



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

The Director-General

Brussels,
DG CONNECT/RM/AMF/pef

Mr. Charilaos DROSOS

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Subject: Your application for access to documents – Ref GestDem No 2014/962 under Regulation 1049/2011 regarding public access to European Parliament, Council and Commission documents

Dear Sir,

We refer to your email dated 20/02/2014 wherein you make a request for access to documents, registered by us on 20/02/2014 with the above-mentioned reference number. We also refer to our holding reply of 04/03/2014.

For the sake of clarity we reply according to the numbering in your email.

1. Manual, or handbook, or equivalent document(s) for:

- The DG INFSO/CNECT imposed methodology and practice about the first checks by the audit firms
- The second check
- The third check
- The checks of special cases, where the Unit S4, or its successor(s), and the project officer were also involved.

Please be informed that we have identified one document corresponding to your request. You find enclosed the document requested. (**Annex 1**)

2. Manual, or handbook, or equivalent document(s) for:

- First check by the two 02 Unit auditors
- The second check
- The third check
- The checks of special cases, where the Unit S4, or its successor(s), and the project officer were also involved

Please be informed that we have identified one document corresponding to your request. You find enclosed the document requested. (**Annex 2**)

3. Manual, or handbook, or equivalent document(s) for:

- **The identification of contractors/beneficiaries having a high risk as regards 'intentional overclaims'**
- **The special procedures for data gathering, especially in view of the content of the first 3 bullets of slide #29**

Please be informed that we have identified one document corresponding to your request. You find enclosed the document requested. **(Annex 3).**

Please also note that only partial access can be granted to the documents requested **(Annex 1, Annex 2 and Annex 3)**. The erased parts in the documents provided fall within one or more of the exceptions laid down in Article 4 of Regulation 1049/2001.

Pursuant to Article 4(1) (a) fourth indent of Regulation 1049/2001 *"the institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards the financial policy of the Community."*

The financial policy of the Community can be understood as relating to the proper management of the funds of the EU. It is a policy aimed at protecting the financial resources of the EU by way of auditing beneficiaries of grants and subcontractors. The information withheld in this instance relates directly to the conduct of these audits and as such is one of the means to protect the financial policy of the EU. The disclosure of these parts could result in deliberate attempts of auditees to pre-empt or distort the findings in audits by taking advantage of the guidance in the manual where there is flexibility.

The exception in Article 4(1) applies to all of the withheld sections. This is an absolute exception not balanced by an overriding public interest.

Article 4(2) third indent of Regulation 1049/2001 provides that *"the institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits."*

The documents setting forth the methodologies, practices, and techniques of the risk based audits contain general standards and procedures and set out in detail specific problems encountered and how they might be managed. The information goes into more detail as it is relevant to particular circumstances. If this information was disclosed, it would open areas of flexibility to abuse if an audited entity acted in a fraudulent way. Therefore, revelation of this information would undermine the audit process. This would defeat the primary purpose of current and future audits and would seriously reduce the effectiveness of the audit capacity of the Commission.

We have examined to which extent the exception laid down in Article 4(2) of Regulation 1049/2001 may be waived in case of an overriding public interest in full 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 elements which could justify the existence of an overriding public interest in the sense of the Regulation, which would outweigh the exceptions stipulated in Article 4(2) mentioned above.

Therefore, we have concluded that only partial access to the aforementioned documents (**Annex 1, Annex 2 and Annex 3**) can be granted.

Please note that in accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position above.

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-4
BERL 5/327
B-1049 Bruxelles

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

Yours sincerely,

(e-Signed)
Robert Madelin