Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

20 July 2017*

(Financial aid – General Programme 'Fundamental Rights and Justice' for the period 2007-2013 – Specific Programme 'Civil Justice' – Action for annulment – Enforceable decision – Article 299 TFEU – Powers of the author of the act – Principle of sound administration – Application for an order directing the Commission to pay the balance due under the grant agreements – Partial reclassification of the action – Arbitration clause – Jurisdiction of the General Court – Eligible costs)

In Case T-644/14,

ADR Center SpA, established in Rome (Italy), represented initially by L. Tantalo, and subsequently by A. Guillerme, lawyers,

applicant,

v

European Commission, represented initially by J. Estrada de Solà and L. Cappelletti, and subsequently by J. Estrada de Solà and S. Delaude, acting as Agents,

defendant,

APPLICATION, first, based on Article 263 TFEU seeking annulment of Decision C(2014) 4485 final of the Commission of 27 June 2014 concerning the recovery of part of the financial contribution paid to the applicant under three grant agreements concluded in the context of the 'Civil Justice' specific programme and, second, based on Article 272 TFEU seeking an order directing the Commission to pay it the balance due to it under the three grant agreements in an amount of EUR 49172.52 together with damages,

THE GENERAL COURT (First Chamber, Extended Composition),

composed of H. Kanninen, President, I. Pelikánová, E. Buttigieg (Rapporteur), S. Gervasoni and L. Calvo-Sotelo Ibáñez-Martín, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 23 November 2016,

gives the following

* Language of the case: English.

Judgment

I. Background to the dispute

1 The applicant, ADR Center SpA, is a company established in Italy which provides services in the field of alternative dispute resolution.

A. The grant agreements at issue

2 In December 2008 the European Community, represented by the Commission of the European Communities, concluded with the consortia of which the applicant was the coordinator three grant agreements bearing the numbers JLS/CJ/2007-1/18, JLS/CJ/2007-1/19 and JLS/CJ/2007-1/21 (respectively, 'Grant Agreement A', 'Grant Agreement B' and 'Grant Agreement C') in the context of implementing the specific programme established by Decision No 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme 'Civil Justice' as part of the General Programme 'Fundamental Rights and Justice' (OJ 2007 L 257, p. 16).

1. *Grant Agreement A*

3 Grant Agreement A concerned an action entitled 'The costs of non ADR — Surveying and showing the actual costs of intra-community commercial litigation'. That action consisted in a survey analysing the costs of not using alternative dispute resolution in the commercial sector.

4 Grant Agreement A stipulated, in Article I.2.2 thereof, that the project in question was to run for 12 months. That period was extended to 16 months, ending on 10 April 2010, by means of an amendment signed on 17 December 2009.

5 It is apparent from Articles I.4.2 and I.4.3 of Grant Agreement A that the total eligible costs were estimated at EUR 216 880 and that the grant was fixed at a maximum of EUR 173 000, representing 79.8% of the estimated eligible costs.

2. *Grant Agreement B*

6 Grant Agreement B concerned an action entitled 'Making information sessions on the use of mediation easily available throughout the EU: A video guide to facilitate settlement'. That action consisted in the creation of specialised videos aimed at educating lawyers and litigants about the nature and usefulness of mediation in cross-border disputes.

7 It is apparent from Article I.2.2 of Grant Agreement B that the duration of the action was 18 months, to be concluded on 9 June 2010.

8 It is apparent from Articles I.4.2 and I.4.3 of Grant Agreement B that the total eligible costs were estimated at EUR 243 500 and that the grant was fixed at a maximum of EUR 194 000, representing 79.7% of the estimated eligible costs.

3. *Grant Agreement C*

9 Grant Agreement C concerned an action entitled 'Beyond winning: successful mediation advocacy in representing clients'. The principal aim of that action was to inform lawyers about the possible use of mediation and to give them a more thorough understanding of the benefits of mediation.

10 It is apparent from Article I.2.2 of Grant Agreement C that the duration of the action was 18 months, to be concluded on 9 June 2010.

11 It is apparent from Articles I.4.2 and I.4.3 of Grant Agreement C that the total eligible costs were estimated at EUR 241 856 and that the grant was fixed at a maximum of EUR 193 000, representing 79.8% of the estimated eligible costs.

4. ***Structure and relevant common provisions of the grant agreements***

(a) ***Structure***

12 The grant agreements all comprised special conditions, whose article numbers started with the Latin numeral I, general conditions, whose article numbers started with the Latin numeral II, and four annexes. It was also stipulated that the terms contained in the special conditions were to take precedence over those in the other parts of the agreement, that the terms of the general conditions were to take precedence over those in the annexes and that the terms of the agreement were to take precedence over the call for proposals and the guide for submitting a grant application ('guide for grant applicants'). Each agreement stated that the latter two documents were nevertheless to be used 'for supplementary purposes'.

(b) ***Submission of reports and other documents***

13 It is apparent from reading Articles I.6 and II.15.4 of the grant agreements together that the coordinator was to submit within two months following the closing date of the action, (i) a final report on the implementation of the action, (ii) a final financial statement of the eligible costs actually incurred, following the structure of the estimated budget and using the same description and (iii) a full summary statement for the receipts and expenditures of the action (those three documents together, 'the final report').

(c) ***Commission payments***

14 Article I.5 of the grant agreements stipulated that the Commission was to make a pre-financing payment to the beneficiaries and that the balance was to be paid after completion of the action. The request for payment of the balance was to be accompanied by the final technical implementation report and the final financial statement and the Commission was allowed 90 days to approve the report and pay the balance or to reject the report and request additional supporting documents or information. The beneficiary was allowed 30 calendar days in which to submit additional information or a new report.

(d) ***Law applicable and competent court***

15 Article I.9 of the grant agreements stipulated:

'The grant is governed by the terms of the agreement, the Community rules applicable and, on a subsidiary basis, by the law of Belgium relating to grants.

The beneficiaries may bring legal proceedings regarding decisions by the Commission concerning the application of the provisions of the agreement and the arrangements for implementing it before the Court of First Instance of the European Communities and, in the event of appeal, the Court of Justice of the European Communities.'

(e) ***Eligible costs***

16 As regards eligible costs, Article II.14.1 of the grant agreements stipulated the following:

'To be considered as eligible costs of the action, costs must satisfy the following general criteria:

– they must be connected with the subject of the agreement and they must be provided for in the estimated budget annexed to it;

– they must be necessary for performance of the action covered by the agreement;

– they must be reasonable and justified ...;

– they must be generated during the lifetime of the action ...;

– they must be actually incurred by the beneficiaries, be recorded in their accounts in accordance with the applicable accounting principles, and be declared in accordance with the requirements of the applicable tax and social legislation;

– they must be identifiable and verifiable.

The beneficiaries' internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.'

(f) ***Enforceable decisions***

17 Article II.19.5 of the grant agreements stipulated:

'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. An action may be brought against such decision before the Court of First Instance of the European Communities.'

(g) ***Checks and audits***

18 Article II.20 of the grant agreements set out the following relevant stipulations:

'II.20.1.
The coordinator undertakes to provide any detailed information requested by the Commission or by any other outside body authorised by the Commission to check that the action and the provisions of the agreement are being properly implemented. Where the Commission so wishes, it may request such information to be provided directly by a co-beneficiary.

II.20.2. The beneficiaries shall keep at the Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the agreement, stored on any appropriate medium that ensures their integrity in accordance with the applicable national legislation, for a period of five years from the date of payment of the balance specified in Article I.5.

II.20.3. The beneficiaries agree that the Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the

agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.

II.20.4. The beneficiaries undertake to allow Commission staff and outside personnel authorised by the Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.'

B. **Implementation of the grant agreements**

1. ***Grant Agreement A***

19 On 19 February 2009 the Commission made a pre-financing payment of EUR 121 100 to the consortium with which Grant Agreement A had been concluded via the applicant. The project in question came to an end on 10 April 2010. The final report concerning that project was submitted to the Commission on 9 June 2010. By letter of 26 July 2010, the Commission asked the applicant for a certain number of supporting documents proving the expenditure it had declared. On 25 November 2010 the applicant submitted a modified final report. By letter of 17 December 2010, the Commission informed the applicant that, following the applicant's submission of additional supporting documents, it would now pay a balance of EUR 17557.97. At that stage, the European Union's financial contribution to the implementation of that project therefore stood at EUR 138657.97, representing 79.8% of the eligible costs declared.

2. ***Grant Agreement B***

20 On 19 February 2009 the Commission made a pre-financing payment of EUR 135 800 to the consortium with which Grant Agreement B had been concluded via the applicant. The project in question came to an end on 9 June 2010. The final report concerning that project was submitted to the Commission on 4 August 2010. By letter of 30 August 2010, the Commission informed the applicant of its intention to recover the sum of EUR 121802.84. On 27 October 2010 the applicant submitted a modified final report. On 10 January 2011 the applicant submitted new information relating to the eligible costs which it had incurred. By letter of 7 February 2011, the Commission informed the applicant that it was making a recovery order for the sum of EUR 6236.38. At that stage, the European Union's financial contribution to the implementation of that project therefore stood at EUR 129563.62.

3. ***Grant Agreement C***

21 On 19 February 2009 the Commission made a pre-financing payment of EUR 135 100 to the consortium with which Grant Agreement C had been concluded via the applicant. The project in question came to an end on 9 June 2010. The final report concerning that project was submitted to the Commission on 21 July 2010. By letter of 24 August 2010, the Commission informed the applicant of its intention to recover the sum of EUR 49960.11. On 19 October 2010 the applicant submitted a modified final report. By letter of 14 December 2010, the Commission informed the applicant that, following the applicant's submission of additional supporting documents, it would now pay a balance of EUR 27484.33. At that stage, the European Union's financial contribution to the implementation of that project therefore stood at EUR 162584.33.

C. **Audit procedure**

22 By letter of 22 June 2011, the Commission informed the applicant of its decision to carry out an audit of the projects in question in accordance with Article II.20 of the grant agreements. The audit would be carried out by a firm outside the Commission.

23 The audit was carried out between 17 and 26 July 2011 at the applicant's offices in Rome (Italy).

24 On 23 November 2011 the auditors issued the applicant three initial draft audit reports, one for each project, in which the auditors concluded that a substantial proportion of the costs declared should be rejected as ineligible. By letter of 22 December 2011, the applicant disputed the content of those initial draft audit reports.

25 On 25 January 2012 the auditors sent the applicant three revised draft audit reports ('the revised draft audit reports'), in which they essentially maintained their position on rejecting as ineligible a significant proportion of the costs declared. By letter of 15 February 2012, the applicant disputed the content of the revised draft audit reports.

26 On 26 April 2012 the auditors sent the Commission their final audit reports.

27 By three letters dated 10 June 2013, the Commission issued the applicant the final audit reports on the projects in question and informed it that it endorsed the auditors' findings and recommendations.

28 The final audit report on the project covered by Grant Agreement A concluded that, of the expenditure declared by the applicant, that which was ineligible amounted to EUR 116610.49. The auditors also noted that there was a risk that some days charged to that project concerning services provided by one expert employed by the applicant, who was also one of the applicant's two co-owners ('expert X') might in fact relate to activities in other projects. The costs affected by that risk, in respect of which the auditors expressed their reservations as to eligibility, amounted to EUR 9418.75. The auditors had asked the applicant to provide extracts of the financial reports submitted in other projects, so as to remove any doubts about the accuracy of some of the costs declared for the abovementioned expert, but the applicant had refused on the ground that the information requested fell outside the scope of the audit.

29 The final audit report relating to the project covered by Grant Agreement B concluded that, of the expenditure declared by the applicant, that which was ineligible amounted to EUR 196687.61. The auditors also noted that there was a risk that some days charged to that project concerning services provided by two experts employed by the applicant, who were at the same time its two co-owners ('experts X and Y') might in fact relate to activities in other projects and might also have been included in the financial reports for those projects. The costs affected by that risk, in respect of which the auditors expressed their reservations as to eligibility, amounted to EUR 9923.68. The auditors had again been confronted with the applicant's refusal to provide them with supposedly relevant documentation enabling them to confirm the eligibility of those costs on the ground that it fell outside the scope of the audit.

30 The final audit report relating to the project covered by Grant Agreement C concluded that, of the expenditure declared by the applicant, that which was ineligible amounted to EUR 43190.57. The auditors noted that additional costs of EUR 44270.22 could also be regarded as ineligible because of the same risk that had been identified in the audit of that project, and they expressed their reservations regarding those costs. The auditors had again been confronted with the applicant's refusal to provide them with supposedly relevant documentation like in the context of the audits of the projects covered by Grant Agreements A and B.

31 In its letters of 10 June 2013, the Commission informed the applicant that the sums to be recovered amounted to EUR 62649.47 for the project covered by Grant Agreement A, EUR 78991.12 for the project covered by Grant Agreement B and EUR 52634.75 for the project covered by Grant Agreement C. In calculating those amounts, it had treated as ineligible the costs in respect of which the auditors had expressed their reservations as to eligibility, that is to say EUR 9418.75 for the first project, EUR 9923.68 for the second project and EUR 44270.22 for the third project. As regards those costs, it stated that they might ultimately be treated as eligible if the applicant submitted by 10 July 2013 the documentation the auditors had requested, and it accepted that documentation. In its letters of 10 June 2013, it also informed the applicant that it would be sending it debit notes within a month, and that it could recover the amounts due, including interest where applicable, either by offsetting them or by enforcing payment. Finally, it apologised in its letters for the late transmission of the final audit reports.

32 By letter of 9 July 2013, the applicant disputed the findings of the final audit reports and argued that the Commission's recovery orders were null and void on the ground of their being issued more than two years after the audits had been completed. It also requested a meeting with the relevant Commission department.

33 By email of 6 August 2013, the Commission informed the applicant that a meeting could take place in September 2013.

34 On 30 September 2013 a conference call was held between the relevant Commission official and the applicant and it was agreed that the applicant would be allowed more time to review the audit findings.

35 By letter of 7 October 2013, the applicant submitted further observations on the audit of the projects in question. It argued that the audits were null and void and the Commission's recovery orders must be rejected because the audit rules that had been followed had not been decided upon by common agreement, because the final audit reports and the recovery orders had been sent to it very late and because the auditors' findings were based on incorrect assumptions. It also argued that, according to its own analysis of the eligible costs incurred in implementing the projects in question, the Commission owed it EUR 49172.52, and it set out the way in which it had calculated that sum.

36 By letter of 16 October 2013, the Commission stated that the applicant had not provided any evidence to demonstrate the eligibility of the rejected costs with its letter of 7 October 2013. It therefore sent the applicant debit notes nos 3241311168, 3241311170 and 3241311175, payable by 29 November 2013, in the following amounts: EUR 62649.47 for the project covered by Grant Agreement A, EUR 78991.12 for the project covered by Grant Agreement B and EUR 52634.75 for the project covered by Grant Agreement C. The debit notes stated that, in the event of failure to pay by the due date, late payment interest would accrue on the debt.

37 By letter of 13 November 2013, the applicant took issue with the content of the Commission's letter of 16 October 2013 and with the debit notes enclosed with that letter and requested another meeting with the Commission. In addition, the applicant enclosed with its letter a pro forma invoice for EUR 64436.38 and two credit notes for EUR 3663.21 and EUR 11600.75 respectively.

38 By letter of 6 December 2013, the Commission informed the applicant that it had initiated procedures for the recovery of the sums due and that the 'contradictory procedure' was closed. It also confirmed that the debt owed by the applicant was certain and receivable within the meaning of Article 81 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1). It also informed the applicant of the legal remedies available to it and stated that no further meeting was necessary.

39 The Commission sent reminders on 16 December 2013 and letters of formal notice on 26 February 2014.

40 In the meantime, on 21 January 2014, a meeting was held between the Commission and the applicant.

41 On 27 June 2014, on the basis of Article 299 TFEU and Article 79(2) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1; 'the Financial Regulation'), the Commission adopted Decision C(2014) 4485 final concerning the recovery of EUR 194275.34 in principal owed by the applicant pursuant to the grant agreements, together with late payment interest to 30 April 2014 of EUR 3 236 and an additional amount of EUR 21.30 for each additional day of delay from 1 May 2014 onwards ('the contested decision').

42 Article 4 of the contested decision stated inter alia that that decision was enforceable within the meaning of the first paragraph of Article 299 TFEU.

II. **Procedure and forms of order sought**

43 By application lodged at the Court Registry on 30 August 2014, the applicant brought the present action.

44 The written stage of the procedure was closed upon the filing of the rejoinder on 6 May 2015.

45 By separate document lodged at the Court Registry on 21 January 2016, the applicant made an application for interim measures. By order of 22 January 2016, the President of the General Court granted, pursuant to Article 157(2) of the Rules of Procedure of the General Court, the suspension of operation of the contested decision until the adoption of the order ruling definitively on the applicant's application. That application was definitively dismissed by order of the President of the General Court of 7 April 2016 and the costs were reserved.

46 On a proposal from the Judge-Rapporteur, the General Court (First Chamber), by way of measures of organisation of procedure under Article 89 of the Rules of Procedure, put, on 12 July 2016, written questions to the parties to which the latter replied within the prescribed period.

47 On a proposal from the First Chamber, the General Court decided, on 14 September 2016, pursuant to Article 28 of the Rules of Procedure, to refer the case to a chamber sitting in extended composition.

48 On a proposal from the Judge-Rapporteur, the General Court (First Chamber, Extended Composition) decided, on 16 September 2016, to open the oral part of the procedure.

49 On a proposal from the Judge-Rapporteur, the General Court (First Chamber, Extended Composition) decided to open the oral procedure and, in respect of the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, put, on 6 October 2016, written questions to the parties and requested that they produce certain documents. The parties complied with the Court's requests within the prescribed period.

50 The parties presented oral argument and answered the questions put by the Court at the hearing on 23 November 2016.

51 The applicant claims that the Court should:

– annul the contested decision;

– order the immediate payment by the Commission of the balance due to it under the grant agreements in the amount of EUR 49172.52;

– order the immediate payment by the Commission of damages as a result of the harm done to its reputation and the time devoted by its staff to defending its interests in administrative and judicial proceedings;

– order the Commission to pay the costs.

52 The Commission contends that the Court should:

– dismiss the action as unfounded;

– reject the request for payment of the balance due and damages as inadmissible and, in any event, unfounded;

– order the applicant to pay the costs.

III. **Law**

A. **Admissibility**

1. ***Admissibility of the applicant's second head of claim***

53 The Commission, during the written part of the procedure, raised a plea of inadmissibility in respect of the applicant's second head of claim, on the ground that the payment of the balance allegedly due under the grant agreements fell outside the scope of the present action, it being an action for annulment. Furthermore, it is settled case-law that the General Court is not entitled, when exercising judicial review of legality, to issue directions to the institutions or to assume the role assigned to them.

54 The applicant did not respond to the present plea of inadmissibility raised during the written part of the procedure.

55 By way of reminder, in its second head of claim, the applicant requests the Court to order the immediate payment by the Commission of the balance that was still due to it under the grant agreements in the amount of EUR 49172.52.

56 The admissibility of the present head of claim depends on the legal nature of the present action. If it were to turn out that it is indeed an action for annulment brought on the basis of Article 263 TFEU, the present head of claim would be inadmissible in so far as, in accordance with settled case-law, the EU judicature is not entitled, when exercising judicial review of legality, to issue directions to the institutions or to assume the role assigned to them; rather, it is for the administration concerned to adopt the necessary measures to implement a judgment given in proceedings for annulment (see judgment of 17 June 2010, *CEVA* v *Commission*, T-428/07 and T-455/07, EU:T:2010:240, paragraph 56 and the case-law cited).

57 In the present case, the applicant indicated, in the application initiating proceedings, under the heading 'Type of Action', that the action being brought was an action for annulment.

58 Nevertheless, the applicant, answering a written question from the Court, stated that the present action was to be understood as being based not only on Article 263 TFEU, which constitutes the legal base of the first head of claim, but also on Article 272 TFEU, which constitutes the legal base of the second head of claim, and relied in support of its argument on the judgment of 6 October 2015, *Technion and Technion Research & Development Foundation* v *Commission* (T-216/12, EU:T:2015:746). The Commission, in its answer to the same written question from the Court, also stated that, according to its understanding, the present action was actually based on both Article 263 TFEU and Article 272 TFEU and its dual legal basis was in line with the judgment of 6 October 2015, *Technion and Technion Research & Development Foundation* v *Commission* (T-216/12, EU:T:2015:746).

59 It should be recalled that, in paragraph 55 of the judgment of 6 October 2015, *Technion and Technion Research & Development Foundation* v *Commission* (T-216/12, EU:T:2015:746), the Court noted that the action at issue, despite its being expressly founded on Article 263 TFEU, had in reality a dual objective, seeking not only annulment of the decision at issue in the case but also a declaration by the Court that the Commission did not hold the contractual claim in question. Based on the premisses that, first, in the context of an action for annulment, the EU judicature does not have jurisdiction to hear an action for a declaratory judgment and, second, the contract at issue in the case contained an arbitration clause within the meaning of Article 272 TFEU, the Court determined, in paragraph 57 of that judgment, whether it was possible to reclassify the action in part as an action brought both under Article 263 TFEU, for annulment of the contested decision, and under Article 272 TFEU, for a declaration that the Commission did not hold the contractual claim at issue.

60 In paragraph 60 of the judgment of 6 October 2015, *Technion and Technion Research & Development Foundation* v *Commission* (T-216/12, EU:T:2015:746), the Court made it clear that reclassification of an action for annulment was possible, without the rights of defence of the defendant institution being affected, where, first, the express intention of the applicant did not preclude it and, secondly, at least one plea alleging infringement of the rules governing the contractual relationship in question was put forward in the application pursuant to the provisions of Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991.

61 In the present case, in view of the parties' answers to the written question from the Court (see paragraph 58 above), of the content of the applicant's second head of claim showing the existence of a dispute that is contractual in nature and of the fact that that head of claim is supported by pleas and arguments alleging breach by the Commission of the grant agreements, it is appropriate to reclassify in part the present action for annulment as an action brought both under Article 263 TFEU, seeking annulment of the contested decision, and under Article 272 TFEU, seeking inter alia that the Court order the immediate payment by the Commission of the balance due to the applicant under the grant agreements in the amount of EUR 49172.52.

62 In view of that partial reclassification, it has to be concluded that the applicant's second head of claim is based on an appropriate legal basis, namely Article 272 TFEU. Under that provision the Court enjoys full jurisdiction, enabling it, in contrast to a review of legality of an act under Article 263 TFEU, to hear and determine any type of action under an arbitration clause (see judgment of 6 October 2015, *Technion and Technion Research & Development Foundation* v *Commission*, T-216/12, EU:T:2015:746, paragraph 57 and the case-law cited). It follows that this head of claim is admissible.

2. *Admissibility of the applicant's third head of claim*

63 The Commission raised a plea of inadmissibility in respect of the applicant's third head of claim on the ground, inter alia, that it does not comply with the conditions laid down in Article 44(1)(c) and (d) of the Rules of Procedure of 2 May 1991.

64 The applicant did not respond to the plea of inadmissibility raised by the Commission.

65 The Court recalls that, under Article 44(1)(c) of the Rules of Procedure of 2 May 1991, which was applicable when the present action was brought, all applications are to contain the subject matter of the dispute and a brief statement of the grounds on which the application is based.

66 In order to satisfy those requirements, an application seeking compensation for damage caused by an EU institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (see judgment of 15 June 1999, *Ismeri Europa* v *Court of Auditors*, T-277/97, EU:T:1999:124, paragraph 30 and the case-law cited).

67 In the present case, the applicant's third head of claim, which relates to the award of damages, is not supported by any argument, the applicant merely indicating in that head of claim that it was seeking damages for the harm 'to its international reputation, and for the time devoted by its senior staff to defend a groundless claim'. Those allegations do not meet any of the three conditions set out in paragraph 66 above, however. It follows that this head of claim must be rejected as inadmissible.

B. **Substance**

1. ***Preliminary observations***

68 It should be recalled that, following the partial reclassification of the present action, the Court must examine, first, the application based on Article 263 TFEU seeking annulment of the contested decision in the applicant's first head of claim and, second, the application in the second head of claim based on Article 272 TFEU seeking an order directing the Commission to pay the applicant the balance due to it under the grant agreements in the amount of EUR 49172.52 (see paragraph 61 above).

69 In support of the action, the applicant relies on five pleas in law. The first plea alleges that the audit rules followed by the auditors were never agreed upon by the parties. The second plea alleges an unreasonable delay in the issue of the final audit reports to the applicant and mismanagement by the Commission, in general, of the projects in question. The third plea alleges failure by the Commission to satisfy its burden of proof. The fourth plea alleges errors in the final audit reports and the fifth plea, raised for the first time in the reply, alleges a lack of competence on the part of the Commission to adopt the contested decision.

70 In that regard, it is important to recall that the European Union judicature must, when adjudicating on an action for annulment on the basis of the provisions of Article 263 TFEU, assess the lawfulness of the contested act in the light of the Treaty or of any rule of law relating to its application, and, thus, of EU law. On the other hand, in the context of an action brought on the basis of Article 272 TFEU, an applicant can only complain that the institution in question infringed the terms of the contract or the law applicable to it (see, to that effect, judgment of 27 September 2012, *Applied Microengineering* v *Commission*, T-387/09, EU:T:2012:501, paragraph 40 and the case-law cited).

71 It follows that, in the present case, with regard to the application for annulment of the contested decision, only those pleas and arguments of the applicant aimed at challenging the legality of the contested decision in the light of the Treaty or of any rule of law relating to its application, within the meaning of Article 263 TFEU, may be examined by the Court, acting as arbiter of legality. However, so far as concerns the applicant's second head of claim, which involves, essentially, a dispute that is contractual in nature, only those pleas and arguments alleging infringements of the grant agreements or of the law applicable to them may be examined by the Court. Consequently, it is appropriate, at this stage, to examine in turn the pleas raised by the applicant so as to determine the head of claim to which they must be linked.

72 By the first plea in law, the applicant argues, essentially, that the auditors applied audit rules which had not been stipulated in the grant agreements and which had not, therefore, been agreed upon by the parties. The contested decision should be annulled on that basis. The applicant also argues that, in that context, the contested decision violated Article 126(2)(d) of the financial regulation, which provides that eligible costs should be recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary.

73 It should be noted that this plea and the arguments relating to it actually concern the implementation of the grant agreements as regards the determination of the financial obligations of the contracting parties and entail the examination by the Court of the provisions of those grant agreements and of the law applicable to them. It follows that the plea must be regarded as being raised in support of the applicant's second head of claim.

74 With regard to the second plea in law, it must be noted, as a preliminary point, that its title is worded as follows: '[T]he contested decision should be annulled on the grounds that the Commission unreasonably delayed its issuance of the final audit reports and accompanying recovery orders.' In this plea, the applicant raises two complaints. With regard to the first complaint, it invokes the unreasonable delay in the issue of the final audit reports to it and argues that that delay constitutes a violation of the principle of sound administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union. As regards the second complaint, it criticises the Commission for mismanaging, in general, the projects in question. As evidence of that mismanagement, it cites the Commission's lack of communication throughout the projects, the subsequent overhaul of the guide for grant applicants, which from that point onwards contained much more information on eligible costs, and the fact that the grant agreements contained numerous stylistic errors.

75 The first complaint of the second plea must be regarded as being raised in support of the second head of claim in so far as the applicant argues that the delay in the issue of the final audit reports was unreasonable. Given that the holding of audits is expressly provided for in Article II.20 of the grant agreements, that alleged delay concerns the implementation of the grant agreements. At the same time, in view of the wording of the plea and given that the applicant expressly alleges violation of the principle of sound administration, namely of a general principle of law governing the administrative action of an institution, the present complaint must also be regarded as being raised in support of the first head of claim seeking annulment of the contested decision to the extent that the applicant argues that the delay in the issue of the final audit reports affected its ability to defend itself in the administrative recovery procedure that led to the adoption of the contested decision.

76 The second complaint of the present plea must be regarded as being raised in support of the second head of claim to the extent that it addresses the Commission's conduct in the implementation of the grant agreements.

77 By the third plea in law, the applicant criticises the auditors and, consequently, the Commission, which adopted the final audit reports, for failing to satisfy their burden of proof. This plea concerns the contractual dispute between the parties and entails the examination, by the Court, of the grant agreements and of the law applicable to them. It follows that the plea must be regarded as being raised in support of the applicant's second head of claim.

78 By the fourth plea in law, the applicant alleges a certain number of errors in the final audit reports. This plea likewise concerns the contractual dispute between the parties and entails the examination, by the Court, of the grant agreements and of the law applicable to them. It follows that the plea must be regarded as being raised in support of the applicant's second head of claim.

79 So far as concerns, last, the fifth plea in law, it evidently must be regarded as being raised in support of the applicant's first head of claim, in so far as it alleges a lack of competence on the part of the Commission to adopt the contested decision.

80 Having determined the head of claim to which the pleas raised by the applicant must be linked, it is necessary to proceed with the examination of the merits of the applicant's first and second heads of claim. It is appropriate first to examine the second head of claim. The contested decision whose annulment is sought in the first head of claim makes enforceable the contractual claim allegedly held by the Commission against the applicant. In the second head of claim, the Court is required to rule on the existence and amount of that contractual claim. In so far as the factual basis of the contested decision relating to the existence and amount of the contractual claim is examined in the context of the second head of claim, it follows, first, that the examination of that head of claim must precede the examination of the first head of claim and, second, that the assessments carried out by the Court in the examination of the second head of claim must be taken into account for the purposes of the review of the legality of the contested decision, in the examination of the first head of claim (see, to that effect, judgments of 6 October 2015, *Technion and Technion Research & Development Foundation* v *Commission*, T-216/12, EU:T:2015:746, paragraph 72, and of 9 November 2016, *Trivisio Prototyping* v *Commission*, T-184/15, not published, EU:T:2016:652, paragraphs 65 and 119).

2. ***Second head of claim***

81 It should be recalled that the pleas that are to be regarded as being raised in support of the applicant's second head of claim are the first, second, third and fourth pleas. It is appropriate to begin by examining the third plea, followed by the fourth and first pleas, ending with the second plea. First, it is necessary to clarify the jurisdiction of the Court and the law in the light of which the aforementioned pleas must be examined.

(a) ***Preliminary observations***

(1) *Jurisdiction of the General Court*

82 As a preliminary point, it should be recalled that, in accordance with Article 272 TFEU, the Court of Justice is to have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the European Union, whether that contract be governed by public or private law. In accordance with Article 256(1) TFEU, the General Court of the European Union generally has the jurisdiction to hear and determine at first instance all actions or proceedings referred to in Article 272 TFEU.

83 In the present case, the second paragraph of Article I.9 of the grant agreements is drafted broadly enough to confer on the Court jurisdiction to hear and determine the applicant's second head of claim. Moreover, the parties do not dispute that the Court has that jurisdiction.

(2) *Law applicable to the dispute*

84 Where proceedings have been instituted pursuant to an arbitration clause under Article 272 TFEU, the Court must resolve the dispute on the basis of the substantive rules of the law applicable to the contract (judgment of 4 February 2016, *Isotis* v *Commission*, T-562/13, not published, EU:T:2016:63, paragraph 51).

85 In the present case, it is apparent from the first paragraph of Article I.9 of the grant agreements that the substantive law applicable to them is, primarily, EU law and, on a subsidiary basis, the law of Belgium relating to grants. Regarding the latter, it should be noted that, in so far as the grants under

the grant agreements are grants financed by the European Union budget and awarded by the Commission, they fall outside the scope of the specific rules of Belgian law framing the grants awarded by Belgian administrative entities. The supplementary rules applicable in the present case can therefore only be those of the general law on Belgian contracts and bonds, which are intended to compensate for any absence of such rules at EU level.

86 Article 1134 of the Belgian Civil Code provides, in its first paragraph, that 'agreements lawfully entered into shall have the force of law for those who have made them' and, in its second paragraph, that 'they may be revoked only by mutual consent or for causes authorised by law'.

87 The third paragraph of Article 1134 of the Belgian Civil Code provides, moreover, that contracts must be performed in good faith. Article 1135 of the same code provides that 'agreements are binding not only as regards what is expressed therein but also as regards all consequences that equity, usage or law impose upon the obligation according to its nature'. That article thus also lays down the principle of performance in good faith of contracts.

88 Article 1156 of the Belgian Civil Code shows that principle being applied in the interpretation of contracts. It provides that 'in agreements, it is necessary to seek the common intention of the contracting parties, rather than stop at the literal meaning of the words'.

89 Where a dispute arises in relation to the performance of a contract, the burden of proof is governed by the provisions of Article 1315 of the Belgian Civil Code, according to which the party claiming performance of an obligation must prove that it exists. Conversely, a party who claims to have been released from an obligation must prove that he has made the payment or performed the act which has brought about the extinction of his obligation.

90 It must also be stated that the Rules of Procedure govern the procedure relating to the examination of the second head of claim in the context of which the Court acts as the court with jurisdiction over the contract, in accordance with the generally-accepted principle of law that every court applies its owns rules of procedure (see, to that effect, judgment of 13 June 2012, *Insula* v *Commission*, T-246/09, not published, EU:T:2012:287, paragraph 88 and the case-law cited).

(b) ***Third plea in law, alleging failure by the Commission to satisfy its burden of proof***

91 By the third plea in law, the applicant argues that the auditors ruled out many expenses without providing supporting evidence and relied on unproven assumptions. It gives, as an example of its allegations, the auditors' findings relating to the expenses declared for expert X's activities in the context of the project covered by Grant Agreement C. It infers from that that the Commission, having approved those conclusions, acted contrary to the fundamental and universal principle of burden of proof which requires the party making an allegation to support it with relevant evidence.

92 The Commission contests the merits of the present plea.

93 It should be recalled that, according to a fundamental principle governing European Union financial aid, the Union can subsidise only expenses which have actually been incurred. It follows from that principle that it is not sufficient for the beneficiary of the aid to show that a project has been carried out for the allocation of a specific subsidy to be justified. The beneficiary of the aid must, in addition, produce evidence that he has incurred the expenses declared in accordance with the conditions laid down for the grant of the aid concerned, with only those expenses which are properly justified being capable of being regarded as eligible. His obligation to satisfy the prescribed financial conditions is even one of his essential commitments and accordingly determines the allocation of European Union financial aid (see judgment of 24 October 2014, *Technische Universität Dresden* v *Commission*, T-29/11. EU:T:2014:912, paragraph 71 and the case-law cited).

94 The principle recalled in paragraph 93 above is reflected in the terms of the grant agreements relating to the arrangements for the grant of the aid. Thus, by way of reminder, pursuant to Articles I.6 and II.15.4 of those agreements, the coordinator was inter alia to submit to the Commission, after the closure of the action, a final report on the implementation of the action, a final financial statement of the eligible costs actually incurred and a full summary statement for the receipts and expenditures of the action, the Commission being able, if necessary, to request additional information and documents. It is on the basis of the documents referred to in Article II.15.4 of those agreements that the Commission determined, in accordance with Article II.17 of the same agreements and subject to information received at a later stage in the context of a financial audit carried out under Article II.20 of the agreements in question, the definitive amount of the grant.

95 It is also necessary to recall that, under Article II.20.3 of the grant agreements, the Commission may have an audit of the use made of the grant and the findings of that audit may lead to recovery decisions by the Commission. Articles II.20.1 and II.20.4 of those agreements stipulate, moreover, the obligation for the beneficiaries of the grant to provide the Commission and the persons authorised by the Commission with information for checking that the action is being implemented in conformity with those agreements.

96 The EU judicature has taken the view that the final audit findings and all the material on which they are based must be analysed as evidence at the Commission's disposal with a view to possible action for breach of contract before the Court (judgment of 8 September 2015, *Amitié* v *Commission*, T-234/12, not published, EU:T:2015:601, paragraph 136). By analogy, it must be considered that, in the present case, the final audit reports constitute evidence supporting the Commission's claims regarding the implementation of the grant agreements.

97 The applicant's specific complaint regarding the rejection of certain expenses in respect of expert X's activities in the context of the project covered by Grant Agreement C should be examined in the light of those principles.

98 It follows from the final audit report on the project covered by Grant Agreement C that the auditors, in referring to the description of the applicant's activities as it appeared on its website, found that expert X had participated, on 13 February 2009, in a training day in Turkey as part of another project. Nevertheless, the applicant has claimed that, on that same day, expert X worked full-time on the project covered by Grant Agreement C. The auditors rejected the costs pertaining to that day, which amount to EUR 450.

99 It also follows from the final audit report on the project covered by Grant Agreement C that the auditors examined whether the error that resulted in the invoicing of the training day on 13 February 2009 for that project was an isolated error or also involved other days. They therefore requested the applicant to provide them with extracts from financial reports relating to other projects implemented by the applicant and, in particular, with information concerning the personnel involved and their time allocation, the objective being to verify, through a comparison exercise, the accuracy of the number of hours invoiced by the persons involved in the project covered by Grant Agreement C. The applicant refused to provide the requested information on the basis that it was outside the scope of the audit at issue.

100 The applicant not having provided the requested documentation, the auditors concluded that they were unable to confirm whether the remainder of the costs declared for expert X's work, totalling EUR 21445.45 (corresponding to 39 days of work declared), related exclusively to the project covered by Grant Agreement C. They thus expressed reservations as to the eligibility of those costs. On the same basis, the auditors expressed reservations as to the eligibility of declared costs in relation to the work provided by expert Y for an amount of EUR 22824.77. Therefore, the declared costs that were the subject of a reservation by the auditors amounted to EUR 44270.22.

101 It is also apparent from the final audit report on the project covered by Grant Agreement C that the abovementioned reservations expressed by the auditors were supported by the following items. In the first place, the auditors noted that 81% of the fees relating to 2009 and 100% of the fees relating to the period from January to June 2010 paid to the two co-owners of the applicant — experts X and Y — concerned their work declared for the projects concerned, despite the fact that other projects in which the applicant was participating ran during those periods. In the second place, they found that the applicant's accounting system did not allow for personnel costs to be distinguished from other projects. In the third place, they found that the time sheets that had been submitted did not detail all activities and time spent by personnel or experts and that only work time charged to the project had been presented there.

102 In its letter of 10 June 2013, containing the final audit report on the project covered by Grant Agreement C, the Commission informed the applicant that the costs amounting to EUR 44270.22 relating to the work of experts X and Y, and under reservation by the auditors, could be regarded as eligible if the applicant submitted the documentation required by the auditors within one month. The applicant did not submit that documentation and the abovementioned costs were definitively rejected by the Commission as ineligible.

103 In the light of the fundamental principle governing European Union financial aid relating to the burden of proof on the beneficiary of an EU grant (see paragraph 93 above), of the consideration contained in paragraph 96 above and of the fact that it is not apparent from the file, nor is it alleged, that the auditors and the Commission acted in bad faith, it must be concluded that it was for the applicant, confronted with the auditor's concrete findings, to submit evidence showing that the costs declared for the work of experts X and Y fulfilled the eligibility criteria set by Article II.14.1 of the grant agreements and, in particular, concerned the subject matter of those agreements and were necessary for the performance of the projects covered by those agreements.

104 It must be held, however, that the applicant did not submit any such evidence either during the preliminary procedure or before the Court.

105 Before the Court, the applicant argues that the auditors' findings were not supported by evidence. For example, the applicant refers to the situation of expert X and claims that the auditors, in excluding the entire allotment of 40 days he declared, were not entitled to proceed on the basis of inference, relying on the error made regarding the day of 13 February 2009, but had to prove that each of the remaining 39 days did not exclusively concern the project covered by Grant Agreement C.

106 That argument must be rejected in so far as it contravenes the allocation of the burden of proof as defined in this case. More specifically, the auditors presented concrete indicators of the existence of a risk that the days of work declared for experts X and Y, in the context of the project covered by Grant Agreement C, did not fulfil the eligibility criteria set by Article II.14.1 of that agreement (see paragraphs 98 to 101 above). The onus was therefore on the applicant to show — with probative evidence — that those eligibility criteria had been met, which it did not do. Accordingly, in relying on the presumption that the costs were ineligible, a presumption which was supported by concrete indicators and which was not rebutted by evidence, the Commission was justified in validating the exclusion of all the costs relating to the work of experts X and Y for that project (see, to that effect, judgment of 12 December 2013, *Berliner Institut für Vergleichende Sozialforschung* v *Commission*, T-171/08, not published, EU:T:2013:639, paragraph 155 and the case-law cited).

107 The applicant also argues that, if one were to follow the auditors' reasoning and reject the entirety of the days declared for experts X and Y, it would mean that the work carried out by the applicant was self-produced and spontaneous, without the involvement of any expert. Such a conclusion would be paradoxical given the scope and the quality of that work.

108 That argument must be rejected having regard to the principle set out in paragraph 93 above, according to which it is not sufficient for the beneficiary of the aid to show that a project has been carried out for the allocation of a specific subsidy to be justified. The beneficiary must, in addition, produce evidence that he has incurred the expenses declared in accordance with the conditions laid down for the grant of the aid concerned, with only those expenses which are properly justified being capable of being regarded as eligible. It follows that, in the present case, the fact that the project covered by Grant Agreement C was carried out and with good results is not sufficient for acceptance of the costs declared for experts X and Y as eligible costs. The eligibility criteria stipulated inter alia in Article II.14.1 of that agreement also had to be met.

109 In the reply, the applicant raises additional arguments which must also be rejected based, inter alia, on the principles relating to the allocation of the burden of proof in the case.

110 With regard to the day of 13 February 2009, the applicant argues that expert X's participation in the training in Turkey did not mean that it was impossible for him to work on the project covered by Grant Agreement C during that day. Nor did that participation mean, in the applicant's view, that it was unable to keep a proper accounting system.

111 The applicant adds that expert X had signed the requested time sheet on the final financial documents and that the invoices and proof of payment had also been presented to the Commission. It therefore asks what other proof did the Commission need, given, moreover, that the work had been completed.

112 Furthermore, the applicant justifies its refusal to provide the documents requested by the auditors by claiming that they did not have any right to conduct an audit of all its accounts and that such refusal cannot warrant the rejection of costs as ineligible.

113 As regards, first of all, the day of 13 February 2009, it is necessary to recall the undisputed fact that expert X participated, during that day, in training in Turkey which was completely unrelated to the project covered by Grant Agreement C and that costs related to that expert's work during that day had nevertheless been declared for that project, the applicant having asserted that that expert had worked full-time on that project during that day. In view of that concrete indicator put forward by the auditors, namely that the charging of such costs for the expert in question during that day did not reflect the reality, the onus was on the applicant to prove that that expert had indeed worked full-time on the project in question during the day at issue despite the fact that, that same day, he participated in training in Turkey.

114 The applicant, however, fails to satisfy its burden of proof. It must be stated, as the auditors did, that the invoices and time sheets relied on by the applicant and submitted to the Court in the context of a measure of organisation of procedure do not allow the reality — and thus the eligibility — of expert X's declared costs to be established. The invoices submitted only indicate the amount the expert in question invoiced the applicant for a given period of time, without specifying the project in question or the work he carried out. The time sheets submitted only indicate the time the expert spent working on the project in question on a given day, without providing detail as to the expert's activities or the time spent on each activity. In addition, the applicant has not called into question the auditors' findings that, first, there was an overlap between several projects in which the applicant was participating and, second, its accounting system did not allow for personnel costs to be distinguished from other projects (see paragraph 101 above). In such circumstances, it must be concluded that the applicant has not demonstrated the reality and thus the eligibility of the costs declared for the expert in question relating to the project covered by Grant Agreement C, for the day of 13 February 2009 or for the remaining 39 days.

115 As regards, next, the applicant's claims concerning its refusal to provide certain documents to the auditors (see paragraph 112 above), it should be noted that the auditors did not request to audit the applicant's accounts, as the applicant claims. The auditors requested to examine the financial reports

of other projects in which the applicant was participating alongside the three projects at issue, so as to be able to cross-reference the information it provided concerning expert X's use of time. As the Commission notes, the auditors' objective was not to verify the applicant's general accounts, but to give it an opportunity to prove the veracity of its claims in relation to the project covered by Grant Agreement C, which was the subject of the audit. It follows that the applicant's argument is irrelevant, since it is based on an erroneous interpretation of the auditors' request. In any event, that argument cannot call into question the conclusion that the applicant has not satisfied its burden of proof.

116 On the basis of the foregoing considerations, the present plea must be rejected.

(c) ***Fourth plea in law, alleging errors in the final audit reports***

117 The applicant argues that the final audit reports are vitiated by a number of clear procedural and substantive errors. In that context, it raises five complaints which should be examined in turn.

118 The Commission contests those complaints.

(1) *Level of expertise of the auditors*

119 The applicant argues that the auditors lacked the expertise to challenge the work quality and relevance of the activities it had carried out and that, in essence, in assessing whether the hours declared were necessary, they should have used the number of hours included in the proposals it had submitted for the purpose of acquiring the grants at issue.

120 In addition, the applicant claims that, in certain passages of the final audit report regarding the project covered by Grant Agreement A, the auditors stated that they were unable to conclude how the costs were relevant to the activities associated with that project. In its view, the auditors' admission of their inability to arrive at such conclusions is, in itself, prima facie evidence that their burden of proof had not been satisfied.

121 The applicant's argument about the level of expertise of the auditors must be rejected.

122 Regarding the auditors' expertise, there is nothing in the file capable of casting doubt on the fact they held the necessary qualifications to verify the eligibility of the costs declared by the applicant in the light of the terms of the grant agreements. Moreover, the applicant is wrong to argue that the auditors should have used the number of hours included in the proposals it had submitted for the purpose of acquiring the grants at issue. It is sufficient to note that it is apparent from reading Articles II.15.4 and II.17.1 of those agreements together that the amount of the grant becomes final only after the Commission's acceptance of the documents submitted by the applicant under Article II.15.4, without prejudice to the information obtained at a later stage through an audit carried out on the basis of Article II.20 of those agreements. Accordingly, the hours included in the proposals submitted by the applicant for the purpose of acquiring the three grants under the agreements in question were mere estimates that in no way prevented the eligibility of the costs declared by the auditors from being verified.

123 With regard to the applicant's argument set out in paragraph 120 above, it should be noted that, in several passages of the final audit reports, the auditors concluded that they were incapable of deciding on the eligibility of the costs declared by the applicant and that that incapability was due to the applicant's not providing them with the information required and thereby demonstrating the eligibility of the costs declared. It follows that the abovementioned incapability on the part of the auditors was not due to their alleged incompetence and does not demonstrate a failure to discharge the burden of proof. In the examination of the third plea, it has been held that, in essence, the onus was on the applicant, in the circumstances of the case, to prove that the costs declared were eligible.

124 The applicant's first complaint must therefore be rejected.

(2) *Time sheets*

125 The applicant argues that the Commission erred in considering that the experts it employed should have filled in time sheets. In its view, the grant agreements do not mention such a requirement nor do they specify what kind of information those time sheets should contain.

126 This complaint must also be rejected. It is true that the grant agreements do not stipulate that the applicant must demonstrate the eligibility of costs declared by means of time sheets filled in by the personnel involved in the projects concerned. Nevertheless, those agreements do stipulate, in Article II.14.1 thereof, that costs declared must be identifiable and verifiable, leaving the applicant the choice of the form of evidence. As the Commission rightly notes, time sheets are a means to demonstrate the eligibility of costs.

127 Moreover, it is not apparent from the final audit reports that the auditors based their conclusions on the applicant's failure to produce time sheets. In all cases, the auditors based their conclusions on several indicators. Among those indicators, they took note of the fact that the time sheets submitted did not detail the activities carried out or the time spent by personnel or experts on each activity. The auditors noted other shortcomings, such as the fact that the applicant's accounting system did not allow personnel costs and the projects undertaken by the applicant to be linked, thus causing a risk of double invoicing. The auditors thus noted several cases of double invoicing (see, for example, the costs pertaining to positions F13, F21, F27, F30 and F34 in the context of the project covered by Grant Agreement A).

128 It follows from the foregoing that the auditors proposed the rejection of certain costs as ineligible not because the applicant had not submitted time sheets or records that were sufficiently accurate, but because it had not demonstrated the eligibility of the costs declared for the projects concerned.

129 The present complaint must therefore be rejected.

(3) *Delay in invoicing and payment in the projects covered by Grant Agreements B and C*

130 The applicant complains that the auditors rejected certain personnel costs in the projects covered by Grant Agreement B and C on the ground that the related invoices had been paid after the final report had been submitted to the Commission. In its view, the grant agreements only stipulate that costs must be generated during the lifetime of the action at issue and do not specify when the payments must be made. In the present case, although the payments were made after completion of the projects covered by Grant Agreements B and C, the costs had been generated during the lifetime of those projects, as evidenced by the dates of the invoices. According to the applicant, if the Commission had wanted to limit eligible costs to those generated and paid before a certain date, it should have indicated so in the grant agreements.

131 This complaint must also be rejected, since it is not based on an accurate account of the auditors' reasons for the rejection of certain costs declared in the context of the projects covered by Grant Agreements B and C.

132 So far as concerns the project covered by Grant Agreement B, as is apparent from the final audit report on that project (point 5.2.1 5), the auditors rejected costs totalling EUR 82 000 pertaining to the work of four experts on the basis of the following. In general, the auditors found that those costs had been recorded in the applicant's accounting system and paid well after the final report had been submitted to the Commission on 4 August 2010. The auditors also noted that they had not been provided with the contracts concluded with the experts concerned and that, as was apparent from the

correspondence between the applicant and the Commission, the time sheets had been filled in, at the Commission's request, after the end of the project, which created doubts as to the reliability of the hours registered. On the basis of those considerations, the auditors concluded that there was insufficient evidence to demonstrate that the abovementioned costs had been generated during the lifetime of the project in question.

133 The auditors subsequently set out the general comments of the final audit report relating to the project covered by Grant Agreement B in relation to the situation of each of the four experts for whom costs had been declared in the context of that project. For example, with regard to expert Y, one of the applicant's two co-owners, they proposed rejecting a total of EUR 18 000 of costs owing to the fact that the invoice was dated and recorded in the applicant's accounts in 2011 and paid on 10 January 2011, namely significantly after the applicant's submission of the final report on 4 August 2010. They also noted that there was no evidence that the expert's services had been provided during the lifetime of the project and that they had been first recorded in the revised final report submitted by the applicant to the Commission on 27 October 2010.

134 Comments along the same lines were made about the three other experts for whom costs were declared in the context of the project covered by Grant Agreement B.

135 Those elements from the final audit report on the project covered by Grant Agreement B were not disputed by the applicant, whose argument was limited to the general argument set out in paragraph 130 above.

136 It follows from the foregoing elements that the rejection of certain expert costs declared in the context of the project covered by Grant Agreement B was not based solely on the fact that the related invoices had been paid after the submission of the final report, as the applicant imprecisely argues, but on a range of elements — which were undisputed — that cast doubt, in a concrete way, on the eligibility of the costs declared and, more specifically, on the origins of the costs declared during the lifetime of the project, as the fourth indent of Article II.14.1 of the grant agreements requires.

137 As the Commission rightly notes, one may legitimately cast serious doubts on the expenditure invoiced and recorded in the applicant's accounts after the submission of the final report. Furthermore, as the Commission states, it is difficult to see how an invoice which had not yet been recorded in the applicant's accounts could be included in the final report submitted to the Commission, which, under Article II.15.4 of the grant agreements, is to include a full summary statement of receipts and expenditure.

138 In relation to the project covered by Grant Agreement C, it is apparent from point 5.2.1 4 of the final audit report on that project that costs totalling EUR 14 800 were invoiced by expert Z. The invoice in question bore the date 9 June 2010, but the costs were recorded in the applicant's accounting system on 30 September 2010 and paid on 19 October 2010, that is to say well after the date of submission of the final report to the Commission (21 July 2010) and after the Commission had informed the applicant, on 24 August 2010, that it was rejecting all the personnel costs it had declared. The auditors also noted that they had not been provided with the contract concluded between the applicant and the expert and that, as was apparent from the correspondence between the applicant and the Commission, the time sheets had been filled in after the end of the project, at the Commission's request. The auditors noted, moreover, that there had not been sufficient evidence of the expert's invoicing of 37 days of work and that the evidence provided justified the invoicing of only 11 days. The auditors concluded that the applicant ought to provide further explanation and supporting evidence to justify the total number of days invoiced by the expert and the delay in recording the invoice in its accounting system and provisionally proposed rejecting as ineligible costs pertaining to 26 days of work as invoiced by the expert, namely EUR 10 400 (26 days x EUR 400).

139 It should be noted that the applicant submitted no evidence, either during the preliminary procedure or before the Court, to call into question the findings of the auditors contained in point 5.2.1 4 of the final audit report on the project covered by Grant Agreement C.

140 As with what has been found in relation to the project covered by Grant Agreement B, it should be noted that the rejection of certain costs of the expert at issue in the context of the project covered by Grant Agreement C was not due solely to the fact that the expert's invoice had been paid after the final report was submitted to the Commission, but was based on a range of elements that cast doubt, in a concrete way, on the eligibility of the costs declared.

141 On the basis of the foregoing, the present complaint must be rejected as ineffective.

(4) *Use of non-EU suppliers on the project covered by Grant Agreement B*

142 The applicant complains that the auditors rejected costs relating to the production of a video, in the context of the project covered by Grant Agreement B, on the ground that the expenditure for that production had been incurred outside the European Union. It argues that the applicable contractual framework does not exclude the use by beneficiaries of suppliers established outside the European Union. It also argues that, in any event, in the present case, the majority of the costs of producing the video were incurred within the European Union. Last, it disputes the auditors' finding that it failed to provide evidence that its choice of producer for the video was the best in terms of value for money.

143 It is apparent from point 5.2.2 1 of the final audit report on the project covered by Grant Agreement B that the auditors rejected as ineligible costs totalling EUR 52497.16 relating to the production of a video, on the ground that those costs had been incurred outside the European Union. The auditors found, moreover, that the applicant was unable to prove that a procurement procedure had been organised to choose the producer of the video and that the choice was the best in terms of value for money. It follows that the rejection of the costs relating to the production of the video has a twofold basis which it is appropriate to examine.

144 Regarding the first basis, concerning the place where the video production costs were incurred, it is undisputed that the video supplier was established in the United States. It is true that Grant Agreement B does not prohibit the beneficiary from using suppliers established outside the European Union. Nevertheless, the guide for grant applicants provides, in section III.2, entitled 'Rules concerning eligible expenditure', that for costs to be considered eligible, they must be incurred by the beneficiary (or his partners) in any of the Member States of the European Union, with the exception of Denmark.

145 With regard to the legal value of the guide for grant applicants, it is stipulated in the introduction of each of the grant agreements that their terms took precedence inter alia over the content of that guide, but that the guide would be used 'for supplementary purposes'. In the present case, in so far as those agreements do not specify the place where costs must be incurred whereas the guide does so, thereby supplementing the agreements, it should be concluded that that guide governs, in the present case, that specific costs issue.

146 Indeed, the applicant claims before the Court that, although the video supplier was a company registered in the United States, the video costs were actually incurred in the European Union. The script was written, the video was produced and the dubbing was performed in the European Union. However, no evidence is provided in support of those claims.

147 It should therefore be concluded that the first basis of the auditors' findings is not called into question by the applicant's argument.

148 Regarding the second basis, concerning the applicant's lack of evidence that a procurement procedure had been organised and that the choice of video supplier was the best in terms of value for money, it should be noted that Article II.9.1 of the grant agreements stipulates the following:

'If the beneficiaries have to conclude contracts in order to carry out the action and they constitute costs of the action under an item of eligible direct costs in the estimated budget, they shall seek competitive tenders from potential contractors and award the contract to the bid offering best value for money, in doing so they shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interests.'

149 In addition, it should be recalled that Article II.14.1 of the grant agreements stipulates that, to be considered as eligible, costs 'must be reasonable and justified and they must accord with the principles of sound financial management, in particular in terms of value for money and cost-effectiveness'.

150 It is apparent from the file that costs relating to producing a video were included in the provisional budget of the project covered by Grant Agreement B, under the heading 'Publications and Dissemination', as direct costs. It follows that, on the basis not only of Article II.19.1 of the grant agreements, but also of Article II.14.1 of those agreements, the auditors were entitled to request the applicant to provide evidence that a procurement procedure had been organised and that the choice of video supplier was the best in terms of value for money and cost-effectiveness. The onus was on the applicant to provide that evidence.

151 It is not apparent from the file, however, that the applicant did provide such evidence.

152 The tenders notified to the Commission, appearing in Annex 31 to the application, bear the date 18 November 2010, which is after the end of the project covered by Grant Agreement B, namely 9 June 2010. That, however, contravenes the terms of Article II.9.1 of the grant agreements, from which, owing to the reference to 'potential' contractors, it is clear that tenders have to be submitted during the project and not after.

153 Regarding those tenders bearing the date 2008, appearing in Annex 30 to the application, as the applicant has itself indicated, they involve a different kind of service, namely the shooting of a traditional video, without special effects, which was then abandoned by the applicant, it having ultimately decided that the objectives of the project covered by Grant Agreement B would be better served if the video contained special effects.

154 It should thus be concluded that the second basis of the auditors' findings is similarly not called into question by the applicant's argument.

155 On the basis of the foregoing considerations, the present complaint must be rejected.

(5) *Quality of the applicant's work*

156 The applicant complains that the auditors and the Commission failed to take account of the quality of its work or of the fact that the objectives of the projects for which the grants were given had been attained.

157 This complaint must be rejected in the light of the fundamental principle of European Union financial aid according to which the Union can subsidise only expenses which have actually been incurred. As has already been noted, it follows from that principle that it is not sufficient for the beneficiary of the aid to show that a project has been carried out for the allocation of a specific subsidy to be justified. The beneficiary of the aid must, in addition, produce evidence that he has incurred the expenses

declared in accordance with the conditions laid down for the grant of the aid concerned, with only those expenses which are properly justified being capable of being regarded as eligible. His obligation to satisfy the prescribed financial commitments is even one of his essential commitments and accordingly determines the allocation of European Union financial aid (see paragraph 93 above).

158 On the basis of the foregoing, the fourth plea must be rejected.

(d) ***First plea in law, alleging that the audit rules followed by the auditors were never agreed upon by the parties***

159 The applicant argues that the audit rules followed by the auditors were not stipulated in the grant agreements and therefore had not been agreed upon by the parties. In addition, the audit reports — both provisional and final — do not make any mention of the terms of those agreements and the auditors acted according to the objectives unilaterally set by the Commission and not on the basis of the terms of reference contained in the agreements. In so far as the auditors' findings and, subsequently, the contested decision were based on rules that had not been agreed upon by the parties, the contested decision should be annulled.

160 The Commission contends that the present plea must be rejected.

161 As a preliminary point, it must be noted that, according to the information in the executive summaries of the final audit reports, the audit was conducted in accordance with the International Standards on Auditing and in accordance with the 'basic principles and concepts of the International Framework for Assurance Engagements established by the [International Federation of Accountants]'. The final audit reports also specified, in point 1.1, that the purpose of the audit was to check, inter alia, whether the financial contribution from the Commission had been used exclusively for the purposes of the project at issue, whether the declared expenditure had been incurred during the period covered by the grant agreement in question, whether the declared expenditure was backed up with appropriate documentation, proof of payments and the existence of controls and whether the coordinator's management of the project complied with the principles of sound financial management, economy and efficiency. That definition of the objective of the audit merely reflected the eligibility criteria of the costs declared by the beneficiary of the grant, stipulated in Article II.14.1 of the grant agreements. Moreover, the auditors acted in the present case pursuant to Article II.20 of those agreements. It follows that the applicant's complaint that the objectives of the audit were unilaterally set by the Commission must be rejected.

162 Next, it should be noted that examining the final audit reports reveals that the costs at issue declared by the applicant were rejected because they did not meet the stipulated eligibility criteria in inter alia Article II.14.1 of the grant agreements. That is also apparent from that set out above in relation to the other pleas raised by the applicant. As the Commission rightly argues, the audit rules, which, according to the applicant, had not been agreed upon by the parties, concern only the rules of professional care and diligence auditors must follow in the performance of their duties and have nothing to do with the eligibility criteria of the costs declared by the applicant. Furthermore, the applicant does not show what the link is between those audit rules and the auditors' findings on the eligibility of the costs; in other words, it does not show how an audit rule might render expenditure eligible or ineligible.

163 It follows that the applicant's complaint relating to the auditors' application of audit rules that were not set by common agreement between the parties must be rejected as ineffective.

164 Last, it should be noted that, in the reply, the applicant argues that it complied with accounting standards under Italian law and that, consequently, the contested decision, allegedly based on other audit rules not agreed upon by the parties, constituted a violation of Article 126(2)(d) of the financial regulation.

165 Article 126(2)(d) of the financial regulation provides that eligible costs should be recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary.

166 In line with the foregoing considerations, however, it must be pointed out that the fact that the costs declared by the applicants might be in compliance with Italian accounting standards in no way means that those costs are in compliance with the eligibility criteria stipulated, inter alia, in Article II.14 of the grant agreements. Accordingly, the application's invocation of Article 126(2)(d) of the financial regulation is irrelevant.

167 On the basis of the foregoing assessments, the present plea must be rejected.

(e) ***Second plea in law, alleging, first, an unreasonable delay in the issue of the final audit reports to the applicant and, second, mismanagement by the Commission of the projects in question***

168 It should be recalled that, in the context of the present plea, the applicant raises two complaints.

169 In the first complaint, the applicant invokes an unreasonable period of 18 months between 25 January 2012, the date on which it was issued the revised draft audit reports, and 10 June 2013, the date on which it was issued the final audit reports. The expiry of that period gave the applicant the impression that the Commission had implicitly accepted its arguments against the auditors' findings and prejudiced it by depriving it of the opportunity to contest the Commission's findings in a timely and efficient fashion.

170 In the second complaint, the applicant criticises the Commission for mismanaging, in general, the projects in question.

171 The Commission disputes the applicant's complaints.

172 As regards the first complaint, it must be noted, first of all, that there was no regulatory provision or contractual term specifying the duration of the audit provided for in Article II.20 of the grant agreements. That latter term simply provides, in paragraph 3 thereof, that an audit may be carried out for a period of five years from the date of payment of the balance. However, for the determination of the obligations of the parties arising out of the implementation of the grant agreements, account must be taken of the obligation of the parties to a contract to perform it in good faith. In the present case, in accordance with that principle, the Commission was obliged to issue the auditors' findings to the applicant within a reasonable period in order to enable it to contest them effectively and, more generally, not to leave it in a state of uncertainty, which would be prejudicial to it.

173 As is apparent from the file, the revised draft audit reports on the projects in question were issued to the applicant on 24 January 2012. The applicant submitted observations on those revised drafts on 15 February 2012. The final audit reports were sent by the auditors to the Commission on 26 April 2012 and the Commission issued those reports to the applicant on 10 June 2013.

174 It must thus be considered that the audit procedure was conducted in a manner consistent with the principle of performance in good faith of contracts until 26 April 2012, the date on which the auditors sent the final audit reports to the Commission. It must also be stated that a lapse of time of more than 13 months occurred between 26 April 2012 and 10 June 2013, the date on which those final audit reports were issued to the applicant. It is therefore appropriate to examine whether, in the light of the principle of performance in good faith of contracts, such a lapse of time constituted a reasonable period in the case.

175 Based on the content of the file, a lapse of time of more than 13 months is not justified and is unreasonable. There was no contact between the Commission and the applicant after the auditors' communication of the final audit reports to the Commission, on 26 April 2012. Moreover, as is apparent from the letters of 10 June 2013, the Commission accepted those final audit reports in their entirety and made no amendments. In addition, neither the subject matter of the audits nor the content of the final audit reports were of any complexity.

176 The only element put forward by the Commission to justify a lapse of time of more than 13 months was the opening of an investigation by the European Anti-Fraud Office (OLAF) on 10 September 2012. According to the Commission, due to the opening of that investigation, it took it several months to verify and endorse the auditors' findings.

177 It must be pointed out that the Commission does not sufficiently explain how OLAF's opening of the investigation caused the lapse of time of more than 13 months. Moreover, it took place five months after the communication of the final audit reports to the Commission, which shows that, in any event, five months had passed between the communication of the final audit reports to the Commission and the opening of the investigation by OLAF. It is not apparent from the file, however, that the Commission was active in any way during that five-month period.

178 It follows from the foregoing that the lapse of time of more than 13 months that occurred between the communication to the Commission of the final audit reports and the issue of those reports to the applicant constitutes, in the case, an unreasonable delay and, therefore, a breach by the Commission of its contractual obligations as interpreted in the light of the principle of performance in good faith of contracts.

179 However, it is not apparent from the file that the unreasonable delay in the issue of the final audit reports to the applicant affected its capacity to contest the auditors' findings effectively, as it claims.

180 First of all, as the Commission rightly indicates, it is appropriate to note that the applicant had the opportunity on two occasions, namely on 22 December 2011 and 15 February 2012, to provide comments and supporting documents to the auditors while the audit reports were still in draft form. It should also be noted that the Commission endorsed the auditors' findings in their entirety. In such circumstances, it is not established that the unreasonable delay in the issue of the final audit reports to the applicant affected its capacity to contest the auditors' findings effectively. It should also be noted that, after issuing the final audit reports, the Commission gave the applicant other opportunities to provide comments and supporting documents and that it is in that context that the applicant submitted observations by letters of 9 July 2013 and of 7 October 2013.

181 Regarding the applicant's argument, advanced before the Court, that, given the duration of the audit, the majority of the staff members managing the projects at issue had departed, thereby depriving the applicant of the knowledge needed to contest the auditors' findings effectively, the following should be noted.

182 First, as the Commission rightly observed, it is apparent from the file that the two key people managing the projects in question, namely experts X and Y, were still active in the management of the applicant as of the date on which the present action was brought and could therefore obtain for it all the information necessary for contesting the auditors' findings.

183 Second, it should be noted that, under Articles II.20.2 and II.20.3 of the grant agreements, the applicant was required to keep all original documents, especially accounting and tax records, for a period of five years from the date of payment of the balance, that is to say until 2015. It follows, first, that the delay in issuing the final audit reports could not affect the applicant's capacity to rely on the

abovementioned documents in support of its positions in so far as it was contractually obliged to keep those documents until 2015 and, second, that the relevant events of the case, namely the contradictory procedure of the audit, took place in 2013.

184 On the basis of the foregoing, the applicant's first complaint must be rejected.

185 By way of reminder, in the second complaint, the applicant criticises the Commission for mismanaging, in general, the projects in question. As evidence of that mismanagement, it cites the Commission's lack of communication throughout the projects, the subsequent overhaul of the guide for grant applicants, which from that point onwards contained much more information on eligible costs, and the fact that the grant agreements contained numerous stylistic errors.

186 This complaint must be rejected as unfounded. Regarding the alleged lack of communication on the part of the Commission throughout the projects in question, the file does not show that, during the implementation of those projects, the applicant had needed additional information and details from the Commission and had requested a meeting that was refused by the Commission. The Commission also cites — rightly — the fact that, in November 2009, its competent services carried out a project monitoring visit to the applicant's premises.

187 With regard to the two other indications cited by the applicant (see paragraph 185 above), they are not such as to show mismanagement on the part of the Commission.

188 On the basis of the foregoing assessments, the present plea must be rejected. Since the applicant has not been able to prove that it had a claim against the Commission on the basis of the grant agreements, its second head of claim must be rejected.

3. ***First head of claim, concerning an application for annulment of the contested decision***

189 It must be recalled that the first complaint of the second plea and the fifth plea are to be regarded as being raised in support of the first head of claim. It is appropriate to begin by examining the fifth plea.

(a) ***Fifth plea in law, alleging a lack of competence on the part of the Commission to adopt the contested decision***

190 In its reply, the applicant disputes the Commission's competence to adopt the contested decision. It claims that, in contractual matters, the Commission may not adopt unilateral measures such as the contested decision in the present case and that, in order to compel its co-contractor to perform its contractual obligations of a financial nature, it must, where appropriate, bring before the court having jurisdiction over the contract a claim for payment on the basis of Article 272 TFEU. In its view, according the Commission the power to adopt enforceable unilateral measures for the recovery of a contractual debt violates Article 47 of the Charter of Fundamental Rights in so far as its 'co-contractor' would not have an effective remedy against that unilateral measure. First, the effectiveness of an action for annulment against that measure would be affected by the case-law of the Court according to which, in an action for annulment, pleas alleging breach of contractual terms and violation of the national law applicable to the contract are inadmissible. Second, in an action in contractual liability brought by the Commission's 'co-contractor' before the court having jurisdiction over the contract, that court could raise against its 'co-contractor' the enforceable unilateral measure validated by the court acting as arbiter of legality in the meantime.

191 The Commission contends that the present plea is unfounded.

192 It should be recalled that the legal bases of the contested decision are Articles 299 TFEU and Article 79(2) of the financial regulation.

193 The first paragraph of Article 299 TFEU provides:

'Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable.'

194 Article 79(2) of the financial regulation provides:

'The institution may formally establish an amount as being receivable from persons other than Member States by means of a decision which shall be enforceable within the meaning of Article 299 [TFEU].'

195 It should be noted that Article 79(2) of the financial regulation is included in a chapter entitled 'Revenue operations' which is followed by a chapter entitled 'Expenditure operations', those two chapters not having been intended to apply in a particular field of Union action, but to all operations within its budget, that being evidenced by the fact that they are included within Title IV, entitled 'Implementation of the budget', which itself appears in the first part of the regulation, entitled 'Common provisions'.

196 The provisions of Title IV of the financial regulation therefore apply even to contractual matters, which is also evidenced inter alia by the wording of the provisions of Article 90 of that regulation, contained under that title, according to which 'payment shall be made on production of proof that the relevant action is in accordance with the provisions of the basic act or the contract'.

197 As the Court has repeatedly confirmed, neither Article 299 TFEU nor Article 79(2) of the financial regulation make a distinction according to whether the amount whose establishment is formalised by an enforceable decision is contractual or non-contractual in origin (see, to that effect, judgments of 13 June 2012, *Insula* v *Commission*, T-246/09, not published, EU:T:2012:287, paragraphs 94 and 95, and of 27 September 2012, *Applied Microengineering* v *Commission*, T-387/09, EU:T:2012:501, paragraph 39).

198 It follows that both Article 299 TFEU and Article 79(2) of the financial regulation confer power on the Commission to adopt the contested decision notwithstanding the fact that the amount concerned by that decision is associated with the implementation of the grant agreements and is therefore 'contractual' in nature.

199 Contrary to the applicant's allegations, the case-law cited in paragraph 197 above does not contravene the judgment of 17 June 2010, *CEVA* v *Commission* (T-428/07 and T-455/07, EU:T:2010:240, paragraph 68).

200 It is true that it is apparent from paragraph 68 of the judgment of 17 June 2010, *CEVA* v *Commission* (T-428/07 and T-455/07, EU:T:2010:240) that, in principle, the Commission does not have the right, in contractual contexts, to adopt unilateral measures and that, consequently, it is not entitled to address any measure having the nature of a decision to the co-contractor concerned with a view to the latter's performance of its contractual obligations of a financial nature, but is required, where appropriate, to bring a claim for payment before the court having jurisdiction.

201 However, as the Court has already made clear in the judgment of 13 June 2012, *Insula* v *Commission* (T-246/09, not published, EU:T:2012:287, paragraph 99), it is apparent from the judgment of 17 June 2010, *CEVA* v *Commission* (T-428/07 and T-455/07, EU:T:2010:240, paragraph 68) that, in so ruling, the Court was merely indicating that the Commission cannot adopt a unilateral measure to recover a contractual debt on the sole basis of the contract. However, it did not rule out that such a measure could have as a legal base a provision, for example, of the financial regulation, as is the case in the present case, where the contested decision is based, inter alia, on Article 79(2) of the financial regulation.

202 In any event, supposing that the judgment of 17 June 2010, *CEVA* v *Commission* (T-428/07 and T-455/07, EU:T:2010:240) could be interpreted as holding that the Commission lacks the competence to adopt an enforceable decision formally establishing an amount which is contractual in origin, it would thus be appropriate to revise such a conclusion, for the reasons set out in paragraphs 195 to 198 above.

203 Neither does the case-law of the Court cited in paragraph 197 above contravene the judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission* (C-506/13 P, EU:C:2015:562), contrary to what the applicant argued in answer to a written question from the Court.

204 In the judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission* (C-506/13 P, EU:C:2015:562), the issue under examination by the Court of Justice was whether a debit note constituted a challengeable act for the purposes of Article 263 TFEU. The Court held that not to be the case, in so far as the debit did not produce legal effects stemming from the exercise of the prerogatives of a public authority, but was inseparable from the contractual relationship existing between the parties in that case (see paragraphs 20 and 24 of that judgment).

205 It was in the context of examining whether a debit note was legal, contractual or administrative in nature that the Court affirmed that, were the EU judicature to hold that it had jurisdiction to adjudicate on the annulment of acts falling within purely contractual relationships, not only would it risk rendering Article 272 TFEU meaningless, but would also risk, where the contract does not contain such a clause, extending its jurisdiction beyond the limits laid down by Article 274 TFEU (judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 19).

206 It was in the same context that the Court stated that, in the event that an institution, specifically the Commission, chooses to allocate financial contributions by means of a contract falling within the framework of Article 272 TFEU, it is bound to stay within that framework and that, accordingly, the institution is obliged, in particular, to ensure that it does not use, in the context of relationships with the co-contractors in question, ambiguous formulations which might be understood by those co-contractors as constituting unilateral decision-making powers going beyond the contractual provisions (judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 21).

207 In so far as the judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission* (C-506/13 P, EU:C:2015:562) concerns the examination of a debit note and the question as to which remedy is available to challenge such a measure, and not the examination of an enforceable decision, as is the case in the present case with the contested decision, or the question as to the powers of the author of such a decision, it follows that that judgment is not relevant in the present case and therefore does not support the applicant's proposition regarding the lack of competence on the part of the Commission to adopt the contested decision. Unlike the debit note, which, in a contractual relationship, constitutes a measure not open to an action for annulment, the contested decision indisputably constitutes such a measure in so far as it aims to produce binding legal effects falling outside of the contractual relationship between the parties and which involve the exercise of the prerogatives of a public authority conferred on the Commission acting in its capacity as an administrative authority (see, to that effect, judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 20, and order of 29 September 2016, *Investigación y Desarrollo en Soluciones y Servicios IT* v *Commission*, C-102/14 P, not published, EU:C:2016:737, paragraphs 55 and 58). It should indeed be clarified that, notwithstanding the fact that the grant agreements make explicit reference, in Article II.19.5, to the possibility for the Commission to adopt an enforceable decision, as is the case in the present case with the contested decision, its legal nature is defined not by those agreements or the law applicable to them, but by Article 299 TFEU and Article 79(2) of the financial regulation (see, to that effect,

judgments of 13 June 2012, *Insula* v *Commission*, T-246/09, not published, EU:T:2012:287, paragraphs 94 to 96, and of 27 September 2012, *Applied Microengineering* v *Commission*, T-387/09, EU:T:2012:501, paragraph 39).

208 To the extent that the contested decision constitutes a measure open to an action for annulment, the risk of unlawful extension of the jurisdiction of the court acting as arbiter of legality, identified by the Court of Justice in paragraph 19 of the judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission* (C-506/13 P, EU:C:2015:562) (see paragraph 205 above), does not arise in the present case, since, in any event, the court having jurisdiction over the contract, namely, in the present case, the EU court before which an action has been brought on the basis of Article 272 TFEU, has no jurisdiction to review the legality of such a measure (see, to that effect, judgment of 8 October 2008, *Helkon Media* v *Commission*, T-122/06, not published, EU:T:2008:418, paragraph 44), In the same vein, the situation raised by the Court in paragraph 21 of the abovementioned judgment (see paragraph 206 above) does not apply in the present case, since, as has already been noted, the adoption of an enforceable measure — such as the contested decision — falls outside of the contractual relationship.

209 The applicant nevertheless claims that according the Commission the power to adopt unilateral measures for the recovery of a contractual debt infringes Article 47 of the Charter of Fundamental Rights in so far as the co-contractor concerned does not have an effective remedy against that unilateral measure (see paragraph 190 above).

210 It should be noted in that regard that the principle of effective judicial protection is a general principle of EU law, which is now set out in Article 47 of the Charter of Fundamental Rights (see judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 46 and the case-law cited). That principle comprises various elements, including the right of access to a tribunal (judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 48).

211 With regard to the right of access to a tribunal, it must be made clear that, for a 'tribunal' to be able to determine a dispute concerning rights and obligations arising under EU law in accordance with Article 47 of the Charter of Fundamental Rights, it must have power to consider all the questions of fact and law that are relevant to the case before it (judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 49).

212 In the present case, it must be stated that, following the partial reclassification carried out, the General Court is examining, in the same action, both the legality of the contested decision and the merits of the Commission's contractual claim against the applicant, which underlies the adoption of that decision. To the extent that all questions of fact and law relevant for the dispute at issue are being examined by the Court, it must be concluded that the present action constitutes an effective remedy within the meaning of Article 47 of the Charter of Fundamental Rights.

213 More generally, it must be noted that, in the event that the Commission adopts an enforceable decision to recover, from the co-contractor concerned, a contractual debt, that co-contractor has the possibility, provided that the contract in question contains an arbitration clause within the meaning of Article 272 TFEU, of bringing an action before the Court with both Article 263 TFEU and Article 272 TFEU as its legal basis. In that action, that co-contractor may not only challenge the legality of the above decision, relying on pleas based on the Treaty or on any rule of law relating to its application, but also raise pleas and arguments based on the contract or on the law applicable to it and request the Court to rule on the merits of the contractual dispute between it and the Commission by exercising, in that respect, its unlimited jurisdiction under Article 272 TFEU (see, to that end, judgments of 6 October 2015, *Technion and Technion Research & Development Foundation* v *Commission*, T-216/12, EU:T:2015:746, paragraph 57, and of 9 November 2016, *Trivisio Prototyping* v *Commission*, T-184/15, not published, EU:T:2016:652, paragraph 62).

214 On the basis of the foregoing assessments, the present plea must be rejected.

(b) ***First complaint of the second plea, alleging an unreasonable delay in the issue of the final audit reports to the applicant***

215 It is appropriate to note that the Court has found that the first complaint of the second plea, alleging an unreasonable delay in the issue of the final audit reports to the applicant, must be regarded as being raised in support not only of the second head of claim, but also the first head of claim, in that that delay allegedly affected the applicant's ability to defend itself effectively in the administrative recovery procedure that led to the adoption of the contested decision (see paragraph 75 above).

216 This complaint must clearly be rejected.

217 Given that the final audit reports were issued to it by the letters of 10 June 2013 (see paragraph 27 above), the applicant had those documents in its possession before it received the letter of 16 October 2013, by means of which the Commission sent it the debit notes and thus informed it of the initiation of the administrative recovery procedure. It follows that the unreasonable delay in the issue of the final audit reports to the applicant did not have, in the present case, an impact on its ability to defend itself effectively in the administrative recovery procedure.

218 On the basis of the foregoing assessments, the applicant's first head of claim must be rejected as must, consequently, the action in its entirety.

IV. **Costs**

219 Under Article 134(1) 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.

220 Moreover, under Article 135(2) of the Rules of Procedure, the Court may order a party, even if successful, to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought.

221 In the present case, the Commission has been successful and that outcome should, in principle, result in the Court ordering the applicant to pay the costs, including those incurred in the proceedings for interim measures, in accordance with the form of order sought by the Commission.

222 However, owing to the Commission's breach of contract (see paragraph 178 above), and pursuant to Article 135(2) of the Rules of Procedure, it must be decided that the Commission shall pay half of the costs of the applicant and that the applicant shall pay the costs of the Commission and bear half of its own costs. That allocation of costs concerns also the costs incurred by the parties in the proceedings for interim measures.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders ADR Center SpA to pay the costs incurred by the European Commission, including the costs of that institution pertaining to the proceedings for interim measures, and to bear half of its own costs, including in relation to its costs pertaining to the proceedings for interim measures;**

3. **Orders the Commission to pay half of the costs incurred by ADR Center, including half of the costs of the latter pertaining to the proceedings for interim measures.**

Kanninen Pelikánová Buttigieg

Gervasoni Calvo-Sotelo Ibáñez-Martín

E. Coulon A. M. Collins

Delivered in open court in Luxembourg on 20 July 2017.

Table of contents

I. Background to the dispute 1

A. The grant agreements at issue 2

1. Grant Agreement A 2

2. Grant Agreement B 2

3. Grant Agreement C 2

4. Structure and relevant common provisions of the grant agreements 3

(a) Structure 3

(b) Submission of reports and other documents 3

(c) Commission payments 3

(d) Law applicable and competent court 3

(e) Eligible costs 4

(f) Enforceable decisions 4

(g) Checks and audits 4

B. Implementation of the grant agreements 5

1. Grant Agreement A 5

2. Grant Agreement B 5

3. Grant Agreement C 5

C. Audit procedure 6

II. Procedure and forms of order sought 8

III. Law 9

A. Admissibility 9

1. Admissibility of the applicant's second head of claim 9

2. Admissibility of the applicant's third head of claim 10

B. Substance 11

1. Preliminary observations 11

2. Second head of claim 13

(a) Preliminary observations 13

(1) Jurisdiction of the General Court 13

(2) Law applicable to the dispute 13

(b) Third plea in law, alleging failure by the Commission to satisfy its burden of proof 14

(c) Fourth plea in law, alleging errors in the final audit reports 18

(1) Level of expertise of the auditors 18

(2) Time sheets 19

(3) Delay in invoicing and payment in the projects covered by Grant Agreements B and C 19

(4) Use of non-EU suppliers on the project covered by Grant Agreement B 21

(5) Quality of the applicant's work 22

(d) First plea in law, alleging that the audit rules followed by the auditors were never agreed upon by the parties 23

(e) Second plea in law, alleging, first, an unreasonable delay in the issue of the final audit reports to the applicant and, second, mismanagement by the Commission of the projects in question 24

3. First head of claim, concerning an application for annulment of the contested decision 26

(a) Fifth plea in law, alleging a lack of competence on the part of the Commission to adopt the contested decision 26

(b) First complaint of the second plea, alleging an unreasonable delay in the issue of the final audit reports to the applicant 30

IV. Costs 30