

Decision of the European Ombudsman closing his inquiry into complaint 2903/2009/KM against the Education, Audiovisual and Culture Executive Agency (EACEA)

Decision

Case 2903/2009/KM - Opened on 04/01/2010 - Decision on 16/02/2012

The background to the complaint

1. The complainant is a German professor. In the course of the inquiry, he clarified that he was acting on behalf of a company (the 'Company') that is owned by the university for which he works (the 'University') and by the city in which the University is located. The Company acquires and administers grants for the University [1]. On 19 October 2004 and following the 2003 Tempus Tacis call, the University and the European Commission signed Grant Agreement JEP-24020-2003 in relation to a project on "Distant Training of Trainers in New curricula in Turkmenistan". The Tempus programme focuses on the development of the higher education systems in partner countries in the western Balkans, eastern Europe and central Asia, as well as the Mediterranean, through co-operation with education institutions from EU Member States.
2. The project ran from September 2004 to August 2007. The relevant agreement (the 'Grant Agreement') envisaged that the total costs would amount to EUR 499 670.00, with a maximum EU contribution of EUR 474 686.00 (95 % of the total costs). On 6 November 2007, the University submitted its final report. After the Commission's Directorate-General for Education and Culture (DG EAC) rejected some costs as ineligible, the University sent an amended report on 17 December 2007, declaring a total expenditure of EUR 461 593.11.
3. On 4 March 2008, DG EAC sent its analysis of the final report. It stated that costs amounting to EUR 2 126.94 were ineligible. This was because: (i) some supporting documents for travel and other costs were missing; and (ii) some co-financed costs, that is, costs borne by the University, had been declared as indirect costs, thereby breaching the rules set out in the Grant Agreement. Thus, the final grant amounted to EUR 436 492.86, which corresponded to 95 % of the total eligible costs (EUR 459 466.17). Since the University had received advances ('pre-financing') amounting to EUR 427 217.40, DG EAC stated that it would pay it the balance of EUR 9 275.46. In accordance with its normal practice, DG EAC informed the University that it had one month to contest the decision and provide any missing documentation or explanations.



It also underlined that costs which were not proven by the appropriate supporting documents would be declared ineligible.

4. On 8 May 2008, the complainant provided the missing documentation justifying travel and some other costs. DG EAC accepted these documents and, on 23 June 2008, informed the Company that the balance to be paid had increased to EUR 9 861.67. This balance was paid in August 2008.

5. On 7 October 2008, the Company noticed that it had made a mistake and that 5% of the total costs, which corresponded to the percentage that it had co-financed, had not been declared. It therefore asked DG EAC to correct the final report and enclosed supporting documents with its request.

6. On 30 October 2008, DG EAC replied stating that the information which the Company had submitted was not clear. DG EAC went on to explain that it did not understand whether the additional costs were to be regarded as 'staff costs' or as 'travel costs'. It therefore asked the Company to revise the 'budget statement table' and the 'individualised statement tables' for staff and travel costs, that is, to amend the report on the standard tables provided in the Grant Agreement and used until then. It also stated that the Company had to submit the relevant supporting documents and requested that these indicate the corresponding reference number, continuing from the reference numbers used in the previous final report.

7. On 1 December 2008, the complainant submitted a new declaration of costs, including an additional sum of EUR 39 808.89 to reflect the 5% of the total costs which were not declared in 2007. This additional claim included staff costs relating to the complainant's work on the project and amounting to EUR 27 463.69, as well as other costs for equipment, printing and so on, and indirect costs, totalling around EUR 12 000. The complainant included his salary slips as supporting documents for his staff costs, as well as other documents in relation to the other costs claimed.

8. On 19 December 2008, DG EAC informed the complainant of the decision it had adopted on the basis of the new documentation. It accepted the newly declared costs as eligible, with three exceptions. Firstly, it rejected the additional staff costs. This was because staff costs had to be supported by a special document (a 'Convention') and no such Convention had been submitted. Secondly, the monthly fee for an internet domain to host videoconferencing services, which belonged to the University, was not accepted because it did not constitute eligible expenditure under the Tempus grant. Thirdly, some indirect costs exceeded the 7% ceiling foreseen in the Grant Agreement and therefore were not accepted either. Overall, DG EAC accepted costs amounting to EUR 466 864.73, which meant that the EU contribution increased to EUR 443 521.49. Thus, the balance to be paid was EUR 16 304.09 (EUR 443 521.49 less the amount of EUR 427 217.40 paid in advance).

9. On 8 January 2009, the complainant replied, asking DG EAC to revise this decision. He also enclosed a Convention signed by him and the University.



10. However, on 16 February 2009, DG EAC stated that the letter dated 19 December 2008 was its final decision on the matter. The University could expect a payment of EUR 6 442.42 (EUR 16 304.09 less the amount of EUR 9 861.67 paid in August 2008). This payment was made in March 2009.

11. On 5 May 2009, the Company wrote to the Education, Audiovisual and Culture Executive Agency (EACEA) which had taken over the management of the Tempus programme on 1 April 2009. It asked the EACEA to revise DG EAC's decision and accept the Convention, which had been sent as a supporting document as soon as possible after the University received the letter dated 19 December 2008. It argued that it had not known that staff costs which were not borne by the Commission but paid by the University had to be evidenced by a Convention and that, in the context of previous collaborations, salary slips were considered sufficient and Conventions were not deemed necessary. It should thus have been given the opportunity to submit this document.

12. On 28 May 2009, the EACEA replied stating that the Grant Agreement and its annexes required a Convention to be submitted for all staff costs, including co-financed costs. It noted that the University had been given several opportunities to submit additional documents and that it was given permission to correct the financial report. The EACEA stated that it could not reopen the case and accept further documents at this stage and thus confirmed DG EAC's decision.

13. The complainant then turned to the European Ombudsman.

The subject matter of the inquiry

14. In his complaint to the Ombudsman, the complainant made the following allegations:

(1) The decision to reject his staff costs as ineligible expenses was wrong.

(2) The University was wrongly not given the opportunity to submit a supporting document in order to prove that the declared expenses were eligible.

15. The complainant further claimed that his additional staff costs should be accepted as eligible expenses.

The inquiry

16. The complaint was submitted on 19 November 2009. On 4 January 2010, the Ombudsman opened an inquiry and asked the EACEA for an opinion on the complaint.

17. The EACEA sent its opinion on 7 April 2010. This opinion was forwarded to the complainant, who sent his observations on 17 May 2010.



18. On 22 October 2010, the Ombudsman asked the EACEA to reply to a number of questions. The Agency sent its reply on 6 December 2010. This reply was forwarded to the complainant for his observations, which were received on 26 January 2011.

19. An analysis of all the documents submitted to the Ombudsman gave rise to some questions, which were put to the complainant in a letter of 5 July 2011. The complainant's reply was received on 17 August 2011.

The Ombudsman's analysis

Preliminary remarks

20. Given that the two allegations are closely linked, the Ombudsman will examine them together.

A. Allegedly incorrect rejection of the staff costs, alleged failure to give the complainant the opportunity to submit the Convention and related claim

Arguments presented to the Ombudsman

21. The complainant essentially argued that the additional staff costs relating to his work on the project claimed in 2008 should have been accepted. The University did not know that the additional staff costs, which had been borne by itself as its co-financing contribution and not by the Tempus grant, had to be supported by a Convention. When the University became aware of the need to submit a Convention, it submitted one as soon as it could, that is, within a few days of receiving the Commission's letter. It was therefore unfair and an abuse of power for the Commission to reject the additional staff costs without giving the University the opportunity to submit such a Convention. The Commission should thus pay the amount of EUR 27 463.69 which it had wrongly not accepted.

22. In its opinion, the EACEA submitted that the decision not to accept the additional staff costs was fully justified by the provisions of the Grant Agreement. The University had breached Article II.15.4 of the Grant Agreement, according to which, "documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article I.6 and the annexes." The EACEA noted that Article I.6 [on the submission of reports and other documents] in turn referred to Article I.5 [on payment arrangements [2]]. It also cited Articles 2 and 9 of Annex V of the Grant Agreement (the 'Guidelines for the Use of the Grant'), which state as follows:

Article 2



"2.1 Readable copies of all supporting documents have to be sent together with the final financial statement in accordance with the Special Conditions of the agreement. The said supporting documents are the only ones which will be taken into consideration.

2.2 Submission of the required supporting documents is an integral part of the agreement obligations and lack of presentation of one or more documents may lead to a request for reimbursement of the corresponding expenses."

Article 9

"As laid down in Article I.4, the maximum Community contribution may not exceed 95% of the eligible costs as established on completion of the action. The remaining costs, equivalent to at least 5 % of the total eligible costs, must be financed from sources other than the European Community and proof of expenditure must be provided in all cases."

23. The fact that the submission of supporting documents is a "*compulsory financial reporting requirement*" concerning all expenses was also explained in question 10 of the "*frequently asked questions*", which was published on the Tempus website, using the same terms as those of Article 9. Further, grant holders were informed of this requirement during the Project Representatives Meetings which DG EAC organised at the beginning of the implementation phase for the projects and to which all new grant holders were invited. Finally, in its e-mail of 30 October 2008, DG EAC clearly stated that the information which the Company submitted was not clear and did not comply with the standard templates. To clarify matters, it asked the Company to provide supporting documents in relation to the additional (co-financed) costs claimed.

24. EACEA further pointed out that the complainant was not new to the programme, having participated in Tempus projects as a grant holder, co-ordinator and individual expert since 1998. Thus, he should have been aware of the provisions of the Grant Agreement and the financial rules governing the Tempus grant. His argument that it was not clear that a Convention was required to justify the co-financed staff costs was thus unfounded.

25. The financial assessment procedure was carried out in accordance with the applicable procedural rules. Thus, on 4 March 2008, the University was sent an information letter which gave it one month to contest the decision and provide additional information and supporting documents. On 8 May 2008, it did so. DG EAC then amended its decision and allowed additional direct costs. On 23 June 2008, it sent its final decision to the complainant.

26. When the Company asked DG EAC to correct the final financial statement in October 2008, it could have decided to reject this request, given that the procedure had already been closed. However, it decided to re-open the case. Thus, on 30 October 2008, it informed the Company that it was giving it a further opportunity to correct its mistakes and added that the documentation it had submitted was not clear and was not in conformity with the standard templates. It therefore asked it to correct these errors and reminded it that it needed to submit



relevant supporting documents, noting also that costs declared without relevant supporting documents would be rejected. In its reply dated 1 December 2008, the Company provided a new declaration of costs and all the related supporting documents, except those evidencing the additional staff costs.

27. DG EAC based its final assessment on that reply and amended its initial decision by granting a further payment. However, it rejected the additional staff costs because the relevant supporting document was missing. The University was informed of this "final position in relation to the financial evaluation of the project" on 19 December 2008. The allegation that it was not given the opportunity to provide the missing document was, therefore, unfounded.

28. DG EAC followed the procedural rules it was bound by. It had to ensure that all grant holders are treated equally. This meant that it would not be justified to review its final decision again. In any event, the EACEA underlined that, overall, it adopted a flexible approach towards the complainant and treated him fairly throughout the procedure.

29. In relation to the complainant's claim for an additional payment of EUR 27 463.69, the EACEA referred to Article II.17.4 of the Grant Agreement, according to which the grant is limited to the amount necessary to balance the grant holder's receipts and its expenditures and may not produce a profit for the grant holder. Thus, if the additional costs had been accepted, this would have raised the total declared expenditure to EUR 499 892.17 and the University's contribution to EUR 52 458.29 (that is, EUR 27 463.69 plus the amount of EUR 24 994.60 it had declared as co-financed costs in the 2008 final report). The final grant would thus have amounted to EUR 447 433.88 (that is, the total costs less the University's contribution), bringing the balance of the final grant (following the deduction of the advance payments) to EUR 20 216.48. However, because the University had already received EUR 16 304.09 in August 2008 and March 2009, the additional payment would have amounted to only EUR 3 912.39. Taking into account the small amount concerned, the decision to reject the additional staff costs was proportionate and it was justified both by sound financial management considerations and the need to ensure that funds are spent in accordance with the applicable rules.

30. In his observations, the complainant noted that, in the past, the University had only ever submitted Conventions in relation to staff costs which were fully paid from project funds. However, the additional staff costs at issue were co-financed and this was the first time that the University was involved in a project where it was required to co-finance the action. Thus, in spite of their experience with Tempus projects, neither the complainant nor the University was familiar with the specifics of financial reporting on the 5 % of the total costs co-financed by the University.

31. In fact, Articles 2 and 9 of Annex V to the Grant Agreement, as well as the frequently asked questions, merely refer to "*supporting documents*" and do not specifically mention Conventions. Similarly, in its e-mail of 30 October 2008, DG EAC referred generally to "*supporting documents*" and not to the need to submit a Convention in particular. It also did not indicate any particular deadline for submitting the "*supporting documents*". It was only in the letter dated 19 December 2008 that it mentioned that a Convention should have been



submitted. When the University received this letter, it immediately submitted the missing Convention. Had DG EAC alerted it to the need to submit a Convention before taking its final decision, it would have submitted it within a few days. However, DG EAC refused to take into account the document submitted in January, maintaining that its decision was final, despite the fact that the University had submitted arguments explaining why the decision should be reversed. This contradicted its usual 'flexible approach' and 'fair treatment' of grant holders.

32. Further, contrary to what the EACEA stated in its opinion, the University did submit supporting documents for the additional staff costs, namely, a table detailing the extra hours which the complainant had spent working on the project, together with the salary slips to prove the hourly rate which had been applied. In fact, these documents contained more detailed information than the Convention which was submitted on 8 January 2009 and which merely repeated what had already been stated in the documents initially submitted. DG EAC was therefore wrong to claim that the complainant did not submit any supporting documents for the staff costs at issue. It should thus not have rejected the additional staff costs.

33. Finally, the complainant objected to the EACEA's calculations. The amended financial report submitted on 1 December 2008 only included the amount of EUR 24 994.60 as a co-financing contribution. This also appeared in the "*financial assessment sheet*" sent by DG EAC on 19 December 2008. In its letter, DG EAC made reference to an EU contribution of EUR 443 520.80. However, the University had claimed payment of the full EU contribution foreseen in the Grant Agreement, which amounted to EUR 474 897.57 [3]. This was EUR 31 376 more than it received. The complainant offered to abandon the claims relating to the costs of equipment of EUR 4 000 and to indirect costs of EUR 1 563.75 which had been rejected. However, he maintained the claim to payment of the amount of EUR 25 812.25.

34. Having analysed the arguments submitted by the EACEA and the complainant, the Ombudsman asked the EACEA to clarify why the supporting documents submitted by the University were not sufficient and on what grounds the latter was required to submit a Convention in relation to costs it financed itself. He pointed in particular to the fact that the template for a Convention provided in page 7 of Annex V to the Grant Agreement reads as follows: "the present convention... has been established **solely** for the purpose of justifying the Staff costs that the Institution will pay **from the Tempus grant**". He also asked the EACEA to comment on the complainant's observations.

35. In its reply, the EACEA did not comment on the wording of the template. However, it reiterated that the Grant Agreement, in particular its Article I.5.3, indicated that the supporting documents referred to in Annex V had to be submitted with the final financial statement. Article 3.5 of Annex V specified that "a duly filled in convention" had to be submitted "for each person employed by the project" and Article 9 recalled that "proof of expenditure must be provided in all cases", thus also in relation to co-financed costs. This was because, in accordance with Article 172a(1) of the Financial Regulation [4] and as recalled in Article II.14.1 of the Grant Agreement, costs claimed must be verifiable in order to be eligible for EU funding.

36. Conventions fulfil particular purposes which the documents submitted by the complainant



do not. Thus, a Convention (i) should mention the tasks performed for the project, so that it is clear which costs were incurred in relation to which activities, and (ii) must be signed by the staff member and must be signed and sealed by the responsible person in the institution for which the staff member normally works. A Convention thus fulfils three different objectives. Firstly, it helps identify which activities are being funded and avoids the eventuality that staff costs relating to ineligible activities or activities outside the scope of the project are also declared. Secondly, in relation to staff costs paid from the grant, the fact that the grant holder must sign and seal the Convention should ensure that the costs are not actually borne by other sources. Thirdly, the seal and signature of the person responsible for administering the grant on the grant holder's side proves that the grant holder is aware that its resources are being used to participate in the Tempus project.

37. The complainant did not submit a Convention but instead submitted an " *overview of additional staff costs* " which included a table indicating hours worked during identified periods of time, the relevant hourly rate and other related costs. This document did not identify the specific tasks which required these additional working hours, and it was not signed or sealed. It thus did not indicate the agreement of the employing institution. The salary slips which the complainant added merely showed the monthly remuneration he received for performing his normal duties at the University. There was no connection between the two types of document, since the salary slips did not prove that the University paid for additional hours or even agreed to the additional hours spent on the project. In fact, as the complainant mentioned in the observations, the salary slips merely served to justify the hourly rate of EUR 67.37 which exceeds the rate normally applicable for Tempus projects and which thus had to be justified as required by Article 3.1 of the Guidelines.

38. Thus, the reasons why the documents could not be accepted were that they did not provide proof that the University agreed to the additional hours worked for the purposes of the project and that they did not show the specific tasks for which the complainant claimed to have been remunerated.

39. Commenting on the complainant's observations, the EACEA added that DG EAC's e-mail of 30 October 2008 reminding the Company to submit supporting documents did not specifically mention a Convention because the Company had not only submitted additional staff costs but also other costs which required a different type of supporting document. This was in line with both the Grant Agreement and with the initial final report, in which 5% of staff costs had also been reported as " *co-financed* " and were backed up by Conventions. In relation to all other types of costs, the University did not question that the supporting documents detailed in Annex V had to be provided and in fact provided them. Considering that the verifiability of costs was a general criterion for their eligibility, there was no reason to treat staff costs differently.

40. Finally, in relation to the financial implications of accepting the additional staff costs, the EACEA recalled that, in order to calculate the amount of the final grant, three different ceilings are applied: (a) 95% of the actual total eligible costs, (b) total declared expenditure less the amount that is co-financed, and (c) the maximum grant as indicated in point A.3 of the Grant Agreement. The amount of the final grant corresponds to the lowest of the resulting three



amounts. The fact that the University claimed further co-financed costs in addition to the amount of EUR 8 491.96 claimed in the 2008 report as co-financed staff costs meant that this amount had to be increased and thus the second ceiling applied.

41. In his observations on this reply, the complainant did not dispute that the information considered necessary by the EACEA in order to accept staff costs had to be provided. He stressed that the University did in fact provide this information when it submitted a signed and stamped Convention on 8 January 2009. He disputed DG EAC's statement that the reason why it had not asked for Conventions specifically in its e-mail of 30 October 2008 was that it had asked for supporting documents for different types of costs. In fact, by e-mail of 1 December 2008, the University informed DG EAC that it was not claiming any travel costs. Given that it was far from clear that a Convention was necessary in order to prove co-financed staff costs, it would have been appropriate for DG EAC to draw the University's attention to this fact. The way the e-mail was phrased, however, supported his view that in the particular case of co-financed costs, a Convention did not have to be submitted.

42. In the 2007 final report, the University had only submitted evidence for the costs paid from the EU contribution foreseen in the Grant Agreement. It did not declare the 5% of the total costs which it had co-financed, even though it possessed evidence of costs incurred beyond that amount, and even beyond the amount of the total costs foreseen by the agreement. This was due to a mistake, which was corrected in the complainant's letter of 1 December 2008.

43. Therefore, in its amended final statement, the University claimed further costs, including the substantiated additional staff costs relating to the complainant's work on the project amounting to EUR 27 463.64. Arguably, the University's grant administration should have insisted that the complainant provide the relevant Convention. However, a university administration could not be expected to have sufficiently detailed knowledge of the complicated subtleties of the EU rules to exclude any minor error. In comparable cases, the Tempus administration had always been very understanding and cooperative. In the present case, what counted was that the amounts claimed in the corrected tables which were submitted on 1 December 2008 were accurate and fully supported by the relevant evidence. It should also be considered that the University, like other European universities that have participated in the Tempus programme, had a very positive effect in the former Soviet states. It should therefore not be punished for its error by being made to lose a significant amount of money it had advanced for the benefit of this project.

44. When analysing the above submissions, the Ombudsman noted that the University claimed that the additional staff costs of EUR 27 463.69 were co-financed costs, but that it had also insisted that the amount of EUR 24 994.60 claimed in the 2008 final report was to be regarded as co-financed costs. Given the possible contradiction between the two sums claimed as co-financed costs, and also the fact that, in the tables detailing the sums claimed under each budget heading, the University had not claimed any co-financed costs, two interpretations seemed possible. First, it was possible that the additional staff costs should not be regarded as co-financed but as financed from the EU grant. Second, it was possible that the additional staff costs were in fact co-financed. In the former case, it appeared obvious that a Convention needed to be submitted. In the latter case, and taking into account the rule that a grant holder



may not make any profit, the Ombudsman could not but consider it reasonable for the EACEA to have added these two sets of costs together, resulting in a total sum of EUR 52 458.29, and to then follow the applicable rules by deducting the declared co-financed costs from the declared total expenditure. In this case therefore, the EACEA's assessment that, if it accepted the additional staff costs, the additional payment would be limited to EUR 3 912.39, seemed reasonable. The Ombudsman therefore asked the complainant to specify why he considered that, assuming that the evidence concerning the additional staff costs would be accepted by the EACEA, the University was entitled to a further amount of EUR 25 812.25, rather than the amount of EUR 3 912.39 calculated by the EACEA.

45. In his reply, the complainant explained that he considered the first interpretation to be correct and that the University intended the additional staff costs to be borne by the EU. As regards the reasons why no Convention was submitted, these could no longer be explained since the member of staff who had dealt with the matter had left the University. The mistake only became clear to the University after it received the letter sent by the EACEA on 19 December 2008, and was corrected a few days later. The complainant reiterated his view that the rules were very complicated and that the young and inexperienced administrative staff of the University had a very hard time applying them all correctly. This was why minor mistakes were made from time to time. In this particular case, matters were aggravated by the fact that the University was applying the co-financing rules for the first time.

46. The complainant added, however, that DG EAC was normally very understanding and accepted corrections where mistakes were made. This was why the University was still hoping that the EACEA would show some good will and would decide to consider the additional staff costs eligible.

47. As regards the financial implications of the acceptance of the staff costs, the complainant referred to a long-established practice according to which, funding could be reallocated between budget lines provided that the overall budget is not exceeded and that the reallocations are less than 10 %. The University claimed staff costs of EUR 169 839.29, that is, an amount which was only 13.3 % more than the amount of EUR 149 900 foreseen in the agreement. The complainant stressed that this amount was therefore almost within the normally tolerated limits.

The Ombudsman's assessment

48. The present case concerns a dispute over payment obligations arising from a contract.

49. The Ombudsman considers that the scope of his powers of review in cases concerning the interpretation of contractual obligations entered into by an institution is necessarily limited. In particular, he is of the view that he should not seek to determine whether there has been a breach of contract by either party. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant law and to evaluate conflicting evidence on any disputed issues of fact.



50. Thus, the Ombudsman takes the view that, in cases concerning contractual disputes, it is justified to limit his inquiries to examining whether the institution has provided him with a coherent and reasonable account of the legal basis for its actions, and of why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

51. The complainant alleged that the decision to reject the additional staff costs was wrong and that the University should have been given the opportunity to submit the correct supporting document when it was informed of this requirement. The EACEA argued that it was right to reject these costs because they were not substantiated by the supporting document required in the Grant Agreement, namely, a Convention.

52. It is true that, as the complainant has argued, Articles 2 and 9 of Annex V of the Grant Agreement mention "supporting documents" and "proof of expenditure", terms which do not in themselves indicate that a Convention is needed to substantiate staff costs. However, Article 2 deals with supporting documents in general and refers to the Special Conditions of the Agreement, which list the different types of costs (in Article I.5.3) and refer to the "costs declared in the financial statement" as well as the documents contained in Annex V. Annex V contains two templates for supporting documents (the documents which Article I.5.3 refers to): one for staff costs, namely, a Convention, and one for travel costs and costs of stay.

53. The template for the overview table for staff costs contains a clearly legible footnote which reads "please do not forget to include your Conventions and/or readable copies of subcontract and invoice for each subcontracted task". It also states that supporting documents should be numbered and that the numbers should be copied into the first column. Moreover, at the bottom of the table, there is a field requesting the "*total N° of Conventions attached to Report*". It is thus clear from this table that staff costs have to be substantiated by a Convention. This was also clear to the University, which submitted Conventions for the other six items of staff costs claimed in the 2007 report. In that regard, it should also be noted that, when it submitted the additional costs in 2008, the Company included in the relevant table the staff costs relating to the complainant's work on the project and changed the number of items entered into the above-mentioned field from six to seven. Item seven corresponded to the additional staff costs relating to the complainant's work.

54. The Ombudsman notes, however, that the complainant initially stated that the request to take into account further staff costs concerned co-financed costs, that is, costs borne by the University. Both the complaint and the complainant's observations on the EACEA's opinion and on its reply to the Ombudsman's request for further information refer to co-financed costs in this context, as the Company had done in its letters of 7 October 2008 and of 5 May 2009 to DG EAC and to the EACEA respectively. The complainant argued that when it submitted its amended final report in 2008, the University did not know that a Convention was necessary in relation to co-financed costs.



55. In that regard, it should be noted that the template for a Convention provided in page 7 of Annex V of the Grant Agreement stipulates that "the present convention... has been established **solely** for the purpose of justifying the Staff costs that the Institution will pay **from the Tempus grant**". This wording makes it appear doubtful whether a Convention is also necessary to substantiate staff costs which the grant holder finances through other means than the Tempus grant. This doubt is likely to be heightened by the wording of Article 3.5 of the Guidelines for the use of the Grant which states that "a duly filled in Convention (Annex V/7) for each person **employed by the project** ... must be sent as supporting documents with the final financial statement". In the interest of good administration and in order to improve the clarity of the contractual rules which bind the Commission and the recipients of its grants, the Ombudsman will therefore make a further remark in this respect.

56. However, in relation to the present complaint, it must be noted that, in his reply to the Ombudsman's question which he submitted on 17 August 2011, the complainant acknowledged that it was the University's intention that the additional staff costs be paid from the Tempus grant. These costs were therefore not 'co-financed', that is, they were not borne by the University.

57. This constitutes a fundamental change in the complainant's position. In fact, and as the Ombudsman explained in his letter of 5 July 2011, in which he asked the complainant for clarifications, if the relevant costs were to be financed from the Tempus grant, the argument that the University could not have known that a Convention was required would lose its main basis. This is because, unless the additional staff costs were co-financed, that is, not "*paid from the Tempus grant*" as discussed in paragraph 55 above, there could not be any doubt from the Grant Agreement that a Convention was required as a supporting document. Moreover, it resulted from the documents before the Ombudsman that this was clear to the University.

58. In view of the foregoing, the Ombudsman takes the view that there are no longer any grounds for further inquiries into the present complaint, which concerns the handling of co-financed staff costs. It should however be noted that the complainant remains free to submit new arguments to the EACEA in order to substantiate its view that the additional staff costs should be financed by the EU.

B. Conclusion

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

There are no grounds for further inquiries into the present complaint.

The complainant and the EACEA will be informed of this decision.

Further remark



The wording of the template for a Convention provided in the standard grant agreement (in particular the indication that the Convention is established " *solely for the purpose of justifying Staff costs [paid] from the Tempus Grant* ") might give rise to misunderstandings. In the interest of good administration, the EACEA could therefore consider amending the template in the standard grant agreement in order to clarify that Conventions are required for all staff costs.

P. Nikiforos Diamandouros

Done in Strasbourg on 16 February 2012

[1] The complainant submitted an authority to act issued by the Company.

[2] In relation to the subject matter of the present complaint, Article I.5 states that "the request for payment of the balance shall be accompanied by the final report ... and by: the supporting documents for the staff costs declared in the financial statement (see supporting documents in Annex V);"

[3] This seems to be a mistake: the total EU contribution foreseen in the agreement is EUR 474 686.00.

[4] Commission Regulation 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ 2002 L 248, p. 1.