



**EUROPEAN COMMISSION**

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Director General

Brussels, **25 NOV. 2016**  
FISMA E2/FK/pm (2016)7171287

Mr Atanas Tchobanov,

(by registered mail with  
acknowledgment of receipt, copy by  
e-mail.)

**Subject: Your application for access to documents GestDem 2016/5082**

Dear Mr. Tchobanov,

I refer to your e-mail dated 8 September 2016 registered under the GestDem reference number 2016/5082, requesting access to documents under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Your request is the following:

"The Bulgarian National Bank published a report on an asset quality review and a stress test of the banking system in Bulgaria on 13 August 2016. This report, which can be found here

[http://www.bnb.bg/bnbweb/groups/public/documents/bnb\\_download/bs\\_aqr\\_results\\_a1\\_en.pdf](http://www.bnb.bg/bnbweb/groups/public/documents/bnb_download/bs_aqr_results_a1_en.pdf), mentions that "The BNB held ongoing consultations with the European Commission and the European Banking Authority over the course of the project in order to ensure adherence to relevant European practices" (p. 9 of the report).

I am writing today to you with the request to share with me the European Commission own assessment of these "ongoing consultations," as reflected in the notes, analyses, back-to-office reports and other internal documents that the employees of the European Commission presumably have written. DG FISMA and DG ECFIN should have been the relevant services in charge of this file".

After a search in our documents, we identified 4 documents linked to your request:

- Document 1: Assessment of the asset quality review and stress test of the Bulgarian banking system dated 15/9/2016

- Document 2: Asset quality review and stress test of the Bulgarian banking system, first meeting of the Consultative Committee in Sofia dated 08/12/2015

- Document 3: Update on the AQR/ST by the Bulgarian National Bank, Deloitte Bulgaria [REDACTED] dated 27/07/2016

- Document 4: Update on the AQR/ST by the Bulgarian National Bank [REDACTED] [REDACTED] 25-26 April dated 28/04/2016

Having examined the documents 1, 2, 3 and 4 under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that these documents may not be disclosed. A detailed motivation for our reasoning is given below.

### **Justification**

#### **1) Protection of the privacy and the integrity of the individual**

- Documents 1, 2, 3 and 4 contain personal data (names, phone numbers, titles) of the external participants of the meetings and the names of civil servants having taken part in the meeting.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001 ("the Regulation"), access to a document has to be refused if its disclosure would undermine the protection of the privacy and the integrity of an individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.<sup>1</sup>

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.<sup>2</sup>

Pursuant to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are not disclosing the documents.

#### **2) The protection of the Union's fiscal or monetary policy**

Article 4(1)(a) fourth indent of Regulation 1049/2001 provides that "*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (...) [t]he public interest as regards (...) the financial, monetary or economic policy of the Community or a Member State*".

<sup>1</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>2</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

Having examined documents 1, 2, 3 and 4 these documents contain sensitive information which would undermine the protection of the public interest as regards *the financial, monetary or economic policy of the Community or a Member State*"

The requested documents reflects exchanges between staff of the Commission, the Bulgarian National Bank and its consultants in the framework of a contract for performing an Asset Quality Review and Stress Test on the banking sector in Bulgaria in the context of the European Semester in which a Country-Specific Recommendation called for such an exercise ([http://ec.europa.eu/europe2020/pdf/csr2015/csr2015\\_council\\_bulgaria\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/csr2015_council_bulgaria_en.pdf)):

"THE COUNCIL OF THE EUROPEAN UNION,

[...]

HEREBY RECOMMENDS that Bulgaria take action in 2015 and 2016 to:

1. [...]

2. By December 2015, complete a system-wide independent asset-quality review and a bottom-up stress test of the banking sector, in close cooperation with European bodies. Perform a portfolio screening for the pension funds and insurance sectors. Review and fortify banking and non-banking financial sector supervision, including by strengthening the bank-resolution and deposit-guarantee frameworks. Improve corporate governance in financial intermediaries, including by tackling concentration risk and related-party exposures.

3. [...]

4. [...]

5. [...]"

The contents of these documents are sensitive since they express preliminary views and an exchange of comments in an evolving process of deepening insight and mutual understanding.

Disclosure of the documents would undermine the protection of the financial, monetary and economic policy of Bulgaria in the sense of Article 4(1)(a), fourth indent of Regulation 1049/2001, in the following way:

The execution of the Bulgarian Asset Quality Review and Stress Test was an on-going process, as any similar exercise, of determining the scope and parameters of the exercise in which Commission representatives were involved at expert level in an advisory role. Discussions about terms of reference, coverage, methodology and assessment of results take place in a confidential setting between the national authorities, international institutions and the contracted providers of the Asset Quality Review and Stress Test. The preliminary internal assessments made by Commission staff are an important element for the establishment of the Commission's position on the matter as eventually reflected in the forthcoming country reporting to be released in the context of the European Semester. Public disclosure of this assessment would be incompatible with the need for confidentiality in shaping up of the Commission's opinion and would weaken the possibility for the Commission to fulfil its tasks related to the financial, monetary or economic policy of the Union and its Member States. Moreover, there is a risk that public disclosure of the concerned documents would be detrimental to the financial situation of Bulgaria and hence undermine the financial, monetary or economic policy of the country.

I therefore conclude that the concerned documents are covered by the abovementioned exception.

### **3) Protection of commercial interests**

Having examined the documents 1, 2, 3 and 4 under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that these documents may not be disclosed also for reasons laid down in Article 4 of this Regulation.

According to Article 4 (2) first indent of the Regulation, "*the institutions shall refuse access to a document where disclosure would undermine the protection of the commercial interests of a natural or legal person, including intellectual property*".

In this regard, it is useful to note that the "commercial interests" exception contained in the Regulation is an expression of the Commission's obligation of professional secrecy which is enshrined in Article 339 of the Treaty of the functioning of the European Union. The article stipulates that the Commission shall take all necessary precautions to ensure that the protection of information covered by the obligation of professional secrecy and other confidential information is not undermined. This applies in particular to 'information about undertakings, their business relations or their cost components'.

The minutes of meetings in documents 1, 2, 3 and 4 contain sensitive information for the banks which were involved in the Asset Quality Review and Stress Test. This information is linked to the banks' commercial interests and has to be protected from disclosure. A disclosure of documents would allow the public to gather important information of business relevance, which could be harmful for the banks involved.

### **4) Protection of the decision-making-process**

These four documents which you seek to obtain relate to a decision which has not yet been taken by the Commission.

The exception laid down in Article 4(3) first subparagraph of Regulation (EC) No 1049/2001 applies to these documents: "Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure".

These 4 internal notes were drafted for an internal audience for keeping record of the experience with the monitoring of Asset Quality Review and Stress Test. They are intended to guide the Commission in its final assessment which would be publicly available in the forthcoming country reporting. Disclosure of the documents requested would undermine the protection of the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure.

I came to the conclusion that also from the angle of the protection of the decision making process of the Commission, the documents cannot be disclosed.

Finally in document 4 "Update on the AQR/ST by the Bulgarian National Bank

25-26 April dated 28/04/2016", a large section of the document concerns a mission report on a meeting completely outside the context of the Asset Quality Review and Stress Test and involving also different participants. Part of this document is not relevant.

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. An examination of your request has not led to the conclusion that such an overriding public interest exists.

I have also examined the possibility of granting partial access to the requested documents in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, partial access is not possible considering that the document concerned is covered in its entirety by the exception protecting the decision-making-process of the Commission.

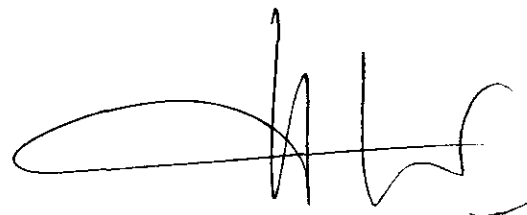
Should you disagree with this assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

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-4  
BERL 5/282  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping initial 'O' followed by several vertical and horizontal strokes that form the name 'Olivier Guersent'.

Olivier GUERSENT