Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

16 July 2014*

(Arbitration clause — Sixth framework programme for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) — Access-eGOV, EU4ALL, eABILITIES, Emerge, Enable, Ask-It contracts — eTEN programme relating to trans-European telecommunications networks — NavigAbile and Euridice contracts — Competitiveness and Innovation Framework Programme — T-Seniority contract — Payment of the final balance — Counterclaim — Reimbursement of sums advanced — Liquidated damages)

In Case T-59/11,

Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis, established in Athens (Greece), represented by V. Christianos, lawyer,

applicant,

v

European Commission, represented by M. Condou-Durande and V. Savov, acting as Agents, assisted by S. Pappas, lawyer,

defendant,

APPLICATIONS, based on Article 272 TFEU, seeking, on the one hand, first, to have declared unfounded the Commission's application for reimbursement of grants paid to the applicant under contracts No 027020 'Access to e-Government Services Employing Semantic Technologies', No 035242 'A virtual platform to enhance and organise the coordination among centres for accessibility resources and support', No 511298 'Ambient Intelligence System of Agents for Knowledge-based and Integrated Services for Mobility Impaired Users', No 034778 'European Unified Approach for Accessible Lifelong Learning', No 045056 'Emergency Monitoring and Prevention', No 045563 'A wearable system supporting services to enable elderly people to live well, independently and at ease', No 029255 'NavigAbile: e-inclusion for communication disabilities', No 517506 'European Recommended Materials for Distance Learning Courses for Educators' and No 224988 'T-Seniority: Expanding the benefits of information society to older people through digital TV channels', concluded between the European Community and the applicant, and, second, seeking an order that the Commission pay the final balance of grants under contracts No 511298 'Ambient Intelligence System of Agents for Knowledge-based and Integrated Services for Mobility Impaired Users' and No 034778 'European Unified Approach for Accessible Lifelong Learning' and, on the other hand, a counterclaim seeking an order that the applicant reimburse the grants unduly paid in connection with all those contracts and liquidated damages,

* Language of the case: Greek.

THE GENERAL COURT (First Chamber),

composed of S. Frimodt Nielsen, acting as President, M. Kancheva (Rapporteur) and E. Buttigieg, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 4 July 2013,

gives the following

Judgment

Background to the dispute

1 The applicant, Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis, is a civil non-profit company governed by Greek law, incorporated on 7 January 2004, whose head office is located in Athens (Greece).

2 Under an agreement concluded on 28 December 2010 and published in the companies bulletin of the Protodikeio Athinon (Court of First Instance, Athens) on 17 January 2011, the applicant was put into liquidation. At this time, Mr X, who was, up to that date, in charge of European programmes for the applicant ('the programme director'), was appointed as the representative for the liquidation of the applicant.

3 According to its articles of association, the applicant's objects are the transfer of technology, the promotion of equal treatment, the integration of people with disabilities into the information society, and the improvement of employment opportunities for people with special needs in Europe and internationally.

4 The applicant concluded several contracts with the European Community, represented by the Commission of the European Communities, concerning the implementation of certain projects. The present dispute concerns nine of those contracts ('the contracts at issue').

A – *Description of the contracts at issue*

5 The contracts at issue were concluded between, on the one hand, the Community, represented by the Commission, and, on the other, a coordinator and members of a consortium, which included the applicant. Each of those contracts contains, in addition to the main text, six annexes, the first of which contains a description of the programme to which it relates and the second of which sets out the applicable general conditions.

6 Of the contracts at issue, six contracts ('the FP6 contracts') were concluded within the framework of the sixth framework programme adopted by Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006) (OJ 2002 L 232, p. 1).

7 Those contracts were:

— contract No 027020 ‘Access to e-Government Services Employing Semantic Technologies’ (‘the Access-eGOV contract’), concluded within the framework of the specific programme ‘Integrating and strengthening the European Research Area (2002-2006)’, Article 4 of which fixed the project’s length at 36 months from the first day of the month following its signature by the Commission, Article 5 of which provided for a maximum Community financial contribution of EUR 1 983 000, EUR 157 320 of which was intended for the applicant, and which was amended on 3 June 2008, as a result of which the project’s length was increased to 48 months;

— contract No 035242 ‘A virtual platform to enhance and organise the coordination among centres for accessibility resources and support’ (‘the eABILITIES contract’), concluded within the framework of the specific programme ‘Integrating and strengthening the European Research Area (2002-2006)’, Article 4 of which fixed the project’s length at 24 months from 1 September 2006 and Article 5 of which provided for a maximum Community financial contribution of EUR 750 000, EUR 95 201.61 of which was intended for the applicant;

— contract No 511298 ‘Ambient Intelligence System of Agents for Knowledge-based and Integrated Services for Mobility Impaired Users’ (‘the Ask-It contract’), concluded within the framework of the specific programme ‘Integrating and strengthening the European Research Area (2002-2006)’, Article 4 of which fixed the project’s length at 48 months from 1 October 2004, Article 5 of which provided for a maximum Community financial contribution of EUR 8 499 657, EUR 183 320.89 of which was intended for the applicant, and which was amended on 25 July 2008, as a result of which the project’s length was increased to 51 months;

— contract No 034778 ‘European Unified Approach for Accessible Lifelong Learning’ (‘the EU4ALL contract’), concluded within the framework of the specific programme ‘Integrating and strengthening the European Research Area (2002-2006)’, Article 4 of which fixed the project’s length at 48 months from 1 October 2006, Article 5 of which provided for a maximum Community financial contribution of EUR 7 400 000, EUR 268 008 of which was intended for the applicant, and which was amended on 21 October 2010, as a result of which the project’s length was increased to 54 months;

— contract No 045056 ‘Emergency Monitoring and Prevention’ (‘the Emerge contract’), concluded within the framework of the specific programme ‘Integrating and strengthening the European Research Area (2002-2006)’, Article 4 of which fixed the project’s length at 33 months from 1 February 2007, Article 5 of which provided for a maximum Community financial contribution of EUR 2 449 964, EUR 203 712 of which was intended for the applicant, and which was amended on 28 October 2008, as a result of which the project’s length was increased to 36 months;

— contract No 045563 ‘A wearable system supporting services to enable elderly people to live well, independently and at ease’ (‘the Enable contract’), concluded within the framework of the specific programme ‘Integrating and strengthening the European Research Area (2002-2006)’, Article 4 of which fixed the project’s length at 36 months from the date of its signature by the Commission, which was, according to the applicant, from 1 January 2007, Article 5 of which provided for a maximum Community financial contribution of EUR 2 800 000, EUR 196 700 of which was intended for the applicant, and which was amended on 13 September 2010, as a result of which the project’s length was increased to 44 months and the amount of the maximum Community contribution was reduced to EUR 2 477 040.

8 The general conditions for FP6 contracts ('the FP6 conditions') provide, inter alia, as follows:

'Article II.1. Definitions ...

4. Consortium: means all the contractors participating in the project covered by this contract. ...

6. Coordinator: means the contractor identified in this contract who, in addition to its obligations as a contractor, is obliged to carry out the specific coordination tasks provided for in this contract on behalf of the consortium.

7. Contractor: means a participant as defined in Article 2.7 of the Rules for Participation and a signatory to this contract other than the [European Commission Joint Research Centre], which signs a separate arrangement with the Commission with respect to its participation in the contract. ...

11. Irregularity: means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a contractor which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by it through unjustified expenditure. ...

Article II.8 Evaluation and approval of reports and deliverables ...

4. Approval of any report does not imply exemption from any audit or review, which may be carried out in accordance with the provisions of Article II.29. ...

Article II.16 Termination for breach of contract and irregularity

1. In the case of breach of any obligation imposed by this contract the Commission shall request the consortium to find appropriate solutions to make good that breach within a maximum period of 30 days. Costs incurred by the consortium, after the date of receipt of such request, shall be eligible only if an appropriate solution to the breach is accepted by the Commission. Where appropriate, the consortium may request the Commission to suspend part, or all, of the project in accordance with Article II.5. In the absence of any satisfactory solution, the Commission will terminate the participation of the defaulting contractor.

2. The Commission may immediately terminate the participation of a contractor:

   (a) where the contractor has deliberately or through negligence committed an irregularity in the performance of any contract with the Commission;

   (b) where the contractor has contravened fundamental ethical principles as referred to in the Rules for Participation.

3. Notification of termination shall be addressed to the contractor and copied to the consortium. Termination shall take effect upon receipt of such notification by the contractor and shall be without prejudice to the obligations established or referred to in the present contract. The Commission shall inform the consortium of the effective date of termination. ...

Article II.19 Eligible costs of the project

1. Eligible costs incurred for the implementation of the project must fulfil all of the following conditions:

   (a) they must be actual, economic and necessary for the implementation of the project; and

   (b) they must be determined in accordance with the usual accounting principles of the contractor; and;

   (c) they must be incurred during the duration of the project as identified in Article 4.2 except for the costs incurred in drawing up the final reports referred to in Article II.7.4, which may be incurred during the period of up to 45 days after the end of the project or the date of termination whichever is earlier; and

   (d) they must be recorded in the accounts of the contractor that incurred them, no later than at the date of the establishment of the audit certificate referred to in Article II.26. The accounting procedures used in the recording of costs and receipts shall respect the accounting rules of the State in which the contractor is established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the project and the overall statement of accounts relating to the overall business activity of the contractor; ...

2. The following non-eligible costs may not be charged to the project: ...

(e) costs declared, incurred or reimbursed in respect of another Community project; ...

(h) excessive or reckless expenditure;

(i) any cost which does not meet the conditions established in Article II.19.1. ...

Article II.28 Payment modalities

1. Without prejudice to Article II.29, the Commission shall adopt the amount of the final payment to be made to the contractor on the basis of the documents referred to in Article II.7 which it has approved. ...

7. In the event of late payment the contractor(s) may claim interest, within two months of receipt of the payment. Interest shall be calculated at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Communities*, in force on the first calendar day of the month in which the due date falls, plus one and a half percentage points. Interest shall be payable for the time elapsed between expiry of the payment deadline and the date of payment. Date of payment is the date upon which the Commission's account is debited. Any such interest payment is not considered as part of the financial contribution of the Community established by the provisions of Article 5 of the contract.

8. The periods identified in Article 8 regarding the delays for payment may be suspended by the Commission at any time by notification of the coordinator that the financial statement is not acceptable, either because it does not conform to the requirements of the contract or because it is not in conformity with the activity reports submitted for approval to the Commission. The delay for approval of the financial statement will be suspended until the submission of the corrected or revised version as requested and the balance of the delay for approval will start

again upon receipt by the Commission of this information. The Commission may suspend its payments at any time in case of non-respect by the contractor(s) of any contractual provision, particularly regarding the audit and control provisions in Article II.29. In such case, the Commission shall notify the contractor(s) directly by means of registered letter with acknowledgement of receipt. The Commission may suspend its payments at any time where there is a suspicion of irregularity committed by one or more contractor(s) in the performance of the contract. Only the portion destined for the contractor(s) suspected of irregularity will be suspended. The Commission shall notify the contractor(s) of the justification for the suspension of payment directly by means of registered letter with acknowledgement of receipt.

Article II.29 Controls and audits

1. The Commission may, at any time during the contract and up to five years after the end of the project, arrange for audits to be carried out, either by outside scientific or technological reviewers or auditors, or by the Commission departments themselves including [the European Anti-Fraud Office]. Such audits may cover scientific, financial, technological and other aspects (such as accounting and management principles) relating to the proper execution of the project and the contract. Any such audit shall be carried out on a confidential basis. Any amounts due to the Commission as a result of the findings of any such audit may be the subject of a recovery as mentioned in Article II.31. The contractor(s) shall have the right to refuse the participation of a particular outside scientific or technological reviewer or auditor on grounds of commercial confidentiality.

2. The contractors shall make available directly to the Commission all the detailed data that may be requested by the Commission with a view to verifying that the contract is being properly managed and performed.

3. The contractors shall keep the original or, in exceptional cases, duly substantiated, authenticated copies, of all documents relating to the contract for up to five years from the end of the project. These shall be put at the Commission's disposal where requested during the execution of any audit under the contract.

4. In order to carry out these audits, the contractors shall ensure that the Commission's departments and any outside body(ies) nominated by it have on-the-spot access, notably to the contractor's offices, at all reasonable times and to all the information needed to carry out those audits. ...

6. In addition, the Commission may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)]

...

Article II.30 Liquidated damages Without prejudice to any other measures provided for in this contract, the contractors agree that the Community, with the aim of protecting its financial interests, is entitled to claim liquidated damages from a contractor who is found to have overstated expenditure

and who has consequently received an unjustified financial contribution from the Community. Liquidated damages are due in addition to the recovery of the unjustified financial contribution from the contractor.

1. Any amount of liquidated damages shall be proportionate to the overstated expenditure and unjustified portion of the Community contribution. The following formula shall be used to calculate any possible liquidated damages: Liquidated damages = unjustified financial contribution × (overstated expenditure/total claimed) The calculation of any liquidated damages shall only take into consideration the period relating to the contractor's claim for the Community contribution for that period. It shall not be calculated in relation to the entire Community contribution.

2. The Commission shall inform the contractor which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The contractor shall have a period of 30 days to answer the Community's claim.

3. The procedure for repayment of unjustified financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.31.

4. The Commission shall be entitled to compensation in respect of any overstated expenditures which come to light after the contract has been completed, in accordance with the provisions of paragraphs 1 to 6.

5. These provisions shall be without prejudice to any administrative or financial sanctions that the Commission may impose on any defaulting contractor in accordance with the Financial Regulation or to any other civil remedy to which the Community or any other contractor may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.

6. Further, as established by the Financial Regulation, any contractor declared to be in grave breach of its contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the Community financial contribution received by that contractor. The rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first breach.

Article II.31 Reimbursement to the Commission and recovery orders

1. If any amount is unduly paid to the contractor or if recovery is justified under the terms of the contract, the contractor undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.

2. If the contractor fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.28. Interest on late payment shall cover the period between the date set for payment and the date when the Commission receives full payment of the amount owed. ...

3. Sums owed to the Commission may be recovered by offsetting them against any sums owed to the contractor, after informing the latter accordingly, or by calling in any financial guarantee. The contractor's prior consent shall not be required. ...

5. The contractor understands that under Article 256 of the Treaty establishing the European Community, and as provided by the Rules for Participation, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.'

9 Two other contracts ('the eTEN contracts') were concluded within the framework of the eTEN specific programme, which related to trans-European telecommunication networks and was governed by Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks (OJ 1995 L 228, p. 1), as amended by Regulation (EC) No 1655/1999 of the European Parliament and of the Council of 19 July 1999 (OJ 1999 L 197, p. 1).

10 Those contracts were:

— contract No 029255 'NavigAbile: e-inclusion for communication disabilities' ('the NavigAbile contract'), Article 2 of which fixed the project's length at 15 months from the first day of the month following the last signature by the parties, which was, according to the applicant, 1 January 2007, and Article 3 of which provided for a maximum Community financial contribution of EUR 756 275, EUR 62 148 of which was intended for the applicant;

— contract No 517506 'European Recommended Materials for Distance Learning Courses for Educators' ('the Euridice contract'), Article 2 of which fixed the project's length at 18 months from the first day of the month following the last signature by the parties, which was, according to the applicant, 1 August 2005, and Article 3 of which provided for a maximum Community financial contribution of EUR 860 834, EUR 55 750 was intended for the applicant.

11 The general conditions for eTEN contracts ('the eTEN conditions') provide, inter alia, as follows:

'Article II.1 Definitions ...

2. "Beneficiary" means a legal entity, an international organisation or the Joint Research Centre (JRC), which has concluded this grant agreement with the Community. ...

4. "Member" means a legal entity, an international organisation, or the JRC, other than a beneficiary, which has concluded a membership agreement signed with a beneficiary in agreement with the Community and in accordance with this grant agreement and having, by virtue of that membership agreement, the same rights and obligations as the beneficiary unless the former stipulates otherwise.

5. "Participant" means a beneficiary or a member. ...

28. "Eligible costs" means the costs referred to in Articles 14 and 15 of this Annex, in compliance with the conditions set out in Articles 13.1 to 13.7 thereof. ...

32. "Irregularity": means any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by a beneficiary or a member which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by it through unjustified expenditure. ...

Article II.3 The Community's financial contribution ...

4. Subject to Article 17 of this Annex, all payments shall be considered as final only after the last project deliverable is approved. ...

6. After the grant agreement completion date, the termination of the grant agreement or of the participation of a beneficiary or a member, the Commission may or shall, as appropriate, request from the beneficiary concerned, or from the beneficiary involved with regard to one of his members, repayment of the entire Community's contribution paid to it, where fraud or serious financial irregularities are discovered in the course of an audit carried out in accordance with Article 17 of this Annex. Interest at the rate applied by the European Central Bank for its main refinancing operations on the first calendar day of the month during which the beneficiary concerned received the funds plus three and a half percentage points shall be added to the amount to be repaid. The interest shall cover the period between the receipt of the funds and their repayment. ... Article II.7 Termination of the grant agreement or of the participation of a beneficiary or member ...

3. The Commission may immediately terminate this grant agreement or the participation of a beneficiary or request the beneficiary involved to terminate the participation of one of his members from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission or, in the case of a member, by the beneficiary concerned in accordance with paragraph 6, third subparagraph, of this Article:

   (a) where the project has not effectively commenced within three months of the payment of the pre-financing and the new date proposed is considered unacceptable by the Commission;

   (b) where the participant directly concerned has not fully performed his contractual obligations despite a written request from the Commission, or the coordinator in agreement with the other beneficiaries, or, in the case of a member, the beneficiary involved, to remedy a failure to comply with such obligations within a period not exceeding one month;

   (c) where a change of control over a beneficiary is likely substantially to affect the project or the interests of the Community;

   (d) in the event of bankruptcy, of winding up, of cessation of trading, of winding up by court order or composition, suspension of activities of a participant or any similar proceeding provided for by national laws or regulations and leading to a similar result;

   (e) in the event of a serious financial irregularity.

4. The Commission shall immediately terminate this grant agreement or the participation of a beneficiary or shall request a beneficiary concerned to terminate the participation of a member from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission or, in the case of a member, by the beneficiary concerned in accordance with paragraph 6, third subparagraph of this Article where a participant has made false declarations for which he may be held responsible or has deliberately withheld information in order to obtain the Community's financial contribution or any other advantage provided for in the grant agreement. ...

Article II.13 Eligible costs — general principles

1. Eligible costs are the costs defined in Articles 14 and 15 of this Annex. They shall fulfil the following conditions:

   — be necessary for the project;

   — be incurred during the duration of the project;

— be determined in accordance with the accounting principle based on historic costs and the usual internal rules of the participant, provided that they are regarded as being acceptable by the Commission;

— be recorded in the accounts no later than at the date of establishment of the final financial statements or in the tax documents, or, where applicable, no later than at the date of the establishment of the audit certificate referred to in Article 4.2(c) of this Annex, whichever date is the earliest, and

— exclude any profit margin. ...

4. Non-eligible costs are in particular the following: ...

— unnecessary or ill-considered expenses; ...

— entertainment or hospitality expenses, except such reasonable expenses accepted by the Commission as being absolutely necessary for carrying out the grant agreement.

Article II.14 Direct costs

1. Personnel With regard to personnel costs,

(a) Only the costs of the actual hours worked by the persons directly carrying out the managerial and technical work under the project may be charged to the grant agreement. Such persons must:

— be directly hired by the participant in accordance with his national legislation,

— be under the sole supervision of the latter,

and

— be remunerated in accordance with the normal practices of the participant, provided that these are regarded as acceptable by the Commission. All the working time charged to the grant agreement must be recorded throughout the duration of the project, or, in the case of the coordinator, within a maximum period of two months from the end of the duration of the project, and be certified at least once a month by the person in charge of the work designated by the participant in accordance with Article 2.2(b) of this Annex or by the duly authorised financial officer of the participant. ...

4. Travel and subsistence

Actual travel and related subsistence costs for personnel working on the project may be charged to the grant agreement.

...

Article II.16 Justification of costs Eligible costs shall be reimbursed where they are justified by the participant. To this end, the participant shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which he is established, the accounts for the project and appropriate documentation to support and justify in particular the costs and time reported in his financial statements. This documentation must be precise, complete and effective.

Article II.17 Financial audit

1. The Commission, or any representative authorised by it, may initiate an audit in respect of a participant at any time during the grant agreement and up to five years after the final payment of the Community contribution, as referred to in Article 3 of this Annex. ...

2. The Commission or any authorised representative may have access, at any reasonable time, in particular to the personnel of the participants connected with the project, the documentation referred to in Article 16 of this Annex, computer records and equipment that it considers relevant. In this connection, it may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs. ...

4. On the basis of the conclusions of the audit, the Commission shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it. The recovery order shall be addressed to the beneficiary concerned or involved in the case of financial audit in respect of one of his members. ...

Article II.19 Reimbursement to the Commission and recovery orders

1. If any amount is unduly paid to the participant or if recovery is justified under the terms of the agreement, the beneficiary undertakes to repay the Commission the sum in question on whatever terms and by whatever date it may specify.

2. If the beneficiary fails to pay by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article 3.6 to this Annex. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive. ...'

12 The last contract at issue ('the CIP contract' or 'the T-Seniority contract') was concluded within the framework of the Competitiveness and Innovation Framework Programme established by Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013) (2007-2013) (OJ 2006 L 310, p. 15).

13 That contract was contract No 224988 'T-Seniority: Expanding the benefits of information society to older people through digital TV channels', Article 3 of which fixed the project's length at 24 months from 1 July 2008 and Article 5 of which provided for a maximum Community financial contribution of EUR 2 669 999, EUR 72 562.50 was intended for the applicant.

14 The general conditions of the CIP contract ('the CIP conditions') provide, inter alia, as follows:

'Article II.1 Definitions ... "beneficiary" means a legal entity which participates in this grant agreement concluded with the Community. ... "eligible costs" means the costs referred to in Articles II.21 and II.22, in compliance with the conditions set out in Articles II.20 and II.23. ... "irregularity" means

any infringement of a provision of Community law or a provision of this grant agreement resulting from an act or omission on the part of the beneficiary(ies) which causes or might cause a loss to the Community budget. ...

Article II.5 Approval of reports and deliverables, time-limit for payments

1. At the end of each reporting period, the Commission shall evaluate the project reports and deliverables required by Annex I and disburse the corresponding payments within 105 days of their receipt unless the time-limit, the payment or the project has been suspended. The Commission may be assisted by external experts in the analysis and evaluation of reports and deliverables.

2. Payments shall be made after the Commission's approval of the reports and/or deliverables. The absence of a response from the Commission within the time-limit shall not imply approval. The Commission may reject reports and deliverables even after the time-limit for payment. Approval of the reports shall not imply recognition of their regularity or of the authenticity of the declarations and information they contain and shall not imply exemption from any audit or review. ...

Article II.10 Termination of the grant agreement or of the participation of a beneficiary ...

2. The Commission shall not object:

   (a) to the termination of the grant agreement at the written request of the coordinator in agreement with all the other beneficiaries on the grounds mentioned in paragraph 1 of this Article;

   (b) to the withdrawal of a beneficiary from the project, unless this withdrawal substantially affects the implementation of the project. The termination of the grant agreement or the withdrawal of a beneficiary shall be effective:

— on the date of the letter of acceptance by the Commission as notified by registered letter with acknowledgement of receipt;

— not later than one month following receipt of notification by the interested part(y)(ies) in the absence of written observations by the Commission within that time-limit.

3. The Commission may immediately terminate this grant agreement or the participation of a beneficiary from the date of receipt of the registered letter with acknowledgement of receipt sent by the Commission: ...

(f) in the event of an irregularity or fraud on the part of a beneficiary; ...

Article II.11 Financial and other consequences of termination ...

3. In the event of termination, payments by the Commission shall be limited to those eligible costs incurred and accepted up to the effective date of termination and to any legitimate commitments undertaken prior to that date which cannot be cancelled.

4. By derogation from the above paragraph:

— In the event of termination pursuant to Article II.10, paragraph 2, first subparagraph, point (b), or paragraph 3, points (b), (c), (e), (f) or (g), the Commission may require repayment of all or part of the Community financial contribution, taking into account the nature and results of the work carried out and its usefulness to the Community in the context of the present programme; ...

7. The Commission may exercise all rights under this grant agreement to accept or reject reports and deliverables, to accept, reduce or reject a cost claim and to initiate an audit or a technical review.

8. Notwithstanding the termination of the grant agreement or the participation of a beneficiary, the provisions in Part B and Part D of Annex II continue to apply after the termination of the grant agreement or the termination of a beneficiary's participation. Any other provisions in this grant agreement which specifically indicate their continued application after the termination shall also apply for the duration specified in those provisions. ...

Article II.20 Eligible costs — general principles

1. Eligible costs are the costs defined in Articles II.21 and II.22. They shall fulfil the following conditions: ...

— be necessary for the implementation of the project;

— be actually incurred by the beneficiary;

— be identifiable and verifiable, be recorded in the beneficiary's accounts and determined in accordance with the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary. The beneficiary's internal accounting and auditing procedures must permit the direct reconciliation of the costs and receipts declared in respect of the project with the corresponding financial statements and supporting documents;

— comply with the requirements of the applicable tax and social legislation;

— be reasonable and justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency; and

— be incurred during the duration of the project. ...

2. Non-eligible costs are in particular the following: ...

— unnecessary or ill-considered expenses; ...

— any cost incurred or reimbursed in respect of, in particular, another Community, international or national project. ...

Article II.23 Justification of costs Eligible costs shall be reimbursed where they are justified by the beneficiary. To this end, the beneficiary shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which it is established, the accounts for the project and appropriate documentation to support and justify in particular the costs and time reported in its financial statements. These accounts shall be maintained for at least five years after the date of the final payment. All the working time charged to the agreement shall be recorded throughout the duration of

the project, or not later than two months from the end of the duration of the project, and shall be certified by the person in charge of the work as designated by the beneficiary in accordance with Article II.3(b) or by the duly authorised financial officer of the beneficiary. This documentation shall be precise, complete and effective. ...

Article II.26 Payment modalities ...

6. Any payment may be subject to an audit or review and may be adjusted or recovered based on the results of the audit or review. ...

Article II.28 Financial audit

1. The Commission may initiate an audit in respect of a beneficiary at any time during the implementation of the project and up to five years after the date of the final payment. The audit procedure in respect of a beneficiary shall be deemed to be initiated on the date of receipt by the latter of the relevant registered letter with acknowledgement of receipt sent by the Commission. The audit procedure may be carried out by external auditors or by the Commission Services themselves, including OLAF. The audit procedure shall be carried out on a confidential basis.

2. The beneficiaries shall make available directly to the Commission all detailed information and data that may be requested by the Commission, or any representative authorised by it, with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it.

3. The beneficiaries shall ensure that the Commission, or any external body authorised by it, has on-the-spot access, at any reasonable time, in particular to the beneficiary's offices, the personnel of the beneficiaries connected with the project, the documentation referred to in Article II.23 needed to carry out the audit, including information on individual salaries of persons involved in the project, accounting data, computer records and equipment. In this connection, the Commission, or any external body authorised by it, may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs. ...

5. On the basis of the conclusions of the audit, the Commission shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it and the application of any applicable sanction. ...

Article II.30 Reimbursement to the Commission and recovery orders

1. Where an amount paid by the Commission to the coordinator in its capacity as the recipient of all payments is to be recovered under the terms of this grant agreement, the beneficiary concerned undertakes to repay the Commission the sum in question, on whatever terms and by whatever date it may specify.

2. If the obligation to pay the amount due is not honoured by the date set by the Commission, the sum due shall bear interest at the rate indicated in Article II.5(5). Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Commission receives full payment of the amount owed, inclusive. ...

4. The beneficiaries understand that under Article 256 of the Treaty establishing the European Community, the Commission may adopt an enforceable decision formally establishing an amount as receivable from persons other than States.'

15 As regards the law applicable to the contracts at issue, Article 12 of the FP6 contracts stipulates that '[t]he law of Belgium shall govern this contract'.

16 Similarly, Article 5(1) of the eTEN contracts provides that '[t]he law of Belgium shall govern this grant agreement'.

17 The first paragraph of Article 10 of the CIP contract provides that 'this grant agreement shall be governed by its terms, the relevant Community acts related to the CIP, the Financial Regulation applicable to the general budget of the European Communities and its Implementing Rules, other Community law and, on a subsidiary basis, the law of Belgium'.

18 As far as jurisdiction is concerned, Article 13 of the FP6 contracts contains an arbitration clause under which the Court of First Instance or the Court of Justice, as is appropriate in the specific case, has sole jurisdiction to hear any disputes between the Community and the contractors as regards the validity, the application or any interpretation of those contracts.

19 The same provision is made in Article 5(2) of the eTEN contracts and in the third paragraph of Article 10 of the CIP contract.

B – *Performance of the contracts at issue and audit*

20 From 8 to 12 February 2010, the Commission carried out a financial audit of the contracts at issue at the applicant's offices.

21 Before that audit was conducted, the Commission had already paid the applicant the final instalment of the Community financial contribution for some of the contracts at issue.

22 These were, first, three of the contracts governed by the FP6 conditions, namely the Access-eGOV, eABILITIES and Emerge contracts, for which payment of the final instalment of the Community financial contribution was made, respectively, on 15 December, 30 September and 30 October 2009. The performance of those three contracts by the applicant was definitively approved by the Commission, respectively, on 13 July 2009, 17 March 2009 and 15 May 2010.

23 They were, second, the contracts governed by the eTEN conditions, namely the NavigAbile and Euridice contracts, for which payment was made, respectively, on 28 January 2009 and 28 December 2007. The performance of those two contracts by the applicant was definitively approved by the Commission on 8 December 2008 and 27 March 2007.

24 On the date of the audit, the other contracts at issue were at different stages of performance.

25 With regard to the contract governed by the CIP conditions, namely the T-Seniority contract, the Commission had paid the applicant, through the project coordinator, the first instalment of the Community financial contribution of EUR 43 934.90 on 23 February 2009. By a letter of 1 March 2010, the applicant informed the T-Seniority project coordinator that it was withdrawing from the consortium as from that date.

26 With regard to the other three contracts governed by the FP6 conditions, namely the Ask-It, EU4ALL and Enable contracts, the situation was as follows.

27 In connection with the Ask-It contract, the Commission had paid the first four instalments of the Community financial contribution intended for the applicant, the last payment being made on 27 May 2008. The final instalment of that contribution had not yet been paid. The consortium had sent the Commission the last deliverables on 21 July 2009.

28 In connection with the EU4ALL contract, the Commission had paid the applicant the first two instalments of the Community financial contribution on 4 April 2007 and on 19 January 2009. Following an examination of the reports submitted by the consortium for the third reference period for the project, the Commission had sent the project coordinator a letter dated 13 January 2010 in which it stated that those reports were approved provided the consortium presented a programme implementation plan for the subsequent period including a number of modifications relating to the services to be provided and the tasks to be performed. The Commission also fixed a time-limit of one month for the consortium to take into account its recommendations and to submit a new implementation plan.

29 Subsequently, by letter of 29 March 2010, the Commission granted a new time-limit of one month, with regard to the EU4ALL contract, for the consortium to take into account additional recommendations following the production of new documents and to produce a new implementation plan that took into account those recommendations.

30 After the consortium had produced new documents in connection with the EU4ALL contract, the Commission informed the consortium, in a letter of 9 June 2010, that it considered, subject to the production of additional documents before the end of June 2010, that the consortium was executing the project in a satisfactory manner.

31 By a letter of 4 August 2010, the applicant pointed out to the Commission that, even though the project coordinator had submitted the additional documents requested by the Commission in its letter of 9 June 2010, the Commission had not made any payment. As that situation made it impossible to execute the project provided for in the EU4ALL contract on account of a lack of financial resources, it informed the Commission that it was suspending all execution and all implementation of the project as from the date of that letter until the Commission had fulfilled its contractual obligations, without prejudice to its rights under the contract and to any further damage.

32 By letter of 25 August 2010, the Commission informed the applicant that it had suspended payment of the Community financial contribution for the last reference period in connection with the EU4ALL contract pursuant to the third subparagraph of Article II.28(8) of the FP6 conditions.

33 With regard to the Enable contract, the Commission had paid the applicant the first six instalments of the Community financial contribution which were intended for it, the last payment having been made on 7 June 2009.

34 Subsequently, in a letter of 16 July 2010, the applicant informed the Commission that, in the absence of payment by the Commission, it could not continue to execute the project provided for in the Enable contract on account of a lack of financial resources. It also informed the Commission that it was suspending all execution and all implementation of the project as from the date of that letter until the Commission had fulfilled its contractual obligations, without prejudice to its rights under the contract and to any further damage. It nevertheless submitted to the Commission its last financial report relating to this project on 15 October 2010.

35 On 28 June 2010, the Commission sent the applicant a provisional audit report concerning the performance of the contracts at issue. The applicant sent the Commission its comments on that report on 30 September 2010.

36 By letter of 22 December 2010, the Commission informed the applicant that it had adopted the final audit report, annexed to that letter, whose findings it approved.

37 In the final audit report annexed to the Commission's letter of 22 December 2010, it was stated that:

— for several successive years, the applicant had failed to record, in particular, its precise receipts in its accounts and its records, contrary to the relevant provisions of Greek law; its accounting records were not therefore reliable and a direct comparison could not be made between the costs and the receipts relating to the implementation of the programmes and its overall statement of accounts;

— a significant percentage of personnel time sheets systematically included handwritten corrections which had been made *a posteriori* by the programme director without the consent of the member of personnel; this had significant consequences for the declared working hours and raised doubts over the recording of working hours;

— the programme director's time sheets showed an overstated number of hours worked, which overlapped with hours spent on other professional activities;

— the applicant had falsely declared that the programme director had not participated in the performance of ETSI STF 333 contract financed by the Commission;

— the justification of travel costs did not give a reliable, objective picture of the conditions and the activities carried out in connection with that travel in so far as the majority of trips were not directly connected with the programmes in question.

38 The audit report concluded that all the costs incurred by the applicant in the course of the performance of the Access-eGOV, eABILITIES, Ask-It, EU4ALL, Emerge and Enable contracts and the NavigAbile, Euridice and T-Seniority contracts were therefore to be considered as non-eligible and that all relevant amounts paid to the applicant were to be recovered.

39 The audit report also recommended, in view of the seriousness of the infringements found, that all current contracts concluded by the applicant with the Commission should be terminated in accordance with Article II.16.2 of the FP6 conditions, Articles II.7.3 (serious financial irregularity) and II.7.4 (false declarations) of the eTEN conditions and Article II.10.3 (breach of contract and failure to provide information) of the CIP conditions.

40 In its letter of 22 December 2010, the Commission also indicated the sum to be reimbursed for each of the contracts at issue, totalling EUR 951 029.21, in the form of the following table:

Contract	Costs declared (A)	Costs accepted by PO (B)	Eligible costs (C)	Gross adjustment in relation to accepted costs (C-B)
027020 Access-eGOV	157 438.84	157 438.84	0.00	-157 438.84
034778 EU4ALL	115 044.16	115 044.16	0.00	-115 044.16
035242 eABILITIES	95 287.40	95 287.40	0.00	-95 287.40
045056 Emerge	112 308.44	112 308.44	0.00	-112 308.44
045563 Enable	118 588.01	104 503.61	0.00	-104 503.61
511298	187 120.70	184 803.16	0.00	-184 803.16

Contract	Costs declared (A)	Costs accepted by PO (B)	Eligible costs (C)	Gross adjustment in relation to accepted costs (C-B)
Ask-It				
029255 NavigAbile	61 004.83	62 129.50	0.00	-62 129.50
517506 Euridice	56 798.04	56 472.10	0.00	-56 472.10
224988 T-Seniority	63 042	63 042	0.00	- 63 042

41 The Commission stated in this regard that the adjustments necessitated by the payment of non-eligible sums to the applicant could affect future payments in respect of the contracts at issue or take the form of a recovery order.

42 In the same letter, the Commission also informed the applicant that, in addition to making these adjustments, its departments would be able to calculate the amount of liquidated damages due to the European Union under Article II.30 of the FP6 conditions and, if necessary, issue a recovery order in respect of those damages.

43 On 4 February 2011, the programme director was interviewed by officials from the European Anti-Fraud Office (OLAF) about the implementation of the projects under the contracts at issue and his participation therein.

44 By letter sent to the applicant on 21 March 2011, the Commission informed the applicant that the amounts that had been unduly paid to the applicant were as follows:

	Projects		Eligible cost /financing according to the audit report	Unduly paid amount
FP6	027020	Access-e-Gov	0.00 €	-157 438.73 €
FP6	035242	eABILITIES	0.00 €	-95 201.60 €
FP6	045563	Enable	0.00 €	-81 456.96 €
FP6	511298	Ask-It	0.00 €	-164 988.82 €
FP6	034778	EU4ALL	0.00 €	-125 580.45 €
FP6	045056	Emerge	0.00 €	-187 248.39 €
ETEN	029255	NavigAbile	0.00 €	-62 129.50 €
ETEN	517506	Euridice	0.00 €	- 55 750 €
CIP	224988	T-Seniority	0.00 €	- 43 966 €
				-643 782.81 €

45 The Commission also informed the applicant that if it failed to submit comments on the matter within 15 days following receipt of the letter, its departments would continue the procedure to recover an amount of EUR 643 782.81 and that it would receive a debit note for each project, containing instructions for making the reimbursement to the Commission within a prescribed time-limit. It also

informed the applicant that if it failed to make the reimbursement within the time-limit prescribed in the debit note, the amount to be reimbursed would bear interest at the rate fixed in that debit note. It added that if the total amount, including interest if appropriate, was not reimbursed, it would be subject to either enforcement or compensation with any sums due. Lastly, it stated that, in addition to the recovery order, the responsible department would also calculate the amount of damages owed by the applicant under Article II.30 of the FP6 conditions.

46 By letter of 1 April 2011, the Commission sent the applicant a 'corrected table' of the sums unduly paid to it. According to that table, the total amount to be reimbursed was EUR 999 366.40 and not EUR 643 782.81.

47 By letter of 4 April 2011, the Commission informed the applicant that, in the light of the findings of the audit, it considered that the applicant had made false declarations and committed irregularities within the meaning of Article II.1.11 of the FP6 conditions, Article II.1.32 of the eTEN conditions and Article II.1 of the CIP conditions. It also notified the applicant that it considered that it had infringed the terms of the contracts at issue relating to the eligibility of costs and that the aim of those infringements and the false declarations was to obtain an undue contribution from the Union. Accordingly, it informed the applicant of its decision to terminate the applicant's participation in the Ask-It, EU4ALL, Emerge and Enable contracts, pursuant to Article II.16.2 of the FP6 conditions, as from receipt of that letter. It also requested that the applicant send it, within 30 days from receipt of that letter, all reports and documents due to be submitted to it in connection with the Enable contract concerning the work carried out up to that date pursuant to Article II.7 of the FP6 conditions. It also drew the applicant's attention to the fact that, in the light of the final results of the audit, it was unlikely that the costs submitted by the applicant for periods not covered by the audit would be considered eligible.

48 On 29 April 2011, the Commission issued nine debit notes indicating the amount to be reimbursed in respect of each of the contracts at issue, totalling EUR 999 213.45. Those debit notes fixed a time-limit of 45 days for the applicant to reimburse the sums due, which expired on 14 June 2011 and at the end of which those sums would bear default interest as provided for in the contracts at issue at the European Central Bank (ECB) rate plus 3.5 percentage points.

49 By letter of the same date, the Commission informed the applicant that the total amount of the damages due in respect of the FP6 contracts was EUR 70 471.47. It also stated that the amount obtained using the formula provided for in Article II.30 of the general conditions of those contracts had been reduced, in order to take account of the requirements of proportionality, to 10% of the amount of the grant paid before the audit.

50 In this connection, the Commission enclosed the following table:

Project		Paid audited period	Overdeclaration %	Financing requested before audit	Limit of amount of damages [1]
027020	Access-e-Gov	1 to 3	157 438.84 €	100%	15 743.87 €
035242	eABILITIES	1 to 2	95 287.40 €	100%	9 520.16 € [1]
045563	Enable	1 to 2	59 732.95 €	100%	5 973.30 €
511298	Ask-It	1 to 3	171 434.65 €	100%	16 498.88 € [1]
034778	EU4ALL	1 to 2	115 044.16 €	100%	11 504.42 €
045056	Emerge	1 to 2	112 308.44 €	100%	11 230.84 €
					70 471.47 €

[1] Amount limited to 10% of the financial contribution paid by the financial coordinator for the projects (95 201,60 € for eABILITIES and 164 988.02 € for Ask-It)

51 In the same letter, the Commission also stated that if the applicant failed to make comments within 30 days of receipt of that letter, a debit note for an amount of EUR 70 471.47 would be issued in accordance with Article II.31 of the FP6 conditions. In addition, it pointed out that if the sum due was not reimbursed within the time-limit prescribed in the debit note, that sum would bear interest on late payment at a rate indicated in the debit note.

52 On 20 June 2011, the Commission issued six debit notes in respect of the contracts concluded between the Community and the applicant for the Access-eGOV, eABILITIES, Ask-It, EU4ALL, Emerge and Enable projects, fixing the total amount owed by the applicant by way of liquidated damages under Article II.30 of the FP6 conditions at EUR 70 471.47. The time-limit within which the applicant had to pay the sums in question was fixed by the Commission at 4 August 2011.

Procedure and forms of order sought

53 By application lodged at the Registry of the General Court on 31 January 2011, the applicant brought the present action.

54 By document lodged at the Registry of the General Court on 13 May 2011, the Commission submitted the defence, which contained a counterclaim.

55 By documents lodged at the Registry of the General Court, the applicant and the Commission submitted, respectively, the reply on 17 August 2011 and the rejoinder on 14 November 2011.

56 The applicant claims that the Court should:

— ‘declare that it has not infringed Article II.16.2 of the FP6 conditions, Articles II.7.3 (serious financial irregularity) and II.7.4 (false declarations) of the eTEN conditions, and Article II.10.3 (breach of contract and failure to provide information) of the CIP conditions’;

— ‘declare that by calling into question the eligibility of its costs the Commission has infringed the contracts at issue’;

— declare that the costs amounting to EUR 932 362.44 which it submitted to the Commission in connection with the Access-eGOV, eABILITIES, Ask-It, EU4ALL, Emerge and Enable contracts and the NavigAbile, Euridice and T-Seniority contracts are eligible costs and that it is not obliged to repay the sums contributed by the Commission;

— 'declare that the Commission's delay in paying the final funding payments in respect of the EU4ALL, Ask-It and Enable contracts constitutes a breach by the Commission of its contractual obligations';

— declare that the Commission must pay it the sum of EUR 52 584.05 plus interest payable from the notification of this application, in respect of the costs incurred by it in connection with the EU4ALL contract;

— declare that the Commission must pay it the sum of EUR 20 678.61 plus interest payable from the notification of this application, in respect of the costs incurred by it in connection with the Ask-It contract;

— declare that the Commission must pay it the sum of EUR 11 693.05 plus interest payable from the notification of this application, in respect of the costs incurred by it in connection with the Enable contract;

— order the Commission to pay the costs.

57 In the reply, the applicant withdrew its fourth head of claim in so far as it concerns the Enable contract and its seventh head of claim. In addition, it claimed that the Court should:

— dismiss the Commission's counterclaim as inadmissible;

— in the alternative, dismiss the Commission's counterclaim as unfounded.

58 The Commission contends that Court should:

— by way of counterclaim, order the applicant to pay it the sums indicated in the debit notes, totalling EUR 999 213.45, plus interest calculated as from 15 June 2011, at the ECB rate increased by 3.5 points, corresponding to the reimbursement of financial contributions from which the applicant benefitted, and the sum of EUR 70 471.47 plus interest payable from the date of expiry, in the absence of payment, of the time-limit for payment prescribed in the relevant debit note, at the abovementioned rate, corresponding to the damages due in respect of the FP6 contracts;

— dismiss the action brought by the applicant;

— order the applicant to pay the costs.

59 In the rejoinder, the Commission stated that the sum of EUR 70 471.47 corresponding to the damages due in respect of the FP6 contracts had to be increased at the ECB rate plus 3.5 points calculated as from 5 August 2011.

60 Upon hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 64 of its Rules of Procedure, requested the applicant to produce various documents and to give written answers to certain questions. The applicant complied with that request within the prescribed time-limit.

61 At the hearing held on 4 July 2013, the parties presented their oral arguments and answered the questions asked by the Court.

Law

62 It should be noted as a preliminary point that under Article 272 TFEU the Court of Justice has jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law. Under Article 256(1) TFEU, the General Court has jurisdiction to hear and determine at first instance actions or proceedings referred to in Article 272 TFEU.

63 In the present case, under Article 13 of the FP6 contracts, Article 5(2) of the eTEN contracts and the third paragraph of Article 10 of the CIP contract, the General Court has jurisdiction to hear any disputes between the Community and contractors as regards the validity, the interpretation and the application of those contracts.

A – *The scope of the dispute*

64 It must be stated that the dispute between the parties concerns two distinct aspects of their contractual relations.

65 First, the parties disagree on the eligibility of the costs submitted by the applicant to the Commission in connection with the contracts at issue and on the subsequent obligations to reimburse all the sums paid to the applicant in respect of those costs and to pay liquidated damages.

66 By its third head of claim, the applicant essentially asks the Court to declare that the costs which it submitted to the Commission in connection with the contracts at issue are eligible and that it is not therefore obliged to reimburse to the Commission the sums which the Commission paid it in connection with those contracts.

67 It should also be noted that, in the reply, the applicant claimed that the Court should dismiss the Commission's counterclaim for the applicant to be ordered to pay the sums indicated in the debit notes of 29 April and 20 June 2011 plus interest as provided for in those notes.

68 Second, the parties also disagree on the Commission's obligation to make the final payments provided for under the EU4ALL and Ask-It contracts.

69 By its fifth and sixth heads of claim, the applicant claims that the Court should declare that the Commission must pay it the sum of EUR 52 584.05 plus interest in respect of the costs submitted in connection with the EU4ALL contract and the sum of EUR 20 678.61, also plus interest, in respect of the costs submitted in connection with the Ask-It contract, to which the Commission objects, claiming that the Court should dismiss the applicant's action.

70 Furthermore, by its first and second heads of claim, the applicant essentially claims that the Court should declare that, contrary to the allegations made against it by the Commission, it did not infringe its contractual obligations under Article II.16.2 of the FP6 conditions, Articles II.7.3 and II.7.4 of the eTEN conditions and Article II.10.3 of the CIP conditions and that, by challenging the eligibility of its costs, the Commission has breached its contractual obligations.

71 Similarly, by its fourth head of claim, the applicant claims that the Court should declare that the Commission's delay in paying the final funding payments in respect of the contracts for the EU4ALL and Ask-It programmes constitutes a breach by the Commission of its contractual obligations.

72 Such requests do not in themselves constitute heads of claim per se, but actually relate to arguments raised by the applicant in support of the action, which will be examined in connection with the explanations concerning the applicant's third, fifth and sixth heads of claim.

B – *The law applicable to the dispute*

73 As these proceedings have been instituted pursuant to an arbitration clause under Article 272 TFEU, the General Court must resolve the dispute on the basis of the substantive rules of the national law applicable to the contract (see, to this effect, Case 426/85 *Commission* v *Zoubek* [1986] ECR 4057, paragraph 4), in this case Belgian law, which governs the contracts at issue under Article 12 of the FP6 contracts, Article 5(1) of the eTEN contracts and the third paragraph of Article 10 of the CIP contract.

74 Clarification should be given in this regard of the rules governing the performance of contracts in Belgian law.

75 Article 1134 of the Belgian Civil Code provides that 'agreements lawfully entered into take the place of the law for those who have made them' (first paragraph) and 'may be revoked only by mutual consent or on grounds permitted by law' (second paragraph).

76 The third paragraph of Article 1134 provides that agreements must be performed in good faith. Article 1135 of the Civil Code provides that 'agreements are binding not only as to what is therein expressed, but also as to all the consequences which equity, custom or statute give to the obligation according to its nature', thereby also expressing the principle of good faith performance of contracts.

77 Where a dispute arises with regard to the performance of a contract, the burden of proof is governed by the provisions of Article 1315 of the Belgian Civil Code, under which:

'A person who claims the performance of an obligation must prove it.

Reciprocally, a person who claims to be released must justify the payment or the fact which has produced the extinguishment of his obligation.'

78 Furthermore, in accordance with the generally recognised principle of law that each court applies its own procedural rules, jurisdiction and the admissibility of the claims — whether made by the applicant or the defendant — fall to be determined solely with regard to Union law (see, to this effect, *Commission* v *Zoubek*, paragraph 73 above, paragraph 10, and Case C-209/90 *Commission* v *Feilhauer* [1992] ECR I-2613, paragraph 13).

79 It is in the light of these considerations that the applicant's different heads of claim and the Commission's counterclaims will have to be examined.

C – *The applicant's third head of claim*

80 In support of its third head of claim, the applicant asserts that the Commission wrongly refused to regard as eligible all the costs which it had asked the applicant to reimburse.

81 In order to prove the validity of that assertion, the applicant puts forward two sets of arguments. The first concerns the findings made by the Commission in the final audit report on the basis of which it concluded that the costs submitted in connection with the contracts at issue were non-eligible. The second concerns the quality of the audit and the conditions under which it was carried out.

1. *The findings of the audit report justifying the non-eligibility of the costs*

82 The applicant puts forward several arguments relating to the findings contained in the audit report on the basis of which the Commission concluded that the contracts at issue had been infringed and, therefore, that all the costs submitted in connection with those contracts were non-eligible and that the applicant was required to reimburse the sums that had been unduly paid to it.

83 It should be pointed out in this regard that, in accordance with the principles mentioned in paragraphs 73 to 77 above, it follows from, first, Article II.19 of the FP6 conditions, Article II.16 of the eTEN conditions and Article II.20 of the CIP conditions and, second, Article 1315 of the Belgian Civil Code, which is applicable in this case, that the costs claimed by the applicant may be reimbursed to it only if it has proved that they had actually been incurred, they were related to the contracts at issue and other eligibility criteria laid down by those contracts had been respected (see, to this effect, Case T-68/99 *Toditec* v *Commission* [2001] ECR II-1443, paragraphs 94 and 95). If such proof is given, the Commission must demonstrate that it should be disregarded.

(a) The accounts kept by the applicant

84 The applicant claims, in essence, that its accounts were reliable, that they were kept in accordance with the Greek legislation applicable in the present case and that they permitted the reconciliation provided for by Article II.19(1)(d) of the FP6 conditions, Articles II.20(1) and II.23 of the CIP conditions and Article II.16 of the e-TEN conditions between, on the one hand, the declared costs and the receipts collected in connection with the contracts at issue and, on the other, its overall activity.

85 It should be observed as a preliminary point that, with regard to the irregularities found in the applicant's accounts, it is clear from the audit report that, further to a request made by the auditors, the applicant identified several errors in its accounts, in particular a failure to record two payments of EUR 63 000 and EUR 11 000 received respectively in connection with the Access-eGOV project and another project not covered by the audit.

86 It is also clear from the audit report that, further to another request made by the auditors for the applicant to provide them with an annual balance sheet for all the years covered by the audit, the applicant stated that it was not legally required to prepare such documents, but that, in any event, they would be available after a brief review. That review revealed errors in the accounts with regard to the recording of certain costs. Consequently, the applicant was asked to produce a new version of the accounts. Despite the corrections made to the accounts, the auditors found that the balance sheets submitted to them did not permit a reconciliation between the declared costs and the payments made in connection with the contracts at issue and the receipts and the costs recorded in the applicant's accounts. The reconciliation between the applicant's end-of-year bank statements and the annual balance sheets provided to the auditors also resulted in significant differences between those documents being identified. Several weeks after the on-the-spot check, the applicant also provided different, new reconciliations to show that the accounts were not materially inaccurate and that they could still be used as a reliable basis for the auditors to issue an opinion on the eligibility of the costs. It is also clear from the audit report that, according to the auditors, all these errors largely stem from the use of different accounting principles over the years. Thus, certain receipts and costs had been recorded on the date of issue of the invoice, whilst others had been recorded on the date of payment.

87 In addition, the audit report contains a table which shows a difference between the receipts initially recorded in the applicant's accounts and the revised receipts of EUR - 20 936.04 for 2005, EUR + 74 060.08 for 2006, EUR - 300 for 2007 and EUR - 8 034.90 for 2008. With regard to costs, the differences were EUR - 750.63 for 2004, EUR - 175.70 for 2006 and EUR - 490.74 for 2007.

88 According to the audit report, the difference with regard to receipts identified for 2006 stemmed from a failure to record two payments from the Commission in the applicant's accounts: the first, amounting to EUR 63 000, for the Access-eGOV project and, the second, amounting to EUR 11 000, for another project.

89 It should be noted in this regard that the applicant does not dispute the existence of the differences found by the auditors between the amounts of the costs and receipts for the period from 2004 to 2008 as shown in the accounts initially provided to the auditors and the amounts of the costs and receipts revised after the Commission auditors found inconsistencies at the end of the audit.

90 In order to assess whether these differences could affect the eligibility of the costs submitted by the applicant in connection with the contracts at issue, it should be pointed out that, under Article II.19(1)(d) of the FP6 conditions, the eligible costs incurred for the implementation of the project 'must be recorded in the accounts of the contractor that incurred them [and] the accounting procedures used in the recording of costs and receipts shall respect the accounting rules of the State in which the contractor is established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the project and the overall statement of accounts relating to the overall business activity of the contractor'.

91 Under Article II.16 of the eTEN conditions:

'Eligible costs shall be reimbursed where they are justified by the participant. To this end, the participant shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which he is established, the accounts for the project and appropriate documentation to support and justify in particular the costs and time reported in his financial statements. This documentation must be precise, complete and effective.'

92 Article II.20 of the CIP conditions provides that eligible costs must be 'identifiable and verifiable, be recorded in the beneficiary's accounts and determined in accordance with the applicable accounting standards of the country where the beneficiary is established and with the usual cost accounting practices of the beneficiary. The beneficiary's internal accounting and auditing procedures must permit the direct reconciliation of the costs and receipts declared in respect of the project with the corresponding financial statements and supporting documents'.

93 Article II.23 of the CIP conditions further provides:

'Eligible costs shall be reimbursed where they are justified by the beneficiary. To this end, the beneficiary shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which it is established, the accounts for the project and appropriate documentation to support and justify in particular the costs and time reported in its financial statements. These accounts shall be maintained for at least five years after the date of the final payment. All the working time charged to the agreement shall be recorded throughout the duration of the project, or not later than two months from the end of the duration of the project, and shall be certified by the person in charge of the work as designated by the beneficiary in accordance with Article II.3(b) or by the duly authorised financial officer of the beneficiary. This documentation shall be precise, complete and effective.'

94 It is clear from those provisions that, for a cost incurred by the applicant in connection with the contracts at issue to be regarded as eligible, it must, among other things, be recorded in the applicant's accounts, which are to be maintained in accordance with the legislation of the State in which it is established, namely the Hellenic Republic. In addition, the applicant's accounts must permit, in the case of the FP6 contracts, a reconciliation allowing a direct comparison between the costs and receipts incurred for the implementation of the project and the overall statement of accounts relating to the applicant's overall activity and, in the case of the eTEN and CIP contracts, a direct comparison between those costs and the financial statements submitted to the Commission.

95 With regard, first, to the question whether in the present case the applicant infringed the provisions of Greek law applicable to the keeping of its accounts, it should be noted that, on page 19 of the final audit report of 22 December 2010, the auditors merely report the infringement of Article 17(1) of the

Proedriko diatagma yp'arithmon 186 — kodikas vivlion kai stihion (Code of Books and Records of the Hellenic Republic) (CBR). However, it is clear from the Commission's written submissions that it also claims that, in accordance with Article 30(4) of the CBR, the applicant's accounts must be considered as inaccurate and to give rise to the non-accounting determination of the applicant's results, as provided for in Article 32(1) and (2) of the Nomos yp'arithmon 2238 — Kyrosi tou kodika forologias isodimatos (Income Tax Code of the Hellenic Republic) (ITC), and the payment of an additional tax in accordance with Article 86 of the ITC.

96 It should be pointed out in this regard that the parties agree that the applicant comes under the second category of accounts for the purposes of Article 6 of the CBR, under which:

'1. In order to carry on his profession, an operator coming under the second category shall keep a book of receipts and costs in which he records, in separate columns:

(a) the type of documentary evidence, its order number and the date of issue or of receipt ...

(b) gross receipts from the sale of goods ..., from the provision of services and from other transactions,

(c) costs for all purchases of goods ..., costs relating to services received, overhead expenses and other transactions ...

2. The amount of each transaction referred to in the preceding paragraph shall be itemised in separate columns of the accounts book or in lists, depending on the requirements of income tax and VAT. This itemised presentation shall be completed by the expiry of the time-limit for submission of income tax returns at the latest ...'

97 The applicant does not deny that Article 17(1) of the CBR, entitled 'Time-limit for updating books', provides that '[t]he updating of books ... in the second category shall be completed by the fifteenth day of the month following the issue or the receipt, as the case may be, of the documentary evidence'.

98 It is also common ground between the parties that Article 30 of the CBR, entitled 'Validity and probative force of books and records', provides:

'1. Without prejudice to the provisions of the following paragraphs of the present article, the validity and the reliability of books and records falling within the ambit of this Code shall not be affected by the identification of irregularities or omissions therein and the head of the competent tax service shall recognise the resulting data in determining the operators' tax obligations. The abovementioned irregularities or omissions shall, except where otherwise specially provided, give rise only to financial and administrative penalties in proportion to their nature and their extent, with reference to the amounts shown in the books.

2. Books and records shall be regarded as incomplete or inaccurate and give rise to the non-accounting determination of the tax base, where appropriate, only in the cases provided for in paragraphs 3, 4, 6 and 7 below.

3. Books and records in the second and third categories shall be regarded as insufficient where one of the following conditions or all those conditions are met: the taxable person ... (b) keeps or issues or maintains the books and records provided for by the present Code in a manner contrary to its provisions.

...

The acts or irregularities or omissions mentioned in the present paragraph shall be regarded as insufficient only where they do not stem from excusable error or negligence or where they make the accounting control of tax obligations objectively impossible, and not simply difficult.

Cases of deficiencies identified in books and records kept and the inability to reproduce the contents of the optical disk of the inventory book do not constitute an objective inability to conduct a review where the relevant information may be compensated by lists or electromagnetic media or other detailed information provided to the tax auditor within the time-limit prescribed by him, on the condition that the information is clear, in order to make the financial audits possible and to permit that information to be audited on the basis of the books and records.

The insufficiency must concern the inability to carry out specific financial audits for amounts which are higher than those contained in the books and records and it must be justified.

4. Books and records in the second and third categories shall be regarded as inaccurate where one of the following conditions or all those conditions are met:

(a) the taxable person does not record receipts or costs in his books or he records them inaccurately or he records costs which have not been incurred and for which no tax document has been issued ...

To give rise to a non-accounting determination of results, the acts or omissions referred to in the present paragraph must be on a large scale and have a significant effect on the results or make the accounting control of tax obligations objectively impossible, the provisions of the latter two subparagraphs of paragraph 3 of this article applying by analogy to the acts or omissions referred to in points (f) and (i) of this paragraph.

... The following shall not be regarded insufficient or inaccurate: (a) the entry in the accounts of a receipt or a cost for a financial year other than the one to which it pertains ...'

99 It follows from these provisions that books and records in the second category of accounts for the purposes of Article 6 of the CBR may, under certain conditions, be regarded as insufficient or inaccurate and, therefore, have their validity and their probative force called into question.

100 Books and records in the second category of accounts for the purposes of Article 6 of the CBR are regarded as insufficient, in particular, where the taxable person keeps those books and records in a manner contrary to the provisions of the CBR provided the irregularities and omissions do not stem from excusable error or negligence and they make the accounting control objectively impossible, and not simply difficult. The accounting control is not made objectively impossible by deficiencies affecting books and records where the relevant information may be compensated by lists or electromagnetic media or other detailed information provided to the tax auditor within the time-limit prescribed by him, on the condition that the information is clear.

101 Books and records in the second category of accounts for the purposes of Article 6 of the CBR are regarded as inaccurate, in particular, where the taxable person does not record receipts or costs in his books or he records them inaccurately or he records costs which have not been incurred and for which no tax document has been issued. However, to give rise to a non-accounting determination of the taxable person's results, those acts or omissions must be on a large scale and have a significant effect on the results or make the accounting control of tax obligations objectively impossible.

102 In addition, the entry in the accounts of a receipt or a cost for a financial year other than the one to which it pertains is not regarded as insufficient or inaccurate.

103 The Commission claims, in it written pleadings, that the errors identified by the auditors in the applicant's accounts constitute inaccuracies for the purposes of Article 30(4) of the CBR.

104 Furthermore, the Court notes that in their written pleadings the parties extensively debated whether the provisions of the ITC are applicable in the present case, the main issue of that debate being whether the applicant could be subject to the non-accounting determination of the tax base provided for in Article 32 of the ITC. It is clear from the wording of Article 30(2) of the CBR that the insufficient or inaccurate nature of books and records may be established irrespective of the penalty, represented by the non-accounting determination of the tax base, which may ensue 'where appropriate'. In those circumstances, the question whether or not the applicant is subject to the provisions of the ITC would seem to be irrelevant, in this case, in determining whether the applicant's accounts are inaccurate.

105 It is therefore necessary to examine only whether, in the present case, the errors identified by the auditors in the applicant's accounts had the effect of making those accounts inaccurate within the meaning of Article 30(4) of the CBR.

106 In this regard, it is apparent from the audit report that a substantial proportion of the errors identified during the audit stem from the fact that certain costs and certain receipts were recorded on the date of issue or of receipt of the documentary evidence, whilst others were recorded on the date of payment made or received by the applicant.

107 According to the applicant, the alternative use of these recording methods is consistent with Greek law and resulted in certain receipts and certain costs being entered into the accounts in financial years to which they do not pertain. However, under Article 30(4) of the CBR, such errors do not constitute inaccuracies.

108 It should nevertheless be pointed out that the applicant does not dispute that the errors identified with regard to the amount of receipts for 2006 stem from a simple failure to record them and not from those receipts being recorded on a wrong date. The failure to record a receipt constitutes an inaccuracy in accordance with the wording of Article 30(4) of the CBR.

109 Accordingly, on the basis of a reading of Article 30(1) and (4) of the CBR, the validity and the probative force of the applicant's accounts for 2006 could be called into question by the Commission.

110 Furthermore, it should also be pointed out that the applicant does not explicitly contest the finding made by the auditors in the audit report according to which the fact that it updated its accounts only after they had noted the failure to record certain costs and certain receipts, namely during the week in which the on-the-spot check was made, constitutes an infringement of Article 17(1) of the CBR, under which it was required to update its accounts no later than the fifteenth day of the month following the receipt or the issue of the relevant documentary evidence.

111 In this regard, the applicant simply asserts that a circular interpreting that provision states that '[w]here, in the course of the financial year, the operator receives documents relating to the purchase of goods (invoices) prior to the receipt of those goods, no entry is made in the books kept by the operator and those items are entered into the accounts when the goods are received', without explaining to what extent this justifies the failure to record in its accounts the payments made by the Commission within the prescribed time-limit.

112 Accordingly, for 2006 at least, the applicant's accounts would not appear to be consistent with the Greek legislation applicable to them.

113 This conclusion cannot be affected by Article 5(5) of the Nomos yp'arithmon 2523 — Diikitikes kai pinikes kyrosis sti forologiki nomothesia kai alles diataxeis (Law No 2523/97 on administrative and criminal penalties in tax laws), which is relied upon by the applicant and which provides that, by way of exception, a fine is not imposed where irregularities or omissions are identified which represent breaches of procedural requirements that are among those which have an effect on the validity of books and records, making them inaccurate and not making financial audits extremely difficult, provided they stem from an excusable error or omission, unless it can be proved that a recommendation was made previously by any tax auditor or any tax authority regarding the proper application of the provisions of the CBR. The errors identified in the applicant's accounts, for 2006 at least, are indeed among those which have an effect on their validity, making them inaccurate.

114 With regard, second, to the question whether the reconciliation provided for in Article II.19(1)(d) of the FP6 conditions, Article II.20(1) and Article II.23 of the CIP conditions and Article II.16 of the eTEN conditions between, on the one hand, the declared costs and the receipts collected in connection with the contracts at issue and, on the other, the applicant's overall activity was possible in this case, it should be pointed out that the parties have not produced any version of the applicant's accounts initially provided to the auditors or of the accounting documents which were subsequently supplied to the auditors by the applicant during the audit and even after the end of the audit.

115 Nevertheless, such an operation required, at the very least, the receipts and the costs relating to the contracts at issue to be correctly recorded in the applicant's accounts. In so far as the accounts initially presented to the auditors contained errors, they did not permit a reconciliation.

116 In addition, the Court is not persuaded by the arguments put forward by the applicant claiming that, despite the errors identified in its accounts, it was not objectively impossible to carry out the reconciliation.

117 With regard, first, to the applicant's claim that the Commission does not specify the unofficial accounting data with which it tried to ascertain the reliability of the accounts and the use of such data is contrary to the fundamental principles governing auditing of accounts, it must be stated that it effectively reverses the burden of proof. It is for the applicant to show that, despite the errors identified in its accounts, the audit is objectively possible and can be carried out on the basis of other information. The applicant cannot therefore criticise the Commission for having tried, by reason of the errors identified in the accounts, to carry out the audit on the basis of unofficial data.

118 With regard, second, to the applicant's argument that the Commission's reliance on the amendments made, at its request, to the applicant's accounts to justify the impossibility of conducting a reconciliation is contrary to the principle of *non concedit venire contra factum proprium*, it should be stated that it has no factual basis. It is clear both from the audit report and from the Commission's written pleadings that the Commission does not claim that the amendments in question made the reconciliation impossible but that, despite those amendments made to rectify the errors identified in the applicant's accounts, it was not possible to conduct that reconciliation.

119 With regard, third, to the applicant's argument that the reconciliation was possible in so far as it had recorded in its accounts all the costs declared and receipts received in respect of the contracts at issue and retained the relevant documentary evidence, this claim is directly refuted by the finding, which is not disputed by the applicant, of the failure to record a receipt of EUR 63 000 in connection with the Access-eGOV contract. In addition, assuming that the claim should be interpreted as applying only to other receipts and costs pertaining to the contracts at issue, it must be stated that the applicant does not furnish any evidence in this regard.

120 With regard, fourth, to the applicant's argument that the Commission had acknowledged that a direct comparison between the costs and the receipts relating to the projects financed by the Union and the applicant's overall state of accounts was possible by stating, in the defence, that 84.14% of the

applicant's total revenue for the years 2007 to 2009 came from its remunerated participation in projects financed by the Union and that 53.19% of those projects were projects managed by the Commission's Directorate General (DG) for Information Society and Media, it should be noted that the period covered by the audit commenced in 2004 and that, consequently, the fact that the Commission was able to calculate the proportion represented by projects financed by the Union in the applicant's total receipts for the years 2007 to 2009 does not show that, in doing so, the Commission was able to carry out the reconciliation in accordance with the provisions of the contracts at issue.

121 With regard, lastly, to the applicant's claim that, as the Commission recognises, it eventually presented to the Commission the precise accounting records together with the relevant documentary evidence, it should be noted that the Commission disputes this claim, asserting that the records in question still contained errors, and that the applicant does not produce those records, with the result that it is not possible to determine that the reconciliation could be carried out on that basis.

122 It follows that the applicant does not show that, despite the errors identified in its accounts, the auditors were able to make a direct comparison between the costs and the receipts relating to the contracts at issue, on the one hand, and its overall state of accounts, on the other.

123 Therefore, by keeping its accounts in a manner that was not consistent with the applicable Greek legislation and that did not permit the Commission to carry out a reconciliation, the applicant failed to comply with the conditions laid down in Article II.19(1)(d) of the FP6 conditions, Article II.16 of the eTEN conditions and Articles II.20 and II.23 of the CIP conditions regarding the keeping of its accounts.

(b) The amendment of personnel time sheets

124 The applicant essentially claims that its system for keeping personnel time sheets was reliable. In this regard, it submits that the handwritten corrections to the personnel time sheets noted by the Commission were not amendments made *a posteriori* without the knowledge of the members of personnel, but stem from the use of a double-checking system by the programme director, relate only to dates and not to the number of hours worked and affect only 72 time sheets, which precludes those amendments having any effect on the actual hours worked.

125 In this regard, the Court points out that under Article 19(1)(a) of the FP6 conditions, Article II.13(1) of the eTEN conditions and Article II.20(1) of the CIP conditions, eligible costs must be incurred for the implementation of the project. Under Article II.14(1) of the eTEN conditions and Article II.21(2) of the CIP conditions, only the costs of the actual hours worked by the persons directly carrying out work under the project may be charged to the project.

126 The applicant does not deny the existence of handwritten amendments to personnel time sheets. It does argue, however, that, first, only 72 of 1 600 time sheets were corrected and, second, those corrections were made by the programme director as part of a system for double-checking working hours so as to reflect the exact time worked. In addition, those corrections related only to dates and not the time worked.

127 With regard, first, to the proportion of time sheets containing corrections, the number of 72 time sheets should not be considered in relation to the total number of time sheets made up by the applicant in connection with the contracts at issue, but the number of time sheets checked by the Commission, that is to say 770. The number of corrected time sheets to be taken into account represents almost 10% of the time sheets checked by the Commission. It should be pointed out in this regard that it is for the applicant to show that no other time sheets contain handwritten amendments, which it has failed to do in the present case, merely stating that it was making the time sheets in

question available to the Court. However, even if the applicant had proved that no other time sheets contained handwritten amendments, the proportion of amended time sheets, even in relation to the total number of time sheets, is sufficient to introduce reasonable doubt as to the effectiveness of its system for recording working hours.

128 Second, the claim that the corrections related only to the dates on which work was done and had no bearing on the number of hours worked must be rejected. Simply by reading the programme director's monthly time sheet for October 2004 in the Ask-It project, included in Annex B101, it can be seen that the corrections relate not only to the dates on which the hours worked were completed, but also to the number of working hours. It is thus clear that the total number of working hours, which was initially 136, was corrected to 120. In addition, the programme director's monthly time sheets for October 2006 show that the working hours initially declared in connection with the EU4ALL project on 18 and 19 October 2006 are, after correction, declared in connection with the eABILITIES project.

129 With regard, third, to the claim that the corrections identified corresponded to a system for double-checking working hours which was intended to reflect the exact time worked, it is clear from the audit report that that system was based on a first check made at the end of each month when the monthly time sheet was issued, with a second check being carried out by the programme director after the official report had been sent to the project coordinator or to the Commission. The applicant has failed to give a convincing explanation why the second check made by the programme director gave rise to the handwritten amendment of such a large number of time sheets. It is relevant in this regard that the applicant has neither claimed nor demonstrated that the handwritten amendments made to monthly time sheets after they had been made up were justified. In these circumstances, the operation of the applicant's system for recording working hours seems to seek less to ensure that the precise number of hours declared by each employee carrying out work under a particular programme is recorded than to allow the number of hours to be adjusted, for reasons that are not explained by the applicant, before the final report is sent to the Commission.

130 In those circumstances, it must be stated that, contrary to the claims made by the applicant, that system for recording working hours did not make it possible to determine whether the personnel costs had actually been incurred, as required by Article II.19(1) of the FP6 conditions, Article II.13(1) of the eTEN conditions and Article II.20(1) of the CIP conditions, whether only the costs corresponding to the hours actually worked by personnel had been charged to the project, as required by Article II.14(1) of the eTEN conditions and Article II.21(1) of the CIP conditions, or whether the company had declared periods in which its personnel carried out work under other projects as working hours completed in connection with the contracts at issue.

(c) The working hours declared by the programme director

131 The applicant essentially claims that the Commission does not furnish proof that the number of working hours declared for the programme director in connection with the contracts at issue is overstated per se or having regard to the activities unrelated to the performance of those contracts carried out by him.

132 It should be pointed out in this regard that, as was stated in paragraph 83 above, under the law applicable to the present dispute, the applicant must show that the costs submitted to the Commission were actually incurred if they are to be reimbursed. Once the applicant has provided justifications for the costs submitted to the Commission in connection with the contracts at issue, the Commission must show why they should be disregarded.

133 In this case, the applicant justified the personnel costs corresponding to the working hours submitted to the Commission in connection with the contracts at issue by means of the personnel time sheets, in respect of which it has been found, in paragraph 130 above, that they did not make it possible to determine that the costs in question had actually been incurred.

134 In addition, in the conclusions of the audit report and in its written pleadings before the Court, the Commission questions the plausibility of the number of hours declared by the applicant for the programme director in connection with the contracts at issue. It is therefore for the Commission to demonstrate to the Court the implausibility of the applicant's declarations relating to the number of hours worked by the programme director.

135 It should be noted in this regard that the Commission does not allege that the applicant declared in respect of the programme director a higher number of working hours than had been initially fixed in the programme budget for the contracts at issue or, contrary to the claim made by the applicant, that it declared, in connection with the contracts at issue, working hours connected with other European projects.

136 The Commission simply asserts that the number of hours declared by the applicant for the programme director in connection with the contracts at issue appears overstated in the light of, first, the number of productive working hours that is reasonably acceptable and, second, the fact that he had other professional activities in the period covered by the audit.

137 First, with regard to the question whether the working hours declared by the applicant for the programme director in connection with the contracts at issue should be regarded as excessive in relation to the number of productive working hours that is reasonably acceptable, it is apparent from pages 3 and 4 of the written record of the interview on 4 February 2011 between the OLAF officials and the programme director that the director does not contest the claim, which is based on a table produced by OLAF that is annexed to that record and is reproduced by the Commission in its written pleadings before the Court, that he worked 327 days in 2007 and in 2008 and 288 days in 2009.

138 Although the number of days worked by the programme director in connection with the contracts at issue based on the table produced by OLAF and annexed to the record of the interview on 4 February 2011 is manifestly high for the years 2007 to 2009, this is not sufficient in itself to demonstrate that the number of working hours declared by the applicant for him in connection with the contracts at issue was excessive.

139 Nevertheless, it is also clear from the record of the interview on 4 February 2011 that the programme director does not contest the finding made by OLAF that the aggregation of his working hours declared in connection with the different contracts at issue produces the result that he purportedly worked, in 2007, 16 hours per day for more than 22 days and 20 hours per day for more than 14 days and, in 2008, 16 hours per day for 64 days, 20 hours per day for 19 days and 24 hours per day for 2 days.

140 Such a finding could, at the very least, seriously call into question the plausibility of the number of hours worked by the programme director in connection with the contracts at issue which were declared to the Commission by the applicant.

141 In addition, the explanation given by the programme director in this regard, reproduced by the applicant in its written pleadings, is not convincing.

142 It is clear from the record of the interview on 4 February 2011 that the programme director argued that on the dates in question when, in addition to his work in connection with the European projects in which the applicant was involved, he was working as an evaluator for the Commission and as an expert for the European Telecommunications Standards Institute (ETSI), the number of his working

hours appeared as 20 or 16 hours per day because, when he worked several hours each day, the total number of his working hours for each project over a long period of time was grouped, for accounting reasons, into periods of 8 or 12 working hours and declared on a aggregated basis.

143 That explanation is difficult to reconcile with the applicant's claim that there is a reliable system for recording working hours. Such a system requires not only the number of hours worked by each member of personnel in the performance of the contracts at issue to be recorded, but also the date on which that work was carried out, which was the specific purpose, in this instance, of the time sheets system for which the programme director was responsible.

144 In addition, the applicant does not put forward any explanation of the accounting reasons which, in its view, justified the aggregation of hours worked on different dates.

145 Second, it is in the light of these considerations that it is necessary to examine the Commission's argument that the number of hours declared by the applicant for the programme director in connection with the contracts at issue is implausible in view of the other professional activities carried out by him in the period covered by the audit.

146 The applicant does not dispute the Commission's claim that it invoiced ETSI for 118.5 working hours in respect of the programme director's participation in the 'Special Task Force 333' (STF 333) working group from September 2007 to March 2009, a claim already been made by OLAF in the interview on 4 February 2011. It should also be stated that, according to page 20 of the ETSI final report to the Commission on the work carried out by STF 333, which is annexed to the defence, ETSI declared 118.5 days of work for the programme director, which had been completed from 21 September 2007 to 31 October 2009. It should be noted in this regard that, of the six experts who participated in STF 333, the programme director is one of the two who declared the most working hours, apart from the main expert. However, the applicant only claims that it was not responsible for checking the working hours actually completed by the programme director in connection with his participation in STF 333. The applicant thus seems to imply that it is not the number of working hours that it declared for the programme director in connection with the contracts at issue for the period covered by the audit that was overstated, but the working hours declared by ETSI for the work done by him in connection with STF 333. Nevertheless, although the applicant was not able to check the number of days actually worked by the programme director during his participation in STF 333, it must have known the number of days of work that the programme director was supposed to devote to the contracts at issue over the same period.

147 Furthermore, the applicant does not offer any response to the Commission's claims, already made by OLAF during the interview on 4 February 2011, that in 2007, in 2008 and in 2009 the programme director had attended STF 333 meetings even though the applicant had declared that at that same time he was working 16 hours per day on the contracts at issue.

148 In addition, it is stated on pages 10 and 11 of the ETSI final report to the Commission on the work of STF 333 that the programme director is 'a member of many working groups dealing with e-inclusion, such as the W3C Working Group on Web Content Accessibility Guidelines v.2 or the ANEC Design4All and ICT Working Groups, [that,] moreover, he represents ANEC on the W3C Advisory Committee and on the ETSI Technical Committee on Human Factors [and that, f]urthermore, he is assisting ANEC ("the European consumer voice in standardisation") as an expert on matters of e-inclusion and e-Accessibility'.

149 In the light of the foregoing considerations, the Court takes the view that the evidence produced by the Commission is sufficient to show the implausibility of the number of working hours declared by the applicant for the programme director in connection with the contracts at issue in the period from 2007 to 2009.

(d) Travel costs

150 The applicant claims, in essence, that the sole trip cited as an example by the Commission cannot call into question the eligibility of all the travel costs declared in connection with the contracts at issue.

151 It should be pointed out in this regard that, as was stated in paragraph 83 above, under the law applicable to the present dispute, the applicant must show that the costs submitted to the Commission were actually incurred if they are to be reimbursed. Once the applicant has provided justifications for the costs submitted to the Commission in connection with the contracts at issue, the Commission must show why they should be disregarded.

152 In the present case, it is apparent from the documents before the Court that the applicant justified the costs submitted to the Commission in connection with the contracts at issue, in particular by travel costs incurred in connection with those contracts, in support of which it produced documentary evidence.

153 The Commission claims, both in the conclusions of the audit report and in its written pleadings before the Court, that all the travel costs declared by the applicant in connection with the contracts at issue are non-eligible. Under these circumstances, the Commission must therefore show that the documentary evidence produced by the applicant in support of the travel costs incurred in connection with the contracts at issue should be disregarded.

154 In this regard, it should be pointed out that it is stated in the audit report, to which the Commission refers in its written pleadings, that an examination of the meeting minutes which the applicant provided to the auditors to justify the travel costs revealed that several trips whose costs were charged to the contracts at issue were not directly and exclusively related to those contracts, but were actually connected with the applicant's other activities. The auditors give the example of a trip made by the programme director to attend a meeting in Nice (France) in January 2008 and charged in full to the budget earmarked for the eABILITIES project, whereas it was actually connected with the ETSI STF 333 contract. This is confirmed by the fact that the names of those attending the meeting, as mentioned in the minutes, were the same as those of the other STF 333 experts.

155 In its written pleadings, the Commission acknowledges that the connection between the travel and the contracts at issue does not have to be exclusive. It nevertheless asserts that it must be direct. In this case, even though there was a connection between the travel and the contracts at issue, it was not direct.

156 The Commission cites just one example, namely a trip by the programme director to Nice during which he attended a meeting at the offices of ETSI from 20 to 25 January 2008.

157 The applicant does not dispute that the meeting in question actually took place, but contends that its essential purpose was to promote the eABILITIES project among the participants.

158 It is relevant in this regard that paragraph 8 of the minutes of the meeting in question, annexed to the Commission's defence, includes the 'Created contact list', which consists of the names of four of the other five experts who were members of STF 333.

159 It is also relevant that it is stated in paragraph 1 of the minutes of the meeting in question, under the heading 'Subjects discussed at the meeting': 'Information on the e-Accessibility project and AT products and standards; Information on the eABILITIES project; Review of possible synergies; Next steps'.

160 It is further stated in paragraph 2 of the minutes of the meeting in question, under the heading 'Questions of special interest for e-Isotis and the eABILITIES project', that there was an in-depth discussion every day on each eABILITIES product and how they could be used by actors in the AT and e-Accessibility sector.

161 Accordingly, the Commission has not been able to demonstrate the absence of a direct link between that trip and that contract and, thus, the non-eligibility of the costs declared in respect of the trip.

162 As a result, the Court cannot take the view that the non-eligibility of the costs declared by the applicant in connection with the contracts at issue stems from the absence of a link between the travel costs incurred by the applicant and those contracts.

163 However, this finding does not support the conclusion that, as the applicant claims, all the travel costs incurred by it in connection with the contracts at issue were eligible. It should be noted that it produced to the Court documentary evidence of travel costs relating to the EU4ALL contract alone, even though it does not dispute that it declared travel costs in connection with the other contracts at issue.

164 Consequently, and in the light of the other findings made above by the Court regarding the unreliability of the applicant's accounts and its system for recording working hours and the manifestly excessive number of days of work declared for the programme director, it must be stated that the applicant infringed Article 19(1)(a) and (d) of the FP6 conditions, Articles II.13, II.14 and II.16(2) of the eTEN conditions and Articles II.20, II.21 and II.23 of the CIP conditions and that the costs submitted to the Commission in connection with the contracts at issue must therefore be regarded as non-eligible.

2. *The quality of the audit and the conditions under which it was carried out*

(a) The false declarations concerning the applicant's participation in the ETSI 333 contract

165 The applicant essentially challenges the conclusion in the audit report that it made false declarations during the audit procedure on the ground that its personnel concealed the connection between the ETSI STF 333 contract and the Commission.

166 It should be pointed out in this regard that, under Article II.29(2) of the FP6 conditions, during the audit, '[t]he contractors shall make available directly to the Commission all the detailed data that may be requested by the Commission with a view to verifying that the contract is being properly managed and performed'.

167 Article II.17(2) of the eTEN conditions also provides that '[t]he Commission or any authorised representative may have access, at any reasonable time, in particular to the personnel of the participants connected with the project, the documentation referred to in Article 16 of this Annex, computer records and equipment that it considers relevant [and that i]n this connection, it may request that data be handed over to it in an appropriate form in order, for instance, to ascertain the eligibility of the costs'.

168 Similarly, Article II.28(2) of the CIP conditions provides that '[t]he beneficiaries shall make available directly to the Commission all detailed information and data that may be requested by the Commission, or any representative authorised by it, with a view to verifying that the grant agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it'.

169 With regard, first, to the question whether the applicant's failure, in reply to the Commission's letters of 22 and 26 January 2010, to mention the ETSI STF 333 contract in the list of contracts constitutes a false declaration, it is clear from the letter which the Commission sent to the applicant on 22 January 2010 that it was asked to provide immediately an exhaustive list of all projects, both research and non-research projects, financed by the Union and of projects or activities within the framework of service contracts or grant agreements in which it was involved, providing at least the name of the programme, its reference, its acronym, its start and end dates, and the amount of financing. It should also be noted that the document entitled 'List of information to be requested from the audited organisation — Annex to the announcement letter', annexed to that letter, contains a table which mentions, in paragraph 8, 'List of all other Community financing received and all contracts (completed and ongoing) signed with the Commission (from 2000 to present)'.

170 Contrary to the claim made by the Commission, such a document does not constitute late evidence in so far as it is relied upon by the applicant in support of an argument which seeks to respond to the claim made by the Commission in the defence that the applicant made a false declaration by failing to mention the ETSI STF 333 contract in reply to its letters of 22 and 26 January 2010. The same holds for the exchange of e-mails between Mr D., a Commission auditor, and the programme director, dated 26 January 2010, which appears as Annex A67 to the defence.

171 According to the e-mail sent to Mr D. by the programme director on 26 January 2010, the programme director sought his advice, writing:

'Please inform us whether contracts which were concluded just between our organisation, as the beneficiary, and another organisation, the successful tenderer which actually concludes a contract with the relevant executive agency of the European Commission or with the corresponding national agency, should be included in the list of projects financed by the European Union, in connection with document E8.'

172 In the e-mail from Mr D., with the subject 'Contracts', he gave the following reply:

'The idea is effectively to have a complete overview of all contracts (and sub-contracts) concluded with EU institutions, agencies, etc. It is therefore important to cite all contracts properly, even if you are not the main contractor but only a sub-contractor. Please describe clearly the situation of the organisation in that context.'

173 Although there might be doubt as to the nature of the contracts to be mentioned for the purposes of the audit in the light of the wording used in the letter of 22 January 2010 and the document annexed thereto, it was subsequently dispelled by the exchange of e-mails between the programme director and Mr D., since, from reading that correspondence, the applicant could be in no doubt that it was required to mention all contracts concluded with the Commission, including those in which it was only a sub-contractor, which was manifestly the case with the ETSI STF 333 contract.

174 According to the commitment letter signed between ETSI and the applicant, represented by Ms A., the purpose of that contract was to make the programme director available to ETSI STF 333 under a mandate. It is also clear from Article 4 of the commitment letter that the 'expert' made available to ETSI, namely the programme director, continued to be employed by ETSI in the course of his work for STF 333 and under Article 5 of that commitment letter ETSI undertakes to pay the applicant a sum of EUR 30 600 for 51 days of work corresponding to the time which the applicant estimates that the programme director will have to devote to that task.

175 Furthermore, it is stated in paragraph A3 of Annex 1 to the commitment letter that the Commission was asked to finance 70% of the total cost of the project within the framework of which the programme director was made available to ETSI.

176 Consequently, by failing to mention the ETSI STF 333 contract in reply to the letters from the Commission of 22 and 26 January 2010, the applicant made a false declaration to the Commission's auditors in contravention of Article II.29(2) of the FP6 conditions, Article II.17(2) of the eTEN conditions and Article II.28(2) of the CIP conditions.

(b) The rules applicable to audits

177 The applicant essentially claims that the generalisations and errors contained in the audit report and the conditions in which it was registered in the central exclusion database set up by Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database (OJ 2008 L 344, p. 12) bear witness, among other things, to the failure by the Commission's auditors to comply with the international auditing rules applicable in the present case in accordance with the principle of good faith performance of agreements.

178 In this regard, the Court points out that the possibility for the Commission to carry out an audit of the contracts at issue is provided for in Article II.29 of the FP6 conditions, Article II.17 of the eTEN conditions and Article II.28 of the CIP conditions.

179 However, those provisions do not specify the technical and practical conditions in which the auditors must do their work. Although the contracts remain silent, good faith requires the parties to adopt objective behaviour, which forms part of the implicit content of the contract.

180 In the present case, the applicant considers, in essence, that, in accordance with the principle of good faith performance of agreements, the Commission was required to comply with international auditing standards pursuant to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ 2006 L 157, p. 87).

181 The applicant refers in particular to paragraphs 17 (Requirements) and A19 (Application and Other Explanatory Material) of the International Standards on Auditing 200 of April 2009, produced by the International Federation of Accountants, which provide as follows:

'Sufficient Appropriate Audit Evidence and Audit Risk

17. To obtain reasonable assurance, the auditor shall obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor's opinion.

...

Professional Scepticism

...

A19. Maintaining professional scepticism throughout the audit is necessary if the auditor is, for example, to reduce the risks of:

— Overlooking unusual circumstances;

— Overgeneralising when drawing conclusions from audit observations;

— Using inappropriate assumptions in determining the nature, timing and extent of the audit procedures and evaluating the results thereof.'

182 In this regard, however, it must be stated that the case-law cited by the applicant in support of this argument is not applicable to this case.

183 It was held in Case C-25/02 *Rinke* [2003] ECR I-8349, paragraphs 24 to 27, that the respect of fundamental rights recognised as general principles of Union law, and now enshrined in the Charter of Fundamental Rights of the European Union, is a condition of the legality of any act adopted by the EU institutions.

184 However, first of all, the present dispute does not concern the legality of an act of the Commission within the meaning of Article 288 TFEU, but compliance with contractual obligations governing relations between the Commission and the applicant and, second, international auditing rules do not constitute fundamental rights or general principles of Union law.

185 Similarly, the present case should be distinguished from situations where a directive may be relied upon as against an EU institution, to which reference is made in Case F-65/07 *Aayan and Others* v *Parliament* [2009] ECR-SC I-A-1-1054 and II-A-1-567, also invoked by the applicant, which are limited to relations between Union institutions and their officials or servants (*Aayan and Others* v *Parliament*, paragraph 112).

186 In addition, the applicant's argument that the Commission was required to comply with international auditing standards in so far as, first, Article II.19(1)(d) of the FP6 conditions and Article II.23 of the CIP conditions referred to the applicable national accounting rules and, second, Greek law had to be consistent with the provisions of Directive 2006/43, which required the Member States to comply with international auditing rules, must be rejected.

187 It is clear from Article 26(1) of Directive 2006/43 that, whilst Member States must require statutory auditors and audit firms to carry out statutory audits of accounts in compliance with international auditing standards adopted by the Commission, they may apply national auditing standards as long as the Commission has not adopted an international auditing standard covering the same subject-matter. The Commission has not thus far adopted international auditing rules.

188 It must therefore be stated that the applicable national accounting rules in the present dispute, under Article II.19(1)(d) of the FP6 conditions and Article II.23 of the CIP conditions, do not require the Commission to comply with the standards adopted by the International Federation of Accountants.

189 Furthermore, in so far as the applicant also submits that the generalisations and errors contained in the audit report and the conditions in which it was registered in the central exclusion database set up by Regulation No 1302/2008 show that the Union did not fulfil its contractual obligations in good faith in carrying out the audit, that argument should be rejected.

190 First, with regard to the applicant's argument that the conclusion of the final audit report stating that it made false declarations and concealed financing received from the Commission in connection with the ETSI contract was based on a subjective judgement by the auditors, it need only be stated that it has no factual basis. As was held in paragraph 176 above, by failing to mention the ETSI STF 333 contract in reply to the letters from the Commission of 22 and 26 January 2010, the applicant made a false declaration to the Commission's auditors in contravention of Article II.29(2) of the FP6 conditions, Article II.17(2) of the eTEN conditions and Article II.28(2) of the CIP conditions.

191 Second, with regard to the applicant's argument that the auditors stated that it had made various declarations, when that was not the case, as the applicant's statutory representative had never been interviewed by the auditors, it should be noted that the fact that the applicant's statutory

representative was not interviewed by the auditors cannot in itself call into question the veracity of any declarations made by members of the applicant's personnel. In addition, according to audit practices, the Commission was not required to interview the applicant's statutory representative in so far as the applicant's personnel were sufficiently qualified to answer the auditors' questions concerning the technical and financial implementation of the contracts at issue, which the applicant does not dispute.

192 Third, with regard to the applicant's argument that the conclusion of the audit report to the effect that it cannot be ruled out that members of personnel other than the programme director declared overstated working hours is subjective, it must be stated that this argument has no factual basis. That conclusion is based on the finding that there is no evidence concerning the hours worked by personnel other than the programme director and on the extent of the irregularities identified in the sample of checked time sheets.

193 Fourth, with regard to the applicant's argument that the Commission based its conclusions relating to travel costs on incomplete information, as was stated in paragraph 156 above, the auditors refer to just one trip in the audit report to illustrate the alleged false declarations relating to travel costs. However, it should be noted that in the audit report the reference to that trip is merely an example to illustrate the auditors' general finding relating to all the documentary evidence concerning the travel costs declared by the applicant in connection with the contracts at issue.

194 Fifth, with regard to the applicant's argument that the auditors unjustifiably declared as non-eligible the costs incurred in connection with reference period No 3 of the Enable project and reference period No 4 of the Ask-It project, which were not covered by the audit, it is clear from paragraph 3 of the audit report that those reference periods were not included in the audit.

195 In this regard, the Commission claims that the failure to mention those reference periods in paragraph 3 of the audit report was due to an omission and that those periods were actually checked, as is shown by Annex 1 to the audit report. However, although it is evident from Annex 1 to the audit report that reference period No 4 of the Ask-It contract was indeed audited, it is clear from that same annex that reference period No 3 of the Enable project ran from 1 January 2009 to 31 August 2010, that is to say after the on-the-spot check and the drafting of the provisional audit report dated 28 June 2010. Accordingly, the Commission cannot claim that the check related to reference period No 3 of the Enable project in its entirety.

196 Nevertheless, it should be noted that the auditors concluded that all the costs incurred during the first two reference periods for the programme that were covered by the audit were non-eligible and that such a finding raises serious doubts as to the truthfulness of the declarations made by the applicant in respect of the subsequent periods under those two programmes. Therefore, according to audit practices, the Commission was able, for period No 3 of the Enable project, to infer the consequences from the findings made by the auditors for the preceding periods.

197 Sixth, with regard to the alleged errors in calculation contained in the audit report which prevented the applicant from exercising its rights of defence, it must be stated that these have not been demonstrated by the applicant.

198 The applicant claims, first, that the auditors wrongly stated in the audit report that the amount of the costs declared by it for the periods covered by the audit was EUR 912 217.15, whereas it was actually EUR 890 595.25. This difference can be explained by the errors made by the Commission regarding the amount of the costs declared in connection with the Ask-It and T-Seniority contracts.

199 Thus, the amount of the costs declared by the applicant for reference period No 3 under the Ask-It programme was EUR 46 571.62 and not EUR 48 889.16 as stated by the Commission.

200 Similarly, the amount of the costs declared in connection with the T-Seniority programme was EUR 47 491.50 and not EUR 66 795.86 as stated by the Commission.

201 In this regard, it is clear from Annex 1 to the audit report that the sum of EUR 46 571.62 to which the applicant refers corresponds to the sum of the costs initially accepted by the Commission in respect of reference period No 3 of the Ask-It programme and that the sum of EUR 48 889.16 corresponds to the total costs declared by the applicant for that period.

202 It is also clear from page 7 of the audit report that the auditors stated, with regard to the costs declared by the applicant in connection with the T-Seniority programme, that the financial reports had not yet been filed on the date when the report was drafted and that those costs had not yet been formally accepted by the Commission. It is also stated that the figures cited in the table relating to the Ask-It programme include the applicant's share in the subcontracting costs. It follows that the amount of EUR 66 795.86 could not be regarded as final and that the total amount of the costs declared by the applicant in connection with the contracts at issue could not be calculated precisely on the basis of the tables in paragraph 3 of the audit report. The applicant cannot therefore infer from that figure any error made by the auditors.

203 The applicant claims, second, that the auditors also made an error in calculating the total amount of the costs declared by it in respect of all the reference periods in connection with the contracts at issue. That amount was not EUR 966 632.42, but EUR 948 734.38. This latter figure was produced by adding the amount of the costs declared for the periods covered by the audit, namely EUR 890 595.25, and the amount of the costs declared in respect of reference period No 3 of the Enable project and reference period No 4 of the Ask-It project, which were not covered by the audit.

204 It should be noted in this regard that the applicant's claim is based on the false premise that the amount of the costs declared for the periods covered by the audit is EUR 890 595.25. Consequently, the applicant does not show that the auditors made an error in this regard.

205 Seventh and lastly, it is necessary to reject the applicant's argument that the unfounded nature of the conclusions contained in the audit report and the Commission's bad faith are demonstrated by the fact that the Commission had initially justified the decision to register it on the 'central exclusion database' by the existence of false declarations made by it and the failure to comply with its contractual obligations when, on 23 March 2011, the Commission informed it that it had been definitively excluded for a period of five years on the ground that it had been put into liquidation.

206 It should be pointed out that Article 93(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as amended ('the Financial Regulation'), provides:

'Candidates or tenderers shall be excluded from participation in procurement procedures if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;

(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(f) they are currently subject to an administrative penalty referred to in Article 96(1).

...'

207 Article 94 of the Financial Regulation provides:

'A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

(a) are subject to a conflict of interest;

(b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;

(c) find themselves in one of the situations of exclusion, referred to in Article 93(1), for this procurement procedure.'

208 Article 96 of the Financial Regulation provides:

'The contracting authority may impose administrative or financial penalties on the following:

(a) candidates or tenderers in the cases referred to in point (b) of Article 94;

(b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the contracting authority must first give the person concerned an opportunity to present his observations.

2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:

(a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years; and/or

(b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.'

209 Under Article 114(3) of the Financial Regulation, '[g]rants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93(1), 94 and 96(2)(a)'.

210 Furthermore, Article 95 of the Financial Regulation provides for the setting-up of a central exclusion database. Under Article 95(1), that database will 'contain details of candidates and tenderers which is in one of the situations referred to in Articles 93, 94, 96(1)(b) and (2)(a)'.

211 Article 1 of Regulation No 1302/2008 establishes a central exclusion database in accordance with Article 95(1) of the Financial Regulation. Article 3 of Regulation No 1302/2008 provides, further, that exclusion warnings must include 'information identifying third parties, which are in one of the situations referred to in Article 93(1), 94, 96(1)(b) and 96(2)(a) of the Financial Regulation'.

212 It follows from those provisions that a contractor like the applicant is registered in the central exclusion database created by Regulation No 1302/2008 each time that it is the subject of an exclusion decision or an administrative penalty imposed under Article 93(1) to Article 94 or Article 96(1)(b) and (2)(a) of the Financial Regulation by an institution or an implementing authority or body, as defined in Article 2(1) and (2) of Regulation No 1302/2008.

213 In this case, it is clear from the letter sent to the applicant by the Commission on 27 July 2010 that the Commission was informing the applicant that, in the light of the conclusions of the provisional audit, it intended, first, to exclude the applicant from an ongoing grant award procedure in connection with the seventh framework programme of the European Community for research, technological development and demonstration activities (2007-2013) on grounds of grave professional misconduct pursuant to Article 93(1)(c) and Article 114(3) of the Financial Regulation and, second, to impose on it an administrative penalty in the form of exclusion from contracts and grants financed by the Union budget, for a maximum period of five years, on account of serious breach of its contractual obligations under Article 96(1) and (2) of the Financial Regulation. The Commission stated in that letter that it was opening an adversarial procedure to allow the applicant to comment on the events leading to the proposed exclusion and on the length of that exclusion. In addition, the Commission stated that, in order to protect the Union's financial interests, the applicant had been provisionally registered in the central exclusion database and that registration would become final if the exclusion decision was confirmed at the end of the adversarial procedure.

214 It should therefore be stated that, on 27 July 2010, the provisional registration of the applicant in the central exclusion database was justified, in accordance with Article 3 of Regulation No 1302/2008, by the fact that the Commission considered that it was in one of the situations referred to in Article 93(1)(c) and Article 96(2)(a) of the Financial Regulation.

215 In addition, by its letter of 23 March 2011, the Commission's Directorate General (DG) for Budget informed the applicant that the Commission's DG for Information Society and Media had requested its registration in the central exclusion database on the ground mentioned in Article 93(1)(a) of the Financial Regulation, pursuant to its decision of 8 March 2011 to exclude the applicant from receipt of European Union grants for a specified period.

216 It should be pointed out in this regard that the applicant was put into liquidation under an agreement concluded on 28 December 2010 and published in the companies bulletin of the Protodikeio Athinon on 17 January 2011.

217 Accordingly, from 17 January 2011, the Commission was justified, on the basis of Article 3 of Regulation No 1302/2008, in requesting the applicant's registration in the central exclusion database on the ground that it was in one of the situations referred to in Article 93(1)(a) of the Financial Regulation.

218 It follows that the fact that the applicant's provisional registration in the central exclusion database was initially on grounds of the exclusions referred to in Article 93(1)(c) and Article 96(2)(a) of the Financial Regulation, whilst the final registration was on grounds of the exclusion referred to in Article 93(1)(a) of that regulation, stems from a change in circumstances objectively justifying the applicant's registration in the central exclusion database and having its origins in the applicant's own conduct.

(c) The communication of the audit report in English

219 The applicant claims that the Commission infringed Article 41(4) of the Charter of Fundamental Rights by refusing its request for the audit report and the other correspondence to be communicated to it in Greek. Such conduct constitutes a violation of its fundamental rights, invalidating the audit procedure, and therefore infringes the contracts at issue.

220 It should be recalled in this regard that, under Article 41(4) of the Charter of Fundamental Rights, '[e]very person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language'. That right, which is an element of the right to good administration, is binding on the Commission in its relations with citizens of the Union in the exercise of the powers conferred on it by Union law.

221 In the present case it is relevant that, by a first letter of 19 July 2010, written in Greek, the applicant made a request to the Commission that the provisional audit report which the Commission had communicated to it in English on 28 June 2010 be communicated to it in Greek.

222 By a second letter of 30 September 2010, also written in Greek, the applicant, among other things, made its observations on the provisional audit report and requested that any additional observations from the Commission in this regard be sent to it in Greek.

223 By a letter of 22 December 2010, written in English, the Commission sent the applicant the final audit report containing the responses to the applicant's comments, also written in English.

224 By a third letter of 10 January 2011, again written in Greek, the applicant informed the Commission that it had not taken note of the audit report on the ground that it was written in English and reiterated its request that the audit report be sent to it in Greek, claiming that, in refusing to grant its request, the Commission was violating its rights of defence.

225 Consequently, without prejudging the ability of a natural person like the applicant to rely upon the right laid down by Article 41(4) of the Charter of Fundamental Rights vis-à-vis the Commission in the context of a contractual relationship, it must be stated that the applicant's complaint does not actually relate to the Commission's refusal to reply to its letters in Greek, but to its refusal to communicate to it the audit report and the related comments in that language.

226 The audit report is a document drafted by the Commission pursuant to the provisions of the contracts at issue. The question of the language in which that document was to be communicated to the applicant in this case therefore falls within the scope of the law applicable to those contracts.

227 As was stated in paragraph 73 above, as these proceedings have been instituted pursuant to an arbitration clause under Article 272 TFEU, the General Court must resolve the dispute on the basis of the substantive rules of the national law applicable to the contract, in this case Belgian law, which governs the contracts at issue under Article 12 of the FP6 contracts, Article 5(1) of the eTEN contracts and the third paragraph of Article 10 of the CIP contract.

228 In this instance, the parties are in dispute as to the Commission's refusal to communicate to the applicant the audit report in Greek and the subsequent correspondence, as it had requested. According to the applicant, that refusal invalidated the audit procedure in so far as it impaired its defence in that procedure.

229 The question is therefore whether the Commission was contractually obliged to communicate the audit report to the applicant in Greek.

230 In this regard, it must be stated that the contracts at issue do not contain any clauses governing the language in which they must be performed.

231 Nevertheless, under Articles 1134 and 1135 of the Belgian Civil Code, the contracts must be performed in good faith.

232 It is relevant that, as is evident from the annexes to the application, English was used by the applicant prior to the audit, not only in the financial reports relating to the contracts at issue which it submitted to the Commission, but also in its correspondence with the Commission. In addition, it must be stated that the applicant had never asked the Commission to use Greek in connection with the performance of the contracts at issue prior to the audit procedure.

233 Accordingly, having regard to the principle of good faith performance of agreements, the Commission was not required, in this case, to send the applicant the audit report in Greek pursuant to the contracts at issue.

234 The applicant's argument concerning the Commission's refusal to communicate to it the audit report in Greek must therefore be rejected as unfounded.

235 In the light of all the foregoing considerations, the applicant's third head of claim must be rejected as unfounded.

D – *The applicant's fifth and sixth heads of claim*

1. *The admissibility of the applicant's fifth and sixth heads of claim*

236 Without formally raising a plea of inadmissibility within the meaning of Article 114 of the Rules of Procedure of the General Court, the Commission challenges the admissibility of the applicant's claims for payment in respect of the Ask-It and EU4ALL contracts in so far as they were made by an 'action for a declaration' and not by an 'action for payment' as such. In addition, if the Court were to consider that it had jurisdiction to hear and determine such claims, the Commission challenges the admissibility of the claim for payment of damages in respect of those contracts in the context of an 'action for a declaration'.

237 In this regard, the Court considers that, despite the use of the expression 'declare that the Commission must pay' in the applicant's fifth and sixth heads of claim, they are clearly intended to ask that the Court order the Commission to pay the applicant the sum of EUR 52 584.05 in respect of the EU4ALL contract and the sum of EUR 20 678.61 in respect of the Ask-It contract. It is not therefore an 'action for a declaration', contrary to the claims made by the Commission, but an action for payment, which is not inadmissible per se.

2. *The merits of the applicant's fifth and sixth heads of claim*

238 The applicant claims, in essence, that the Commission infringed the EU4ALL and Ask-It contracts by failing to make all the payments corresponding to the costs incurred by it in connection with the second, third and fourth reference periods of the EU4ALL contract and the final reference period of the Ask-It contract.

239 Consequently, the applicant claims that the Court should order the Commission to pay the difference between the sums already paid to it in connection with those contracts and the amount of the costs incurred in connection with the reference periods in question plus default interest.

240 It must be stated at the outset that such a claim is based on the premise that the costs submitted by the applicant are eligible for reimbursement.

241 However, it was held in paragraph 164 above that the costs which the applicant submitted to the Commission in connection with the contracts at issue were not eligible.

242 Moreover, it should also be stated that the applicant does not show that the suspension of payments by the Commission constitutes an infringement of the EU4ALL and Ask-It contracts.

243 With regard, first, to the applicant's argument that the Commission infringed the EU4ALL contract by suspending the final payment due to it in respect of that contract, it should be noted that Article II.28(8) of the FP6 conditions stipulates:

'...

The Commission may suspend its payments at any time in case of non-respect by the contractor(s) of any contractual provision, particularly regarding the audit and control provisions in Article II.29. In such case, the Commission shall notify the contractor(s) directly by means of registered letter with acknowledgement of receipt.

The Commission may suspend its payments at any time where there is a suspicion of irregularity committed by one or more contractor(s) in the performance of the contract. Only the portion destined for the contractor(s) suspected of irregularity will be suspended. The Commission shall notify the contractor(s) of the justification for the suspension of payment directly by means of registered letter with acknowledgement of receipt.'

244 The applicant does not dispute that the Commission notified it of the suspension of payments in connection with the EU4ALL contract by its letter of 25 August 2010, but merely claims that there were not sufficient grounds for the suspicion of irregularity in so far as it had not yet submitted its observations on the draft audit report. Nevertheless, it is immediately clear from the broad logic of Article II.28(8) of the FP6 conditions that the Commission does not need to have the final results of the audit and thus to have ascertained that there were grounds for its suspicions in order to suspend payment. It need only suspect an irregularity and notify the contractor of the reasons for the suspension, which the applicant does not deny that it did in this case. This possibility of suspending payments under the second subparagraph of Article II.28(8) of the FP6 conditions is without prejudice to the possibility available to the Commission to suspend payments in the light of the audit and the controls provided for by Article II.29 of the FP6 conditions.

245 Consequently, the applicant does not show that, by notifying it of the suspension of payments in connection with the EU4ALL contract by its letter of 25 August 2010, the Commission breached its contractual obligations.

246 In addition, as regards the question whether the applicant could unilaterally suspend the performance of the contract by reason of the suspension of payments by the Commission, it is clear from Article II.5 of the FP6 conditions that only the consortium and not a contractor can propose to suspend the performance of the contract and that such suspension must be accepted by the Commission. Accordingly, by unilaterally suspending its performance of the EU4ALL contract by its letter of 4 August 2010, the applicant infringed Article II.5 of the FP6 conditions.

247 Furthermore, the application for a measure of organisation of procedure asking the Court to order the production of the letter sent by the Commission to the project coordinator on 27 August 2010 has become devoid of purpose as the Commission produced that letter in Annex A88 to the defence.

248 With regard, second, to the suspension by the Commission of payments in connection with the Ask-It contract, it should be noted that Article II.28(1) of the FP6 conditions provides that '[w]ithout prejudice to Article II.29, the Commission shall adopt the amount of the final payment to be made to the contractor on the basis of the documents referred to in Article II.7 which it has approved'.

249 Article II.7 of the FP6 conditions, read in conjunction with Articles 6 and 7 of the Ask-It contract, provides that all required reports and documents should be submitted to the Commission within the 45 days following the end of the last reference period, that is to say by 14 February 2009 at the latest.

250 In this regard, the Commission claims that, in so far as it did not receive from the project coordinator all the documents referred to in Article II.7 of the FP6 conditions, it was not able to evaluate or approve them and that it is not therefore in a position to make the payments.

251 The applicant maintains that on 15 November 2010 it sent the coordinator all the documents that the Commission had requested from the coordinator concerning it. The coordinator had informed it that he would send the documents in question to the Commission the day after 30 November 2010. In its view, the Commission has not proved that it did not receive the documents in question.

252 In so far as the applicant claims that the Commission wrongfully postponed payment of the sums intended for it when it had already received all the documents required by Article II.7 of the FP6 conditions, the burden of proof in this regard rests with it.

253 It must nevertheless be stated that the applicant has not shown that the documents in question had eventually been sent to the Commission in accordance with Article II.7 of the FP6 conditions.

254 The applicant also claims in the reply that the Commission eventually made payments from the grant under the Ask-It contract for the final reference period to all the members of the consortium except for it, on account of the rejection of its costs after the financial control, and that it had not received any notification from the Commission regarding the suspension of payments.

255 However, the applicant does not provide any evidence in support of that claim.

256 In the light of the foregoing considerations, it should be stated that the applicant does not show that the Commission breached its contractual obligations by suspending the payments intended for it in connection with the EU4LL and Ask-It contracts.

257 Accordingly, the applicant's fifth and sixth heads of claim, and therefore its action in its entirety, must be rejected as being unfounded.

E – *The Commission's counterclaims*

1. *The extent of the Commission's claims*

258 The Commission claims, by way of counterclaim, that the applicant should be ordered to pay it the sums indicated in the debit notes totalling EUR 999 213.45 plus default interest 'at the ECB rate' increased by 3.5 points, calculated as from 15 June 2011, and the total amount of damages of EUR 70 471.47 plus interest at the abovementioned rate as from 5 August 2011.

259 The Commission bases its claim for reimbursement on Article II.31 of the FP6 conditions, Article II.19 of the eTEN conditions and Article II.30 of the CIP conditions. In its view, the observations made in the audit report justify the reimbursement of the sums paid to the applicant in their entirety.

260 The Commission also considers that it is justified in claiming damages pursuant to the penalty clause laid down in Article II.30(6) of the FP6 conditions, corresponding to 10% of the requested contribution.

261 In addition, under the combined provisions of Articles II.28(7) and II.31 of the FP6 conditions, Articles II.3(6) and II.19 of the eTEN conditions and Articles II.5(5) and II.30(2) of the CIP conditions, the Commission claims that the sums in question bear interest fixed at 3.5 basis points above the refinancing rate applied by the ECB on the first calendar day of the month in which the sums in question became due.

2. *The admissibility of the Commission's claims*

262 First of all, the applicant essentially asserts that as the Commission's counterclaims were not made in a document separate from the defence, it will only be able to respond to them in the reply, whereas the Commission will be able to put forward further arguments in the rejoinder. That fact impairs the principle of equality of arms, which is a corollary of the fundamental right to a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. Second, the liquidated damages due, if appropriate, under Article II.30 of the FP6 conditions are neither certain nor of a fixed amount in so far as they must be calculated on the basis of the sums paid by the Commission, which correspond to the costs which were ultimately considered to be non-eligible, when the eligibility of those costs is the subject-matter of the present action. Third, on the date of the application for liquidated damages made in the counterclaim, the Commission had not issued either a recovery order or debit note in respect of that amount receivable, contrary to the provision made in Article 71(2) of the Financial Regulation for any amount receivable that is identified as being certain, of a fixed amount and due. The applicant therefore maintains that the counterclaim is inadmissible.

263 The Commission claims that the principle of equality of arms has been respected in the present case, as each party has had the possibility to lodge two pleadings. The possibility for the defendant to submit a counterclaim in the defence exists in the procedural law of many States and finds its justification in the principle of procedural economy. It is also confirmed by the settled case-law of the General Court and of the Court of Justice and the scheme of Article 116(1) of the Rules of Procedure of the Court of Justice. Under Article II.30 of the FP6 conditions, liquidated damages constitute an ancillary claim vis-à-vis the principal claim, namely the unjustified financial contribution. The ancillary application for payment of liquidated damages is therefore lawfully attached to the principal application for reimbursement of the unjustified contribution. Since the relationship between the Community and the applicant was contractual, Article 71(2) of the Financial Regulation is not applicable in this case. Consequently, the question whether the applicant is liable for the damages in question is governed solely by Articles II.29.1, II.30 and II.31 of the FP6 conditions. The amount of damages was notified to the applicant on 29 April 2011 and the six debit notes corresponding to the FP6 contracts in question were issued and sent to the applicant on 20 June 2011. Because the time-limit for responding to the counterclaim was extended by the Registry of the General Court, at the applicant's request, to 19 August 2011, the applicant had a reasonable period of time to defend itself effectively against such a claim.

264 The Court points out that, although it is called upon to resolve a dispute in accordance with the national law governing the contract, the question whether it has jurisdiction to hear and determine a counterclaim and to consider whether it is admissible must be assessed solely in the light of Article 256(1) TFEU, Article 272 TFEU and the Rules of Procedure (see, to this effect, *Commission* v *Zoubek*, paragraph 73 above, paragraph 10).

265 It is settled case-law that the jurisdiction of the General Court under Article 256(1) TFEU and Article 272 TFEU to deal with an action based on an arbitration clause necessarily implies jurisdiction to deal with a counterclaim made in the context of the same action which derives from the contractual relationship or the situation on which the main application is based or has a direct link with the obligations deriving therefrom (see, to this effect, *Commission* v *Zoubek*, paragraph 73 above, paragraph 11; Case C-167/99 *Parliament* v *SERS and Ville de Strasbourg* [2003] ECR I-3269, paragraphs 95 to 104; order of 21 November 2003 in Case C-280/03 *Commission* v *Lior and Others*, not published in the ECR, paragraphs 8 and 9; and Case T-29/02 *GEF* v *Commission* [2005] ECR II-835, paragraph 73).

266 In the present case, it should be noted that the counterclaims ask the Court to order the applicant, first, to pay the amounts indicated in the debit notes plus interest payable from 15 June 2011 by reason of the infringement of the contracts at issue and, second, to pay the total amount of damages provided for by Article II.30 of the FP6 conditions, also plus interest payable from the date of expiry of the time-limit prescribed in the relevant debit note at the abovementioned rate.

267 It cannot be disputed that such claims stem from the contractual link which forms the basis for the applicant's principal claim which, among other things, asks the Court to declare that the costs which it submitted to the Commission in connection with the contracts at issue are eligible and that it is not required to reimburse the sums subsequently granted by the Commission. The Court therefore has jurisdiction to hear and determine such claims.

268 It is thus necessary to assess the claims of inadmissibility raised by the applicant against the Commission's counterclaims.

(a) Admissibility of the counterclaims in so far as they were made in the Commission's defence

269 It should be pointed out that, in accordance with the case-law cited in paragraph 264 above, the admissibility of a counterclaim by which the original defendant seeks to obtain an advantage other than the simple rejection of his opponent's claims must be assessed in the light of the provisions of the Rules of Procedure.

270 It is relevant in this regard that the Rules of Procedure do not contain any particular requirements relating to the conditions in which such a claim may be made after an action has been brought pursuant to an arbitration clause. There is therefore nothing, a priori, to prevent the defendant in a contractual dispute from being able to make a counterclaim in the defence. Consequently, this fact cannot, in itself, give rise to the inadmissibility of the counterclaim in the present case.

271 Furthermore, with regard to the principle of equality of arms, it should be pointed out that the aim of that principle is to ensure a balance between the parties to proceedings. It is a corollary of the very concept of a fair hearing (Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden and Others* v *API and Commission* [2010] ECR I-8533, paragraph 88) and it implies that each party must be afforded a reasonable opportunity to present his case, including his evidence, under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (Case C-199/11 *Otis and Others* [2012] ECR, paragraph 71).

272 In the present case, the applicant claims in the reply that it will not have an opportunity to respond to the arguments put forward by the Commission in the rejoinder regarding the counterclaims. The applicant thus asserts that, whilst the Commission will be able to submit written comments on those claims twice, the applicant will be able to submit written comments on those claims only once.

273 It must be stated in this regard that, in the light of the current organisation of the written procedure in the Rules of Procedure, once the possibility is available to the initial defendant to make a counterclaim, it necessarily follows that the initial applicant will be able only once to submit written comments on that claim in the reply.

274 In addition, under the Rules of Procedure, the written phase of the procedure is supplemented by an oral phase which gives the parties every opportunity to defend themselves. In the present case, there is therefore nothing to prevent the initial applicant from responding at the hearing to the arguments put forward by the Commission in the rejoinder regarding the counterclaims, as the most important thing is not so much ensuring that each party has submitted written comments on each of the claims the same number of times but ensuring that the Court has been able to hear the position of each party on those claims.

(b) Admissibility of the claim for payment of liquidated damages

275 It should be noted at the outset that the arguments put forward by the applicant do not relate to the admissibility of the counterclaim seeking payment of liquidated damages, but to its merits.

276 First of all, the applicant maintains that the counterclaim requesting that it be ordered to pay liquidated damages is inadmissible on the ground that those damages are normally calculated on the basis of the costs which were ultimately considered to be non-eligible, when that eligibility of those costs is the subject-matter of the present action.

277 The applicant must thus be considered to challenge the certainty of the amount receivable corresponding to the liquidated damages whose payment is claimed by the Commission.

278 Second, the applicant maintains that the counterclaim requesting that it be ordered to pay liquidated damages is inadmissible on the ground that, on the date of that claim, the Commission had not issued either a recovery order or debit note in respect of those damages.

279 In doing so, the applicant therefore challenges the due character of the amount receivable corresponding to the liquidated damages.

280 Under the Belgian law applicable to the dispute, it is a condition for the proper foundation of the claim for payment made by the creditor that the amount receivable is certain, of a fixed amount and due.

281 In particular, under Article 1315 of the Belgian Civil Code, it is for the creditor to provide proof that the amount receivable claimed by him is certain.

282 Similarly, under Articles 1315, 1650 and 1651 of the Belgian Civil Code, the creditor must prove that the amount receivable in respect of which he claims payment is due.

283 It will therefore be necessary in examining the merits to assess the applicant's arguments on whether the liquidated damages are certain and due.

3. *The merits of the Commission's claims*

284 The Commission bases its claim for reimbursement on Article II.31(1) and (2) of the FP6 conditions, Article II.19(1) and (2) of the eTEN conditions and Article II.30(1) and (2) of the CIP conditions. It bases its claim for payment of liquidated damages on Article II.31(1) and (2) of the FP6 conditions.

285 For a due amount receivable to have been able to arise under those provisions, two conditions must be met. First, an unjustified payment must have been made or a recovery must be justified under the conditions of the contracts at issue and, second, the Commission must have specified the conditions for reimbursement and the date of payment. With regard to default interest, it is due, in the event of non-payment, on the date set by the Commission (see, to this effect, judgment of 9 July 2013 in Case T-552/11 *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, not published in the ECR, paragraphs 44 to 46).

286 The merits of the Commission's counterclaims must be assessed in the light of these conditions.

(a) The recovery of the undue payment

The amount of the unjustified payment

287 As was held above, the applicant has not shown that the costs submitted to the Commission in connection with the contracts in respect of which the Commission paid it the sum of EUR 999 213.45 were eligible. As is clear from the table in paragraph 32 of the reply, the applicant does not contest the Commission's method of calculation in this regard. That method of calculation is also not contradicted by material in the file.

288 On the other hand, the applicant claims that the Commission cannot, in accordance with the principle of proportionality, the principle of good faith performance of agreements and the CIP conditions, demand reimbursement of all the sums paid to it in connection with the contracts at issue in so far as those contracts have already been performed in whole or in part.

289 It should be noted that the only contract at issue governed by the CIP conditions is the T-Seniority contract and that the applicant informed the T-Seniority project coordinator that it was withdrawing from the consortium as from 23 February 2009.

290 Under the first indent of Article II.11(4) of the CIP conditions, in the event that a contractor withdraws from the contract governed by those conditions, 'the Commission may require repayment of all or part of the Community financial contribution, taking into account the nature and results of the work carried out and its usefulness to the Community in the context of the present programme'.

291 However, under Article II.11(8) of the CIP conditions, '[n]otwithstanding the termination of the grant agreement or the participation of a beneficiary, the provisions in Part B and Part D of Annex II continue to apply after the termination of the grant agreement or the termination of a beneficiary's participation'. It is also stated that '[a]ny other provisions in this grant agreement which specifically indicate their continued application after the termination shall also apply for the duration specified in those provisions'.

292 The financial consequences of the withdrawal of a contractor or of the termination of the contract, as provided for by Article II.11 of the CIP conditions, are therefore without prejudice to a contractor's obligation to reimburse sums ultimately considered to be non-eligible following any audit.

293 Second, with regard to the applicant's argument that the Commission's claim for reimbursement of all the sums paid to it in connection with the contracts at issue is contrary to the principles of good faith performance of agreements and proportionality, it should be noted that under Article II.29(1) of the FP6 conditions 'any amounts due to the Commission as a result of the findings [of audits conducted under that article] may be the subject of a recovery as mentioned in Article II.31'.

294 Similarly, Article II.17(4) of the eTEN conditions and Article II.28(5) of the CIP conditions provide that '[o]n the basis of the conclusions of the audit, the Commission shall take all appropriate measures which it considers necessary, including the issuing of a recovery order regarding all or part of the payments made by it'.

295 It follows from these provisions that in the present case the Commission has the option to claim from the applicant, on the basis of the audit findings, reimbursement of any sums that it considers are due to it, including all sums which it has paid to the applicant in connection with the contracts at issue.

296 In view of the number and the seriousness of the breaches of the contractual obligations identified in the audit report and the Court's rejection of the applicant's arguments challenging that finding, the Commission's claim for reimbursement of all sums paid to the applicant in respect of the contracts at issue seems neither disproportionate nor contrary to the principle of good faith performance of agreements.

The specification of the conditions of reimbursement

297 It should be recalled that on 29 April 2011 the Commission issued nine debit notes indicating the amount to be reimbursed in respect of each of the contracts at issue, totalling EUR 999 213.45. Those debit notes fixed a time-limit of 45 days for the applicant to reimburse the sums due, which expired on 14 June 2011 and at the end of which those sums would bear default interest as provided for in the contracts at issue at the ECB rate plus 3.5 percentage points. In addition, those debit notes indicated the number of the bank account into which the applicant was to make the reimbursement. This fact is not disputed by the applicant.

298 The Commission's application for the applicant to be ordered to reimburse to it a sum of EUR 999 213.45 in respect of the recovery of unduly paid grants in accordance with Article II.31 of the FP6 conditions, Article II.19 of the eTEN conditions and Article II.30 of the CIP conditions should therefore be upheld.

(b) The payment of liquidated damages

The amount to be recovered by way of liquidated damages

299 The applicant contests the principle of the counterclaim on the ground that its action should be upheld. It also contests the certainty of the liquidated damages. In contrast, the applicant does not contest the Commission's method of calculation. This is also not contradicted by material in the file.

300 However, as was stated in paragraph 257 above, the action brought by the applicant has been dismissed in its entirety.

301 With regard to the certainty of the amount receivable corresponding to the liquidated damages whose payment is claimed by the Commission, it should be noted that, under Article II.30 of the FP6 conditions, co-contractors are liable for damages simply because, after declaring unjustified costs, they have received undue grants. As the financial damage suffered by the Union has been proven (see paragraph 298 above), the Commission rightly considered that the applicant was liable for the damages claimed by it.

The specification of the conditions of reimbursement

302 The applicant essentially claims that liquidated damages are not due because, first, on the date when the Commission made the counterclaim, it was challenging the non-eligibility of all the costs submitted in connection with the contracts at issue, on the basis of which those damages are calculated, and, second, on that same date the Commission had not yet issued a debit note concerning those damages.

303 It is relevant in this regard that, as was stated in paragraph 287 above, it has been ruled that the applicant has not shown that the costs submitted to the Commission in connection with the contracts at issue were eligible.

304 It should also be recalled that on 20 June 2011 the Commission issued six debit notes in respect of the contracts concluded between the Community and the applicant for the Access-eGOV, eABILITIES, Ask-It, EU4ALL, Emerge and Enable projects, fixing the total amount owed by the applicant by way of liquidated damages under Article II.30 of the FP6 conditions at EUR 70 471.47. The time-limit within which the applicant had to pay the sums in question was fixed by the Commission at 4 August 2011.

305 Consequently, the Commission's application for the applicant to be ordered to pay it a sum of EUR 70 471.47 by way of damages should be upheld.

(c) Interest

306 It is clear from a combined reading of Articles II.28(7) and II.31 of the FP6 conditions, Articles II.3(6) and II.19 of the eTEN conditions and Articles II.5(5) and II.30(2) of the CIP conditions that any amount owed by a co-contractor under the contracts at issue bears interest from the date set for payment by the Commission. The applicant must therefore be ordered to pay the interest provided for in Article II.28(7) of the FP6 conditions, Article II.19 of the eTEN conditions and Article II.30(2) of the CIP conditions.

Costs

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

308 Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with Article 87(2) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Dismisses the action brought by Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis;**

2. **Orders Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis to pay the sum of EUR 999 213.45, plus interest calculated as from 15 June 2011, at the European Central Bank (ECB) rate increased by 3.5 points, corresponding to the reimbursement of financial contributions from which it benefited, under contracts No 027020 'Access to e-Government Services Employing Semantic Technologies', No 035242 'A virtual platform to enhance and organise the coordination among centres for accessibility resources and support', No 511298 'Ambient Intelligence System of Agents for Knowledge-based and Integrated Services for Mobility Impaired Users', No 034778 'European Unified Approach for Accessible Lifelong Learning', No 045056 'Emergency Monitoring and Prevention', No 045563 'A wearable system supporting services to enable elderly people to live well, independently and at ease', No 029255 'NavigAbile: e-inclusion for communication disabilities', No 517506 'European Recommended Materials for Distance Learning Courses for Educators' and No 224988 'T-Seniority: Expanding the benefits of information society to older people through digital TV channels';**

3. **Orders Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis to pay the sum of EUR 70 471.47, plus interest calculated at the European Central Bank (ECB) rate increased by 3.5 points as from 5 August 2011, corresponding to liquidated damages due under contracts No 027020 'Access to e-Government Services Employing Semantic Technologies', No 035242 'A virtual platform to enhance and organise the coordination among centres for accessibility resources and support', No 511298 'Ambient Intelligence System of Agents for Knowledge-based and Integrated Services for Mobility Impaired Users', No 034778 'European Unified Approach for Accessible Lifelong Learning', No 045056 'Emergency Monitoring and Prevention', No 045563 'A wearable system supporting services to enable elderly people to live well, independently and at ease';**

4. **Orders Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis to bear its own costs and to pay those incurred by the European Commission.**

Frimodt Nielsen Kancheva Buttigieg

Delivered in open court in Luxembourg on 16 July 2014.

[Signatures]

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