

### Pleas in law and main arguments

By the present action, the Italian Government contests Commission Implementing Decision 2013/209/EU of 26 April 2013 on 'the clearance of the accounts of the paying agencies of Member States concerning expenditure financed by the European Agricultural Fund for Rural Development (EAFRD) for the 2012 financial year', notified under document C(2013) 2444 on 29 April 2013, in so far as that decision finds that the amount of EUR 5 006 487,10, relating to the Basilicata Region, is a 'non-reusable amount' and accordingly subtracts that amount from the Basilicata Rural Development Plan (RDP)'s EAFRD spending limit, with the result that it is impossible for that amount to be used within that limit, essentially leading to the decommitment of the amount in question.

In that regard, the applicant claims that the adjustment arises from the Commission staff's assumption that some projects which were paid for in the final quarter of 2011 could not be included in the quarterly declaration of expenditure as they did not comply with the RDP then in force.

The Commission's position as finally implemented in the contested implementing decision is, according to the applicant, flawed in several respects.

- First, there are legitimate doubts as to whether it was correct to bring the reduction — made pursuant to Article 27 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1) and categorised as a "non-reusable amount" — within the scope of the decision on the clearance of the accounts, as any amount which has been reduced or suspended must be disregarded by that decision, as established by Article 29(5) of that regulation. One of the ways in which the reduction in question is incorrect is in terms of its quantification;
- Secondly, the decision is also vitiated by failure to state adequate reasons, given that an amount corresponding to a quarter's expenditure has been reduced or suspended by the Commission for the purposes of Article 29(5) of Regulation (EC) No 1290/2005;
- Lastly, the finding that the amount is not reusable is equivalent to decommitting that amount, with the result that the sums involved cannot be used in the future within the Basilicata RDP's spending limit, even though the EU legislation currently in force does not allow amounts which have been suspended to be decommitted.

**Action brought on 11 July 2013 — Spain Doce 13 v OHIM — Ovejero Jiménez and Becerra Guibert (VICTORIA DELEF)**

(Case T-359/13)

(2013/C 252/69)

Language in which the application was lodged: Spanish

### Parties

*Applicant:* Spain Doce 13, SL (Crevillente, Spain) (represented by: S. Rizzo, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other parties to the proceedings before the Board of Appeal:* Gregorio Ovejero Jiménez and María Luisa Becerra Guibert (Alicante, Spain)

### Form of order sought

The applicant claims that the General Court should:

- annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 April 2013 in Case R 1046/2012-5 in so far as it refuses registration of Community trade mark application No 9 522 384 in relation to the following goods and services:
  - Class 18: goods made of leather and imitations of leather not included in other classes;
  - Class 25: clothing, footwear and headgear;
  - Class 35: retail and wholesale services of clothing, footwear and accessories;
- order OHIM to pay the costs in accordance with Article 87(2) of the Rules of Procedure of the General Court.

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*Applicant for a Community trade mark:* Spain Doce 13, SL

*Community trade mark concerned:* Word mark 'VICTORIA DELEF' for goods and services in Classes 18, 25 and 35 — Community trade mark application No 9 522 384

*Proprietors of the mark or sign cited in the opposition proceedings:* Gregorio Ovejero Jiménez and María Luisa Becerra Guibert

*Mark or sign cited in opposition:* National figurative marks containing the word element 'VICTORIA', 'Victoria' and 'victoria' for goods in Class 25

*Decision of the Opposition Division:* Opposition rejected

*Decision of the Board of Appeal:* Appeal upheld in part

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009