



Luxembourg, 18 SEP. 2014

Vítor Caldeira

President

Mr Guido STRACK

By e-mail:

[ask+request-1425-93901749@asktheeu.org](mailto:ask+request-1425-93901749@asktheeu.org)

Dear Mr Strack,

By e-mail of 2 September 2014, you asked the Court of Auditors to reconsider its position refusing access to the documents requested in your e-mail of 4 August 2014, i.e.:

*"any documents in relation to officials or non-officials-staff of the EU-institutions contacting you or your predecessors as "external addressee" for whistleblowers under art. 22b of the staff regulations (inc. previous internal norms of the Commission) including but not limited to: any correspondence from and to the whistleblower(s) including all its annexes and also any follow-up communication or notifications from and to other services also with all its annexes as well as all internal drafts and other documents related to these issues."*

First of all, I would like to point out that, as explained in the reply of 21 August 2014 to your access to documents request, documents related to whistleblowing are subject to specific confidentiality requirements in order to protect the persons implicated in those procedures. It should also be noted that the protection of whistleblowers has been further enhanced by Article 22c of the new Staff Regulations. Moreover, in accordance with Article 339 TFEU, we may *"not disclose information of the kind covered by the obligation of professional secrecy."*

Those principles must be taken into account when examining whether the requested documents shall be disclosed or whether, and to what extent, they fall under one (or more) of the exceptions laid down in Article 4 of Decision No 12/2005 of the Court of Auditors regarding public access to Court documents (OJ C 67 of 20.3.2009, p. 1).

### (I) The documents concerned by your request

Following your access to documents request, we have identified six cases of exchange of correspondence falling within the scope of whistleblowing under Article 22b of the Staff Regulations. Three of those cases date from 2009 and one from 2010, 2011 and 2013 respectively. Please note that the Court of Auditors' document registration systems and

databases do not contain the specific category of Article 22b whistleblowers and that we limited our search to correspondence dating from 2009 onwards.

The accusations made by the whistleblowers, three of which remained anonymous, concerned, in general terms, maladministration, misuse of public funds, as well as irregularities relating to internal governance, staff management and contracts.

In five of the six cases, the information given by the whistleblower was also communicated to OLAF, either by the whistleblower himself or by the Court of Auditors when the alleged facts fell within OLAF's competence.

## **(II) Assessment of your request under Article 4 of Decision No 12/2005**

We consider that public access to the documents received from whistleblowers and, to a certain extent, the subsequent correspondence, would undermine the protection of the privacy and integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data (Article 4(1)(b) of Decision No 12/2005).

The documents in question contain personal data of whistleblowers, of persons accused of misconduct and other persons involved. In some of those documents, the persons concerned are explicitly named, in others they are easily identifiable, especially for someone who has a certain knowledge of the background. Granting public access to such data would undermine the protection of external whistleblowers required under Articles 22b and 22c of the Staff Regulations, the presumption of innocence of the persons accused of misconduct and the privacy and reputation of all persons involved.

Furthermore, disclosing the requested documents would undermine the protection of investigations (Article 4(3), third indent of Decision No 12/2005). When the Court of Auditors receives evidence of irregularities falling within the competence of OLAF, the information is forwarded to the latter. In order not to jeopardize OLAF's inspections and investigations, it is essential that the information forwarded be treated confidentially, on a strict "need-to-know" basis. Furthermore, the effectiveness of the procedure foreseen in Article 22b of the Staff Regulations and the trust of external whistleblowers in the Court of Auditors would be undermined if the institution disclosed those documents to the public.

## **(III) Partial access to certain documents**

In accordance with Article 4(6) of Decision No 12/2005, we have examined the possibility of granting partial access to the requested documents. As regards the documents we received from whistleblowers, we consider that it is not sufficient to blacken certain parts of those documents to ensure that the privacy and integrity of the individual and the purpose of investigations are adequately protected. In fact, it would be necessary to delete all personal and factual elements contained in those documents so that no useful information would be left. Therefore, I confirm the decision of 21 August 2014 not to grant any access to those documents.

As regards the *replies* sent to the persons concerned, I am pleased to inform you that partial access is granted to the three letters informing those complainants who had provided their name and contact details to the Court, of the follow-up of their denunciations (see attachment). The names of persons, institutions as well as dates and

other information allowing to identify the whistleblower and other persons concerned, have been omitted. The remaining parts of those letters are drafted in general terms. Therefore they show how the whistleblowing cases were dealt with at the Court of Auditors, without giving access to information whose disclosure would be harmful to the interests of the individuals involved or the conduct of investigations.

**(IV) Absence of overriding public interest in disclosure**

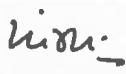
In accordance with Article 4(8) of Decision No 12/2005, we also examined whether there is an overriding public interest in disclosing those documents for which access is totally or partially refused. We consider that in this case the interests of protecting the whistleblower and other persons concerned as well the need to ensure the effectiveness of investigations outweigh the general interest of openness and transparency and that there are no other overriding public interests at stake which might require disclosure.

**(V) Conclusions**

For these reasons, I regret to inform you that I have to confirm the decision of 21 August 2014, in so far as access to documents received by the Court from external whistleblowers is refused. However, partial access is granted to the Court's replies to the three whistleblowers who identified themselves.

Finally, I draw your attention to the fact that you have the possibility to challenge the present decision, in so far as access to the requested documents is refused, before the General Court of the European Union, within two months of receipt of the present letter, or to submit a complaint to the European Ombudsman ([www.ombudsman.europa.eu](http://www.ombudsman.europa.eu)).

Sincerely,

  
Vitor Caldeira

**Attachment:**

Three letters (with omissions) from the Court of Auditors to external whistleblowers

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА  
TRIBUNAL DE CUENTAS EUROPEO  
EVROPSKÝ ÚČSTNÍ DVŮR  
DEN EUROPÆISKE REVISIONSRET  
EUROPÄISCHER RECHNUNGSHOF  
EUROOPA KONTROLLIKODA  
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ  
EUROPEAN COURT OF AUDITORS  
COUR DES COMPTES EUROPÉENNE  
CÚIRT INIUCHÓIRÍ NA HEORPA



CORTE DEI CONTI EUROPEA  
SIROPAS REVIZIJAS PALĀTA  
EUROPOS AUDITO RŪMAI

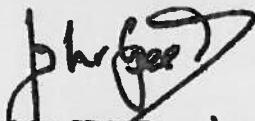
EURÓPAI SZÁMVÉVŐSZÉK  
IL-QORTI EWROPEA TA' L-AWDITURI  
EUROPESE REKENKAMER  
EUROPEJSKI TRYBUNAL OBRAČUNKOWY  
TRIBUNAL DE CONTAS EUROPEU  
CURTEA DE CONTURI EUROPEANĂ  
EVROPSKY DVOR AUDÍTOROV  
EVROPSKO RAČUNSKO SODIŠĆE  
EUROOPAN TILINTARKASTUSTUOMIOISTUIN  
EUROPEISKA REVISIONSRÄTEN

We acknowledge receipt of your letter dated . . .

We draw your attention to the fact that the Court of Auditors does not initiate investigations at the request of third parties, except in cases explicitly foreseen by the Treaties. However, where possible and appropriate, the information that you have sent us will be taken into account in the Court's work.

If you have a grievance which you are unable to pursue satisfactorily within your organisation, it is open to you to contact the European Ombudsman on the following website:  
<http://www.ombudsman.europa.eu/en/home.faces>

Yours sincerely,

  
John SPEED  
Director

Privacy statement:

Pursuant to Articles 11 and 12 of Regulation (EC) 45/2001 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data, please be informed that your personal data are stored in the European Court of Auditors electronic and paper files concerning this matter. Your data may be transferred to other EU Institutions in order to ensure appropriate follow-up. Your data will be stored for a maximum of 10 years. You have the right to access the personal data we hold regarding you and to correct and complete them. On request, you may be sent your own personal data and correct or complete them. Any such request should be addressed to the Data Protection Officer (BCA-DATA-PROTECTION@eca.europa.eu). You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.



LUXEMBOURG . . .

Vitor Caldeira

PRÉSIDENT  
COUR DES COMPTES EUROPÉENNE

. . .

Objet: votre communication du . . .

J'accuse réception de votre lettre du . . . , parvenue à la Cour le . . . , dans laquelle vous exposez des conduites qui laisseraient, selon vous, présumer des activités illégales préjudiciables aux intérêts de l'Union européenne ou qui pourraient constituer un grave manquement aux obligations des fonctionnaires de l'Union.

Par votre lettre vous me demandez, d'une part, de « prendre acte des faits et conduites exposés dans [votre] demande » et, d'autre part, de faire « introduire un pourvoi contre ». . .

En ce qui concerne la première demande, conformément à l'article 7 du règlement (CE) n° 1073/1999 du Parlement européen et du Conseil, du 25 mai 1999, relatif aux enquêtes effectuées par l'Office européen de lutte antifraude (OLAF)<sup>1</sup>, j'ai transmis, pour information, copie de votre lettre et de ses annexes à l'OLAF. Comme vous le savez, c'est l'OLAF qui, aux termes de la législation de l'Union, est le service compétent pour lutter contre la fraude, la corruption et contre toute autre activité illégale portant atteinte aux intérêts financiers de l'Union et pour rechercher à cet effet les faits graves, liés à l'exercice d'activités professionnelles, pouvant constituer un manquement aux obligations des fonctionnaires et agents de l'Union, susceptible de poursuites disciplinaires et le cas échéant, pénales.

Concernant votre demande portant sur l'introduction de la part de la Cour des comptes européenne d'un pourvoi contre . . .

. . . je suis au regret de vous informer que la Cour ne dispose pas d'un tel pouvoir. En effet, il ressort du deuxième paragraphe de l'article 9 de

---

<sup>1</sup> JO L 136 du 31.5.1999, p. 1-7

12.06. .

l'annexe 1 au Protocole sur le Statut de la Cour de justice que la possibilité d'introduire un pourvoi est réservée aux seules parties à l'affaire.

Enfin, je tiens à vous rassurer que votre lettre a été traitée par la Cour des comptes de façon confidentielle.

Je vous prie d'agréer, . . .

!

*Lu84:*

Vítor Caldeira

Annexe : copie de la lettre envoyée à l'OLAF



LUXEMBOURG. . .

Vitor Caldeira

PRÉSIDENT  
COUR DES COMPTES EUROPÉENNE

M. Nicholas ILETT  
Directeur général f.f. OLAF  
BRU-J-30 13/003  
Rue Joseph II, 30  
1000 Bruxelles  
Belgique

Objet: Information relative à d'éventuels cas de fraude ou de corruption, ou à toute autre activité illégale (article 7 du règlement (CE) n° 1073/1999 du Parlement européen et du Conseil, du 25 mai 1999, relatif aux enquêtes effectuées par l'Office européen de lutte antifraude)

*Cher M. Ilett,*

Conformément à l'article 7 du règlement (CE) n° 1073/1999 je vous transmets, pour votre information, copie de la lettre et de ses annexes que . . .

. . . a adressé au Président de la Cour des comptes le . . . et qui est parvenue à la Cour le . . .

. . . expose des conduites de la part de . . .  
qui laisseraient, selon lui, présumer des activités illégales préjudiciables aux intérêts de l'Union européenne ou qui pourraient constituer un grave manquement aux obligations des fonctionnaires de l'Union.

Veuillez agréer, M. Ilett, l'expression de ma haute considération.

*Bien à vous,*

*Vitor Caldeira*

# DOCUMENT (3)

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА  
TRIBUNAL DE CUENTAS EUROPEO  
EVROPSKÝ ÚČETNÍ DVŮR  
DEN EUROPÆISKE REVISIONSRET  
EUROPÄISCHER RECHNUNGSHOF  
EUROOPA KONTROLLIKODA  
ΕΥΡΩΠΑΪΚΟ ΒΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ  
EUROPEAN COURT OF AUDITORS  
COUR DES COMPTES EUROPÉENNE  
CÚIRT INNÚCHÓIRÍ NA HEORPA



CORTE DEI CONTI EUROPEA  
EIROPAS REVIZIJAS PALĀTA  
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK  
IL-QORTI EWROPEA TA' L-AWDITURI  
EUROPESE REKENKAMER  
EUROPEJSKI TRYBUNAŁ OBRACHUNKOWY  
TRIBUNAL DE CONTAS EUROPEU  
CURTEA DE CONTURI EUROPEANĂ  
EVÓPSKY DVOR AUDÍTOROV  
EVROPSKO RAČUNSKO SODIŠĆE  
EUROOPAN TILINTARKASTUSTUOMIOISTUIN  
EUROPEISKA REVISIONSRÄTTEL

Luxembourg, ...

Nous accusons réception de votre lettre datée du ...

Nous attirons votre attention sur le fait que la Cour des comptes n'ouvre pas d'enquêtes à la demande de tiers, sauf dans les cas expressément prévus par les traités. Néanmoins, dans la mesure du possible, les informations que vous nous avez fait parvenir seront, le cas échéant, prises en considération dans le cadre des travaux de la Cour.

Veuillez agréer, ......., l'expression de notre considération distinguée.

John SPEED  
Directeur du groupe CEAD-A