

Details of the proceedings before EUIPO

Trade mark at issue: Other EU trade mark (Affixing a green ring on a leg) — Application for registration No 14 396 568

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 15 November 2016 in Case R 285/2016-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs of the proceedings.

Pleas in law

- Infringement of Article 7(1)(a) of Regulation No 207/2009;
- Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 27 January 2017 — Spain v Commission

(Case T-49/17)

(2017/C 095/29)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: V. Ester Casas, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- Annul in part the Decision of 15 November 2016 (2016/2018/EU) excluding from European Union funding certain expenditure incurred by various Member States, including the Kingdom of Spain, under the EAGF and EAFRD schemes, in so far as:
 1. As regards the Autonomous Community of Andalusia, the decision excludes from EU funding EUR 1 356 144,90, in respect of the EAGF (Financial year 2012).
 2. As regards the Autonomous Community of Catalonia, the decision excludes from EU funding EUR 2 191 585, in respect of the EAGF (Financial years 2009 to 2012).
 3. As regards the Autonomous Community of Castile and León, the decision excludes from EU funding EUR 9 638 473,73, in respect of the EAGF, and EUR 433 138,10, in respect of the EAFRD (Financial years 2012 to 2013).
 4. The total amount which is the subject of the present application for annulment is EUR 13 619 341,73.
- Order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law.

1. Pleas in law concerning the financial correction imposed on the Autonomous Community of Andalusia.

- The applicant alleges in this respect infringement of Article 3(6) of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42), in that the Commission found that the entities ACRES and Unión Rural are not producers.

2. Pleas in law concerning the financial correction imposed on the Autonomous Community of Catalonia. The applicant alleges in this respect that:

- The single financial correction for errors in the admissibility of expenses in the sum of EUR 122 112,95 (controls concerning the operational programmes: investment in the OP 'A') is unlawful since the Commission infringed Articles 105 and 106 of Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96 (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (OJ 2007 L 350, p. 1), in respect of Articles 55(3) of Council Regulation (EC) No 1182/2007 laying down specific rules as regards the fruit and vegetable sector, amending Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 and repealing Regulation (EC) No 2202/96 (OJ 2007 L 273, p. 1) and Article 52 (1) and (2) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549), given that the national authorities carried out the controls referred to in the abovementioned articles properly, having respected the requirements of the applicable rules and, in any event, given that there is no risk to the fund.
- The flat-rate correction of 5 %, in the sum of EUR 2 191 585 (item: 'Weaknesses in programme approval and authorisation of expenditure, Autonomous Community of Catalonia'), is unlawful since the Commission infringed Article 52(1) and (2) of Regulation No 1306/2013, in conjunction with Articles 103, 105(2)(d), 106, 107(1)(c) to (e), 108(1)(b) and 109(1)(a) to (c) of Regulation No 1580/2007, in that the Spanish authorities have established compliance with the rules referred to and, in any event, there is no risk to the fund.
- In the alternative, the applicant alleges breach of the principle of proportionality by infringement of Article 52(2) and (3) of Regulation No 1306/2013 in conjunction with Document VI/5330/97 establishing the Guidelines for the calculation of the financial consequences when preparing the decision regarding the clearance of the accounts of the EAGGF Guarantee.

3. Pleas in law which relate to the financial correction imposed on the Autonomous Community of Castile and León. The applicant alleges in this respect that:

- The flat-rate correction at 5 % in the sum of EUR 10 071 661,83 and the calculation method used are contrary to Article 31(2) of Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1) and the Guidelines in Commission Document VI/5330/97 and AGHRI-2005-64043.
- In the alternative, the flat-rate correction imposed by the Commission is disproportionate, infringing Article 31(2) of Regulation (EC) No 1290/2005 in conjunction with Document VI/5330/97.