

- It is submitted in this regard that the applicant has provided evidence that the remuneration of its own worker members is fully in line with market values and with the remuneration received by self-employed ‘parasubordinate’ workers and employees pursuing similar activities. *Iner alia*, the employment on the basis of ‘continuous and coordinated contractual relationships’ of international experts engaged in activities connected with the projects in question is perfectly legitimate.
2. Second plea in law, alleging breach of the principle that administrative action should be proportionate and breach of the principles of sound administration, transparency and that criteria must be determined in advance.
- It is submitted in this regard that the existence of a multiplicity of criteria which may be used for the purpose of determining the methods of calculating remuneration should have led the administration to adopt the criterion most favourable to private individuals. Once it was realised that there is considerable variation among the rates paid on the Italian and European markets for the same services, the appropriate course of conduct for the administration would have been to adopt a solution liable to cause the least detriment possible.
3. Third plea in law, alleging breach of the principle that administrative action should be reasonable, on the grounds of manifest contradiction and unequal treatment.
- It is submitted in this regard that while the justification given in the contested measure for the recovery is that the method used for calculating eligible costs and remuneration is unlawful, that measure is clearly at variance with decisions previously adopted by the Commission, since the very same methodology which is the subject of complaint here has been also been viewed in a positive light by that institution.
4. Fourth plea in law, alleging breach of the principle of legitimate expectations, the principle of good faith and the principles of the protection of acquired rights and legal certainty and breach of the duty of care.
- It is submitted in this regard that the Commission’s conduct has given rise to a legitimate expectation on the part of the applicant, in so far as the administration’s decision that the grant agreement relating to the ECOLINK + project was to be concluded ‘in accordance with the solution elaborated to the noteworthy findings of a recent audit report’ [sic] and the decision to provide in the subsequent amendment to that agreement that, as regards the Shareholders, it was necessary to use ‘the methodology annexed to the contract and the relative costs are reported in the company’s books’ [sic] show that it may be inferred that the Commission had in fact, by that stage, indicated its acceptance of the methods of calculating costs proposed by META.
5. Fifth plea in law, alleging insufficient reasoning, breach of the rule that the parties should be heard, the principle of sound administration, breach of the procedures laid down by the grant agreements and of the Code of proper administrative conduct.

Action brought on 31 October 2012 — Giorgis v OHIM — Comigel (Shape of goblets)

(Case T-474/12)

(2013/C 9/72)

Language in which the application was lodged: English

Parties

Applicant: Giorgio Giorgis (Milan, Italy) (represented by: I. Prado and A. Tornato, lawyers)

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

Other party to the proceedings before the Board of Appeal: Comigel SAS (Saint-Julien-lès-Metz, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 July 2012 in case R 1301/2011-1; and

— Order OHIM to pay the costs

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The three-dimensional mark representing a shape of goblets, for goods in class 30 — Community trade mark registration No 8132681

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The request for a declaration of invalidity was based on grounds for refusal pursuant to Article 52(1)(a) in conjunction with Articles 7(1)(b) and (d) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the contested CTM invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and 7(3) of Council Regulation No 207/2009.
