



Legal Service

**By e-mail to
Mr Franklin Dehousse**

Luxembourg, 31 January 2019

JUR108308EN01-19PP-AJ_28-19_ECA-Info-OR

Subject: Your request for access to documents and information of 10 January 2019

Dear Sir,

Thank you for contacting the European Court of Auditors (ECA).

By your request for access to documents submitted on 10 January 2019, you asked the ECA to provide you with the following documents:

- all document exchanges between the ECA and the Court of Justice of the EU (CJEU) regarding the Performance review of case management at the CJEU, especially concerning the IT systems weak performance, and information about the documents whose transfer was refused by the CJEU;
- copy of the registry providing the list of those documents.

Your request for access to documents has been processed in accordance with Articles 6 and 9 of Decision No 12-2005 of the Court of Auditors regarding public access to Court documents (as amended by ECA Decision No 14-2009) and not with Regulation (EC) No 1049/2001¹, which is not applicable to our institution.

I am pleased to inform you that we can provide you partial access to document exchanges between the ECA and the CJEU regarding the Performance review of case management at the CJEU. They concern mainly the areas of review, the categories of documents requested, and a description of the methodology used by the ECA in order to collect information and gain assurance on the functioning of the CJEU control systems. In addition, we provide you examples of questionnaires concerning factors that influenced the duration of the sampled cases during and after the written procedure. A detailed analysis of the factors affecting the duration of the sampled cases can be consulted in Annex II of the ECA's [Special Report No 14/2017](#): "Performance review of case management at the Court of Justice of the European Union".

We would like to emphasize that certain documents or information to which you seek access cannot be provided to you, as they are covered by the following exceptions set out in ECA Decision No 12-2005:

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001.

- Article 4.1 (b) - privacy and integrity of the individual;
- Article 4.2 -audit observations;
- Article 4.5 - documents held by the ECA of which the ECA is not the author.

In this respect, we would like to point out that the documents to which you request access contain personal data (e.g. name, surname and e-mail address) of staff members of the CJEU and the ECA who were involved in the above-mentioned review. In addition, in the provided examples of questionnaires, the name and case number were removed, as they were not included in the ECA's Special Report mentioned-above.

According to Article 4.1 (b) of Decision No 12-2005 of the Court of Auditors (as amended), the ECA "shall refuse access to a document where disclosure would undermine the protection of [...] privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data". Pursuant to Article 9(1)(a) and (b) of Regulation (EU) 2018/1725² (the relevant legislation as regards protection of personal data), personal data shall only be transferred to recipients established in the Union other than Union institutions and bodies if:

"(a) the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient; or

(b) the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests."

Furthermore, in line with settled case-law (see for example the ClientEarth case, C-615/13 P, paragraph 47), it is for the requestor to establish the necessity of such a transfer. The EU institution does not have to examine *ex officio* the existence of a need for transferring personal data. Based on the information available from your request, we consider that the necessity of disclosing the aforementioned personal data to you has not been established. Therefore, in order to comply with Article 4.1 (b) of ECA Decision No 12-2005 and Article 9(1)(a) and (b) of Regulation (EU) 2018/1725, these data have been removed, except for the names of the President of the ECA and the ECA Reporting Member for that review, as those names are public by virtue of the public duties that were conferred upon those persons.

In addition, we are not in a position to provide you with documents exchanged with the CJEU which contain audit observations. Pursuant to Article 4.2 of the ECA's Decision, the ECA shall refuse access to its audit observations. This policy reflects the provisions of Article 258(1) and 259(1) of the Regulation (EU, Euratom) No 2018/1046 on the financial rules applicable to the general budget of the Union, which sets out that those observations made by the ECA within the context of the its Annual Report and Special Reports shall remain confidential. Notwithstanding the foregoing, the ECA may, in exceptional circumstances only, disclose to third parties such observations, provided such third parties are directly concerned by said observations and can therefore prove a legitimate interest in having access to the same.

After careful consideration of your case, we have not been able to identify you as a third party that could be directly concerned by the audit observations concerning the ECA review of the CJEU. Hence, for the reasons exposed here above, we can, unfortunately, not grant you access thereto.

Furthermore, we cannot provide you access to the documents received from the CJEU for the purposes of the above-mentioned review, including their replies to the requests for documents and the replies to

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

the questionnaires, as the ECA is not the author of such documents. Pursuant to Article 4.5 of its Decision no 12-2005, "if the application concerns a document held by the Court but of which the Court is not the author, the Court shall confirm receipt of the application and supply the name of the person, institution or body to whom the application must be addressed". Therefore, you may consider addressing your request to the CJEU with a view to obtain those documents.

As regards the IT systems, which were part of that review, please note that the information gathered by the auditors concerning those IT systems comes from concrete demonstrations of the features of the IT systems, made by staff of the CJEU, from interviews with judges and the Registrars and consultation of IT-related documents on the premises of the CEJEU.

As regards "a copy of the registry providing the list of those documents", that you request us, we intend your request as referring to an ECA register of documents, similar to the one provided in Article 11 of Regulation (EC) 1049/2001. Under the ECA Decision No 12-2005, the creation of such a register is not contemplated. However, a list of the documents to which we provide you access is attached as Annex I to this reply.

Please note that in accordance with Article 7 of the ECA's Decision 12/2005 regarding access to its documents, you can address a request for reconsideration to the ECA's President, within 15 working days of receiving the ECA's reply.

Yours sincerely,



Christophe LESAUVAGE
Head of the Legal Service

Annex

List of documents provided

1. Letter from the President of the ECA to the President of the CJEU of 1 July 2016 concerning the carrying out of the review of the CJEU and the General Court
2. Letter from the President of the ECA to the President of the CJEU of 17 October 2016 concerning the change of the Reporting Member
3. Letter from the Reporting Member to the President of the CJEU of 25 January 2017 concerning access to audit documentation
4. Cover letter from the Reporting Member to the President of the CJEU of 16 March 2017 accompanying the letter containing the preliminary results of the review
5. Letter from the Reporting Member to the President of the CJEU of 25 April 2017 describing the calculation method for the average duration of the cases and containing the correlation analysis
6. Three examples of questionnaire for the management of the cases during and after the written procedure