



# Tripartite Agreement between the European Commission, the European Court of Auditors, and the European Investment Bank





**Tripartite Agreement**  
**between**  
**the European Commission,**  
**the European Court of Auditors,**  
**and**  
**the European Investment Bank**

1. The purpose of this Tripartite Agreement (the "Agreement") is to renew the agreement concluded on 27 October 2003 on cooperation between the European Commission ("the Commission"), the European Court of Auditors ("the Court") and the European Investment Bank ("the Bank"), (altogether, the "Parties") on the rules under which the Court is to carry out its audits.

In accordance with the third subparagraph of Article 287(3) of the Treaty on the Functioning of the European Union ("TFEU") the Agreement covers both the financing operations under the mandates conferred by the European Union on the Bank and the operations managed by the Bank and guaranteed by the general budget of the European Union ("the operations covered by the Agreement"). These mandates are the subject of specific agreements between the Commission, representing the European Union, and the Bank. The Bank performs its obligations by virtue of its mandates in relation to the European Union, represented by the Commission, as mandator.

In accordance with the legal framework governing the European Development Funds, the Agreement applies *mutatis mutandis* to the operations financed from the European Development Funds and managed by the Bank.

The scope of this Agreement shall cover both completed and current operations.

2. The Parties consider that this Agreement must be implemented diligently and in good faith, with due regard for each party's legitimate concerns.

3. Documentary audits

- a) The Bank and the Commission shall do everything in their power to allow the Court to perform effective documentary audits of the operations covered by the Agreement, in line with the approach of the Court.
- b) To this end, the Parties agree to allow the flow of information between the Bank, the Commission and the Court on the operations covered by the Agreement to proceed on the scale required for the performance of as complete a documentary audit as possible.

The operations which such auditing will cover shall be selected by the Court according to its own criteria.

The Court shall send the main questions relating to documentary audits in writing and in good time to the Commission and to the Bank's Audit Committee and the relevant departments of the Bank.

- c) The procedure whereby the relevant departments of the Court are provided with the necessary information for documentary checks shall be as follows:
  - i. The Bank shall make available to the Commission and the Court the information set out in the Annex to this Agreement within five working days from the date of receipt of the request by the Bank.
  - ii. The Court may address requests for additional information to the relevant departments of the Commission and to the Bank. The Bank

shall make the documentation requested available to the relevant departments of the Commission and the Court as soon as possible.

- iii. In the event of exceptional and duly substantiated urgency due to an imminent audit visit requiring documents to be made available without delay, the deadline for making them available shall be agreed by the Bank with the Court. In the latter case, the Court shall inform the Commission thereof.

#### 4. On-the-spot audits

- a) The Court shall inform the Commission and the Bank at regular intervals, on the basis of its annual work programme, of the operations covered by this Agreement for which it considers that an on-the-spot audit is necessary, and of the proposed timetable for carrying this out. These operations shall be selected by the Court according to its own criteria.

For operations only guaranteed by the Union budget and for operations still under way, the Court's finding that an on-the-spot audit is necessary must arise from its firm conviction that there are grounds for departing from the framework of a strictly documentary audit.

- b) On-the-spot audits shall be scheduled by the Bank's Audit Committee and the Court in coordination, so that the audits can, as a general rule, be conducted jointly and to the mutual satisfaction of both institutions. If the availability of the Bank's Audit Committee is not compatible with the requirements of the Court's timetable, the Bank's Audit Committee may decline to take part in a scheduled visit. In that event, it shall inform the Court accordingly within no more than two weeks from the date of receipt of the proposed dates for any particular visit.
- c) Preparation of the audits shall be undertaken jointly by the Bank's Audit Committee and the Court in preparatory meetings.

The Bank's Audit Committee shall make contact, as appropriate, with the Bank's departments. It shall also establish the necessary contact with intermediary financial institutions and final beneficiaries.

- d) The logistical organisation of audits, as far as arrangements for on-the-spot visits are concerned (dates, itinerary, timetable, transport, accommodation), shall be the responsibility of the Court, in consultation with the Bank's Audit Committee. The practical constraints on and of the Parties concerned shall be taken into consideration.

In their capacity as members of the audit visit, the representatives of the Court and the Bank's Audit Committee shall be permitted to examine the necessary documents and ask such questions as they consider useful for their audits.

The agents of the Bank and the Commission shall take part in on-the-spot audits as observers, together with the representatives of the Court and the Bank's Audit Committee. Each Party to the visit will bear its own costs.

All the members of the audit visit and the observers shall be bound to respect professional secrecy as laid down in Article 339 TFEU and banking secrecy.

The conclusions of the Court's audit may be communicated to the Bank's clients only by the Bank or by the Commission.

5. The Commission shall decide how it is to be represented at the information meetings, in preparatory discussions, and on-site- visits.
6. After each audit, the Bank's Audit Committee and the Court's delegation shall draw up their respective mission reports which they shall then send to each other and to the Commission.

The information obtained during audits on operations covered by this Agreement shall be treated with the utmost discretion.

The Court shall send the Commission and the Bank its draft observations, for use in the preparation of a report, well ahead of its formal adoption and publication.

The Commission and, through the Commission, the Bank, may express their point of view on the observations.

7. Where co-financed projects are concerned, the Court shall not make use of any information it may have acquired during its on-the-spot audits, regarding the part not financed or guaranteed by the budget of the Union.
8. A tripartite conciliation procedure shall be established between the representatives of the Presidents of the Parties.

The representatives shall be:

- for the Court, the Member designated by the Court;
  - for the Commission, the Member of the Commission in charge of the EU budget;
  - for the Bank, the Vice-President in charge of relations with the Court.
9. The conciliation procedure shall be commenced at the request of one of the Parties, under the chairmanship of the Commission. It shall seek to resolve difficulties of any kind whatever arising from the application of this Agreement, and to assess its implementation. It shall be used prior to any termination or renegotiation of this Agreement.

The representatives shall be authorised to amend the different headings set out in the Annex to this Agreement; they shall also be empowered to draw up a list of documents on operational needs and to amend it in response to new circumstances which may require it to be updated, acting by written procedure or otherwise.

Decisions shall be taken unanimously by the institutions' representatives.

10. This Agreement is concluded for a period of four years. It shall be renewable by tacit agreement for further four-year periods.
11. This Agreement shall apply as soon as it is signed by the parties. The parties shall endeavour to renew or reinstate the Agreement on expiry of the four-year term.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed, in three originals, each Party taking one copy, as of the day and year written below.

For the EUROPEAN INVESTMENT BANK

Luxembourg, *16 -09 - 2016*

For the EUROPEAN COMMISSION

Brussels, *26 -09 - 2016*

For the EUROPEAN COURT OF AUDITORS

Luxembourg, *26. IX. 2016*

**Annex referred to in Article 3(c)(i) of the Agreement**

**I. EU GENERAL BUDGET**

- 1. Request**
- 2. Eligibility**
- 3. Approval**
- 4. Financial control**
- 5. Administration and evaluation**
- 6. General information**

**II. EUROPEAN DEVELOPMENT FUNDS (including the Investment Facility under the Cotonou Agreement as amended and supplemented)**

- 1. Request**
- 2. Eligibility**
- 3. Approval**
- 4. Financial control**
- 5. Administration and evaluation**
- 6. General information**





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