

# **Bi-Annual Management Report DG INFSO**

**MT meeting**

**01 January 2011 – 30 June 2011**



**European Commission**  
Information Society and Media





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# 1. Introduction

This Bi-annual Management Report (BMR) covers the period from 1 January to 30 June 2011 and is accompanied by a set of Annexes containing more detailed information. The report complies with the Code of Conduct for Commissioners (SEC(2004) 1487/2), the Communication of 10.02.2010 on the Working Methods of the Commission 2010-2014 (C(2010) 1100), and the Procedures agreed between DG INFSO and the Commissioner and her Cabinet.



## 2. Implementation of the 2011 Budget

### 2.1. Commitments & Payments - Status of Implementation up to 30 June 2011

As far as commitment appropriations are concerned, implementation at end of June was ahead with respect to the forecast (133.75%). Areas of minor under-implementation with respect to forecast were the electronic communications line (09 02 01), the BEREC Office operational line (09 02 04 02), and the audiovisual policy line (09 02 05). Under-implementation causes were minor delays in individual commitments on the electronic communications and audiovisual policy lines, which do not appear to be permanent sources of under-implementation. The under-implementation on the BEREC Office operational line should be absorbed once the BEREC Office gains financial autonomy in September 2011, after which the line will be used to finance its operational expenditure. An overall implementation rate of 100% or close can therefore be expected by the end of the year.

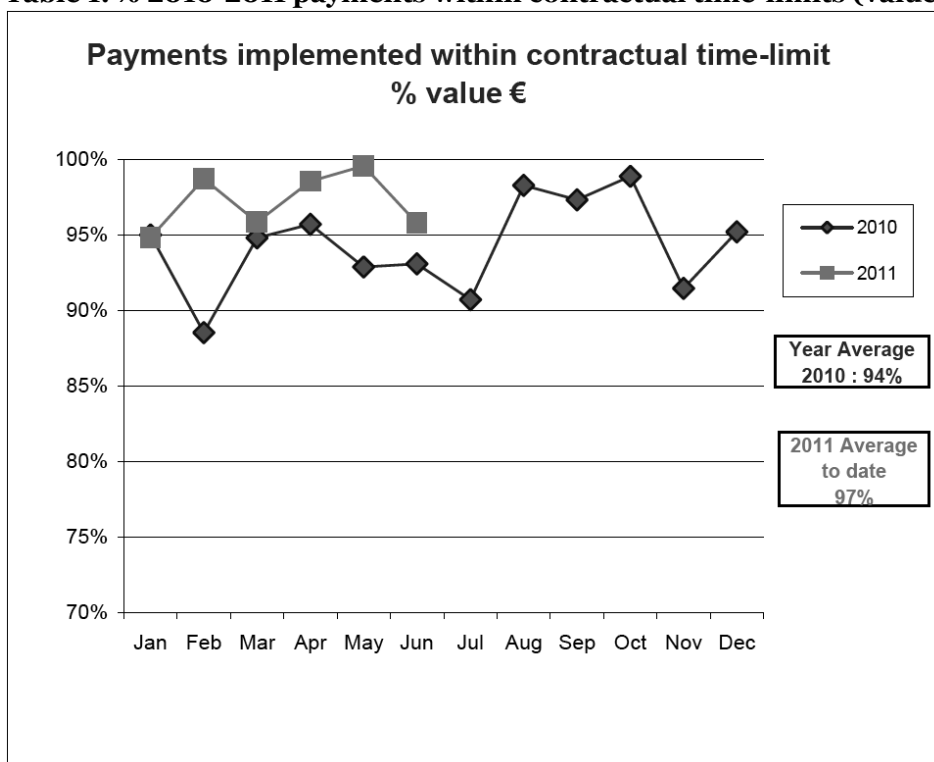
Concerning payment appropriations, implementation at the end of June was ahead with respect to forecast (134.22%). Areas of major under-implementation with respect to forecast were the audiovisual policy line (09 02 05), Erasmus for Journalists (09 02 06), eContent completion (09 03 02) and ENIAC administrative line (09 04 01 05). On the audiovisual policy and Erasmus for Journalists lines, the under-implementation was due to delays in the approval of final reports, whereas the under-implementation on the ENIAC administrative line has now been absorbed by the payment of the subsidy. On the eContent line, some cost statements and supporting documents were submitted with incomplete information, and have therefore delayed the processing of payments. Minor areas of under-implementation with respect to forecast were the BEREC Office administrative line (09 02 04 01), for which under-implementation should be absorbed once financial autonomy is achieved in September, and the FP7 Capacities – Research Infrastructure line (09 05 01), for which it is expected that the delays will be absorbed during the coming weeks. An implementation rate of 100% or close can therefore be expected by the end of the year.

An important over-implementation with respect to forecast occurred on the FP7 ICT Cooperation line (09 04 01 01). It has been anticipated that a transfer to increase the payment appropriations on the line will be necessary to sustain the Call 7 pre-financing outflows (outgoing payments). Upon re-assessment of estimates for payment outflows until year-end Dir R will determine whether a request shall be entered in the framework of the Global Transfer exercise in September 2011.

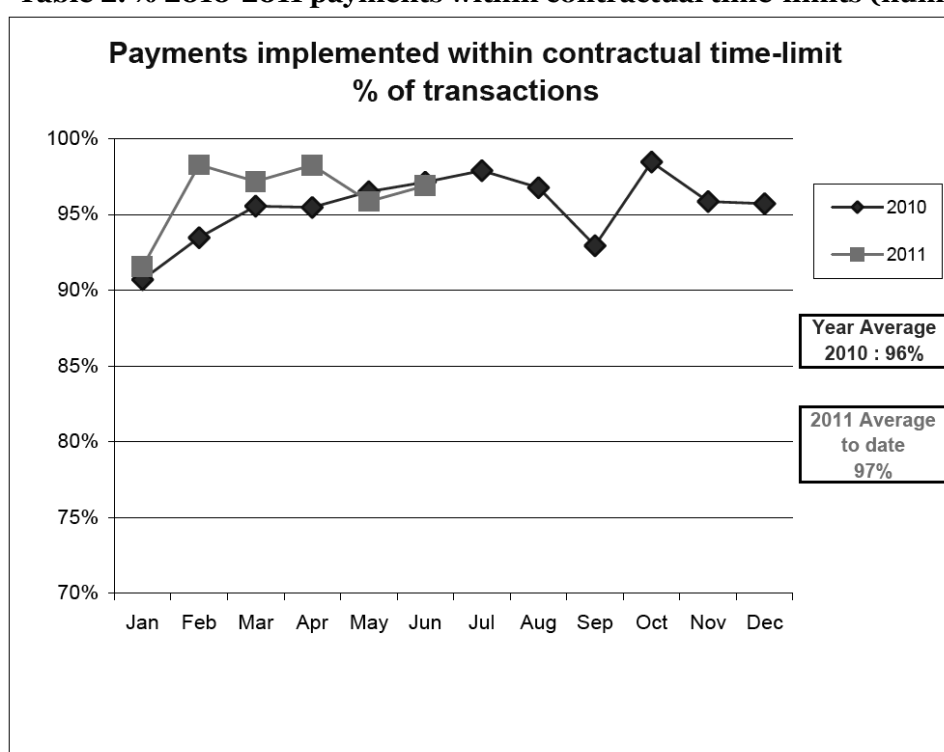
## 2.2. Payment times

Performance in terms of average payment times over the first six months of the year shows further consolidation of the positive trend of reduction in payment times recorded in the past years. A record performance of 97% was achieved in terms of underlying value of payments carried out within contractual time-limits, and in terms of number of transactions.

**Table 1: % 2010-2011 payments within contractual time-limits (value)**



**Table 2: % 2010-2011 payments within contractual time-limits (number)**





The positive trend is reflected in the breakdown by Directorate and by type of expenditure (see table 3).

Project payments represented 93% of the total value of payments, and the project payment times performance was the major source of improvement in the average value of payments processed within contractual time-limits.

The changes to the meetings payment circuit also contributed to improve overall performance in terms of number of transactions processed within contractual time-limits.

In terms of total number of payments, 59% were for evaluations and reviews, 18% for meetings, 15% for projects, and 8% for procurement.

## Breakdown of payments by Directorate and by type of expenditure

DC INFO: BMR - 01.01.2011 - 30.06.2011

## 2.3. Status of Recovery Orders

During the first semester of 2011 DG INFSO has focussed in the processing of recovery orders, issuing new and following up existing open recovery orders.

The main reason for new recovery orders during 2011 is the implementation of audit results (92 cases) and a further 65 for liquidated damages in the context of follow-up to audits. In addition, 19 recovery orders have been issued while processing final payments and 3 of them refer to waivers of previous recovery orders.

DG INFSO has processed 7 recoveries for bankruptcies, out of which 3 have been issued by the Participants Guarantee Fund.

In addition, DG INFSO has partially or totally recovered the initial contribution to the Participants Guarantee Fund in 2 projects in 2011.

There have been 5 recovery orders due to Contribution of candidate countries to EU programmes, and 8 recoveries for other reasons.

All details are provided in *Annex A1*.



### 3. Changes to the Financial Circuits

DG INFSO's financial circuits underwent a complete revision in the course of 2010 in order to take into account changes in our organisational structure, the introduction of new IT tools and the introduction of new procedures have called for its complete revision. As a result, the following is, inter alia, now covered by the documentation:

- The specificities of directorates without OS/AFU and units that report directly to the director-general or the deputy directors-general;
- The financial circuits where iFlow, MIPS, PRESTO/SYSDRINK and WEBDOR are used to register electronic visas;
- The financial circuits concerning the subsidies to ENISA, BEREC Office and the joint undertakings; and
- The financial circuits covering the financial transactions of the FP7 participants guarantee fund.

The full documentation which has been subject to several validation rounds with the OS/AFU has been implemented as of 1<sup>st</sup> April 2011, and is currently available in the Manual of Procedures.

As of June 2011, further organisational changes related to the shift of Unit 02 to Directorate S and its subsequent renaming to Unit S5 were also integrated into the financial circuits.



## 4. Risk Management

At the end of 2010, and in line with the 2011 Management Plan (MP) process, DG INFSO carried out its annual High-Level Risk Assessment (HLRA) exercise for 2010-2011 (Ares(2011)78960). Five main risks were identified and assessed for 2011:

- FP 8 simplification (reinforced monitoring for future as implications of this risk will not arise in 2011)
- External entities (reinforced monitoring)
- EU CERT Office (reinforced monitoring)
- Digital Agenda Assembly (reinforced monitoring)
- Fraud in FP and CIP projects (reinforced monitoring)

None of the risks identified and assessed during the HLRA-exercise for 2011 were considered to have sufficient political/reputational exposure to be considered as 'critical risks' in 2011.

Following this exercise, a consolidated risk register with the most significant risks at DG-level was established and endorsed by the Management Team meeting on 31.01.2011 ([http://intra.infso.cec.eu.int/S2/HLRA/doc/final\\_HLRA\\_2010-2011.doc](http://intra.infso.cec.eu.int/S2/HLRA/doc/final_HLRA_2010-2011.doc)).

These risks are reviewed in the context of the mid-year review of the Management Plan (Ares(2011)672586) and are followed up via the Internal Control Coordination (ICC) Group at DG-wide level.

The other risks, i.e. those below the HLRA main risks level threshold, are being addressed by 'continued line management' from the individual Directorate(s) concerned and reported on in their twice-annual Directorate Management Reports (DMRs).





## 5. Internal Control & Internal Control Standards (ICS)

### 5.1.State-of-play of the implementation of the Internal Control Standards

In 2010, DG INFSO has implemented the requirements of the Internal Control Standards. There are no critical or major ICS-related weaknesses that would lead to an AAR reservation. After a thorough screening of compliance with the Internal Control Standards, DG INFSO can be said to be fully compliant with all ICS except for some of the requirements relating to mission statements, document archiving, and management supervision. Actions to reach full compliance have been identified and will be implemented by the end of 2011. The Internal Control Standard 9: "Management Supervision" was identified as a priority ICS for 2011.

As agreed in the beginning of 2011 and in order to remedy the weaknesses identified by the review DG INFSO launched in May an awareness-raising campaign on ICS (Ares(2011)522254). A practical guidance on how to better implement ICS in daily work has been printed out and distributed to staff during the meetings with the units. Usually the meetings are well received by staff and colleagues are interested to learn more about ICS.. A number of proposals for follow-up actions have already been made; they include in particular the need for more focussed information/guidance, enhanced elearning and easier possibilities to monitor the obligatory trainings. The meetings should be completed before the end of the year and the conclusions should be reported to the Director-General by year end with proposals for follow-up actions.

As foreseen all mission statements has been accordingly updated and subsequently uploaded on the intranet.

In line with the new procedures in place since January 2011 (Ares 2010/977694) exceptions are reported monthly and kept in a central register.

Other actions to remedy the weaknesses identified by the review include the following:

- training on "Dealing with lobbies" will be offered again;
- action will be undertaken to get closer to 100% (from 79% in February 2011) of validated job objectives for all staff;
- risk management process will be streamlined to ensure better continuity;
- an archive plan for the DG will be finalised by the end of 2011;
- ICS review will be carried out before end of 2011 in order to identify early any gaps in compliance and propose any appropriate corrective actions;
- Directorates have been requested to suggest ICS for prioritisation already in the mid-year DMRs so that their proposals can be better taken into consideration in the Management Plan exercise.

## 5.2. Reporting by Directors as Authorising Officers by Sub-Delegation (DMRs)

Through their 2011 mid-term Directorates' Management Reports (DMRs), the INFSO Directors as Authorising Officers by Sub-Delegation (AOSDs) reported reasonable assurance that risks are under control and that suitable controls are in place and working as intended. They did not raise any material issues<sup>1</sup> to be considered in the context of the declaration by the Director-General as Authorising Officer by Delegation (AOD).

Among the points for attention raised are:

During the first semester of 2011 a number of minor exceptions<sup>2</sup> (= "deviations from established processes and procedures") were made, but these are considered to be of limited relevance and non-systemic. They have been adequately justified, duly authorised and documented (logged through the appropriate administrative/financial IT tools). Where possible, measures have been taken to avoid similar cases in the future. One instance of overruling regarding the venue for the Digital Agenda Assembly has been reported (note to the file Ares(2011)499408)

Besides the reporting on exceptions through the DMRs (Directorate Management Reports), monthly reports on exceptions are sent by all Directorates to Dir S (Ares 2010/977694).

In the context of sensitive functions, Directors reported on the status of the mitigating measures in place at the end of June 2011 – as required.

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<sup>1</sup> These "material issues" relate to the principles of legality, regularity, effectiveness, efficiency and economy (sound financial management) and/or to risk management and internal control.

<sup>2</sup> These include: extensions of FDI after expiration, *saisine a posteriori* and/or additional commitments for existing payment obligations ('Couverture des Obligations Subsistantes' (COS)), payment approved by acting Head of OS under a different profile than the one stated in the deputising form several categories related to experts [hotel cancellation fees for a review expert paid through the AL ; Appointment Letter paid on basis of written contribution due to the expert's impossibility to travel) extension of total contracted days from 30 to 37 and grant of non-standard travel arrangements) and several categories related to public procurement. ).

## 6. Status Report on External Financial Audits up to 30 June 2011

The implementation in quantitative and qualitative terms of the working programme on external financial audits is progressing as planned. An important part of the programme concerns the gathering of statistical relevant data on error rates pertinent to FP7. In the first six months, 52 statistically selected cost statements have been audited (audit closed). Balance between outsourced/in-house performed audits as of 30.06.2011 is in line with the objective (74%/26%).

### 6.1. Initiation of New Audits

As of 30.06.2011, all new audits launched by DG INFSO in 2011 were selected on the basis of risk-considerations. 61% of them relate to FP7, 27% to FP6, 3% to FP5 and 9% to non-research programmes. In addition, 6 audits were launched by the European Court of Auditors.

DG INFSO has not drawn a second FP7 MUS as it was considered that this would not be a good use of resources. Indeed, the expected outcome in terms of detected error rate would not vary much from the one resulting from the first MUS sample. The need to extend the number of statistically selected audits at this moment of time is not considered necessary. It is expected to have 107 of representatively selected audits closed (on 114 representative cost statements) at the end of the year which will allow to draw conclusions on the most likely error rate in the overall population.

DG INFSO will focus in the second semester of 2011 on carrying out MUS audits from the first sample that were not yet launched (36 audits that were delayed in view of coordination efforts with the Research DGs to avoid unnecessary concentration of audits on the same beneficiaries in the same time frame).

Finally, the 20 audits on non-research projects initially planned to be launched in the course of first semester 2011 have been postponed to second semester because of the non-availability of a framework contract with external audit firms. The tender procedure is currently in the evaluation phase and it is expected that the framework contract will be available in the course of the third quarter of 2011.

Overall, up to 30.06.2011, DG INFSO has launched 124 audits, which is slightly above 50% of the 2011 target of 221 audits to be launched.

#### Overview of audits initiated in 2011 up to 30.06.2010

|              | INFSO     | External Audit Firm | ECA      | TOTAL      |
|--------------|-----------|---------------------|----------|------------|
| FP5          | 3         | 0                   | 0        | 3          |
| FP6          | 10        | 22                  | 1        | 33         |
| FP7          | 10        | 63                  | 5        | 78         |
| Non-Research | 10        | 0                   | 0        | 10         |
| <b>TOTAL</b> | <b>33</b> | <b>85</b>           | <b>6</b> | <b>124</b> |

## 6.2. Status on Ongoing Files

198 audits are currently ongoing of which 6 relate to FP5, 63 to FP6, 120 to FP7 and 9 to non-research programmes. The figures include 8 audits initiated and conducted by the ECA. These audits are included in the statistics as the administrative and financial follow-up is ensured by the DG.

### Overview of audits ongoing up to 30.06.2011

|              | INFSO     | External Audit Firm | ECA      | TOTAL      |
|--------------|-----------|---------------------|----------|------------|
| FP5          | 6         | 0                   | 0        | 6          |
| FP6          | 15        | 44                  | 4        | 63         |
| FP7          | 18        | 98                  | 4        | 120        |
| Non-Research | 9         | 0                   | 0        | 9          |
| <b>TOTAL</b> | <b>48</b> | <b>142</b>          | <b>8</b> | <b>198</b> |

## 6.3. Finalised Audits

Up to 30.06.2011 a total of 98 audits were closed. 2 relate to FP5, 28 to FP6, 61 to FP7, and 7 to non-research.

The number of audits closed is slightly above the objective of first semester (87) and corresponds to 45% of 2011 objective. Compared to previous year there is a significant increase regarding the number of audits closed (73 as of end of first semester 2010). This reflects the efforts taken in order to come to a more balanced charge of work throughout the year and to avoid peaks in work load.

### Overview of audits closed in the first semester 2011

|              | INFSO     | External Audit Firm | ECA      | TOTAL     |
|--------------|-----------|---------------------|----------|-----------|
| FP5          | 2         | 0                   | 0        | 2         |
| FP6          | 11        | 15                  | 2        | 28        |
| FP7          | 5         | 52                  | 4        | 61        |
| Non-Research | 74        |                     | 0        | 7         |
| <b>TOTAL</b> | <b>25</b> | <b>67</b>           | <b>6</b> | <b>98</b> |

## 6.4. Audit Results

**Annex B1** provides a quantitative overview of the finalised audits, both in terms of numbers of audits and the resulting adjustment rates.

For FP6 and FP7, the error rate is calculated at funding level according to the following formula:

$$\frac{\text{Adjustments to funding accepted before audit in favour of the EC}^3}{\text{Total funding accepted before audit}}$$

The aggregated FP6 error rate (excluding risk-based and follow-up audits) has stabilised at 3.9%.

<sup>3</sup> adjustments to funding accepted before audit= (funding accepted before audit-funding eligible after audit)

The FP7 error rate (calculated on the basis of representative sample) is 3.1%. The error rate calculation is based on 85 audited cost statements. The error rate noted in FP7 overall appears to be more favourable than in FP6. It can be attributed partly to the simplification of methodology (Commission decision C(2011)174 of 24.01.2011), partly to the "learning curve" for beneficiaries who were participating in FP6, and partly to the dissuasive effects of the audit campaign. However, it is still too early to draw conclusions on the residual error rate for 2011.

## 6.5. Implementation of Audit Results

A summary of the implementation of the external audit results up to 30.06.2011 can be found in **Annex B2**. The overall status is quite favourable. It can be concluded that by and large all audits results related to 2010 and earlier which are not subject to contestation have been implemented.

Supportive to this positive development is certainly the full deployment of WebARPS which considerably shortened the implementation cycle and the monitoring of implementation within the frame of the monthly Ex-post Auditors Coordination (EPAC) meetings with DG INFSO's administrative and finance units.

## 6.6. Risk-based Audits

### • General concept

The aim of risk-based auditing is to identify and control those beneficiaries that expose a much higher than average risk to have overstated their costs in an irregular and potentially deliberate manner. This requires selection methods, which discriminate between "normal" and "risky" beneficiaries, and refined audit methods in order to assess the risk, detect anomalies and safeguard evidence when required.

The underlying logic for investing substantial resources in risk-based auditing is that there is a different level of tolerance (materiality) for errors and mistakes than for fraud and intentional over-claims. Whereas 2% of errors or mistakes in the cost claims are perceived as acceptable, the tolerance for intentional over-claims is much lower – even though zero-tolerance is unrealistic.

In order to reach a tolerable level of fraud/irregularities without increasing red tape highly selective detection/correction/prevention methods are needed and this is exactly what DG INFSO has been trying to do in the development and implementation of risk-based audits.

Audits selected on the basis of risk do not contribute to the representative detected error rate as they are not considered as statistically representative for the whole population. They do however influence the residual error rate by increasing the share of the budget that is clean from errors. Qualitative results and lessons learnt will also be presented here.

- **Results in 2011**

In 2011 a lot of work in risk-based audits was focussed on cases of organised networks of companies and individuals which have set up systematic fraud mechanisms. The modus operandi involves multiple entities and escapes the traditional ex-ante and ex-post control mechanisms. The average error rate of risk-based audits was 60% in the first half of 2011.

Most risk-based audits confirmed important overstatement of costs. In some cases, the audit scope has been extended to the member of the same consortia and even to subcontractors in order to have a global picture of the irregularities. Those risk-based audits have led in some instances to termination of project participations, exclusion from ongoing grant award procedures and/or in the transfer of files to OLAF.

- **The COCOON case**

A specific example of how the audit findings in the frame of risk-based audits have driven the reflection and improvement processes in the DG is to be found in the coordination of efforts and the take up of corrective actions in the "Cocoon case".

This case relates to a group of interrelated companies which have over claimed costs in an organised manner by cross-charging staff in various projects at the same time and by using fictitious companies as partners or subcontractors.

More than three years of intensive cooperation has taken place between audits, administrative investigations and criminal investigations involving DG INFSO, OLAF and national law enforcement authorities.

The Italian judicial authorities opened a criminal investigation on the basis of information gathered and forwarded by the Commission and OLAF. This

criminal investigation was concluded and information was made public in May 2011 by the Italian judicial authorities.

These projects are part of the broader OLAF investigation.

Whereas most of the administrative measures (recoveries and termination) were already initiated by the Commission services, the relevant Commission services have initiated the appropriate measures (termination or "informed" technical reviews") with respect to the open projects concerned.

Audits and OLAF investigation with respect to the COCOON network continued throughout 2011. 6 additional audits on beneficiaries related to the COCOON network were closed in the first half of 2011. Most of the audit work in this case is now completed and the audit procedures need to be finalized in the second half of 2011 in order to complete the administrative follow-up of the COCOON case.

The administrative follow-up in terms of recoveries, terminations, exclusions is coordinated in weekly meetings with the OS/AFUs, Dir C and Dir S (S4 and S5).

Carrying out administrative follow-up during an ongoing OLAF investigation is a novel approach at the Commission. The results of this approach are convincing:

DG INFSO is also coordinating with OLAF, the Commission's Legal Service and DG BUDG in order to become civil party in the legal case that will follow the conclusion of the COCOON criminal investigation.

## • The SPIDER case

The SPIDER case is an offspring of the COCOON case. DG INFSO has been cooperating intensively with OLAF in this case as well.

During the first half of 2011, 6 audits had already been closed on beneficiaries related to this case, leading to a significant rejection of cost. This brings the total number of audits closed at 10. At least 20 audits will

need to be carried out in 2011.

Furthermore, and in parallel to the administrative follow-up by audits, criminal investigations have been and will be launched in several Member States to defend the EU's financial interests via the judicial procedure.

## 6.7. Certification policy in FP7

On 24.01.2011 the Commission has adopted new criteria (Simplification on methodology (Commission decision C(2011)174 of 24.01.2011)) regarding the acceptance of average personnel cost methods used by beneficiaries. Under the terms of these criteria average hourly labour rates are acceptable as far as based on actual costs, consistently applied by the beneficiary, exclusive of ineligible items and regarding productive hours corresponding to the usual accounting practice of the beneficiary as far.

The criteria are to be applied with retroactive effect. The retroactivity of this decision affects the audit conclusions of three audits which have already been closed. The audit conclusions cannot be implemented as such. DG INFSO is in consultation with the research DGs in order to find a co-ordinated approach regarding the handling of these cases. There are currently no extrapolation cases ongoing in this respect. The conclusions of all audits ongoing at the time of the simplification decision have been amended to the new provisions.

The simplification regarding the flat rate financing of SME owners did not have any effect on audits closed or ongoing in the first half of 2011.

DG INFSO is represented in the Joint Assessment Committee which assesses requests of certificates on the methodology for approval. The Joint Assessment Committee comprises representatives and case handlers of DG RTD and DG INFSO. The work of this group has been concentrated in the first half of the year on update of the grant agreements in view of the effects of the simplification decision on the (Certificate on Methodology) CoM/CoMAv (Certificate on Methodology average –related to personnel costs). Apart from that it appears that some beneficiaries intend to replace the CoMAv by a CoM which allows them to go back to their usual accounting practice regarding the calculation of average labour rates and being liberated from the obligation to provide interim certificates on financial statements at the same time.

Dir S further supports the handling of Certificate on Financial Statement (CFS) by operating an advisory service on a bi-lateral basis to services requesting support or within the frame of the EPAC network.



## 6.8. Conclusion

The common audit strategy FP7 is being implemented according to plan. Focus is on the provision of statistical error rates at the end of the year which will allow to conclude on the most likely error rate in the population. The FP6 audit strategy has been fully implemented in quantitative and qualitative terms at the end of 2010. This has facilitated the lifting of the reservation in the Annual Activity Report (AAR) concerning error rates exceeding the control target of 2%. At this stage there are still a significant number of extrapolation cases ongoing which are intended to be closed in the second semester of 2011. The ongoing FP6 audits concern risk considerations.

In the second half of 2011 focus will be placed on the prevention and detection of fraud and irregularities. To this effect a significant number of risk based audits will be launched. In the same context Dir S has formalised its approach to risk based audits. The approach has been adopted at the level of the ICT-Directors on 04.05.2011. At the same time Dir S has elaborated an update to the DG INFSO anti-fraud strategy which describes the implemented control measures with respect to fraud detection and prevention. The strategy encompasses all lessons learned from risk based audits and defines action/responsibility plan on the measures to be taken. It is envisaged to obtain management approval to this document shortly. One of the challenges for Dir S will be in the second part of the year to find in collaboration with all services concerned the right approach regarding the creation of the right awareness level among services regarding this strategy.



# 7. European Court of Auditors (ECA)

## 7.1. Declaration of Assurance (DAS) 2009 – Recommendations

The European Parliament adopted on 10 May 2011 its decision to grant the discharge to the Commission for its implementation of the budget for the financial year 2009, by a large majority (506/132/20).

The Council and the Parliament have formulated respectively 86 and 213 recommendations to the Commission, based on the Annual Report 2009 of the Court of Auditors. Among these recommendations, 1 concerns DG INFSO as "chef de file" (recommendation concerning Artemis' accounts). DG INFSO is associated to another 17 recommendations (11 from the Council and 6 from the Parliament) where DG RTD is "chef de file".

## 7.2. The European Court of Auditors Annual report 2010

### • The Court's audit work and preliminary findings

For DG INFSO, the Court's Annual Report 2010 is based on the results of the following audits:

- Transaction audits: for 2010, 27 DG INFSO payments were checked by the Court. Seventeen statements of Preliminary Findings were issued in relation to these payments. The errors mainly concerned the overstatement of eligible personnel and/or indirect costs (8 cases).
- Follow-up to Court's previous findings (PF 4261)
- Follow-up of Court's previous recommendations (PF 4265)
- Ex-post audit strategy and recoveries (PF 4330)
- DG INFSO's control systems and AAR (PF 4350)

### • The Court's draft Annual Report 2010

DG INFSO is mainly concerned by Chapter 6 (Research and other internal policies).

In **Chapter 6** the general results drawn by the Court concerning the assessment made on supervisory /control systems and on the errors found in transactions selected for testing in the framework of DAS 2010, are the following:

- Supervisory and control systems: The Court considers that, overall, the systems are partially effective. This assessment is in line with the one made by the Court for 2009. The Court considers however that on the one hand ex-post financial audits, on the other hand the implementation of recoveries/financial corrections, are both effective in terms of supervisory/control systems.

- Results of transactions testing: the Court indicates that 41% (24% in 2009) of the transactions tested for DAS 2010 were affected by an error. The Court estimates that the most likely error rate is 1.6%. It indicates however that it found a significant level of error in FP6 and FP7 interim and final payments

The Court also reports in Chapter 6 a number of problems already noted in previous years (declaration of overstated eligible costs, in particular in relation with personnel costs and indirect costs; submission of audit certificates that confirmed the correctness of costs, although the Court detected ineligible costs). The Court also considers that DG INFSO should have maintained a reservation for FP6.

The Court highlights several positive aspects, including the improvement in making timely payments to beneficiaries, the effectiveness of ex-post audits and the more extensive use by the Commission of liquidated damages.

The pre-contradictory meeting with the Court took place on 20.06.2011 for the research part of Chapter 6. The formal contradictory meeting, planned initially for 6 July, was cancelled as the Court and the Commission agreed, before that meeting, on the Court's text of chapter 6 and on the Commission's reply to it.

### 7.3. Declaration of Assurance 2011

#### • Transaction audits

During the first semester of 2011, the Court requested the supporting documents for 6 transactions dealt with by DG INFSO.

### 7.4. Special Reports

#### **Performance Audit: "e-Government":**

The aim of the Court's audit was to assess the effectiveness, efficiency and economy of the e-Government projects co-financed by the ERDF.

Twenty-eight projects were selected in four Member States (FR, IT, SP and PL).

The Court sent its draft report, with its conclusions and recommendations, in April 2011. The Court concludes that the e-Government projects supported by the ERDF have contributed to the development of electronic public services. It considers however that the benefits obtained are lower than expected, due to insufficient focus on project results.

The contradictory meeting with the Court took place on 17 June. The next steps are the publication by the Court of its special report, with the Commission's replies, as well as the presentation of this report to the Budgetary Control Committee of the European Parliament.

## 8. Internal Audit Service (IAS)

In 2011, progress on implementation of IAS recommendations addressed to DG INFSO was reported beginning of July to the IAS (and onward to the Audit Progress Committee - APC) via the update of the Governance Risk and Compliance – GRC (= the upgraded version of the AMS- Audit Management System IssueTrack database<sup>4</sup>).

Following the reminder of late implementation of very important recommendation from the Audit Progress Committee received in December 2010, DG INFSO has taken further action to strengthen its monitoring of audit recommendations accepted by management arising from both IAS and IAC audits. Quarterly reporting on progress in implementation of audit recommendations was introduced. Additionally, the implementation of open critical and very important IAS and IAC recommendations is monitored on a monthly basis. If at the end of December 2010 DG INFSO still had one very important recommendation only partially completed, this recommendation was considered completed at the end of June 2011 as a result of reinforced monitoring and focused efforts.

This very important recommendation concerned the Audit on "FP7 Controls Desing" and was labelled "Liquidated damages and financial penalties. Requirements concerning liquidated damages have been met since mid-2009. Concerning the financial penalties, a DG INFSO internal Early Warning System (EWS) guidance note on legal entities considered to have committed irregularities and thus for flagging in the EWS, was approved by the Director General of DG INFSO in June 2010. DG RTD has agreed to follow DG INFSO's proposal for a guidance note that was forwarded to DG RTD as input for the common guidelines on administrative and financial penalties. As a result of the ongoing coordination with DG RTD during 2011, the agreed version of the document was presented at the OS/AFU meeting on 30<sup>th</sup> June for comments subjected to the ICT directors' approval at the meeting of 12 July 2011.

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<sup>4</sup> AMS is a comprehensive, fully-integrated audit-automation system that allows audit units to complete all of their work in a single database. With modules for risk assessment, planning, scheduling, work papers, reporting, issue tracking, time and expenses quality assurance and personnel records, AMS is the most complete way to operate an audit department. In the Commission, AMS is the main tool for managing audits and consultancies carried out by IAS and the Internal Audit Capabilities (IAC's), for following up audit recommendations as well as for the Internal management of audit staff.



## 9. Internal Audit Capability and Related Matters

During the first semester of 2011, the Internal Audit Capability (IAC) of DG INFSO finalised one audit: "DG INFSO's activities related to the functioning and policy objectives of Artemis and Eniac (JTIs)". Additionally one follow-up audit was finalised: "FP7 Project Review".

Two audits were launched during the first half of 2011 and are still in progress: "Human Resources" and "ICS 11 Document Management".

The Head of Unit of the IAC has acted as secretary of the Audit, Control and Budgetary committee, chaired by the Director General, since its creation in May 2010. The main purpose of the committee is to brief the Director General and the members of the Committee on the evolution of the planning, the results of IAC and IAS audits and the degree of implementation of recommendations, as well as all other internal control, auditing and budget issues.

The IAC has also given advice upon request to the DG INFSO management.

### 9.1. Overview of the Audits and Internal Organisation

All audits planned to be finished in the first half of the year have been executed except two, which are in a final phase<sup>5</sup>.

The software "Auto Audit" has systematically been used since mid-2007 to carry out audits in order to have a better audit trail, a formalised supervision and a production of ad hoc reports (observations and recommendations per audit, time sheets etc.). It has been replaced by an updated version (GRC), which offers further possibilities as audit software.

### 9.2. Two finalised Audits

The results of the two finalised audits (one initial and one follow-up) show that DG INFSO makes continuous efforts to improve its internal control systems. However, several recommendations were only partially implemented.

A detail of the status of recommendations is showed in the table hereafter:

Audit on DG INFSO's activities related to the functioning and policy objectives of Artemis and Eniac (JTIs):

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<sup>5</sup> One being at the stage of draft reporting, the other at the stage of validation the draft observations.

- 5 recommendations out of 5 (100%) were accepted by the auditees;

| Audits   | Accepted Recommendations |      |      | Rejected Recommendations |      |      | Dropped by IAC | Total |
|--|--------------------------|------|------|--------------------------|------|------|----------------|-------|
|  | VI (*)                   | I(*) | D(*) | VI (*)                   | I(*) | D(*) |                |       |
| DG INFSO's activities related to the functioning and policy objectives of Artemis and Eniac (JTIs) |                          | 5    |      |                          |      |      |                | 5     |
| Total  | 5                        |      |      | 0                        |      |      |                | 5     |
|  | 5                        |      |      |                          |      |      |                |       |

Follow-up audit on FP7 Project Review:

- 5 recommendations out of 6 are only partially implemented.

| Follow- up audit of | Implemented Recommendations |      |      | Partially implemented/ Not implemented Recommendations |      |      | Dropped by IAC | Total |
|---------------------|-----------------------------|------|------|--|------|------|----------------|-------|
|                     | VI (*)                      | I(*) | D(*) | VI (*)   | I(*) | D(*) |                |       |
| FP7 Project Reviews | 0                           | 0    | 1    | 4  | 2    | 0    |                | 7     |
| Total               | 1                           |      |      | 6  |      |      |                | 7     |

(\*) VI: Very important

I: Important

D: Desirable

The IAC's Opinion concerning the audit "DG INFSO's activities related to the functioning and policy objectives of Artemis and Eniac (JTIs) "is that DG INFSO's internal control system in place provides reasonable assurance.<sup>6</sup>

The IAC's Opinion on the recommendations resulting from the follow-up audit on "FP7 projects reviews" is that the recommendations have not yet been adequately and effectively implemented. The follow-up audit assessed that all 4 very important recommendations were only partially implemented.

### 9.3. Audits in Progress

Two audits were launched during the first half of 2011 and are still in progress: "Human Resources" and "ICS 11 Document Management". The draft report for the audit "ICS 11 Document Management" was issued on June 14<sup>th</sup>, 2011. For the audit on "Human Resources" a meeting to discuss the draft observations table was held on June 10<sup>th</sup>, 2011 and the draft report will be issued at the beginning of July.

Engagement Planning Memorandums (EPM) have been drafted for the audits planned for the 2<sup>nd</sup> semester of 2011: audits on "Policy design and

<sup>6</sup> Even an effective internal control system, no matter how well designed and operated, has inherent limitations – including the possibility of the circumvention or overriding of controls – and therefore can provide only reasonable assurance to management regarding the achievement of the business objectives and not absolute assurance.



implementation" and on "Effective use of studies". These EPMs have been discussed in the Management meeting of June 27<sup>th</sup>.

## 9.4. Consultancy

The IAC has also given advice upon request to DG INFSO senior management. This advice covered mainly internal control and risk management processes and issues related to the implementation of audit recommendations.

## 9.5. Implementation Status of Open IAC Recommendations

At the end of the first semester of 2011 the status of IAC accepted audit recommendations according to the auditees was the following:

- Audit on Procurement including Appointment Letters. One very important recommendation is still ongoing and has to be implemented by the end of 2011.
- Audit on FP7 Project Reviews. At the end of this reporting period the ICT Directors reported that from the 4 very important recommendations only two recommendations are partially implemented and thus still ongoing. These recommendations have to be implemented by the end of 2011.

For the recommendations of the Audits on "CIP, Safer Internet and other non-research programmes not covered by IST framework programmes", "Audit on Evaluation of proposals FP7", "Evaluation of Research Framework Programmes managed by DG INFSO" and "DG INFSO's activities related to the functioning and policy objectives of Artemis and Eniac (JTIs)" the follow up audits are planned for the second semester of 2011.



## 10. OLAF Files

The status of OLAF files, both open and under evaluation was analysed and updated with OLAF in early 2011. During the first half of 2011, 5 new files were communicated to OLAF resulting directly from the audit work carried out by Unit S5.

An overview including a short description of the ongoing OLAF cases is in ***Annex C1***.



# 11. European Ombudsman Files

In the first semester of 2011 DG INFSO:

- Received three new complaints as "chef de file" ;
- Replied to two complaints as "DG associated";
- Received two closing decisions without remark;
- Transmitted seven replies to the Ombudsman concerning six complaints and one 'request for information'. One of those six complaints was an informal complaint.

See ***Annex D1*** for the full status report.



## 12. Litigation

With respect to litigation before the General Court of the Court of Justice, DG INFSO has contributed to the establishment of the Commission position and provides in-put to on-going cases before the Court that are handled by the Commission Legal Service.

Two new Court cases have been opened following applications from applicants in the period from 01.01.2011 to 30.06. 2011. Both cases concern contestation of audit results and associated implementation of audit results. One case is accompanied by an application for interim measures. A full list of on-going and closed cases in 2010 is in ***Annex E1***.

As it can be seen from the information provided in the Annex E1, one Court case has been successfully settled out of Court to the satisfaction of the parties in the 1<sup>st</sup> half of 2011.

No other Court cases have been closed in the 1<sup>st</sup> half of 2011.

The total number of on going Court cases in the 1<sup>st</sup> half of 2011 is 10.





## 13. Declaration and Reservations

No reservation has been issued in the 2010 Annual Activity Report.



## 14. Annexes

### ***Annex A – Chapter 2: Implementation of 2010 budget***

A1: Overview Status of Recovery orders

### ***Annex B – Chapter 6: Status Report on External Financial Audits up to 30 June 2011***

B1: External Audit Key Indicators – **Limited**

B2: Progress Report on Implementation of Audit Results – **Limited**

### ***Annex C – Chapter 10: OLAF Files***

### ***Annex D – Chapter 11: European Ombudsman files***

D1: State of Play of European Ombudsman files up to 30.06.2011 - **Limited**

### ***Annex E – Chapter 12: Litigation***

E1: Synopsis table on litigation ongoing and closed in the first half of 2011

DE WFSO: 582 - 01.01-2011 - 30.06-2011

# **Bi-Annual Management Report DG INFSO**

01 JANUARY 2011 – 30 JUNE 2011

## **Annexes**



## **Annexes - Table of Contents**

### ***Annex A – Chapter 2: Implementation of 2011 budget***

A1: Overview Status of Recovery orders

### ***Annex B – Chapter 6: Status Report on External Financial Audits up to 30 June 2011***

B1: External Audit Key Indicators – **Limited**

B2: Progress report on implementation of audits - **Limited**

### ***Annex C – Chapter 10: OLAF Files***

### ***Annex D – Chapter 11: European Ombudsman files***

D1: State of Play of European Ombudsman files up to 30 June 2011 - **Limited**

### ***Annex E – Chapter 12: Litigation***

E1: Synopsis table on litigation ongoing and closed in the first half of 2011

## ***Annex A – Chapter 2: Implementation of 2011 Budget***

- A1: Overview Status of Recovery orders

| Recovery Type  | Recovery Orders amount | GF intervention   | Cashed or compensated 2011 | Waived 2011 amount  | Cancelled 2011 amount | Balance30/06/2011 amount | Estimated amounts to be waived in the future | No of RO (01/01/2011-30/06/2011) | Estimated number of RO to be waived in the future |
|--|------------------------|-------------------|----------------------------|---------------------|-----------------------|--------------------------|--|----------------------------------|---|
| <b>Total</b>   | <b>9.805.815,77</b>    | <b>152.988,37</b> | <b>4.053.737,18</b>        | <b>1.083.300,99</b> | <b>128.014,59</b>     | <b>4.387.774,64</b>      | <b>852.016,91</b>                            | <b>198,00</b>                    | <b>25,00</b>                                      |
| Financial Audit                                      | 4.372.921,59           |                   | 862.985,35                 | 125.217,27          | 128.014,59            | 3.256.704,38             | 651.200,00                                   | 92                               | 18  |
| Final Payment  | 746.090,25             |                   | 19.631,46                  | 352.083,40          | 0,00                  | 374.375,39               |  | 19                               |   |
| Liquidated Damages                                   | 690.871,25             |                   | 196.743,29                 |                     |                       | 494.127,96               |  | 65                               |   |
| Liquidation/ bankruptcy                              | 357.949,26             | 152.988,37        | 4.143,98                   |                     |                       | 200.816,91               | 200.816,91                                   | 7                                | 7   |
| Contract Termination                                 |                        |                   |                            |                     |                       |                          |  |                                  |   |
| Recovery of the initial contribution to the GF       | 106.278,00             |                   | 62.828,00                  |                     |                       | 43.450,00                |  | 2                                |   |
| Contribution of candidate countries to EU programmes | 2.717.615,00           |                   | 2.699.315,00               |                     |                       | 18.300,00                |  | 5                                |   |
| Other/divers   | 814.090,42             |                   | 208.090,10                 | 606.000,32          |                       | 0,00                     |  | 8                                |   |



***Annex B – Chapter6: Status Report on External Financial Audits up to 30 June 2011 - Limited***

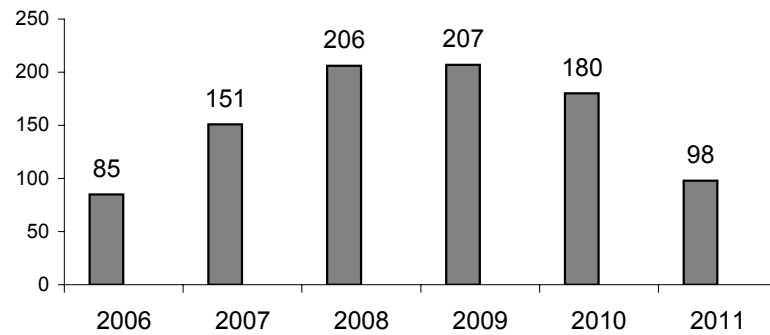
- B1: External Audit Key Indicators – **Limited**
- B2: Progress report on implementation of audit - **Limited**

# External audit key indicators

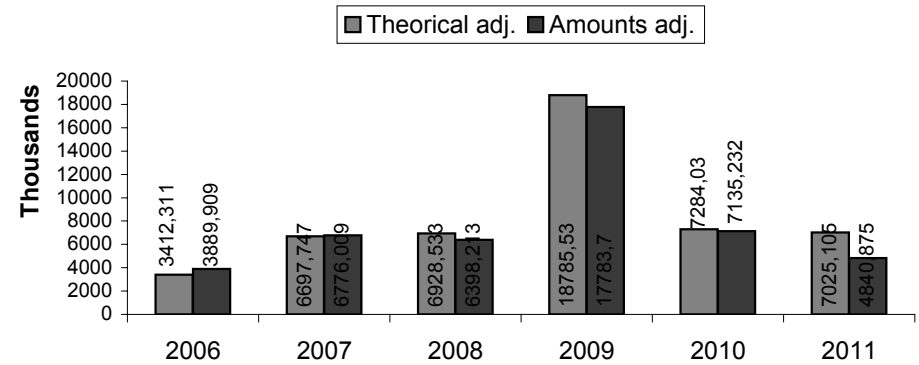
30.06.2011

BMR 1 January - 30 June 2011

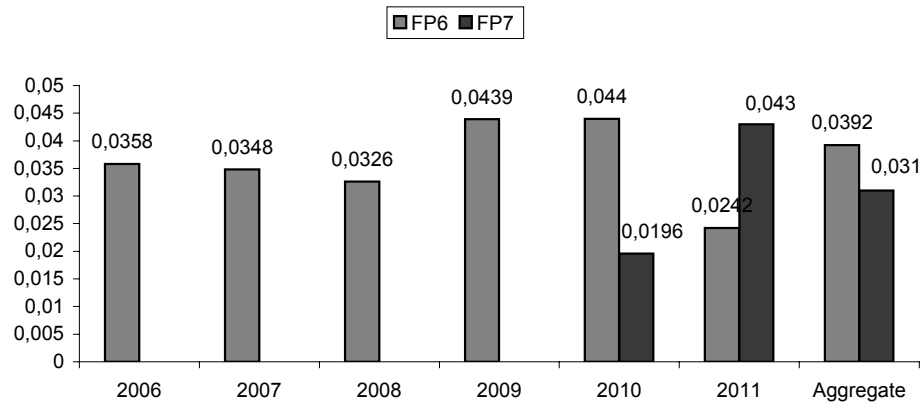
## Number of finalised audits per year



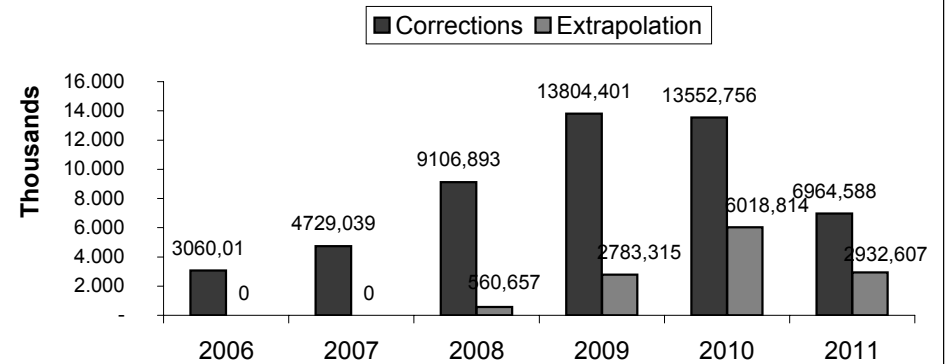
## Implementation of audit results by year audit was closed (FP5, FP6 & FP7)



## Error rate



## Implementation of audit results by year of implementation (FP5, FP6 & FP7)



30.06.2011

Implementation of the ex-post audit results for **FP7**

| Year         | Audit activity  |                          | Results in favour of the EC |                    | Open for implementation |                | Implemented (registered in contract management system) |                  |            |                |   |              | TOTAL (in terms of participations) |             |
|--------------|-----------------|--------------------------|-----------------------------|--------------------|-------------------------|----------------|--|------------------|------------|----------------|---|--------------|------------------------------------|-------------|
|              |                 |                          |                             |                    |                         |                | Offset from payment                                    |                  | Recoveries |                | Waived (amounts below materiality criteria) |              | Open                               | Implemented |
|              | # audits closed | # participations audited | # participations            | Adjustments in EUR | #                       | EUR            | #  | EUR              | #          | EUR            | #   | EUR          |                                    |             |
| 2011         | 61              | 157                      | 78                          | 1.280.980          | 29                      | 383.444        | 44   | 753.776          | 5          | 143.760        | 0   | -            | 37%                                | 63%         |
| 2010         | 90              | 208                      | 121                         | 1.612.251          | 11                      | 82.628         | 95   | 1.357.550        | 8          | 164.449        | 7   | 7.623        | 9%                                 | 91%         |
| 2009         | 6               | 9                        | 1                           | 23.607             | 0                       | -              | 1  | 23.607           | 0          | -              | 0   | -            | 0%                                 | 100%        |
| <b>TOTAL</b> | <b>157</b>      | <b>374</b>               | <b>200</b>                  | <b>2.916.838</b>   | <b>40</b>               | <b>466.072</b> | <b>140</b>   | <b>2.134.933</b> | <b>13</b>  | <b>308.209</b> | <b>7</b>                                    | <b>7.623</b> | <b>20%</b>                         | <b>80%</b>  |

Implementation of the ex-post audit results for **FP6**

| Year         | Audit activity  |                          | Results in favour of the EC |                    | Open for implementation |                  | Implemented (registered in contract management system) |                   |            |                   |   |                | TOTAL (in terms of participations) |             |
|--------------|-----------------|--------------------------|-----------------------------|--------------------|-------------------------|------------------|--|-------------------|------------|-------------------|---|----------------|------------------------------------|-------------|
|              |                 |                          |                             |                    |                         |                  | Offset from payment                                    |                   | Recoveries |                   | Waived (amounts below materiality criteria) |                | Open                               | Implemented |
|              | # audits closed | # participations audited | # participations            | Adjustments in EUR | #                       | EUR              | #  | EUR               | #          | EUR               | #   | EUR            |                                    |             |
| 2011         | 28              | 54                       | 44                          | 5.744.125          | 12                      | 1.800.786        | 12   | 1.587.514         | 20         | 2.355.826         | 0   | -              | 27%                                | 73%         |
| 2010         | 74              | 171                      | 120                         | 5.379.310          | 16                      | 66.169           | 38   | 2.227.427         | 66         | 3.085.714         | 0   | -              | 13%                                | 87%         |
| 2009         | 180             | 418                      | 307                         | 17.614.761         | 7                       | 487.505          | 125  | 7.816.048         | 133        | 9.243.550         | 42  | 67.657         | 2%                                 | 98%         |
| 2008         | 156             | 320                      | 171                         | 4.191.311          | 6                       | 481.931          | 83   | 1.409.415         | 47         | 2.253.395         | 35  | 46.570         | 4%                                 | 96%         |
| 2007         | 54              | 128                      | 85                          | 1.516.196          | 0                       | -                | 52   | 979.143           | 17         | 485.020           | 16  | 52.033         | 0%                                 | 100%        |
| 2006         | 6               | 6                        | 3                           | 54.684             | 0                       | -                | 2  | 869               | 1          | 53.815            | 0   | -              | 0%                                 | 100%        |
| <b>TOTAL</b> | <b>498</b>      | <b>1097</b>              | <b>730</b>                  | <b>34.500.387</b>  | <b>41</b>               | <b>2.836.391</b> | <b>312</b>   | <b>14.020.416</b> | <b>284</b> | <b>17.477.320</b> | <b>93</b>                                   | <b>166.260</b> | <b>6%</b>                          | <b>94%</b>  |

NB: the EUR amounts considered in the statistics are based on theoretical calculations to translate cost adjustments into funding adjustments. Real amounts implemented might differ due to budget constraints but are only known later in the recovery process cycle

## ***Annex D – Chapter 11: European Ombudsman files – limited***

- D1: State of play of European Ombudsman files up to 30 June 2011

State of play on European Ombudsman files  
Status overview

Limited

DG INFSO "Chef de file"

| Name of the complaint | Date of reception of the complaint | Subject and<br>-----<br>Background   | Steps taken  | Next steps  |
|-----------------------|------------------------------------|--|--|---|
| N° 2011/995           | 06.06.2011                         | <p><b>Infringement complaint</b></p> <p><u>Allegations</u></p> <ul style="list-style-type: none"> <li>The EC failed properly to handle the complainant's infringement complaint of 19 February 2010. The EC failed properly to reason its decision in this regard, in particular by failing to comment on the arguments raised in his letter dated 2 February 2011</li> </ul> <p><u>Claims</u></p> <ul style="list-style-type: none"> <li>The EC should either commence infringement proceedings against Germany or provide sufficient reasons for its decision not to do so.</li> </ul> | <ul style="list-style-type: none"> <li>Draft reply has been prepared by S4 in cooperation with Dir B (Unit B2).</li> </ul> | <ul style="list-style-type: none"> <li>ISC to be initiated</li> <li>Empowerment procedure to be launch</li> <li>Reply to be send to EO on 31.08.2011</li> </ul> |

**State of play on European Ombudsman files**  
**Status overview**

Limited

|                        |                   |  |  |   |
|------------------------|-------------------|--|--|---|
| <p>N°<br/>2011/286</p> | <p>15.04.2011</p> | <p><b>Audit/Financial<br/>Guidelines/Extrapolation</b></p> <p><u><b>Allegations:</b></u></p> <ul style="list-style-type: none"> <li>• The Commission failed to reply to the complainant's argument that the audit wrongly applied the 2010 Financial Guidelines retroactively, instead of the 2007 Financial Guidelines, which were in force at the time when the two grant agreements were negotiated.</li> <li>• The Commission acted unfairly by failing to respect the complainant's right to be heard in relation to the audits findings</li> <li>• The Commission failed to respect the principle of sincere cooperation and mutual trust because it (i) used the principle of extrapolation, which is not provided for in the Financial Guidelines and (ii) failed properly to monitor the implementation of the two projects and to ask for clarifications at the time when the complainant</li> </ul> | <ul style="list-style-type: none"> <li>• Draft reply has been prepared by S4 in cooperation with Dir S2 during the months of May and June 2011.</li> </ul> | <ul style="list-style-type: none"> <li>• ISC to be initiated</li> <li>• Empowerment procedure to be launch</li> <li>• Reply to be send to EO on 31.07.2011</li> </ul> |
|------------------------|-------------------|--|--|---|

**State of play on European Ombudsman files**  
**Status overview**

Limited

|  |  |   |  |  |
|--|--|---|--|--|
|  |  | <p>submitted its cost statements</p> <ul style="list-style-type: none"> <li>• The Commission abused its power by implementing an audit policy which is not tailored to the structure and needs of SMEs.</li> </ul> <p><u>Claims</u></p> <ul style="list-style-type: none"> <li>• The EC should grant the complaint the right to be heard and to challenge the findings of the audit report</li> <li>• The EC should apply Financial Guidelines and adjust the conclusions of the audit report accordingly</li> <li>• The EC should not apply the principle of extrapolation and should adopt an attitude of cooperation and trust towards the complainant.</li> </ul> |  |  |
|--|--|---|--|--|

**State of play on European Ombudsman files**  
**Status overview**

Limited

|             |            |   |   |   |
|-------------|------------|---|---|---|
| N° 2011/290 | 14.03.2011 | <p><b>Suspended payments</b></p> <hr/> <p><u><b>Allegations</b></u></p> <ul style="list-style-type: none"> <li>The complainant alleges that the EC suspended payments in the framework of its Grant Agreement without informing it of valid and adequate justifications for doing so</li> </ul> <p><u><b>Claims</b></u></p> <ul style="list-style-type: none"> <li>The EC should either now make the payments that it suspended, or provide valid and adequate justifications for not doing so</li> </ul> | <ul style="list-style-type: none"> <li>Draft reply prepared by S4 in cooperation with Dir S,E,H (Unit S1, E3,E4,H2)</li> <li>Draft reply submitted for Dir S approval on: 19.05.2011.</li> <li>(Approval received on 20.05.2011)</li> <li>ISC has been started on 24.06.2011</li> <li>Extension of the Ombudsman's deadline for answer: 31.07.2011</li> </ul> | <ul style="list-style-type: none"> <li>ICS to be finalised</li> <li>Empowerment procedure to be launch</li> <li>Reply to be send to EO on 31.07.2011</li> </ul> |
|             |            |   |   |   |



**State of play on European Ombudsman files**  
**Status overview**

Limited

|                        |            |  |   |  |
|------------------------|------------|--|---|--|
|                        |            |  |   |  |
| N°<br>2938/2009/GIS/IP | 10.05.2010 | <p><b>Access to documents</b></p> <p>-----</p> <p>The complainant relates to the Commission's handling of an infringement complaint against the Italian authorities, which the complainant submitted to the EC in 1 April 2008 (complaint 2008/4516) and a request for access to documents, which the complainant submitted on 3 March 2009.</p> <p><u><b>Allegations:</b></u></p> <ul style="list-style-type: none"> <li>the EC failed to deal with the complainant's confirmatory application for access to</li> </ul> | <p>On 08.06.2010 SG sent a holding reply to the complainant (Deadline 29.06.2010). ISC was started on 22.06.2010 (Draft reply prepared by DG INFSO). 2nd holding reply sent to the complainant on 29.06.2010. SG sent the final reply to the complainant on 09.07.2010 – Decision of 09.07.2010. Request for LS approval on: 02.07.2010. (Reply required before 16.07.2010) On 09.07.2010 SG sent to the complainant a reply to his confirmatory application.</p> | <p>European Ombudsman's closing decision: awaiting (between 6 months &amp; 1 year)</p> |

**State of play on European Ombudsman files**  
**Status overview**

Limited

|  |  |   |   |  |
|--|--|---|---|--|
|  |  | <p>documents and argues that the EC service, which received it, ought to have passed his complaint to the Commission service competent, namely SG.</p> <ul style="list-style-type: none"> <li>the EC failed to reply to the complainant's letter of 15 July 2009.</li> </ul> <p><b>Claims:</b></p> <ul style="list-style-type: none"> <li>the EC has to respond to his confirmatory application and</li> <li>the EC has to inform him about its examination of his letter dated 15 July 2009, and its corresponding conclusions.</li> </ul> | <p>Request for Cabinet agreement on 12.07.2010 (Reply required before 19.07.2010)</p> <p>On 26.07.2010 Cabinet agreement received</p> <p>Commission's reply to be sent to the Ombudsman by 31.07.2010</p> <p>Commission's reply sent to the Ombudsman on: 06.08.2010</p> <p>The translated in Italian reply sent on: 18.08.2010</p> |  |
|  |  |   |   |  |

State of play on European Ombudsman files  
Status overview

Limited

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  |  |
|--|--|--|--|--|

**State of play on European Ombudsman files**  
**Status overview**

Limited

|                    |            |   |  |      |
|--------------------|------------|---|--|------|
|                    |            |   |  |      |
| Nº<br>3065/2009/JF | 18.02.2010 | <b>Audit/Recovery</b><br><hr/> <b>Allegations:</b> <ul style="list-style-type: none"> <li>the EC failed to explain why the assessment made by its auditor should prevail over the assessment made by complainant's Commissaire aux comptes and</li> <li>the EC's plans to conduct further audits into the complainant's activities are motivated by revenge for its having complained to the EO in</li> </ul> | <p>Commission's reply sent to the Ombudsman on: 30.06.2010</p> <p>European Ombudsman's closing decision on 20.02.2011: no maladministration by the Commission has found:</p> <p>(a) The contradictory procedure applied to the Audit was compatible with the relevant rules and the reasons why the Commission trusted the Auditor's assessment were sufficiently explained.</p> | NONE |

**State of play on European Ombudsman files**  
**Status overview**

Limited

|  |  |   |   |  |
|--|--|---|---|--|
|  |  | <p>2007, and are thus unjustified.</p> <p><b>Claims:</b></p> <ul style="list-style-type: none"> <li>• EC should recognize the above,</li> <li>• repay to him EUR 73 619 recovered on the basis of the 2007 audit and</li> <li>• abandon its intention to conduct further audits into the complainant's activities.</li> </ul> | <p>(b) In the absence of any additional supporting evidence, the facts of the present case do not allow the Ombudsman even to suspect that this might have been the case.</p> |  |
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**State of play on European Ombudsman files**  
**Status overview**

Limited

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| N° 2008/3373 | 22.12.2008 | <p><b>Audit/Recovery</b></p> <p>-----</p> <p>The complaint relates to the earlier complaint 2008/2291 which was closed with no follow-up by the Ombudsman.</p> <p><b>Allegations:</b></p> <ul style="list-style-type: none"> <li>the EC acted unfairly by not accepting the complainant's costs related to salaries it paid to Moscow employees,</li> <li>the EC unilaterally changed contracts by transferring funds from different budget lines and</li> <li>the EC failed to reply in substance (and not only formally) to his letter of 13.08.2008.</li> </ul> <p><b>Claim:</b> the EC should waive the recovery of the "Overheads".</p> | <p>Commission's opinion sent to the Ombudsman: 15.05.2009</p> <p>Proposal of the European Ombudsman for a friendly solution: 19.10.2009</p> <p>Reply sent by DG INFSO via empowerment procedure: 02.12.2009</p> <p>Commission's reply sent to the Ombudsman: 15.01.2010</p> <p>On 20.09.2010 EO sent to the Commission a draft recommendation: The Commission could consider waiving the recovery from "*****" of the amounts corresponding to the "Overheads" for the three projects - and invited the Commission to send its detailed opinion by 31.12.2010</p> <p>On 20.10.2010 Ombudsman's press release No 20/2010</p> <p>On 20.10.2010 – The Commission's LTT.</p> <p>On 22.11.2010 – DG INFSO Note to the Cabinet consisting of proposal for</p> | <p>European Ombudsman's closing decision: awaiting (between 6 months &amp; 1 year)</p> |

**State of play on European Ombudsman files**  
**Status overview**

Limited

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|  |  |   | <p>accepting the EO draft recommendation.<br/>On 03.12.2010– Cabinet response to the Note, manifesting its disagreement with DG INFSO previously proposal.<br/>ISC started on 07.12.2010. Due date for answer -13.12.2010.<br/>On 13.12.2010-DG BUDG agreement with annotations.<br/>Commission detailed opinion to be sent by 31.12.2010.<br/>The reply was submitted to the EO on 03.02.2011.</p> |  |
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State of play on European Ombudsman files  
Status overview

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**State of play on European Ombudsman files**  
Status overview

Limited

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State of play on European Ombudsman files  
Status overview

Limited

DG INFSO associated

| Name of the complaint | Date of reception of the complaint | Subject and<br>Background  | Steps taken  | Next steps  |
|-----------------------|------------------------------------|--|--|---|
| No1817/2010           | 25.10.2010                         | <p><b>Access to documents</b></p> <p><u>Allegations:</u></p> <ul style="list-style-type: none"> <li>the EC failed to respect the procedural provisions of Regulation 1049/2001 concerning deadlines when dealing with the complainant's application for public access to documents and</li> <li>the EC wrongly invoked the protection of the decision-making process to justify its decision to grant only partial access to the document entitled "Safer Internet 2009-2013-Evaluation Summary Report".</li> </ul> <p><u>Claim:</u> the EC should grant full access to the Evaluation Summary Report.</p> | <p>Ombudsman's inspection of the relevant file on: 23.11.2010</p> <p>Commission's reply to be sent before <b>31.12.2010</b></p> <p>DG INFSO's agreement with annotations sent on 03.02.2011 (agreement due to 07.02.2011)</p> <p>The SG's reply to be sent to the EO by 28.02.2011</p> | <p>European Ombudsman's closing decision: awaiting (between 6 months &amp; 1 year).</p> |
| No<br>1682/2010/ANA   | 20.10.2010                         | <p><b>Transparency matter</b></p> <p><u>Allegations:</u></p> <ul style="list-style-type: none"> <li>the EC failed to provide a complete Register of Expert Groups and to guarantee adequate transparency in the operation of the Expert Groups.</li> <li>the EC failed to adopt the best</li> </ul>  | <p>DGs agreement asked on <b>07.12.2010</b>.<br/>Due date to reply-<b>14.12.2010</b></p> <p>DG INFSO's agreement sent on 21.01.2011</p> <p>The SG's reply to be sent to the EO by 31.01.2011.</p>  | <p>European Ombudsman's closing decision: awaiting (between 6 months &amp; 1 year)</p>  |

**State of play on European Ombudsman files**  
**Status overview**

Limited

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|              |            | <p>practices concerning industry representatives, appointed to Expert Groups in a personal capacity;</p> <ul style="list-style-type: none"> <li>the EC failed to provide convincing reasons for not developing general criteria for the selection of members of Expert Groups and</li> <li>the EC failed to ensure a balanced composition of the Expert Groups.</li> </ul> <p><b>Claims:</b></p> <ul style="list-style-type: none"> <li>the EC should complete its Register of Expert Groups;</li> <li>ensure appropriate transparency in their work;</li> <li>apply in all the Commission the principle adopted by DG SANCO for situations where there is a conflict of interests;</li> <li>develop and publicise general criteria for the selection of members of the Expert Groups and</li> <li>address the issue of unbalanced composition of Expert Groups.</li> </ul> |   |   |
| N° 2781/2008 | 02.12.2008 | <p><b>Access to documents</b></p> <p>-----</p> <p><b>Allegation:</b> the EC failed to provide valid and adequate grounds for the refusal of access to the documents that he requested under Regulation</p>  | <p>Attribution to DG INFSO: 02.12.2008.<br/>SG G3's draft reply sent on 27.01.2009<br/>DG INFSO's agreement with annotations sent on 10.02.2009</p> | <ul style="list-style-type: none"> <li>Draft reply to be prepared by DG 'chef de file' (SG) and submitted to the associated DGs: ISC to be initiated</li> <li>Empowerment procedure to</li> </ul> |

**State of play on European Ombudsman files**  
**Status overview**

Limited

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|                |            | <p>1049/2001.</p> <p><b>Claim:</b> the EC should grant access to the documents requested, without, if necessary, revealing the identities of the individual experts.</p>                                   | <p>Legal Service's agreement asked by SG G3 on 11.02.2009</p> <p>SG agreement with annotations received on 23.02.2009</p> <p>SG G3 agreement received on 23.02.2009</p> <p>Empowerment procedure finalised on 19.03.2009</p> <p>Commission's reply sent to the Ombudsman: 19.03.2009.</p> <p>Proposal of the EO for a friendly solution sent to the Commission on 24.03.2011:</p> <p>"The EC could reconsider the possibility that public access to the requested individual expert reports could be provided without necessarily having to disclose the expert' identities".</p> <p>Commission reply to be sent by 31.05.2011</p> <p>Extension of the Ombudsman's deadline for answer: 30.06.2011</p> | <p>be launch</p> <ul style="list-style-type: none"> <li>• Reply to be send to EO on : new deadline for answer has to be decided</li> </ul> |
| N°2403/2008/OV | 24.07.2008 | <p><b>Non compliance with the procedures and infringement</b></p> <hr/> <p>On 24.07.2008 a 3<sup>rd</sup> complaint was sent by the complainant to the Ombudsman. This 3<sup>rd</sup> complaint is the</p> | <p>3rd complaint sent to the Ombudsman: 24.07.2008</p> <p>Transmission of this 3rd complaint by the</p>  | <p>European Ombudsman's closing decision: awaiting (between 6 months &amp; 1 year).</p>  |

**State of play on European Ombudsman files**  
**Status overview**

Limited

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|  |  | <p>follow up of the 2 earlier ones for failure to deal, both as regards the procedure and the substance (only pending replies have been yet received by the complainant), with the initial complaint of 26.09.2007.</p> | <p>Ombudsman to the Commission: 11.09.2008</p> <p>reply received through the EU-Pilot mechanism on 18.09.2008.</p> <p>Proposed reply on the substance (based on ) from F. Colasanti to the complainant sent for comments to the involved DGs and the Ombudsman's related correspondents within the DGs (deadline: 10 working days): 14.10.2008</p> <p>Reminder sent by DIR A to DG EMPL and LS on 31.10.08.</p> <p>Reattribution by the SG to DG EMPL 11.11.2008</p> <p>DG EMPL's suggestion to re-attribution to DG INFSO as chef de file (which is rejected by DG INFSO): 13.11.08</p> <p>Note by DG INFSO sent to DG EMPL: 10.12.2008</p> <p>DG INFSO's holding reply sent to 11.12.2008</p> <p>Commission's opinion sent to the Ombudsman: 06.02.2009.</p> <p>Date of the Ombudsman's further request for info: 28.10.2009</p> <p>Reattribution to DG EMPL as chef de file: 29.10.2009</p> <p>DG INFSO input sent: 18.12.2009</p> <p>DG INFSO's agreement with annotations sent on 11.01.2010</p> <p>Reply sent to Ombudsman: 01.02.2010</p> <p>Translation sent: 08.02.2010</p> <p>Date of the Ombudsman's draft recommendation: <b>20.09.2010</b></p> |  |
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**State of play on European Ombudsman files**  
**Status overview**

Limited

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|                       |                   |  | DG INFSO's agreement to the draft reply sent on <b>01.12.2010</b><br>Commission's reply sent to the EO on 24.01.2011<br>Translation of the reply sent on 24.01.2011   |      |
| <b>N° 488/2007/PB</b> | <b>24.09.2007</b> | <b>Access to documents</b><br><hr/> Allegation: the EC failed to give valid and adequate grounds for its rejections of his confirmatory application for full access to the documents requested. Claim: the EC should grant full access to the documents requested. | Date of the Ombudsman's sending to the Commission: 24.09.2007<br>Attribution to Cabinet Barroso (SecGen): 31.05.2007<br>SecGen asking for DG INFSO contribution: 22.08.2007<br>DG INFSO forwarded its contribution to SG-E3: 30.08.2007<br>Comments of the Commission sent to the Ombudsman by SG-E3: 01.10.2007<br>Ombudsman's proposal for a friendly solution sent to the Commission on 24.09.2008<br>SG /E/3 (Transparency, Relations with Stakeholders and External Organisations)-asked whether it would be possible to re-consult the representatives of the Member States concerned to see if they maintain their opposition to the disclosure of documents/data provided by them: 25.09.2008<br>Consultation of the ERG<br>Extension of the Ombudsman's deadline for answer: 31.01.2009<br>DG INFSO's draft reply sent to the SecGen | NONE |

**State of play on European Ombudsman files**  
**Status overview**

Limited

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|  |  |  | <p>on 09.01.09<br/> SecGen's comments on the DG INFSO's draft reply: 20.01.2009<br/> Legal Service's comments: 05.02.09<br/> SecGen's amended draft reply : 09.02.2009<br/> DG INFSO's approval of the amended draft reply: 16.02.09<br/> Commission's reply sent to the Ombudsman: 19.03.2009<br/> Commission's translated reply sent to the Ombudsman: 30.03.2009<br/> SecGen asking for DG INFSO contribution: 16.07.2009<br/> DG INFSO forwarded its contribution to SG-E3: 16.07.2009<br/> <b>European Ombudsman's closing decision sent to the Commission on 03.11.2009 (No Instance of Maladministration but further remarks)</b><br/> The Ombudsman considers that the factual outcome of his friendly solution proposal may be considered satisfactory but he nevertheless asked for 2 further clarifications: 1) whether Article 4(5) of Regulation 1049/2001 applied to the private undertakings or whether the Commission consulted the private undertakings indirectly by contacting the national authorities, AND 2) whether refusals to provide access to a document with reference to confidentiality requests should be supported by a concrete reference<br/> Commission's reply to be sent on: 30.04.2010</p> |  |
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**State of play on European Ombudsman files**  
**Status overview**

Limited

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|  |  |  | <p>Given the high number of ongoing complaints running within SG-E3 and given that DG INFSO is mainly concerned by the further remark made by the Ombudsman regarding this complaint, it has been decided to start drafting a reply.</p> <p><b>The DG INFSO's reply has been sent to SG-E3 on 06.07.2010.</b></p> <p><b>DG INFSO's agreement to the SG E3 draft reply has been given on 16.07.2010.</b></p> <p><b>Commission's response sent to the EO on: 27.08.2010</b></p> |  |
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## ***Annex E – Chapter 12: Litigation***

- E1: Synopsis table on litigation ongoing and closed in the first half of 2011

Synopsis table on litigation ongoing and closed up to 05.07.2011

1. Ongoing litigation (period 01.01.2011 -30.06.2011)

**INSULA vs. Commission**

**Case :** T-246/09

**Subject :** Request to annul Commission decision to recover ineligible costs following an audit

**Programme :** FP5

**Amount :** Annulment of Commission claim for EUR 189 241,64 (INSULA also claims damages of EUR 212 597,00 or a subordinated claim for compensatory allowances of EUR 230,025)

**AML vs. Commission**

**Case :** T-387/09

**Subject :** Request to annul Commission decision on audit results and associated recovery of ineligible costs

**Programme :** FP5

**Amount :** EUR 201 333,29 + late payment interest

**GL2006 vs. Commission**

**Case :** T-435/09

**Subject :** Application to declare the Commission's on the spot checks, audit reports and final decision to terminate the participation of the company in two ongoing FP6 projects (dated 10.07.2009) and the relative debit notes (dated 07.08.2009) unlawful and null and void (preceded by a request for application of interim measures that was rejected by the Court).

**Programme :** FP6 (FP5, eTen projects were also audited and subject to recovery orders)

**Amount :** EUR 2 258 456,31

**Synopsis table on litigation ongoing and closed up to 05.07.2011**

|  |
|--|
| <b>Commission vs. EU Research Projects Limited (previously Spectrolab)</b>   |
| <p><b>Case :</b> T-220/10<br/> <b>Subject :</b> Recovery of EU contribution following non-performance of beneficiary<br/> <b>Programme :</b> FP5<br/> <b>Amount :</b> EUR 102 039,32 + interest</p>  |
| <b>CROSS CZECH vs. Commission</b>  |
| <p><b>Case :</b> T-252/10<br/> <b>Subject :</b> Application to contest the audit, the audit results and the announced related administrative consequences (+ a request for application of interim measures)<br/> <b>Programme :</b> FP6<br/> <b>Amount :</b> The recovery claimed by the Commission relates to a total amount of EUR 447 065,00</p>  |
| <b>IDIAP vs. Commission</b>  |
| <p><b>Case :</b> T-286/10<br/> <b>Subject :</b> Contests audit results<br/> <b>Programme :</b> FP6<br/> <b>Amount :</b> No recovery order has yet been issued by the EC at this stage, so the amount challenged (EUR 251 505.76 – maximum value of corrections to be made post-audit) is an estimate used by the plaintiff to justify the application for interim measures (which has been rejected)</p> |
| <b>ELESIA vs. Commission</b>   |
| <p><b>Case :</b> T-312/10</p>  |

### Synopsis table on litigation ongoing and closed up to 05.07.2011

**Subject :** Application requesting the Court to declare that the Commission has infringed the provisions of the contract concluded with ELESIA as one of the beneficiaries of the project I-WAY by terminating the company's participation in the project for irregularities and that the related recovery orders are illegal and consequently to be annulled.

**Programme :** FP6

**Amount :** EUR 196 000.00

#### **Lito Hospital vs. Commission**

**Case :** T-353/10

**Subject :** Contests the recovery order issued against LITO

**Programme :** FP6

**Amount :** EUR 109 415,20

#### **e-Isotis vs. Commission**

**Case :** T-59/11

**Subject :** Request the Court to declare that the costs claimed for the audited projects are eligible and requests the payment of the outstanding payments to eISOTIS for the audited projects

**Programme :** FP6 /eTEN/CIP

**Amount :** The draft pre information letter sets an amount of EUR 643 782,81 + liquidated damages to be calculated

#### **EMA vs. Commission**

**Case :** T-116/11

**Subject :** Application requesting the Court to declare that EMA has correctly fulfilled its contractual obligations, that the Commission has acted unlawfully by terminating EMA's participation in the projects and that the related recovery order is illegal and consequently to be annulled (+ a request for application of interim measures)

Synopsis table on litigation ongoing and closed up to 05.07.2011

**Programme :** FP6  
**Amount :** +/- 400 000,00 EUR

**2. Recently closed in 2011 litigation**

**Health Information Management (HIM) vs. Commission**

**Case :** T-316/10  
**Subject :** Contests audit results – Methodology of calculation of general costs (overheads)  
**Programme :** eTen  
**Amount :** EUR 11,000

***Annex C – Chapter 10: OLAF files – limited***

















