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DIRECTORATE GENERAL
ECONOMIC AND FINANCIAL AFFAIRS

The Director General

DG ECFIN

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Brussels,
ECFIN/R3/Ares(2013)

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Mr David CABO

ask+request-295-0b3b0eff@asktheeu.org

Subject: Your application for access to documents according to Regulation 1049/2001 – Ref GestDem No 2012/5838

Dear Mr Cabo,

We refer to your e-mail dated 11/12/2012 in which you make a request for access to documents, registered on 14/12/2012 under the above mentioned reference number.

Your application concerns all correspondence between the European Commission and the Spanish Bank Restructuring Fund, (FROB - Fondo de Reestructuración Ordenada Bancaria). In particular, all information submitted by the FROB regarding the creation of the "bad bank" SAREB.

Since some of the documents concerned originate from a third party, the FROB, the originator of the documents, has been consulted.

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents¹ and taking into account the opinion of the FROB, we decided to disclose some of the documents requested. We enclose a copy of these documents.

I also would like to draw your attention to the FROB webpage (http://www.frob.es/index_en.html) where you may find other documents that could be of interest to you. The contents of this webpage are frequently updated.

Please note that some of these documents are preliminary drafts which do not reflect the position of the Commission. They cannot be quoted as reflecting the Commission's position and cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

Please also note that some of these documents were received by the Commission from FROB. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

As to the remaining documents, having examined them under the provisions of Regulation (EC) No 1049/2001, I regret to inform you that your request cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

¹ Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L145, 31.05.2001, page 43

In particular, the disclosure of documents submitted by FROB regarding the creation of the bank SAREB would undermine the protection of the commercial interests of SAREB. In fact, according to article 19.3 of Royal Decree 1559/2012, which establishes the legal regime of asset management companies in Spain, SAREB is a private company since the majority of its capital must be owned by private entities. SAREB will be competing with real estate companies and banks both in Spain and abroad. Therefore, all information related to SAREB which can be considered commercially sensitive should be considered as confidential given the adverse impact that its public disclosure might cause for the market position of SAREB. This relates to any information concerning for instance the business plan, strategy, management and asset composition of SAREB.

Therefore the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to these documents.

We have considered whether partial access could be granted to the documents requested. However, the documents are entirely covered by the exception mentioned above.

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

The documents withheld from public disclosure are those containing commercially sensitive information of SAREB.

In view of the above, I consider that in your application you have not put forward sufficient arguments to identify an overriding public interest in disclosure capable of rebutting the prevailing interest of protection of commercial interests of SAREB.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Bruxelles

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

Yours sincerely,



Marco Buti

Enclosure: Appendix