

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

Brussels, 25 SEP. 2013
ACCESS DOCUMENTS-2010-2013
GestDem number 2013/3349
ARES save number 3042960

Dear Mr Vitsos,

**Subject: Your request for access to documents
Reference GestDem 2013/3349**

I would like to refer to your email dated 20 June 2013, through which you request access to documents, registered under the abovementioned reference number.

1. SCOPE OF YOUR APPLICATION

Your application concerns the following documents:

- "1. The FP6 Audit Manuals, including all annexes, as dispatched to the 'external auditors' for guidance and reference purposes.*
- 2. The FP7 Audit Process Handbook, including all annexes, as dispatched to the 'external auditors' for guidance and reference purposes.*
- 3. The documents DG RTD dispatched to the 'external auditors' with 'Guidelines', or equivalent', about the content of the 'FP6 flash reports' and their counterpart "FP7 'flash' report".*
- 4. The documents fully describing the 'quality check on audit report for coherence, completeness, correctness, compliance with the Audit Handbook' regarding FP7 audits. One or more DG RTD Units have been using such documents to verify and validate the audits of 'external contractors'*
- 5. The documents describing how in particular a 'contractor' was singled out for either a 'risk-based audit' or an 'audit for continued dissuasive effect', which are mentioned in the 2010 Annual Activity Report of DG RTD.*
- 6. The template of the letter in use in 2011, with which DG RTD notified a 'contractor' about a 'normal' financial audit, and all annexes thereto.*
- 7. The template of the letter in use in 2011, with which DG RTD notified a 'contractor' about a 'risk-based audit', and all annexes thereto.*

8. The template of the letter in use in 2011, with which DG RTD notified a 'contractor' about an 'audit for continued dissuasive effect' and all annexes thereto."

Your request is considered to fall within the scope of Regulation (EC) N°1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

2. IDENTIFICATION OF THE RELEVANT DOCUMENTS

After an examination of DG RTD files, the following documents have been identified as corresponding to your application for access:

In respect of Point 1 of your request, please find attached an expunged version of the FP6 Audit Manual. The full version of this document cannot be disclosed for reasons explained below (please see §3 of the present letter).

In respect of Point 2, please find attached an expunged version of the FP7 Audit Manual. The full version of this document cannot be disclosed for reasons explained below (please see §3 of the present letter).

In respect of Point 3 of your application, I regret to inform you that no guidelines exist for the 'external auditors' on the content of the FP6 Flash Report. DG RTD is, however, pleased to grant you full access to the template for the FP6 Flash Report, which is part of DG RTD's FP6 Audit Framework Services Contract and is self-explanatory. For FP7, no flash reports have to be provided by the 'external auditors'. The request for this document is thus 'devoid of purpose'.

In respect of Point 4 of your request, please find attached the full version of the *Draft Report Control Checklist*, which is the document used by DG RTD.

In respect of Point 5 of your request, we have identified two documents describing the selection of beneficiaries for risk-based audits. Please find attached the first document, which is entitled *Outcome of 2007 Risk Questionnaire*. I regret to inform you, however, that after careful examination, the second document entitled *7th Framework Programme RTD Risk-Based Audit Approach* cannot be disclosed to you, even partially, for reasons explained below (please see §3 of the present letter).

In respect of Points 6 to 8 of your request, please find attached the templates for the Letters of Announcement for FP6 and FP7 audits, including their annexes. Please kindly note that for FP7, a different model is used for audits performed by 'external auditors'. We have noticed that in your application, you refer to possibly different templates for different types of audits. Please note that while different Letter of Announcement templates are used for audits performed by the Commission auditors and audits performed by 'external auditors' for FP7, no other distinction is made. We would also like to draw your attention to the fact that the attached templates are evolving documents, which are being adapted over time according to new developments. These templates are thus by nature only indicative documents. Hence only the latest versions of the templates are kept on a shared drive, so that the auditors of the different Research DGs always have the latest version at their disposal.

¹ OJ L145, 31.05.2001, p.43. (Hereinafter, 'Regulation (EC) N°1049/2001').

3. EXAMINATION AND CONCLUSIONS – REASONS FOR FULL OR PARTIAL REFUSAL

The document entitled 7th *Framework Programme RTD Risk- Based Audit Approach*, which falls within the scope of Point 5 of your application for access to documents, cannot be disclosed under Article 4§2, third indent and Article 4§1(a), fourth indent of Regulation (EC) N°1049/2001, as explained below.

This document contributes to the definition of the risk-based pillar within the FP7 Ex-Post Audit Strategy 2009-2016 for DG RTD. It aims at listing and analysing potential risks that could be taken into account for the implementation of the FP7 Audit Strategy. Its disclosure while the FP7 audit campaign is still on-going would undermine the protection of the purpose of audits. It falls, therefore, under the exception of Article 4§2, third indent of Regulation (EC) N°1049/2001, according to which: “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (...) the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure”.

Moreover, the aim of risk-based audits of FP7 beneficiaries is to ensure that public funding, which has been awarded to FP7 beneficiaries in the form of FP7 grants, is properly spent, and to prevent the abuse of public funds. A disclosure of the abovementioned document and of the methods and procedures set out by it would thus have a negative impact on the public interest as regards the Union’s financial policy. Therefore, the requested document is also covered by the exception of Article 4§1(a), fourth indent of Regulation (EC) N°1049/2001. According to this provision, “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: (...) the financial, monetary or economic policy of the Community or a Member State”. The financial policy of the Community can indeed be understood as relating to the proper management of the funds of the EU.

We have examined the possibility of granting partial access to this documents in accordance with Article 4§6 of Regulation (EC) N°1049/2001. However, partial access could not be envisaged either given the above mentioned exceptions of Regulation (EC) N°1049/2001.

As regards the withheld parts of documents corresponding to Points 1 and 2 of your application, they cannot be disclosed as they are covered by the same abovementioned two exceptions of Regulation (EC) N°1049/2001.

The expunged parts in both the FP6 and FP7 Audit Manual contain general standards and procedures related to on-the-spot audits as well as examples of specific problems encountered and how they might be addressed.

These parts cannot be disclosed under the above mentioned exception of Article 4§2, third indent of Regulation (EC) N°1049/2001. Disclosure of the expunged procedures would enable a beneficiary to pre-empt the audit by making adaptations to the accounting and supporting documentation. This would lose the potential benefits derived from audits and would, therefore, undermine the purpose of future audits.

The rest of the expunged sections relates to specific potential problems, practical advice and specific occasions on which there is an element of flexibility within the guidance to allow for certain circumstances. This information goes into more detail than a standardised practice manual as it is relevant to the particular circumstances. If this were to be disclosed, it would

leave the areas of flexibility open to abuse. This would undermine the audit process, and consequently defeat the primary purpose of current and future audits.

Moreover, the expunged parts in both audit manuals cannot be disclosed pursuant to Article 4§1(a), fourth indent of Regulation (EC) N°1049/2001. The Commission carries out audits with a view to protect the financial interests of the EU. Should it be disclosed, the withheld specific guidance drawn up as part of the policy to ensure a proper allocation of EU funds could result in deliberate attempts of auditees to circumvent or obstruct auditors' findings. The financial policy of the Community would consequently inevitably be undermined.

We have examined to which extent the exception laid down in Article 4§2, third indent of Regulation (EC) N°1049/2001 may be waived if there was an overriding public interest in disclosure. Such an interest must, firstly, be a public interest and secondly, outweigh the harm caused by the disclosure.

Having analysed your request, we have not found any sufficient elements that could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exception stipulated in this provision of Regulation (EC) N°1049/2001. The disclosure of the “*7th Framework Programme RTD Risk- Based Audit Approach*” and the redacted parts of the FP6 and FP7 Audit Manuals would reveal information on the way in which audit activities are concretely carried out in very specific cases. This would seriously reduce the effectiveness of the audit capacity of the Commission. In this context, the arguments which you put forward in your application do not justify the existence of an overriding public interest in the sense of the regulation that would outweigh the negative impact on the EU Budget and on the overall audit capacity of the Commission resulting from full public access to the three documents in question.

Consequently, we regret to refuse access to the “*7th Framework Programme RTD Risk- Based Audit Approach*” falling within the scope of under Point 5 of your application and to the withheld parts of documents partially disclosed to you in response to Points 1 and 2.

4. MEANS OF REDRESS

We have refused to disclose to you one document. However, we have granted to you full access to nine documents, and partial access to two documents.

Please note that the documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

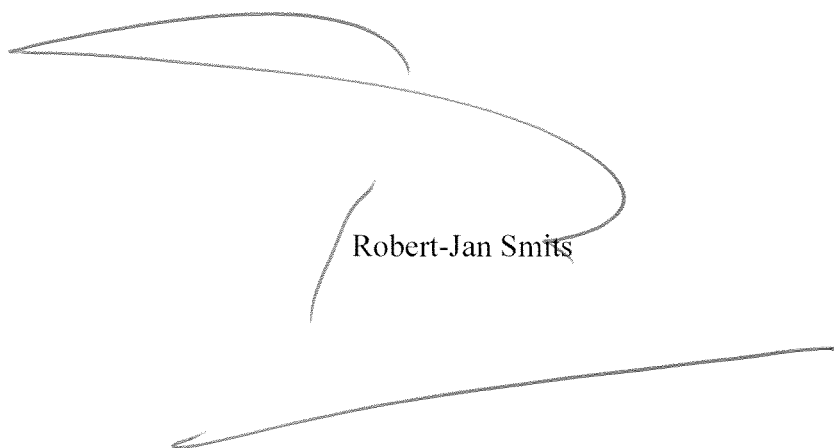
Should you wish the position of the Commission to be reconsidered in respect of points 1, 2 and 5 of your application, you should send a confirmatory application to the Commission's Secretary-General at the address below within fifteen working days.

The Secretary-General will inform you of the result of such review within 15 working days from the date of registration of your request. You will either be given access to the documents requested, or your request will be rejected, in which case you will be informed of what further action is open to you.

All correspondence should be sent to the following address:

The Secretary-General
European Commission
B-1049 BRUSSELS
Email: SG-ACC-DOC@ec.europa.eu

Yours sincerely,



Robert-Jan Smits

Annexes

CC: Ms S. Gruener (M.1); S. Bojinova, C. Moal-Nuyts, G. Lucza (R.5)
Mr M. Bellens (M.1); T. Bourgeois (R.5)