Further proposal of the European Ombudsman for a friendly solution in the inquiry into complaint 108/2013/JN against the Education, Audiovisual and Culture Executive Agency

Solution - 01/03/2013
Case 108/2013/JN - **Opened on** 01/03/2013 - **Decision on** 05/12/2014 - **Institution concerned** European Education and Culture Executive Agency (Friendly solution) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

The background

1. The complainant is a non-profit NGO whose mission is "empowering young people". In 2009, it concluded a Grant Agreement (the 'Agreement') with the Education, Audiovisual and Culture Executive Agency (the 'Agency') in the framework of the 'Youth in Action' Programme for a project entitled "E-VOLUTION-Globalising E-Youth Work". The complainant acted as coordinator of a consortium of several organisations.

2. The complainant submitted its final report on the project by 22 February 2012. On 30 May 2012, the Agency refused to approve the report as it no longer corresponded to the project submitted. The Agency claimed full reimbursement of the pre-financing payment made to the complainant.

3. On 3 January 2013, the complainant sent its complaint to the Ombudsman. On 4 January 2013, the complainant repaid the Agency the amount claimed.

4. On 1 March 2013, the Ombudsman opened an inquiry into the allegation that the Agency did not act in accordance with the principles of good administration. The complainant submitted a number of arguments in support of this allegation. Essentially, it considered that the Agency (i) acted unlawfully and unfairly by rejecting its final report and by proceeding with recovery, and (ii) failed to respect the complainant's procedural rights. The complainant claimed that the Agency should enter into a discussion with the complainant with a view to agreeing on an appropriate financial settlement.

Allegation that the Agency did not comply with the principles of good administration in that the recovery was unfair and unlawful

The Ombudsman's friendly solution proposal

5. On 11 September 2013, the Ombudsman made a proposal for a friendly solution. The Ombudsman took into account the arguments and opinions put forward by the parties. The proposal dealt exclusively with the issue of the allegedly unfair and unlawful rejection of the final report and the recovery. The remaining issues raised by the complainant were left for a later stage in light of the outcome of the friendly solution proposal.

6. The Ombudsman agreed with the complainant that the final report was rejected more than 90 days after its submission and that this was not allowed by the Agreement. Thus, for procedural reasons, the recovery was in breach of the Agreement from the very start and therefore unlawful. In fact, pursuant to Article I.5.4 of the Agreement, the Agency had 90 days from the day of submission of the final report to approve or reject it and to pay the balance, or to request additional supporting documents or information. By virtue of Article II.15.4, "[f] *ailing a written reply from the Agency within the time limit for scrutiny* [that is to say, the 90 days mentioned above] *, the reports shall be deemed to have been approved* ". Thus, in the Ombudsman's view, once the 90 days had elapsed, the Agency was no longer entitled to reject the report but had to act as if it had expressly approved it.

7. The Ombudsman focused on the interpretation to be given to the above implicit approval provision. The Agency had not argued that its implicit approval of the final report did not apply to the actual project whose implementation was described in that report. Nor did it argue that the stipulation in Article II.15.4, which sets out that approval " *shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain* ", would authorise it to reverse its implicit approval of the project implemented, as described in the final report, on the ground that it did not correspond to the project initially submitted.

8. The Ombudsman further pointed out that the Agreement did not make sufficiently clear the exact meaning of the "approval" of the final report and its scope. The lack of clarity was, to a certain extent, due to the fact that Article II.15.4 contains the above stipulation, whose wording is not sufficiently clear. In this light, the Ombudsman took the view that, given that the Agency drafted the Agreement, which is a standard model, and that the terms of the Agreement could not be freely negotiated by the complainant, any unclear terms it contains should be interpreted in the complainant's favour (the principle of *contra proferentem*). Moreover, given that the above stipulation is a limitation of the scope and thus, by its very nature, constitutes an exception, it needs to be interpreted as such, that is to say, restrictively.

9. In the light of the above principles, the Ombudsman took the view that the above stipulation — which seems to address two issues, that is to say, (i) the "regularity" of the final report, and

(ii) the authenticity, completeness and correctness of the declarations and information it contains — needs to be interpreted as a whole in light of its second part, which addresses the issue of incomplete, inaccurate, incorrect or false statements in the final report. As regards the concept of "regularity", it cannot be interpreted extensively so as to authorise the Agency not to respect the 90-day time limit and to reverse its approval — implicit and explicit — of the final report at will. The approval as such would thus lose its effective purpose and would become merely illusory, which runs counter to the principle of legal certainty and the legitimate expectations of the grant beneficiary. As pointed out by the complainant, the purpose of the 90-day period for a decision on approval or rejection is to provide the Agency's contractors with legal certainty and to make the Administration act.

10. Moreover, the Ombudsman took into account the remaining provisions of the Agreement which provide, *inter alia* , that the Agency has 90 days to approve or reject the final report and to pay the balance. It cannot be said that the 90-day period would be insufficient for the Agency to reject a final report, especially where it considers that it should be rejected on a ground such as the one in the present case.

11. The Ombudsman further pointed out that the Agency's explanation — that is to say, the complainant's alleged late submission of the final report — was not relevant since it did not absolve the Agency from having to respect the Agreement and, in particular, the 90-day time limit. The Agency could have reacted to the alleged delay on the part of the complainant by considering other possibilities provided for by the Agreement, such as suspension of the period for payment, termination of the Agreement or a financial penalty. It was, however, not authorised by the Agreement to disregard the time limit. As to the Agency's assertion that the complainant's alleged late submission of the final report, combined with the alleged deficiencies in that report, complicated its internal treatment, the Ombudsman considered that these circumstances were not relevant. The principles of good administration require the Agency to abide by the Agreement, which it had itself drafted, and to organise its internal procedures in such a way as to be able to comply with its commitments. This is all the more true if the Agency considered the project as described in the final report to be deficient. For such assessment, even 90 days do not appear to be necessary.

12. The proposal for a friendly solution was phrased as follows:

"The Agency could accept that it was not entitled to reject the final report and could therefore annul its recovery order and reimburse the amount recovered, as well as default interest.

Moreover, the Agency could enter into negotiations with the complainant with a view to ascertaining the value of the non-implemented activities, in order to determine the value of the balance to be paid to the complainant, if any."

13. In its reply of 3 December 2013, the Agency acknowledged that it adopted its position on the final report 8 days after the 90-day time limit had elapsed. The recovery claim was however motivated by radical changes in the project. The Agency went on to disagree with the

Ombudsman's interpretation of the Agreement and of the legal effects of its not reacting within the 90-day time limit.

14. The Agency stated that it " *realises that it may have created a misunderstanding as to the concept and the exact scope of the "tacit approval of the final report" within the meaning of Article II.15.4 of the Grant Agreement* ". It apologised for this misunderstanding and provided the following clarifications.

15. The Agency agreed that if it fails to reply in writing within 90 days of the request for payment of the balance, the reports accompanying that request are deemed to have been "approved" by the Agency. However, this approval — whether express or tacit — has limited effects. Its sole meaning is that " *on the basis of the information contained in the final report, the Agency is in a position to (a) assess whether the project has been correctly implemented and to (b) determine the eligible costs incurred by the beneficiary as well as the final amount of the grant.* " The approval does not imply the Agency's agreement with the way the action has been implemented or with the eligibility of the costs declared by the beneficiary. This approval cannot create any right to the payment of the balance.

16. The Agency provided the following arguments in support of its position. *First* , it relied on the provisions of the Agreement which oblige the grant beneficiary to comply with the initial description of the project [2] unless it announces the envisaged modifications to the Agency and obtains the Agency's prior approval of the modifications [3] . The way the project has been implemented is assessed under Article I.1.2 and Annex I, and not Articles I.5.4 [4] and II.15.4 [5] of the Agreement. In the Agency's view, tacit approval cannot imply approval of modifications which have not been authorised in compliance with the Agreement. This would be incompatible with the aforesaid provisions and allow them to be circumvented. In fact, the beneficiary would be allowed to make substantial changes to the initial project in a purely unilateral way. Circumventing the requirements laid down in the calls for proposals under EU programmes would thus also be legitimised.

17. *Second* , the Agency submitted that the eligible costs and the final amount of the grant are also not determined under Articles I.5.4 and II.15.4, but under Articles I.4 [6] , II.14 [7] and II.17 [8] of the Agreement. Pursuant to Article II.17.5, " *if the action is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant* ...". The interpretation that the tacit approval of the final report implies the Agency's agreement with the implementation of the project and with the eligibility of the costs declared by the beneficiary would be incompatible with these provisions. Otherwise, the beneficiary would be allowed to benefit from EU funding to which it was not entitled.

18. *Third* , the Agency relied on the findings of the General Court and the Court in the case of *ArchiMEDES v Commission* , in which it sees support for its view that tacit approval does not imply validation of the implemented works and the costs declared and cannot create any right to the payment of the balance of the grant for the beneficiary [9] .

19. Finally, the Agency said that it had erroneously stated in its letter of 30 May 2012 that it

rejected the report. It should have correctly stated that it approved the report but, on the basis of that report, concluded that the complainant failed to implement the action in accordance with Article I.1.2 and Annex I to the extent that the project was radically different from the project initially selected and the subject matter of the Agreement. In addition, the Agency determined the eligible costs and the final amount of the grant in accordance with Articles II.14, I.6 [10] and II.17 respectively. The Agency considered that the costs were not " *necessary for the implementation of the action which is the subject of the grant* " within the meaning of Article II.14.1 and decided to reduce the amount of the grant to EUR 0 on the basis of Article II.17.5.

20. In sum, the Agency took the view that it had actually already implemented the proposal for a friendly solution because it accepted the report and, on its basis, ascertained the value of the non-implemented activities in order to determine the value of the balance to be paid to the complainant. It came to the conclusion that the project implemented would never have been selected for funding. Therefore, it had no other choice but to reduce the grant to EUR 0. Any other solution would breach the principle of equal treatment of the grant applicants and beneficiaries and of the requirements laid down in the call for proposals. Taking into account that there might have been a misunderstanding, the Agency invited the complainant to submit any new relevant information regarding the implementation of the action and the costs incurred [11] .

21. In its observations of 30 January 2014, the complainant submitted that the Agency actually rejected the proposal for a friendly solution. Given, in particular, that the Agency suggested that it was improbable that any new information could alter its conclusion, the complainant decided not to follow up on the Agency's invitation to submit any further information.

22. The complainant further pointed out that it is not legally represented and therefore its capacity to comment on the Agency's legal construction is limited. However, if the Agency's interpretation were correct, this would mean that the Agreement puts no time limit on the Agency's obligation to settle its debt. The complainant found it hard to believe that the Agency would use a grant agreement template which does not provide for a deadline for its final payment, especially taking into account the inequality in power between the parties. In addition, the pre-financing had been disbursed to partners, employees and suppliers long ago. It is not tolerable that the beneficiary/coordinator should be left in limbo for an indefinite period of time as to whether it actually had the permission to disburse the funds. Finally, the complainant suggested that the Agency created the impression that there was a time limit for the final payment.

The Ombudsman's assessment after the proposal for a friendly solution

23. Having thoroughly examined the submissions of the parties, the Ombudsman will limit her analysis at this stage to the issues dealt with in the friendly solution proposal, namely, the lawfulness of the recovery with respect to the tacit approval provision in the Agreement. In this respect, the Agency put forward two sets of arguments. *First* , it relied on the case-law of the EU

courts which, in the Agency's view, gives an interpretation to implicit approval that is different from the one given to it by the Ombudsman. *Second* , it relied on the provisions of the Agreement relating to the project to be implemented and to the eligibility of costs. The Ombudsman will analyse these arguments in turn.

24. As regards the judicial interpretation of implicit approval, the Agency relied on the judgment of the General Court and the judgment of the Court of Justice in the *ArchiMEDES* case. In that case, the General Court took a position on, among other things, the argument that the Commission was obliged to pay the balance because of the tacit approval of the final report and that it was no longer entitled to challenge the implementation of the project [12] .

25. However, the Ombudsman does not share the Agency's view that these judgments would warrant its interpretation of the legal effects of implicit approval. In fact, support for the Agency's general conclusion cannot be found in these judgments and it appears from the courts' reasoning that the rationale was more nuanced. The General Court merely stated that, in the particular case, the contractors were not entitled to receive the full payment **on the sole ground** that the **final report** had been approved. The reason for this was that the amount of the final payment was only a portion of the eligible costs of all contractors [13] . As regards paragraphs 90-99 of the General Court's judgment to which the Agency also referred, the Court took into account the fact that, in the particular circumstances of the case, the coordinator could not claim costs incurred by a project partner. As regards the judgment of the Court of Justice, it, too, did not determine this issue authoritatively [14] .

26. In addition, the *ArchiMEDES* case is not relevant for the case at hand because it concerned a different contract, the relevant provisions of which were not the same as those used in the Agreement [15] . It is important that the contract in the *ArchiMEDES* case appears to have made a distinction between the final report on the implementation of the project, on the one hand, and the financial documentation relating to the eligibility of costs, on the other hand. While the payment of the balance depended on the approval of both, the implicit approval covered only the final report [16] . By contrast, the tacit approval provided for by the Agreement in the present case covers both the final report on the implementation of the project and the financial documentation needed for the assessment of the eligible costs [17] . In the present case, once these documents have been approved, the Agency must pay the balance [18] .

27. Furthermore, the Ombudsman attaches weight to the fact that, unlike the contract in the *ArchiMEDES* case, the Agreement in the present case attempts to define, albeit not in a very clear way, the legal effects of the Agency's implicit approval by stating what it does **not** imply. Pursuant to Article II.15.4, " *Approval of the reports accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain* ." The Ombudsman maintains the earlier view that this provision does not and cannot authorise the Agency to reverse its implicit approval for reasons other than those stated in this clause (see paragraphs 7-9 above).

28. Therefore, the Ombudsman is of the view that the *ArchiMEDES* case has no bearing on the assessment of the present complaint.

29. Nor does the Ombudsman find convincing the Agency's second set of arguments, namely, that the Ombudsman's interpretation is not compatible with the provisions of the Agreement relating to the implementation of the action agreed on with the Agency and to the eligibility of the costs. The Ombudsman's view is that the wording of the Agreement does not, in fact, support the Agency's arguments.

30. In the Ombudsman's view, according to the wording of the Agreement, the Agency has 90 days: (i) to check both the final implementation report and the financial documents; (ii) to assess these documents; and (iii) if approved, to pay the balance [19] . The Ombudsman therefore cannot accept the Agency's submission that the sole meaning of the implicit approval in question is that, " *on the basis of the information contained in the final report, the Agency is in a position to (a) assess whether the project has been correctly implemented and to (b) determine the eligible costs incurred by the beneficiary as well as the final amount of the grant.* " The Agency's interpretation clearly contradicts the provisions of Articles I.5.4 and II.15.4 of the Agreement [20] . If the Agency has a different view, it should revise its grant agreement template to reflect that view.

31. As already pointed out in the friendly solution proposal and above, Article II.15.4 of the Agreement defines the scope of the Agency's implicit approval. This definition, which is based on a comprehensive, restrictive list of shortcomings which are not covered by the approval, seems to leave no space for reversing the approval on the ground that the grant beneficiary deviated from the initial project without the Agency's prior agreement. In other words, the Agreement, as it is drafted, gives the impression that the implicit approval also covers the action implemented *as described in the final report* .

32. In this respect, the Ombudsman acknowledges that, in some cases, this might lead to the Agency accepting implemented works which do not correspond to the project it initially selected and approved. This is a matter of concern since public money allocated to the projects should be spent as intended.

33. However, in the present case, it is the Agency that drafted the Agreement and freely imposed this time limit on itself. In the Ombudsman's view, the clause contained in Article II.15.4, read in conjunction with the provisions of Article I.5.4, constitutes a typical tacit approval clause whose legal meaning is that, in the event of 90 days of administrative silence, the project as described in the final report is approved. It appears that the reason the Agency decided to introduce the implicit approval provision in the Agreement was precisely to strike a balance between the public interest of having EU funds efficiently spent on the selected project and the legitimate interests of the beneficiaries and, especially, the project coordinator. It serves the beneficiaries' right to legal certainty that the Administration is under a duty to adopt a binding decision without unreasonable delay, in this case, within 90 days.

34. Had the Agency had a different interpretation of the Agreement at the time of its drafting, it should have adopted a different definition of the implicit approval or provided for a different relationship between different provisions of the Agreement. In addition, as already pointed out in

the friendly solution proposal, the Ombudsman cannot see why 90 days would be insufficient for the Agency to reject the final report if it considers that the project was not implemented as agreed.

35. The above arguments are equally applicable to the assessment of eligible costs, which should be, under the particular grant agreement in this case, also terminated within the 90-day time limit. It is true that Article II.17.1 provides that " *the Agency shall adopt the amount of the final payment to be granted to the beneficiaries* on the basis of the documents referred to in Article II.15.4 which it has approved ." **[21]** However, this provision cannot, on its own, derogate from the rules in Articles I.5.4 and II.15.4, according to which the Agency should approve these documents and pay the balance within 90 days. In the same vein, although Article II.17.5 provides that " *if the action is not implemented or is implemented poorly, partially or late, the Agency may reduce the grant ...*", the Agreement contains no indication that this could be done freely beyond the 90-day time limit [22] .

36. Finally, the Ombudsman cannot agree with the Agency's statement that it has already accepted the Ombudsman's friendly solution proposal. It is the Ombudsman's view that the Agreement does not allow for the course of action taken by the Agency, that is to say, to "approve" the final report merely formally, but to reject, after the 90-day time limit, all of its essential content, that is to say, the description of the implemented actions and the declaration of eligible costs. Such an interpretation flies in the face of common sense and finds no support in the provisions of the Agreement. As correctly pointed out by the complainant, such an interpretation would free the Agency from its obligation to take a binding position within the period of time specified in the Agreement and would render the corresponding provisions meaningless. In addition, it would authorise the Agency to adopt a binding position and to reverse it whenever it finds appropriate.

37. For all these reasons, the Ombudsman maintains the position expressed in the friendly solution proposal. Unless the Agency can provide a better explanation, the Ombudsman urges the Agency, by means of a complementary friendly solution proposal, to review its position on the Ombudsman's friendly solution proposal.

38. In addition, the Ombudsman would suggest that the Agency revise the grant agreement template it uses in order to simplify and clarify its provisions relating to the concept, scope and legal effects of the approval (including implicit) and rejection of the final report and the related documents.

The further proposal for a friendly solution

Taking into account the above findings, the Ombudsman urges the Agency to implement the original proposal for a friendly solution.

In addition, the Agency could revise its grant agreement template in order to simplify and clarify the provisions relating to the approval of the final report and of the related

documents.

Emily O'Reilly

European Ombudsman

Done in Strasbourg on 27/06/2014

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] Pursuant to Article I.1.2, " *The beneficiaries accept the grant and undertake to do everything in their power to carry out the action as described in Annex I, in accordance with the terms and conditions of this agreement.* " Annex I provides in particular that "[t] *he grant awarded aims at implementing the activities as they are described in the application form* ..." and that "[**a**] *ny change to the activities needs to be* explicitly *authorised by the Executive Agency.* "

[3] Article II.13 reads as follows:

" *II.13.1 Any amendment to the grant conditions must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.*

II.13.2 The supplementary agreement may not have the purpose of the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of applicants.

II.13.3 If the request for amendment is made by the co-ordinator, in agreement with the co-beneficiaries, he must send it to the Agency in good time before it is due to take effect and at all events one month before the closing date of the action, except in cases duly substantiated by the co-ordinator and accepted by the Agency. "

[4] Article I.5.4 reads as follows: " *The request for payment of the balance shall be accompanied by the final technical implementation report and the financial statement specified in Article II.15.4.*

The Agency shall have 90 days to approve or reject the report and the financial statement and to pay the balance in accordance with Article II.17, or to request additional supporting documents or information under the procedure laid down in Article II.15.4. The co-ordinator shall have 30 days in which to submit additional information or a new report.

The Agency may suspend the period for payment in accordance with the procedure in Article II.16.2. "

[5] The relevant part of Article II.15.4 reads as follows: "... *the co-ordinator shall submit a*

request for payment of the balance accompanied by the following documents:

-a final report on the implementation of the action;

-a final financial statement of the eligible costs actually incurred ... ;

-a full summary statement of the receipts and expenditure of the action;

-where required ... , an external audit report ... ;

-an updated report on the distribution of the European Community financial contribution between the beneficiaries, including dates of transfer.

[...]

On receipt of these documents, the Agency shall have the period specified in Article I.5 in order to:

-approve the final report on implementation of the action and the final financial statement;

-ask the co-ordinator for supporting documents or any additional information it deems necessary to allow the approval of the reports;

-reject the report(s) and ask for the submission of (a) new report(s).

Failing a written reply from the Agency within the time limit for scrutiny indicated above, the reports shall be deemed to have been approved. Approval of the reports accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain . [...]"

[6] Article I.4 concerns the financing of the action.

[7] Article II.14 determines eligible costs. Under Article II.14.1, eligible costs are, among other things, " *necessary for the implementation of the action which is the subject of the grant* ".

[8] Article II.17 concerns the determining of the final grant. Under Article II.17.1, "[w] *ithout prejudice to information obtained subsequently pursuant to Article II.19, the Agency shall adopt the amount of the final payment to be granted to the beneficiaries on the basis of the documents referred to in Article II.15.4 which it has approved.* " Article II.19 concerns checks and audits.

[9] Joined Cases T-396/05 and T-397/05 *ArchiMEDES v Commission* , judgment of the General Court of 10 June 2009, [2009] ECR II-70 (summary publication), paragraphs 78-80 and 83-99; and Case C-317/09 P *ArchiMEDES v Commission* , judgment of the Court of 18 November 2010, [2010] ECR I-150 (summary publication), paragraphs 62 *et seq.*

[10] Pursuant to Article I.6, "[t] *he technical implementation reports, financial statements and other documents referred to in Article I.5 must be submitted in one copy on the following date:*

-final technical implementation report and financial statement: within 2 months following the closing date of the action specified in Article I.2.2. "

[11] On 2 December 2013, the Agency sent the complainant a letter in which it provided essentially the same explanations for its position as in its reply to the friendly solution proposal and invited the complainant to submit any new relevant information.

[12] See paragraphs 78 *et seq.* of the General Court's judgment.

[13] See especially paragraphs 80-81 of the General Court's judgment.

[14] In fact, the Court stated in paragraph 62 of its judgment that the General Court's finding that the final report had been tacitly approved and that it was therefore necessary to examine the scope of the plaintiff's claims was not challenged by the parties. In paragraph 65, it used an open-ended formulation: " *Nevertheless, even assuming that the tacit approval of the final report created a debt on the part of the Commission, this does not necessarily imply that the plaintiff has the right to claim the payment of the total amount of that debt* " (translated by the Ombudsman from French).

[15] The Ombudsman reiterates that by virtue of Article I.9 of the Agreement, only the EU courts can provide an authoritative interpretation of the Agreement. The contract examined in the *ArchiMEDES* case is not in the EO's possession and the Ombudsman's conclusions are therefore based on the text of the judgments of the Court and the General Court in that case.

[16] See paragraphs 8-9 of the judgment of the General Court. Pursuant to Article 4 of the contract, the balance was to be paid within two months following the approval of the final report **and** of the statement of the costs (" *le relevé des coûts* "). Article 10.3 of the contract provided (in French): "... *En l'absence d'observations de la Commission, le rapport final sera réputé approuvé dans les deux mois de sa réception, un délai d'un mois étant applicable aux autres rapports.* " See also the Commission's arguments summarised in paragraph 87 of the General Court's judgment as follows: "... *l'acceptation du rapport final ne vaudrait pas acceptation des coûts du projet. Il résulterait de l'article 4, troisième tiret, du contrat que l'approbation des coûts est également nécessaire au versement du solde de la contribution totale. Or, ceux-ci ne feraient pas partie des documents qui peuvent être tacitement approuvés par la Commission.* "

[17] See footnote 5 above.

[18] In fact, the relevant part of Article I.5.4 provides: " *The request for payment of the balance shall be accompanied by the final technical implementation report and the financial statement ... The Agency shall have 90 days to approve or reject the report and the financial statement* **and to pay the balance** ..., *or to request additional supporting documents or information* ..." (emphasis added by the Ombudsman).

[19] See notably Articles I.5.4 and II.15.4.

[20] The Ombudsman points out that Article I.5.4, which provides for the 90-day time limit for the payment of the balance on the basis of the approved documents, forms part of the Special Conditions, which, according to the provisions on the first page of the Agreement, take precedence over the remaining parts of the Agreement (notably Article II.17 referred to below).

[21] Emphasis added by the Ombudsman.

[22] As already pointed out in footnote 20 above, Article I.5.4 takes precedence over Article II.17.