

THE BAILOUT OF THE BANKING SYSTEM: TRANSPARENCY ISSUES

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The bailout of the banking system is clearly one of the most controversial issues in Mexico's modern economic history. Paradoxically, it has ceased to be treated as a problem of *pesos* and *cents*, although the amount involved is quite important, to become an issue of 'basic' transparency, accountability and, therefore, legitimacy of the Mexican State.

It should be pointed out that even though there is a great deal of public information available about the banking system crisis and its subsequent bailout, it is in aggregate form and does not provide details about diagnoses and decision-making processes made by the Savings Protection Bank Fund (Fobaproa in Spanish). For this reason, neither civil society, nor politicians or experts in the issue have been able to use reliable, and therefore credible information that would permit them to address the factors that aggravated the crisis, and to respond to the failed efforts to rescue the national banking system.

This situation is largely due to the fact that financial authorities have systematically closed the door to transparency and access to information about the banking system bailout. As a result, the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish), which has the main goal of allowing citizens to be informed about our government's actions, has been incapable of forcing out the truth about this issue.

To corroborate this, I recall that on June 17, 2003, less than a month after the LFTAIPG was published, I presented an information request to the Institute for Banking Savings Protection (IPAB in Spanish), with file number 0674700001203, asking for minutes from all sessions – from 1999 to date – of the IPAB's Governing Board meetings (ordinary and extraordinary), as well as the document that summarized the state of the Fobaproa Fund at the time when it was transferred to the IPAB, and its corresponding annexes.

On July 15, 2003, the IPAB denied this information request, citing various articles from the LFTAIPG and Article 118 of the Credit Institutions Law (bank secrecy). In this context, two days later I filed the first appeal to the Federal Institute for Access to Public Information (IFAI in Spanish), requesting their intervention and review of the IPAB's refusal. The central argument of the appeal focused on the need to disclose all the information related to the bailout of the banking system, given the fact that there were public resources involved, and that Article 12 of the LFTAIPG established that:

“Institutions obligated should make public all the information related to the amounts and persons to whom **public resources** are given, for any reason, as well as **the reports that these persons hand over regarding the use and destination of said resources.**”

Additional arguments were related to the very fulfillment of the mandates of the IPAB, based on its own law.

On December 2, 2003, the IFAI commissioners decided unanimously to revoke the IPAB's response to the information request, and they instructed the Institute to formulate a public version of the minutes from the IPAB's Governing Board meetings from 1999 to date, as well as the documentation of Fobaproa's transfer to the IPAB, and its annexes. The Institute for Banking Savings Protection was given up to three months to issue their response.

An important part of the IFAI's resolution was that it determined that the documentation of the Fobaproa's transfer to the IPAB could not be considered a fiduciary act and therefore, is not protected under the Credit Institutions Law.

On March 19, 2004, I received the following notification from the IPAB: “in compliance with the resolution of the IFAI's decision, you are informed that the public version of the minutes from the IPAB's Governing Board meetings, as well as the documentation of the Fobaproa's transfer to the IPAB and its attachments, are posted on the IPAB's internet site.”

However, when I checked the information published by the Institute, I realized that the IPAB only made public, “a simple summary of some of the agreements that the Governing Board reached,” which prevented the public from finding out about the decision-making process involving governmental actions, conflicting with the central goal of the transparency law.

Moreover, although the IPAB insisted on using the “fiduciary and banking secrecy” argument, this had been rendered invalid by the IFAI's December, 2003 decision.

This situation forced me to present my second appeal, on March 23, 2004. At that moment, without knowing it, I set in motion machinery both in the IPAB and in the banking system, which provoked a long legal/administrative process that included several appeals for federal injunctions, from practically all banking institutions and from IPAB officials themselves.

As time went by, federal courts rejected several of the appeals for injunctions and on June 10, 2005, almost two years after having initiated the request, the Fourth Collegiate Court on Administrative Matters, based in Mexico City, rejected the last one, from the Northern Mercantile Bank (Banorte) presented against the IFAI, and called for the disclosure of the information regarding the banking system bailout.

In its sentence, the court pointed out that, “the right to information will be guaranteed by the State. If freedom of expression is essentially a subjective public right, the right to information constitutes a collective right, that is, it is a guarantee of social nature that gives the State the function of securing that all members of society receive timely, objective and diverse information, to benefit the formation of public opinion.”

However, the court did specify in its sentence the following: “insofar as this does not damage any public or private entities, because access to information does not only oblige the delivery of information or the exhibition of the documents requested by the governed, but it must also disclose all the information that **is not confidential or reserved**; this is the orientation and content of the LFTAIPG.”

Unfortunately, this last and regrettable interpretation by the court has permitted that even now, after more than 10 years since the banking system crisis and its bailout, society does not have all the information regarding this regrettable and costly event in Mexico’s economic history.

Even though this problem is key to legality and the state of law, in its core, it is also an issue of corruption, or the fear of those responsible to face their mistakes. However, it is our citizens’ right to demand that the State’s legality and legitimacy be restored.

Without a doubt, future generations will continue to investigate until they know what really happened; they will question how, apparently overnight, the banking system bailout abruptly eliminated the savings and the hopes for a better life for millions of Mexicans; they will look over what was done right as well as the errors or illegal acts, so as not to repeat them.

For now, it is our obligation to get to the bottom of the problem, to name those who are responsible, and to remedy the mistakes to the degree possible. If this is not done, we will be the new accomplices of those responsible for this huge fraud against the nation. And history, the one that future Mexicans will learn, will remember us simply as a generation of cowards.