EC because their per capita GDP is too high. The aid at issue cannot either be authorised on the basis of Article 87(3)(c) EC, since the scale of the tax credits exceeds the ceilings specified in the successive regional aid maps. Further, the provisions at issue may apply to replacement investments and to expenditure linked to the 'investment process' or to 'investments made during the preparatory phase'. However, in the absence of a precise definition of those terms, the possibility cannot be ruled out that the scope of the aid at issue includes expenditure which cannot be considered to be investment expenditure compatible with the relevant Community rules.

31 Moreover, aid for investment expenditure which does not meet the definition laid down by Community law might be considered to be operating aid, which as a general rule is prohibited. The Commission considers in that regard that the conditions of eligibility for the exceptions laid down in Article 87(3)(a) and (c) EC are not satisfied in the present case. The Commission also states that, in the absence of sectoral limitations, the 45% tax credits cannot comply with the sectoral rules. Lastly, the Commission states that the aid at issue also cannot qualify for other derogations provided for in Article 87(2) and (3) EC and that the aid is therefore incompatible with the common market.

32 Consequently, the Commission holds, in Article 1 of the contested decisions, that the Normas Forales at issue constitute State aid, unlawfully put into effect by the Kingdom of Spain in the provinces of Álava, Vizcaya and Guipúzcoa, and incompatible with the common market.

33 Article 2 of the contested decisions provides that the Kingdom of Spain is to abolish the aid scheme referred to in Article 1, if it is still in force.

34 Article 3 of the contested decisions requires recovery of the aid as follows:

'1. [The Kingdom of] Spain shall take all necessary measures to recover from the recipients the aid referred to in Article 1, which has been unlawfully made available to them.

As regards aid not yet paid, [the Kingdom of] Spain shall cancel all payments of outstanding aid.

2. Recovery shall be effected without delay in accordance with the procedures of national law, provided these allow the immediate and effective execution of this Decision. The sums to be recovered shall bear interest from the date on which they were available to the recipients until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.'

35 Article 4 of the contested decisions states that the Kingdom of Spain is to inform the Commission, within two months of the date of notification of the decisions, of the measures taken to comply with them. Article 5 of Decision 2002/820 states that it does not cover aid granted to Demesa and to Ramondín. Article 5 of Decisions 2003/27 and 2002/894 and Article 6 of Decision 2002/820 state that the contested decisions are addressed to the Kingdom of Spain.

36 Further to an action brought by the Commission, the Court of Justice held that the Kingdom of Spain had failed to fulfil its obligations by failing to adopt the measures required to comply with

the contested decisions (Joined Cases C?485/03 to C?490/03 *Commission* v *Spain* [2006] ECR I?11887).

Procedure

37 By three applications lodged at the Registry of the Court of First Instance on 25 September 2001, the Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco – Gobierno Vasco brought the actions in Cases T?227/01 to T?229/01.

38 By applications lodged at the Court Registry on 22 October 2001, the Confederación Empresarial Vasca (Confebask) brought the actions in Cases T?265/01, T?266/01 and T?270/01.

39 By documents lodged at the Court Registry on 21 December 2001, the Comunidad autónoma de La Rioja applied for leave to intervene in the procedure relating to Cases T?227/01 to T?229/01 in support of the forms of order sought by the Commission.

40 By documents 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 the procedure relating to the action in Case T?227/01 in support of the forms of order sought by the applicants; the Círculo de Empresarios Vascos, the Cámara Oficial de Comercio, Industria y Navegación de Vizcaya and the Territorios Históricos of Álava and Guipúzcoa applied for leave to intervene in the procedure relating to the action in Case T?228/01 in support of the forms of order sought by the applicants; the Círculo de Empresarios Vascos, the Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa and the Territorios Históricos of Álava and Vizcaya applied for leave to intervene in the procedure relating to the action in Case T?229/01 in support of the forms of order sought by the applicants.

41 By documents lodged at the Court Registry on 11 January 2002, Confebask applied for leave to intervene in the procedure relating to the actions in Cases T?227/01 to T?229/01 in support of the applicants.

42 By documents lodged at the Court Registry on 16 January 2002, the Comunidad autónoma de La Rioja applied for leave to intervene in the procedure relating to the actions in Cases T?265/01 to T?270/01 in support of the forms of order sought by the Commission.

43 By orders of 10 September 2002, the President of the Third Chamber (Extended Composition) of the Court of First Instance decided to stay proceedings in each of Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01 until the Court of Justice had ruled on the appeals brought against the judgments of the Court of First Instance of 6 March 2002 in Joined Cases T?127/99, T?129/99 and T?148/99 *Diputación Foral de Álava and Others* v *Commission* [2002] ECR II?1275 (‘*Demesa*’) and in Joined Cases T?92/00 and T?103/00 *Diputación Foral de Álava and Others* v *Commission* [2002] ECR II?1385 (‘*Ramondín*’). In those two judgments, the Court of First Instance ruled on actions brought against two Commission decisions which classified as State aid incompatible with the common market the granting of tax advantages to Demesa and to Ramondín in the Territorio Históríco of Álava (Commission Decision 1999/718/EC of 24 February 1999 concerning State aid granted by Spain to Daewoo Electronics Manufacturing España SA (Demesa) (OJ 1999 L 292, p. 1) and Commission Decision 2000/795/EC of 22 December 1999 on the State aid implemented by Spain for Ramondín SA and Ramondín Cápsulas SA [Ramondín] (OJ 2000 L 318, p. 36)).

44 After a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Fifth Chamber and the present cases were then assigned to the Fifth Chamber,

Extended Composition.

45 The judgments of the Court of Justice of 11 November 2004 in Joined Cases C?183/02 P and C?187/02 P *Demesa and Territorio Histórico de Álava* v *Commission* [2004] ECR I?10609 and in Joined Cases C?186/02 P and C?188/02 P *Ramondín and Others* v *Commission* [2004] ECR I?10653 dismissed the appeals brought against *Demesa* and *Ramondín*, paragraph 43 above.

46 On 10 January 2005, as a measure of organisation of procedure, the Court of First Instance (Fifth Chamber, Extended Composition) raised with the parties the question of how the judgments in *Demesa and Territorio Histórico de Álava* v *Commission* and *Ramondín and Others* v *Commission*, paragraph 45 above, might affect the present actions.

47 By statement of 3 February 2005, the applicants commented on those judgments and said that they wanted the actions to proceed.

48 However, the Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autonóma del País Vasco withdrew the first two pleas in law of their applications in Cases T?227/01 to T?229/01.

49 By orders of 9 September 2005, the President of the Fifth Chamber (Extended Composition) of the Court of First Instance allowed Confebask's application to intervene in the procedure relating to the actions in Cases T?227/01 to T?229/01 in support of the applicants. The intervener lodged its statements, the applicants made no specific comments on them and the Commission lodged its observations within the time-limits allowed.

50 By orders of 9 and 10 January 2006, the President of the Fifth Chamber (Extended Composition) of the Court of First Instance allowed the application to intervene of the Comunidad autónoma de La Rioja in support of the Commission's forms of order in the procedures relating respectively to Cases T?265/01, T?266/01 and T?270/01, on the one hand, and T?227/01 to T?229/01, on the other. The intervener lodged its statements. The applicant in Cases T?265/01, T?266/01 and T?270/01 lodged its observations. The applicants in Cases T?227/01 to T?229/01 said that they had no comments to make. The Commission lodged no observations.

51 By orders of 10 January 2006, the President of the Fifth Chamber (Extended Composition) of the Court of First Instance allowed the applications to intervene of 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, respectively in Cases T?227/01, T?228/01 and T?229/01, but rejected the applications to intervene of the Círculo de Empresarios Vascos and of the Territorios Históricos of Álava, Vizcaya and Guipúzcoa. The interveners lodged their statements. The applicants made no specific comments on them and the Commission lodged its observations within the time-limits allowed.

52 On 27 April 2006, the parties were called upon to submit their observations on the joinder of the actions in Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01 for the purposes of the oral procedure and, possibly, for judgment. By order of the President of the Fifth Chamber (Extended Composition) of the Court of First Instance of 13 July 2006, those cases were joined for the purposes of the oral procedure, in accordance with Article 50 of the Rules of Procedure of the Court of First Instance.

53 On 14 February 2007, as a measure of organisation of procedure, the Court requested from the applicants, in each of Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01, certain information on the beneficiaries of the tax systems at issue.

54 By letter of 26 February 2007, Confebask requested a review of the measure of organisation of procedure. The response of the applicants in Cases T?227/01 to T?229/01, in a letter of 6 March 2007, was that they questioned the relevance of such a measure.

55 On 2 April 2007, the Court confirmed the measure of organisation of procedure of 14 February 2007 and called upon the applicants in each of Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01 to provide the information requested. The applicants replied by letters of 23 April 2007.

56 On 31 July 2007, as a measure of organisation of procedure, the Court addressed questions to the parties, to which they replied in October 2007.

57 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure. The parties presented oral argument and replied to the questions put by the Court at the hearing which took place on 16 January 2008.

58 At that hearing, the Court required the parties to produce before 28 January 2008 certain information on the beneficiaries of the measures at issue. That was officially noted in the record of the hearing.

59 At the end of the hearing, the President of the Fifth Chamber (Extended Composition) decided to stay the close of the oral procedure.

60 By letters of 24 January 2008, as regards the Territorio Histórico of Vizcaya, and 28 January 2008, as regards the Territorios Históricos of Álava and Guipúzcoa, the applicants lodged documents concerning the information requested by the Court at the hearing. Confebask replied by letter of 29 January 2008. The Commission, after the period for doing so was extended by the Court, submitted its observations on the documents produced.

61 The President of the Fifth Chamber (Extended Composition) closed the oral procedure on 12 March 2008. The parties were informed by letters of 14 March 2008.

62 The Court considers, after hearing the parties' observations, in accordance with Article 50 of the Rules of Procedure, that the actions in Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01 should be joined for the purposes of judgment.

63 At the hearing, the applicants in Cases T?227/01 to T?229/01 renewed their request that the Court should call upon the Commission to produce certain documents. The Court considers however that it has sufficient information in the documents before it.

Forms of order sought by the parties

I – *In Cases T?227/01 to T?229/01*

64 The Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco, as applicants, claim that the Court should:

– annul the contested decisions;

– alternatively, annul Article 3 of the contested decisions;

– order the Commission to pay the costs.

65 Confebask, intervener in support of the forms of order sought by the applicants in Cases

T?227/01 to T?229/01, claims that the Court should:

– annul the contested decisions;

– order the Commission to pay the costs.

66 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, interveners in support of the applicants in Cases T?227/01, T?228/01 and T?229/01 respectively, claim that the Court should:

– annul the decisions respectively contested in each of those cases or, alternatively, annul their Article 3;

– order the Commission to pay the costs.

67 The Commission and the Comunidad autónoma de La Rioja, intervener in its support, contend that the Court should:

– dismiss the actions brought by the Territorios Históricos of Álava, Vizcaya and Guipúzcoa as unfounded;

– declare the actions brought by the Comunidad autónoma del País Vasco to be inadmissible or, alternatively, dismiss them as unfounded;

– order the applicants to pay the costs.

II – *In Cases T?265/01, T?266/01 and T?270/01*

68 Confebask, as applicant, claims that the Court should:

– annul the contested decisions;

– alternatively, annul Articles 3 and 4 of the contested decisions;

– order the Commission to pay the costs.

69 The Commission and the Comunidad autónoma de La Rioja, intervener in its support, contend that the Court should:

– declare the actions to be inadmissible;

– alternatively, dismiss the actions as unfounded;

– order the applicant to pay the costs.

Law

I – *Admissibility of the actions*

70 It is appropriate to examine the admissibility initially of the actions in Cases T?227/01 to T?229/01 and, thereafter, of the actions brought by Confebask in Cases T?265/01, T?266/01 and T?270/01.

A – *Admissibility of the actions in Cases T?227/01 to T?229/01*

71 It is appropriate to examine, first, the admissibility of the actions for annulment and, secondly, the admissibility of Confebask's intervention in Cases T?227/01 to T?229/01.

1. Admissibility of the actions for annulment in Cases T?227/01 to T?229/01

(a) Arguments of the parties

72 The Commission, supported by the Comunidad autónoma de La Rioja, without making a formal objection of inadmissibility under Article 114(1) of the Rules of Procedure, considers that the Comunidad autónoma del País Vasco has no standing to bring proceedings for annulment in Cases T?227/01 to T?229/01. It cannot be inferred from the fact that it has 'powers in the area of tax coordination and harmonisation in the Territorios Históricos' that it is directly and individually concerned by the contested decisions. The aid schemes at issue were adopted solely by the Territorios Históricos of Álava, Vizcaya and Guipúzcoa. The Commission refers in that regard to paragraphs 54 and 55 of *Demesa*, paragraph 43 above.

73 The Commission accepts nevertheless that the abovementioned actions are admissible, to the extent that they were brought jointly with the Territorios Históricos of Álava, Vizcaya and Guipúzcoa, which do, according to the Commission, have standing to bring proceedings.

74 The applicants in Cases T?227/01 to T?229/01 claim that their actions are admissible.

(b) Findings of the Court

75 It is clear that the applicants, namely the Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco, are not persons to whom the contested decisions are addressed.

76 The admissibility of the actions brought by the Territorios Históricos of Álava, Vizcaya and Guipúzcoa is not in dispute. The contested decisions relate to aid schemes of which they themselves are the authors. Moreover, the contested decisions prevent the applicants from exercising, as they see fit, their own powers, which they enjoy directly under Spanish law (see, to that effect, Case T?214/95 *Vlaams Gewest* v *Commission* [1998] ECR II?717, paragraphs 29 and 30; *Demesa*, paragraph 43 above, paragraph 50; and Joined Cases T?346/99 to T?348/99 *Diputación Foral de Álava and Others* v *Commission* [2002] ECR II?4259, paragraph 37). The actions are therefore admissible as regards the Territorios Históricos of Álava, Vizcaya and Guipúzcoa.

77 Since one and the same application is involved in each of Cases T?227/01 to T?229/01, there is no need to examine whether the Comunidad autónoma del País Vasco is entitled to bring proceedings (see, to that effect, Case C?313/90 *CIRFS and Others* v *Commission* [1993] ECR I?1125, paragraph 31, and Joined Cases T?374/94, T?375/94, T?384/94 and T?388/94 *European Night Services and Others* v *Commission* [1998] ECR II?3141, paragraph 61).

78 It follows that the actions for annulment in Cases T?227/01 to T?229/01 are admissible.

2. Admissibility of Confebask's intervention in Cases T?227/01 to T?229/01

(a) Confebask's entitlement to intervene

79 In the course of the oral procedure, the Commission contended that, since the actions of the

principal parties relate only to the recovery of the aid at issue and since no member of Confebask is affected by that recovery, Confebask is not entitled to intervene in the proceedings.

80 Further to questions put at the hearing, Confebask supplied a number of documents. Confebask produced a document, from the Director-General of Finance (Director General de Hacienda) of each of the three Territorios Históricos, certifying that a number of companies had benefited from the tax credits at issue. Those documents are evidence that those companies are concerned by the contested decisions and, in particular, by Article 3 of those decisions, which orders recovery of the aid. In addition, an affidavit, signed by the Secretary-General and the President of Confebask, certifies that each of those companies was a member of Confebask when the applications to intervene were lodged.

81 It must be observed that the orders of 9 September 2005 of the President of the Fifth Chamber (Extended Composition) of the Court of First Instance, by which Confebask was given leave to intervene in support of the forms of order sought by the applicants in Cases T?227/01 to T–229/01, do not preclude a fresh examination of the admissibility of its intervention in the final judgment (see, to that effect, Case C?199/92 P *Hüls* v *Commission* [1999] ECR I?4287, paragraph 52).

82 Pursuant to the second paragraph of Article 40 of the Statute of the Court of Justice, applicable to the Court of First Instance by virtue of the first paragraph of Article 53 thereof, the right to intervene is open to any person establishing an interest in the result of the case.

83 According to settled case-law, intervention by representative associations whose object is to protect their members in cases raising questions of principle liable to affect those members is allowed (orders of the President of the Court of Justice 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 C?151/98 P *Pharos* v *Commission* [1998] ECR I?5441, paragraph 6; order of the President of the Fourth Chamber of the Court of First Instance of 19 April 2007 in Case T?24/06 *MAAB* v *Commission* (not published in the ECR), paragraph 10).

84 Moreover, it must be recalled that the adoption of a broad interpretation of the right of associations to intervene is intended to facilitate assessment of the context of such cases whilst avoiding multiple individual interventions which would compromise the effectiveness and proper course of the procedure (order in *National Power and PowerGen*, paragraph 83 above, paragraph 66, and order of 26 July 2004 in Case T?201/04 R *Microsoft* v *Commission* [2004] ECR II?2977, paragraph 38).

85 In the present case, Confebask is a trade organisation which is a cross-sectoral confederation, set up to represent, coordinate, communicate and defend the general and common interests of businesses within its member organisations of the Basque Country in Spain. One of its purposes is to represent Basque businesses and to defend their interests before the authorities and before trade unions and professional bodies.

86 It is not in dispute that Confebask is an organisation which represents companies in the Basque Country in Spain.

87 Further, it must be stated that, as is clear from the documents produced during the oral procedure, a number of companies, which were members of Confebask when it lodged its application for leave to intervene, were the beneficiaries of aid granted in accordance with the tax systems at issue in the present case.

88 Consequently, the outcome of the present actions may affect the interests of those

undertakings, which are both members of Confebask and actual beneficiaries of the tax measures at issue.

89 In addition, Confebask took part in the administrative procedure which led to the adoption of the contested decisions.

90 Accordingly, it is clear that Confebask has established that it has an interest in the outcome of the proceedings and that its intervention in support of the applicants is admissible.

(b) Admissibility of Confebask's statements in intervention

Arguments of the parties

91 The Commission considers that Confebask's statements in intervention in Cases T?227/01 to T?229/01 contain no legal argument, since they refer solely to annexes. The Commission concludes that those statements do not satisfy the requirements of Article 44 of the Rules of Procedure.

92 In the alternative, in the event that the Court rules that Confebask's statements in intervention in Cases T?227/01 to T?229/01, taken as a whole, are admissible, the Commission claims that several pleas in law advanced by Confebask, as an intervener, are inadmissible, since they alter the nature of the dispute as defined by the applications in those cases.

Findings of the Court

93 The second subparagraph of Article 116(4) of the Rules of Procedure provides:

'The statement in intervention shall contain:

(a) a statement of the form of order sought by the intervener in support of or opposing, in whole or in part, the form of order sought by one of the parties;

(b) the pleas in law and arguments relied on by the intervener;

(c) where appropriate, the nature of any evidence offered.'

94 In accordance with settled case-law in relation to an application initiating proceedings, applicable by analogy in relation to a statement in intervention (Case T?171/02 *Regione autónoma della Sardegna* v *Commission* [2005] ECR II?2123, paragraph 186), the summary of the pleas in law must be sufficiently clear and precise to enable the defendant to prepare its defence and to enable the Court to give judgment in the action without the need to seek further information (see Case T?209/01 *Honeywell* v *Commission* [2005] ECR II?5527, paragraph 55, and case-law there cited).

95 Moreover, in order to guarantee legal certainty and sound administration of justice, it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (see *Honeywell* v *Commission*, paragraph 94 above, paragraph 56, and case-law there cited). In that regard, although specific points in the text of the application can be supported and completed by references to specific passages in the documents attached, a general reference to other documents, even those annexed to the application, cannot compensate for the lack of essential elements of legal arguments which, under the provision set out above, must be included in the application (order in Case T?154/98 *Asia Motor Franceand Others* v *Commission* [1999] ECR II?1703, paragraph 49). Furthermore, it is not for the Court of First Instance to seek and identify in

the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (see *Honeywell* v *Commission*, paragraph 94 above, paragraph 57, and Case T?167/04 *Asklepios Kliniken* v *Commission* [2007] ECR II?2379, paragraph 40, and case-law there cited; see also, to that effect, Joined Cases C?189/02 P, C?202/02 P, C?205/02 P to C?208/02 P and C?213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I?5425, paragraphs 97 to 99).

96 In the present case, in its statements in intervention lodged in Cases T?227/01 to T?229/01, Confebask states that it is intervening in support of the forms of order sought by the applicants in each of those cases. Confebask seeks the annulment of the contested decisions and an order that the Commission pay the costs. Confebask considers it appropriate, 'in order to save the Court time and save translation resources', to refer to the applications which it made respectively in Cases T?265/01, T?266/01 and T?270/01, and which are attached as annexes to its statements in intervention. In those statements, Confebask submits, moreover, observations on the infringement of the principle of the protection of legitimate expectations.

97 It is therefore clear that, with the exception of the argument on legitimate expectations, no essential material of fact and law, either substantially or even summarily, is to be found in the statements in intervention themselves.

98 Furthermore, although Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01 may have been joined on 13 July 2006, which post-dates Confebask's intervention, it remains the position that those cases do not lose their autonomy (see, to that effect, Joined Cases C?280/99 P to C?282/99 P *Moccia Irme and Others* v *Commission* [2001] ECR I?4717, paragraph 66, and *Honeywell* v *Commission*, paragraph 94 above, paragraph 71).

99 Lastly, the Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco, as applicants in Cases T?227/01 to T?229/01, and 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 (together the 'Cámaras Oficiales de Comercio e Industria'), as interveners in Cases T?227/01 to T?229/01, are not parties to the actions in Cases T?265/01, T?266/01 and T?270/01, to which Confebask refers. However, the requirement that the parties be identical is an essential condition for the admissibility of pleas purportedly raised by means of a reference to pleadings in another case (*Honeywell* v *Commission*, paragraph 94 above, paragraph 67).

100 In those circumstances, a general reference to other pleadings, even attached to the statements in intervention, cannot compensate for lack of essential elements of legal arguments which, in accordance with point (b) of the second subparagraph of Article 116(4) of the Rules of Procedure, must be included in the statement in intervention.

101 It follows that Confebask's statements in intervention are inadmissible in so far as they refer to the applications in Cases T?265/01, T?266/01 and T?270/01 and are admissible in so far as they plead that the principle of the protection of legitimate expectations was infringed. There is therefore no need to adjudicate on the argument relied on in the alternative by the Commission, that several of Confebask's pleas in law are inadmissible because they alter the nature of the dispute as defined in the applications.

B – *Entitlement of Confebask to bring actions for annulment in Cases T?265/01, T?266/01 and T?270/01*

1. Arguments of the parties

102 The Commission and the Comunidad autónoma de La Rioja, without making a formal objection of inadmissibility under Article 114 of the Rules of Procedure, contend that the actions brought by Confebask are inadmissible. According to them, an undertaking cannot bring an action against a decision declaring the incompatibility of an aid scheme the beneficiaries of which are not specified individually, but in general and abstract terms. Consequently, Confebask cannot rely on any standing to bring proceedings deriving from the fact that undertakings which it represents are directly and individually concerned by the contested decisions. Furthermore, Confebask does not claim to have any interest of its own. Lastly, the interests of procedural economy which explain the recognition of the right of associations to bring proceedings are met by Confebask's intervention in Cases T?227/01 to T?229/01.

103 Confebask considers on the contrary that it does have standing to bring proceedings. Confebask states that it represents the interests of undertakings which themselves are entitled to bring proceedings, since they have tax liabilities under the tax systems in question and accordingly may have to repay aid received.

104 In reply to a question of the Court, Confebask declared at first that it had no information on whether some of its members were actual beneficiaries of the measures at issue. Confebask stated that it is the only spokesman, before the Spanish public authorities, of the Basque undertakings which it represents and which are the persons to whom the measures at issue are addressed. In any event, its standing to bring proceedings can be in no doubt, particularly when it actively participated throughout the procedure from the beginning of the process initiated by the Commission.

105 Following the hearing and the request, renewed for a third time, by the Court, as a result of which the oral procedure was extended, Confebask produced affidavits from the Director-General of Finance of each of the three Territorios Históricos certifying that certain undertakings, additionally certified to have been members of Confebask when the actions in Cases T?265/01, T?266/01 and T?270/01 were brought, were concerned by each of the contested decisions and in particular by the order to recover the tax credits at issue (see paragraph 80 above).

106 The Commission, in its comments on the documents produced by Confebask after the hearing, considers that Confebask has not proved that any order for recovery had been issued to the beneficiaries concerned.

2. Findings of the Court

107 As regards, in the present case, an action for annulment brought by an association, it must be borne in mind that, according to the case-law, the defence of general interests is not sufficient to establish the admissibility of such an action (see, to that effect, Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes and Others* v *Council* [1962] ECR 471, 479 and Case 282/85 *DEFI* v *Commission* [1986] ECR 2469, paragraphs 16 to 18).

108 An association such as Confebask, which is responsible for defending the interests of Basque undertakings, is, as a rule, entitled to bring an action for annulment against a final decision of the Commission in matters of State aid only if the undertakings which it represents or some of those undertakings themselves have *locus standi* or if it can prove an interest of its own (see Joined Cases C?182/03 and C?217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I?5479, paragraph 56, and case-law there cited).

109 Those are the principles which govern assessment of whether Confebask is entitled to bring proceedings in the present case.

110 As regards whether the members of Confebask or the members of its affiliates have standing to bring proceedings in an individual capacity against the contested decisions, it is necessary to examine whether they are individually and directly concerned by the contested decisions, within the meaning of the fourth paragraph of Article 230 EC.

111 Natural or legal persons can claim to be individually concerned only if they are affected by the measure in question by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107, and Case C?298/00 P *Italy* v *Commission* [2004] ECR I?4087, paragraph 36, and case-law there cited).

112 In that regard, the potential beneficiaries of an aid scheme cannot, solely by virtue of that capacity, be regarded as individually concerned by the Commission decision declaring that scheme incompatible with the common market (see the order in Joined Cases T?228/00, T?229/00, T?242/00, T?243/00, T?245/00 to T?248/00, T?250/00, T?252/00, T?256/00 to T?259/00, T?265/00, T?267/00, T?268/00, T?271/00, T?274/00 to T?276/00, T?281/00, T?287/00 and T?296/00 *Gruppo ormeggiatori del porto di Veneziaand Others* v *Commission* [2005] ECR II?787, paragraph 34, and case-law there cited).

113 However, an undertaking is in a different position if it is not only concerned by the decision at issue as an undertaking which is a potential beneficiary of the aid scheme in question, but also as an actual beneficiary of individual aid granted under that scheme, the recovery of which has been ordered by the Commission (see, to that effect, Joined Cases C?15/98 and C?105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I?8855, paragraph 34, and *Italy* v *Commission* , paragraph 111 above, paragraphs 38 and 39).

114 In the present case, the documents submitted by Confebask following the hearing reveal that certain undertakings, which were among its members when the actions in Cases T?265/01, T?266/01 and T?270/01 were brought, were concerned by the tax measures at issue in each of the contested decisions, as actual beneficiaries of individual aid granted under the schemes at issue, the recovery of which has been ordered by the Commission. The affidavits from the Director-General of Finance of each of the Territorios Históricos of Álava, Vizcaya and Guipúzcoa refer to undertakings which benefited from the tax credit of 45% and are evidence that they were affected by the contested decisions.

115 Consequently, those undertakings must be regarded as individually concerned by the contested decisions. In that regard, since the conditions governing the admissibility of an action may be examined at any time by the Community judicature of its own motion, there is nothing to prevent the Court from taking into consideration additional information provided, in this case, during the oral procedure (see, to that effect, Case T?95/03 *Asociación de Estaciones de Servicio de Madrid and Federación Catalana de Estaciones de Servicio* v *Commission* [2006] ECR II?4739, paragraph 50).

116 As to whether the undertakings are directly concerned, the contested decisions oblige the Kingdom of Spain to take the measures necessary to recover from the beneficiaries the aid at issue. Consequently, the undertakings which received the aid must be regarded as directly concerned by those decisions (see, to that effect, *Italy and Sardegna Lines* v *Commission*, paragraph 113 above, paragraph 36, and Case T?136/05 *Salvat père & fils and Others* v *Commission* [2007] ECR II?4063, paragraph 75).

117 It follows that those undertakings, which were members of Confebask, would themselves have been regarded as having standing to bring proceedings.

118 Since Confebask represents undertakings some of which at least have standing to bring proceedings in an individual capacity, Confebask is entitled to bring proceedings against the contested decisions.

II – *The substance of the actions*

119 It is appropriate to examine the pleas in law alleging the absence of State aid, the compatibility of the schemes at issue with the common market, the misuse of powers by the Commission and whether the aid at issue is existing aid, as raised by Confebask, applicant in Cases T?265/01, T?266/01 and T?270/01, before examining, first, the plea in law alleging a procedural irregularity and infringement of the principles of legal certainty, good administration, the protection of legitimate expectations and equal treatment, raised both in Cases T?227/01 to T?229/01 and in Cases T?265/01, T?266/01 and T?270/01, and then the plea in law alleging infringement of the principle of proportionality, relied on by the applicants in Cases T?227/01 to T?229/01.

A – *The plea in law alleging the absence of State aid within the meaning of Article 87 EC (Cases T?265/01, T?266/01 and T?270/01)*

120 In its applications in Cases T?265/01, T?266/01 and T?270/01, Confebask first argues that the tax credits at issue did not entail any reduction in tax revenue. Secondly, Confebask claims that the Commission did not adequately demonstrate that the measures at issue affected intra-Community trade and caused distortion of competition. Thirdly, Confebask challenges the classification of the tax measures at issue. Fourthly, Confebask claims that the nature and overall structure of the tax system justified the tax credits at issue. Fifthly and lastly, Confebask argues that Article 87 EC is not applicable in the present case.

1. The first part, claiming that there was no reduction in tax revenue

(a) Arguments of the parties

121 Confebask claims that the Commission’s assertion, in the contested decisions, that the tax credits at issue would cause a reduction in tax revenue presupposes that there is a general tax rate, in the light of which any tax relief entails a loss of funds and, consequently, State aid. Confebask claims that such a rate does not exist and that the legislation of all Member States contains exemptions of some kind. Moreover, the aim of the disputed Normas Forales was to encourage investment. Accordingly, they generated revenue, since the sums invested were themselves taxed.

122 The Commission does not accept the validity of those arguments.

(b) Findings of the Court

123 Under Article 87(1) EC, any aid granted by Member States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the common market.

124 The Court has consistently held 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 (Case C?6/97 *Italy* v *Commission* [1999] ECR I?2981, paragraph 15).

125 A measure by which the public authorities grant to certain undertakings a tax exemption which, although not involving a transfer of State resources, places the persons to whom the tax exemption applies in a more favourable financial situation than other taxpayers constitutes State aid within the meaning of Article 87(1) EC (Case C?387/92 *Banco Exterior de España* [1994] ECR I?877, paragraph 14).

126 In the present case, it is sufficient to find that the tax credit of 45% at issue provides to the beneficiary firms a reduction in their tax burden by an amount equivalent to 45% of the eligible investment, as the Commission correctly stated in the contested decisions (paragraph 54 of Decision 2002/820; paragraph 62 of Decisions 2003/27 and 2002/894). In the absence of that tax credit, the firm has to pay its final tax liability in full. A firm which receives that tax credit is therefore placed in a financial position which is more favourable than that of other taxpayers.

127 Contrary to what is claimed by Confebask, the Commission was therefore correct to take the view that the tax credits at issue involved a loss of tax revenue.

128 In that regard, there is no evidence for Confebask's assertion that the Commission based its reasoning on a general rate of taxation. On the contrary, it is clear from the contested decisions that the Commission made reference to the normal level of tax deriving from the tax system at issue (paragraph 56 of Decision 2002/820; paragraph 64 of Decisions 2003/27 and 2002/894).

129 Moreover, the fact that the tax laws of Member States contain many exemptions does not alter the nature of the measures at issue in relation to the rules on State aid.

130 Lastly, as regards the argument that the tax credits at issue were intended to encourage investment, with the objective of generating future revenue, it must be remembered that the objective pursued by a measure cannot enable it to escape classification as State aid within the meaning of Article 87(1) EC (Case C?56/93 *Belgium* v *Commission* [1996] ECR I?723, paragraph 79, and *Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraph 63). Moreover, that argument cannot easily be reconciled with the granting of tax reductions (*Ramondín*, paragraph 43 above, paragraph 62, and *Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraph 64).

131 The first part of this plea in law, claiming that there was no reduction in tax revenue, must therefore be rejected as unfounded.

2. The second part, claiming that there was no distortion of competition and no effect on intra-Community trade, and that the statement of reasons was insufficient

(a) Arguments of the parties

132 First, Confebask claims that the statement of reasons for the contested decisions was

insufficient, having regard to Article 253 EC, in relation to the affect on trade and the adverse effect on competition, and relies in particular on *Italy and Sardegna Lines* v *Commission*, paragraph 113 above, paragraph 66. The serious consequences attached to the contested decisions required a statement of reasons which was particularly rigorous. According to Confebask, the Commission is wrong to believe that the tax credits distort trade on the basis that their beneficiaries can take part in intra-Community trade, without any specific detail on that point. The Commission merely produced general data on exports and the external dependence of the Basque economy, but provided no market research concerning the economic sector which was disadvantaged.

133 Secondly, Confebask disputes, in any event, the merits of the Commission's assessment of the effect on trade. Confebask claims that, while the overall tax burden may, in certain cases, influence the strategy of undertakings, that is not true of a merely temporary incentive, which is not a decisive factor in relation to the competitiveness of undertakings. To consider systematically that undertakings or sectors which are in receipt of any form of tax relief have a competitive advantage is accordingly indefensible. Further, according to some research, the influence of the tax incentives adopted by the Basque authorities was slight. That research demonstrates, moreover, that the tax burden in the Spanish Basque Country was higher than that in the rest of the Kingdom of Spain. Consequently, the criticised tax credits were not in themselves capable of affecting intra-Community trade. In addition, the tax burden is not the only factor influencing the economic behaviour of undertakings. It is also necessary to take account of factors such as legislation relating to trade, employment or social security. The influence of those measures was very much greater than that attributed by the Commission to the tax credits in question, and the Commission has not demonstrated how the provisions at issue are not like any other difference in Member States' tax legislation.

134 The Commission does not accept the validity of those arguments.

(b) Findings of the Court

135 Under Article 87(1) EC, only State aid which 'affects trade between Member States' and which 'distorts or threatens to distort competition' is incompatible with the common market.

136 As regards the Commission's obligation to state reasons for its decisions, it is settled case-law that the statement of reasons must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (Case C?367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I?1719, paragraph 63, and *Italy and Sardegna Lines* v *Commission*, paragraph 113 above, paragraph 65).

137 In the present case, it is clear from paragraph 57 of Decision 2002/820 and from paragraph 65 of Decisions 2003/27 and 2002/894 that the Commission relied on reports published by the statistical office of the Basque Government and found that 'the Basque economy [was] very open to the outside and its production [was] very much geared to exporting' and that 'given these characteristics of the Basque economy, it [might] be deduced that beneficiary firms [were] engaged in economic activities which [were] likely to include intra-Community trade'. The Commission concluded that, in those circumstances, the aid at issue strengthened the position of beneficiary firms vis-à-vis other firms which were their competitors in intra-Community trade and

that such trade was thereby affected. The Commission adds that ‘the beneficiary firms’ profitability [was] improved by the increase in their net profit (profit after tax)’ and that ‘this enable[d] them to compete with firms which [were] not eligible for the tax credit, either because they ha[d] not invested, or because their investments ha[d] not reached the threshold of ESP 2 500 million following the introduction of the 45% tax credit at issue’.

138 Such a statement of reasons discloses in a clear and unequivocal fashion the Commission’s reasoning on the effect of the tax credits on trade and competition. It enables the persons concerned to ascertain the reasons for the measures taken and enables the Court to exercise its power of review.

139 The contested decisions can, in that regard, be distinguished from the decision which was annulled by the Court of Justice in *Italy and Sardegna Lines* v *Commission*, paragraph 113 above, as relied on by Confebask. As was stated in paragraph 67 of that judgment, to conclude that competition was adversely affected, the Commission confined itself to the simple assertion that the aid was selective and restricted to shipping companies in Sardinia (Italy). It is clear from the foregoing that that is not the case in the contested decisions.

140 Moreover, the criticism cannot be made of the Commission that it did not submit any research concerning the economic sector which was disadvantaged, since the tax rules at issue apply across sectors and, in addition, the Spanish authorities did not answer the request for information made in the decisions to initiate the formal investigation procedures which led to the contested decisions.

141 Consequently, taking account of the circumstances of the present case, the contested decisions must be considered to contain a sufficient statement of the reasons why the Commission considers that the measures at issue distort or threaten to distort competition and affect intra-Community trade. Accordingly, the contested decisions meet the requirements of Article 253 EC in that respect.

142 As regards the merits of the Commission’s assessment, it must be recalled that, when the result of State aid or aid granted through State resources is that the position of an undertaking is strengthened compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by the aid, even if the beneficiary undertaking is itself not involved in exporting (see Case C?75/97 *Belgium* v *Commission* [1999] ECR I?3671, paragraph 47, and Case T?217/02 *Ter Lembeek* v *Commission* [2006] ECR II?4483, paragraph 181, and case-law there cited). Furthermore, the Commission is required not to establish that the measure has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether the measure is liable to affect such trade and distort competition (Case C?372/97 *Italy* v *Commission* [2004] ECR I?3679, paragraph 44).

143 Moreover, in the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies (Case C?66/02 *Italy* v *Commission* [2005] ECR I?10901, paragraph 91; see, to that effect, *Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraph 68). In a case such as the present, where the tax systems at issue were not notified, it is not necessary for the reasoning on which the Commission decisions are based to contain an up-to-date assessment of the effect of the systems on competition and on trade between Member States (*Belgium* v *Commission*, paragraph 142 above, paragraph 48).

144 In the present case, as regards the condition relating to the effect on trade, as the Commission stated in the contested decisions (paragraph 57 of Decision 2002/820; paragraph 65 of Decisions 2003/27 and 2002/894), it can be deduced from the characteristics of the Basque

economy that the beneficiary firms are engaged in economic activities which are likely to include trade between Member States.

145 In those circumstances, intra-Community trade is likely to be affected by the tax advantages at issue.

146 As regards, furthermore, the condition relating to distortion of competition, the tax credits, by reducing the costs of firms which receive them, improve the competitive position of the beneficiary firms vis-à-vis firms which are their competitors and which do not receive those advantages. The result is therefore a distortion of competition or, at the least, a likelihood of such distortion.

147 Consequently, the Commission was correct to find, in the present case, that the tax credits were such as to affect trade between Member States and to distort or threaten to distort competition.

148 That conclusion cannot be disturbed by the fact that those tax advantages are temporary, that their influence is small and not decisive, or even that they are not the only factor to be taken into account. There is no requirement in case-law that the distortion of competition, or the threat of such distortion, and the effect on intra-Community trade, must be significant or substantial (Case T?55/99 *CETM* v *Commission* [2000] ECR II?3207, paragraph 94).

149 Equally, in the absence of harmonisation at Community level, the argument that there are differences in the tax legislation of Member States has no relevance in relation to the classification of State aid.

150 It follows that the second part of this plea in law, claiming that there was no distortion of competition and no effect on intra-Community trade, and also that the statement of reasons for the contested decisions was insufficient, must be rejected as unfounded.

3. The third part, claiming that the tax measures are general

(a) Arguments of the parties

151 Confebask does not accept the Commission’s assessment that the provisions at issue confer a selective advantage. Confebask claims that the tax legislation at issue is general in application and that all economic traders can benefit from it. Similarly, the Normas Forales in question contain no regional specificity, since they apply to all undertakings based in the territorial jurisdiction of the Territorios Históricos of Álava, Vizcaya and Guipúzcoa and are designed merely to promote large investments. In that regard, Confebask considers that the Commission displays inconsistency by abandoning, in the contested decisions, the premiss that the measure was regionally specific, though that was referred to in the decisions to initiate the formal investigation procedure.

152 Confebask claims that the criterion of the minimum investment threshold, used by the Commission in the present case, has no counterpart in criteria applied in the past and is not referred to in the 1998 notice on tax aid to businesses (see paragraph 7 above), according to which, furthermore, tax measures ought not to be classified as State aid solely because some firms or some sectors are less affected than others (1998 notice on tax aid to businesses, paragraph 14).

153 Confebask refers also to the *XXVIIIth Report on Competition Policy* (paragraph 207), adopted by the Commission, according to which, in the case of taxation measures, it is necessary to distinguish between ‘the situation whereby the beneficiaries are certain undertakings or the

production of certain goods, … and that whereby the measures in question have a cross-sectoral impact and are intended to favour the whole of the economy. In the latter case, there is no [S]tate aid within the meaning of Article 87(1) [EC], but a general measure'.

154 Confebask adds that tax systems frequently contain quantitative criteria and that the use of such a criterion in order to determine whether a tax measure is selective would mean that virtually all tax provisions in the Member States would require examination as possible State aid. Such monitoring would, according to Confebask, go beyond the provisions of the Treaty.

155 Furthermore, Confebask claims that the measures at issue are general measures, since the Diputaciones Forales have no discretion. According to Confebask, the tax credits are granted automatically and the authorities do no more than check whether the taxpayers satisfy the required conditions to qualify for them. Confebask adds that in the Spanish legal order arbitrary action by the authorities is prohibited. Moreover, Confebask claims that, by providing that the authorities are to determine the amount of the investment by deciding on the time-limits and restrictions applicable to the tax credit, the provisions at issue establish a 'management device' which makes it possible to check that the conditions required are satisfied, but do not grant any discretion to the Diputaciones.

156 Lastly, Confebask comments that legislation of general application can only establish State aid if it creates a 'legislative framework which permits the granting [of aid] without any further procedure; in other words, if there is no discretion'. On the other hand, if, as is implied in the Commission's position, the Normas Forales at issue were to be regarded as mere empowering measures, they could not be classified as State aid. In any event, the contested decisions are accordingly 'devoid of content'.

157 The Commission, supported by the Comunidad autónoma de La Rioja, does not accept those arguments.

(b) Findings of the Court

158 It should be observed that the specific nature of a State measure, namely its selective application, constitutes one of the characteristics of State aid within the meaning of Article 87(1) EC. In that regard, it is necessary to determine whether or not the measure in question entails advantages accruing exclusively to certain undertakings or certain sectors of activity (*CETM* v *Commission*, paragraph 148 above, paragraph 39; see also, to that effect, *Belgium* v *Commission*, paragraph 142 above, paragraph 26).

159 In the present case, in the contested decisions, the Commission bases the selectivity of the provisions at issue on the minimum investment amount (ESP 2 500 million) which restricts the tax credit's application only to those firms capable of making such investments and, alternatively, on the discretionary power of the tax authorities (paragraphs 60 and 61 of Decision 2002/820; paragraphs 68 and 69 of Decisions 2003/27 and 2002/894; see paragraph 28 above).

160 First, Confebask cannot claim that the contested decisions are inconsistent, on the ground that the Commission is said to have abandoned the argument that because the measures at issue were regionally specific, allegedly referred to in the decisions to initiate the formal investigation procedure, the measures were therefore selective. In fact, those decisions were not based on the regional specificity of the schemes at issue and, consequently, this argument rests on a misreading of those decisions (see paragraph 22 above, and *Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraphs 19, 20 and 56).

161 It is clear, moreover, from the contested decisions (paragraph 60 of Decision 2002/820;

paragraph 68 of Decisions 2003/27 and 2002/894) that only firms which make investments exceeding the threshold of ESP 2 500 million (EUR 15 025 303), and do so after 1 January 1995 (Decision 2002/820) and after 1 January 1997 (Decisions 2003/27 and 2002/894), are eligible for the 45% tax credit at issue. All other firms, even when they invest, but do not exceed that threshold, are ineligible for the advantage at issue.

162 It is clear that, by restricting the application of the tax credit to investments in new fixed assets exceeding ESP 2 500 million, the Basque authorities restricted the tax advantage in question to undertakings which have at their disposal significant financial resources. The Commission could therefore justifiably conclude that the tax credits provided in the Normas Forales at issue were designed to apply selectively to 'certain undertakings' within the meaning of Article 87(1) EC (*Demesa*, paragraph 43 above, paragraph 157, and *Ramondín*, paragraph 43 above, paragraph 39).

163 Furthermore, the fact that tax systems frequently contain quantitative criteria does not allow the conclusion that the provisions at issue in the present case, by establishing a tax advantage favouring undertakings with significant financial resources at their disposal, were outside the scope of Article 87(1) EC (see, to that effect, *Ramondín*, paragraph 43 above, paragraph 40).

164 The arguments based on the 1998 notice on tax aid to businesses do not allow the conclusion that the measures at issue are general. That notice provides that general measures do not constitute State aid, even if certain undertakings or certain sectors benefit from them more than others. In the present case, however, the measures at issue are not general, since, as was stated earlier (see paragraph 162 above), only certain undertakings are eligible.

165 Furthermore, the schemes at issue in the present case, although cross-sectoral in nature, restrict the advantages to certain undertakings which are subject to the Basque tax systems. They cannot therefore be considered as intended to benefit the entire economy, in the sense meant by the Commission in the *XXVIIIth Report on Competition Policy*, relied on by Confebask (see paragraph 153 above), and, accordingly, they must be classified as selective measures.

166 It follows from the foregoing that the tax credits at issue constitute a selective advantage 'favouring certain undertakings', within the meaning of Article 87(1) EC.

167 Such a finding is, in itself, sufficient to show that the tax credits at issue fulfil the condition of specificity which is one of the characteristics of the definition of State aid. Consequently, it is no longer necessary to examine whether the selective nature of the measures at issue is or is not also the result of the authority's discretionary power in implementation of those measures (see, to that effect, Case C?501/00 *Spain* v *Commission* [2004] ECR I?6717, paragraphs 120 and 121, and *Demesa*, paragraph 43 above, paragraph 160), particularly when that criterion, whether or not the authority has a discretionary power, is, in the present case, only used by the Commission as an alternative (paragraph 61 of Decision 2002/820; paragraph 69 of Decisions 2003/27 and 2002/894).

168 In any event, as regards whether or not the power of the Diputaciones Forales is discretionary in the present case, it must be recalled that Confebask's arguments in that regard have already been rejected by the Court in relation to the 45% tax credit provided for by the Sixth Additional Provision of Norma Foral No 22/1994 of Álava, at issue in *Demesa*, paragraph 43 above, paragraphs 150 to 154, and *Ramondín*, paragraph 43 above, paragraphs 32 to 35. The Court held that the legislation granted to the authorities a discretion, enabling them inter alia to vary the amount of the tax concessions at issue or the eligibility conditions according to the characteristics of the investment projects submitted for their assessment.

169 As regards the amendments made to the Sixth Additional Provision of Norma Foral No 22/1994 of Álava, which was at issue in *Demesa* and *Ramondín*, paragraph 43 above, for 1998 and 1999 (see paragraph 13 above), those amendments introduce the concept of 'investment process', which can include those investments 'made during the preparatory phase of the project which generates the investments and with a necessary, direct link to that process'. However, it is clear that those concepts are not defined, with the result that the discretion of the authorities is unaffected.

170 As regards the tax credits applicable in the Territorios Históricos of Vizcaya and Guipúzcoa, it is clear from the provisions at issue (see paragraph 15 above) that the Diputaciones Forales have a discretion, inter alia in relation to the amount to which the 45% tax credit is applicable, the length of the investment process and the scope of the concept of investment eligible for tax credits. Further, there has been no challenge to the Commission's finding (paragraph 69 of Decisions 2003/27 and 2002/894) that the concepts of 'investment process' and 'preparatory phase of the investment' are not defined, and consequently the Commission could correctly conclude that the regional authorities had a discretion in the matter.

171 Lastly, as the Commission stated in its pleadings, in order to preclude characterisation as a general measure, it is not necessary to determine whether the conduct of the tax authority is arbitrary. It is enough to establish, as was done in this case, that the authority has a discretionary power (*Demesa*, paragraph 43 above, paragraph 154).

172 As regards, finally, the argument that, if it is accepted that the authorities have a discretionary power, the measures at issue must be regarded as merely empowering and not subject to the requirement to notify, it must also be rejected. The provisions at issue set out the conditions for the granting of the tax credits in detail and therefore were correctly considered by the Commission to be aid schemes which required to be notified.

173 It follows from the foregoing that the measures at issue are selective measures.

4. The fourth part, claiming that the tax measures were justified by the nature and overall structure of the tax system

(a) Arguments of the parties

174 Confebask claims that the Territorios Históricos of Álava, Vizcaya and Guipúzcoa autonomously determine their tax systems according to the economic policies adopted by democratically elected representative bodies. The tax provisions at issue therefore constitute an instrument of fiscal policy and economic organisation stemming from the State's political and economic choices, which cannot be reviewed at Community level.

175 Confebask further claims that the tax provisions at issue are objective and horizontal and have a beneficial effect on employment and investment, fully compatible with the nature and overall structure of the tax systems at issue.

176 Lastly, the establishment of tax advantages according to certain minimum investment thresholds corresponds to the objective of the provisions at issue. That objective is to collect revenue from the activities of the undertakings, while ensuring the promotion of their development, in order to maintain their taxpaying capacity. In that perspective, it is logical that the contested tax measures do not treat small investments and large investments alike.

177 The Commission, supported by the Comunidad autónoma de La Rioja, does not accept that

these arguments are well founded.

(b) Findings of the Court

178 The Court observes first of all that the fact that the Territorios Históricos have autonomy in taxation matters which is recognised and protected by the Spanish Constitution does not exempt them from complying with the provisions of the Treaty concerning State aid. In that regard, Article 87(1) EC, by referring to aid granted by 'a Member State or through State resources in any form whatsoever' is directed at all aid financed from public resources. It follows that measures adopted by intra-State entities (decentralised, federated, regional or other) of the Member States, whatever their legal status and description, fall, in the same way as measures taken by the federal or central authority, within the ambit of Article 87(1) EC, if the conditions of that provision are satisfied (Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 17, and *Ramondín*, paragraph 43 above, paragraph 57).

179 Next, it must be recalled that the justification of the measures at issue 'by the nature or overall structure of the system' refers to the consistency of a specific tax measure with the internal logic of the tax system in general (see, to that effect, *Belgium* v *Commission*, paragraph 142 above, paragraph 39). Thus, a specific tax measure which is justified by the internal logic of the tax system – such as the progressiveness of the tax which is justified by the system's aim of redistribution – will be outside the scope of Article 87(1) EC (*Demesa*, paragraph 43 above, paragraph 164).

180 In the present case, Confebask claims that the tax measures at issue are based on objective criteria and are horizontal. However, as stated previously (see paragraphs 158 to 166 above), the measures at issue remain selective and those arguments do not permit the conclusion that they are measures justified by the internal logic of the tax system concerned.

181 Next, Confebask asserts that the establishment of a minimum investment threshold corresponds to the objective of the provisions at issue, namely to encourage investment in the three Territorios Históricos and to maintain the taxpaying capacity of businesses.

182 However, to restrict entitlement to aid to a limited category of businesses is not symptomatic of a general intention to encourage investment.

183 Further, Confebask's claim does no more than refer to general objectives of economic policy which are extraneous to the tax system concerned.

184 However, the objective pursued by the measures at issue cannot prevent their classification as State aid within the meaning of Article 87(1) EC. 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, outside the scope of Article 87(1) EC. However, that provision does not distinguish between measures of State intervention by reference to their causes or aims but defines them in relation to their effects (Case C?241/94 *France* v *Commission* [1996] ECR I?4551, paragraph 20, and *CETM* v *Commission*, paragraph 148 above, paragraph 53).

185 Accordingly, the specific tax measures at issue cannot be regarded as being justified by the nature or overall structure of the tax system taken into consideration by the Commission.

186 Consequently, the Commission was correct to hold in the contested decisions that the tax credits corresponding to 45% of the amount of the investment were State aid within the meaning of Article 87(1) EC.

5. The complaint that Article 87 EC is not applicable to the measures at issue

187 In its response of 3 February 2005 to questions put by the Court in Cases T?265/01, T?266/01 and T?270/01 (see paragraph 47 above), Confebask comments that, in the cases which led to the judgments of the Court of Justice of 11 November 2004 in *Demesa and Territorio Histórico de Álava* v *Commission* and in *Ramondín and Others* v *Commission*, paragraph 45 above, the applicants had claimed that a tax measure, adopted prior to the resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council, of 1 December 1997 [the Ecofin Council meeting] on a code of conduct for business taxation (OJ 1998 C 2, p. 2), and prior to the 1998 notice on tax aid to businesses, was excluded from the review of State aid. In Confebask's opinion, that complaint, which was rejected by the Court of Justice as being new and therefore inadmissible, should be upheld.

188 The Court of First Instance holds that such a complaint, raised in a reply to questions put by the Court, must be rejected as inadmissible under the first subparagraph of Article 48(2) of the Rules of Procedure. It is, in fact, a new plea in law introduced in the course of proceedings, which is not based on matters of law or of fact which have come to light in the course of the procedure.

189 It is true that a plea which may be regarded as amplifying a plea made previously, whether directly or by implication, in the original application must be considered admissible (Case 306/81 *Verros* v *Parliament* [1983] ECR 1755, paragraph 9, and Case C?301/97 *Netherlands* v *Council* [2001] ECR I?8853, paragraph 169).

190 However, even if the complaint that Article 87 EC is not applicable to the measures at issue can be regarded as an amplification of the plea in law, based on the absence of State aid within the meaning of Article 87 EC, examined in paragraphs 120 to 186 above, it is clear that the complaint must in any event be rejected as inadmissible.

191 It must be recalled that, in accordance with Article 44(1)(c) of the Rules of Procedure, an application must, inter alia, contain the subject-matter of the dispute and a brief statement of the grounds on which the application is based. It is settled case-law that those indications must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and sound administration of justice, it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (see Case T?106/95 *FFSA and Others* v *Commission* [1997] ECR II?229, paragraph 124; the order in *Asia Motor France and Others* v *Commission*, paragraph 95 above, paragraph 49; and the judgment of 19 July 2007 in Case T?360/04 *FG Marine* v *Commission* (not published in the ECR), paragraph 33, and case-law there cited).

192 However, in the present case, the alleged complaint is not at all made explicit. Confebask does no more than subscribe to the arguments which were submitted, in that regard, before the Court of Justice by the applicants in the cases which led to *Demesa and Territorio Histórico de Álava* v *Commission* and *Ramondín and Others* v *Commission*, paragraph 45 above.

193 Accordingly, the complaint that Article 87 EC is not applicable to the measures at issue must be rejected as inadmissible.

194 Consequently, the plea in law alleging the absence of State aid must be rejected in its entirety.

B – *The plea in law claiming that the Normas Forales are compatible with the common market (Cases T?265/01, T?266/01 and T?270/01)*

1. Arguments of the parties

195 First, Confebask claims that in the contested decisions the Commission considers that the provisions at issue are incompatible with the common market because they fail expressly to take into consideration Community provisions relating to sectoral aid, regional aid or other forms of aid. Confebask concludes that, to comply with State aid rules, unless national regulations adjusting the tax burden specify the undertakings to which they do not apply, they will be incompatible with the common market. However, Confebask claims that tax law should not contain that kind of specification. In any event, Confebask considers that the Commission should have clearly explained in what way the aid was incompatible with the common market, even when such specification was lacking.

196 Secondly, Confebask criticises the Commission for having concluded that the Normas Forales were incompatible with the 1998 Guidelines (see paragraph 8 above), after an examination which was strictly formal and abstract, without carrying out any concrete examination, even though the 1998 Guidelines had no binding legal effect and could not therefore, in the absence of a thorough analysis, be the basis of a finding that aid was incompatible.

197 The Commission, supported by the Comunidad autónoma de La Rioja, contends that that plea in law should be rejected as unfounded.

2. Findings of the Court

198 It must be recalled that the Commission has wide discretion in matters falling under Article 87(3) EC (Case C?142/87 *Belgium* v *Commission* [1990] ECR I?959, paragraph 56; Case C?39/94 *SFEIandOthers* [1996] ECR I?3547, paragraph 36; and Case T?198/01 *Technische Glaswerke Ilmenau* v *Commission* [2004] ECR II?2717, paragraph 148). Judicial review must therefore be limited to establishing whether there has been compliance with the rules governing procedure and the statement of reasons, whether the facts have been accurately stated and whether there has been any manifest error of assessment or a misuse of powers. The Court is not entitled to substitute its own economic assessment for that of the Commission (see *Technische Glaswerke Ilmenau* v *Commission*, paragraph 148, and case-law there cited).

199 In the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies (*Italy* v *Commission*, paragraph 143 above, paragraph 91; see, to that effect, *Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraph 68).

200 It can be observed that under the pretext of alleging an infringement of Article 87(3) EC, Confebask's criticism of the Commission is, in essence, that the statement of reasons in the contested decisions is insufficient.

201 It is clear from the contested decisions (paragraphs 77 to 93 of Decision 2002/820; paragraphs 84 to 99 of Decisions 2003/27 and 2002/894) that the Commission examined the

compatibility of the aid schemes at issue with regard to the derogations laid down in Article 87(3)(a) and (c) EC in the light of the Community rules on regional aid (paragraphs 77, 78 and 86 of Decision 2002/820; paragraphs 84, 85 and 92 of Decisions 2003/27 and 2002/894, which refer to the Commission communication on the method for the application of Article [87](3)(a) and (c) [EC] to regional aid (OJ 1988 C 212, p. 2) and to the 1998 Guidelines (see paragraph 8 above)); on investment aid (paragraphs 82, 89 and 92 of Decision 2002/820; paragraphs 88, 95 and 98 of Decisions 2003/27 and 2002/894, which refer to the first Council resolution of 20 October 1971 of Representatives of the Governments of the Member States, meeting within the Council, on general regional aid schemes (OJ, English Special Edition Series II, Volume IX, p. 57), to the Commission communication on regional aid systems (OJ 1979 C 31, p. 9) and to the Commission notice entitled 'Multisectoral framework on regional aid for large investment projects' (OJ 1998 C 107, p. 7)); on aid to small and medium-sized enterprises (SMEs) (paragraphs 81 and 88 of Decision 2002/820; paragraphs 87 and 94 of Decisions 2003/27 and 2002/894, which refer to the Commission notice on the Community framework on aid to SMEs (OJ 1992 C 213, p. 2)); and on aid to undertakings in difficulty (paragraph 93 of Decision 2002/820: paragraph 99 of Decisions 2003/27 and 2002/894, which refer to the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 1994 C 368, p. 12), as amended by the guidelines published in 1999 (OJ 1999 C 288, p. 2)).

202 The Commission stated at the outset that the tax credits seemed to be capable of satisfying, at least in part, the conditions imposed by the 1998 Guidelines because, first, they were based on investment expenditure, and, secondly, the amount paid did not exceed 45% of the investment (see paragraph 77 of Decision 2002/820; paragraph 84 of Decisions 2003/27 and 2002/894). The Commission then explained that nevertheless they could not qualify for one of the regional derogations laid down in Article 87(3) EC. The Commission stated that the Territorios Históricos of Álava, Vizcaya and Guipúzcoa were not eligible for the derogation laid down in Article 87(3)(a) EC because the per capita GDP was too high (see paragraph 78 of Decision 2002/820; paragraph 85 of Decisions 2003/27 and 2002/894). The Commission added that the tax credits could not be authorised either on the basis of Article 87(3)(c) EC, since their scale exceeded the ceilings set in successive regional aid maps (paragraph 79 of Decision 2002/820; paragraph 86 of Decisions 2003/27 and 2002/894). The Commission also stated that they were, moreover, likely to be applied to replacement investments, and to expenditure linked to the 'investment process' or to 'investments made during the preparatory phase'. The Commission considered that, in the absence of a precise definition of those terms, the possibility could not be ruled out that the aid at issue might be applied to the initial investment but also to other expenditure which could not be regarded as investment expenditure pursuant to the relevant Community rules (paragraph 82 of Decision 2002/820; paragraph 88 of Decisions 2003/27 and 2002/894). The Commission stated that the measures at issue were not limited to eligible zones, were not subject to ceilings and could not therefore be regarded as compatible under the regional derogation in Article 87(3)(c) EC (paragraph 84 of Decision 2002/820; paragraph 90 of Decisions 2003/27 and 2002/894).

203 As regards measures supportive of investment expenditure which do not correspond to the Community definition, the Commission considered that the measures were to be classed as operating aid, which, as a general rule, is prohibited and which could not, in the present case, be eligible for the derogation provided in Article 87(3)(a) EC (paragraphs 85 and 86 of Decision 2002/820; paragraphs 91 and 92 of Decisions 2003/27 and 2002/894).

204 The Commission held that the measures at issue could not qualify for the derogation in Article 87(3)(c) EC concerning aid to facilitate the development of certain activities, since they did not comply with the applicable Community rules, neither in relation to SMEs (paragraph 88 of Decision 2002/820; paragraph 94 of Decisions 2003/27 and 2002/894), nor in relation to large enterprises, since the schemes at issue were not aimed at certain activities (paragraphs 89 and 90

of Decision 2002/820; paragraphs 95 and 96 of Decisions 2003/27 and 2002/894).

205 Furthermore, in the absence of sectoral limitations, the Commission observed that the 45% tax credits could not comply with the sectoral rules (paragraph 91 of Decision 2002/820; paragraph 97 of Decisions 2003/27 and 2002/894).

206 Lastly, the Commission held that the schemes at issue could not qualify either for other derogations provided in Article 87(2) and (3) EC (paragraph 94 of Decision 2002/820; paragraph 100 of Decisions 2003/27 and 2002/894). The Commission concluded that the aid schemes at issue were incompatible with the common market.

207 The Commission added that the contested decisions, which related to aid schemes, were without prejudice to the possibility that individual aid might be regarded, in full or in part, as compatible with the common market on its own merits (paragraph 98 of Decision 2002/820; paragraph 105 of Decision 2003/27; paragraph 107 of Decision 2002/894).

208 It follows from the foregoing that, taking account, first, of the nature of the aid scheme measures at issue and, secondly, the failure of the Spanish authorities to provide information, notwithstanding the Commission's requests, on the beneficiaries of the schemes at issue, the Commission's analysis cannot be regarded as abstract.

209 Moreover, Confebask does not provide any evidence which in any way supports the claim that the Commission's analysis of the compatibility of the measures at issue with the common market is incorrect. In particular, Confebask advances no argument to show that application of the 1998 Guidelines, in the present case, in any way affected the lawfulness of the contested decisions.

210 It follows that the plea in law challenging the incompatibility of the tax credits at issue with the common market is unfounded.

C – *The plea in law claiming misuse of power (Cases T?265/01, T?266/01 and T?270/01)*

1. Arguments of the parties

211 Confebask claims, on several occasions in its pleadings, that the Commission misused its powers, because the Commission's objective in using its powers under Article 87 EC was to achieve harmonisation of the Member States' tax systems. Confebask claims that, after the failure of Commission's attempts to achieve harmonisation, the contested decisions are part of a comprehensive process, initiated by the Commission, aimed at harmonising the direct taxation of businesses by means of State aid, instead of using the appropriate legal method provided for that purpose in Article 96 EC.

212 The Commission, supported by the Comunidad autónoma de La Rioja, contends that this plea in law should be rejected.

2. Findings of the Court

213 It must be observed that a decision is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence, to have been taken with the exclusive or main purpose of achieving an end other than that stated (see Case C?110/97 *Netherlands* v *Council* [2001] ECR I?8763, paragraph 137, and case-law there cited, and *Ramondín and Others* v *Commission*, paragraph 45 above, paragraph 44).

214 In the present case, Confebask provides no objective evidence from which it could be

inferred that the Commission's real purpose, in adopting the contested decisions, was to achieve fiscal harmonisation.

215 Moreover, Confebask has not even shown that any harmonisation has in fact been achieved at Community level by the contested decisions (see, to that effect, *Ramondín*, paragraph 43 above, paragraph 85).

216 In those circumstances, the plea in law claiming misuse of power must be rejected as unfounded.

D – *The plea in law claiming that the aid at issue is existing aid (Cases T?265/01, T?266/01 and T?270/01)*

1. Arguments of the parties

217 Confebask claims that, even if the Normas Forales at issue constitute State aid, they ought to be classified as existing aid, and the obligation to recover the aid should consequently be annulled.

218 First, in Case T?265/01, Confebask claims that in 1981, 1983 and 1984, in other words, before the accession of the Kingdom of Spain to the Community, the Territorio Histórico of Álava established tax credits 'substantially identical' to the Sixth Additional Provision of Norma Foral No 22/1994 of Álava, in order to encourage investment. Confebask refers to the tax credit of 15% of investment established in 1981, which was conditional on maintaining employment for two years and increasing the workforce and investment, the percentage rising to 20% in 1984; the 50% tax credit established in 1983 following the 1983 floods which damaged fixed assets; and the tax credit of 50% of investment made in 1984 and 1985 which was also subject to certain conditions, inter alia self-financing of at least 25%. According to Confebask, the aid is therefore existing aid in accordance with Article 1(b)(i) of Regulation No 659/1999.

219 Secondly, in Cases T?265/01, T?266/01 and T?270/01, Confebask claims that the Normas Forales at issue are a continuation of provisions adopted after the accession of the Kingdom of Spain to the Community and to which the Commission made no objection.

220 Confebask claims, in that regard, in Case T?270/01, that on 22 April 1986 and 27 April 1987 the Territorio Histórico of Guipúzcoa enacted Normas Forales Nos 4/1986 and 14/1987, containing tax reductions of 50% on investments, comparable, in its opinion, to those challenged in the contested decisions.

221 Confebask also claims, in Cases T?265/01, T?266/01 and T?270/01, that the tax credits established in 1988 in the three Territorios Históricos and the tax systems at issue in the present case are very similar. However, according to Confebask, those 1988 tax credits were authorised by the Commission in Decision 93/337/EEC of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque Country (OJ 1993 L 134, p. 25). Confebask refers in addition to a letter from the Commission of 3 February 1995, in which the Commission acknowledged that the incompatibility of the 1988 tax credits in relation to freedom of establishment had been corrected.

222 Confebask adds that it is a requirement of the case-law that, if a measure is to be classified as new aid, it must be substantially altered. To the extent that Article 1(c) of Regulation No 659/1999 refers to ‘alterations’ and thereby restricts the meaning of existing aid, an interpretation of that article in a way contrary to the case-law infringes the rights of the authorities and undertakings concerned.

223 Thirdly, Confebask claims that the contested decisions are the result of a change in the Commission’s attitude to tax relief measures, since the Commission had at no time previously maintained, and particularly not in Decision 93/337 on the 1988 tax credits, that a measure could be ‘specific’ on the sole ground that its scope is limited in time or quantitatively. In the light of that change in policy, the Normas Forales at issue should be treated as existing aid within the meaning of Article 1(b)(v) of Regulation No 659/1999.

224 Confebask also infers that there was a change in the Commission’s attitude from the fact that on 17 March 1997 the Member of the Commission responsible for competition policy stated to a delegation from the Comunidad autónoma de La Rioja, in relation to corporation tax exemption schemes established in 1993 by the Territorios Históricos of Álava, Vizcaya and Guipúzcoa, that consideration of them was not within the powers of the ‘European Union’. According to Confebask, the significance of that statement is that the Commission initially analysed those 1993 exemption schemes as general tax measures and not as State aid. The origin of the Commission’s change of attitude is to be found in the 1998 notice on tax aid to businesses. It is clear, in that connection, from the Commission report C (2004) 434 of 9 February 2004 on its implementation that the objective of that notice was not only to clarify the application of the State aid rules, but also to reinforce their application.

225 Given such a change, Confebask considers that the Normas Forales at issue must be analysed as existing aid, in accordance with Article 1(b)(v) of Regulation No 659/1999.

226 Lastly, Confebask states that the objective of the tax measures at issue was to ‘stimulate investment, which would not have been made without such an incentive’. Confebask concludes that recovery of the sums at issue is equivalent to retracting that investment. Moreover, obligations of that kind would place the undertakings in a difficult position.

227 The Commission, supported by the Comunidad autónoma de La Rioja, contends that this plea in law should be rejected as unfounded.

2. Findings of the Court

228 First, the EC Treaty establishes different procedures according to whether the aid is existing or new. Whereas new aid must, under Article 88(3) EC, be notified in advance to the Commission and cannot be implemented before the procedure has culminated in a final decision, existing aid may, under Article 88(1) EC, be duly implemented as long as the Commission has not found it to be incompatible (*Banco Exterior de España*, paragraph 125 above, paragraphs 20 and 22, and Joined Cases T?298/97, T?312/97, T?313/97, T?315/97, T?600/97 to T?607/97, T?1/98, T?3/98 to T?6/98 and T?23/98 *Alzetta and Others* v *Commission* [2000] ECR II?2319, paragraph 148). Existing aid may therefore only be the subject, should the situation arise, of a decision of incompatibility producing effects for the future (*Alzetta and Others* v *Commission*, paragraph 147).

229 Article 1(b)(i) of Regulation No 659/1999, which entered into force on 16 April 1999, and was therefore applicable when the contested decisions were taken, defines existing aid as ‘all aid which existed prior to the entry into force of the Treaty in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after,

the entry into force of the Treaty'.

230 As regards, first, the provisions at issue in Case T?265/01, it is undisputed that they were adopted by the Territorio Histórico of Álava between 1994 and 1999, in other words, when the Kingdom of Spain was a Member State.

231 However, contrary to what is claimed by Confebask, those provisions adopted between 1994 and 1999 cannot be regarded as 'substantially identical' to the provisions of 1981, 1983 and 1984 which introduced tax credits and on which Confebask relies (see paragraph 218 above).

232 It is clear from material in the documents before the Court, and in particular from paragraph 72 of Decision 2002/820 and Confebask's own application, that, first, the eligibility conditions and, consequently, the range of beneficiaries of the tax credits were altered and that, secondly, the taxable base for the tax credits and their percentage were also altered. Moreover, the application of the provisions of the successive Normas Forales which established the tax credits is limited in time. The duration of the aid was therefore also altered.

233 Such alterations are clearly substantial within the meaning of the relevant case-law (see, to that effect, Case T?35/99 *Keller and Keller Meccanica* v *Commission* [2002] ECR II?261, paragraph 62; Joined Cases T?195/01 and T?207/01 *Government of Gibraltar* v *Commission* [2002] ECR II?2309, paragraph 111; and *Demesa*, paragraph 43 above, paragraph 175).

234 Consequently, the provisions at issue in the Territorio Histórico of Álava cannot be classified as existing aid within the meaning of Article 1(b)(i) of Regulation No 659/1999.

235 Secondly, Confebask claims that the Normas Forales at issue are a continuation of Normas Forales which were authorised.

236 Article 1(b)(ii) of Regulation No 659/1999 provides that existing aid consists of 'authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council'.

237 First, in Case T?270/01, Confebask claims, in that regard, that on 22 April 1986 and 27 April 1987 the Territorio Histórico of Guipúzcoa enacted Normas Forales Nos 4/1986 and 14/1987, which contain measures comparable to those at issue in the contested decisions.

238 However, it is sufficient to observe that Confebask does not at all establish that those provisions of 1986 and 1987 were authorised by the Commission. Furthermore, and in any event, those provisions established tax advantages which were confined to 1986 and 1987. Consequently, even if Norma Foral No 7/1997 of Guipúzcoa contained similar provisions, it unquestionably remains new aid (see, to that effect, *Demesa*, paragraph 43 above, paragraph 175).

239 Secondly, in Cases T?265/01, T?266/01 and T?270/01, Confebask claims that the tax credits at issue in the three Territorios Históricos and the 1988 tax credits, allegedly authorised by the Commission in its Decision 93/337, are 'very similar' (see paragraph 221 above).

240 First, the Court observes that the 1988 tax credits are substantially different from those at issue in the present case, having regard not only to the percentage of the tax credit, but also the investment threshold and the duration.

241 Secondly, Confebask's argument is based on a misreading of Decision 93/337 and the Commission's letter of 3 February 1995. In that decision, the Commission classified the aid at issue as incompatible with the common market not only because it was contrary to Article 43 EC,

but because it did not comply with the various rules relating to aid, in particular the rules relating to regional aid, those relating to sectoral aid, those relating to aid to SMEs and those on the cumulation of aid (Section V of Decision 93/337). As regards the letter of 3 February 1995, it is clear that the Commission there merely records the fact that the tax system in question is no longer in breach of Article 43 EC but says nothing however on whether the system in question complies with the various bodies of aid rules referred to in Decision 93/337 (see, to that effect, *Demesa and Territorio Histórico de Álava* v *Commission*, paragraph 45 above, paragraphs 48 and 49, and *Demesa*, paragraph 43 above, paragraph 237).

242 Consequently, even if the tax credits at issue could be regarded as identical to those of 1988, they cannot be regarded as having been authorised by the Commission.

243 Thirdly, Confebask claims that, taking account of the changes in the Commission's rules in relation to selectivity criteria, the tax systems at issue should have been treated as existing aid within the meaning of Article 1(b)(v) of Regulation No 659/1999.

244 In accordance with Article 1(b)(v) of Regulation No 659/1999, an existing aid is 'aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the common market and without having been altered by the Member State'.

245 That concept of 'evolution of the common market' can be understood as a change in the economic and legal framework of the sector concerned by the measure in question (*Belgium and Forum 187* v *Commission*, paragraph 108 above, paragraph 71). Such a change can, in particular, be the result of the liberalisation of a market initially closed to competition (Case T?288/97 *Regione autónoma Friuli-Venezia Giulia* v *Commission* [2001] ECR II?1169, paragraph 89).

246 In the present case, Confebask's argument consists of alleging that there were changes in the appraisal by the Commission.

247 First, it must be held that the material put forward by Confebask does not allow the conclusion that the selectivity criteria applied by the Commission in its appraisal of the tax measures in the light of Article 87(1) EC underwent any change subsequent to the adoption of the tax measures at issue.

248 The fact that, in Decision 93/337, relied on by Confebask, the Commission's finding that the 1988 tax credits were selective was based on the application of certain criteria does not mean that the Commission could not have found those measures to be selective on the basis of another criterion (see, to that effect, *Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraph 99). Therefore, it is equally the case that the Commission could conclude on the basis of other criteria that the tax credits at issue in the present case were selective, provided that the application of those criteria permitted the conclusion that they constituted a measure 'favouring certain undertakings or the production of certain goods' within the meaning of Article 87(1) EC.

249 Furthermore, in the 1998 notice on tax aid to businesses, which is substantially based on the case-law of the Court of Justice and the Court of First Instance and which elucidates the application to tax measures of Articles 87 EC and 88 EC, the Commission none the less does not announce any change of the criteria for the assessment of tax measures in the light of Articles 87 EC and 88 EC (*Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraph 79, and *Diputación Foral de Álava and Others* v *Commission*, paragraph 76 above, paragraph 83). The report C (2004) 434 on the implementation of that notice confirms the objective to clarify and reinforce the application, to tax measures, of State aid rules in order to reduce

distortions of competition, stating expressly that there is no change in Commission's practice in the matter. Lastly, the text of a question put by a Spanish senator to the Spanish Government, concerning comments allegedly made by the Member of the Commission responsible for competition policy in the course of a meeting of 17 March 1997 cannot be evidence of any change in the Commission's assessment in relation to selectivity criteria.

250 Secondly, even if Confebask were to have established that the Commission's rules in relation to selectivity had changed, such an argument does not prove that there was an 'evolution of the common market' within the meaning of Article 1(b)(v) of Regulation No 659/1999. That concept of 'evolution of the common market' does not cover the situation where the Commission alters its appraisal on the basis only of a more rigorous application of the Treaty rules on State aid (*Belgium and Forum 187* v *Commission*, paragraph 108 above, paragraph 71).

251 Consequently, the condition relating to the 'evolution of the common market' within the meaning of Article 1(b)(v) of Regulation No 659/1999 is not satisfied and the argument that the tax measures at issue constituted existing aid must therefore be rejected.

252 Lastly, no argument can be based on difficulties which the obligation to recover the aid would create, since the classification as existing aid or as new aid is independent of whether or not there are such difficulties.

253 In the light of all the foregoing, it must therefore be concluded that the tax credits at issue constitute new aid, which should have been notified to the Commission under Article 88(3) EC and which could not be implemented until the Commission had taken a final decision on the measures concerned.

E – *The plea in law alleging procedural irregularity and infringement of the principles of legal certainty, good administration, the protection of legitimate expectations and equal treatment (Cases T?227/01 to T?229/01 and also Cases T?265/01, T?266/01 and T?270/01)*

254 First, Confebask raises, within its actions in Cases T?265/01, T?266/01 and T?270/01, a procedural complaint in relation to the Commission's refusal to take its comments into consideration during the formal investigation procedure. Secondly, the applicants and the parties intervening in their support in Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01 challenge the recovery of the aid at issue, on the ground that such recovery infringes the principles of legal certainty and good administration, the principle of the protection of legitimate expectations and the principle of equal treatment.

1. The complaint alleging procedural irregularity

(a) Arguments of the parties

255 Confebask claims that the Commission was wrong to disregard the additional arguments which it set out in a document of 29 December 2000, on the ground that they were out of time. However, the period allowed to submit comments was not a time-bar. By refusing to take that argument into consideration, the Commission departed from the flexibility which is a mark of its normal practice and infringed the principle of the protection of legitimate expectations. In addition, the principle of good administration obliges the Commission to examine carefully and impartially all the material relevant to a particular case.

256 Confebask also claims that its additional comments could have been taken into consideration, since the Commission adopted the contested decisions only seven months later, on 11 July 2001. Moreover, its comments were based on a new fact, namely the Commission's

adoption of Decision 2001/168/ECSC of 31 October 2000 on Spain's corporation tax laws (OJ 2001 L 60, p. 57).

257 Lastly, Confebask states that it maintains the arguments in question so that they may be assessed by the Court.

258 The Commission does not accept that this complaint is well founded.

(b) Findings of the Court

259 Article 6(1) of Regulation No 659/1999 provides:

'The decision to initiate the formal investigation procedure … shall call upon the Member State concerned and upon other interested parties to submit comments within a prescribed period which shall normally not exceed one month. In duly justified cases, the Commission may extend the prescribed period.'

260 In the present case, Confebask submitted its comments to the Commission on 4 January and 13 April 2000, in other words, within the period of one month from the date of publication in the Official Journal of the decisions to initiate the formal investigation procedure, as allowed by the Commission (see paragraph 22 above). On the other hand, Confebask's additional comments, submitted on 29 December 2000 and registered on 3 January 2001, were not taken into consideration by the Commission, on the grounds that they had arrived out of time and that Confebask had at no time requested an extension of the time-limit pursuant to Article 6(1) of Regulation No 659/1999 (paragraph 50 of Decision 2002/820; paragraph 46 of Decisions 2003/27 and 2002/894).

261 Confebask alleges, in essence, that the Commission's usual practice is such that, according to Confebask, a legitimate expectation on its part that its comments would be taken into account, even though lodged out of time, was justified.

262 The Court observes that, in accordance with settled case-law, the right to rely on the principle of the protection of legitimate expectations extends to any individual in a situation where a Community authority has caused him to entertain expectations which are justified. Furthermore, a person may not plead infringement of the principle unless he has been given precise assurances by the administration (see *Belgium and Forum 187* v *Commission*, paragraph 108 above, paragraph 147, and case-law there cited).

263 However, in the present case, Confebask does not at all establish that the Commission gave it any guarantee, by means of precise assurances, that any additional comments, even late, would be taken into consideration in the absence of a request for extension of the time-limit. While Confebask makes reference to the Commission's practice, it provided no support for its claims in that regard.

264 The argument claiming infringement of the principle of the protection of legitimate expectations in that regard must therefore be rejected.

265 Further, Confebask claims that the refusal to take its additional comments into consideration is contrary to the principle of good administration.

266 The case-law provides that among the rights guaranteed by the Community legal order in administrative procedures is the principle of good administration, to which is attached the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see, to that effect, Case C?269/90 *Technische Universität München* [1991] ECR

I?5469, paragraph 14, and *Commission* v *Sytraval and Brink's France*, paragraph 136 above, paragraph 62).

267 It is clear from Article 6(1) of Regulation No 659/1999 (see paragraph 259 above) that, within the formal investigation procedure, interested parties have the opportunity to submit their comments to the Commission, which must then, in the light of, inter alia, those comments, adopt a decision declaring either that there is no aid or that there is aid which is classified as either compatible or incompatible with the common market. That provision accordingly constitutes an expression, in the procedure for reviewing State aid, of the principles laid down in the case-law referred to in paragraph 266 above.

268 The fact remains that Article 6(1) of Regulation No 659/1999 provides that those comments must be submitted within a specified period, and in the present case it is undisputed that the lodging of Confebask's additional comments on 29 December 2000 did not comply. It is also clear that the abovementioned provision does not provide that an interested party may lodge further comments with the Commission on his own initiative and after expiry of the period provided for that purpose.

269 It must be recalled in that regard, that, in the procedure for reviewing State aid, interested parties other than the Member State responsible for granting the aid therefore cannot themselves claim a right to debate the issues with the Commission in the same way as may that Member State, and cannot rely on rights as extensive as the rights of the defence as such (Joined Cases C?74/00 P and C?75/00 P *Falck and Acciaierie di Bolzano* v *Commission* [2002] ECR I?7869, paragraph 83, and *Technische Glaswerke Ilmenau* v *Commission*, paragraph 198 above, paragraphs 192 and 193). General principles of law, such as the principle of good administration, relied on by Confebask, cannot enable the Community Court to extend the procedural rights which the Treaty and secondary legislation confer on interested parties in procedures for reviewing State aid (*Technische Glaswerke Ilmenau* v *Commission*, paragraph 198 above, paragraph 194).

270 In those circumstances, Confebask's claim that Decision 2001/168 constituted a new and relevant fact justifying the lodging of its additional comments has no relevance, in the sense that it cannot call into question the case-law referred to in paragraph 269 above.

271 In any event, the relevance to the present case of Decision 2001/168 is in no way demonstrated by Confebask. That decision makes clear that the tax deductions examined were considered to be incompatible with the common market, but that the Commission took account of the particular circumstances and did not pursue recovery of the aid at issue on the basis of the principle of the protection of legitimate expectations. However, as stated by the Commission, those legitimate expectations were created, on the one hand, by there having been an earlier decision declaring another similar scheme not to be State aid and, on the other hand, by a reply from the Commission itself, a situation which is not the same as in the present case.

272 Consequently, Confebask has not proved that the Commission failed, by declining to take its additional comments into account in the present case, to observe the principle of good administration.

273 In the light of the foregoing, the complaint alleging procedural irregularity must be rejected.

2. The complaint alleging infringement of the principles of legal certainty and good administration, the principle of the protection of legitimate expectations and the principle of equal treatment

(a) Arguments of the parties

274 The applicants, in Cases T?227/01 to T?229/01, T?265/01, T?266/01 and T?270/01, and the parties intervening in their support, base their opposition to the obligation to recover aid imposed by the contested decisions on the principle of the protection of legitimate expectations.

275 The applicants argue that national authorities and economic operators may be induced to have legitimate expectations if there is no reaction from the Commission to measures of which it is aware and if the Commission thereby creates a position of ambiguity over several years.

276 Confebask also claims, in essence, that it ought to be more readily accepted that traders may have legitimate expectations that general rules establishing tax concessions are ‘lawful’ than when aid is the result of an individual measure.

277 The Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco claim that the case-law to the effect that the protection of legitimate expectations in relation to individual aid presupposes prior notification under Article 88 EC cannot be transposed to aid schemes.

278 In that context, the applicants and the parties intervening in their support consider that the Commission’s conduct convinced the economic operators that the contested tax measures were not open to criticism under Community law.

279 First, they refer to Decision 93/337 concerning the 1988 tax credits.

280 According to Confebask, the Commission created an expectation on the part of traders by making no criticism under State aid rules of the 1988 tax credits in Decision 93/337. The Commission there held only that they infringed the rules on freedom of establishment. Once that incompatibility was corrected, the Commission acknowledged by letter of 3 February 1995 that the Kingdom of Spain had fulfilled its obligations. The Normas Forales at issue are very similar to those 1988 tax credits. Confebask accepts that that ground of appeal was rejected in *Demesa and Territorio Histórico de Álava* v *Commission*, paragraph 45 above, but claims that that does not preclude the annulment, in the present case, of the obligation to recover aid already granted. Confebask claims that the applicants in the case which led to *Demesa*, paragraph 43 above, relied on the principle of the protection of legitimate expectations not only to prevent recovery, but also to challenge the classification as State aid of the tax credit allocated to them. The criteria applicable in relation to classification as State aid are not the same as those applicable in relation to recovery. Accordingly, the finding that aid is incompatible with the common market does not inevitably imply that the aid must be repaid.

281 The Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco claim, for their part, that the Commission did not base Decision 93/337 on the minimum investment required to qualify for the 1988 tax credits. The basis of the Commission’s decision was a criterion of regional selection and the fact that certain activities were excluded. According to the Cámaras Oficiales de Comercio e Industria, the Commission only relied on the latter criterion. Be that as it may, on both assumptions, the *a contrario* inference from Decision 93/337 is that a limitation on the amount of eligible investment is not a criterion of selectivity. Furthermore, that decision did not require the aid to be recovered. Consequently, the Commission undermined the legitimate expectations of the applicants and the parties intervening in their support by basing the contested decisions on the fact that the granting of the tax relief at issue was conditional on a minimum investment threshold. It serves no purpose for the Commission to respond that it need not exhaust all possible selectivity criteria, because proceeding in such a

manner is contrary to the principle of good administration.

282 Secondly, the applicants and the parties intervening in their support in Cases T?227/01 to T?229/01 refer to the 1993 exemption schemes and the Commission's attitude to them. According to them, the 1993 exemption schemes provided for, inter alia, tax credits of 25%, subject to certain conditions, including a minimum investment threshold of ESP 80 million, comparable to those of the tax credits at issue in the present case. However, they state that the Commission, which was aware of the 1993 schemes after a complaint of 14 March 1994, registered on 28 April 1994, declared them to be incompatible with the common market only in Commission Decision 2003/28/EC of 20 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Álava (Spain) (OJ 2003 L 17, p. 20); Commission Decision 2003/86/EC of 20 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Vizcaya (Spain) (OJ 2003 L 40, p. 11), and Commission Decision 2003/192/EC of 20 December 2001 on a State aid scheme implemented by Spain in 1993 for certain newly established firms in Guipúzcoa (Spain) (OJ 2003 L 77, p. 1), which are the decisions subject to the actions in Cases T?86/02 to T?88/02.

283 The Cámaras Oficiales de Comercio e Industria also refer to the conduct of the Commission following the complaint of 14 March 1994 on the 1993 exemption schemes. They claim that that conduct created a legitimate expectation on their part that the tax credits at issue were lawful.

284 Thirdly, the Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco claim that the decisions taken by the Commission in the cases which led to *Demesa* and *Ramondín*, paragraph 43 above, could not affect the legitimate expectations of economic traders as to the Normas Forales at issue. Those decisions concerned only the granting, on an individual basis, of a tax credit to two undertakings which additionally were in receipt of other aid.

285 Fourthly, the Cámaras Oficiales de Comercio e Industria, interveners in Cases T?227/01 to T?229/01, refer to the length of the preliminary procedure in the present case. They state that the decisions to initiate formal examination procedures were published only on 4 December 1999 and 11 March 2000, although the Commission has accepted that the subject of the tax credits at issue had been raised at a meeting of 17 March 1997 between the Member of the Commission responsible for competition policy and a delegation from the Comunidad autónoma de La Rioja. They refer, in that regard, to the slowness in initiating the formal investigation procedure and the infringement, by the Commission, of its duty of diligence and good administration and also the infringement of the principle of legal certainty.

286 Fifthly, according to the applicants in Cases T?227/01 to T?229/01, the decisions to initiate the formal investigation procedures make no mention of any obligation to suspend application of the taxation provisions at issue, or of there being any obligation to recover aid in the event that the final decisions confirmed that State aid was involved.

287 Sixthly, Confebask claims that the length of the procedure was unjustified, and the applicants in Cases T?227/01 to T?229/01 claim that the length of the formal investigation procedures, 23 months in the present case, constitutes an exceptional circumstance capable of precluding recovery of aid, within the meaning of the case-law based on Case 223/85 *RSV* v *Commission* [1987] ECR 4617.

288 Seventhly, the Cámaras Oficiales de Comercio e Industria claim that, in cases which were very similar, the Commission on its own initiative took into consideration factors giving rise to legitimate expectations and decided not to require the recovery of the illegal aid. They quote in particular the Commission decisions on coordination centres (Commission Decision 2003/81/EC of

22 August 2002 on the aid scheme implemented by Spain in favour of coordination centres in Vizcaya (OJ 2003 L 31, p. 26); Commission Decision 2003/512/EC of 5 September 2002 on the aid scheme implemented by Germany for control and coordination centres (OJ 2003 L 177, p. 17); Commission Decision 2003/438/EC of 16 October 2002 on the aid scheme C 50/2001 (ex NN 47/2000) – Finance companies – implemented by Luxembourg (OJ 2003 L 153, p. 40); and Commission Decision 2004/76/EC of 13 May 2003 on the aid scheme implemented by France for headquarters and logistics centres (OJ 2004 L 23, p. 1)). They also refer to Decision 2001/168. They claim that this decision-making practice also reveals a clear infringement of the principle of equal treatment.

289 Lastly, the applicants in Cases T?227/01 to T?229/01 claim that the obligation to recover aid should be limited to investments made after publication in the Official Journal of the decisions to initiate the formal investigation procedure.

290 The Commission, supported by the Comunidad autónoma de La Rioja, contends that this complaint should be rejected.

(b) Findings of the Court

The complaint based on infringement of the principles of legal certainty and good administration, due to the length of the preliminary examination

291 The Cámaras Oficiales de Comercio e Industria, interveners in Cases T?227/01 to T?229/01, claim that the length of the preliminary procedure is contrary to the principles of legal certainty and good administration (see paragraph 285 above).

292 As regards the admissibility of this complaint, it must be borne in mind that, under the fourth paragraph of Article 40 of the Statute of the Court of Justice, which applies to the Court of First Instance by virtue of Article 53 of that statute, an application to intervene must be limited to supporting the form of order sought by one of the parties. In addition, under Article 116(3) of the Rules of Procedure, the intervener must accept the case as it finds it at the time of its intervention. Although those provisions do not preclude an intervener from using arguments different from those used by the party it is supporting, that is nevertheless on the condition that they do not alter the framework of the dispute and that the intervention is still intended to support the form of order sought by that party (Case T?2/03 *Verein für Konsumenteninformation* v *Commission* [2005] ECR II?1121, paragraph 52).

293 It is thus for the Court of First Instance, when determining the admissibility of the pleas put forward by an intervener, to determine whether they are connected with the subject-matter of the dispute, as defined by the main parties.

294 In the present case, it is clear that the applicants take issue with the length of the procedure in relation to the complaint that the principle of the protection of legitimate expectations has been infringed (see paragraph 287 above). The complaint made by the interveners, though different from that of the applicants, must therefore be regarded as connected with the subject-matter of the dispute, as defined by the applicants, and as not altering the framework of the dispute. It is therefore admissible.

295 As regards the substance, the Cámaras Oficiales de Comercio e Industria rely on the slowness in initiating the formal investigation procedure.

296 The Court observes that, when the Commission became aware of the taxation provisions at issue, and until 16 April 1999, the date when Regulation No 659/1999 entered into force, the

Commission was not bound by any specific time-limits. The fundamental requirement of legal certainty nevertheless had the effect of preventing the Commission from indefinitely delaying the exercise of its powers (*Falckand Acciaierie di Bolzano* v *Commission*, paragraph 269 above, paragraph 140, and Joined Cases C?346/03 and C?529/03 *Atzeni and Others* [2006] ECR I?1875, paragraph 61).

297 Since the assessment of the compatibility of State aid with the common market falls within its exclusive competence, the Commission is bound, in the interests of sound administration of the fundamental rules of the Treaty relating to State aid, to conduct a diligent and impartial examination of a complaint alleging the existence of aid that is incompatible with the common market. It follows that the Commission cannot prolong indefinitely its preliminary investigation into State measures that have been the subject of a complaint. Whether or not the duration of the investigation of a complaint is reasonable must be determined in relation to the particular circumstances of each case and, especially, its context, the various procedural stages to be followed by the Commission and the complexity of the case (Case T?395/04 *Air One* v *Commission* [2006] ECR II?1343, paragraph 61).

298 In the present case, it is clear from the contested decisions that it was as a result of the information collected when proceedings were initiated in relation to State aid in favour of the undertakings Demesa and Ramondín, which were the subject of complaints on 11 June 1996 and 2 October 1997 respectively, that the Commission became aware of the tax credits established by the tax legislation at issue.

299 The contested decisions also make it clear that, by letters of 17 August 1999, the Commission informed the Kingdom of Spain of its decision to initiate the formal investigation procedure in relation to the three schemes at issue.

300 A period of time which can be reckoned to be 38 months (from June 1996 to August 1999) therefore elapsed between the time when the Commission became aware of the aid schemes at issue and the time when the Commission initiated the formal investigation procedure.

301 However, it is clear, first, that the tax measures at issue, renewed in amended form until 31 December 1999 as regards the Álava tax credit, required the Commission to undertake a thorough examination of the Spanish legislation and of complex issues of fact and law.

302 Secondly, as regards the background to those tax credits, until the initiation of the formal investigation procedure on 17 August 1999, the Commission carried out inter alia an examination of the complaints brought against the tax advantages granted to Demesa and Ramondín, at the conclusion of which it adopted the decisions to initiate the formal investigation procedure, on 16 December 1997, as regards Demesa and, on 30 April 1999, as regards Ramondín. The Commission thereafter adopted Decision 1999/718 (Demesa) and Decision 2000/795 (Ramondín).

303 However, although those cases involved individual aid, it remains the position that the tax credits involved in those cases were granted on the basis of the Sixth Additional Provision of Norma Foral No 22/1994 of Álava which is at issue in the present case in the Territorio Histórico of Álava (Cases T?227/01 and T?265/01) and there is no dispute that that Norma Foral is comparable to the provisions at issue in the Territorios Históricos of Vizcaya and Guipúzcoa (Cases T?228/01, T?229/01, T?266/01 and T?270/01).

304 Thirdly, it must be declared that responsibility for the length of the procedure lies, at least in part, with the Spanish authorities.

305 It is in fact clear from material in the Court file that the Commission had the information

necessary to initiate the formal investigation procedure only on 2 June 1999. As regards the tax credit applicable in the Territorio Histórico of Álava, the Commission received information only as a result of two complaints concerning State aid in favour of the undertakings Demesa and Ramondín. Next, apart from the meeting of 17 March 1997 involving the Comunidad autónoma de La Rioja and staff of the Commission referred to by the parties, the contested decisions disclose that informal information was received by the Commission concerning the tax credits applicable in the Territorios Históricos of Vizcaya and Guipúzcoa (see paragraph 17 above).

306 The Commission therefore sent to the Spanish authorities, on 15 March 1999, a request for information on those non-notified schemes. On two occasions, the Spanish authorities asked for extensions of the period allowed to reply. Their reply was finally sent only on 2 June 1999.

307 Accordingly, taking account of the background and the circumstances mentioned, the Commission's conduct in initiating the formal investigation procedure on 17 August 1999 did not infringe the general principle of legal certainty.

308 Lastly, as regards the arguments relating to the infringement, by the Commission, of the principle of good administration, it must be held that they are, in essence, closely linked to the argument on infringement of the principle of legal certainty because of the length of the preliminary examination and must therefore, in the light of the foregoing, be rejected.

309 In conclusion, the complaint based on infringement of the principles of legal certainty and good administration must be rejected.

The complaint based on infringement of the principle of the protection of legitimate expectations

310 It must first be recalled that a legitimate expectation that aid is lawful cannot be invoked unless that aid has been granted in compliance with the procedure laid down in Article 88 EC (Case C?5/89 *Commission* v *Germany* [1990] ECR I?3437, paragraph 14, and *Regione autónoma della Sardegna* v *Commission*, paragraph 94 above, paragraph 64).

311 In fact, a regional authority and a diligent businessman should normally be able to determine whether that procedure has been followed (*Commission* v *Germany*, paragraph 310 above, paragraph 14; Case C?169/95 *Spain* v *Commission* [1997] ECR I?135, paragraph 51; and *Demesa* , paragraph 43 above, paragraph 236).

312 Furthermore, since Article 88 EC makes no distinction between aid schemes and individual aid, those principles are equally applicable to aid schemes, contrary to what is claimed by Confebask (paragraph 276 above).

313 In the present case, it is common ground that the tax credits, which were the subject of the contested decisions, were introduced without prior notification, contrary to Article 88(3) EC.

314 However, according to the case-law, a recipient of aid which is granted unlawfully, because it was not notified, as is the case of the aid schemes at issue in the present case, is not precluded from relying on exceptional circumstances on the basis of which it legitimately assumed the aid to be lawful, in order to oppose repayment of the aid (Case C?183/91 *Commission* v *Greece* [1993] ECR I?3131, paragraph 18; see, to that effect, *Demesa and Territorio Histórico de Álava* v *Commission*, paragraph 45 above, paragraph 51, Joined Cases T?126/96 and T?127/96 *BFM and EFIM* v *Commission* [1998] ECR II?3437, paragraphs 69 and 70, *CETM* v *Commission*, paragraph 148 above, paragraph 122, and *Regione autónoma Friuli-Venezia Giulia* v *Commission*, paragraph 245 above, paragraph 107).

315 If the applicants in Cases T?227/01 to T?229/01, which are not traders but the territorial entities which introduced the aid schemes at issue, are to be entitled to rely on a legitimate expectation (*Regione autónoma della Sardegna* v *Commission*, paragraph 94 above, paragraph 66), the Court must examine, in the light of the above principles, whether their arguments disclose exceptional circumstances, which might have justified a legitimate expectation that the aid schemes at issue were lawful.

316 The applicants and the parties intervening in their support claim that the Commission's conduct constitutes an exceptional circumstance capable of justifying their legitimate expectation that the aid schemes at issue were lawful, on the grounds of, first, Decision 93/337 on the 1988 tax credits; secondly, the Commission's attitude to the 1993 schemes; thirdly, the unconscionable length of the procedure; and, fourthly, the failure to mention certain matters in the decision to initiate the formal investigation procedure.

– The argument based on Decision 93/337

317 Confebask claims that the fact that the 1988 tax credits are very similar to those at issue in the present case and that the Commission did not classify them as State aid incompatible with the common market created a legitimate expectation in relation to the tax credits at issue. Confebask refers to Decision 93/337, and to the Commission's letter of 3 February 1995, in which the Commission recorded that the Spanish authorities had complied with Article 1(2) of Decision 93/337, which required them to modify the tax system in order to eliminate distortions with regard to Article 43 EC.

318 However, the Court finds that Confebask has in fact misread Decision 93/337, as previously stated (see paragraph 241 above). In that decision, the Commission classified the aid at issue as incompatible with the common market not only because it was contrary to Article 43 EC, but because it did not comply with the various rules relating to aid, in particular the rules on regional aid, the rules on sectoral aid, the rules on aid to SMEs and the rules on cumulation of aid (Section V of Decision 93/337).

319 As regards the letter of 3 February 1995, it has already been stated in paragraph 241 above that the Commission there merely records the fact that the tax system in question no longer infringes Article 43 EC but does not decide whether the system in question complies with the various bodies of aid rules referred to in Decision 93/337 (*Demesa and Territorio Histórico de Álava* v *Commission*, paragraph 45 above, paragraph 48, confirming *Demesa*, paragraph 43 above, paragraph 237).

320 Furthermore, Confebask claims that the outcome of *Demesa and Territorio Histórico de Álava* v *Commission*, paragraph 45 above, does not preclude the annulment, in the present case, of the obligation to recover aid, since the parties which were the applicants in that case relied on the principle of the protection of legitimate expectations not only to prevent recovery, but also to challenge the classification as State aid of the tax credit allocated to them. However, it is clear that such an argument cannot call into question the conclusion that the Commission did not consider the 1988 tax credits to be compatible with the State aid rules.

321 Consequently, even if the tax credits at issue could be regarded as comparable to the 1988 tax credits, Decision 93/337 cannot be regarded as an exceptional circumstance capable of justifying any expectation whatsoever that the tax credits at issue in the present case were lawful.

322 The Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco state, for their part, that, in Decision 93/337, the Commission raised no objection to

the fact that implementation of the tax credit was subject to a minimum investment being made. Accordingly, by considering, in the contested decisions, that the condition requiring a minimum investment of ESP 2 500 million means that the tax credits are selective and by thereby altering its criteria for the appraisal of selectivity, the Commission infringed the legitimate expectations created by Decision 93/337.

323 The Court of First Instance finds that the tax measures at which Decision 93/337 was directed are not the same as those at which the contested decisions are directed. Decision 93/337 concerns tax aid established by Normas Forales No 28/1988 of Álava, No 8/1988 of Vizcaya and No 6/1988 of Guipúzcoa.

324 While those 1988 provisions do establish a tax credit in the Spanish Basque Country, the fact that, in Decision 93/337, the Commission's decision on the selectivity of the 1988 tax credits was based on the finding that they applied only to certain undertakings and that certain activities did not qualify for them (Section III of Decision 93/337) does not therefore mean that the Commission could not have determined that those measures were selective on the basis of another criterion (*Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above, paragraph 99).

325 The argument based on an infringement of the principle of good administration, relied on by the Cámaras Oficiales de Comercio e Industria, cannot rebut that finding, given that the finding of one characteristic feature of selectivity in the measure examined is enough (see, to that effect, *Spain* v *Commission*, paragraph 167 above, paragraphs 120 and 121). The Commission is therefore not obliged to carry out an exhaustive study of the matter.

326 It follows that Decision 93/337, which furthermore held that the 1988 tax credits were incompatible with the common market, cannot constitute an exceptional circumstance capable of justifying any legitimate expectation whatsoever that the tax credits at issue in the present case were lawful.

– The argument based on the 1993 schemes and the Commission's attitude to them

327 The applicants and the parties intervening in their support in Cases T?227/01 to T?229/01 refer to the 1993 schemes and the fact that the Commission's attitude to them created a legitimate expectation that the tax credits at issue were lawful. According to them, the 1993 Normas Forales provide for both tax exemptions and a 25% tax credit.

328 As regards, first the corporation tax exemptions, established by Article 14 in each of Normas Forales Nos 18/1993, 5/1993 and 11/1993, which are subject to the actions in Joined Cases T?30/01 to T?32/01 and T?86/02 to T?88/02, those cannot be regarded as analogous to the tax credits at issue in the present case. The tax measures are technically different and the size of the advantages is different. Thus, the tax credits at issue in the present case are 45% of eligible investment, attributable to the final amount of tax payable, whereas the 1993 schemes provided for a corporation tax exemption over 10 years for newly established businesses. Again, the conditions of application are not analogous, because the Normas Forales at issue restrict the tax credits to undertakings which make investments exceeding ESP 2 500 million, whereas the potential beneficiaries of the 1993 schemes were newly established businesses, commencing their activity with a minimum capital of ESP 20 million, making an investment of ESP 80 million in a specified period and creating a minimum of 10 jobs. The two tax relief measures also differ in their scope. The tax credits are linked to a particular tax year, even if their application was renewed on several occasions. On the other hand, the 1993 exemption schemes were open only to undertakings commencing their activity between the date when the Normas Forales establishing them came into force and 31 December 1994.

329 Consequently, whatever the conduct of the Commission might have been in relation to the 1993 tax exemptions, no inference can be drawn as to the lawfulness of the tax credits at issue.

330 Moreover, and in any event, as the Court has stated in its judgment relating to the 1993 exemption schemes, none of the facts and circumstances, put forward by the applicants and the parties intervening in their support concerning the Commission's attitude to the 1993 tax exemptions, which are repeated in the present case, is capable of demonstrating that the Commission's attitude was an exceptional circumstance which could justify their legitimate expectation that the tax exemptions at issue in those cases were lawful (judgment of the Court of 9 September 2009 in Joined Cases T?30/01 to T?32/01 and T?86/02 to T?88/02 *Diputación Foral de Álava and Others* v *Commission* (not yet published in ECR), paragraphs 278 to 317).

331 Accordingly, the Commission's attitude to the 1993 exemption schemes cannot represent an exceptional circumstance which could justify any legitimate expectation whatsoever that the tax credits at issue in the present case were lawful.

332 As regards, secondly, the 25% tax credit referred to by the applicants in Cases T?227/01 to T?229/01, even if it could be regarded as comparable to the 45% tax credits at issue in the present case, the applicants provide no evidence for the argument that the procedure undertaken by the Commission, and therefore its attitude to the 1993 exemption measures, would also have extended to the 25% tax credit.

333 It follows that the argument based on the 1993 schemes and the Commission's attitude to them cannot be accepted.

– The argument based on the length of the procedure

334 Confebask, applicant in Cases T?265/01, T?266/01 and T?270/01, claims that the principle of the protection of legitimate expectations was infringed because of the 'unjustified length of the procedure'. The applicants in Cases T?227/01 to T?229/01 claim, for their part, that the same principle was infringed because of the length of the formal investigation procedure.

335 It must be recalled that, under Article 13(2) of Regulation No 659/1999, in the case of possible illegal aid, the Commission is not bound by the time-limits applicable to notified aid.

336 The reasonableness of the length of the procedure for review of State aid, whether that relates to the preliminary examination or the formal investigation procedure, must be appraised in the light of the circumstances specific to each case and, in particular, its context, the various procedural stages followed by the Commission, the conduct of the parties in the course of the procedure, the complexity of the case and its importance for the various parties involved (*Spain* v *Commission*, paragraph 167 above, paragraph 53; as regards the preliminary examination procedure, see *Asociación de Estaciones de Servicio de Madrid and Federación Catalana de Estaciones de Servicio* v *Commission*, paragraph 115 above, paragraph 122; as regards the formal investigation procedure, see Case T?190/00 *Regione Siciliana* v *Commission* [2003] ECR II?5015, paragraphs 136 and 139).

337 In the present case, the preliminary examination phase of 38 months (see paragraph 300 above) ended with the initiation of the formal investigation procedure on 17 August 1999 (see paragraph 22 above). The Commission then adopted the contested decisions on 11 July 2001. The formal investigation procedure therefore lasted 23 months and the length of the entire procedure is 5 years 1 month.

338 It is clear from the examination of the complaint alleging infringement of the principle of legal certainty (see paragraphs 301 to 307 above) that, in the light of the circumstances of this case, the preliminary examination procedure was not unreasonably prolonged.

339 As regards the formal investigation procedure, it is clear from the material in the file before the Court that, following the Commission's letter of 17 August 1999, informing the Kingdom of Spain of the initiation of the formal investigation procedures, the latter submitted comments, which were registered at the Commission on 12 November 1999. In those comments, the Spanish authorities considered that it was unnecessary to reply to the Commission's requests, made as part of the initiation of the formal investigation procedure, concerning the decisions to grant the tax credits at issue (paragraph 43 of Decision 2002/820; paragraph 39 of Decisions 2003/27 and 2002/894; see paragraph 24 above).

340 Moreover, other bodies submitted their comments in March and April 2000 concerning Álava, and in January 2000 concerning Vizcaya and Guipúzcoa. Those comments were sent by the Commission to the Spanish authorities in March 2000 concerning the tax credit in Vizcaya and Guipúzcoa, and in May 2000 concerning the tax credit in Álava. The Spanish authorities submitted no observations on those comments, although they submitted a request for an extension of the time allowed to do so (paragraph 52 of Decision 2002/820; paragraph 60 of Decisions 2003/27 and 2002/894; see paragraph 26 above).

341 It follows from the foregoing that the Spanish authorities contributed, at least in part, because of their conduct, to the lengthening of the examination procedure.

342 In the light of those circumstances and taking into account the context, the complexity of the measures at issue and the importance of the case, the overall length of the examination procedure cannot be regarded as unreasonable.

343 The applicants in Cases T?227/01 to T?229/01 refer to *RSV* v *Commission*, paragraph 287 above, according to which if the Commission is slow to decide that aid is illegal and that it must be abolished and recovered by a Member State, that may, in certain circumstances, justify the beneficiaries of that aid having a legitimate expectation which can prevent the Commission instructing that Member State to order repayment of the aid. In *RSV* v *Commission*, paragraph 287 above, the Court of Justice held that the period of 26 months taken by the Commission to adopt its decision in that case could cause the applicant to have a legitimate expectation which could

prevent the Commission instructing the national authorities to order repayment of the aid in question.

344 However, the circumstances of the case which led to that judgment were exceptional and in no way similar to those of the present case. The aid in question had been formally notified to the Commission, admittedly after it had been paid to the recipient. It concerned the supplementary costs of one transaction, which had already been the subject of aid authorised by the Commission. It concerned a sector which since 1977 had been in receipt of aid granted by the national authorities and authorised by the Commission. Consideration of the compatibility of the aid with the common market had not called for deep research. The Court of Justice concluded that in those circumstances the applicant had reasonable grounds for believing that the aid would encounter no objection from the Commission (*RSV* v *Commission*, paragraph 287 above, paragraphs 14 to 16).

345 Such factors are fundamentally different from those in the present actions. The tax credits at issue do not relate to a particular sector nor, a fortiori, to a particular sector which had received authorised aid. The tax credits were not notified and are not a continuation of any earlier aid scheme authorised by the Commission. On the contrary, they were the subject of the Commission decisions in the cases which led to *Demesa* and *Ramondín*, paragraph 43 above, made prior to initiation of the formal investigation procedure (see paragraph 43 above), which left no doubt that their compatibility with the common market was at issue.

346 Accordingly, the particular circumstances of the case which led to *RSV* v *Commission*, paragraph 287 above, stated above, are entirely different from those at issue in the present case. The applicants and the parties intervening in their support in this case cannot therefore validly rely on that judgment.

347 In conclusion, the overall length of the procedure, given the circumstances of the present case, is not unreasonable and does not represent an exceptional circumstance capable of justifying a legitimate expectation that the aid was lawful.

– The argument based on the omission, in the decisions to initiate the formal investigation procedures, of any mention of the obligation to suspend the application of the tax provisions at issue and the risk of recovery

348 The applicants in Cases T?227/01 to T?229/01 claim that a legitimate expectation that the aid schemes at issue were lawful was created by the omission, in the decisions to initiate the formal investigation procedures, of the obligation to suspend the application of the tax provisions at issue.

349 However, it is clear from the decisions to initiate the formal investigation procedure, which were moreover the subject of actions which have been dismissed by the Court of First Instance (*Diputación Foral de Guipúzcoa and Others* v *Commission*, paragraph 22 above), that the Commission held that the tax credits at issue were new aid which could be considered to be illegal. Such a classification implies that the suspension, which is a consequence, in relation to new aid, of the last sentence of Article 88(3) EC, was disregarded. Consequently, the fact that the obligation to suspend the measures at issue was not explicitly mentioned in the decisions to initiate the formal investigation procedure cannot constitute an exceptional circumstance, capable of justifying any legitimate expectation whatsoever that the measures at issue were lawful.

350 Further, the applicants rely on the omission of any mention in the decisions to initiate the formal investigation procedure of the risk of recovery of the advantages derived from the tax credits.

351 The Court points out that the invitations to submit comments, published in the Official Journal (see paragraph 25 above), state, within the summaries of the decisions to initiate the formal investigation procedure, that, under Article 14 of Regulation No 659/1999, all illegal aid may fall to be recovered from its beneficiary. Moreover, and in any event, the Court has consistently held that the withdrawal of unlawful aid by recovery is the logical consequence of the finding that it is unlawful (*Belgium* v *Commission*, paragraph 198 above, paragraph 66, and Case C?148/04 *Unicredito Italiano* [2005] ECR I?11137, paragraph 113).

352 Accordingly, the omission of explicit mention of the risk of recovery cannot constitute an exceptional circumstance capable to justifying a legitimate expectation that the measures at issue were lawful.

353 It follows from all the foregoing that the applicants and the parties intervening in their support have not established that there are exceptional circumstances which can prevent recovery of the aid at issue.

The complaint based on infringement of the principle of equal treatment

354 The Cámaras Oficiales de Comercio e Industria claim that, in very similar cases, the Commission on its own initiative took into consideration factors which could give rise to legitimate expectations and decided not to require recovery of aid. They claim that the principle of equal treatment has been infringed.

355 It is clear that this complaint, alleging infringement of the principle of equal treatment, was not raised by the applicants and has no connection to the subject-matter of the dispute as defined by the applicants. It must therefore be declared inadmissible, in accordance with the case-law quoted in paragraph 292 above.

356 In any event, even if it were admissible, this complaint is unfounded.

357 Compliance with the principle of equal treatment and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see Case C?248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I?10211, paragraph 72, and case-law there cited.

358 However, the interveners do not establish that the situation relating to the aid schemes at issue is comparable to the situations concerned in the decisions to which they refer where the Commission held that recovery was not to be instructed.

359 In those decisions, the Commission explained that the non-recovery of aid was justified by circumstances which could give rise to a legitimate expectation that the schemes under examination were lawful, and the Commission took that into account. The Commission particularly took into consideration the fact that declarations of the absence of aid had been expressly made in other decisions concerning measures analogous to the schemes examined in the decisions in question, and that justified there being no recovery of aid (Decisions 2003/81, 2004/76, 2003/438 and 2003/512; see paragraph 288 above). The Commission also took into account, in some cases, the fact that the length of the procedure at issue was in no way attributable to the Member State concerned (Decision 2001/168; paragraph 288 above), or the fact that the only [approved] beneficiary of the scheme in question had not been granted the advantage at issue and that therefore there was no need to recover aid (Decision 2003/81; see paragraph 288 above).

360 That is not the situation in the contested decisions, where the Commission stated that, on

the contrary, the conditions governing the right to claim the protection of legitimate expectations were not satisfied (paragraphs 74 and 75 of Decision 2002/820; paragraphs 81 and 82 of Decisions 2003/27 and 2002/894) a position upheld by the Court (see paragraphs 310 to 353 above). The Commission decisions relied on by the interveners therefore relate to measures and situations which are not the same as those at issue in the present case.

361 Accordingly, the complaint that the contested decisions, by ordering recovery of the aid at issue, infringed the principle of equal treatment cannot be accepted.

362 Consequently, the complaint must be rejected as inadmissible and, in any event, unfounded.

363 Lastly, the applicants in Cases T?227/01 to T?229/01 claim that the obligation to repay the illegal aid ought to have been restricted to investments made after the date of publication in the Official Journal of the decisions to initiate the formal investigation procedures.

364 Since that argument, pleaded with regard to the principle of the protection of legitimate expectations, is related to the proportionality of recovery, it will be examined as part of the examination of the plea in law on the proportionality of the contested decisions (see paragraph 366 et seq. below).

365 In conclusion, the plea in law alleging procedural irregularity and infringement of the principles of legal certainty, good administration, the protection of legitimate expectations and equal treatment must be rejected in its entirety.

F – *The plea in law alleging infringement of the principle of proportionality (Cases T?227/01 to T?229/01)*

1. Arguments of the parties

366 The applicants in Cases T?227/01 to T?229/01 claim that the obligation to recover is disproportionate. They claim that recovery should not have extended to either undertakings producing solely for the local market or to those operating in a sector closed to competition. The contested decisions should also have restricted the obligation to make repayment to the sum in excess of the maximum limits of regional aid allowed in the Basque Country in Spain.

367 Further, they claim that the obligation to repay illegal aid should have been restricted to investments made after the date of publication in the Official Journal of the decisions to initiate the formal investigation procedures.

368 Further, restoration of the previously existing situation can be achieved by other alternatives which are less onerous than the recovery of aid. Consequently, the Commission cannot require the recovery of aid if the Member State considers that alternative to be more onerous than some other measure. According to the applicants, Article 14(1) of Regulation No 659/1999, which provides for the recovery of aid incompatible with the common market, relates to subsidies and cannot be automatically transposed to aid which consists of a selective tax measure.

369 Lastly, to enable the Member State to choose the most appropriate alternative, the Commission should have specified approximately the minimum investment threshold which would have prevented the Normas Forales at issue being classified as State aid.

370 Article 3 of the contested decisions should, consequently, be annulled.

371 The Commission contends that this plea in law should be rejected.

2. Findings of the Court

372 According to settled case-law, abolishing unlawful aid by means of recovery is the logical consequence of a finding that it is unlawful. Consequently, the recovery of State aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the provisions of the Treaty relating to State aid (*Spain* v *Commission*, paragraph 311 above, paragraph 47; and *Italy* v *Commission*, paragraph 111 above, paragraph 75).

373 By repaying the aid, the beneficiary forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored (Case C?350/93 *Commission* v *Italy* [1995] ECR I?699, paragraph 22). It also follows from that function of repayment of aid that, as a general rule, the Commission will not, save in exceptional circumstances, exceed the bounds of its discretion, recognised by the case-law of the Court of Justice, if it asks the Member State to recover the sums granted by way of unlawful aid, since it is only restoring the previous situation (*Belgium* v *Commission*, paragraph 142 above, paragraph 66, and Case C?310/99 *Italy* v *Commission* [2002] ECR I?2289, paragraph 99).

374 It is true that the principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued, and of course, when there is a choice between several appropriate measures, the least onerous measure must be used (Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 25, and Case 265/87 *Schräder HSKraftfutter* [1989] ECR 2237, paragraph 21).

375 However, the recovery of unlawful aid, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the Treaty in regard to State aid. Such a measure, even if it is implemented long after the aid in question was granted, cannot constitute a penalty not provided for by Community law (*CETM* v *Commission*, paragraph 148 above, paragraph 164).

376 In the light of those principles, none of the arguments put forward by the applicants in the present case demonstrates that the obligation to recover is disproportionate by reference to the objectives of the Treaty.

377 First, since the Spanish authorities considered that it was unnecessary to reply to the Commission’s requests, made as part of the initiation of the formal investigation procedures, concerning the decisions to grant the tax credits at issue (see paragraph 24 above), the Commission cannot be criticised for not having excepted certain undertakings or certain sectors from the obligation to recover.

378 Again, the applicants’ assertion that the contested decisions should have restricted the obligation to repay tax credits to those relating to investments made after publication of the decisions to initiate the formal investigation procedures, namely after 4 December 1999 in respect of Vizcaya and Guipúzcoa and after 11 March 2000 in respect of Álava, has no justification, since the aid at issue is illegal *ab initio* and no exceptional circumstance capable of preventing recovery has been established in the present case (see paragraph 353 above).

379 As regards cross-sectoral aid schemes, in the absence of more detailed information being provided during the administrative procedure, the contested decisions cannot be held to be disproportionate on the ground that they did not more closely define the scope of the obligation to recover the aid at issue. In that regard, it must be observed that the contested decisions, whose terms should be interpreted, as necessary, by taking account of the reasons which led to their

adoption (Case C?355/95 P *TWD* v *Commission* [1997] ECR I?2549, paragraph 21), mention expressly the possibility that ‘individual aid may be regarded, in full or in part, as compatible with the common market on its own merits, either in a subsequent Commission decision or under exempting regulations’.

380 Further, contrary to what is claimed by the applicants, Article 14 of Regulation No 659/1999 makes no distinction according to whether the aid measure at issue is a subsidy or a tax relief, and the application of the same principles in the case-law extends to the recovery of tax advantages (*Unicredito Italiano*, paragraph 351 above, paragraph 113). The recovery of illegal aid through the repayment of the sums in question is therefore, in the present case, the most appropriate means of cancelling out the effects of the distortion of competition caused by the tax credits at issue and of restoring the previously existing competitive situation.

381 Lastly, it was not for the Commission to set, within the contested decisions, the minimum investment threshold which would have avoided classification as State aid in the present case. Such a question is rather a matter for dialogue between the Spanish authorities and the Commission, as part of the notification of the schemes at issue, which ought to have taken place before the schemes were put into effect.

382 Accordingly, the plea in law alleging infringement of the principle of proportionality must be rejected as unfounded.

383 Consequently, in conclusion, the actions must be dismissed in their entirety.

Costs

384 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings.

I – *Cases T?227/01 to T?229/01*

385 Since the applicants, namely the Territorios Históricos of Álava, Vizcaya and Guipúzcoa and the Comunidad autónoma del País Vasco, have been unsuccessful in their forms of order and pleas in law in the actions T?227/01 to T?229/01, they must be ordered not only to bear their own costs but also to pay the costs of the Commission and of the Comunidad autónoma de La Rioja, as applied for by those parties in their pleadings.

386 Confebask and the Cámaras Oficiales de Comercio e Industria, as interveners, shall bear their own costs.

II – *Cases T?265/01, T?266/01 and T?270/01*

387 Since Confebask has been unsuccessful in its forms of order and pleas in law in the actions T?265/01, T?266/01 and T?270/01, it must be ordered not only to bear its own costs but also to pay the costs of the Commission and of the Comunidad autónoma de La Rioja, as applied for by those parties in their pleadings.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber, Extended Composition)

hereby:

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.**

Vilaras

Martins Ribeiro

Dehousse

Šváby

Jürimäe

Delivered in open court in Luxembourg on 9 September 2009.

[Signatures]

Table of contents

(b) Findings of the Court

3. The third part, claiming that the tax measures are general

(a) Arguments of the parties

(b) Findings of the Court

4. The fourth part, claiming that the tax measures were justified by the nature and overall structure of the tax system

(a) Arguments of the parties

(b) Findings of the Court

5. The complaint that Article 87 EC is not applicable to the measures at issue

B – The plea in law claiming that the Normas Forales are compatible with the common market (Cases T?265/01, T?266/01 and T?270/01)

1. Arguments of the parties

2. Findings of the Court

C – The plea in law claiming misuse of power (Cases T?265/01, T?266/01 and T?270/01)

1. Arguments of the parties

2. Findings of the Court

D – The plea in law claiming that the aid at issue is existing aid (Cases T?265/01, T?266/01 and T?270/01)

1. Arguments of the parties

2. Findings of the Court

E – The plea in law alleging procedural irregularity and infringement of the principles of legal certainty, good administration, the protection of legitimate expectations and equal treatment (Cases T?227/01 to T?229/01 and also Cases T?265/01, T?266/01 and T?270/01)

1. The complaint alleging procedural irregularity

(a) Arguments of the parties

(b) Findings of the Court

2. The complaint alleging infringement of the principles of legal certainty and good administration, the principle of the protection of legitimate expectations and the principle of equal treatment

(a) Arguments of the parties

(b) Findings of the Court

The complaint based on infringement of the principles of legal certainty and good administration,

due to the length of the preliminary examination

The complaint based on infringement of the principle of the protection of legitimate expectations

– The argument based on Decision 93/337

– The argument based on the 1993 schemes and the Commission’s attitude to them

– The argument based on the length of the procedure

– The argument based on the omission, in the decisions to initiate the formal investigation procedures, of any mention of the obligation to suspend the application of the tax provisions at issue and the risk of recovery

The complaint based on infringement of the principle of equal treatment

F – The plea in law alleging infringement of the principle of proportionality (Cases T?227/01 to T?229/01)

1. Arguments of the parties

2. Findings of the Court

Costs

I – Cases T?227/01 to T?229/01

II – Cases T?265/01, T?266/01 and T?270/01

* Language of the case: Spanish.