BoA-D-2025-01

D E C I S I O N

given by

the **BOARD OF APPEAL**
OF THE EUROPEAN SUPERVISORY AUTHORITIES

on the reimbursement of costs

in the appeal case brought by

NOVIS Insurance Company, NOVIS Versicherungsgesellschaft, NOVIS Compagnia di Assicurazioni, NOVIS Poisťovňa a.s., ("NOVIS")
[Appellant]

against

The European Insurance and Occupational Pensions Authority (EIOPA)
[Respondent]

APPEAL under Article 60 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 of the European Parliament and of the Council (the "ESAs Regulations")

Board of Appeal
Michele Siri (President)
Margarida Lima Rego (Vice President and Co-Rapporteur)
Gerben Everts
Christos Gortsos
David Ramos Muñoz (Co-Rapporteur)
Carsten Zatschler

Date: 3 December 2025

Summary

This decision on taxation of costs arises from Board of Appeal (BoA) Decision BoA-D-2024-05, of 30 July 2024, between NOVIS Insurance Company, NOVIS Versicherungsgesellschaft, NOVIS Compagnia di Assicurazioni, NOVIS Poisťovňa a.s. ("NOVIS", or the Appellant) and the European Insurance and Occupational Pensions Authority ("EIOPA", or the Respondent).

In the Decision of 30 July 2024, the Respondent was ordered to reimburse the Appellant's costs for the appeal. The Appellant provided a full breakdown of hours spent, and the hourly rates applicable by the lawyers assisting the Appellant in its appeal. In total, the Appellant claimed 656 hours and 49 minutes of legal support. The Respondent objected to the order to reimburse the costs, and disputed the reimbursement claim, arguing that the sum was too high due to unnecessary and unreasonable costs being claimed. The matter was brought to the BoA for a decision.

Firstly, the BoA found that, in accordance with its Rules of Procedure (RoP) it has the competence to decide on the allocation and the taxation of costs. Following the case-law of European Courts, the BoA determined that not all fees and expenses a party states to have incurred automatically qualify for reimbursement. Only those costs that are considered objectively necessary and reasonable do qualify. The BoA determined that some categories of costs are excluded outright, including costs incurred in pre-litigation and non-litigation stages, and when informing the client. Costs categories like drafting the appeal, replying to the Respondent, preparing and participating in the hearing, reviewing the final decision and preparing present decision qualify for reimbursement. Furthermore, the choice made by NOVIS to involve several law firms does not lead to an automatic exclusion of the costs of one or more of the firms. The correct approach is to look at the total number of hours considered, from an objective point of view, as "reasonably necessary" for an appeal, not at who incurred those hours.

Second, the BoA decided on the necessity and reasonableness of costs, finding that the Appellant's breakdown and justification of costs was detailed and cogent, the hourly rates were not "manifestly excessive", but, conversely, that the number of hours claimed by the Appellant exceeded what could be considered as reasonably necessary and thus recoverable from the Respondent. Following European Courts precedents and taking into account that case BoA-2024-05 involved novel points of law, and was relevant in the context of the Appellant's overall defence strategy, the BoA found that a total of 148 hours should be reimbursed by the Respondent.

NOVIS v EIOPA – Decision on costs

1 By its Notice of Appeal, dated 23 May 2025, NOVIS Insurance Company, NOVIS Versicherungsgesellschaft, NOVIS Compagnia di Assicurazioni, NOVIS Poisťovňa a.s. ("**NOVIS**") brought an action against the European Insurance and Occupational Pensions Authority ("**EIOPA**") to recover the costs from previous proceedings, where NOVIS had brought an action against EIOPA's Decision EIOPA-23-684 of 6 September 2023 particularly refusing to grant public access pursuant to Regulation (EC) No 1049/2001[1] to documents produced in the context of an EIOPA investigation in accordance with Article 17 of the EIOPA Regulation[2] into the conduct of the Národná banka Slovenska (Slovak National Bank), as national competent authority and direct supervisor of NOVIS. The Board of Appeal of the European Supervisory Authorities ("**BoA**"), by its Decision in case BoA-D-2024-05 of 30 July 2024, remitted the case to EIOPA, ordering EIOPA to pay the Appellant's reasonable costs.

I – Background to the dispute

2 This dispute concerns the taxation of costs, and stems from previous proceedings concerning access to documents. The relevant facts of those proceedings are contained in the Decision BoA-D-2024-05, and need not be reproduced here. Paragraph 163 of that decision, concerning costs, read as follows: *"EIOPA must be ordered to pay the costs, in accordance with the form of order sought by NOVIS."* The second point of the operative part of that Decision read as follows: "*orders EIOPA to pay the reasonable costs of NOVIS and to bear its own costs*". This decision was shared with the parties on 30 July 2024, with the BoA's request to provide the BoA through the Secretariat a list of clerical mistakes, errors in calculation or obvious slips in the Decision.

3 On 6 August 2024, together with an indication of what in its view were clerical mistakes, errors in calculation or obvious slips, EIOPA also pointed out that *"while EIOPA will be ordered to pay the reasonable costs of the Appellant, there will, if needed, be a separate procedure to determine the actual amount of those reasonable costs and that EIOPA will be able to make submissions on them by analogy of the General Court's procedure for taxation of costs"*.

4 On 7 August 2024, the Appellant indicated, in this respect, that *"Regarding the costs of the proceedings, NOVIS intends to contact EIOPA in due course separately"*.

[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, 31.5.2001, pp. 43-48.
[2] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ 2010 L 331, 15.12.2010, pp. 48-84, as amended (*inter alia*) by Regulation (EU) No 2175/2019 and currently in force.

A – *Subsequent exchanges between the parties*

5 During August and September 2024, the Parties exchanged several communications regarding the revised Confirmatory Decision that would result from the BoA Decision remitting the case to EIOPA, but these communications did not refer to the issue of costs.

6 On 2 December 2024, the Appellant sent a letter to EIOPA requesting the reimbursement of costs in the amount of EUR 214,327.66.

7 On 9 December 2024, EIOPA sent a letter to the Appellant in reply to the Appellant's letter of December 2, copying the BoA's Secretariat. In its letter, EIOPA objected to the reimbursement of costs requested by the Appellant. EIOPA raised several legal grounds to object to the reimbursement of costs.

8 On 17 March 2025, the Appellant sent another letter to EIOPA. In this letter the Appellant proposed a revised calculation of costs, arriving at a total amount of 196,300.66. The Appellant also included several arguments, which replied to the grounds raised by EIOPA to object to the reimbursement in its 9 December 2024 letter.

9 On 24 March 2025, EIOPA sent a letter to the Appellant in reply to the Appellant's letter of March 17, copying the BoA's Secretariat. In its letter, EIOPA stated that: *"EIOPA still considers the invoice – now amounting to 180 000 EUR - to be unreasonably high and thus will not proceed to pay",* and also that *"now it would be opportune that you reach out to the BoA for an assessment on the reasonable costs that could be recovered in this case"*.

II – Procedure

10 On 15 April 2025, the BoA, through its Secretariat, received a Letter from NOVIS, requesting the BoA to confirm that EIOPA is required to comply with the BoA's order on costs as contained in Decision BoA-D-2024-05, and pay the Appellant's actual costs as laid out in its letter of 17 March 2025 within the period of seven days set out in Article 25(5) of the Rules of Procedure ("**RoP**"), and, should the BoA consider that a separate procedure applies for the determination of costs, to issue a statement in this regard, reserving its right to make further detailed submissions regarding the appropriateness and reasonableness of its costs.

11 On 5 May 2025, the President of the BoA issued a Procedural Order, which included a statement of the facts, and the following considerations:

> *"The Parties' communications include arguments and considerations that raise different legal issues. The Parties have shared these arguments with each other. In some instances, the Parties have copied the BoA in their communications. The Parties have also, in some cases, expressed their views about the potential role of the BoA in settling the matter of costs, and about the criteria to assess the recoverability of certain categories of costs, and the reasonableness of said costs, often relying on the facts of the case, and on the case law of European Courts on disputes about the amount of recoverable costs.*

However, the Parties have not formally requested the BoA to decide on the matter of the reimbursement of costs. Thus, although the previous communications between the Parties are useful as background and context, they are no substitute for a procedure where the Parties are given the opportunity to make formal submissions. The Parties, who on several instances have stated their intention to reserve their right to make submissions in this regard, share this view.

The Appellant's Letter of April 15 is the first formal request to the BoA to decide on this matter. To do so, the BoA deems it necessary to first allow the Parties to make their submissions.

The BoA informs the parties that, due to the unavailability of one of the BoA members, the composition of the BoA for this and further decisions concerning the allocation of costs has changed, with Alternate Member David Ramos Muñoz replacing Member Geneviève Helleringer."

12 Based on these considerations, the BoA instructed the parties to file their submissions on the matter of the reimbursement of costs, with a further indication that, without prejudice to the Parties' right to address all the issues of fact and law that, in their view, are relevant for the just determination of the matter of reimbursement of cost, the BoA requested the Parties to at least address the following matters:

1. Whether the statement of Facts included above by the BoA corresponds to the actual timeline of the exchange between the Parties, or whether there are other communications exchanged by the Parties.

2. The basis for the BoA's jurisdiction to decide on the reimbursement of costs, and, in particular, whether a BoA Decision on the reimbursement of costs should be treated as a separate Appeal against a refusal by EIOPA to reimburse the full costs, or as a separate procedural step, but within the same Appeal that resulted in the Decision BoA-D-2024-05, and what would be the Form of Order sought to settle the dispute.

3. In order to assess recoverability, which are the categories of costs where reimbursement may be recovered, and what are the legal arguments to assess whether they are recoverable or not, and/or reasonable or not, in particular, the extent to which the BoA should base its decision on the same principles and criteria applied by the General Court and the Court of Justice, or whether different principles and/or criteria should apply, and their implications.

4. Which would be the act that provides a legal basis for the recovery of costs, the date from which said costs would be recoverable, and whether interests could accrue from said amount, and from what date.

13 The BoA gave the parties the following deadlines to file their submissions: 23 May 2025 for NOVIS, and 10 June for EIOPA.

14 NOVIS filed its submissions on 23 May, within the deadline set.

15 EIOPA asked the BoA for an extension until 17 June 2025, which was granted by the President of the BoA. EIOPA filed its Response on 16 June, within the extended deadline.

16 On 27 June 2025, NOVIS requested the BoA for an opportunity to submit a Reply to EIOPA's Response. NOVIS grounded its request on its argument that EIOPA's Response contained several statements and assertions of fundamental and concerning nature, which appeared to challenge the orders issued by the BoA in its Decision of 30 July 2024 (BoA-D-2024-05), in particular the BoA's

power and authority to render the decision on taxation of costs, and to urge the BoA to retrospectively amend ("reconsider") that decision on cost allocation, apart from calling into question NOVIS's estimate of costs. NOVIS also argued that these fundamental assertions had not been previously raised in EIOPA's previous communications.

17 The President of the BoA allowed NOVIS to submit a Reply, setting 13 August 2025 as a deadline.

18 On the deadline (13 August 2025), the Appellant submitted its Reply to EIOPA's Response.

III – Forms of order sought

19 NOVIS requests that the BoA demands compliance by EIOPA with the BoA's order and request that EIOPA immediately pay NOVIS's costs, these costs being: (a) EUR 199,225.66, per Annex A, plus interest in the amount of 11.15% from the date of 17 March 2025; and (b) EUR 20,506.00, per Annex C.

20 EIOPA, for its part, requests the BoA to:

- Reconsider its cost order in Decision BoA-D-2024-05 and order the parties to bear their own costs, in light of the inadmissibility of the cost claim, or, alternatively,

- Reconsider its cost order in Decision BoA-D-2024-05 and order the parties to bear their own costs, as a consequence of the disproportionate request of costs, or, alternatively,

- Drastically reduce NOVIS's claimed costs, limiting them to the objectively necessary work, at reasonable rates, excluding VAT, non-recoverable, unreasonable, excessive or disproportionate costs, and exclude costs from the work of third-party law firms, and

- Order a default interest of 5.90% from the Default day.

IV – Legal context

A – *The Board of Appeal's RoP*

21 Article 60 (1) and (6) of Regulation 1094/2010 states that:

> *1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18 and 19 and any other decision taken by the Authority in accordance with the Union acts referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.*
>
> *[…]*

6. The Board of Appeal shall adopt and make public its rules of procedure.

22 Article 25 of the BoA's RoP states:

"1. The costs of the appeal shall comprise the reasonable legal and other costs incurred by the parties for the appeal.

2. The question of costs may be dealt with in the decision of the Board of Appeal. Otherwise, any question of the apportionment of costs shall be dealt with after publication of the decision of the Board of Appeal (subject to any earlier order made under Article 11.4). In either case, the parties shall be entitled to make representations in that regard.

3. The Board of Appeal may decide which of the parties shall bear the costs or in which proportion they shall be borne by the parties.

[…]

5. Costs, if ordered, must be paid to the receiving party within 7 days."

23 The main arguments of the parties are briefly summarised below. However, to avoid unnecessary duplications, this summary is limited to the essential elements of the parties' pleas. A more detailed account of the parties' arguments is included and considered in the findings of the BoA's decision on costs. The BoA considered all the arguments raised by the parties, irrespective of whether or not a specific mention to each of them is made in this decision.

24 By way of factual clarification, it is important to note that both parties confirmed that the BoA's description of the sequence of events was an accurate summary of the actual timeline of the exchange between the Parties, and that there were no other communications exchanged between the Parties.

25 NOVIS argued in its submissions filed on 23 May 2025 that this is a continuation of the proceedings leading to Decision BoA-D-2024-05, and that the BoA had already ruled on EIOPA's obligation to reimburse NOVIS's costs, and no other order was necessary; that EIOPA's communication of March 14 should not be considered a conclusive decision to refuse reimbursement; that all costs incurred in the proceedings are recoverable, and that NOVIS had incurred further costs as part of the procedural steps leading to this decision; that the BoA is bound only by its RoP, which are limited in nature and are not comparable to the RoP of the General Court, and thus there would be no legal basis to apply the case-law of the General Court; and that the legal basis for the recovery of costs is the Decision (i.e., Decision BoA-D-2024-05) and no other decision or procedure is needed.

26 EIOPA argued in its Response that NOVIS's claim on costs is inadmissible because the BoA lacks the competence to allocate costs between the parties, and Article 25 of the BoA's RoP lacks a valid legal basis; that, in the alternative, the BoA should reconsider its allocation of costs in its Decision BoA-D-2024-05, and indicate that each party shall bear its own costs, since the BoA's decision to remit the case in its Decision BoA-D-2024-05 was only a partial, not total, acceptance, of the appeal. In the alternative, i.e., if the BoA rejects EIOPA's other pleas, EIOPA argued that the BoA is best suited to review the reasonableness of the costs claimed by NOVIS, and the taxation of costs decision should be seen as a separate step, but in continuity with the previous procedure, (i.e., the one resulting in Decision BoA-D-2024-05), resulting in a BoA Decision, as the formally correct

form of order, which should apply certain principles, drawn from the case-law of European Courts, about the categories of non-recoverable costs, and the reasonableness of costs. EIOPA argued that the date of accrual of interest should be that of an ulterior decision on costs, and for the applicable interest rate it referred the BoA to Article 99(2)(b) of Regulation 2024/2509.[3] EIOPA then provided arguments disputing the reasonableness of NOVIS's cost estimate on grounds of the subject-matter, the significance and difficulty of the dispute, the amount of work generated, and the financial interests being represented. It also argued that there were categories of non-recoverable costs, regarding the change of legal representation, non-procedural periods, expenses from lawyer-client interactions and other non-procedural activities. EIOPA also argued that certain costs (of which it provided concrete examples) should be excluded for being excessive and disproportionate, including a separate analysis of the costs of drafting the appeal, or of NOVIS's reply to EIOPA, the preparation to the hearing, the assessment and reply to EIOPA's PowerPoint presentation, or closing statements, adding that the hourly rates were excessive, and arguing that the costs linked to unsuccessful pleas should not be reimbursable. Finally, EIOPA also rejected the claims for costs resulting from the post-Decision submissions to EIOPA and the BoA.

27 In its subsequent Reply of 13 August 2025, NOVIS argued that the BoA lacked a legal basis to reduce the costs claimed by NOVIS, and could not use the case-law of the General Court on Article 170 of its RoP. It disputed EIOPA's allegation about the BoA's lack of legal basis for a decision to allocate costs, arguing that the BoA's Decision was *res judicata* because EIOPA had accepted the Decision by failing to appeal it before European Courts, and also disputed EIOPA's claim that the BoA should reconsider its cost allocation in Decision BoA-D-2024-05 as unwarranted, because the BoA remitted the case to EIOPA, holding the decision unlawful. NOVIS then disputed EIOPA's arguments regarding the exclusion of certain costs, and the unreasonableness of other costs. NOVIS argued that neither the BoA RoP nor its Decision BoA-D-2024-05 limited the costs in terms of categories or amounts, and that the costs incurred were, indeed, reasonable. It also disputed EIOPA's position on the *dies a quo* for the accrual of interest on the costs, arguing that, since the BoA lacks a legal basis like Article 170 of the RoP for the General Court, a party can legitimately expect reimbursement of its costs from the moment the BoA orders the other party to bear the first party's costs, and argued that the interest should be set by a methodology that the BoA considers fair and equitable, presenting a figure of 11.5%, as based upon the European Union's interest calculator in response to debts of a public authority payable to a creditor in the Slovak Republic (which had since been updated to 10.15%). NOVIS then disputed all EIOPA's arguments on the proportional allocation of costs, its assertions regarding the subject matter and significance of the proceedings, the amount of work generated by the case, the financial interests of the parties, the change of legal representation, the alleged non-procedural periods, EIOPA's denial to reimburse specific costs, and EIOPA's allegations on the (un)reasonableness of NOVIS's costs, with a specific discussion of the number of lawyers providing assistance, the hours worked, the sufficiency of the evidence supplied by NOVIS, and the false analogy between EIOPA's legal team's tasks, and NOVIS's tasks. NOVIS also provided a justification of the reasonableness of the costs it incurred, preparing the notice of appeal, the correspondence with the BoA, the hearing and its preparation, the review of EIOPA's PowerPoint presentation, the preparation of closing statements. It also disputed EIOPA's allegations about the unreasonableness of NOVIS's hourly rates, the existence of other non-reimbursable costs, or its supplementary cost claims.

[3] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024.

V – Admissibility, competence of the BoA to decide on costs

28 Although NOVIS "*simply requests that the BoA demand EIOPA [to] comply with its order in the Decision and to reimburse NOVIS for its costs*", NOVIS then clarifies that its request is actually that the BoA confirms "*that EIOPA is obliged to pay NOVIS's costs (which are set out below)*", "*these costs being: (a) EUR 199,225.66, per Annex A, plus interest in the amount of 11.15% from the date of 17 March 2025; and (b) EUR 20,506.00, per Annex C*" of its 23 May 2025 submissions. In its Decision BoA-D-2024-05, the BoA merely ordered EIOPA to reimburse NOVIS's reasonable costs, in the abstract, without specifying an amount.

29 The BoA is now asked by NOVIS to confirm that EIOPA must pay to NOVIS specific amounts, such amounts corresponding to the full costs actually incurred by NOVIS. The BoA therefore concludes that NOVIS has made a request to the BoA for a decision on the determination of reimbursable costs following its BoA-D-2024-05 Decision.

30 Regarding the competence of the BoA to decide on the taxation of costs, both parties cast doubt on the BoA's competence, although their arguments reach opposite conclusions about the consequence of such limited competence, in terms of who bears what costs. NOVIS suggests that, since the BoA's RoP lack a provision comparable to Article 170 of the RoP of the General Court, it can only award the party that prevails in the main proceeding its full costs. EIOPA, for its part, argues that, since Article 60 of EIOPA Regulation provides no specific content regarding cost allocation, by extension, the BoA, lacks the competence to make a cost allocation other than deciding that each party shall bear its own costs.

31 The BoA is required by Article 60(6) of the EIOPA Regulation to set its RoP, and it is the BoA's view that these RoP necessarily encompass the rules for the taxation, including apportionment and allocation of costs as envisaged in Article 25(2) and (3) of the RoP. The allocation of reasonable costs by the BoA is moreover consonant with Article 47 of the Charter, insofar as it furthers the right to an effective remedy and upholds the principles of fairness and procedural equality, also bearing in mind that – contrary to the situation regarding disputes before the European Courts – there is no provision for legal aid in proceedings before the BoA (cf. Article 146-150 of the RoP of the General Court, and see Order of the Civil Service Tribunal of 26 November 2014, Eklund v Commission, Case F-57/11 DEP, EU:F:2014:254, paragraph 42).

32 EIOPA argues that a power for the BoA to allocate the losing party the costs of an appeal require an explicit provision in the Level 1 text, i.e., EIOPA Regulation. EIOPA bases this assertion on a comparative analysis of the RoP of other Boards of Appeal, which, it argues, generally include a provision stating that each party shall bear its own costs (citing the Single Resolution Board (SRB), the European Chemicals Agency (ECHA), the European Union Agency for the Cooperation of Energy Regulators (ACER), the European Union Agency for Railways (ERA), or the European Union Aviation Safety Agency (EASA)), in contrast with the appeal bodies that provide for a rule stating that the losing party shall bear the appeal costs, which include such rule in the Level 1 text (citing the founding regulations of the appeal bodies of the European Union Intellectual Property Office (EUIPO) or the Community Plant Variety Office (CPVO)).

33 The BoA finds this argument unconvincing. The reference to the RoP of different BoAs may illustrate an empirical regularity, but this is different from a binding legal principle. EIOPA fails to explain the rationale for a binding legal principle, whereby each party shall bear its own costs as a

general rule, or why this principle would find an exception in the General Court or the Court of Justice, whose RoP provide exactly the opposite solution (articles 134 GC RoP, or 138 (1) Court of Justice RoP). Even the empirical argument is not as clearcut as suggested by EIOPA. Some of the RoP of administrative appeal bodies whose Level 1 texts are silent on cost allocation contemplate exceptions to the rule that each party shall bear its own costs, concerning e.g., on the allocation of costs on the taking of evidence (ECHA's RoP, article 17), or the reimbursement of the successful party for travel and accommodation expenses, and loss of earnings to the extent deemed equitable (ERA RoP, article 35), or are silent on cost allocation, save for the possibility that the agency may reimburse the appeal charges (EASA RoP, article 20 (3)). This appears to support the view that, under EU Law, the rules on costs are determined in the applicable RoP, save when a different, hierarchically superior text, makes a specific provision in this respect.

34 NOVIS's argument for its part is that, lacking a provision similar to Article 170 of the RoP of the General Court, the BoA lacks the competence to decide on the determination of costs, and must limit itself to order EIOPA to reimburse the costs as incurred, and determined by NOVIS itself.

35 This argument is equally unsuccessful. The BoA's RoP do not include a specific rule, such as the one where each party shall bear its own costs. What Article 25 of the RoP does is to allocate to the Board itself the competence to decide on cost on a case by case basis. This provision has been in force in its current form since at least 2020, without ever having been called into question by any of the Authorities. In its Decision BoA-D-2024-05 the BoA stated that EIOPA should pay *"the reasonable costs of NOVIS"* and that it should *"bear its own costs"*. Should the parties agree on the reasonableness of NOVIS's costs, there should be no need for further decision. However, when, as it is the case, the parties disagree about the categories of reimbursable costs, and the reasonableness of the costs, Article 25(2) of the RoP provides that "*any question of the apportionment of costs shall be dealt with after publication of the decision of the Board of Appeal*", which is precisely what the present proceedings are about. These proceedings could equally be described as resulting from EIOPA refusing to pay the costs demanded, forming the subject of an appeal pursuant to Article 60 of the EIOPA Regulation.

36 A different matter is whether the BoA has not only the competence to decide on cost allocation, but also to make a concrete determination of which costs are or are not recoverable, and in what amounts. This is yet another example of the challenges encountered by administrative boards of appeal, which must, on one hand, act as a useful filter for disputes involving technical aspects that would otherwise end up in front of European Courts, and, on the other hand, must scrupulously respect their limited remit, and not decide on aspects that are reserved for the Courts. Guidance from the case-law of European Courts is fundamental in this respect.

37 There appears to be no guidance on the competence to decide on the recoverability of costs by boards of appeal in general. The RoP of the General Court include an explicit reference to the recoverability of costs in proceedings relating to intellectual property rights, which consist in appeals against decisions by the EUIPO Boards of Appeal. Article 190 of the GC RoP states that:

> *1. Where an action against a decision of a Board of Appeal is successful, the General Court may order the defendant to bear only its own costs.*
>
> *2. Costs necessarily incurred by the parties for the purposes of the proceedings before the Board of Appeal shall be regarded as recoverable costs.*

38 However, a possible explanation of this explicit reference is the large volume of disputes decided before the EUIPO BoA, and the fact that article 109(7) Regulation 2017/1001 (EU Trademark Regulation), article 18 Regulation 2018/626 (EU Trademark Implementing Regulation) and article 70 Council Regulation 6/2002 (EU Design Regulation)) provide some explicit criteria for the apportionment and determination of costs, and in this way it is possible for the General Court RoP to bring the criteria for determining said costs in line with its own principles and criteria on taxation of costs. It is worth noting that the language of Article 190(2) is analogous to the one used in Article 140(b), for proceedings before the Court. This alignment of the criteria to determine costs is compatible with allocating the EUIPO Board of Appeal the competence to apportion and fix costs (EUIPO BoA RoP, articles 63 and 64).

39 It is commensurate with principles relating to the economy of the procedure for the BoA to make the determination of the costs, as the body with the more direct knowledge of the specific circumstances of the proceedings giving rise to such costs.

40 This also helps to determine the nature of the present proceedings, which must be understood as a separate incident, or procedural step, in continuity with the previous, main procedure, which led to the Decision BoA-D-2024-05, since it was the decision to order EIOPA to reimburse NOVIS's "reasonable" costs that led to the parties' disagreement, and to the present dispute. Notwithstanding its nature, the BoA must, in any event, take into consideration the circumstances of the case up to the time of this decision on costs. This is also how the Court of Justice and the General Court treat the procedures on taxation of costs, although their adjudication on costs is made in the form of an order (Order of the Court of Justice of 4 March 2021, case C-514/18 P, Gabriele Schmid v Landeskammer für Land- und Forstwirtschaft in Steiermark, EU:C:2021:180, paragraph 21; Order of the General Court of 14 May 2013, case T-298/13 Christina Arrieta D. Gross v. Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), paragraph 53).

41 Finally, this also disposes of EIOPA's argument that the BoA should reconsider its decision on cost allocation, and should allocate the costs proportionally, to reflect what EIOPA perceives to be the actual outcome of the dispute, where the appeal was only accepted in part. In its decision BoA-D-2024-05, the BoA made a determination about the of costs. This Decision is a continuation of the previous one, where the BoA's task is, in accordance with Article 25(1) and (2) of the RoP to apportion the "*reasonable legal and other costs incurred*", wherever the parties disagree. It is not a separate dispute requiring a determination *ex novo*, which would moreover be precluded by the *res judicata* effect attaching to the BoA's determination on costs in the operative part of Decision-D-2024-05 in light of the outcome of the dispute. Furthermore, that determination was not based on an arithmetical addition and subtraction of successful and unsuccessful pleas, but on an overall assessment of which party prevailed in the case's main arguments of substance. In light of this, the BoA considers that this decision may consider the details of the allocation and determination of recoverable costs, but otherwise sees neither a possibility nor a reason to deviate from its general finding in Decision BoA-D-2024-05.

VI – Legal assessment

A.- Principles applicable to the taxation of costs

42 A preliminary issue concerns the principle and criteria applicable to the determination of reimbursable costs, and in particular the suitability of the case-law of the Court of Justice and the General Court in this respect. Here, whereas EIOPA has a favourable view to the application of such case-law by analogy, NOVIS objects to it, arguing that, whereas the RoP of the General Court refer to "necessarily incurred" costs (Article 140(b)), the BoA's RoP refer to "reasonable legal costs" (Article 25(1)).

43 The BoA finds it appropriate to draw on the case-law of the General Court and the Court of Justice. Both Courts have ample experience with disputes over the taxation of costs, and their case-law both enshrines the general principles underpinning a fair taxation of costs, and is flexible enough to be adjusted to the circumstances of each case. Alignment with the case-law of European Courts is particularly opportune given that, after the reform of the Statute of the Court of Justice, the BoA was included as one of the administrative boards of appeal that, under article 58a, despite not being courts, form part of the EU system of administration of justice. This also stresses the link between determination of costs and judicial protection, understood as a "concrete and effective" right of access to justice (see, e.g., Order of the Civil Service Tribunal, 26 November 2014, case F-57/11 DEP, Eklund v Commission, EU:F:2014:254, paragraphs 40-43). Indeed, as outlined above, also in cases where Level 1 texts provide specific rules on costs, such as the EUIPO Board of Appeal, alignment is sought with the principles that govern the recoverability of costs before European Courts.

44 NOVIS warns the BoA against "blindly transferring" the case-law of the General Court, and argues that the formulation of the BoA's RoP (which speak of "reasonable costs") being different from that of the General Court ("costs necessarily incurred") should provide for a more comprehensive recovery of costs. However, it must be stated in this regard that Boards of Appeal are meant to operate as a first filter of cases otherwise decided by European Courts, and a filter that is also speedy, user-friendly and with a streamlined decision-making process. Encouraging long, protracted proceedings, with longer hours and larger fees than the procedures before European Courts would do a disservice to this idea. Therefore, while the BoA's RoP may indeed provide a greater degree of flexibility, the BoA considers that the principles used by European Courts supply a valid, and persuasive point of reference.

B.- Categories of recoverable costs

45 For purposes of determining the categories of recoverable costs it is opportune to refer to the case-law of European Courts, under which recoverable costs are limited to those incurred for the purpose of the proceedings and to those which were necessary for that purpose, and include the travel and subsistence expenses and the remuneration of agents, advisers or lawyers, as well as witnesses and experts (Order of the General Court of 25 March 2021, case T-800/19 DEP, Austria Tabak v EUIPO – Mignot & De Block (AIR), EU:T:2021:174, paragraph 9; Order of the General Court of 26 January 2017, Nürburgring v EUIPO – Biedermann (Nordschleife), T-181/14 DEP, EU:T:2017:41, paragraph 9).

46 The parties disagree about which categories of costs are recoverable. The BoA proceeds to analyse those categories. The BoA will use as a basis the detailed statements of costs provided by NOVIS on the part of three law firms instructed by it, namely Clyde & Co Europe LLP, Hillbridges and AK GG s.r.o. These statements of costs concern lawyers' fees, and are included in the evidence submitted by NOVIS together with its submissions which comprises an Annex A, with a breakdown of the hours spent by the lawyers of each of the three firms involved, by date, person involved, billable

rate, task performed, and, in the case of one of the firms, the correspondence with a specific invoice (the breakdown is organized by date); an Annex B, which provides a separate description of the tasks performed by the firm that employed more hours on the case (this breakdown is organised by item, with a reference to the dates where some time was spent on the specific item); and an Annex C, with a separate breakdown (by date again) of the hours that the firm that spent more hours on the case employed trying to recover the costs from EIOPA.

(a) Costs relating to the change in legal representation, and coordination costs

47 EIOPA challenges the recoverability of the costs associated to the familiarisation of NOVIS's new legal representatives with the procedure on access to documents, arguing that each party should be responsible of its own decisions regarding procedural strategy. EIOPA also challenges the recoverability of costs relating to client consultations and meetings, services by third-party lawyers, and coordination with those lawyers. NOVIS disputes this, arguing, from its side, that parties are entitled to legal representation, that case-law acknowledges the recoverability of preparatory work for a case, and that the costs requested do not concern the familiarisation with the case, or the interactions to inform the client, but the joint effort in the collection and drafting of arguments.

48 In principle, according to the case-law of the General Court, *"the drafting of documents sent to the client and coordination with the client cannot be regarded as corresponding to expenses necessarily to be taken into account when calculating the amount of recoverable costs"* (Order of the General Court of 3 June 2020, Kiku v CPVO – Sächsisches Landesamt für Umwelt, Landwirtschaft und Geologie (Pinova), T-765/17 DEP, EU:T:2020:238, paragraph 36).

49 However, this reasoning also depends on the specific situation. The case resulting in the BoA's Decision BoA-D-2024-05, where the present determination of costs originates, involved different legal domains, including access to documents, insurance-related issues, and institutional provisions (EIOPA regulations) regarding confidential documents. It is not unreasonable *per se* for an appellant to consider that the number of matters involved justifies a change of legal representation, to enlist the help of a team of lawyers with the requisite (i.e., comprehensive) expertise. Likewise, assembling a team that provides such expertise may require some coordination between the members of the team.

50 In this sense, EIOPA's examples regarding activities that, in its view, would be deemed to be coordination-related do not necessarily support this view, since they refer to "drafting of memorandum", or "legal analysis of rejection", which could very well take place within a single legal team within the law firm that originally advised NOVIS. On the other hand, as the next point illustrates, the main objection to consider these costs recoverable is not that they relate to coordination efforts due to a change in legal representation, but that they correspond to work undertaken during the pre-litigation stage.

51 The same can be concluded of EIOPA's arguments about the non-recoverability of costs associated to the services of third-party lawyers, for the mere fact that they were third-party lawyers. Whether or not certain activities can be considered as "objectively necessary" for an appeal should depend on the number of hours, not on who incurred those hours.

52 Thus, the BoA considers that the evidence cautions against an outright exclusion of certain expenses on grounds that they were caused by a change of legal representation. It is more appropriate to consider whether the expenses were incurred during the pre-litigation stage, and/or whether the

total amount of hours incurred fall within the boundaries of what may be considered objectively necessary and reasonable for the case.

53 Conversely, the hours associated with a "debrief call" (e.g., between two of the law firms involved, on 5 April 2024), and "Discussion/Communication with the client" by AK GG (6 October, 16 November, 29 November, 2023, 11 January, 20 February, 3 April, 1 August, 2024), no doubt important for the attorney-client relationship, seem to fall within the category of communication and coordination with the client, but not for the preparation of the appeal. There is in particular no indication, given the subject-matter of the proceedings, which concerned access to documents held by EIOPA, that any of these communications were required for the purposes of gathering factual evidence or deciding on a particular litigation strategy.

(b) Costs borne in pre-litigation (and non-litigation) stages.

54 EIOPA challenges the recoverability of costs relating to periods where there was no procedural step, including the familiarisation of the third-party lawyers, and the work done before the appeal decision. NOVIS disputes this, arguing that all the costs incurred concerned the preparation of the appeal, that the work was efficiently allocated to the most competent lawyer regarding each piece of work, and that the total number of lawyers is not relevant.

55 According to case-law, *"costs related to periods during which no procedural step was taken cannot be recovered, since such costs cannot be regarded as directly connected to the intervention of a party's lawyer before the Court. In particular, it should be recalled that, in that regard, the time devoted to the examination of the decision of the Court closing the proceedings is not considered to represent expenses necessarily incurred for the purposes of the proceedings"* (Order of the General Court of 25 March 2021, Austria Tabak v EUIPO – Mignot & De Block (AIR), T-800/19 DEP, EU:T:2021:174, paragraph 19 and the case-law cited). *"The same applies to the time spent on the discussion with the client concerning that decision"* (see Order of 3 June 2020, Kiku v CPVO – Sächsisches Landesamt für Umwelt, Landwirtschaft und Geologie (Pinova), T-765/17 DEP EU:T:2020:238, paragraph 30 and the case-law cited).

56 Thus, *"in proceedings concerning the taxation of costs, save in exceptional circumstances, fees owed for services provided by a lawyer at the stage of the pre-litigation procedure do not constitute recoverable costs"* (see judgment of 28 October 2010 in Ceravolo v ECB, F-23/09, EU:F:2010:138, paragraph 63, or Order of the European Civil Service Tribunal of 29 August, 2016, in Joined Cases F-106/13 DEP and F-25/14 DEP, DD v European Union Agency for Fundamental Rights (FRA), EU:F:2016:205, paragraph 39)". In the view of the Courts:

> *"Even if substantial legal work is, as a general rule, carried out before the judicial stage, 'proceedings' in Article 91(b) of the Rules of Procedure refers only to the proceedings before the General Court, to the exclusion of any prior stage. That follows in particular from Article 90 of those rules, which refers to the 'proceedings before the General Court'"* (Orders of the General Court of 3 September 2010, Componenta v Commission, T-455/05, EU:T:2010:345 paragraphs 42 and 43, of 10 April 2014 in Éditions Odile Jacob v Commission, T-279/04 DEP, EU:T:2014:233, paragraph 39, and of 8 October 2014, Coop Nord ekonomisk förening v European Commission, T-244/08 DEP, EU:T:2014:899, paragraph 13).

57 In light of this, costs resulting from actions before 6 September 2023 when EIOPA's appealed decision refusing access to documents was rendered, should, in principle, not be recoverable, as not considered necessary for the appeal. Looking at Annex A to NOVIS's submissions of 23 May 2023, which includes a detailed account of activities, this would apply to the activities undertaken by Clyde & Co.'s legal team from 21 August 2023, until 30 August 2023 (the next action taking place on September 7, 2023). According to the same Annex A, the account of billable activities by Hillbridges begins on October 5, 2023, and by AK GG, on September 12. The BoA considers that the arguments raised by EIOPA on this point are *prima facie* correct.

58 However, the BoA does not consider, as EIOPA does, that one should extend this reasoning without nuance to the actions undertaken until 31 October 2023 because, according to EIOPA, it was only then that "*the first activity on drafting the Appeal was recorded*". September 6 was the date when the Confirmatory Decision was rendered, and subsequent actions may, in principle, have been directed at preparing the appeal, even if they do not explicitly mention "drafting of a memorandum", or similar language.

59 However, this presumption that actions subsequent to the rendering of the appealed decision were directed at preparing the appeal of such decision is rebutted where the description of the actions shows that they were directed at evaluating *whether* the decision could, or should be appealed. In its Order of 8 October 2014, Coop Nord ekonomisk förening v European Commission, T-244/08 DEP, EU:T:2014:899, referred to above, the General Court not only indicated that even "substantial work" not pertaining to proceedings should be excluded. In paragraph 12 clarified that this comprised the fees relating to the preparatory analysis that *"sought to determine <u>whether</u> the decision should be challenged"*. Thus, actions by the lawyers of Clyde & Co. during the period between 6 September and 12 October 2023, including research of case-law, legal assessment of arguments, among other activities, appear directed at exploring the "available remedies", the "prospect of appeals" or "risk factors". In this sense, the final determination of the legal strategy seems to have been adopted on the 12 October 2023, while on 13 October 2023 there is a clear reference to the preparation of the specific appeal before the BoA, as are the subsequent actions.

60 Following this criterion would result in the exclusion, in principle, of the hours prior to the moment where the preparation of the actual appeal began, i.e., those before 13 October.

61 Regarding third-party firms, EIOPA states that their services should be considered non-recoverable because, in EIOPA's view, they correspond to periods "preceding" (Hillbridges) or "largely preceding" the appeal procedure (EIOPA's submissions, paragraph 69 b)). This statement is inaccurate, since all the actions detailed in the account in Annex A correspond to periods after 6 September.

62 However, following the same criterion as with the services of Clyde & Co., some actions, albeit subsequent to the Confirmatory Decision, involve considerations about *whether* to appeal. This is the case of Hillbridges lawyers' actions on October 5, 2023, or AK GG lawyers' actions before 6 October 2023.

63 Even if applying the previous criterion would consider the actions directed at evaluating the course of action and likelihood of success as prior to the appeal, they might, under certain circumstances, be considered as preparatory of such appeal. In principle, the assessment of legal arguments regarding the likelihood of success, risk, and adequate remedies, could serve to identify

the stronger arguments, and help prepare the briefs. Actions prior to the date of the Confirmatory Decision, although more difficult to consider as necessary for this appeal, might also be subject to a reconsideration, e.g., Clyde & Co.'s actions of August 28, 29 and 30 of August 2023, which suggest a preparation in the event of a confirmatory decision refusing access to documents.

64 However, reconsidering such actions as preparatory of the appeal should only occur if the total amount of hours incurred in the preparation of the appeal as such, including, e.g., drafting the appeal or reply, or preparing for the hearing, are below what may be considered reasonable and necessary. Only in such case it would be possible to infer that it was, indeed, the work during the pre-litigation stage that lowered the lower amount of litigation hours below what could have been expected. Conversely, should the costs incurred during the litigation stage be deemed excessive, the second-order consideration of treating costs within the pre-litigation stage as recoverable should not arise.

65 With regard to the costs linked to the rectification of the decision, the Courts have held that in the context of proceedings before the European Courts, where rectification constitutes an exceptional procedure, the time devoted to the examination of the decision of the Court closing the proceedings is not considered to represent expenses necessarily incurred for the purposes of the proceedings (see Orders of the General Court of 7 October 2021, case T-701/18, Campbell v Commission, EU:T:2021:670, paragraph 40, and of 25 March 2021, Austria Tabak v EUIPO – Mignot & De Block (AIR), T-800/19 DEP, EU:T:2021:174, paragraph 19 and the case-law cited). By contrast, proceedings in front of the BoA routinely involve the correction of clerical mistakes, errors in calculation or obvious slips in the Decision in accordance with Article 23 RoP. The BoA considers that procedure valuable in ensuring the quality of its decisions notwithstanding the streamlined administrative framework within which it operates, in line with its focused mandate. By way of consequence, fees associated with a pre-publication review of a decision and the preparation of any list of emendations must be considered to reasonably form part of the costs of the proceedings.

66 Finally, the costs associated to the present procedure for the determination of costs must exclude any costs not falling within the procedure itself, such as the costs associated to the exchanges of communications between the parties, from August 2024 until the President's Procedural Order, in May 5, 2025, giving procedural instructions to the parties. Costs incurred during the procedure for the determination of costs itself, however, are considered recoverable (Orders of the General Court of 31 March 2011, Joined Cases 5/02 DEP and T-80/02 DEP, Tetra Laval BV v Commission, EU:T:2011:129, paragraph 54, and of 23 March 2012, case T-498/09 P-DEP, Kerstens v Commission, EU:T:2012:147, paragraph 15) to the extent that they are considered objectively necessary.

67 This stresses the importance of focusing on the necessity and reasonableness of costs.

68 *C.- Necessity and reasonableness of costs.*

(a) Assessment of recoverable costs, and documentation.

69 It is opportune to refer to the established criteria of the General Court, according to which, regarding the recoverability of costs, in particular lawyers' fees:

> *"according to a consistent line of case-law, the Courts of the European Union are not empowered to tax the fees payable by the parties to their own lawyers, but may determine the*

> *amount of those fees which may be recovered from the party ordered to pay the costs. When ruling on an application for taxation of costs, the Court is not obliged to take account of any national scale of lawyers' fees or any agreement in that regard between the party concerned and its agents or advisers"* (Orders of the General Court of 29 November 2018, case T-912/16 DEP, RRTec sp. z o.o v EUIPO, EU:T:2018:865, paragraph 10, and of 26 January 2017, Nordschleife, T-181/14 DEP, EU:T:2017:41, paragraph 10 and the case-law cited).

70 With regard to the documentation produced, the Courts, in cases where the documentation was not detailed, have noted the following:

> "*the fee notes produced by the applicant do not contain sufficiently specific information, which makes it difficult to verify the costs incurred for the purpose of the proceedings before the General Court and how they were necessary for that purpose. In those circumstances, a strict assessment of the fees recoverable is necessary*" (Orders of the General Court of 23 October 2013 in Phonebook of the World v OHIM, T-589/11 DEP, EU:T:2013:572, paragraph 17 and the case-law cited).

71 The BoA must note the commonalities in the cases where the Courts have used such reasoning to apply a "strict assessment", that the party requesting a reimbursement of costs failed to produce a detailed account of the hours employed in each task.

72 In contrast, NOVIS produced not only the invoices sent to the client, but also a detailed breakdown of the number of hours. EIOPA's objections regarding the breakdown of costs focus on the alleged "inefficiencies, duplication of efforts and exorbitance" of costs (see, *inter alia,* EIOPA Response, paragraph 71), than on the lack of substantiation, i.e., EIOPA does not argue that the lawyers did not work the hours, but that those hours of work were not objectively necessary.

73 In light of this, the BoA considers that the cost breakdown facilitated by NOVIS provides, in formal and evidentiary terms, an adequate justification of the costs incurred for the hours worked. The BoA concludes this, however, subject to considerations set out below on the objective necessity and reasonableness of such costs.

(b) The criteria to determine the reasonableness of the recoverable amounts.

74 The parties disagree about the total number of hours worked, and the hourly rates, that are objectively necessary or reasonable, using different points of reference to support their views. NOVIS argues that *"the GC has in the past considered costs in the amount of several million Euros and confirmed reimbursements of more than ten times higher amounts than incurred and claimed by NOVIS"* [NOVIS Reply of 13 August 2025, para. 47], citing the Order of the General Court of 29 February 2024, Qualcomm v Commission, T-235/18 DEP, EU:T:2024:142.

75 EIOPA, for its part, refers to some access to documents cases, where the General Court allowed reimbursements of costs between EUR 10,520 (Order of 26 March 2021, case T-31/18, Izuzquiza v European Border and Coast Guard Agency (Frontex), EU:T:2021:173) and EUR 22,621.50 (Order of 7 October 2021, case T-701/18 DEP, Campbell v Commission, EU:T:2021:670).

76 With regard to the criteria for the determination of the fees, the Courts have stated that:

> *"in the absence of any provisions of European Union law ('EU law') relating to tariffs or to the necessary working time, the Court must freely assess the details of the case, taking account of the subject-matter and the nature of the dispute, its importance from the point of view of EU law and also the difficulties presented by the case, the amount of work which the contentious proceedings generated for the agents or counsel involved and the economic interests which the dispute presented for the parties*" (Orders of the Court of Justice of 20 May 2010, paragraph 44, and of 9 January 2008 in Case C-104/05 P-DEP Pucci v El Corte Inglés, paragraph 10 and the case-law cited, and C.A.S. v Commission, paragraph 14).

77 Furthermore, the primary consideration *"is the total number of hours of work which may appear to be objectively necessary for the purpose of the proceedings […]irrespective of the number of lawyers who may have provided the services in question"* (Orders of the General Court of 29 February 2024, Qualcomm v Commission, T-235/18 DEP, EU:T:2024:14228, paragraph 34, and of 28 June 2004, Airtours v Commission, T-342/99 DEP, EU:T:2004:192, paragraph 30 and the case-law cited).

78 Finally, *"In fixing recoverable costs, the Court takes account of all the circumstances of the case up to the signing of the order on taxation of costs, including the expenses necessarily incurred in relation to the taxation of costs proceedings"* (Orders of the General Court of 29 November 2018, case T-912/16 DEP, RRTec sp. z o.o v EUIPO, EU:T:2018:865, paragraphs 11 and 12, of 27 January 2016, ANKO v Commission and REA, T-165/14 DEP, EU:T:2016:108, paragraph 20, and of 6 March 2017, Hostel Tourist World v EUIPO – WRI Nominees (HostelTouristWorld.com), T-566/13 DEP, EU:T:2017:158, paragraph 16 and the case-law cited).

79 The BoA will apply these principles to the determination of recoverable costs arising from lawyers' fees.

(c) Application to the case (I): Hourly rates.

80 Lawyers' fees typically depend on two elements: the number of hours worked, and the hourly rates. Although it is habitual for the case-law of European Courts to assess the number of hours first, and then the hourly rate, the BoA considers appropriate to invert the order. The reason is that the Courts' standard applicable to reviewing hourly rates is different, less intrusive, than the standard applicable to the number of hours, and that the hourly rates can influence the determination of the number of hours that are objectively necessary.

81 As regards the hourly rate, *"as EU law now stands, of a scale in that respect, it is only where the average hourly rate invoiced appears manifestly excessive that the Court may depart from it and fix ex aequo et bono the amount of recoverable lawyers' fees"* (see *Campbell v Commission*, paragraph 55, and Order of the General Court of 6 January 2021, Romańska v Frontex, T-212/18 DEP, EU:T:2021:30, paragraph 39 and the case-law cited).

82 European Courts have accepted hourly rates of EUR 297 (Order of the General Court of 14 May 2013 in Case T-298/10 DEP Christina Arrieta D. Gross v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), EU:T:2013:237; average rate, in a case brought in 2010); 375 EUR/hour (Order of the General Court of 16 October 2024 in case T-677/22 DEP Portal Golf Gestión, SA, v European Union Intellectual Property Office (EUIPO) not published; a more recent case); 200 EUR for an associate and 300 EU for a partner (Order of the General Court

of 7 October 2021, case T-701/18, Campbell v Commission, EU:T:2021:670 (a legal aid case, which implies lower hourly rates), 375 EUR (approximately, in the Order of the General Court of 8 October 2014, case T-244/08 DEP, Coop Nord ekonomisk förening v European Commission, EU:T:2014:899, the figure for a partner, regarding services undertaken after April 2008, was Swedish krona (SEK) 3,500), which, at an exchange rate between 9,33 – 9,5, typical in May/June 2008, yields approximately 370-375 EUR, in a case taking place more than a decade ago). The EFTA Court, for its part, has considered acceptable hourly rates of EUR 428 EUR/hour (Orders of the General Court of 11 October 2017, cases E-7/12 and E-14/11, Schenker North AB v. EFTA Surveillance Authority). In its Order of 29 February 2024, Qualcomm v Commission, T-235/18 DEP, EU:T:2024:142 the General Court objected to fees between USD 1,005 and 1,515 charged by US counsel, but also partly because the work undertaken by each counsel was not sufficiently justified.

83 It is important to note that the hourly rate is a matter determined by contract, and dependent on market practice, and thus, unlike the number of hours considered objectively necessary, it is, in principle, not for the deciding body to depart from said market practice and contract determination, unless the amounts are "manifestly" excessive.

84 The hourly rates differ among the law firms that represented NOVIS' interests. For Clyde & Co.'s lawyers they were EUR 475 for a partner, 360 for a senior associate, 290 for an associate, and 150 for junior associates, while the rates for Hillbridges are either EUR 200 or 100, and AK GG charged a single rate of EUR 150. While the rates of Hillbridges and AK GG are below, or even significantly below the rates usually accepted by the Courts, the partner rate of Clyde & Co. is higher, but does not appear "manifestly excessive". In principle, the BoA sees no reason to depart from these rates.

85 However, even if the Courts do not customarily depart from lawyers' hourly rates, they also stress that hourly rates must influence the assessment of the number of hours considered objectively necessary, *"since remuneration at a high hourly rate is appropriate only for the services of professionals who are capable of working efficiently and rapidly, the quid pro quo being that, in such a case, an assessment must be made – which must be rigorous – of the total number of hours of work necessary for the purposes of the proceedings concerned"* (see Orders of the General Court of 14 May 2013 in Case T-298/10 DEP Christina Arrieta D. Gross v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), EU:T:2013:237, paragraph 20, and of 22 March 2010 in Case T-93/06 DEP Mülhens v OHIM – SpaMonopole (MINERAL SPA), not published, paragraph 22 and the case-law cited).

86 Therefore, whereas the BoA does not depart from the hourly rates claimed by NOVIS, it will take into consideration those hourly rates when assessing the number of hours objectively necessary for this appeal by lawyers with the required qualification.

(d) Application to the case (II): Number of hours considered objectively necessary and reasonable.

87 Regarding the reasonableness of the hours worked, the BoA must consider, first, the points of reference offered by the parties. NOVIS points out that the General Court has in the past considered costs in the amount of several million euros and confirmed reimbursements of more than ten times higher amounts than incurred and claimed by NOVIS. However, the case cited as an example (Order of the General Court of 29 February 2024, Qualcomm v Commission, T-235/18 DEP,

EU:T:2024:142, paragraphs 29 and 56) provides more a point of contrast, than a point of reference. *Qualcomm v Commission* was a dispute over a case of abuse of dominant position, where the Commission's fine amounted to EUR 997,439,000, leading to an appeal that involved complex and technical points of law, an extended composition of the general Court's Chamber, hundreds of pages of submissions, and thousands of pages of annexes and evidence. Other significant cases that offer a (closer) point of contrast include the *Tetra Laval* case, where the Court of Justice considered approximately 400 hours as objectively necessary for a company to defend its interests, in a Grand Chamber appeal in a competition case, which involved a substantial economic interest, though less so than in other competition cases, and where the complex points of law had been discussed in prior proceedings (Order of the General Court of 20 May 2010, Joined Cases C-12/03, C-12/03 P-DEP and C 13/03 P-DEP, Tetra Laval v Commission, EU:C:2010:280, paragraphs 33-34).

88 Conversely, EIOPA refers to cases on access to documents (e.g., Orders of the General Court of 26 March 2021, Izuzquiza and Semsrott v Frontex, T-31/18 DEP, EU:T:2021:173; and of 7 October 2021, case T-701/18, Campbell v Commission, EU:T:2021:670). The General Court in *Izuzquza v Frontext*, regarding the complexity and legal significance of the case held that: *"the purpose and nature of the case in the main proceedings did not present any particular complexity. In essence, the case raised a question falling within the context of ordinary litigation regarding the access to documents, namely the scope of the exception relating to the protection of the public interest as regards public security* […] *As regards the legal significance of the case in the main proceedings, in line with what Frontex has submitted, issues have indeed arisen around reconciling the fundamental right of access to documents, enshrined in Article 15 TFEU and Article 42 of the Charter of Fundamental Rights of the European Union, on the one hand, with the obligation to protect the legal interest of public security under Regulation No 1049/2001, on the other, which testify to the fact that the case in the main proceedings had some legal significance. However, those issues were resolved on the basis of settled case-law, without the need for extensive legal research or analysis of new legal issues. Moreover, the case in the main proceedings was the subject of a judgment delivered by a formation of three judges, not published in the General Reports of Cases" (Izuzquza v Frontex,* paragraphs 25-26). In this case, which involved no special complexity, legal significance, and there were no important financial interests at stake, the Court considered 40 hours to be appropriate (although it provided no further details as to their allocation).

89 In *Campbell v Commission* (paragraphs 31-32), the General Court held that: *"the case in the main proceedings related to a complex legal issue concerning the Commission's obligations when applying a presumption of confidentiality in response to a request for access to documents and the rebuttable nature of that presumption [...] as regards the significance of the case from the point of view of EU law, it should be noted that the case in the main proceedings was an opportunity for the Court to provide further details concerning the Commission's obligation to identify the documents which it considers to be covered by the application of a general presumption of confidentiality. The Commission does not dispute that the judgment of the Court in this case has a legal significance for the practical implementation of decisions adopted under Regulation No 1049/2001."* In this case, where the applicant submitted an application of 13 pages and two points in law, filed no reply to the Commission's defence, which was 14 pages long, and lodged a request for a hearing that it then had to prepare, the Court considered appropriate 40 hours for the drafting of an application, 5 hours to examine the defence, and 20 hours to prepare for the hearing.

90 Compared to these cases, the case in Decision BoA-D-2024-05 involved some complexity and novel points of law, including the one on the interplay between the confidentiality and professional secrecy provisions in the EIOPA Regulation, and the principle of public access to documents in

Regulation 1049/2001. This was also the case of the assessment of the exceptions to public access, under Regulation 1049/2001, notably on the protection of court proceedings, the protection of the purpose of investigations, and the protection of decision-making processes. It was also the case of the point on the possibility of partial access. Furthermore, the exceptions themselves, even if they entailed a more straightforward application of the Courts' case-law, presented technical complexities derived from the need to apply that case-law to the concrete facts of a multi-level application of regulatory and supervisory provisions in the insurance field, between different (EU and national) authorities, and the potential legal challenges that they might face. All this required combining knowledge and experience in access to documents, insurance law, and confidentiality provisions.

91 The points of law covered by the parties were also numerous in comparison with the main points on which the outcome of the dispute ultimately hinged. However, the reason for this was not NOVIS's lack of focus, but the number of exceptions to public disclosure relied upon by EIOPA. NOVIS's legal grounds, though numerous, followed in part the arguments raised by EIOPA in its Confirmatory Decision, and in its Reply. This in no way suggests that EIOPA should have limited itself to a more streamlined strategy with more concise grounds, but that it would be equally incorrect to make NOVIS responsible for the length and detail of the legal grounds. Both parties put much effort and care in their submissions, and a consequence was a greater number of hours employed.

92 In this sense, the BoA considers appropriate to also draw on EFTA Court, Orders of 11 October 2017, cases E-7/12 and E-14/11, Schenker North AB v. EFTA Surveillance Authority. Both cases involved an access to documents request in specific regulatory contexts; case E-14/11 dealing with a request to annul a decision denying access to documents, and case E-7/12 dealing with a request on failure to act and damages, regarding an access to documents request. The legal issues involved in this case appear to be closer to those made in those two cases.

93 In case E-14/11, the EFTA Court considered appropriate 60 hours for preparing the application for annulment, 60 hours for the assessment of the defence and preparation of the reply, 10 hours to assess the rejoinder, 20 hours to assess the application of leave to intervene, 10 hours for the preparation of the first application for measures of organization of procedure, 10 hours to assess the Commission's written observations, 7 hours to prepare the second and third applications for measures of organization of procedure, 6 hours to review the report for the oral hearing, 20 hours to prepare the oral hearing, 8 hours for the oral hearing, 5 hours for an application to reopen the oral procedure, and 7 hours for the preparation of the application for taxation of costs (total, 223 hours).

94 In case E-7/12, the EFTA Court considered appropriate 45 hours for the preparation of the application, 17 hours for reviewing the defence, 1 hour for an application to stay the proceedings, 8 hours for preparing an application for leave to intervene, and preparing a response, 24 hours for the preparation of the reply, 4 hours for the preparation of measures of organization of procedure, 8 hours for the assessment of the rejoinder, 8 hours for reviewing the report for the hearing, 15 hours for preparing the oral hearing, 8 hours for participation in the oral hearing, and 6,25 hours for the preparation of the cost claim (total: 146,15 hours).

95 However, it is also important to note that proceedings before the BoA are less formal and complex, and the BoA did not impose a specific format. The evidence prepared by the parties, in the form of documents, was limited. The proceedings involved two rounds of submissions to give the Appellant an opportunity to reply to EIOPA's submissions. However, by then the more relevant aspects of the case were identifiable. The oral hearing took place online, under the guidance of the

BoA. Thus, in spite of the legal complexities and number of initial grounds there were also elements that considerably helped to simplify the procedure.

96 As regards the financial interests which the proceedings represented for the parties, *"cases concerning access to documents, in so far as they form part of the exercise of the right to information such as in the present case, are not per se of financial interest to the parties"* (Orders of 26 March 2021, Izuzquiza and Semsrott v Frontex, T-31/18 DEP, EU:T:2021:173, paragraph 27 and the case-law cited).

97 It is important to note, however, that in the present case, NOVIS filed the appeal of access to documents as part of its defence strategy regarding the supervisory actions undertaken by national competent authorities. Those supervisory actions presented a serious challenge for NOVIS, which, as a result, could be precluded from exercising its activity. While this should not lead to treating the access to documents procedure and the procedure where the actual supervisory actions were challenged as equivalent, it also cautions against treating the procedure as an ordinary access to documents case.

98 In light of these elements, the total of 656 hours and 49 minutes claimed by NOVIS, including Clyde & Co. lawyers' 470 hours and 54 minutes, Hillbridges lawyers' 127 hours and 55 minutes, and AK GG lawyers' 58 hours, exceed what ought to be recoverable from EIOPA, and, objectively, do not appear as necessary and reasonable. This is also the case if one does not count the hours incurred in pre-litigation stages, or in assessing whether to appeal, or in interactions with the client, as discussed *supra* under *IV.B.b).*

99 Furthermore, whereas, as stated *supra* under *IV.B.a) and b)*, the presence of the three legal teams of Clyde & Co., Hillbridges and AK GG, cannot lead to the outright exclusion of the work done by one or more of such legal teams, neither can it be concluded that the presence of several legal teams was objectively necessary for purposes of the present appeal.

100 Finally, regarding the costs incurred in the procedure for the taxation of costs in the present case, the Courts also consider such costs as objectively necessary insofar as the application for the determination of costs appears to be justified (Orders of the General Court of 8 October 2014, case T-244/08 DEP, Coop Nord ekonomisk förening v European Commission, EU:T:2014:899, paragraph 36, of 6 May 2008 in Freistaat Thüringen v Commission, T-318/00 DEP, EU:T:2008:140, paragraph 51, and of 16 November 2011 in Group Lottuss v OHIM, T-161/07 DEP, EU:T:2011:676, paragraph 34). The General Court has considered justified the costs linked to the procedure for determination of costs when the formal request was filed after several unsuccessful attempts were made at obtaining the reimbursement of costs, and the request was partially founded (Order of 16 November 2011 in Group Lottuss v OHIM, T-161/07 DEP, EU:T:2011:676, paragraph 34).

101 In the present case, NOVIS attempted several times to request the reimbursement of costs from EIOPA, and the present request has been partly successful.

102 The BoA considers that the number of hours that appears objectively necessary and reasonable in the present appeal amounts to 148 hours, divided as follows:

103 70 hours for the drafting of the appeal, and the corresponding research and evaluation of arguments. Regard must be had to the fact that the application raised new legal issues, and involved multiple points of law, explored in detail.

104 20 hours for the drafting of the Reply to EIOPA. Regard must be had to the fact that, at this stage, the relevant legal issues had been identified, and there was little or no need to explore novel arguments. To a large extent, the submissions discussed arguments that, one way or another, had already been explored in the appeal itself. It was mostly with regard to the exception of the protection of court proceedings that the Reply required developing some novel arguments.

105 20 hours for the preparation to the hearing, and the hearing itself. Here it is important to note that it was clear where the main points of contention were, and NOVIS could focalize its preparation on those points.

106 8 hours to address the specific arguments in EIOPA's presentation. It is important to note that, although EIOPA raised the presentation at the hearing, which justifies a separate cost item, the presentation did not involve special complexity.

107 10 hours for preparing the closing statements. Here it is important to note that, although the arguments were clear, this was the last item to be addressed during the proceedings.

108 5 hours for carrying out a pre-publication review of the decision and the preparation of a list of emendations in accordance with Article 23 RoP.

109 15 hours for preparing the procedure for the determination of costs.

110 When determining the legal fees used as a reference for the recoverable costs the BoA takes as a reference the fees charged by Clyde & Co., as it is the law firm that, by far, dedicated the greater number of hours, and represented NOVIS in the proceedings before the BoA, including the hearing. It is also the firm that conducted the subsequent correspondence with EIOPA for the recovery of costs. The BoA also takes into account for purposes of the recoverable fees that this firm's fees involved primarily partner hours (at a fee of EUR 475/hour) Senior Associate hours (at EUR 360/hour) and Associate hours (at EUR 290/hour). The BoA also considers that the average fee should take into consideration a reasonable estimate of the amount of time dedicated in each capacity, thereby assuming that, during the procedure, a Senior Associate would have covered approximately a 64% of the total hours, while a Partner and an Associate would have approximately covered 18% of the time each. This would yield a result of EUR 54,479.

- Partner hours: 18% of 148 hours = 26,46 hours. At an hourly rate of EUR 475 the total recoverable is EUR 12,654.

- Senior Associate hours: 64% of 148 hours = 94,08 hours. At an hourly rate of EUR 360 the total recoverable is EUR 34,099.

- Associate hours: 18% of 148 hours = 26,46 hours. At an hourly rate of EUR 290 the total recoverable is EUR 7,726.

111 The BoA sees no need to use different hourly rates for the stage of the recovery of costs. Although the fees had slightly changed by then (Senior Partner hours were charged at a fee of EUR 490 per hour; while the hours of the individual person who dedicated more hours to the procedure were charged at EUR 400 initially, and subsequently at EUR 440, and an Associate, at EUR 250) and the time allocation also differed (with proportionately more time dedicated by the Associate, and proportionately less by the Senior Associate and partners) the difference is not large enough to justify a differentiated treatment. The parties have argued, respectively, that the costs of the recovery stage are non-recoverable (EIOPA) or that they are reasonable and must be recovered in full NOVIS). They have introduced no alternative pleas that, should these costs, or a part of these costs, be found recoverable, they should receive a differentiated treatment.

(d) Application of VAT

112 With regard to the VAT of legal services, the Courts have held that VAT must not be taken into account for the purposes of calculating recoverable costs where the applicant for taxation of costs is, in his capacity as an entrepreneur, subject to VAT and may, consequently, recover the VAT paid on the payment of his lawyers' fees. Therefore, the VAT cannot be taken into account for purposes of calculating the recoverable "cost" (Orders of the Court of 12 September 2012, Klosterbrauerei Weissenohe v Torresan, C-5/10 P-DEP, EU:C:2012:562, paragraph 30, of 4 March 2021, case C-514/18 P-DEP, Schmid v Landeskammer für Land- und Forstwirtschaft in Steiermark, paragraph 48, and of 16 May 2013, case C-498/07 P-DEP, EU:C:2013:302, paragraph 32, as well as Orders of the General Court of 19 January 2016, Copernicus-Trademarks v OHIM – Blue Coat Systems (BLUECO), T-685/13 DEP, EU:T:2016:31, paragraph 26) since it does not represent an expenditure for the person claiming it (Order of the General Court of 18 July 2025, T-577/21 DEP, Tinnus Enterprises, LLC v EUIPO, EU:T:2025:771, paragraph 14).

D.- Payable interest

113 The final aspect to decide is the determination of interests payable on the sum of recoverable costs, which includes determining the *dies a quo* from which the interest becomes payable, and the applicable interest rate.

114 With regard to the recoverability of interest and the *dies a quo*, the Courts have held that:

> *"an application made in the course of proceedings for taxation of costs to have default interest added to the amount due must be allowed for the period between the date of notification of the order for taxation of costs and the date of actual recovery of the costs"* (Orders of the General Court of 7 October 2021, case T-701/18, Campbell v Commission, EU:T:2021:670, paragraph 71, with reference to the Order of 11 June 2021, PedalBox +,T 801/19 DEP, EU:T:2021:351, paragraph 29 and the case-law cited). Thus, the *dies a quo* should that where the present Decision is notified.

115 As regards the applicable interest rate, the Courts have found it appropriate *"to have regard to Article 99(2)(b) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ 2018 L 193, p. 1). In accordance with that provision, the applicable interest rate is to be calculated on the basis of the interest rate applied by the European Central Bank to its principal refinancing operations in force on the first calendar day of the month in which payment is due, increased by three*

and a half percentage points (see *Campbell v Commission*, paragraph 72; see also Order of the General Court of 11 June 2021, PedalBox +, T-801/19 DEP, EU:T:2021:351, paragraph 30 and the case-law cited). According to the ECB's official site (https://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.html), the ECB's rate for main refinancing operations (in fixed rate tenders) was set for the last time in June 2025, and amounts to 2,15%. Accordingly, the interest rate applicable would be 5,65%.

116 According to all of the above, an interest rate of 5,65% would accrue from the moment when the present Decision is notified.

VII – Decision

117 On those grounds, the BoA hereby:

1) Orders that the total amount of costs to be reimbursed by EIOPA amount to EUR 54,479;

2) That said costs shall be subject to interest, at a rate of 5,65%, accruing from the date of notification of the Decision.

The original of this Decision is signed by the Members of the BoA in electronic format and countersigned by hand by the Secretariat.

Michele Siri (President)
(SIGNED)

Margarida Lima Rego (Vice President, Co-Rapporteur)
(SIGNED)

Gerben Everts
(SIGNED)

Christos Gortsos
(SIGNED)

David Ramos Muñoz (Co-Rapporteur)
(SIGNED)

Carsten Zatschler
(SIGNED)

On behalf of the Board of Appeal Secretariat

Adrien Rorive
(SIGNED)

A signed copy of the decision is held by the Secretariat

Date of the decision: 3 December 2025