



Brussels, 19 MARS 2014
Gestdem registration n°: 2013/6469

Mr T. NTETSIKAS

per email only: ask+request-1091-c4ff2fd0@asktheeu.org

Subject: Your application for access to documents – Gestdem Ref. No. 2013/6469

Dear Mr Ntetsikas,

We refer to your email of 16 December 2013 in which you submit, within the framework of Regulation (EC) N°1049/2001¹, an application for access to documents, registered on 19 December 2013 under the above mentioned reference number.

1. SCOPE OF THE REQUEST

Your request concerns the release of the following documents:

1. The External Audits Synthesis Reports (or equivalent documents) of years 2008, 2009, 2010, 2011 and 2012, drawn up by the DG RTD M1 'External Audit' Unit, or its predecessor(s) Units or Sectors, as the case may be. This includes all annexes and appendices thereto.

2. The External Audits Synthesis Reports (or equivalent documents) of years 2008, 2009, 2010, 2011 and 2012, drawn up by the DG RTD M3 'Risk Management' Unit, or its predecessor(s) Units or Sectors, as the case may be. This includes all annexes and appendices thereto.

3. The External Audits Synthesis Reports (or equivalent documents) of years 2008, 2009, 2010, 2011 and 2012, drawn up by the DG RTD Sector 'Outsourced audits and audit certification policy', or its predecessor(s) Units or Sectors, as the case may be. This includes all annexes and appendices thereto.

4. The documents drawn up by DG RTD setting forth the methodologies, practices, and techniques of the DG RTD risk-based audits.

¹ Regulation (EC)N°1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145/43 of 31.5.2001, hereinafter 'Regulation (EC) N°1049/2001'.

5. *The documents drawn up by DG RTD setting forth the methodologies, practices, and techniques of the DG RTD corrective external financial audits.*

6. *The internal administrative decision, or equivalent, authorising the DG RTD External Audit Unit(s) or Sector(s) to carry out audits pursuant to the above-mentioned methodologies, practices, and techniques.*

7. *The internal administrative decision, or equivalent, authorising the DG RTD External Audit Unit(s) or Sector(s) to instruct external audit firms to carry out risk-based audits. One such example is found in the case T-165/13 Talanton v Commission, where the field audit was conducted by KPMG Greece. The same audit firm drew up the draft audit report.*

2. IDENTIFICATION OF THE CONCERNED DOCUMENTS AND ASSESSMENT

Your application is considered to fall within the scope of Regulation (EC) N°1049/2001.

1. In respect to point 1 of your request, please find attached the expunged versions of the Annual Activity Reports on External Audits for the years 2008, 2009, 2010, 2011, 2012.

Having examined the documents requested under the provisions of the Regulation, we have come to the conclusion that they may be partially disclosed in accordance with Article 4(6). Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation (EC) N°1049/2001, as detailed below.

Some of the expunged parts of the requested documents contain sensitive information on audit policy matters and fraud detection activities and fraud cases. The remaining withheld parts relate to details of specific audits on FP6 and FP7 beneficiaries.

Full disclosure of the requested documents would, firstly, undermine the protection of the interest laid down in Article 4(1)(a), fourth indent.

Pursuant 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 [...] of the Community [...].*

It should be borne in mind that the Commission carries out audits with a view to protect the financial interests of the EU. Any misuse of the expunged guidance drawn up as part of the policy to ensure a proper allocation of EU funds would have a direct financial impact for the EU budget not only in relation to the audits themselves, but also for any other potential future audits. The Commission's proper detection of errors, irregularities and cases of fraud would be seriously endangered and this would seriously undermine the EU financial policy.

We have noted that this exception is absolute and is not balanced against an overriding public interest. For this reason, only specific details of the requested documents have been withheld.

Secondly, full disclosure of the requested External Audits Annual Activity Reports would also prejudice the proper implementation of the Commission's Audit policy and the purpose of audits.

Pursuant to Article 4(2), third indent, *[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.*

The expunged parts of the External Audits Annual Activity Reports contain specific information on concrete audits and fraud cases. There are currently 13 pending FP6 audit procedures and financial audits on FP7 projects will be performed at least until 2016. Disclosure of the very detailed expunged information would thus undermine the purpose of audits, which is to assess the degree of compliance with the applicable rules and procedures, and ultimately to ensure the correct implementation of the EU funds. Moreover, it would open areas of flexibility to abuse if an audited entity acted in a fraudulent way. This would defeat the primary purpose of current and future audits and seriously endanger the efficiency and effectiveness of the Commission's audit capacity and activities in the field of Research.

The exception laid down in Article 4(2), third indent applies unless there is an overriding public interest in full disclosure of the requested documents. Such an interest must firstly be a public interest and secondly outweigh the harm caused by the disclosure. We share your view pursuant to which the public is entitled to scrutinise the conduct of DG RTD audits. However, we consider that such scrutiny should be limited to a minimum extent so as not to endanger the proper functioning of the audit policy. In this instance, we consider that the interest of transparency does not prevail over the general public interest served by ensuring that the Commission can properly audit beneficiaries of grants and contracts.

Thirdly, the withheld parts of the requested documents fall under the scope of the exception provided under Article 4(2), first indent of Regulation (EC) N°1049/2001. Pursuant to this provision, *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] commercial interests of a natural or legal person, including intellectual property.*

The redacted parts of the External Audits Annual Activity Reports contain information about legal entities which have been involved in audits as well as the results of these financial controls. Disclosure of the above mentioned data would lead to their identification. This could adversely affect their reputation or reveal commercial information not in the public knowledge. This situation would result in a negative impact on the audited entities' ability to exercise their commercial and business activities. Their commercial interests would be thus seriously undermined within the meaning of Article 4(2), first indent.

We have examined to which extent the exception laid down in Article 4(2), first indent may be waived in case of an overriding public interest in full disclosure. In the present case, we consider that the arguments which you put forward do not justify the existence of such an overriding public interest within the meaning of Regulation (EC) N°1049/2001. The limited expunging of the requested documents is required in order to ensure the prevailing public interest of the protection of an operational and credible auditing system. In light of the large parts of the documents concerned that are being disclosed, we consider that the public's scrutiny of the Commission's audit policy is ensured to the maximum extent.

2. In respect to points 2, 3, 6 and 7 of your request, we regret to inform you that there are no corresponding documents. We would like to refer you, hereby, to the Annual Activity Reports partially released under point 1. (More specifically concerning points 6 and 7, please consult the mission statements of the External audit units which can be found at the end of these reports.)

3. With regard to point 4 of your application, we have identified one corresponding document which is entitled as follows: *FP7 Framework Programme RTD Risk-Based Audit Approach*. Unfortunately, this document cannot be disclosed as it falls within the scope of the above mentioned exception of Article 4(2), third indent for the protection of the purpose of inspections, investigations and audits.

The *FP7 Framework Programme RTD Risk-Based Audit Approach* contributes to the definition of the risk-based pillar within DG RTD's FP7 Ex-Post Audit Strategy 2009-2016. It lists and analyses potential risks that could be taken into account for the implementation of the FP7 Audit Strategy. It was drafted as an internal document for use by auditors only. It describes in detail a range of potential risks that were identified on the basis of the previous audit experience. The identified specific risks, which are further assessed and ranked in order of priority in the document, serve as a basis for the selection of risk-based audits. Disclosure of these risk assessments would affect the efficiency and effectiveness of DG RTD's risk-based audit approach, as it would give indications to potentially audited entities as regards the scope and focus of future audits. Its disclosure would enable the circumvention of these audits and would seriously undermine their purpose, especially in light of the fact that the FP7 audit campaign is still underway.

Consequently, the *FP7 Framework Programme RTD Risk-Based Audit Approach* which corresponds to point 4 of your request cannot be disclosed to you pursuant to Article 4(2), third indent, as such disclosure would undermine the purpose of audits protected by that provision.

4. In respect to point 5 of your application, please kindly note that the methodologies, practices, procedures and techniques of DG RTD audits are outlined in the attached expunged FP6 and FP7 Audit Process Handbooks and Audit Manuals.

After careful examination of each of these four documents, we regret to inform you that they cannot be fully disclosed under the above mentioned Article 4(2), third indent and Article 4(1)(a), fourth indent of Regulation (EC) N°1049/2001.

The FP6 and FP7 Audit Process Handbooks and the two Audit Manuals contain general standards and procedures detailing specific problems encountered and how they might be managed. As already mentioned above, some FP6 audits are still ongoing and the FP7 audit campaign will continue until 2016. These four documents are thus still used by the auditors.

Some of the withheld parts of these documents relate to detailed criteria which trigger audits of projects beneficiaries. The checks relate to the eligibility of costs declared and the compliance with legal provisions. Others concern specific problems that may be encountered, practical advice and specific situations in which there is an element of flexibility within the guidance. If such parts of the documents were to be publicly disclosed, there is a real and non-hypothetical risk that beneficiaries, especially those having acted in a irregular or fraudulent way, will try to work within the tolerances provided for in the above mentioned documents to increase the likelihood of the errors, irregularities or potential fraud to remain undetected.

For instance, as some of the audits envisaged in the expunged sections of the documents are performed at the place of work of the beneficiary upon a short prior notice designed to leave less time for the beneficiary to adjust any irregularities before an audit, disclosure of the details of the procedures adopted would enable a beneficiary to pre-empt the audit by making adaptations to their accounting and supporting documentation. This would reduce the potential benefits derived from this type of audits and would, therefore, seriously

undermine the purpose of ongoing and future audits, which is to assess the degree of compliance with the applicable rules and procedures, and ultimately to ensure the correct implementation of EU funds.

Disclosure of these procedures and guidance would therefore undermine the efficiency and effectiveness of the audit policy within the meaning of Article 4(2), third indent.

Again, we have examined to which extent the exception laid down in Article 4(2), first indent may be waived in case of an overriding public interest in full disclosure. In the present case, we consider that the arguments which you put forward do not justify the existence of such an overriding public interest within the meaning of Regulation (EC) N°1049/2001.

Likewise, the redacted parts of the handbooks and audit manuals fall also within the scope of the exception to disclosure pursuant to Article 4(1)(a), fourth indent. As already mentioned, the financial policy of the Community can be understood as relating to the proper management of its funds. The information expunged from the four above mentioned documents corresponding to point 5 of your application, relates directly to the conduct of audits designed to protect the financial interests and policy of the Union. As we are aware that the absolute exception provided under Article 4(1)(a), fourth indent is not balanced against an overriding public interest and requires a strict interpretation, only specific details of the four documents have been withheld.

3. MEANS OF REDRESS

We granted you partial access to nine documents and refused to disclose one document.

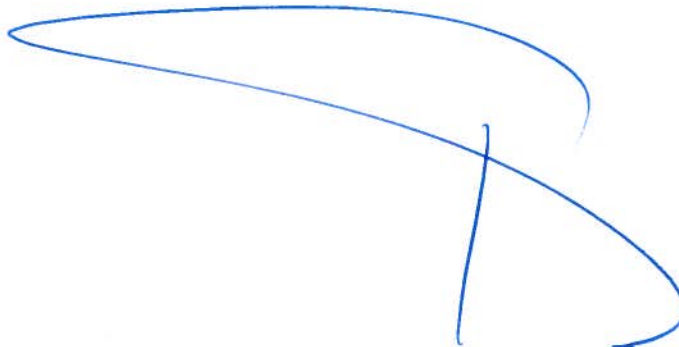
In accordance with Article 7(2) of Regulation (EC) N°1049/2001, you are entitled to submit a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Bruxelles

Or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Robert-Jan Smits