

Aidas Palubinskas

From: [REDACTED]

To: information requests at European Court of Auditors <eca-info@eca.europa.eu>

Date: 29/06/2013 13:07

Subject: access to information request - Audit Report and all Preliminary findings for EEA for 2010, 2011 and 2012

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

Report and all Preliminary findings for European Environment Agency (EEA) for 2010, 2011 and 2012. If available, preliminary findings for 2013.

Yours faithfully,

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via the [REDACTED] website.

Please kindly use this email address for all replies to this request: [REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] on email to [REDACTED]

This message and all replies from European Court of Auditors will be published on the AsktheEU.org website. For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - Audit Report and all Preliminary findings for European Fishery Agency for 2010, 2011 and 2012**

ECA-INFO to: [REDACTED]

18/07/2013 09:24

Sent by: Aidas PALUBINSKAS

Cc: information requests at European Court of Auditors

Dear [REDACTED]

The reports that you have requested can be found here:

[http://eca.europa.eu/portal/page/portal/publications/auditreportsandopinions/specificannualreports/specificannualreportsdetailed?mo=containsany&ms=&p\\_action=SUBMIT&pg=&fi=-1&fs=&pu=0&l=&ci=&pi=933496%2C0&rt=items&ii=49717%2C0&st=Advanced&saa=ALL](http://eca.europa.eu/portal/page/portal/publications/auditreportsandopinions/specificannualreports/specificannualreportsdetailed?mo=containsany&ms=&p_action=SUBMIT&pg=&fi=-1&fs=&pu=0&l=&ci=&pi=933496%2C0&rt=items&ii=49717%2C0&st=Advanced&saa=ALL)

According to Article 162 paragraph 1 of the Financial Regulation (Regulation No 966/2012), the Court's audit observations, submitted to the auditee concerned "must remain confidential". Only those observations that the Court has decided to include in its final report may be disclosed to the public.

Article 4, paragraph 2 of the Court of Auditor's Decision (No 12 /2005) on public access to Court Documents states, with reference to the FR, that the Court shall refuse access to its audit observations and may also refuse access to documents used in the preparation of those observations.

Article 4, paragraph 3 of Decision No 12 /2005 states that the Court is to refuse access to a document where disclosure would undermine inter alia the protection of inspections, investigations and audits.

The preliminary observations you have requested are covered by this exception.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Sincerely,

Aidas Palubinskas

ECA-INFO

[REDACTED] Thank you for your email of 2...

01/07/2013 08:28:18

From: ECA-INFO/Eca  
To: [REDACTED]  
Cc: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 01/07/2013 08:28  
Subject: Re: access to information request - Audit Report and all Preliminary findings for European Fishery Agency for 2010, 2011 and 2012  
Sent by: Aidas PALUBINSKAS

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[REDACTED]

Thank you for your email of 29 June 2013 in which you request documents which contain information on our report and all preliminary findings for European Fisheries Control Agency (EFCA) for 2010, 2011 and 2012. If available, preliminary findings for 2013. Under the terms of Decision No 12-2005 of the Court of Auditors regarding public access to Court documents you will receive a reply within 15 working days, that is by the end of business on 19 July 2013.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 29/06/2013 13:03  
Subject: access to information request - Audit Report and all Preliminary findings for European Fishery Agency for 2010, 2011 and 2012

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

Report and all Preliminary findings for European Fisheries Control Agency (EFCA) for 2010, 2011 and 2012. If available, preliminary findings for 2013.

Yours faithfully,

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] on email [REDACTED]

This message and all replies from European Court of Auditors will be published on [REDACTED]. For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations**

ECA-INFO to: [REDACTED]  
Sent by: Aidas PALUBINSKAS

22/07/2013 09:07

Cc: information requests at European Court of Auditors

Dear [REDACTED]

The Court does not have specific "internal" guidelines to staff setting out "limits" as to:

- what information auditors should make enquiries about in an on-the-spot audit or
- what kind of documents of the auditee (or parts thereof) the Court's staff will include in the audit documentation.

Our published audit methodology however contain some explanations in terms of access of information and audit documentation.

**TFEU, Article 287 (3)**

*The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget.*

--> This allows the Court to audit up to the beneficiary level.

**TFEU, Article 339**

*The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.*

--> Auditors have to respect the principle of professional secrecy

**Staff Regulations of Officials of the EC, Articles 17-19; Conditions of Employment of Other Servants of the EC, Article 11**

Staff of the European Union is required to exercise the greatest discretion with regard to facts and information coming into their knowledge in the course of or in connection with the performance of their duties.

The extensive rights of access to information that are accorded to the Court mean that this duty of discretion is particularly important, especially as the information handled by staff is frequently of a sensitive nature.

--> Duty of discretion

**Ethics**

Decision No 66-2011 laying down Ethical Guidelines for the European Court of Auditors

4. Professional secrecy: *We have a duty of confidentiality in relation to our work. This duty should not curtail individual freedom of expression.*

**Court Audit Policies and Standards (CAPS) :**

<http://eca.europa.eu/portal/page/portal/audit/Auditpoliciesandstandards>

mainly:

- 1.1.1. Professional Ethics (ISSAI 30, ISSAI 40))
- 1.1.2 Professional judgement (ISSAI 100)
- 1.1.4. Professional scepticism (ISSAI 1200/ISA 200)
- 1.1.6. Audit documentation (ISSAI 1230/ISA 230)
- 2.4. Audit Evidence (ISSAI 1500/ISA 500)

**Financial and Compliance Audit Manual (FCAM):**

<http://eca.europa.eu/portal/page/portal/audit/FCAM>

- 1.5 The Court's legal right of access
- 1.10 Documentation of audit work
- 2.4 Considering the sufficiency, relevance and reliability of audit evidence (esp. 2.4.9, 2.4.10, 2.4.11)

#### 4.4.3 Nature and consequence of an inability to obtain sufficient appropriate audit evidence

#### Performance Audit Manual (PAM):

<http://eca.europa.eu/portal/page/portal/audit/PerformanceAuditManual>

2.4.6 Evidence is sufficient, relevant and reliable to support the audit findings

4.2 Delivering sufficient, relevant & reliable audit evidence

4.6 Documenting the audit

#### International auditing standards:

ISSAIs and ISAs see above under CAPS

Please find attached the DPO notification for the financial audit in the research area as requested by



one of the persons. AUD-160-RIP-DAS.pdf

However the number 214 of the DPO notification has been corrected to 160 as 214 concerned the Performance audit for the FP6 & FP7 and not the financial audit.

Regarding your requests 3-6, we are unable to provide you with any documents, as your request was insufficiently specific regarding what audit you are referring to. According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

Dear European Court of Auditors,

20/06/2013 08:07:57

From:

To:

Date:

Subject:

Information requests at European Court of Auditors <eca-info@eca.europa.eu>

20/06/2013 08:07

access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

All requested documents drawn up by the Court concern on-the-spot audits of a private sector beneficiary (e.g. a company) and the 'measures' of the Court to protect and safeguard the information of third parties in relation to an auditee, in particular information that is subject to professional secrecy according to article 339 TFEU.

As a hypothetical example to illustrate the scope of the present application, consider the case where the Court inspects an agreement between an auditee and a third party regarding, inter alia,, some financial transaction under the scope of the audit. It is probable that the agreement has a wider scope than the audit itself, perhaps about other transactions that have nothing to do with the beneficiary's subsidies from the Union's budget. By consulting the agreement, staff of the Court may become aware of information that is commercially sensitive and is not related at all with the Court's audit of the beneficiary. Furthermore, it

cannot be excluded that the staff refrain from requesting and obtaining copies of such agreements for inclusion in the audit file. Consequently, copies of such agreements might end up in the audit file held by the Court.

It is clarified that all requested documents are internal documents of the Court, in the sense that they are not published in the Court's web site. Therefore, the published Financial and Compliance Audit Manual of the Court is not within the scope of the present application. Similarly, International Audit Manuals according to which the Court conducts its audit work are not within the scope of the application. It is reiterated that the requested documents solely concern (a) the protection of information regarding private sector entities other than the auditee obtained/collected from a private sector beneficiary and definitely not information/documents obtained from audits of a Public Administration, and (b) the information comes into the knowledge of the Court's staff in an on-the-spot audit of a private sector entity in a Member State.

I would be grateful if the Court would release copies of the following documents:

1. Internal 'guidelines' (or equivalent) to its staff setting out some kind of a 'limit' as to what information they will make enquiries about in an on-the-spot audit.
2. Internal 'guidelines' (or equivalent) to its staff setting out some kind of a 'limit' as to what kind of documents of the auditee, or parts thereof, the Court's staff will copy for inclusion in the audit file.
3. For a single audit announced in 2011, (i) a redacted version of a Court's letter (drawn up in 2011) informing a private sector entity in a Member State about the conduct of an on-the-spot audit, including all annexes thereto, (ii) subsequent letters addressed to the auditee up to the conduct of the on-the-spot audit and annexes thereto, (iii) letters (notes) addressed to National Audit Bodies about that particular audit and annexes thereto, and (iv) letters (notes) addressed to the European Commission about that particular audit and annexes thereto. The letters (notes) under (iii) and (iv) are documents drawn up until the conduct of the on-the-spot audit.
4. For the same audit under (3) above, (i) a redacted version of the 'On-the-spot audit report', or equivalent, drawn up by the Court's staff after the completion of the on-the-spot audit, and (ii) the document(s) containing the list(s) of documents copied from the audit (or parts thereof) for inclusion in the audit file. The document(s) under (ii) may be considered as some kind of 'statement of contents' of the audit file, as of, say, a few months, after the conduct of the on-the-spot audit.
5. For the same audit under (3) above, a redacted version of the Court's main letter addressed to the auditee setting out the main findings of the audit.
6. For the same audit under (3) above and in case the Court notified the National Audit Body or the European Commission about its findings, a redacted version of the Court's letter (or note) addressed to the Body and the Commission setting out the main findings of the audit.

The requests under (3) to (6) above concern a single audit. It is left to the Court to select according to its own convenience any particular audit, provided that the audit was conducted (descending order of preference) in 1-Greece, 2-Cyprus, 3-U.K., 4. Ireland, 5-Malta, 6-France, 7-Belgium, 8-Italy, 9-Spain.

In my view, the redacted documents will be produced by expunging from the original documents the parts allowing to infer the identity of the auditee, third parties and natural persons.

The Court's Decision 12/2005 provides for several exceptions, but in my view none is applicable to the present requests. The provision of article 4(2) 'In accordance with the rules governing confidentiality laid down in Articles 143(2) and 144(1) of Council Regulation EC, Euratom) No 1605/2002' applies to the Court's observations addressed to an Institution and not to an auditee. In any case, none of the exemptions of the Decision 12/2005 is applicable to the documents requested under (1) to (3).

Arguably, an overriding public interest concerns the requested documents, because the subject matter of the application is the Court's observance of article 339 TFEU. A refusal of the Court to release, fully or partially as the case may be, any of the requested document may, rightly, be interpreted as the Court's refusal to subject itself to public scrutiny about its strict observance of article 339 TFEU regarding third parties (not an auditee) in the framework of its own on-the-spot audits of private sector beneficiaries.

Should the Court find that the application is not sufficiently precise, please advise me.

Yours faithfully,

[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] in email [REDACTED]

This message and all replies from European Court of Auditors will be published on the AsktheEU.org website. For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - Access to documents requests in 2011 and 2012**

**ECA-INFO** to: [REDACTED]

22/07/2013 09:13

Sent by: **Aidas PALUBINSKAS**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

We are unable to provide you with the documents you requested, as they are not held by the European Court of Auditors, i.e. a detailed list of access to documents requests does not exist.

According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

[REDACTED]  
11/07/2013 14:10:06

From: [REDACTED]

<ask+request-651-215a1b2f@asktheeu.org>

To: information requests at European Court of Auditors <eca-info@eca.europa.eu>

Date: 11/07/2013 14:10

Subject: access to information request - Access to documents requests in 2011 and 2012

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Dear [REDACTED]

In line with the right of access to EU documents, and further to ECA Decision 12/2005, we (Transparency International EU Office & Access Info Europe) are hereby writing to request access to all documents/records providing a detailed list of all the access to documents requests received by the European Court of Auditors in the calendar years 2011 and 2012, which should indicate in particular:

- a) The subject of the request made (i.e. the specific document(s)/record(s) requested);
- b) The (type of) requestor;
- c) How the request was submitted/received (online form, direct email, [REDACTED] phone, mail or other);
- d) The initial decision on the request, including the basis upon



which any refusals to grant access were made (prior to any confirmatory applications);

e) Whether the institution consulted with third parties (including other institutions and outside parties) prior to responding to the request;

f) Whether or not the initial refusal or partial refusal resulted in a confirmatory application;

g) Whether the confirmatory application was successful or partially successful (ie. it resulted in a partial revision of the initial response), or whether the confirmatory application resulted in a confirmation of the initial denial;

h) Whether or not partial access was granted to the documents;

i) Whether or not access to the entirety of the document requested was denied;

j) The time taken to deal with each request (i.e. including confirmatory applications, where applicable);

k) The number of times the deadline was extended, the amount of time it was extended for, and the reasons for the extension;

l) Whether the requester was asked to clarify or narrow their request, or to provide more information about themselves or about the reasons for their request.

Should an overview record listing the above-mentioned information for each individual request not be held by your institution, we would like to request the individual files related to all access to documents requests received in the calendar years 2011 and 2012 (i.e. the administrative correspondence providing insights to (a)-(l) above).

May we kindly request that the documents be provided in electronic format; where database records are provided, please provide these in an open, accessible format.

Thank you for your cooperation.

Yours sincerely,

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

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This message and all replies from European Court of Auditors will be published on the [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]



**Re: access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes**

**ECA-INFO** to [REDACTED]

22/07/2013 09:24

Sent by: **Aidas PALUBINSKAS**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

We are unable to provide you with any documents, as your request was insufficiently specific regarding what presentations by whom you are referring to.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors,

14/07/2013 11:59:12

From:

To:

Date:

Subject:

[REDACTED] information requests at European Court of Auditors <eca-info@eca.europa.eu>

14/07/2013 11:59

access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

**I. APPLICATION**

The present application is subject to the Court's Decision No 12/2005 regarding public access to Court documents 2009/C 67/01 (henceforth the 'Decision').

The requested documents concern the presentations given by European Commission officials to the Court in January 2011, as well as any documents handed over thereafter to the Court on the occasion of the presentations. The term 'official' herein is to be understood as both a Commission official who made the presentation, as well as a co-author of a presentation, even though such co-authors may not necessarily have visited the Court in January 2011.

The term 'presentation' also means a 'training course' like the 'CETFI Course'.

Copies of the following documents are kindly requested:

1. The documents with which the Court invited the officials to make the presentations.
2. In case the initiative for the presentations was at the Commission's side, the documents with which the officials suggested to the Court the organisation of the presentations.

3. The documents with which the Court and the Commission officials agreed the dates of the presentations. By definition, such documents predate the respective presentation. There may be emails, note to the file and so on.

4. Any follow-up documents about the presentations. For instance, such documents may be emails with which the officials dispatched to the Court copies of their presentations.

5. Every single presentation the officials made to the Court in January 2011, except the presentation released by the Court on 27/7/2013 via [REDACTED]

<http://www.asktheeu.org/en/request/584/response/1772/attach/3/DGINFSOpresentationSeminar2011%201.ppt>.

## II. TRANSFER OF PERSONAL DATA

The documents applied for contain will certainly contain the personal data of the Court's and the Commission's officials, for which article 8(2) of Regulation No 45/2001 may be applicable, as well as article 4(1)(b) of the Decision.

Regarding the personal data of the Court's officials, I am not requesting the transfer of their personal data. Therefore, in my view the Court should redact what is strictly necessary in order not to disclose the identity of the Court's official(s). The Court's Unit(s) to which the official(s) belong need not necessarily be redacted.

Regarding the personal data of the Commission's officials, I am not, in general, requesting the transfer of their personal data. Therefore, in my view the Court should redact what is strictly necessary in order not to disclose the identity of those officials. However, in my view the identities of the authors and the presenters is to be released; this applies specifically to the authors whose identity is already public information. In all cases, the Units to which the Commission officials belonged should be released.

## III. OVERRIDING PUBLIC INTEREST FOR PRESENTATIONS CONCERNING THE FP6 & FP7 PROGRAMMES

In the last few weeks, tens of requests have been lodged with the European Commission via asktheeu.org pursuant to Regulation No 1049/2001 about the FP6 & FP7 programmes, with particular emphasis on the fundamental right of the personal data protection.

It has already emerged that the prior notifications DG ENTR DPO-3334.1, DG INFSO DPO-3338.1, DG RTD DPO-3398 (summer of 2012), and DG MOVE-ENER DPO-3420.1 contain two false declarations, namely the statements 'This processing has been submitted to the EDPS who concluded that Article 27 is not applicable' and '3. Sub-Contractors -'. As another applicant stated, [http://www.asktheeu.org/en/request/fundamental\\_rights\\_legal\\_advice](http://www.asktheeu.org/en/request/fundamental_rights_legal_advice), "When a public administration is prepared to risk criminal liabilities for the few officials who are personally liable for the factual accuracy of statutory instruments, it will not hesitate for a second to disregard a provision like article 28(2) of Regulation No 45/2001".

Consequently, every single presentation made to the Court by the former DG INFSO S.5 Unit is to be scrutinised by the public in order to see whether that Unit has attempted to mislead the Court

about the Unit's external financial audits. To this end, the organisation of the presentations is essential in order to establish how many presentations officials of the S.5 Unit gave to the Court.

The overriding public interest argument is based on the premise that when an administrative Unit of an Institution has been prepared to act like an outlaw for many years, then anything that the Unit may have attempted to do involving interactions with third-parties like the Court must be scrutinised, either to unearth further wrongful acts of the Unit, or check whether that Unit has infringed the fundamental rights of natural and legal persons enshrined in Union and national law.

Yours faithfully,

[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

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**Re: access to information request - Court Decisions No 14-2010 and No 36-2011**

**ECA-INFO** to: [REDACTED]

22/07/2013 09:35

Sent by: **Aidas PALUBINSKAS**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

Please find attached Court decisions 14-2010 and 36-2011 that you requested. We are not in possession of any implementing guidelines relative to those documents. As to the "procedure documents", we are unable to make a determination as to what you mean by that.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas



142010en.pdf 362011en.pdf

Dear Sir/Madam,

12/07/2013 16:02:58

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 12/07/2013 16:02  
Subject: access to information request - Court Decisions No 14-2010 and No 36-2011

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Dear Sir/Madam,

In line with the right of access to EU documents, and further to ECA Decision 12/2005, we (Transparency International EU Office) are hereby writing to request access to the following documents:

- a) Court Decision No 14-2010 and any implementing guidelines or procedure documents that relate to this decision.
- b) Court Decision No 36-2011 and any implementing guidelines or procedure documents that relate to this decision.

May I kindly request that the documents be provided in electronic format.

Thank you for your cooperation.

Yours sincerely,

[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] team on email to [REDACTED]

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**Re: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights**

**ECA-INFO** to: [REDACTED]

24/07/2013 09:22

Sent by: **Aidas PALUBINSKAS**

Cc: eca-info

Dear [REDACTED]

Our sincere apologies. It was my understanding that we'd replied to you.

By email of 20 June 2013, you requested access to documents which contain the following information:

"1. Audit reports and its annexes for the contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights. Details for the particular contracts I refer could be found here

[http://ec.europa.eu/justice/newsroom/files/decision\\_just\\_2012\\_prog\\_ag\\_ad\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/decision_just_2012_prog_ag_ad_en.pdf)  
[http://www.asktheeu.org/en/request/request\\_to\\_access\\_information\\_an\\_2](http://www.asktheeu.org/en/request/request_to_access_information_an_2)  
[http://www.asktheeu.org/en/request/contacts\\_of\\_mrs\\_viviane\\_reding\\_m](http://www.asktheeu.org/en/request/contacts_of_mrs_viviane_reding_m)  
and here  
[http://www.asktheeu.org/en/request/request\\_to\\_access\\_fra\\_informatio\\_3](http://www.asktheeu.org/en/request/request_to_access_fra_informatio_3)

2. Relevant information and related documents on respect of collaboration of Court of Auditors with OLAF on these cases

<http://www.asktheeu.org/en/request/453/response/1652/attach/html/4/Access%20to%20doc.of%2011%20April%202013.tif.html>

3. Audit Report on FRA procurement procedure for "Provision of legal services to FRA staff" .

[http://www.asktheeu.org/en/request/tender\\_file\\_for\\_provision\\_of\\_leg](http://www.asktheeu.org/en/request/tender_file_for_provision_of_leg)

The reports on FRA can be found here:

[http://eca.europa.eu/portal/page/portal/publications/auditreportsandopinions/specificannualreports/specificannualreportsdetailed?mo=containsany&ms=&p\\_action=SUBMIT&pg=&fi=-1&fs=&pu=0&l=&ci=&pi=7999%2C0&rt=items&ii=49717%2C0&st=Advanced&saa=ALL](http://eca.europa.eu/portal/page/portal/publications/auditreportsandopinions/specificannualreports/specificannualreportsdetailed?mo=containsany&ms=&p_action=SUBMIT&pg=&fi=-1&fs=&pu=0&l=&ci=&pi=7999%2C0&rt=items&ii=49717%2C0&st=Advanced&saa=ALL)

According to Article 162 paragraph 1 of the Financial Regulation (Regulation No 966/2012), the Court's audit observations, submitted to the auditee concerned "must remain confidential". Only those observations that the Court has decided to include in its final report may be disclosed to the public.

Article 4, paragraph 2 of the Court of Auditor's Decision (No 12 /2005) on public access to Court Documents states, with reference to the FR, that the Court shall

refuse access to its audit observations and may also refuse access to documents used in the preparation of those observations.

Article 4, paragraph 3 of Decision No 12 /2005 states that the Court is to refuse access to a document where disclosure would undermine inter alia the protection of inspections, investigations and audits.

The documents containing the information you are seeking are covered by those exception.

I would also like to draw your attention to Recital 15 to Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1) which provides:

" ..., for the sake of successful cooperation between the Office, the Member States and the relevant institutions, bodies, offices and agencies, the reciprocal exchange of information must be organised, **subject to rules of confidentiality** where information is subject to professional secrecy, ..." (emphasis added)

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a confirmatory application, within 15 working days of receiving its reply, and ask the ECA to reconsider its position.

Sincerely,

Aidas Palubinskas

Dear European Court of Auditors, This is a kind r...

24/07/2013 08:28:55

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 24/07/2013 08:28  
Subject: Re: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights

---

Dear European Court of Auditors,

This is a kind reminder that my request of 9 July 2013 did not receive a reply.

Yours faithfully,

[REDACTED]  
-----Original Message-----  
[REDACTED]



Thank you for your request for reconsideration of 09 July 2013. In accord with Decision 12/2005 of the Court of Auditors regarding public access to Court documents, it will be handled within 15 business days.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]  
To: information requests at European Court of Auditors  
<[European Court of Auditors request email]>  
Date: 09/07/2013 10:55  
Subject: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights

A full history of my FOI request and all correspondence is available on the Internet at this address:  
[REDACTED]

Yours faithfully,  
[REDACTED]

-----  
Please use this email address for all replies to this request:  
[FOI #564 email]

This message and all replies from European Court of Auditors will be published on [REDACTED] For more information see our dedicated page for EU public officials at  
[REDACTED]

\*\*\*\*\*

Disclaimer: If you have received this message in error, please contact the sender immediately.

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Avertissement : Si ce message vous a été adressé par erreur, nous vous prions de vous mettre immédiatement en rapport avec l'expéditeur.

#### References

##### Visible links

1. <http://eca.europa.eu/portal/pls/portal/docs/1/11418739.PDF>
2. <http://eca.europa.eu/portal/pls/portal/docs/1/11222951.PDF>
3. [http://fra.europa.eu/sites/default/files/fra\\_uploads/2046-F-SE-10-03-T02-Award-notice.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/2046-F-SE-10-03-T02-Award-notice.pdf)

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

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Please use this email address for all replies to this request:  
[REDACTED]

This message and all replies from European Court of Auditors will be published on the [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes**

**ECA-INFO** to: [REDACTED]  
Sent by: **Aidas PALUBINSKAS**  
Cc: eca-info

24/07/2013 11:38

Dear [REDACTED]

Thank you for your email of 24 July 2013, in which you apply for reconsideration as set forth below.

Under the terms of Decision No 12-2005 of the Court of Auditors regarding public access to Court documents you will receive a reply within 15 working days, that is by the end of business on 14 August 2013.

Kindest regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, This is a applic...

24/07/2013 10:42:36

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 24/07/2013 10:42  
Subject: Re: access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes

---

Dear European Court of Auditors,

This is a application for reconsideration pursuant to article 7 of the Court's Decision 12/2005.

**I. INITIAL REPLY**

It is worth recalling that article 6 of the Court's Decision 12/2005 lays down the essential steps of processing initial applications. The Director of Audit and Communications may have informed other officials of the Court about this particular application. It means that the initial reply has been approved by more than one official.

As the EU Courts have consistently held for applications according to Regulation No 1049/2001, in handling the initial application the Institution is obliged to undertake a diligent search and inform the applicant about the results of the search, in particular the documents the Institution has indentified. There is no reason to assume that the Court has a lower standard to meet in searching for documents regarding an application pursuant to the Decision 12/2005.

The EU Courts have also consistently held that acts of Institutions are presumed legal. Applying the reasoning of the EU Courts in Judgments about Regulation No 1049/2001, in the framework of an application pursuant to the Decision 12/2005 the Court's initial reply about the non-existence of documents does not leave, in principle, much room for applying for a reconsideration, which is relevant in cases the Court has refused access, either partially or totally.

However, the present application is very exceptional in several respects. This is set out in the next section.

## II. CONSIDERATIONS ABOUT THE DG INFSO PRESENTATION(S) IN JANUARY 2011

It has now fully emerged in full public view that the DG MOVE and ENER prior notification DPO-3340.1 has two false statements

[REDACTED] in particular that the EDPS was consulted and that no subcontractors have been engaged. In the next few weeks it will also emerge in asktheeu.org that three prior notifications DG ENTR DPO-3334.1, DG INFSO DPO-3338.1, and DG RTD DPO-3338 (as of summer 2012) have the same two false declarations. Moreover, their legal basis is, in essence, non-existing. One of the immediate conclusions is that the external financial audits of the Research family DGs are outright unlawful in so far they have processed personal data of third parties to the audited projects.

In any action before the General Courts about these audits, the General Court will likely examine on its own motion whether the evidence - personal data of third parties - the Research family DGs have produced before it is admissible evidence. It is very difficult to see how the Court will declare it as admissible evidence, especially after the Bavarian Lager and Schecke Judgments of the Court of Justice (Grand Chamber). All it will take is a party to inform the General Court about the two false declarations of these four prior notifications. The Court will immediately realise that there is something extremely peculiar about the audits regarding compliance with Union law.

The Court of Auditors has now at hand some explaining to do about its own audits of the Research family DGs and their compliance with Regulation No 45/2001. There are a few applications pursuant to Decision 12/2005 submitted via [REDACTED]

The prior notifications DG ENTR DPO-3334.1, DG RTD DPO-3338 (summer 2012) and DG MOVE-ENER DPO 3420.1 are nothing but copies of the DG INFSO prior notification DPO-3338.1, with only the names of the Directorate-General and the officials adapted to the particularities of each DG. It was DG INFSO that pioneered the risk-based audits and 'taught' these audit methods to the other three DGs, which somehow were persuaded to follow. Annual Activity report of DG INFSO have proudly informed the public about its innovative auditing methods of FP6 contractors and FP7 beneficiaries (e.g. 2011 report). According to these reports, the Court of Auditors 'praised' DG INFSO for its innovative audit methods.

Nearly six and two months after the Bavarian Lager and Schecke Judgments of the Court of Justice respectively, two officials of the former DG INFSO external audits S.5 Unit made a presentation to the Court about the risk-based audits, which the Court found worthy to report in its publication. Put differently, the architects of the gravely unlawful risk-based audits proudly presented to the Court their innovations in auditing, which according to DG INFSO the Court found them as worth of the Court's praising.

In another application the Court released the presentation entitled 'Risk-based audits' that the DG INFSO staff made to the Court in January 2011, [http://\[REDACTED\]](http://[REDACTED])

[REDACTED] Slide 8 and 41 are empty. In addition, the first part of the released presentation is very similar to a presentation (PDF file) that the same DG INFSO official had posted for more than a year in the website about the 2011 Belgian Anti-Fraud Congress, Sheraton Brussels Airport, 24/3/2011. This particular presentation is the subject of the GestDem 2013/3691 application,

[REDACTED] In both presentations, the properties of the PowerPoint and PDF files are "CETFI Course". There is simply too much 'CETFI Course' in those two presentations.

According to the Court's initial reply, the presentation on the 21/1/2011 was arranged without any documents to trace its organisation, be it an

email, a note to the file and the like. While it is possible that no document was drawn up about the presentation organisation and everything was done orally, devoting space in a Court's publication about the presentation in question is not in line with a total absence of any document about the organisation of the presentation.

The emails deserve special considerations, as even if the Court's officials have deleted them from their own mailboxes, it is nearly certain that they are kept in the backup files of the Court's email servers. This means that the Court may hold emails, i.e. documents, which the Court did not seek to identify them and release them. The EU Courts have held that an Institution may not rely on its administrative burden to refuse access, at least without consulting with the applicant.

It is worth recalling that the applicant, or other applicants lodging similar applications with the Court, may bring an action before the General Court and as part of the organisation of the procedure request that officials of the Court of Auditors testify under oath. Were the General Court to grant such a measure, those officials would have to give a complete explanation about how the presentation was organised. This may reveal that at least a few lines were drawn up in an email.

### III. APPLICATION FOR RECONSIDERATION

An application is hereby respectfully submitted. It is expected that the Court will duly take into full account the foregoing observations and considerations.

Yours faithfully,

-----Original Message-----

Dear [REDACTED]

We are unable to provide you with any documents, as your request was insufficiently specific regarding what presentations by whom you are referring to.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]  
To: information requests at European Court of Auditors  
<[European Court of Auditors request email]>  
Date: 14/07/2013 11:59  
Subject: access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes

-----  
Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

#### I. APPLICATION

The present application is subject to the Court's Decision No 12/2005 regarding public access to Court documents 2009/C 67/01

(henceforth the 'Decision').

The requested documents concern the presentations given by European Commission officials to the Court in January 2011, as well as any documents handed over thereafter to the Court on the occasion of the presentations. The term 'official' herein is to be understood as both a Commission official who made the presentation, as well as a co-author of a presentation, even though such co-authors may not necessarily have visited the Court in January 2011.

The term 'presentation' also means a 'training course' like the 'CETFI Course'.

Copies of the following documents are kindly requested:

1. The documents with which the Court invited the officials to make the presentations.
2. In case the initiative for the presentations was at the Commission's side, the documents with which the officials suggested to the Court the organisation of the presentations.
3. The documents with which the Court and the Commission officials agreed the dates of the presentations. By definition, such documents predate the respective presentation. There may be emails, note to the file and so on.
4. Any follow-up documents about the presentations. For instance, such documents may be emails with which the officials dispatched to the Court copies of their presentations.
5. Every single presentation the officials made to the Court in January 2011, except the presentation released by the Court on 27/7/2013 via asktheei.org,

[1]

<http://www.asktheeu.org/en/request/584/response/1772/attach/3/DGINFSOpresentationSeminar2011%201.ppt>.

## II. TRANSFER OF PERSONAL DATA

The documents applied for contain will certainly contain the personal data of the Court's and the Commission's officials, for which article 8(2) of Regulation No 45/2001 may be applicable, as well as article 4(1)(b) of the Decision.

Regarding the personal data of the Court's officials, I am not requesting the transfer of their personal data. Therefore, in my view the Court should redact what is strictly necessary in order not to disclose the identity of the Court's official(s). The Court's Unit(s) to which the official(s) belong need not necessarily be redacted.

Regarding the personal data of the Commission's officials, I am not, in general, requesting the transfer of their personal data. Therefore, in my view the Court should redact what is strictly necessary in order not to disclose the identity of those officials. However, in my view the identities of the authors and the presenters is to be released; this applies specifically to the authors whose identity is already public information. In all cases, the Units to which the Commission officials belonged should be released.

## III. OVERRIDING PUBLIC INTEREST FOR PRESENTATIONS CONCERNING THE FP6 & FP7 PROGRAMMES

In the last few weeks, tens of requests have been lodged with the European Commission via asktheeu.org pursuant to Regulation No 1049/2001 about the FP6 & FP7 programmes, with particular emphasis on the fundamental right of the personal data protection.

It has already emerged that the prior notifications DG ENTR DPO-3334.1, DG INFSO DPO-3338.1, DG RTD DPO-3398 (summer of 2012), and DG MOVE-ENER DPO-3420.1 contain two false declarations, namely the statements 'This processing has been submitted to the EDPS who concluded that Article 27 is not applicable' and '3. Sub-Contractors -'. As another applicant stated,

[REDACTED]

Consequently, every single presentation made to the Court by the former DG INFSO S.5 Unit is to be scrutinised by the public in order to see whether that Unit has attempted to mislead the Court about the Unit's external financial audits. To this end, the organisation of the presentations is essential in order to establish how many presentations officials of the S.5 Unit gave to the Court.

The overriding public interest argument is based on the premise that when an administrative Unit of an Institution has been prepared to act like an outlaw for many years, then anything that the Unit may have attempted to do involving interactions with third-parties like the Court must be scrutinised, either to unearth further wrongful acts of the Unit, or check whether that Unit has infringed the fundamental rights of natural and legal persons enshrined in Union and national law.

Yours faithfully,

[REDACTED]

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via t [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If [European Court of Auditors request email] is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] on email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED]. For more information see our dedicated page for EU public officials at [REDACTED]

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Disclaimer: If you have received this message in error, please contact the sender immediately.

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#### References

Visible links

1.

http://[REDACTED]  
tationSeminar2011%201.ppt

2.

3.

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Please use this email address for all replies to this request:

This message and all replies from European Court of Auditors will be published on [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - FP6, FP7, ESF audits, personal data protection, prior notifications**

**ECA-INFO** to: [REDACTED]  
Sent by: **Aidas PALUBINSKAS**

25/07/2013 15:25

Cc: information requests at European Court of Auditors

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Dear [REDACTED]

Thank you for your email of 25 July 2013, in which you apply for access to a list of documents as set forth below in your email.

Under the terms of Decision No 12-2005 of the Court of Auditors regarding public access to Court documents you will receive a reply within 15 working days, that is by the end of business on 15 August 2013.

Kindest regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, Under the right...

25/07/2013 14:53:40

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 25/07/2013 14:53  
Subject: access to information request - FP6, FP7, ESF audits, personal data protection, prior notifications

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Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

I. PRIOR NOTIFICATIONS FOUND IN THE COURT'S REGISTER OF ARTICLE 26 OF REGULATION NO 45/2001

Copies of the following prior notifications of article 25 of Regulation No 45/2001 are kindly requested:

- #1. No 38, 19/04/2007, Head of Unit, AUDIT, NR2, Statement of assurance (DAS), -Selecting beneficiaries; -Verification of the declarations and eligibility criteria
- #2. No 66, 19/07/2007, Head of Unit, AUDIT, NR5, Reliability of SPS/IACS controls and inspections in EU-15 auditing if the payments have been carried out correctly
- #3. No 75, 28/09/2007, Head of Unit, AUDIT, AEI, Audit of salaries, allowances and pensions for staff employed (or formerly employed) by European Institutions Audit of documents which serve as evidence for the grade/step and the entitlement to other allowances, e.g. latest decision on promotion, certificate of marriage, children's schooling certificates.....
- #4. No 90, 08/11/2007, Head of Unit, AUDIT, NR4, Statement of assurance
- #5. No 92, 08/11/2007, Head of Unit, AUDIT, NR4, Cross compliance
- #6. No 107, 05/12/2007, Head of Unit, AUDIT, NR5, The system of milk quotas

in the new Member States Auditing quotas allocated

#7. No 114, 04/04/2008, Head of Unit, AUDIT, SPD, DAS audit, In the execution of the DAS transactions for Structural actions and more specifically for the Social fund, personal data is audited in order to verify the requirements of the Regulations. This can take the form of collecting, consulting and/or storage of personal data.

#8. No 132, 05/05/2008, Head of Unit, CEAD, AMS, ASSYST: Time Recording In ASSYST, there is a module for time recording. Each auditor who has access to ASSYST and are planned for in the Annual Work Programme is requested to record their

#9. No 199, 19/02/2009, Head of Unit, AUDIT, IPB, DAS 2008

#10. No 211, 18/06/2009, Head of Unit, AUDIT, NR3, Pr  enqu  te sur les b  n  ficiaires de la PAC Traitement des donn  es des montants re  us par les b  n  ficiaires de la PAC

#11. No 214, 09/07/2009, Head of Unit, AUDIT, TRE, Performance Audit of the Adequacy and Effectiveness of Selected FP6 Instruments  
The audit procedures defined included surveys, testing at project level and reviews of studies and reports. Throughout the audit, data contained in several Commission's databases were used. Furthermore, the audit involved the review of documentation prepared by or containing information about individuals.

#12. No 224, 05/01/2010, Head of Unit, AUDIT, AEI, Audit on performance of OLAF investigations Audit of documents gathered by OLAF in the framework of its investigations.

#13. No 224, 05/01/2010, Head of Unit, AUDIT, AEI, Audit on performance of OLAF investigations Audit of documents gathered by OLAF in the framework of its investigations.

## II. OTHER PRIOR NOTIFICATIONS OF ARTICLE 25 OF REGULATION No 45/2001

Copies of the prior notifications of article 25 of Regulation No 45/2001 regarding the following audit activities of the Court are kindly requested:

#14. Annual report covering FY 2009, European Social Fund audit. An example of the Court's manifest personal data processing is given in page 102, 'Overdeclaration of staff costs: In the case of an ESF project supporting professional training courses for pupils from secondary schools, the beneficiary incorrectly charged various indirect costs (staff salaries, insurance, fuel, telephone and depreciation) to the project.'

#15. Annual report covering FY 2009, Research Energy and Transport. An example of the Court's manifest personal data processing is given in page 121 'The Court found that the audited beneficiary reported 17 person-months as input to the Commission'.

#16. Annual report covering FY 2010, Research and other Internal Policies. An example of the Court's manifest personal data processing is given in page 173 'Example 6.1 Ineligible costs and incorrectly calculated costs A beneficiary managing an FP6 project claimed overheads using a flat rate which was based on direct staff costs. Following an ex-post audit carried out in 2007, the beneficiary changed its allocation of overheads methodology without fully and correctly implementing the recommendations made by the ex-post auditors. Errors and inconsistencies, noted during the Court's audit led to an over-claim of 731 652 euro'.

#17. Annual report covering FY 2011, Employment and social affairs. An example of the Court's manifest personal data processing is given in page 155 'a) Ineligible training participants: ESF funding was provided for training courses to increase the qualifications and knowledge of employees

working in the electronics sector. The Court found that many of the participants were employed outside of the electronics sector and were therefore not eligible for such training. The cost declared for the ineligible participants was 29 % of the audited amount'.

#18. Annual report covering FY 2011, Research and other internal policies. An example of the Court's manifest personal data processing is given in page 193 'Example 8.1 - Error identified in a cost claim relating to personnel costs A beneficiary involved in a FP7 project declared 308 000 euro of personnel costs. The Court's audit revealed that the beneficiary: - underestimated the productive hours worked by its employees; - over-charged hours for several employees involved in the audited project. In total these findings resulted in the over-declaration of 45 000 euro of personnel costs.'

It is noted that the above five prior notifications are statutory documents. In view of the combined provisions of article 24(1) last sub-paragraph 'That person shall thus ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations', article 25 and article 24(1)(d) of Regulation No 45/2001, any defect, and a fortiori a non-existence, of any of these five prior notification will be tantamount that the Court has likely not respected 'the rights and freedoms of the data subjects'.

It is thus expected that the Court will carry out a diligent search to identity and release these five prior notifications.

### III. DOCUMENTS DRAWN UP BY THE AUDIT DIRECTORATE

Referring to the auditing activities documented in the annual report of financial years 2009, 2010 and 2011 in the area of 'research and other internal policies' (requests #15, #16 and #18 concern that area), copies of the following documents drawn up by the Audit Directorate - or its predecessor(s), if applicable - are requested:

#19. The documents drawn up from 1/1/2004 onwards setting out some kind of an analysis of the lawfulness of processing personal data of third parties to the audited projects or/and Community/Union actions.

#20. The documents draw up from 1/1/2004 onwards setting out some kind of an analysis of the lawfulness of processing personal data in the legal context of a private law contract between a Research family and DG and an FP6 contractor/FP7 beneficiary.

#21. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice or opinion of the Data Protection Officer about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

#22. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice or opinion of the Court's Legal Services about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

#23. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice, instruction or direction of the Court's Member(s) about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

### IV. DOCUMENTS DRAWN UP THE LEGAL SERVICES AND THE DATA PROTECTION OFFICER

Copies of the following documents are requested:

#24. The documents drawn up by the Legal Services in response to the request under #22 above.

#25. The documents drawn up by the Data Protection Officer in response to the request under #21 above.

#26. Notwithstanding the above requests, any other documents drawn up by the Legal Services regarding the Court's personal data processing in the context of auditing FP6 and FP7 programmes.

#27. Notwithstanding the above requests, any other documents drawn up by the Data Protection Officer regarding the Court's personal data processing in the context of auditing FP6 and FP7 programmes.

#### V. OVERRIDING PUBLIC INTEREST

It is patently obvious that the applicant entertains serious doubts as to what extent the Court has been diligent in observing Regulation No 45/2001 and for the activities described above.

Requests #24 and #26 concern legal opinions and therefore the Court may find appropriate to refuse access. However, the substance of these legal opinions is whether the Court was either negligent or willful or both in risking serious infringements of Regulation No 45/2001 in its audits of financial statements of contractors/beneficiaries in the FP6 and FP7 programmes. Refusing total access will further strengthen the doubts.

In a Union governed by the rule of law, where Institutions are held accountable for the lawfulness of their acts, no exception of article 4 of the Court's Decision 12/2005 may be relied upon to refuse full access. On the contrary, article 4(8) is fully applicable to shed light into the Court's observance of Regulation No 45/2001.

At the end of the day, checking the legality of financial transactions presupposes that the checks and audits are themselves lawful. Relying on unlawful audit practices renders the whole audit meaningless.

Yours faithfully,

[REDACTED]

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request:

[REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] team on email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

[REDACTED]

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**Re: access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations**

**ECA-INFO** to: [REDACTED]

26/07/2013 07:57

Sent by: **Aidas PALUBINSKAS**

Cc: eca-info

Dear [REDACTED]

Thank you for your email received on 26 July 2013, in which you apply for access to a list of documents as set forth below in your email.

Under the terms of Decision No 12-2005 of the Court of Auditors regarding public access to Court documents you will receive a reply within 15 working days, that is by the end of business on 16 August 2013.

Kindest regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, Thank you for y...

25/07/2013 19:26:28

From: [REDACTED]

To: eca-info@eca.europa.eu

Date: 25/07/2013 19:26

Subject: Re: access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations

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Dear European Court of Auditors,

Thank you for your reply to the initial application dated 22 July 2013 over email.

The present is a request for reconsideration according to article 7 of the Court's Decision 12/2005.

The extensive provision of information about the Court's audit methods is appreciated.

The released prior notification of article 25 of Regulation No 45/2001 dated 13/08/2012 has in my view of host of 'open issues'. It can by no means construed as relating to the requests #1 and #2.

#### I. OBSERVATIONS ON THE INITIAL REPLY ON REQUESTS #1 AND #2

I have interpreted the Court's initial reply to requests #1 and #2 as the Court having carried out a search for relevant documents, being confident that no further consultations with the applicant was necessary, and finally concluding that no document matched the applicant's request for documents.

According to the Court's email of 9 July 2013, the application related to a very large number of documents "Because your application relates to a very large number of documents, we are extending the time limit by 15 days". The reply of 22/7/2012 (21 work-days after the application registration) is not necessarily fully in line with that statement, since out of a very large number of documents the Court finally concluded that no documents related to requests #1 and #2 and that other four requests were imprecise. Yet the Court neither did it find useful to consult with the applicant about his very large number of document nor did it provide any information about the internal documents.

Page 3 of the Court's Audit Policies and Standards reads:

"Professional Ethics

In carrying out audits, auditors of the Court have regard to the obligations of officials and other servants of the European Union, as laid down in the Staff Regulation, and to the Code of good administrative conduct for staff of the European Court of Auditors. They conduct themselves in accordance with the INTOSAI Code of ethics. In particular, they ensure that audits are conducted in such a way as to protect and enhance the Court's independence, integrity, objectivity and professional standing, and to protect the confidentiality of information obtained in the audit process. "

It is clear that the Court's professional ethics refer to the 'Code of good administrative conduct for staff of the European Court of Auditors' in a context concerned inter alia with the protection of 'the confidentiality of information obtained in the audit process'. Arguably, this document falls under the scope of requests #1 and #2. It is therefore suggested that the Court fully release this document.

## II. OBSERVATIONS ON THE INITIAL REPLY ON REQUESTS #3 TO #6

Requests #3 to #6 concern the Court's on-the-spot audits announced in 2011 to a beneficiary (i.e. recipient of Union funds) that is a private sector entity. There is nothing out of the ordinary for such on-the-spot audits. The Annex herein provides excerpts from the Court's Annual Report of financial year 2011. It appears that for at least one of those audit findings the Court had audited on-the-spot a beneficiary. While it cannot be inferred with certainty that the beneficiaries were private sector entities, nonetheless it is probable that at least one was indeed such a legal or natural person.

Furthermore, the Court is not strange to applications for documents concerning its own on-the-spot audits to companies. One particular example is described in the following paragraph.

On 10/2/1997 the Court carried out an inspection of a beneficiary's head office in Dublin, Ireland. On the basis of the results of the Court's audit, the Commission services decided to conduct their own inspection of the beneficiary that ultimately led to the Commission Decision C(1999)1498 recovering the amounts unduly paid to the beneficiary. In late 2012 an application pursuant to Regulation No 1049/2001 (GestDem 2012/4960) requested from DG AGRI, inter alia, the release of the Court's 'audit report'. The Commission services consulted with the Court about releasing to the applicant the Court's audit report; the Court notified to the services its objection to even partially releasing that report.

It is therefore suggested that the Court examines whether the following audits referred to 2011 Annual Report fall under the scope of requests #3 to #6. The order of preference in decreasing order is indicated by the serial number.

1. Example 6(1)(a)
2. Example 6(1)(b)
3. Example 6(1)(c)
4. Example 6(2)(a)
5. Example 4(5)
6. Example 4(2)
7. Example 4(1)

In the event that all seven above audits do not concern an on-the-spot audit of a private sector beneficiary, in the interests of procedural economy it is respectfully suggested that the Court inform me about a few other such audits announced in 2011.

As a last general remark, an applicant is not supposed to substitute the

Court's proper search for documents falling under the scope of an application for documents with its own search of the Court's published documents in order to identify the Court's documents conceivably falling under the application. If this is the implied intention of the Court, one would have then expected that the Court would have published on-line its register of documents.

### III. AUDITOR'S DISCRETION REGARDING AUDIT EVIDENCE, REQUESTS #1 AND #2

This section argues that there is likely that a few lines were drawn up about the matters of requests #1 and #2.

Page 9 of the Court's Audit Policies and Standards reads:

#### "AUDIT EVIDENCE

The auditor designs and performs audit procedures in such a way as to enable the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion"

It is manifestly evident that during an on-the-spot audit of a beneficiary, the auditors have certain discretion as to what evidence they will collect for inclusion in the audit file. Seen in conjunction with the policies of 'Professional judgement' and 'The auditor plans and performs an audit with an attitude of professional scepticism recognising that circumstances may exist that cause the financial statements to be materially misstated', it is patently obvious that the Court has a policy of granting auditors a substantial margin of discretion regarding the audit evidence and the contents of the audit file. In fact, the 'riskier' a beneficiary appears, the more evidence the auditors will be compelled to include in the audit file.

Not having drawn up a single paragraph with internal directions and instruction to the auditors will entail the risk of a non-uniform approach to the on-the-spot audits. The Court is not an 'ordinary' auditor. On the very contrary, it has been established by the Treaties and carries out on-the-spot audits to all Member States, where different legal frameworks govern the national audit organisations.

The INTOSAI standards primarily concern the auditing of Government accounts and not those of private sector entities that receive public funds. The Court is entitled to audit the recipients of payments from the Union budget by virtue of article 287(3) TFEU. Regulation No 1605/2002, as amended, has lots of provisions about the auditing of the Institutions by the Court, but it is totally silent about pursuant to Community law on-the-spot audits to private sector entities in receipt of payments from the budget. Regulation No 1906/2006 (FP7 rules of participation) does not provide, as a matter of Community law, for the Court's on-the-spot audits to FP7 beneficiaries.

The above line of reasoning suggests that the Court's on-the-spot audits of private sector entities are a sensitive issue, entirely outside the audits of Government accounts. Put differently, regarding the on-the-spot audits in question the Court 'navigates partially chartered waters. It will be rather surprising if no single paragraph or a brief internal document was drawn up.

In view of the above considerations, it can be concluded that in case the Court has not drawn up a few lines falling under the scope of requests #1 and #2 the Court have run the risk of collecting too much audit evidence, which in some 'risky' cases may have reached the point of a heavy-handed audit.

### IV. APPLICATION FOR RECONSIDERATION

An application for reconsideration is respectfully submitted. I am confident that the Court will dully take into full consideration the foregoing line of reasoning.

\*\*\*\*\*

## ANNEX. EXTRACTS FROM THE COURT'S ANNUAL REPORT OF FINANCIAL YEAR 2011

Page 101

### Example 4.1 – Non-respect of agri-environment commitments (example of eligibility error)

The beneficiary applied for support for two agri-environment schemes. For the first scheme, he had committed on 14 parcels to refrain from cultivating crops in a one metre buffer strip and to leave this area uncultivated, unploughed, unfertilised and unsprayed. The audit found that this requirement was not respected on any of the 14 parcels. For the second scheme, the farmer committed to carry out appropriate orchard management techniques and good agricultural practices, including pruning and thinning of fruit trees. The audit found that the trees were not pruned and that the parts of the parcels where the trees grew were covered with waste matter. According to the applicable national rules, this significant breach of requirements for the two schemes should result in a 100 % reduction of the payment.

### Example 4.2 – Breach of public procurement rules (example of eligibility error)

The beneficiary of 5,1 million euro EU aid was the paying agency itself. The amount was paid for the measure 'technical assistance' and concerned a part of the larger operation of the paying agency's service and maintenance of the IT system. The Court found that the two contracts for this larger operation, with a value of around 58 million euro, were awarded to a company through negotiated procedures without notice. The paying agency did not provide the necessary analysis or required justification for awarding these contracts through such procedures, rather than through open or restricted procedures.

Page 105

### Example 4.5 – Insufficient quality of Member State's administrative and on-the-spot checks

One of the Court's re-performance checks in Italy (Lombardia) was of a project to construct a two-storey building on a farm including a laboratory for the processing of fruit and other farm products, a storage area and a terrace for drying fruits. The paying agency approved the full amount of the final payment claim of 221 205 euro following both administrative and on-the-spot checks. However, the Court found that the building had predominantly the characteristics of a private residence and not of an agricultural building and that thus the related costs were not eligible. The fact that the national authorities accepted the full amount of expenditure declared indicates a material system weakness in the administrative and on-the-spot checks.

Pages 155-156

### Example 6.1 – Ineligible costs

(a) Ineligible training participants: ESF funding was provided for training courses to increase the qualifications and knowledge of employees working in the electronics sector. The Court found that many of the participants were employed outside of the electronics sector and were therefore not eligible for such training. The cost declared for the ineligible participants was 29 % of the audited amount.

(b) Overcharging of staff costs: ESF funding was provided to a commercial association, as support for its activities, which included the provision of advice to small and medium-sized enterprises (SMEs). The costs of several staff members of the association were charged to the ESF project, although evidence supporting the charging of their time to the project could not be provided. The Court considers that the project staff costs have been overcharged by 60 %.

(c) Ineligible staff costs: for a professional training course, the



expenditure declared by the beneficiary included payments received by staff working on the project as termination of employment benefits. However, the national eligibility rules specify that such payments are considered ineligible. Therefore, 2,5 % of the declared costs for the audited project is considered as being ineligible.

Example 6.2 - Incorrectly calculated costs

(a) Incorrect calculation of overhead costs: for a project consisting of training courses for unemployed persons, the overhead costs for the project were allocated using a ratio based on the proportion of the area of the building used by the project. The Court found that the ratio had been incorrectly calculated, leading to an overstatement of 2,4 % of the audited amount.

\*\*\*\*\* END OF ANNEX \*\*\*\*\*

Yours faithfully,

[REDACTED]

-----Original Message-----

Dear [REDACTED]

The Court does not have specific "internal" guidelines to staff setting out "limits" as to:

- what information auditors should make enquiries about in an on-the-spot audit or
- what kind of documents of the auditee (or parts thereof) the Court's staff will include in the audit documentation.

Our published audit methodology however contain some explanations in terms of access of information and audit documentation.

TFEU, Article 287 (3)

The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget.

--> This allows the Court to audit up to the beneficiary level.

TFEU, Article 339

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

--> Auditors have to respect the principle of professional secrecy

Staff Regulations of Officials of the EC, Articles 17-19; Conditions of Employment of Other Servants of the EC, Article 11

Staff of the European Union is required to exercise the greatest discretion with regard to facts and information coming into their knowledge in the course of or

in connection with the performance of their duties.

The extensive rights of access to information that are accorded to the Court mean that this duty of discretion is particularly important, especially as the information handled by staff is frequently of a sensitive nature.

--> Duty of discretion

Ethics

Decision No 66-2011 laying down Ethical Guidelines for the European Court of Auditors

4. Professional secrecy: We have a duty of confidentiality in relation to our work. This duty should not curtail individual freedom of expression.

Court Audit Policies and Standards (CAPS) :

[1]

<http://eca.europa.eu/portal/page/portal/audit/Auditpoliciesandstandards>  
mainly:

- 1.1.1. Professional Ethics (ISSAI 30, ISSAI 40))
- 1.1.2 Professional judgement (ISSAI 100)
- 1.1.4. Professional scepticism (ISSAI 1200/ISA 200)
- 1.1.6. Audit documentation (ISSAI 1230/ISA 230)
- 2.4. Audit Evidence (ISSAI 1500/ISA 500)

Financial and Compliance Audit Manual (FCAM):

[2]<http://eca.europa.eu/portal/page/portal/audit/FCAM>

- 1.5 The Court's legal right of access
- 1.10 Documentation of audit work
- 2.4 Considering the sufficiency, relevance and reliability of audit evidence (esp. 2.4.9, 2.4.10, 2.4.11)
- 4.4.3 Nature and consequence of an inability to obtain sufficient appropriate audit evidence

Performance Audit Manual (PAM):

[3]<http://eca.europa.eu/portal/page/portal/audit/PerformanceAuditManual>  
2.4.6 Evidence is sufficient, relevant and reliable to support the audit findings

- 4.2 Delivering sufficient, relevant & reliable audit evidence
- 4.6 Documenting the audit

International auditing standards:

ISSAIs and ISAs see above under CAPS

Please find attached the DPO notification for the financial audit in the research area as requested by one of the persons.

However the number 214 of the DPO notification has been corrected to 160 as 214 concerned the Performance audit for the FP6 & FP7 and not the financial audit.

Regarding your requests 3-6, we are unable to provide you with any documents, as your request was insufficiently specific regarding what audit you are referring to. According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant. We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]

To: information requests at European Court of Auditors  
<[European Court of Auditors request email]>

Date: 20/06/2013 08:07

Subject: access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations

This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED].

Please kindly use this email address for all replies to this request: [REDACTED]

If [European Court of Auditors request email] is the wrong address for

information

requests to European Court of Auditors, please tell the  
[REDACTED] n email [REDACTED]

This message and all replies from European Court of Auditors will  
be published [REDACTED] For more information see  
our dedicated page for EU public officials at  
[REDACTED]

\*\*\*\*\*

Disclaimer: If you have received this message in error, please contact the  
sender immediately.

\*\*\*\*\*

Avertissement : Si ce message vous a été adressé par erreur, nous vous  
prions de vous mettre immédiatement en rapport avec l'expéditeur.

#### References

Visible links

1. <http://eca.europa.eu/portal/page/portal/audit/Auditpoliciesandstandards>
  2. <http://eca.europa.eu/portal/page/portal/audit/FCAM>
  3. <http://eca.europa.eu/portal/page/portal/audit/PerformanceAuditManual>
- [REDACTED]

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Please use this email address for all replies to this request:  
[REDACTED]

This message and all replies from European Court of Auditors will be  
published [REDACTED] For more information see our  
dedicated page for EU public officials at  
[REDACTED]

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**Re: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights**

ECA-INFO to: [REDACTED]

30/07/2013 15:58

Sent by: **Damijan FISER**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

We hereby acknowledge the receipt of your request for consideration, which you submitted to the ECA by email of 9 July 2013.

Please be informed that due to the vacation period the initial deadline of 15 working days must be exceptionnally extended by another 15 working days pursuant to Article 8(3) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents.

You will receive a reply by the end of the business day on 21 August 2013.

Kind regards,  
ECA Info

[REDACTED] Dear European Court of Auditors, Thank you for y...

25/07/2013 06:46:28

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 25/07/2013 06:46  
Subject: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights

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Dear European Court of Auditors,

Thank you for your reply and recommendation to make a confirmatory application. But I already did it in 9 July 2013. See above. The Court send an acknowledgement in the same day. I then submitted a reminder in 24 July 2013, but the reply given by COA do not cover at all the content of my confirmatory application.

May I kindly ask you to address my confirmatory application submitted to you on 9 July 2013?

As per your request, I submit hereby a new one but legally and technically speaking the only valid confirmatory application is the one I sent on 9 July 2013. The present one is only to comply once again with the requirement of COA. So here is :

Second confirmatory application:

Dear European Court of Auditors,  
Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of European Court of Auditors's handling of my FOI request 'Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights'.

DETAILS ABOUT COMPLAINT HERE : copy/paste from the first Confirmatory

application

"1. In relation to your argument below:

"According to Article 162 paragraph 1 of the Financial Regulation (Regulation No 966/2012), the Court's audit observations, submitted to the auditee concerned "must remain confidential". Only those observations that the Court has decided to include in its final report may be disclosed to the public", I request access to observations and preliminary findings related to these 2 Reports by Court of Auditors for 2009 and 2010, which have Observations included in the final report <http://eca.europa.eu/portal/pls/portal/d...>  
<http://eca.europa.eu/portal/pls/portal/d...>

For 2011 Report I request access to a piece of information, namely if the Court audited this Contracts  
<http://fra.europa.eu/sites/default/files...>

concluded by FRA with Danish Institute for Human Rights. If yes, I request access to the documents used in the preparation of any existing observations.

In this respect, see Article 4, paragraph 2 of the Court of Auditor's Decision (No 12 /2005) on public access to Court Documents which states, with reference to the FR, that the Court shall refuse access to its audit observations but may grant access to documents used in the preparation of those observations (may refuse but also or may grant).

I invoke the same jurisprudence as the one invoked

and below:

"In accordance to p. 165 of Judgment of the Civil Service Tribunal of 2 May 2007 in Case F-23/05: "it has to be recognized that a culture of accountability has grown up within the Community institutions, responding in particular to the concern of the public to be informed and assured that malfunctions and frauds are identified and, as appropriate, duly eliminated and punished. The consequence of that requirement is that officials and other servants who hold posts of responsibility within an administration such as the Commission must take into account the possible existence of a justified need to communicate a degree of information to the public".

Relying on this jurisprudence and on the precedence created by EDPS, which granted access to documents following a confirmatory application (see above the link to EDPS approval) I request a review of your decision and request access to the observations CoA used in respect of Audit for 2011 at FRA and European Commission.

I also rely on the fact that the FRA and EC` Contractor (DIHR/IMR) is suspect of fraud  
<http://www.turtlebayandbeyond.org/2012/h...>

as can be seen in several postings in this website and therefore the jurisprudence mentioned above is fully and dully justified to be applied (right of public to know how public money are used).

I also remind you about my request to access the Audit Report on FRA procurement procedure for "Provision of legal services to FRA staff".

In light of the above, I request a review of your decision and approval of my requests to access the requested documents."

A full history of my FOI request and all correspondence is available on the Internet at this address:

[REDACTED]

Yours faithfully,

-----  
Please use this email address for all replies to this request:

[REDACTED]  
This message and all replies from European Court of Auditors will be  
published [REDACTED] or more information see our  
dedicated page for EU public officials at  
[REDACTED]

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**Re: access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes**

**ECA-INFO** to: [REDACTED]  
Sent by: **Damijan FISER**  
Cc: eca-info

30/07/2013 16:07

Dear [REDACTED]

We hereby acknowledge the receipt of your request for reconsideration, which you submitted to the ECA by email of 24 July 2013.

Please be informed that due to the vacation period the initial deadline of 15 working days (ending on 14 August 2013) must be exceptionnally extended by another 15 working days pursuant to Article 8(3) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents.

You will receive a reply by the end of the business day on 5 September 2013.

Kind regards,  
ECA Info

[REDACTED] Dear European Court of Auditors, This is a applic...

24/07/2013 10:42:36

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 24/07/2013 10:42  
Subject: Re: access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes

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Dear European Court of Auditors,

This is a application for reconsideration pursuant to article 7 of the Court's Decision 12/2005.

**I. INITIAL REPLY**

It is worth recalling that article 6 of the Court's Decision 12/2005 lays down the essential steps of processing initial applications. The Director of Audit and Communications may have informed other officials of the Court about this particular application. It means that the initial reply has been approved by more than one official.

As the EU Courts have consistently held for applications according to Regulation No 1049/2001, in handling the initial application the Institution is obliged to undertake a diligent search and inform the applicant about the results of the search, in particular the documents the Institution has indentified. There is no reason to assume that the Court has a lower standard to meet in searching for documents regarding an application pursuant to the Decision 12/2005.

The EU Courts have also consistently held that acts of Institutions are presumed legal. Applying the reasoning of the EU Courts in Judgments about Regulation No 1049/2001, in the framework of an application pursuant to the Decision 12/2005 the Court's initial reply about the non-existence of documents does not leave, in principle, much room for applying for a reconsideration, which is relevant in cases the Court has refused access,

either partially or totally.

However, the present application is very exceptional in several respects. This is set out in the next section.

## II. CONSIDERATIONS ABOUT THE DG INFSO PRESENTATION(S) IN JANUARY 2011

It has now fully emerged in full public view that the DG MOVE and ENER prior notification DPO-3340.1 has two false statements,

[REDACTED] particular that the EDPS was consulted and that no subcontractors have been engaged. In the next few weeks it will also emerge in asktheeu.org that three prior notifications DG ENTR DPO-3334.1, DG INFSO DPO-3338.1, and DG RTD DPO-3338 (as of summer 2012) have the same two false declarations. Moreover, their legal basis is, in essence, non-existing. One of the immediate conclusions is that the external financial audits of the Research family DGs are outright unlawful in so far they have processed personal data of third parties to the audited projects.

In any action before the General Courts about these audits, the General Court will likely examine on its own motion whether the evidence - personal data of third parties - the Research family DGs have produced before it is admissible evidence. It is very difficult to see how the Court will declare it as admissible evidence, especially after the Bavarian Lager and Schecke Judgments of the Court of Justice (Grand Chamber). All it will take is a party to inform the General Court about the two false declarations of these four prior notifications. The Court will immediately realise that there is something extremely peculiar about the audits regarding compliance with Union law.

The Court of Auditors has now at hand some explaining to do about its own audits of the Research family DGs and their compliance with Regulation No 45/2001. There are a few applications pursuant to Decision 12/2005 submitted via asktheeu.org about it.

The prior notifications DG ENTR DPO-3334.1, DG RTD DPO-3338 (summer 2012) and DG MOVE-ENER DPO 3420.1 are nothing but copies of the DG INFSO prior notification DPO-3338.1, with only the names of the Directorate-General and the officials adapted to the particularities of each DG. It was DG INFSO that pioneered the risk-based audits and 'taught' these audit methods to the other three DGs, which somehow were persuaded to follow. Annual Activity report of DG INFSO have proudly informed the public about its innovative auditing methods of FP6 contractors and FP7 beneficiaries (e.g. 2011 report). According to these reports, the Court of Auditors 'praised' DG INFSO for its innovative audit methods.

Nearly six and two months after the Bavarian Lager and Schecke Judgments of the Court of Justice respectively, two officials of the former DG INFSO external audits S.5 Unit made a presentation to the Court about the risk-based audits, which the Court found worthy to report in its publication. Put differently, the architects of the gravely unlawful risk-based audits proudly presented to the Court their innovations in auditing, which according to DG INFSO the Court found them as worth of the Court's praising.

In another application the Court released the presentation entitled 'Risk-based audits' that the DG INFSO staff made to the Court in January 2011,

[REDACTED] Slide 6 and 11 are empty. In addition, the first part of the released presentation is very similar to a presentation (PDF file) that the same DG INFSO official had posted for more than a year in the website about the 2011 Belgian Anti-Fraud Congress, Sheraton Brussels Airport, 24/3/2011. This particular presentation is the subject of the GestDem 2013/3691 application,

[REDACTED] both presentations, the properties of the Powerpoint and PDF files are



"CETFI Course". There is simply too much 'CETFI Course' in those two presentations.

According to the Court's initial reply, the presentation on the 21/1/2011 was arranged without any documents to trace its organisation, be it an email, a note to the file and the like. While it is possible that no document was drawn up about the presentation organisation and everything was done orally, devoting space in a Court's publication about the presentation in question is not in line with a total absence of any document about the organisation of the presentation.

The emails deserve special considerations, as even if the Court's officials have deleted them from their own mailboxes, it is nearly certain that they are kept in the backup files of the Court's email servers. This means that the Court may hold emails, i.e. documents, which the Court did not seek to identify them and release them. The EU Courts have held that an Institution may not rely on its administrative burden to refuse access, at least without consulting with the applicant.

It is worth recalling that the applicant, or other applicants lodging similar applications with the Court, may bring an action before the General Court and as part of the organisation of the procedure request that officials of the Court of Auditors testify under oath. Were the General Court to grant such a measure, those officials would have to give a complete explanation about how the presentation was organised. This may reveal that at least a few lines were drawn up in an email.

### III. APPLICATION FOR RECONSIDERATION

An application is hereby respectfully submitted. It is expected that the Court will duly take into full account the foregoing observations and considerations.

Yours faithfully,

[REDACTED]

-----Original Message-----

Dear [REDACTED]

We are unable to provide you with any documents, as your request was insufficiently specific regarding what presentations by whom you are referring to.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]

To: information requests at European Court of Auditors  
<[European Court of Auditors request email]>

Date: 14/07/2013 11:59

Subject: access to information request - Presentations in January 2011 to the Court by European Commission officials, FP6 & FP7 programmes

-----  
Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

## I. APPLICATION

The present application is subject to the Court's Decision No 12/2005 regarding public access to Court documents 2009/C 67/01 (henceforth the 'Decision').

The requested documents concern the presentations given by European Commission officials to the Court in January 2011, as well as any documents handed over thereafter to the Court on the occasion of the presentations. The term 'official' herein is to be understood as both a Commission official who made the presentation, as well as a co-author of a presentation, even though such co-authors may not necessarily have visited the Court in January 2011.

The term 'presentation' also means a 'training course' like the 'CETFI Course'.

Copies of the following documents are kindly requested:

1. The documents with which the Court invited the officials to make the presentations.
2. In case the initiative for the presentations was at the Commission's side, the documents with which the officials suggested to the Court the organisation of the presentations.
3. The documents with which the Court and the Commission officials agreed the dates of the presentations. By definition, such documents predate the respective presentation. There may be emails, note to the file and so on.
4. Any follow-up documents about the presentations. For instance, such documents may be emails with which the officials dispatched to the Court copies of their presentations.
5. Every single presentation the officials made to the Court in January 2011, except the presentation released by the Court on 27/7/2013 via [REDACTED]

[11]

[REDACTED]

## II. TRANSFER OF PERSONAL DATA

The documents applied for contain will certainly contain the personal data of the Court's and the Commission's officials, for which article 8(2) of Regulation No 45/2001 may be applicable, as well as article 4(1)(b) of the Decision.

Regarding the personal data of the Court's officials, I am not requesting the transfer of their personal data. Therefore, in my view the Court should redact what is strictly necessary in order not to disclose the identity of the Court's official(s). The Court's Unit(s) to which the official(s) belong need not necessarily be redacted.

Regarding the personal data of the Commission's officials, I am not, in general, requesting the transfer of their personal data. Therefore, in my view the Court should redact what is strictly necessary in order not to disclose the identity of those officials. However, in my view the identities of the authors and the presenters is to be released; this applies specifically to the authors whose identity is already public information. In all cases, the Units to which the Commission officials belonged should be

released.

### III. OVERRIDING PUBLIC INTEREST FOR PRESENTATIONS CONCERNING THE FP6 & FP7 PROGRAMMES

In the last few weeks, tens of requests have been lodged with the European Commission via asktheeu.org pursuant to Regulation No 1049/2001 about the FP6 & FP7 programmes, with particular emphasis on the fundamental right of the personal data protection.

It has already emerged that the prior notifications DG ENTR DPO-3334.1, DG INFSO DPO-3338.1, DG RTD DPO-3398 (summer of 2012), and DG MOVE-ENER DPO-3420.1 contain two false declarations, namely the statements 'This processing has been submitted to the EDPS who concluded that Article 27 is not applicable' and '3. Sub-Contractors -'. As another applicant stated,

"When a public administration is prepared to risk criminal liabilities for the few officials who are personally liable for the factual accuracy of statutory instruments, it will not hesitate for a second to disregard a provision like article 28(2) of Regulation No 45/2001".

Consequently, every single presentation made to the Court by the former DG INFSO S.5 Unit is to be scrutinised by the public in order to see whether that Unit has attempted to mislead the Court about the Unit's external financial audits. To this end, the organisation of the presentations is essential in order to establish how many presentations officials of the S.5 Unit gave to the Court.

The overriding public interest argument is based on the premise that when an administrative Unit of an Institution has been prepared to act like an outlaw for many years, then anything that the Unit may have attempted to do involving interactions with third-parties like the Court must be scrutinised, either to unearth further wrongful acts of the Unit, or check whether that Unit has infringed the fundamental rights of natural and legal persons enshrined in Union and national law.

Yours faithfully,

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via

Please kindly use this email address for all replies to this request:

If [European Court of Auditors request email] is the wrong address for information

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#### References

Visible links

1.

http: [REDACTED]

2. http:// [REDACTED]

3. http:// [REDACTED]

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[REDACTED]

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**Re: access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations**

ECA-INFO to: [REDACTED]

30/07/2013 16:12

Sent by: **Damijan FISER**

Cc: eca-info

Dear [REDACTED]

We hereby acknowledge the receipt of your request for reconsideration, which you submitted to the ECA by email of 25 July 2013.

Please be informed that due to the vacation period the initial deadline of 15 working days (ending on 16 August 2013) must be exceptionnally extended by another 15 working days pursuant to Article 8(3) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents.

You will receive a reply by the end of the business day on 6 September 2013.

Kind regards,  
ECA Info

[REDACTED] Dear European Court of Auditors, Thank you for y...

25/07/2013 19:26:28

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 25/07/2013 19:26  
Subject: Re: access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations

---

Dear European Court of Auditors,

Thank you for your reply to the initial application dated 22 July 2013 over email.

The present is a request for reconsideration according to article 7 of the Court's Decision 12/2005.

The extensive provision of information about the Court's audit methods is appreciated.

The released prior notification of article 25 of Regulation No 45/2001 dated 13/08/2012 has in my view of host of 'open issues'. It can by no means construed as relating to the requests #1 and #2.

#### I. OBSERVATIONS ON THE INITIAL REPLY ON REQUESTS #1 AND #2

I have interpreted the Court's initial reply to requests #1 and #2 as the Court having carried out a search for relevant documents, being confident that no further consultations with the applicant was necessary, and finally concluding that no document matched the applicant's request for documents.

According to the Court's email of 9 July 2013, the application related to a very large number of documents "Because your application relates to a very large number of documents, we are extending the time limit by 15 days". The reply of 22/7/2012 (21 work-days after the application registration) is not necessarily fully in line with that statement, since out of a very large number of documents the Court finally concluded that no documents related

to requests #1 and #2 and that other four requests were imprecise. Yet the Court neither did it find useful to consult with the applicant about his very large number of document nor did it provide any information about the internal documents.

Page 3 of the Court's Audit Policies and Standards reads:

"Professional Ethics

In carrying out audits, auditors of the Court have regard to the obligations of officials and other servants of the European Union, as laid down in the Staff Regulation, and to the Code of good administrative conduct for staff of the European Court of Auditors. They conduct themselves in accordance with the INTOSAI Code of ethics. In particular, they ensure that audits are conducted in such a way as to protect and enhance the Court's independence, integrity, objectivity and professional standing, and to protect the confidentiality of information obtained in the audit process. "

It is clear that the Court's professional ethics refer to the 'Code of good administrative conduct for staff of the European Court of Auditors' in a context concerned inter alia with the protection of 'the confidentiality of information obtained in the audit process'. Arguably, this document falls under the scope of requests #1 and #2. It is therefore suggested that the Court fully release this document.

## II. OBSERVATIONS ON THE INITIAL REPLY ON REQUESTS #3 TO #6

Requests #3 to #6 concern the Court's on-the-spot audits announced in 2011 to a beneficiary (i.e. recipient of Union funds) that is a private sector entity. There is nothing out of the ordinary for such on-the-spot audits. The Annex herein provides excerpts from the Court's Annual Report of financial year 2011. It appears that for at least one of those audit findings the Court had audited on-the-spot a beneficiary. While it cannot be inferred with certainty that the beneficiaries were private sector entities, nonetheless it is probable that at least one was indeed such a legal or natural person.

Furthermore, the Court is not strange to applications for documents concerning its own on-the-spot audits to companies. One particular example is described in the following paragraph.

On 10/2/1997 the Court carried out an inspection of a beneficiary's head office in Dublin, Ireland. On the basis of the results of the Court's audit, the Commission services decided to conduct their own inspection of the beneficiary that ultimately led to the Commission Decision C(1999)1498 recovering the amounts unduly paid to the beneficiary. In late 2012 an application pursuant to Regulation No 1049/2001 (GestDem 2012/4960) requested from DG AGRI, inter alia, the release of the Court's 'audit report'. The Commission services consulted with the Court about releasing to the applicant the Court's audit report; the Court notified to the services its objection to even partially releasing that report.

It is therefore suggested that the Court examines whether the following audits referred to 2011 Annual Report fall under the scope of requests #3 to #6. The order of preference in decreasing order is indicated by the serial number.

1. Example 6(1)(a)
2. Example 6(1)(b)
3. Example 6(1)(c)
4. Example 6(2)(a)
5. Example 4(5)
6. Example 4(2)
7. Example 4(1)

In the event that all seven above audits do not concern an on-the-spot audit of a private sector beneficiary, in the interests of procedural

economy it is respectfully suggested that the Court inform me about a few other such audits announced in 2011.

As a last general remark, an applicant is not supposed to substitute the Court's proper search for documents falling under the scope of an application for documents with its own search of the Court's published documents in order to identify the Court's documents conceivably falling under the application. If this is the implied intention of the Court, one would have then expected that the Court would have published on-line its register of documents.

### III. AUDITOR'S DISCRETION REGARDING AUDIT EVIDENCE, REQUESTS #1 AND #2

This section argues that there is likely that a few lines were drawn up about the matters of requests #1 and #2.

Page 9 of the Court's Audit Policies and Standards reads:

#### "AUDIT EVIDENCE

The auditor designs and performs audit procedures in such a way as to enable the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion"

It is manifestly evident that during an on-the-spot audit of a beneficiary, the auditors have certain discretion as to what evidence they will collect for inclusion in the audit file. Seen in conjunction with the policies of 'Professional judgement' and 'The auditor plans and performs an audit with an attitude of professional scepticism recognising that circumstances may exist that cause the financial statements to be materially misstated', it is patently obvious that the Court has a policy of granting auditors a substantial margin of discretion regarding the audit evidence and the contents of the audit file. In fact, the 'riskier' a beneficiary appears, the more evidence the auditors will be compelled to include in the audit file.

Not having drawn up a single paragraph with internal directions and instruction to the auditors will entail the risk of a non-uniform approach to the on-the-spot audits. The Court is not an 'ordinary' auditor. On the very contrary, it has been established by the Treaties and carries out on-the-spot audits to all Member States, where different legal frameworks govern the national audit organisations.

The INTOSAI standards primarily concern the auditing of Government accounts and not those of private sector entities that receive public funds. The Court is entitled to audit the recipients of payments from the Union budget by virtue of article 287(3) TFEU. Regulation No 1605/2002, as amended, has lots of provisions about the auditing of the Institutions by the Court, but it is totally silent about pursuant to Community law on-the-spot audits to private sector entities in receipt of payments from the budget. Regulation No 1906/2006 (FP7 rules of participation) does not provide, as a matter of Community law, for the Court's on-the-spot audits to FP7 beneficiaries.

The above line of reasoning suggests that the Court's on-the-spot audits of private sector entities are a sensitive issue, entirely outside the audits of Government accounts. Put differently, regarding the on-the-spot audits in question the Court 'navigates partially chartered waters. It will be rather surprising if no single paragraph or a brief internal document was drawn up.

In view of the above considerations, it can be concluded that in case the Court has not drawn up a few lines falling under the scope of requests #1 and #2 the Court have run the risk of collecting too much audit evidence, which in some 'risky' cases may have reached the point of a heavy-handed audit.

### IV. APPLICATION FOR RECONSIDERATION

An application for reconsideration is respectfully submitted. I am confident that the Court will duly take into full consideration the foregoing line of reasoning.

\*\*\*\*\*

#### ANNEX. EXTRACTS FROM THE COURT'S ANNUAL REPORT OF FINANCIAL YEAR 2011

Page 101

##### Example 4.1 - Non-respect of agri-environment commitments (example of eligibility error)

The beneficiary applied for support for two agri-environment schemes. For the first scheme, he had committed on 14 parcels to refrain from cultivating crops in a one metre buffer strip and to leave this area uncultivated, unploughed, unfertilised and unsprayed. The audit found that this requirement was not respected on any of the 14 parcels. For the second scheme, the farmer committed to carry out appropriate orchard management techniques and good agricultural practices, including pruning and thinning of fruit trees. The audit found that the trees were not pruned and that the parts of the parcels where the trees grew were covered with waste matter. According to the applicable national rules, this significant breach of requirements for the two schemes should result in a 100 % reduction of the payment.

##### Example 4.2 - Breach of public procurement rules (example of eligibility error)

The beneficiary of 5,1 million euro EU aid was the paying agency itself. The amount was paid for the measure 'technical assistance' and concerned a part of the larger operation of the paying agency's service and maintenance of the IT system. The Court found that the two contracts for this larger operation, with a value of around 58 million euro, were awarded to a company through negotiated procedures without notice. The paying agency did not provide the necessary analysis or required justification for awarding these contracts through such procedures, rather than through open or restricted procedures.

Page 105

##### Example 4.5 - Insufficient quality of Member State's administrative and on-the-spot checks

One of the Court's re-performance checks in Italy (Lombardia) was of a project to construct a two-storey building on a farm including a laboratory for the processing of fruit and other farm products, a storage area and a terrace for drying fruits. The paying agency approved the full amount of the final payment claim of 221 205 euro following both administrative and on-the-spot checks. However, the Court found that the building had predominantly the characteristics of a private residence and not of an agricultural building and that thus the related costs were not eligible. The fact that the national authorities accepted the full amount of expenditure declared indicates a material system weakness in the administrative and on-the-spot checks.

Pages 155-156

##### Example 6.1 - Ineligible costs

(a) Ineligible training participants: ESF funding was provided for training courses to increase the qualifications and knowledge of employees working in the electronics sector. The Court found that many of the participants were employed outside of the electronics sector and were therefore not eligible for such training. The cost declared for the ineligible participants was 29 % of the audited amount.

(b) Overcharging of staff costs: ESF funding was provided to a commercial association, as support for its activities, which included the provision of advice to small and medium-sized enterprises (SMEs). The costs of several staff members of the association were charged to the ESF project, although evidence supporting the charging of their time to the project could not be



provided. The Court considers that the project staff costs have been overcharged by 60 %.

(c) Ineligible staff costs: for a professional training course, the expenditure declared by the beneficiary included payments received by staff working on the project as termination of employment benefits. However, the national eligibility rules specify that such payments are considered ineligible. Therefore, 2,5 % of the declared costs for the audited project is considered as being ineligible.

Example 6.2 - Incorrectly calculated costs

(a) Incorrect calculation of overhead costs: for a project consisting of training courses for unemployed persons, the overhead costs for the project were allocated using a ratio based on the proportion of the area of the building used by the project. The Court found that the ratio had been incorrectly calculated, leading to an overstatement of 2,4 % of the audited amount.

\*\*\*\*\* END OF ANNEX \*\*\*\*\*

Yours faithfully,

-----Original Message-----

Dear [REDACTED]

The Court does not have specific "internal" guidelines to staff setting out "limits" as to:

- what information auditors should make enquiries about in an on-the-spot audit or
- what kind of documents of the auditee (or parts thereof) the Court's staff will include in the audit documentation.

Our published audit methodology however contain some explanations in terms of access of information and audit documentation.

TFEU, Article 287 (3)

The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget.

--> This allows the Court to audit up to the beneficiary level.

TFEU, Article 339

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

--> Auditors have to respect the principle of professional secrecy

Staff Regulations of Officials of the EC, Articles 17-19; Conditions of Employment of Other Servants of the EC, Article 11

Staff of the European Union is required to exercise the greatest discretion with regard to facts and information coming into their knowledge in the course of or in connection with the performance of their duties.

The extensive rights of access to information that are accorded to the Court mean that this duty of discretion is particularly important, especially as the information handled by staff is frequently of a sensitive nature.

--> Duty of discretion

## Ethics

Decision No 66-2011 laying down Ethical Guidelines for the European Court of Auditors

4. Professional secrecy: We have a duty of confidentiality in relation to our work. This duty should not curtail individual freedom of expression.

## Court Audit Policies and Standards (CAPS) :

[1]

<http://eca.europa.eu/portal/page/portal/audit/Auditpoliciesandstandards> mainly:

- 1.1.1. Professional Ethics (ISSAI 30, ISSAI 40))
- 1.1.2 Professional judgement (ISSAI 100)
- 1.1.4. Professional scepticism (ISSAI 1200/ISA 200)
- 1.1.6. Audit documentation (ISSAI 1230/ISA 230)
- 2.4. Audit Evidence (ISSAI 1500/ISA 500)

## Financial and Compliance Audit Manual (FCAM):

[2]<http://eca.europa.eu/portal/page/portal/audit/FCAM>

- 1.5 The Court's legal right of access
- 1.10 Documentation of audit work
- 2.4 Considering the sufficiency, relevance and reliability of audit evidence (esp. 2.4.9, 2.4.10, 2.4.11)
- 4.4.3 Nature and consequence of an inability to obtain sufficient appropriate audit evidence

## Performance Audit Manual (PAM):

[3]<http://eca.europa.eu/portal/page/portal/audit/PerformanceAuditManual>

- 2.4.6 Evidence is sufficient, relevant and reliable to support the audit findings
- 4.2 Delivering sufficient, relevant & reliable audit evidence
- 4.6 Documenting the audit

## International auditing standards:

ISSAIs and ISAs see above under CAPS

Please find attached the DPO notification for the financial audit in the research area as requested by one of the persons.

However the number 214 of the DPO notification has been corrected to 160 as 214 concerned the Performance audit for the FP6 & FP7 and not the financial audit.

Regarding your requests 3-6, we are unable to provide you with any documents, as your request was insufficiently specific regarding what audit you are referring to. According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant. We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]

To: information requests at European Court of Auditors  
<[European Court of Auditors request email]>

Date: 20/06/2013 08:07

Subject: access to information request - On-the-spot audits to private sector beneficiaries, professional secrecy obligations

This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent [REDACTED].

Please kindly use this email address for all replies to this request: [REDACTED]

If [European Court of Auditors request email] is the wrong address for information

requests to European Court of Auditors, please tell the [REDACTED] email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

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#### References

##### Visible links

1. <http://eca.europa.eu/portal/page/portal/audit/Auditpoliciesandstandards>
  2. <http://eca.europa.eu/portal/page/portal/audit/FCAM>
  3. <http://eca.europa.eu/portal/page/portal/audit/PerformanceAuditManual>
- [REDACTED]

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**Re: access to information request - Fundamental Rights Agency  
Reports by Court of Auditors**

ECA-INFO to: [REDACTED]

31/07/2013 09:01

Sent by: **Damijan FISER**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

We acknowledge the receipt of your request for access to ECA documents sent on 30 July 2013 regarding:

- ECA cooperation with OLAF in the below-mentioned cases;
- ECA reports in respect of the FRA and other EU Agencies;

You will receive a reply within 15 working days, that is by the end of the business day on Wednesday 21 August 2013.

Kind regards,  
ECA Info

[REDACTED] Dear European Court of Auditors, Under the right...

30/07/2013 17:22:53

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 30/07/2013 17:22  
Subject: access to information request - Fundamental Rights Agency Reports by Court of Auditors

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

OLAF published in its letter available here

[REDACTED]

These 4 cases:

- A) Case OF/ 2007/ 0488 on FRA Recruitment.
- B) Case OF/ 2010/ 0711 on FRA Procurement.
- C) Case OF/ 2011/ 0573 on FRA Mismanagement.
- D) Case OF/ 2013/ 0328 on FRA Forgery of document.

This 5th case was opened following European Parliament letter of 27.04.2012 available here

[REDACTED]

European Parliament has been informed in 2nd July 2013 that following its letter dated 27 April 2012 OLAF closed the related case with no recommendation. Details could be found in this Letter by Mr Michael Theurer (President of EP Budgetary Control Committee)

[REDACTED]

1. I request access to following information: if Court of Auditors cooperated on all these 5 cases with OLAF. I read in this website that COA is precluded to give details on that cooperation with OLAF, if any. Therefore I request punctual, simple and general information : in which of the above 5 cases COA cooperated with OLAF.

2. I also request access to an overview of critical remarks in COA reports in respect of the other EU agencies. I ask access to these information because I did a research in COA website and noticed that FRA is the only EU Agency which has any critical remark in COA Audit Reports. In asktheeu website, European Parliament Website, Ombudsman website I noticed that FRA has some sensitive and not yet clarified problems with tender procedures, conflict of interest, employment cases, harassment cases, etc.

I would very much appreciate having access to some documents, even in partial form with names covered, in order to be able to understand how FRA managed not having any critical remark in COA Reports, given the details provided in point 2.

Thank you very much.

Yours faithfully,

[REDACTED]

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request:

[REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] on email

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[REDACTED]

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**Re: Internal review of access to information request - Access to documents requests in 2011 and 2012**

**ECA-INFO** to: [REDACTED]

02/08/2013 16:35

Sent by: **Damijan FISER**

Cc: **eca-info**

Dear [REDACTED]

We hereby acknowledge the receipt of your email today, which we consider as your request for reconsideration of your request for access to documents, which we received from you on 11 July and replied on 22 July 2003.

Please be informed that due to the vacation period the initial deadline of 15 working days (ending on 26 August 2013) must be exceptionnally extended by another 15 working days pursuant to Article 8(3) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents.

You will receive a reply by the end of the business day on 16 September 2013.

Kind regards,  
ECA Info

[REDACTED]  
02/08/2013 14:49:44

From: [REDACTED]

To: **eca-info@eca.europa.eu**

Date: **02/08/2013 14:49**

Subject: **Internal review of access to information request - Access to documents requests in 2011 and 2012**

Dear Mr Palubinskas,

Following your refusal to our request for access to documents containing a list of requests for the access to documents and the answers/decisions given/made by the Court of Auditors for the years 2011-12, and following our telephone conversation in which you clarified that extracting the individual files that we requested alternatively would be an excessive task given the lack of a separate centralised register for this type of documents, we would propose a solution in line with Article 6.4 of Decision No 12/2005 of the Court of Auditors, including the prolongation of the time period for a reply by 15 working days

We wanted to ask whether it would be helpful for you if we narrowed down or adapted our request, e.g. to request documents relating to access to documents requests received by the Court of Auditors in the past year (for instance 1 July 2012 to 30 June 2013).

This request is meant to provide us a more objective and detailed view on the scope of requests and decisions to grant/refuse access received by all EU institutions, but we are open to discuss potential options for modification or to clarify what we are looking for with each institution, understanding that all have different ways of storing the documents and information we requested. [REDACTED]

looking at these issues in the context of our study on the integrity of EU Institutions.)

Thank you for your attention and we look forward to hearing from you.

Yours sincerely,

on behalf of

-----Original Message-----

Dear

We are unable to provide you with the documents you requested, as they are not held by the European Court of Auditors, i.e. a detailed list of access to documents requests does not exist.

According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

From:

to: information requests at European Court of Auditors  
<[European Court of Auditors request email]>

Date: 11/07/2013 14:10

Subject: access to information request - Access to documents requests in 2011 and 2012

Dear Sir/Madam,

In line with the right of access to EU documents, and further to ECA Decision 12/2005, we are hereby writing to request access to all documents/records providing a detailed list of all the access to documents requests received by the European Court of Auditors in the calendar years 2011 and 2012, which should indicate in particular:

- a) The subject of the request made (i.e. the specific document(s)/record(s) requested);
- b) The (type of) requestor;
- c) How the request was submitted/received (online form, direct email, via phone, mail or other);
- d) The initial decision on the request, including the basis upon which any refusals to grant access were made (prior to any confirmatory applications);
- e) Whether the institution consulted with third parties (including other institutions and outside parties) prior to responding to the request;
- f) Whether or not the initial refusal or partial refusal resulted in a confirmatory application;

g) Whether the confirmatory application was successful or partially successful (ie. it resulted in a partial revision of the initial response), or whether the confirmatory application resulted in a confirmation of the initial denial;

h) Whether or not partial access was granted to the documents;

i) Whether or not access to the entirety of the document requested was denied;

j) The time taken to deal with each request (i.e. including confirmatory applications, where applicable);

k) The number of times the deadline was extended, the amount of time it was extended for, and the reasons for the extension;

l) Whether the requester was asked to clarify or narrow their request, or to provide more information about themselves or about the reasons for their request.

Should an overview record listing the above-mentioned information for each individual request not be held by your institution, we would like to request the individual files related to all access to documents requests received in the calendar years 2011 and 2012 (i.e. the administrative correspondence providing insights to (a)-(l) above).

May we kindly request that the documents be provided in electronic format; where database records are provided, please provide these in an open, accessible format.

Thank you for your cooperation.

Yours sincerely,

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED].

Please kindly use this email address for all replies to this request: [REDACTED]

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#### References

##### Visible links

1. [REDACTED]
2. [REDACTED]

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h [REDACTED]

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**Re: access to information request - Compliance of the Court with Regulation No 45/2001, FP6 & FP7 Financial Audits , Personal Data Protection**

ECA-INFO to: Mr. [REDACTED]  
Sent by: Damijan FISER  
Cc: ECA-INFO  
[REDACTED]

02/08/2013 16:51

Dear [REDACTED]

We would like to inform you that - pursuant to Article 6(3) and (4) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents - and due to the vacation period, the initial deadline of 15 working days (ending on 25 July 2013) was exceptionnally extended for another 15 working days.

You will receive a reply by the end of the business day on 16 August 2013.

Kind regards,  
ECA Info

[REDACTED] Dear European Court of Auditors,

04/07/2013 11:48:13

From: [REDACTED]  
To: Information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 04/07/2013 11:48  
Subject: access to information request - Compliance of the Court with Regulation No 45/2001, FP6 & FP7 Financial Audits , Personal Data Protection

---

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

I refer to the audits of the Court of the FP6 & FP7 projects. The Court has audited the Research family DGs and has relied on the personal data in the possession of those DGs to check the compliance of the underlying transactions with legality. In other words, the Court has processed personal data originating from the contractual financial audits of those DGs pursuant to articles FP6.II.29 and FP7.II.22.

Approximately 80% of all external financial audits of the Research family DGs have been conducted by external auditors pursuant to a private law contract between the DG RTD and the external auditors. It follows therefore that for 80% of the said audits, the personal data of employees or service providers of the auditees end up in the possession of a Research family DG solely pursuant to two private law contracts. There can be no doubt that the Research family DGs end up with personal data of third parties to the audited FP6 contracts or FP7 grant agreements, as the case may be.

There are huge questions about how exactly personal data acquired by the Commission services in such a solely contractual context, and which also concern third parties to the research contracts, is lawfully in the possessed by the Commission services. An analysis of article 25 of Regulation No 45/2001 immediately discloses that none of the conditions of article 5 of the said Regulation is even remotely satisfied, unless the data subject has expressly stated his/her consent. It is absolutely certain that the data subject has

not given its consent, as the personal data are collected in the field audit from the auditee (a legal person in the vast majority of audits) and not from the data subject. Furthermore, the data subject is not even aware about it.

The above reasoning calls immediately to question to what extent the Court of Auditors has lawfully processed personal data in its audits of the Research family DGs. As the Court itself has stated in its opinion 1/2006, in the FP4, FP5 and FP6 Programmes the relationship between the contractor-beneficiary and the Commission is a 'private law contract'. Equally, the FP7 grant agreement is a 'private law contract'. It cannot be accepted that the Court has 'overlooked' article 5 of Regulation No 45/2001 and its implications about the lawfulness of the personal data in the possession of the Research family DGs.

Since the Court is primarily concerned with verifying the legality of the underlying transactions, prior to any processing by itself of the personal data in the possession of the Research DGs, the Court has had an absolute obligation to satisfy itself that the latter DGs were indeed in a fully lawful possession. To this end, the Court has had an absolute obligation to verify that the data subjects had provided their express consent.

There are also huge issues about the article 25 prior notifications of Regulation No 45/2001 about the external financial audits of the Research family DGs. The very first one, DG INFSO DPO-3338.1 was filed as late as 2/2/2011, i.e. when more than approximately 1,500 audits had been carried out.

The prior notifications DPO-3334.1, DPO-3338.1, DPO-3398, DPO-3420.1 and DPO-3455.1 have the 'statements' "This processing has been submitted to the EDPS who concluded that Article 27 is not applicable. 3. Sub-Contractors -". These statements are manifestly extremely inaccurate, to say the least simply because:

1. The Annual Activity Reports of the Research family DGs state that approximately 80% of the audits were outsource.
2. The EDPS calls prior notifications referred to him for article 27 consultations as a 'non-prior check'. In accordance to Regulation No 45/2001, the EDPS publishes his opinion about every single 'non-prior check' in his website. A rudimentary 'check' of the EDPS website discloses that DPO-3334.1, DPO-3338.1, DPO-3398, DPO-3420.1 and DPO-3455.1 were never submitted to the EDPS for any type of 'consultations'. It is thus evident that the statement "This processing has been submitted to the EDPS who concluded that Article 27 is not applicable" is in total contradiction with the contents of the EDPS public website.

It cannot be accepted that the Court was not diligent enough to realise that up to 2/2/2011 there was no prior notification at all about the external financial audits in question and that those filed afterwards have had highly inaccurate statements, with the 'no subcontractors' as blatantly inaccurate. This inaccuracy alone ought to have raised red alerts to the Court, since the Court supposedly verifies the legality of the transactions.

It is worth recalling that legality is far more than the protection of financial interests. After all, democracy, the rule of law, fundamental rights, education, and publicly-funded art do not come without a price tag. Arguably, the taxpayers' financial interests take a hit, as taxation is raised to pay for elections, the Parliament, the Courts and so on. Dispensing with such 'expensive' Institutions would certainly lower taxation, thus positively impacting the taxpayer's financial interests.

Furthermore, the Court itself costs the taxpayer money. The very fact that the Treaties provide for the Court proves that legality is above the financial interests. It appears that the Court has somewhat 'forgotten' such fundamental considerations in its audits of the Research family DGs when it came to compliance with Regulation No 45/2001.

For the purposes of this application, the abbreviation 'PDTPRCPC' stands for 'Personal Data of Third Parties to Research Contracts Processed by the Court originating from the external financial audits of the Research family DGs pursuant to articles FP6.II.29 and FP7.II.22'.

Copies of the following documents drawn up by the Court are kindly applied for:

1. The documents setting out the lawfulness of the PDTPRCPC.
2. The article 25 of Regulation 45/2001 prior notification(s) about the PDTPRCPC.
3. The documents drawn up by the Data Protection Officer about the PDTPRCPC.
4. Since the Court has processed personal data it did not itself obtain/collect from the data subjects but from a third party (i.e. Commission services), copies of any 20 letters the Court dispatched to data subjects pursuant to article 12(1) or Regulation No 45/2001 for the personal data the Court processed from 1/1/2019 to 31/12/2011.
5. The documents setting out an analysis of the compliance with article 7 of Regulation No 45/2001 regarding the PDTPRCPC.

\*\*\*\*\* OVERRIDING PUBLIC INTEREST \*\*\*\*\*

First, it is worth recalling that:

1. The Schecke Judgement has made absolutely clear the fundamental importance of personal data protection in the European Union, Joined Cases C-92/09 and C-93/09.
2. The Bavarian Lager Judgement, as well as the Commission's refusal to disclose personal data without the express consent of a data subject, has illustrated (i) that strict compliance with the Regulation No 45/2001 is of the essence, and (ii) the Commission services are in general very diligent in observing the said Regulation.
3. The Commission referred Austria to Court of Justice for lack of independence of data protection authority, Case C-614/10.
4. The Commission referred Germany to the Court of Justice for lack of independence of the data protection supervisory authority, Case C-518/07.

Due to the extremely sensitive nature of the subject-matter of the application, it is manifestly evident that there is an overriding public interest for the full release of very single document held by the Court and applied for above.

Yours faithfully,



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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell the [REDACTED] on email to [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED]. For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - FP6, FP7, ESF audits, personal data protection, prior notifications**

ECA-INFO to [REDACTED]

02/08/2013 17:19

Sent by: **Damijan FISER**

Cc: information requests at European Court of Auditors  
[REDACTED]

Dear [REDACTED]

We would like to inform you that pursuant to Article 6(3) and (4) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents, and due to the vacation period, the initial deadline of 15 working days (ending on 16 August 2013) must be exceptionally extended for another 15 working days.

You will receive a reply by the end of the business day on Friday 6 September 2013.

Kind regards,  
ECA Info

[REDACTED] Dear European Court of Auditors, Under the right...

25/07/2013 14:53:40

From:

To: information requests at European Court of Auditors <eca-info@eca.europa.eu>

Date: 25/07/2013 14:53

Subject: access to information request - FP6, FP7, ESF audits, personal data protection, prior notifications

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

I. PRIOR NOTIFICATIONS FOUND IN THE COURT'S REGISTER OF ARTICLE 26 OF REGULATION NO 45/2001

Copies of the following prior notifications of article 25 of Regulation No 45/2001 are kindly requested:

- #1. No 38, 19/04/2007, Head of Unit, AUDIT, NR2, Statement of assurance (DAS), -Selecting beneficiaries; -Verification of the declarations and eligibility criteria
- #2. No 66, 19/07/2007, Head of Unit, AUDIT, NR5, Reliability of SPS/IACS controls and inspections in EU-15 auditing if the payments have been carried out correctly
- #3. No 75, 28/09/2007, Head of Unit, AUDIT, AEI, Audit of salaries, allowances and pensions for staff employed (or formerly employed) by European Institutions Audit of documents which serve as evidence for the grade/step and the entitlement to other allowances, e.g. latest decision on promotion, certificate of marriage, children's schooling certificates.....
- #4. No 90, 08/11/2007, Head of Unit, AUDIT, NR4, Statement of assurance
- #5. No 92, 08/11/2007, Head of Unit, AUDIT, NR4, Cross compliance
- #6. No 107, 05/12/2007, Head of Unit, AUDIT, NR5, The system of milk quotas in the new Member States Auditing quotas allocated

#7. No 114, 04/04/2008, Head of Unit, AUDIT, SPD, DAS audit, In the execution of the DAS transactions for Structural actions and more specifically for the Social fund, personal data is audited in order to verify the requirements of the Regulations. This can take the form of collecting, consulting and/or storage of personal data.

#8. No 132, 05/05/2008, Head of Unit, CEAD, AMS, ASSYST: Time Recording In ASSYST, there is a module for time recording. Each auditor who has access to ASSYST and are planned for in the Annual Work Programme is requested to record their

#9. No 199, 19/02/2009, Head of Unit, AUDIT, IPB, DAS 2008

#10. No 211, 18/06/2009, Head of Unit, AUDIT, NR3, Pr  enquête sur les b  n  ficiaires de la PAC Traitement des donn  es des montants re  us par les b  n  ficiaires de la PAC

#11. No 214, 09/07/2009, Head of Unit, AUDIT, TRE, Performance Audit of the Adequacy and Effectiveness of Selected FP6 Instruments

The audit procedures defined included surveys, testing at project level and reviews of studies and reports. Throughout the audit, data contained in several Commission's databases were used. Furthermore, the audit involved the review of documentation prepared by or containing information about individuals.

#12. No 224, 05/01/2010, Head of Unit, AUDIT, AEI, Audit on performance of OLAF investigations Audit of documents gathered by OLAF in the framework of its investigations.

#13. No 224, 05/01/2010, Head of Unit, AUDIT, AEI, Audit on performance of OLAF investigations Audit of documents gathered by OLAF in the framework of its investigations.

## II. OTHER PRIOR NOTIFICATIONS OF ARTICLE 25 OF REGULATION No 45/2001

Copies of the prior notifications of article 25 of Regulation No 45/2001 regarding the following audit activities of the Court are kindly requested:

#14. Annual report covering FY 2009, European Social Fund audit. An example of the Court's manifest personal data processing is given in page 102, 'Overdeclaration of staff costs: In the case of an ESF project supporting professional training courses for pupils from secondary schools, the beneficiary incorrectly charged various indirect costs (staff salaries, insurance, fuel, telephone and depreciation) to the project.'

#15. Annual report covering FY 2009, Research Energy and Transport. An example of the Court's manifest personal data processing is given in page 121 'The Court found that the audited beneficiary reported 17 person-months as input to the Commission'.

#16. Annual report covering FY 2010, Research and other Internal Policies. An example of the Court's manifest personal data processing is given in page 173 'Example 6.1 Ineligible costs and incorrectly calculated costs A beneficiary managing an FP6 project claimed overheads using a flat rate which was based on direct staff costs. Following an ex-post audit carried out in 2007, the beneficiary changed its allocation of overheads methodology without fully and correctly implementing the recommendations made by the ex-post auditors. Errors and inconsistencies, noted during the Court's audit led to an over-claim of 731 652 euro'.

#17. Annual report covering FY 2011, Employment and social affairs. An example of the Court's manifest personal data processing is given in page 155 'a) Ineligible training participants: ESF funding was provided for training courses to increase the qualifications and knowledge of employees working in the electronics sector. The Court found that many of the

participants were employed outside of the electronics sector and were therefore not eligible for such training. The cost declared for the ineligible participants was 29 % of the audited amount'.

#18. Annual report covering FY 2011, Research and other internal policies. An example of the Court's manifest personal data processing is given in page 193 'Example 8.1 - Error identified in a cost claim relating to personnel costs A beneficiary involved in a FP7 project declared 308 000 euro of personnel costs. The Court's audit revealed that the beneficiary: - underestimated the productive hours worked by its employees; - over-charged hours for several employees involved in the audited project. In total these findings resulted in the over-declaration of 45 000 euro of personnel costs.'

It is noted that the above five prior notifications are statutory documents. In view of the combined provisions of article 24(1) last sub-paragraph 'That person shall thus ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations', article 25 and article 24(1)(d) of Regulation No 45/2001, any defect, and a fortiori a non-existence, of any of these five prior notification will be tantamount that the Court has likely not respected 'the rights and freedoms of the data subjects'.

It is thus expected that the Court will carry out a diligent search to identity and release these five prior notifications.

### III. DOCUMENTS DRAWN UP BY THE AUDIT DIRECTORATE

Referring to the auditing activities documented in the annual report of financial years 2009, 2010 and 2011 in the area of 'research and other internal policies' (requests #15, #16 and #18 concern that area), copies of the following documents drawn up by the Audit Directorate - or its predecessor(s), if applicable - are requested:

#19. The documents drawn up from 1/1/2004 onwards setting out some kind of an analysis of the lawfulness of processing personal data of third parties to the audited projects or/and Community/Union actions.

#20. The documents draw up from 1/1/2004 onwards setting out some kind of an analysis of the lawfulness of processing personal data in the legal context of a private law contract between a Research family and DG and an FP6 contractor/FP7 beneficiary.

#21. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice or opinion of the Data Protection Officer about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

#22. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice or opinion of the Court's Legal Services about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

#23. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice, instruction or direction of the Court's Member(s) about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

### IV. DOCUMENTS DRAWN UP THE LEGAL SERVICES AND THE DATA PROTECTION OFFICER

Copies of the following documents are requested:

#24. The documents drawn up by the Legal Services in response to the request under #22 above.

#25. The documents drawn up by the Data Protection Officer in response to



the request under #21 above.

#26. Notwithstanding the above requests, any other documents drawn up by the Legal Services regarding the Court's personal data processing in the context of auditing FP6 and FP7 programmes.

#27. Notwithstanding the above requests, any other documents drawn up by the Data Protection Officer regarding the Court's personal data processing in the context of auditing FP6 and FP7 programmes.

#### V. OVERRIDING PUBLIC INTEREST

It is patently obvious that the applicant entertains serious doubts as to what extent the Court has been diligent in observing Regulation No 45/2001 and for the activities described above.

Requests #24 and #26 concern legal opinions and therefore the Court may find appropriate to refuse access. However, the substance of these legal opinions is whether the Court was either negligent or willful or both in risking serious infringements of Regulation No 45/2001 in its audits of financial statements of contractors/beneficiaries in the FP6 and FP7 programmes. Refusing total access will further strengthen the doubts.

In a Union governed by the rule of law, where Institutions are held accountable for the lawfulness of their acts, no exception of article 4 of the Court's Decision 12/2005 may be relied upon to refuse full access. On the contrary, article 4(8) is fully applicable to shed light into the Court's observance of Regulation No 45/2001.

At the end of the day, checking the legality of financial transactions presupposes that the checks and audits are themselves lawful. Relying on unlawful audit practices renders the whole audit meaningless.

Yours faithfully,

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via the

Please kindly use this email address for all replies to this request:

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [redacted] on email [redacted]

This message and all replies from European Court of Auditors will be published on the [redacted]. For more information see our dedicated page for [redacted] at [redacted]

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**Re: access to information request - Fundamental Rights Agency  
Reports by Court of Auditors**

**ECA-INFO** to [redacted] information requests at  
European Court of Auditors

02/08/2013 17:29

Sent by: **Damijan FISER**

Cc: **ECA-INFO**  
[redacted]

Dear [redacted]

We would like to inform you that pursuant to Article 6(3) and (4) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents, and due to the vacation period, the initial deadline of 15 working days (ending on 21 August 2013) must be exceptionally extended for another 15 working days.

You will receive a reply by the end of the business day on Wednesday 11 September 2013.

Kind regards,  
ECA Info

ECA-INFO

[redacted] We acknowledge the recei...

31/07/2013 09:01:35

From: **ECA-INFO/Eca**

To: [redacted]

Cc: information requests at European Court of Auditors <eca-info@eca.europa.eu>

Date: 31/07/2013 09:01

Subject: Re: access to information request - Fundamental Rights Agency Reports by Court of Auditors

Sent by: **Damijan FISER**

Dear [redacted]

We acknowledge the receipt of your request for access to ECA documents sent on 30 July 2013 regarding:

- ECA cooperation with OLAF in the below-mentioned cases;
- ECA reports in respect of the FRA and other EU Agencies;

You will receive a reply within 15 working days, that is by the end of the business day on Wednesday 21 August 2013.

Kind regards,  
ECA Info

[redacted] Dear European Court of Auditors, Under the right...

30/07/2013 17:22:53



**Re: access to information request - FP6 & FP7 programmes, personal data protection, legal mandate to audit on-the-spot**

ECA-INFO to: [REDACTED]

02/08/2013 17:41

Sent by: **Damijan FISER**

Cc: information requests at European Court of Auditors  
[REDACTED]

Dear [REDACTED]

We would like to inform you that pursuant to Article 6(3) and (4) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents, and due to the vacation period, the initial deadline of 15 working days (ending on 7 August 2013) must be exceptionally extended for another 15 working days.

You will receive a reply by the end of the business day on Thursday 29 August 2013.

Kind regards,  
ECA Info

[REDACTED] Dear European Court of Auditors,

17/07/2013 18:38:15

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 17/07/2013 18:38  
Subject: access to information request - FP6 & FP7 programmes, personal data protection, legal mandate to audit on-the-spot

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Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

I refer to the manifest personal data processing by the Court in on-the-spot audits of FP5 and FP6 contractors and FP7 beneficiaries.

One example to illustrate the depth and breadth of the personal data processing is the Court's 5-page document entitled 'Annex I, Audit Questionnaire - DAS 2011, Mission on the spot'. The document is just a multi-page 5-column table. Parts of page 1 and page 2 (first and second columns only) read:

\*\*\* Page 1 \*\*\*

3. Do the amounts in the cost declaration (form C) reconcile to the beneficiary's accounting records?

4. Verify:

- if the correct reporting model (FP6) or funding rates (FP7) have been used and
- if the beneficiary has an approved COM/COMAV (for FP7 only).

\*\*\* Page 2 \*\*\*

I) Personnel costs

8

- Obtain a list of all personnel involved in the indirect research actions, indicating period(s) they worked for the project as well

as their position.

- Obtain copies of employment contracts for all the relevant employees.
- Obtain list of absence dates (holidays/illnesses) for project staff

9. Was the standard personnel practice complied with? (contract type, remuneration, subordination,...)  
If not, is it acceptable?

10. Is the time recording in accordance with the Commission's requirements (e.g. time sheets)?

11. Can you confirm that project staff did not record any time on the project during holidays or illness periods?

12. Is the calculation of hourly labour costs correct?

13. Is the calculation of productive hours correct?

It is striking that question no 10 is about the Commission's requirements about time-recording, that is to say one of the two contracting parties, and with no reference to the Union law or contractual provisions. It is not immediately obvious that such an attitude is fully in line with verifying the legality of transactions.

\*\*\*\*\*

Copies of the following documents drawn up by the Courts are kindly requested:

1. The internal documents drawn up prior to 31/12/2012 setting out a legal analysis about the lawfulness of the Court's personal data processing of third parties to the FP5-FP6-FP7 audited contracts (i.e. the persons the contractor-beneficiary charged to the audited projects), except those drawn up by the Data Protection Officer.

2. The documents drawn up by the Data Protection Officer prior to 31/12/2012 setting out a legal analysis about the lawfulness of the Court's personal data processing of third parties to the FP5-FP6-FP7 audited contracts (i.e. the persons the contractor-beneficiary charged to the audited projects).

3. The article 25 of Regulation 45/2001 prior notification in force in 2009 covering the Court's personal data processing of third parties to the audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited projects.

4. The article 25 of Regulation 45/2001 prior notification in force in 2010 covering the Court's personal data processing of third parties to the audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited projects.

5. The article 25 of Regulation 45/2001 prior notification in force in 2011 covering the Court's personal data processing of third parties to the audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited projects.

6. The article 25 of Regulation 45/2001 prior notification in force in 2012 covering the Court's personal data processing of third parties to the audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited

projects.

7. A sample of 10 documents drawn up in 2009 pursuant to article 12(1) of Regulation 45/2001 regarding the manifest personal data processing by the Court of third parties to the audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited projects.

8. A sample of 10 documents drawn up in 2010 pursuant to article 12(1) of Regulation 45/2001 regarding the manifest personal data processing by the Court of third parties to the audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited projects.

9. A sample of 10 documents drawn up in 2011 pursuant to article 12(1) of Regulation 45/2001 regarding the manifest personal data processing by the Court of third parties to the audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited projects.

10. A sample of 10 documents drawn up in 2012 pursuant to article 12(1) of Regulation 45/2001 regarding the manifest personal data processing by the Court of third parties audited FP5, FP6 and FP7 contracts, that is to say the persons the contractor-beneficiary charged to the audited projects.

11. In view of employment contracts most definitely containing information covered by the professional secrecy obligations of article 339 TFEU (even arguably business secrets), the document(s) setting out an analysis of how the Court's manifest processing of such information - in particular in view of the circumstances of the processing (e.g. keeping completely in the dark the third parties to the audited projects about it) -, has been compliant with the EU Courts case law, in particular the Cases 53/85 Akzo, T-353/94 Postbank, T-198/03 Bank Austria Creditanstalt (§29-34, §71-74).

12. The documents setting out an analysis of the lawfulness of the Court's processing of personal data originating from the Research family DGs. In this context, it is pointed out that the Research family DGs have breached numerous provisions of Union and national law on personal data protection, with the crown of the illegalities being the two false statements in DG ENTR DPO-3334.1, DG INFSO DPO-3338.1, DG RTD DPO-3398.1 (summer 2012), and DG MOVE-ENER DPO-3420.1 'This processing has been submitted to the EDPS who concluded that Article 27 is not applicable' and '3. Sub-Contractors -'.

13. The documents setting out an analysis of the lawfulness of the Courts on-the-spot audits of FP5-FP6-FP7 contractors with its own staff and at the premises of the contractors, in particular what provisions of Union law authorising the Court to do so. Some considerations about it are given further below.

14. Regarding any ten (10) on-the-spot audits of FP5-FP6-FP7 contractors by the Court in the period 2009-2012, the documents with which the Court notified the relevant national audit body pursuant to article 287(3) TFEU 'In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments'. In identifying those 10 audits, the applicant's kindly requests that the Court select the 10 audits on the basis of the language of the correspondence, which is in decreasing order: (1) English, (2) Greek, (3) French, (4) Italian, (5) Spanish.

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## OVERRIDING PUBLIC INTEREST

### 1. Fundamental right of personal data protection

To appreciate the seriousness of the matters and the public's great interest, the Court's staff may find useful to read the legal analysis in a very recent application pursuant to Regulation No 1049/2001 (Gestdem 2013/3761) at the asktheeu.org, [http://www.asktheeu.org/en/request/dg\\_infso\\_ict\\_for\\_transport\\_manag](http://www.asktheeu.org/en/request/dg_infso_ict_for_transport_manag).

Requests #1 to #12 concern the fundamental right of personal data protection. Full release is necessary, except the personal data in the documents of requests #7 to #10.

### 2. Court's mandate to audit on-the-spot and at their premises FP6 contractors and FP7 beneficiaries

The following paragraphs outline the applicant's doubts about to what extent the Court is duly authorised to audit FP6 contractors and FP7 beneficiaries on-the-spot and in a Member State.

As a preliminary observation, the Court is neither a Court of Law nor a Tribunal and therefore it is not covered by the principle of sincere cooperation between the Judicial Authorities of the Union and those of the Member States. Principles like the unfettered evaluation of evidence lawfully produced before a Court of Law do not apply to the Court of Auditors.

Article 142 of Regulation No 1605/2002, as amended (in force until 31/12/2012), concerns on-the-spot audits at the premises of an Institution and not in the premises of a contractor-beneficiary.

Article 18(4) of Regulation No 2324/2002 FP6 Rules of Participation reads:

"4. Pursuant to Article 248(2) of the Treaty, the Court of Auditors may verify the use of the Community's financial contribution"

In my view, this provision does not expressly authorise the Court to audit a FP6 contractor in a Member State. Furthermore, a 'verification of the use' is not necessarily a financial audit per se.

Article 19(10) of Regulation No 1605/2006 FP7 Rules of Participation reads:

"10. The model grant agreement shall provide for supervision and financial control by the Commission or any representative authorised by it, and the Court of Auditors."

This provision merely mandates the insertion into the grant agreement of a contractual right of the Court of Auditors for 'financial control'. It does not expressly state that the 'financial control' will take place at the beneficiary's premises. In addition, the Court will carry out the 'financial control' pursuant to a provision of a private law contract (FP7.II.22) and not pursuant to Union law. There are fundamental legal differences between a contractual 'financial control' and a 'financial control' pursuant to Union law.

As the EU Courts have always held, any intervention in a Member State by an Institution into the private affairs of private law legal person needs to have a clear and unambiguous mandate in Union law. Article 7 of Regulation No 2185/96 and article 20 of Regulation No 1/2003 are two examples of Union law expressly authorising the Commission to carry out on-the-spot inspections. Union law expressly provides that the economic operators are

required to submit to those inspections. The former provides for the assistance of the competent national authorities to the Commission inspectors in case of non-submission by the economic operator. The latter provides *inter alia* for the imposition of severe administrative fines in case of non-submission. In other words, when the EU legislature intended to confer on an Institution to power to intervene in the private affairs of an economic operator for the public interest, not only did it expressly state it in the legislative act, but it also included provisions for dealing with cases of non-submission or non-compliance. There is absolutely nothing of this kind of clarity for the Court's on-the-spot audits of FP6 contractors and FP7 beneficiaries.

We will now examine the provisions of article 287(3) TFEU that indeed provides for on-the-spot audits:

"The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task."

In my view, the provisions of article 287(3) TFEU by no means imply that Union law authorises the Court of Auditors to audit on-the-spot a FP6 contractor or a FP7 beneficiary. Some key reasons are:

- The FP6 contract and the FP7 grant agreement is a private law contract. By definition, they are outside the mainstream of Union law.
- If article 287(3) were to be interpreted as covering indiscriminately anyone who has received payments from the budget, then the Court would be entitled to audit any private-sector landlord of a Commission building, any local bookstore that sold 100-Euro worth stationery to an Agency, even audit the personal finances of every single member of staff of an Institution and the Judges of the Court of Justice. After all, officials do indeed receive payments from the budget. It will be even more interesting to see how a Court's audit of a senior official of an Institution pursuant to article 287(3) TFEU can be reconciled with diplomatic immunity of those officials.
- If the Ministry of Defence were a party to a FP7 grant agreement, the Court would be entitled to audit its accounts relating to the FP7 action.

Of course, article 287(3) TFEU is not that far wide-ranging. It solely concerns recipients of payments from the budget pursuant to Union law, such as subsidies for agriculture for which there is some kind of universal right to receive a subsidy, provided that

all the conditions of Union law are satisfied by the recipient.

It cannot be argued that it applies to private law contracts awarded pursuant to competitive call for tenders and calls for proposals like a FP6 contract or FP7 grant agreement. It is the very competition that ensures the 'best value for money' for a tender or an FP7 call for proposals, and essentially renders a financial audit meaningless.

Why such financial audits are in the FP6 contracts and FP7 grant agreements is another matter. Suffice it to say for now, that the FP7 grant agreement has even more bizarre provisions like article FP7.II.13 that deals with personal data rights of legal persons and 'grants' a right for recourse to the EDPS to legal persons.

The ultimately logical conclusion of a blanket extension of article 287(3) TFEU to audit on the spot any entity that has received payments from the budget, regardless of the legal basis of the payment, is that the Court is entitled to audit a 50 billion company for a commercial transaction corresponding to an invoice of just 10 Euro to an Institution. It is not sure that the draftsmen of the TFEU had that in mind.

In view of the above considerations, it is evident that there is an overriding public interest for the full release of the documents under requests #13 and #14 above.

Yours faithfully,

[REDACTED]

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] on email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: Request for public access to information**

**ECA-INFO** to: [REDACTED]

Sent by: **Damijan FISER**

Cc: **eca-info**

06/08/2013 14:34

Dear [REDACTED]

I hereby acknowledge the receipt of your request for public access to information, received by email on 5 August 2013, regarding:

- the details of penalties/financial corrections imposed for breaches of European Regional Development Fund (ERDF) publicity requirements, by member state, for each of the (i) 2000-2006 and (ii) 2007-2013 programmes.

We would like to inform you that pursuant to Article 6(3) and (4) of Decision 12-2005 of the Court of Auditors regarding public access to Court documents, and due to the vacation period, the deadline of 15 working days (ending on 27 August 2013) must be exceptionally extended by another 15 working days.

You will receive a reply by the end of the business day on Tuesday 17 September 2013.

Kind regards,  
ECA Info

[REDACTED] Director of Audit Support and Communication E...

05/08/2013 16:33:15

From: [REDACTED]  
To: [eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)  
Date: 05/08/2013 16:33  
Subject: Request for public access to information

Director of Audit Support and Communication  
European Court of Auditors  
By email: [eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)

Dear Sir/Madam,

**REQUEST FOR PUBLIC ACCESS TO INFORMATION**

I wish to make a request for information which may be held by the European Court of Auditors, as per the Court's guidance on public access to information.

<http://eca.europa.eu/portal/page/portal/aboutus/rightaccessdocuments>

I wish to request details of penalties/financial corrections imposed for breaches of European Regional Development Fund (ERDF) publicity requirements, by member state, for each of the (i) 2000-2006 and (ii) 2007-2013 programmes. The publicity requirements are as laid out in EC Regulation 1828/2006.

I wish to request, by each member state, information on:

(a) the grant receiving organisation, (b) the project title, (c) the financial amount of the

irregularity/financial correction, and (d) details relating to the precise nature of the breach of the publicity regulations, in as far information is held by the Court.

As an example, this information has already been published in relation to the ERDF programme in England. I would be grateful if my request for information could be processed in a similar way.

<https://www.gov.uk/government/publications/penalties-imposed-for-breaches-of-european-regional-development-fund-erdf-requirements>

I am only requesting information on closed cases. I am not requesting the names of individuals.

Disclosure will be in the public interest as it will enhance public accountability on the efficient administration of EU Structural Fund programmes and the spending of taxpayers' money. Given information has already been published for some ERDF programmes (as listed above), further disclosure will allow valid comparisons to be made between Member States.

As per Article 6, please contact me if it is necessary to narrow the request, if it is too broad, and narrowing would help facilitate disclosure.

I wish to receive the information in electronic format.

[REDACTED]



**Re: Request for public access to information**

**ECA-INFO** to: [REDACTED]  
Sent by: **Helena PIRON**  
Cc: eca-info

20/08/2013 16:19

Dear Sheridan Westlake,

In response to your request for access to ECA documents, which we received on 5 August 2013, we would like to inform you that any financial corrections in relation to irregularities found by the ECA are imposed by the European Commission following a further clearance procedure with the national authorities. This effectively means that we do not possess the information you have requested. .

We would advise you to contact the relevant DG of the European Commission, i.e. DG REGIO, who may provide you the information you are looking for.

Kind regards,  
ECA Info

[REDACTED] Director of Audit Support and Communication E...

05/08/2013 16:33:15

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 05/08/2013 16:33  
Subject: Request for public access to information

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Director of Audit Support and Communication  
European Court of Auditors  
By email: [eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)

Dear Sir/Madam,

**REQUEST FOR PUBLIC ACCESS TO INFORMATION**

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<http://eca.europa.eu/portal/page/portal/aboutus/rightaccessdocuments>

I wish to request details of penalties/financial corrections imposed for breaches of European Regional Development Fund (ERDF) publicity requirements, by member state, for each of the (i) 2000-2006 and (ii) 2007-2013 programmes. The publicity requirements are as laid out in EC Regulation 1828/2006.

I wish to request, by each member state, information on:

(a) the grant receiving organisation, (b) the project title, (c) the financial amount of the irregularity/financial correction, and (d) details relating to the precise nature of the breach of the publicity regulations, in as far information is held by the Court.

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in a similar way.

<https://www.gov.uk/government/publications/penalties-imposed-for-breaches-of-european-regional-development-fund-erdf-requirements>

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As per Article 6, please contact me if it is necessary to narrow the request, if it is too broad, and narrowing would help facilitate disclosure.

I wish to receive the information in electronic format.

[REDACTED]



**Re: access to information request - Compliance of the Court with Regulation No 45/2001, FP6 & FP7 Financial Audits , Personal Data Protection**

**ECA-INFO** to: [REDACTED]

20/08/2013 11:15

Sent by: **Helena PIRON**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

hereby the ECA's reply to your access to information request of 4 July:

The documents setting out the lawfulness of the PDTPRCPC (Personal Data of Third Parties to Research Contracts Processed by the Court originating from the external financial audits of the Research family DGs pursuant to articles FP6.II.29 and FP7.II.22'.) The article 25 of Regulation 45/2001 prior notification(s) about the PDTPRCPC

The documents drawn up by the Data Protection Officer about the PDTPRCPC

Since the Court has processed personal data it did not itself obtain/collect from the data subjects but from a third party (i.e. Commission services), copies of any 20 letters the Court dispatched to data subjects pursuant to article 12(1) or Regulation No 45/2001 for the personal data the Court processed from 1/1/2019 to 31/12/2011.

The documents setting out an analysis of the compliance with article 7 of Regulation No 45/2001 regarding the PDTPRCPC.

Paragraph 1 and 3 of Article 287 of the "Consolidated version of the Treaty of Functioning of the European Union".

Article 140 and paragraph 5 of article 142 of Council Regulation(EC, Euratom) 1605/2002.

see attached file

There are not such documents.

There are not such documents as the ECA does not need to inform the data subjects as this is the Commissions task as a subvention provider and the organisations that receive such a subvention if they subcontract with 3th parties.

There are no such documents.



AUD-214-TRE-FP6.pdf

sincerely yours,

Helena Piron Mäki-Korvela

Dear European Court of Auditors,

04/07/2013 11:48:13

From: [REDACTED]  
To: Information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 04/07/2013 11:48  
Subject: access to information request - Compliance of the Court with Regulation No 45/2001, FP6 & FP7 Financial Audits , Personal Data Protection

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Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

I refer to the audits of the Court of the FP6 & FP7 projects. The Court has audited the Research family DGs and has relied on the personal data in the possession of those DGs to check the compliance of the underlying transactions with legality. In other words, the Court has processed personal data originating from the contractual financial audits of those DGs pursuant to articles FP6.II.29 and FP7.II.22.

Approximately 80% of all external financial audits of the Research family DGs have been conducted by external auditors pursuant to a private law contract between the DG RTD and the external auditors. It follows therefore that for 80% of the said audits, the personal data of employees or service providers of the auditees end up in the possession of a Research family DG solely pursuant to two private law contracts. There can be no doubt that the Research family DGs end up with personal data of third parties to the audited FP6 contracts or FP7 grant agreements, as the case may be.

There are huge questions about how exactly personal data acquired by the Commission services in such a solely contractual context, and which also concern third parties to the research contracts, is lawfully in the possession by the Commission services. An analysis of article 25 of Regulation No 45/2001 immediately discloses that none of the conditions of article 5 of the said Regulation is even remotely satisfied, unless the data subject has expressly stated his/her consent. It is absolutely certain that the data subject has not given its consent, as the personal data are collected in the field audit from the auditee (a legal person in the vast majority of audits) and not from the data subject. Furthermore, the data subject is not even aware about it.

The above reasoning calls immediately to question to what extent the Court of Auditors has lawfully processed personal data in its audits of the Research family DGs. As the Court itself has stated in its opinion 1/2006, in the FP4, FP5 and FP6 Programmes the relationship between the contractor-beneficiary and the Commission is a 'private law contract'. Equally, the FP7 grant agreement is a 'private law contract'. It cannot be accepted that the Court has 'overlooked' article 5 of Regulation No 45/2001 and its implications about the lawfulness of the personal data in the possession of the Research family DGs.

Since the Court is primarily concerned with verifying the legality of the underlying transactions, prior to any processing by itself of the personal data in the possession of the Research DGs, the

Court has had an absolute obligation to satisfy itself that the latter DGs were indeed in a fully lawful possession. To this end, the Court has had an absolute obligation to verify that the data subjects had provided their express consent.

There are also huge issues about the article 25 prior notifications of Regulation No 45/2001 about the external financial audits of the Research family DGs. The very first one, DG INFSO DPO-3338.1 was filed as late as 2/2/2011, i.e. when more than approximately 1,500 audits had been carried out.

The prior notifications DPO-3334.1, DPO-3338.1, DPO-3398, DPO-3420.1 and DPO-3455.1 have the 'statements' "This processing has been submitted to the EDPS who concluded that Article 27 is not applicable. 3. Sub-Contractors --". These statements are manifestly extremely inaccurate, to say the least simply because:

1. The Annual Activity Reports of the Research family DGs state that approximately 80% of the audits were outsource.
2. The EDPS calls prior notifications referred to him for article 27 consultations as a 'non-prior check'. In accordance to Regulation No 45/2001, the EDPS publishes his opinion about every single 'non-prior check' in his website. A rudimentary 'check' of the EDPS website discloses that DPO-3334.1, DPO-3338.1, DPO-3398, DPO-3420.1 and DPO-3455.1 were never submitted to the EDPS for any type of 'consultations'. It is thus evident that the statement "This processing has been submitted to the EDPS who concluded that Article 27 is not applicable" is in total contradiction with the contents of the EDPS public website.

It cannot be accepted that the Court was not diligent enough to realise that up to 2/2/2011 there was no prior notification at all about the external financial audits in question and that those filed afterwards have had highly inaccurate statements, with the 'no subcontractors' as blatantly inaccurate. This inaccuracy alone ought to have raised red alerts to the Court, since the Court supposedly verifies the legality of the transactions.

It is worth recalling that legality is far more than the protection of financial interests. After all, democracy, the rule of law, fundamental rights, education, and publicly-funded art do not come without a price tag. Arguably, the taxpayers' financial interests take a hit, as taxation is raised to pay for elections, the Parliament, the Courts and so on. Dispensing with such 'expensive' Institutions would certainly lower taxation, thus positively impacting the taxpayer's financial interests.

Furthermore, the Court itself costs the taxpayer money. The very fact that the Treaties provide for the Court proves that legality is above the financial interests. It appears that the Court has somewhat 'forgotten' such fundamental considerations in its audits of the Research family DGs when it came to compliance with Regulation No 45/2001.

For the purposes of this application, the abbreviation 'PDTPRCPC' stands for 'Personal Data of Third Parties to Research Contracts Processed by the Court originating from the external financial audits of the Research family DGs pursuant to articles FP6.II.29 and FP7.II.22'.

Copies of the following documents drawn up by the Court are kindly applied for:

1. The documents setting out the lawfulness of the PDTPRCPC.

2. The article 25 of Regulation 45/2001 prior notification(s) about the PDTPRCPC.

3. The documents drawn up by the Data Protection Officer about the PDTPRCPC.

4. Since the Court has processed personal data it did not itself obtain/collect from the data subjects but from a third party (i.e. Commission services), copies of any 20 letters the Court dispatched to data subjects pursuant to article 12(1) or Regulation No 45/2001 for the personal data the Court processed from 1/1/2019 to 31/12/2011.

5. The documents setting out an analysis of the compliance with article 7 of Regulation No 45/2001 regarding the PDTPRCPC.

\*\*\*\*\* OVERRIDING PUBLIC INTEREST \*\*\*\*\*

First, it is worth recalling that:

1. The Schecke Judgement has made absolutely clear the fundamental importance of personal data protection in the European Union, Joined Cases C-92/09 and C-93/09.

2. The Bavarian Lager Judgement, as well as the Commission's refusal to disclose personal data without the express consent of a data subject, has illustrated (i) that strict compliance with the Regulation No 45/2001 is of the essence, and (ii) the Commission services are in general very diligent in observing the said Regulation.

3. The Commission referred Austria to Court of Justice for lack of independence of data protection authority, Case C-614/10.

4. The Commission referred Germany to the Court of Justice for lack of independence of the data protection supervisory authority, Case C-518/07.

Due to the extremely sensitive nature of the subject-matter of the application, it is manifestly evident that there is an overriding public interest for the full release of very single document held by the Court and applied for above.

Yours faithfully,

-----  
This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] in email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]





**Re: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights**

ECA-INFO to: [REDACTED]

21/08/2013 17:40

Sent by: **Helena PIRON**

Cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

Further to your request of access to information, would it be possible to receive your postal address, so that we can send the President's reply to you by surface mail, please?

Many thanks in advance.

sincerely yours,

ECA-Info

[REDACTED] Dear European Court of Auditors,

09/07/2013 10:55:55

From: [REDACTED]

To: [REDACTED] information requests at European Court of Auditors <eca-info@eca.europa.eu>

Date: 09/07/2013 10:55

Subject: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights

Dear European Court of Auditors,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of European Court of Auditors's handling of my FOI request 'Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights'.

Confirmatory application.

1. In relation to your argument below:

"According to Article 162 paragraph 1 of the Financial Regulation (Regulation No 966/2012), the Court's audit observations, submitted to the auditee concerned "must remain confidential". Only those observations that the Court has decided to include in its final report may be disclosed to the public", I request access to observations and preliminary findings related to these 2 Reports by Court of Auditors for 2009 and 2010, which have Observations included in the final report  
<http://eca.europa.eu/portal/pls/portal/docs/1/11418739.PDF>  
<http://eca.europa.eu/portal/pls/portal/docs/1/11222951.PDF>

For 2011 Report I request access to a piece of information, namely if the Court audited this Contracts

[http://fra.europa.eu/sites/default/files/fra\\_uploads/2046-F-SE-10-03-T02-Award-notice.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/2046-F-SE-10-03-T02-Award-notice.pdf)

concluded by FRA with Danish Institute for Human Rights. If yes, I request access to the documents used in the preparation of any existing observations.

In this respect, see Article 4, paragraph 2 of the Court of Auditor's Decision (No 12 /2005) on public access to Court Documents which states, with reference to the FR, that the Court shall refuse access to its audit observations but may grant access to documents used in the preparation of those observations (may refuse but also or may grant).

I invoke the same jurisprudence as the one invoked here  
[REDACTED]

"In accordance to p. 165 of Judgment of the Civil Service Tribunal of 2 May 2007 in Case F-23/05: "it has to be recognized that a culture of accountability has grown up within the Community institutions, responding in particular to the concern of the public to be informed and assured that malfunctions and frauds are identified and, as appropriate, duly eliminated and punished. The consequence of that requirement is that officials and other servants who hold posts of responsibility within an administration such as the Commission must take into account the possible existence of a justified need to communicate a degree of information to the public".

Relying on this jurisprudence and on the precedence created by EDPS, which granted access to documents following a confirmatory application (see above the link to EDPS approval) I request a review of your decision and request access to the observations CoA used in respect of Audit for 2011 at FRA and European Commission.

I also rely on the fact that the FRA and EC` Contractor (DIHR/IMR) is suspect of fraud  
[REDACTED]

as can be seen in several postings in this website and therefore the jurisprudence mentioned above is fully and dully justified to be applied (right of public to know how public money are used).

I also remind you about my request to access the Audit Report on FRA procurement procedure for "Provision of legal services to FRA staff".

In light of the above, I request a review of your decision and approval of my requests to access the requested documents.

-----  
A full history of my FOI request and all correspondence is available on the Internet at this address:  
[REDACTED]

Yours faithfully,  
[REDACTED]

-----  
Please use this email address for all replies to this request:  
[REDACTED]

This message and all replies from European Court of Auditors will

be published [REDACTED] For more information see  
our dedicated page for EU public officials at  
[REDACTED]

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**Re: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights**

**ECA-INFO** to: [REDACTED]  
Sent by: **Sebastian MITROWSKI**  
Cc: **ECA-INFO**  
[REDACTED]

23/08/2013 11:10

Dear [REDACTED]

Please find enclosed a letter from Mr Vitor Caldeira, President of the Court, concerning your request for access to the documents dated 9 July 2013.

Sincerely yours,

ECA-Info



CPR006503EN01-13PP-Reply\_to\_Mr\_Nicholson-OR.pdf

----- Forwarded by Sebastian MITROWSKI/Eca on 23/08/2013 11:05 -----

From: **ECA-INFO/Eca**  
To: [REDACTED]  
Cc: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 21/08/2013 17:40  
Subject: Re: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights  
Sent by: Helena PIRON

---

Dear [REDACTED]

Further to your request of access to information, would it be possible to receive your postal address, so that we can send the President's reply to you by surface mail, please?

Many thanks in advance.

sincerely yours,

ECA-Info

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 09/07/2013 10:55  
Subject: Internal review of access to information request - Audit Reports on Contracts concluded by European Commission and FRA Vienna with Danish Institute for Human Rights

Dear European Court of Auditors,

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Confirmatory application.

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<http://eca.europa.eu/portal/pls/portal/docs/1/11222951.PDF>

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and below:

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I also rely on the fact that the FRA and EC` Contractor (DIHR/IMR)

is suspect of fraud

[REDACTED]

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In light of the above, I request a review of your decision and approval of my requests to access the requested documents.

-----

A full history of my FOI request and all correspondence is available on the Internet at this address:

[REDACTED]

Yours faithfully,

[REDACTED]

-----

Please use this email address for all replies to this request:

[REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

-----



**Re: Request for public access to information**

**ECA-INFO** to: [REDACTED]

Sent by: **Aidas PALUBINSKAS**

Cc: eca-info

02/09/2013 10:08

Dear [REDACTED]

Such a list has not been drawn up by the ECA, and thus we are unable to provide it for you.

Kindest regards,

Aidas Palubinskas

Sheridan Westlake

Thank you for the email. I would like to refine m...

20/08/2013 16:53:18

From: [REDACTED]

To: eca-info@eca.europa.eu

Date: 20/08/2013 16:53

Subject: Re: Request for public access to information

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Thank you for the email.

I would like to refine my request (or submit a new request, if necessary) by asking for the list of publicity irregularities that were identified by the ECA and which were passed onto the European Commission for review. [i.e. as per my original email below, in terms of scope: please let me know if I need to narrow the scope]

On 20 August 2013 15:19, <[eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)> wrote:

Dear [REDACTED]

In response to your request for access to ECA documents, which we received on 5 August 2013, we would like to inform you that any financial corrections in relation to irregularities found by the ECA are imposed by the European Commission following a further clearance procedure with the national authorities. This effectively means that we do not possess the information you have requested. .

We would advise you to contact the relevant DG of the European Commission, i.e. DG REGIO, who may provide you the information you are looking for.

Kind regards,  
ECA Info

From: [REDACTED]

To: [eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)

Date: 05/08/2013 16:33

Subject: Request for public access to information

Director of Audit Support and Communication  
European Court of Auditors  
By email: [eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)

Dear Sir/Madam,

## **REQUEST FOR PUBLIC ACCESS TO INFORMATION**

I wish to make a request for information which may be held by the European Court of Auditors, as per the Court's guidance on public access to information.  
<http://eca.europa.eu/portal/page/portal/aboutus/rightaccessdocuments>

I wish to request details of penalties/financial corrections imposed for breaches of European Regional Development Fund (ERDF) publicity requirements, by member state, for each of the (i) 2000-2006 and (ii) 2007-2013 programmes. The publicity requirements are as laid out in EC Regulation 1828/2006.

I wish to request, by each member state, information on:  
(a) the grant receiving organisation, (b) the project title, (c) the financial amount of the irregularity/financial correction, and (d) details relating to the precise nature of the breach of the publicity regulations, in as far information is held by the Court.

As an example, this information has already been published in relation to the ERDF programme in England. I would be grateful if my request for information could be processed in a similar way.  
<https://www.gov.uk/government/publications/penalties-imposed-for-breaches-of-european-regional-development-fund-erdf-requirements>

I am only requesting information on closed cases. I am not requesting the names of individuals.

Disclosure will be in the public interest as it will enhance public accountability on the efficient administration of EU Structural Fund programmes and the spending of taxpayers' money. Given information has already been published for some ERDF programmes (as listed above), further disclosure will allow valid comparisons to be made between Member States.

As per Article 6, please contact me if it is necessary to narrow the request, if it is too broad, and narrowing would help facilitate disclosure.

I wish to receive the information in electronic format.





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Disclaimer: If you have received this message in error, please contact the sender immediately.

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Avertissement : Si ce message vous a été adressé par erreur, nous vous prions de vous mettre immédiatement en rapport avec l'expéditeur.



**Re: access to information request - Fundamental Rights Agency  
Reports by Court of Auditors**

**ECA-INFO** to: [REDACTED]

02/09/2013 15:42

Sent by: **Aidas PALUBINSKAS**

Cc: information requests at European Court of Auditors  
[REDACTED]

Dear [REDACTED]

The ECA has considered your requests of 30 July 2013:

**Request 1:**

*I request access to following information: if Court of Auditors cooperated on all these 5 cases with OLAF. I read in this website that COA is precluded to give details on that cooperation with OLAF, if any. Therefore I request punctual, simple and general information : in which of the above 5 cases COA cooperated with OLAF.*

References provided in respect of the first 4 cases are internal OLAF references. It is not possible for the ECA to identify what recruitment/procurement/transactions were the subject of the OLAF investigation from these references or from the annexed documents provided by OLAF to the requestor. For the 5th case, the case concerned a procurement but this procurement is not identified in any of the documents provided. In the absence of a means to identify either the procurements, recruitments or transactions involved, it is not possible to make any comment as we use different reference codes than OLAF in recording our work and we cannot reconcile our references to those of OLAF.

**Request 2:**

*a) I also request access to an overview of critical remarks in COA reports in respect of the other EU agencies.*

*b) In asktheeu website, European Parliament Website, Ombudsman website I noticed that FRA has some sensitive and not yet clarified problems with tender procedures, conflict of interest, employment cases, harassment cases, etc.*

*I would very much appreciate having access to some documents, even in partial form with names covered, in order to be able to understand how FRA managed not having any critical remark in COA Reports, given the details provided [in point 2].*

a) The information requested is already in the public domain, i.e our reports are publicly available at <http://www.eca.europa.eu/en/Pages/AuditReportsOpinions.aspx>. No document containing an "overview of critical remarks" has been produced by the ECA, and thus we are unable to provide such a document.

b) You have not specified what documents you are seeking access to. In the absence of a request for specific documents, it is not possible to determine which documents will enable you to understand the judgement the ECA applied in drafting its report.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kind regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, Under the right...

30/07/2013 17:22:53

From: [REDACTED]

To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 30/07/2013 17:22  
Subject: access to information request - Fundamental Rights Agency Reports by Court of Auditors

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Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

OLAF published in its letter available here  
[REDACTED]

these 4 cases:

- A) Case OF/ 2007/ 0488 on FRA Recruitment.
- B) Case OF/ 2010/ 0711 on FRA Procurement.
- C) Case OF/ 2011/ 0573 on FRA Mismanagement.
- D) Case OF/ 2013/ 0328 on FRA Forgery of document.

This 5th case was opened following European Parliament letter of 27.04.2012 available here  
[REDACTED]

European Parliament has been informed in 2nd July 2013 that following its letter dated 27 April 2012 OLAF closed the related case with no recommendation. Details could be found in this Letter by Mr Michael Theurer (President of EP Budgetary Control Committee)  
[REDACTED]

1. I request access to following information: if Court of Auditors cooperated on all these 5 cases with OLAF. I read in this website that COA is precluded to give details on that cooperation with OLAF, if any. Therefore I request punctual, simple and general information : in which of the above 5 cases COA cooperated with OLAF.

2. I also request access to an overview of critical remarks in COA reports in respect of the other EU agencies. I ask access to these information because I did a research in COA website and noticed that FRA is the only EU Agency which has any critical remark in COA Audit Reports. In asktheeu website, European Parliament Website, Ombudsman website I noticed that FRA has some sensitive and not yet clarified problems with tender procedures, conflict of interest, employment cases, harassment cases, etc.

I would very much appreciate having access to some documents, even in partial form with names covered, in order to be able to understand how FRA managed not having any critical remark in COA Reports, given the details provided in point 2.

Thank you very much.

Yours faithfully,  
[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via the  
[REDACTED]

Please kindly use this email address for all replies to this request:  
[REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] on email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - Document request**

**ECA-INFO** to: [REDACTED]  
Sent by: **Aidas PALUBINSKAS**

02/09/2013 16:11

Cc: [REDACTED] information requests at European Court of Auditors

Dear [REDACTED]

Thank you for your request. You have requested that we provide you documents that contain information regarding communication between the EU delegation in Tirana and your employer.

The European Court of Auditors is not in possession of any such documents and we are thus unable to provide any such documents.

We suggest you contact the delegation:

[delegation-albania@eeas.europa.eu](mailto:delegation-albania@eeas.europa.eu)

or the EU External Action Service: [http://eeas.europa.eu/contact/index\\_en.htm](http://eeas.europa.eu/contact/index_en.htm)

with your request.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kind regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, Under the right...

13/08/2013 16:26:57

From: [REDACTED]  
To: [REDACTED]  
Date: 13/08/2013 16:26  
Subject: information requests at European Court of Auditors <[eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)>  
access to information request - Document request

Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

Do I have the right to know what has been reported to European Delegation in Tirana from my employer.  
This request is related with transparency communication between NGO and EU Delegation?

Is addressed right my question to you, or should I have to make to someone else? Could you help me where to ask this?  
Yours faithfully,

[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via the [REDACTED]

Please kindly use this email address for all replies to this request:

[REDACTED]  
If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] on email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED]. For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: access to information request - Request paper document**

**ECA-INFO** to: [REDACTED]

03/09/2013 09:36

Sent by: **Aidas PALUBINSKAS**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

This request was replied to yesterday.

You have requested that we provide you documents that contain information regarding communication between the EU delegation in Tirana and your employer.

The European Court of Auditors is not in possession of any such documents and we are thus unable to provide any such documents.

We suggest you contact the delegation:

[delegation-albania@eeas.europa.eu](mailto:delegation-albania@eeas.europa.eu)

eu

or the EU External Action Service: [http://eeas.europa.eu/contact/index\\_en.htm](http://eeas.europa.eu/contact/index_en.htm)

with your request.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kind regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, Under the right...

02/09/2013 20:24:37

From: [REDACTED]  
To: information requests at European Court of Auditors <[eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)>  
Date: 02/09/2013 20:24  
Subject: access to information request - Request paper document

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Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

Do I have the right to know what has been reported to European Delegation in Tirana from my employer.

This request is related with transparency communication between NGO and EU Delegation?

Yours faithfully,

[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request:

[REDACTED]  
If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] on email [REDACTED]

This message and all replies from European Court of Auditors will be published on the [REDACTED]. For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: Internal review of access to information request - Access to documents requests in 2011 and 2012**

**ECA-INFO** to: [REDACTED]

03/09/2013 12:30

Sent by: **Aidas PALUBINSKAS**

Cc: eca-info

Dear [REDACTED],

Thank you for your request. While it is related to your previous request, it cannot be held to be a request to review the previous decision, as you have modified the request. You have now requested documents relating to access to documents requests received by the Court of Auditors in the past year (for instance 1 July 2012 to 30 June 2013).

We are unable to provide you with the documents you requested, as they are not held by the European Court of Auditors, i.e. a detailed list of access to documents requests does not exist. According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

For your information, we are presently looking at the options regarding how access to information requests could be reported on. In the future, if we have something akin to a register, you will, naturally, have access to it.

Kindest regards,

Aidas Palubinskas

[REDACTED]  
02/08/2013 14:49:44

From: [REDACTED]

To: eca-info@eca.europa.eu

Date: 02/08/2013 14:49

Subject: Internal review of access to information request - Access to documents requests in 2011 and 2012

Dear Mr. Palubinskas,

Following your refusal to our request for access to documents containing a list of requests for the access to documents and the answers/decisions given/made by the Court of Auditors for the years 2011-12, and following our telephone conversation in which you clarified that extracting the individual files that we requested alternatively would be an excessive task given the lack of a separate centralised register for this type of documents, we would propose a solution in line with Article 6.4 of Decision No 12/2005 of the Court of Auditors, including the prolongation of the time period for a reply by 15 working days

We wanted to ask whether it would be helpful for you if we narrowed down or adapted our request, e.g. to request documents relating to access to documents requests received by the Court of Auditors in the past year (for instance 1 July 2012 to 30 June 2013).

This request is meant to provide us a more objective and detailed view on the scope of requests and decisions to grant/refuse access received by all EU institutions, but we are open to discuss potential options for modification or to clarify what we are looking for with each institution, understanding that all have different ways of storing the documents and information we requested. (The Transparency International EU Office is looking at these issues in the context of our study on the integrity of EU Institutions.)

Thank you for your attention and we look forward to hearing from you.

Yours sincerely,

on behalf of

-----Original Message-----

Dear

We are unable to provide you with the documents you requested, as they are not held by the European Court of Auditors, i.e. a detailed list of access to documents requests does not exist.

According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

Kindest regards,

Aidas Palubinskas

From:

Information requests at European Court of Auditors  
<[European Court of Auditors request email]>

Date: 11/07/2013 14:10

Subject: access to information request - Access to documents requests in 2011 and 2012

Dear Sir/Madam,

In line with the right of access to EU documents, and further to ECA Decision 12/2005, we are hereby writing to request access to all documents/records providing a detailed list of all the access to documents requests received by the European Court of Auditors in the calendar years 2011 and 2012, which should indicate in particular:

a) The subject of the request made (i.e. the specific document(s)/record(s) requested);

b) The (type of) requestor;

- c) How the request was submitted/received (online form, direct email, via [REDACTED] phone, mail or other);
- d) The initial decision on the request, including the basis upon which any refusals to grant access were made (prior to any confirmatory applications);
- e) Whether the institution consulted with third parties (including other institutions and outside parties) prior to responding to the request;
- f) Whether or not the initial refusal or partial refusal resulted in a confirmatory application;
- g) Whether the confirmatory application was successful or partially successful (ie. it resulted in a partial revision of the initial response), or whether the confirmatory application resulted in a confirmation of the initial denial;
- h) Whether or not partial access was granted to the documents;
- i) Whether or not access to the entirety of the document requested was denied;
- j) The time taken to deal with each request (i.e. including confirmatory applications, where applicable);
- k) The number of times the deadline was extended, the amount of time it was extended for, and the reasons for the extension;
- l) Whether the requester was asked to clarify or narrow their request, or to provide more information about themselves or about the reasons for their request.

Should an overview record listing the above-mentioned information for each individual request not be held by your institution, we would like to request the individual files related to all access to documents requests received in the calendar years 2011 and 2012 (i.e. the administrative correspondence providing insights to (a)-(l) above).

May we kindly request that the documents be provided in electronic format; where database records are provided, please provide these in an open, accessible format.

Thank you for your cooperation.

Yours sincerely,  
[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request: [REDACTED]

If [European Court of Auditors request email] is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] on email [REDACTED]

This message and all replies from European Court of Auditors will

be published [REDACTED] For more information see  
our dedicated page for EU public officials at  
[REDACTED]

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prions de vous mettre immédiatement en rapport avec l'expéditeur.

#### References

##### Visible links

1. [REDACTED]
2. [REDACTED]

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Please use this email address for all replies to this request:

[REDACTED]

This message and all replies from European Court of Auditors will be  
published [REDACTED] For more information see our  
dedicated page for EU public officials at  
[REDACTED]

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**Re: access to information request - FP6, FP7, ESF audits, personal data protection, prior notifications**


**ECA-INFO** to: [REDACTED]  
Sent by: **Aidas PALUBINSKAS**

03/09/2013 12:34

Cc: information requests at European Court of Auditors

Dear [REDACTED]

Regarding your request of 25 July, please find attached the requested documents no. 1 -11 as no 12 is

    
identical to 11. AUD-038-NR2-DAS.pdf AUD-066-NR5-SPS-IACS.pdf AUD-075-AEI-sal-allow-staff-Inst.pdf

    
AUD-090-ETE-DAS.pdf AUD-092-NR4-CrossCompliance.pdf AUD-107-NR5-MilkQuotas.pdf

     
AUD-114-ESD-DAS.pdf AUD-132-AMS-ART-timealloc.pdf AUD-199-REF-DAS.pdf AUD-211-NR3-PAC.pdf

   
AUD-214-TRE-FP6.pdf AUD-224-AEI-OLAF-perform.pdf

For request 14 and 17 it is the DPO notification AUD-114-ESD-DAS.pdf that is applicable.  
For request 15 it is the DPO notification AUD-090-ETE-DAS.pdf that is applicable.



For request 16 and 18 it is the DPO notification AUD-160-RIP-DAS.pdf. The reason why this notification contains a date in 2012 is due to a reorganisation of the audit units which triggered an update of the DPO notification from 2008.

For the requests 19 - 23 there are no documents drawn up by the DPO as this was not necessary because the legal basis for the processing is quite clear and very strong:  
Art. 287 of the Treaty of Functioning of the EU

Art. 140 to 142 of the Financial Regulation (Council Regulation (EC, Euratom) No. 1605/2002 as amended (Art. 159 to 161 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council which apply from 01/01/2013

IV. For the requests 25 & 27 there are no documents drawn up to our knowledge neither for the requests 24 & 26.

Kindest regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, Under the right...

25/07/2013 14:53:40

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 25/07/2013 14:53  
Subject: access to information request - FP6, FP7, ESF audits, personal data protection, prior notifications

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Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

I. PRIOR NOTIFICATIONS FOUND IN THE COURT'S REGISTER OF ARTICLE 26 OF REGULATION NO 45/2001

Copies of the following prior notifications of article 25 of Regulation No 45/2001 are kindly requested:

#1. No 38, 19/04/2007, Head of Unit, AUDIT, NR2, Statement of assurance (DAS), -Selecting beneficiaries; -Verification of the declarations and eligibility criteria

#2. No 66, 19/07/2007, Head of Unit, AUDIT, NR5, Reliability of SPS/IACS controls and inspections in EU-15 auditing if the payments have been carried out correctly

#3. No 75, 28/09/2007, Head of Unit, AUDIT, AEI, Audit of salaries, allowances and pensions for staff employed (or formerly employed) by European Institutions Audit of documents which serve as evidence for the grade/step and the entitlement to other allowances, e.g. latest decision on promotion, certificate of marriage, children's schooling certificates.....

#4. No 90, 08/11/2007, Head of Unit, AUDIT, NR4, Statement of assurance

#5. No 92, 08/11/2007, Head of Unit, AUDIT, NR4, Cross compliance

#6. No 107, 05/12/2007, Head of Unit, AUDIT, NR5, The system of milk quotas in the new Member States Auditing quotas allocated

#7. No 114, 04/04/2008, Head of Unit, AUDIT, SPD, DAS audit, In the execution of the DAS transactions for Structural actions and more specifically for the Social fund, personal data is audited in order to verify the requirements of the Regulations. This can take the form of collecting, consulting and/or storage of personal data.

#8. No 132, 05/05/2008, Head of Unit, CEAD, AMS, ASSYST: Time Recording In ASSYST, there is a module for time recording. Each auditor who has access to ASSYST and are planned for in the Annual Work Programme is requested to record their

#9. No 199, 19/02/2009, Head of Unit, AUDIT, IPB, DAS 2008

#10. No 211, 18/06/2009, Head of Unit, AUDIT, NR3, Pr  enquête sur les b  n  ficiaires de la PAC Traitement des donn  es des montants re  us par les b  n  ficiaires de la PAC

#11. No 214, 09/07/2009, Head of Unit, AUDIT, TRE, Performance Audit of the Adequacy and Effectiveness of Selected FP6 Instruments  
The audit procedures defined included surveys, testing at project level and reviews of studies and reports. Throughout the audit, data contained in several Commission's databases were used. Furthermore, the audit involved the review of documentation prepared by or containing information

about individuals.

#12. No 224, 05/01/2010, Head of Unit, AUDIT, AEI, Audit on performance of OLAF investigations Audit of documents gathered by OLAF in the framework of its investigations.

#13. No 224, 05/01/2010, Head of Unit, AUDIT, AEI, Audit on performance of OLAF investigations Audit of documents gathered by OLAF in the framework of its investigations.

## II. OTHER PRIOR NOTIFICATIONS OF ARTICLE 25 OF REGULATION No 45/2001

Copies of the prior notifications of article 25 of Regulation No 45/2001 regarding the following audit activities of the Court are kindly requested:

#14. Annual report covering FY 2009, European Social Fund audit. An example of the Court's manifest personal data processing is given in page 102, 'Overdeclaration of staff costs: In the case of an ESF project supporting professional training courses for pupils from secondary schools, the beneficiary incorrectly charged various indirect costs (staff salaries, insurance, fuel, telephone and depreciation) to the project.'

#15. Annual report covering FY 2009, Research Energy and Transport. An example of the Court's manifest personal data processing is given in page 121 'The Court found that the audited beneficiary reported 17 person-months as input to the Commission'.

#16. Annual report covering FY 2010, Research and other Internal Policies. An example of the Court's manifest personal data processing is given in page 173 'Example 6.1 Ineligible costs and incorrectly calculated costs A beneficiary managing an FP6 project claimed overheads using a flat rate which was based on direct staff costs. Following an ex-post audit carried out in 2007, the beneficiary changed its allocation of overheads methodology without fully and correctly implementing the recommendations made by the ex-post auditors. Errors and inconsistencies, noted during the Court's audit led to an over-claim of 731 652 euro'.

#17. Annual report covering FY 2011, Employment and social affairs. An example of the Court's manifest personal data processing is given in page 155 'a) Ineligible training participants: ESF funding was provided for training courses to increase the qualifications and knowledge of employees working in the electronics sector. The Court found that many of the participants were employed outside of the electronics sector and were therefore not eligible for such training. The cost declared for the ineligible participants was 29 % of the audited amount'.

#18. Annual report covering FY 2011, Research and other internal policies. An example of the Court's manifest personal data processing is given in page 193 'Example 8.1 - Error identified in a cost claim relating to personnel costs A beneficiary involved in a FP7 project declared 308 000 euro of personnel costs. The Court's audit revealed that the beneficiary: - underestimated the productive hours worked by its employees; - over-charged hours for several employees involved in the audited project. In total these findings resulted in the over-declaration of 45 000 euro of personnel costs.'

It is noted that the above five prior notifications are statutory documents. In view of the combined provisions of article 24(1) last sub-paragraph 'That person shall thus ensure that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations', article 25 and article 24(1)(d) of Regulation No 45/2001, any defect, and a fortiori a non-existence, of any of these five prior notification will be tantamount that the Court has likely not respected 'the rights and freedoms of the data subjects'.

It is thus expected that the Court will carry out a diligent search to

identity and release these five prior notifications.

### III. DOCUMENTS DRAWN UP BY THE AUDIT DIRECTORATE

Referring to the auditing activities documented in the annual report of financial years 2009, 2010 and 2011 in the area of 'research and other internal policies' (requests #15, #16 and #18 concern that area), copies of the following documents drawn up by the Audit Directorate - or its predecessor(s), if applicable - are requested:

#19. The documents drawn up from 1/1/2004 onwards setting out some kind of an analysis of the lawfulness of processing personal data of third parties to the audited projects or/and Community/Union actions.

#20. The documents drawn up from 1/1/2004 onwards setting out some kind of an analysis of the lawfulness of processing personal data in the legal context of a private law contract between a Research family and DG and an FP6 contractor/FP7 beneficiary.

#21. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice or opinion of the Data Protection Officer about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

#22. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice or opinion of the Court's Legal Services about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

#23. The documents drawn up from 1/1/2004 onwards with which the Audit Directorate requested the advice, instruction or direction of the Court's Member(s) about the Court's personal data processing in its audits of the FP6 and FP7 programmes.

### IV. DOCUMENTS DRAWN UP BY THE LEGAL SERVICES AND THE DATA PROTECTION OFFICER

Copies of the following documents are requested:

#24. The documents drawn up by the Legal Services in response to the request under #22 above.

#25. The documents drawn up by the Data Protection Officer in response to the request under #21 above.

#26. Notwithstanding the above requests, any other documents drawn up by the Legal Services regarding the Court's personal data processing in the context of auditing FP6 and FP7 programmes.

#27. Notwithstanding the above requests, any other documents drawn up by the Data Protection Officer regarding the Court's personal data processing in the context of auditing FP6 and FP7 programmes.

### V. OVERRIDING PUBLIC INTEREST

It is patently obvious that the applicant entertains serious doubts as to what extent the Court has been diligent in observing Regulation No 45/2001 and for the activities described above.

Requests #24 and #26 concern legal opinions and therefore the Court may find appropriate to refuse access. However, the substance of these legal opinions is whether the Court was either negligent or willful or both in risking serious infringements of Regulation No 45/2001 in its audits of financial statements of contractors/beneficiaries in the FP6 and FP7 programmes. Refusing total access will further strengthen the doubts.

In a Union governed by the rule of law, where Institutions are held



accountable for the lawfulness of their acts, no exception of article 4 of the Court's Decision 12/2005 may be relied upon to refuse full access. On the contrary, article 4(8) is fully applicable to shed light into the Court's observance of Regulation No 45/2001.

At the end of the day, checking the legality of financial transactions presupposes that the checks and audits are themselves lawful. Relying on unlawful audit practices renders the whole audit meaningless.

Yours faithfully,

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via [REDACTED]

Please kindly use this email address for all replies to this request:  
[REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] on email  
[REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at  
[REDACTED]

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**Re: Internal review of access to information request - Access to documents requests in 2011 and 2012**

**ECA-INFO** to: [REDACTED]

05/09/2013 10:32

Sent by: **Aidas PALUBINSKAS**

Cc: eca-info

Dear [REDACTED]

We hereby acknowledge the receipt of your request for consideration, which you submitted to the ECA by email of 5 September 2013.

Under the terms of Decision No 12-2005 of the Court of Auditors regarding public access to Court documents you will receive a reply within 15 working days, that is by the end of business on 26 September 2013.

Kindest regards,

Aidas Palubinskas

[REDACTED]  
05/09/2013 10:13:53

From: [REDACTED]

To: eca-info@eca.europa.eu

Date: 05/09/2013 10:13

Subject: Internal review of access to information request - Access to documents requests in 2011 and 2012

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Dear Mr Palubinskas,

Thank you for your reply to our message of 2 August. We are hereby writing to request reconsideration of the Court's position, under Art. 7 of ECA Decision No. 12/2005, with regard to our narrowed request for access to the individual files related to all access to documents requests received by the Court in the period 1 July 2012 to 30 June 2013. We ask you kindly to forward this to the President of the Court.

Refusal to both the original request and our narrowed request was predicated upon the non-existence of an overview record (or 'detailed list', as indicated in your responses) of access to documents requests. However our original request anticipated that in the case that no overview record exists, we would wish to receive the individual files related to requests made. Self-evidently, these files must exist, provided access to documents requests have been made. In the spirit of Art. 6.4 of ECA Decision No. 12/2005, we sought to narrow this request to a single twelve-month period in view of the potential workload involved in gathering these files. We are duly seeking reconsideration of the refusal to grant access to these files: moreover, the files requested, should not per se fall under the exceptions listed in Art. 4 of Decision No. 12/2005.

We remain available to discuss this request further and hope to reach a mutually amenable solution.

Thank you.

With kind regards,  
[REDACTED]

on behalf of

[REDACTED]

-----Original Message-----

[REDACTED]

Thank you for your request. While it is related to your previous request, it cannot be held to be a request to review the previous decision, as you have modified the request. You have now requested documents relating to access to documents requests received by the Court of Auditors in the past year (for instance 1 July 2012 to 30 June 2013).

We are unable to provide you with the documents you requested, as they are not held by the European Court of Auditors, i.e. a detailed list of access to documents requests does not exist. According to Article 9(4) of the Court's decision regarding public access to the Court's documents, the Court is not obliged to compile information at the request of the applicant.

We draw your attention to the fact that, pursuant to Article 7 of Decision No. 12/2005, you may make a request for reconsideration within 15 working days of receiving this reply, and ask the ECA to reconsider its position.

For your information, we are presently looking at the options regarding how access to information requests could be reported on. In the future, if we have something akin to a register, you will, naturally, have access to it.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]

To: [REDACTED] [European Court of Auditors request email]

Date: 02/08/2013 14:49

Subject: Internal review of access to information request - Access to documents requests in 2011 and 2012

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Dear Mr Palubinskas,

Following your refusal to our request for access to documents containing a list of requests for the access to documents and the answers/decisions given/made by the Court of Auditors for the years 2011-12, and following our telephone conversation in which you clarified that extracting the individual files that we requested alternatively would be an excessive task given the lack of a separate centralised register for this type of documents, we would propose a solution in line with Article 6.4 of Decision No 12/2005 of the Court of Auditors, including the prolongation of the time period for a reply by 15 working days

We wanted to ask whether it would be helpful for you if we narrowed down or adapted our request, e.g. to request documents relating to access to documents requests received by the Court of Auditors in the past year (for instance 1 July 2012 to 30 June 2013).

This request is meant to provide us a more objective and detailed view on the scope of requests and decisions to grant/refuse access received by all EU institutions, but we are open to discuss potential options for modification or to clarify what we are looking for with each institution, understanding that all have different ways of storing the documents and information we requested.

[REDACTED]

looking at these issues in the context of our study on the integrity of EU Institutions.)

Thank you for your attention and we look forward to hearing from you.

Yours sincerely,

[REDACTED]

on behalf of

[REDACTED]

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Please use this email address for all replies to this request:

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[REDACTED]

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**Re: access to information request - Training policy at your institution**

**ECA-INFO** to: [REDACTED]

09/09/2013 09:01

Sent by: **Aidas PALUBINSKAS**

Cc: information requests at European Court of Auditors

Dear [REDACTED]

We hereby acknowledge the receipt of your request for documents related to training policy, which you submitted to the ECA by email of 08 September 2013.

Under the terms of Court of Auditors Decision No 12-2005 as amended by decision 14/2009, regarding public access to Court documents you will receive a reply within 15 working days, that is by the end of business on 27 September 2013.

Kindest regards,

Aidas Palubinskas

[REDACTED] Dear European Court of Auditors, Under the right...

08/09/2013 12:40:45

From: [REDACTED]  
To: information requests at European Court of Auditors <eca-info@eca.europa.eu>  
Date: 08/09/2013 12:40  
Subject: access to information request - Training policy at your institution

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Dear European Court of Auditors,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

1. Documents related to "Study Support Scheme" provided to member staff within the Training Policy of your institution similar to the Scheme provided by Fundamental Rights Agency (FRA) to its staff accessible from here

[REDACTED]  
6.4 and here  
[http://\[REDACTED\]](http://[REDACTED])

2. Information if the first university studies, i.e first one after high school, are reimbursed by your institution.

3. How many staff of your institution are STUDENTS at EU Universities similar to the one mentioned by FRA here

[REDACTED]  
4. How many such STUDENTS of your institution benefit of the Reimbursement Scheme for their University Studies, Master Studies and PhD Studies, similarly to the Scheme applied by FRA and mentioned here at point 6.4.  
[REDACTED]

[REDACTED]

5. Decision by your institution's Governing Board for granting reimbursement of individual University Studies, Master Studies and PhD Studies to your staff. If this Decision is not under competence of Governing Board, I request access to the decisions by Appointing Authority (Director).

6. Recommendations, opinions or any other relevant documents containing the position of Staff Committee of your institution on the "Study Support Scheme" for individual studies in form of university, master and PhD studies.

7. How your institution ensure the equal treatment within the promotion exercise and recruitment procedures, when in the Promotion list or Recruitment list appears STAFF -STUDENTS and REGULAR STAFF (i.e. staff having their university, master or PhD studies completed at the date of recruitment).

This is not part of Request I submit under Regulation 1049/2001, but I would very much appreciate to have your opinion on these questions:

- a) Do you consider legal and in line with EU Legislation to assimilate training with individual studies in form of University studies, Master studies and PhD studies?
- b) Do you consider legal to pay such individual studies from Public Budget? Are you aware of some specific provisions for such payments? (I could not find such rules).
- c) Do you consider fair and equal that some of staff have this opportunity to be paid from EU Public budget (so from taxpayers money) for their university, master and PhD studies and some of staff do not have this opportunity, because they simply do not need such study-payments (having all their studies completed).

Thank you in advance for your kind cooperation.

Yours faithfully,

[REDACTED]

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This is a request for access to information under Article 15 of the TFEU and, where applicable, Regulation 1049/2001 which has been sent via the [REDACTED]

Please kindly use the email address for all replies to this request:


[REDACTED]

If eca-info@eca.europa.eu is the wrong address for information requests to European Court of Auditors, please tell [REDACTED] email [REDACTED]

This message and all replies from European Court of Auditors will be published [REDACTED] For more information see our dedicated page for EU public officials at [REDACTED]

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**Re: Code of Conduct**   
**ECA-INFO** to: Marthe-Marie Arntz  
Sent by: **Aidas PALUBINSKAS**  
Cc: eca-info

05/09/2013 11:16

Dear [REDACTED]

We hereby acknowledge the receipt of your request for Court decisions on the procedure for recruiting staff to Members' private offices, representation and reception expenses and the use of the Court's official vehicles, which you submitted to the ECA by email of 5 September 2013.

Under the terms of Court of Auditors Decision No 12-2005 as amended by decision 14/2009, regarding public access to Court documents you will receive a reply within 15 working days, that is by the end of business on 26 September 2013.

Kindest regards,

Aidas Palubinskas

[REDACTED] Dear Madam or Sir, According to Article 7 para...

05/09/2013 11:00:53

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 05/09/2013 11:00  
Subject: Code of Conduct

---

Dear Madam or Sir,

According to Article 7 para. 2 of the Code of Conduct of the Members of the Court the following Court decisions have been taken with regard to

- the procedure for recruiting staff to Members' private offices,
- representation and reception expenses and
- the use of the Court's official vehicles.

I hereby ask for access to those documents according to ECA Decision No 14/2009.

Thank you very much for your help.

Yours sincerely,

[REDACTED]

--

[REDACTED]



**Re: Code of Conduct**  
**ECA-INFO** to: [REDACTED]  
Sent by: **Aidas PALUBINSKAS**  
Cc: eca-info

06/09/2013 15:40

Dear [REDACTED]

Please find attached the decisions that you have requested below.

Kindest regards,

Aidas Palubinskas



membersstaff.pdf receptionrepresentation.pdf carfleet.pdf

[REDACTED] Dear Madam or Sir, According to Article 7 para...

05/09/2013 11:00:53

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 05/09/2013 11:00  
Subject: Code of Conduct

---

Dear Madam or Sir,

According to Article 7 para. 2 of the Code of Conduct of the Members of the Court the following Court decisions have been taken with regard to

- the procedure for recruiting staff to Members' private offices,
- representation and reception expenses and
- the use of the Court's official vehicles.

I hereby ask for access to those documents according to ECA Decision No 14/2009.

Thank you very much for your help.

Yours sincerely,

[REDACTED]

[REDACTED]





**Re: Code of Conduct**  
**ECA-INFO** to: [REDACTED]  
Sent by: **Aidas PALUBINSKAS**  
Cc: eca-info

10/09/2013 08:56

Dear [REDACTED]

Here it is.

Kindest regards,

Aidas Palubinskas



classification of staff in private offices 59 2004.pdf

[REDACTED] Dear Sir or Madam, in addition to my former re...

09/09/2013 18:11:30

From: [REDACTED]  
To: eca-info@eca.europa.eu  
Date: 09/09/2013 18:11  
Subject: Re: Code of Conduct

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Dear [REDACTED] or Madam,

in addition to my former request, I would kindly ask you to provide me with Decision No 59-2004.

Many thanks and kind regards,

[REDACTED]

2013/9/9 [REDACTED]

Thank you very much for the prompt reply!

Kind regards,

[REDACTED]

2013/9/6 <[eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)>

Please find attached the decisions that you have requested below.

Kindest regards,

Aidas Palubinskas

From: [REDACTED]  
To: [eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)  
Date: 05/09/2013 11:00  
Subject: Code of Conduct

---

Dear Madam or Sir,

According to Article 7 para. 2 of the Code of Conduct of the Members of the Court the following Court decisions have been taken with regard to

- the procedure for recruiting staff to Members' private offices,
- representation and reception expenses and
- the use of the Court's official vehicles.

I hereby ask for access to those documents according to ECA Decision No 14/2009.

Thank you very much for your help.

Yours sincerely,

[REDACTED]

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[REDACTED]

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--  
[REDACTED]

[REDACTED]

[REDACTED]