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EUROSTAT

Directorate D: Government Finance Statistics (GFS)

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**Subject:** Request for advice on the sector classification of *Accademia Nazionale di Santa Cecilia* and *Teatro alla Scala di Milano*

**Reference:** Your e-mail of 6 December 2020

Dear Mr Blangiardo,

Following your e-mail from 6 December 2020 and enclosed documentation, Eurostat would like to provide you with its opinion regarding the sector classification of two cultural foundations *Accademia Nazionale di Santa Cecilia* and *Teatro alla Scala di Milano*.

## **1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS REQUESTED**

The issue, for which an opinion is being sought, is the sector classification, according to ESA 2010, of two cultural foundations *Accademia Nazionale di Santa Cecilia* and *Teatro alla Scala di Milano*. Both entities were classified inside general government by the Italian statistical office (ISTAT) since their creation. Recently, both foundations challenged their sector classification in the Italian Court of Auditors (Court) and, following the Court's ruling, ISTAT excluded them from the list of general government units.

### ***1.1. Documentation provided***

ISTAT provided to Eurostat, by e-mail of 6 December 2020, a statistical analysis of the sector classification for both foundations, presenting the elements for the ISTAT's decision to classify the entities inside general government.

## ***1.2. Description of the case***

Both foundations *Teatro alla Scala di Milano* and *Accademia Nazionale di Santa Cecilia* were established with the aim to provide professional training of artists and music education of the community as well as to promote national music production, national composers and an access to theatres for dedicated groups (students, etc.). All those activities are considered to be carried out for public policy purposes, as defined by law, and on a non-market basis. As long as the mandate of the entity is followed, as prescribed by the law, foundations are entitled to receive public grants or to use public property for its operation. It is the Ministry of Cultural Heritage and Activities and Tourism (Ministry) that controls and supervises both foundations.

As disclosed in financial statements, both entities are financed from public grants that prevail over private grants received from private contributors. In addition, foundations benefit from an explicit government guarantee to provide financial support in case of difficulties. Results of the market/ non-market test are below 50% in years 2015-2018 in both cases, as presented by ISTAT.

ISTAT decided to classify both foundations in the general government sector. Recently, *Teatro alla Scala di Milano* and *Accademia Nazionale di Santa Cecilia* challenged the ISTAT's decision in the Court. After the Court ruled against ISTAT in 2020, the two foundations had to be excluded from the official list of general government units published by ISTAT in November 2021. In its ruling, the Court referred to its own interpretation of ESA 2010 provisions and to the final judgement of the European Court of Justice (ECJ) in the previous joined cases of two Italian sport federations<sup>1</sup>. In the latter, the Court concluded that there was a disagreement on the concept of public control and on the application of the indicators of control between ISTAT and sport federations. Consequently, Court referred both parties to the ECJ with three related questions for a preliminary ruling. In its final judgment, which included answers to the three questions, ECJ provided guidance for the interpretation of ESA 2010 provisions and of various criteria relating to the sector classification of non-profit institutions (NPIs).

## **2. METHODOLOGICAL ANALYSIS AND CLARIFICATION**

### ***2.1 Applicable accounting rules***

Rules for the definition of institutional units and groupings of units are described in ESA 2010 chapter 2. The market/ non-market delineation and the market/ non-market test are defined in ESA 2010 chapters 3 and 20 (20.19-20.22 and 20.29-20.31). Provisions for the classification of NPIs are referred to in ESA 2010 paragraphs 20.13-20.16 and 20.309 (public sector control). The concept of a government controlled entity is defined in the Manual on Government Deficit and Debt (MGDD) in chapter 1.2.3.

### ***2.2 Availability of national accounting analysis***

The Italian statistical authorities provided to Eurostat, in their e-mail of 6 December 2020, a methodological analysis of the sector classification of both cultural foundations. As a result of the analysis based on ESA 2010 criteria for public control and non-market production,

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<sup>1</sup> <http://curia.europa.eu/juris/liste.jsf?num=C-612/17&language=en>

ISTAT decided to classify *Accademia Nazionale di Santa Cecilia* and *Teatro alla Scala di Milano* in the general government sector. The entities remained classified in S.13 until the time of the Court's ruling against the ISTAT's decision.

## **2.3 Methodological analysis and clarification by Eurostat**

### **2.3.1. Teatro alla Scala di Milano**

#### **Institutional unit:**

On the basis of the information provided by the Italian statistical authorities in the note, Eurostat understands that, following the legal provisions, *Teatro alla Scala di Milano* is able to draw a full set of accounts, it can own assets and incur liabilities on its own behalf and it can take economic decisions for which it is responsible and accountable by Law. The foundation is therefore an institutional unit under ESA 2010 paragraph 2.12.

#### **Public control:**

The concept of public control of an NPI is defined in ESA 20.15: "*Control of a NPI is defined as the ability to determine the general policy or programme of the NPI*". To determine whether an NPI is controlled by the government, the following five indicators of control should be considered (ESA 2010 20.15): "*(a) the appointment of officers; (b) other provisions of the enabling instrument, such as the obligations in the statute of the NPI; (c) contractual agreements; (d) degree of financing; (e) risk exposure*".

*Teatro alla Scala di Milano* is a non-profit institution established for public policy purposes according to a specific law. The law also stipulates functions, objectives and operational provisions included in the Statute. The foundation is controlled and supervised by the Ministry, which also verifies compliance of the entity's activity with law. Failing these commitments, the foundation is not entitled to receive public grants.

On the issue of the appointment of officers, ESA 20.309 (a) reads: "*(a) rights to appoint, veto or remove a majority of officers, board of directors etc. The rights to appoint, remove, approve or veto a majority of the governing board of an entity are sufficient to determine control.*" In the case of *Teatro alla Scala di Milano*, the Board of Directors is mainly composed of publicly appointed members and chaired by the President of the foundation that is, as a rule, the Mayor of the Municipality, where the foundations is located.

Government exercises control over the foundation via enabling instrument as defined in ESA 20.15 (b) above. It is the Ministry that controls and supervises the entity, mainly in the context of its status of a 'special organisation form' assigned to specific foundations, complying with the Ministry's requirements. The status might be revoked any time when the Ministry concludes on a non-compliance with requirements.

The Board of Directors, composed mainly of public members, approves changes in the Statute. It also approves the financial statements and the budget of the foundation. According to the law, the foundation has an exclusive right to use premises necessary to carry out its activities such as historical buildings, theatres, etc, provided that it agrees with the grantor on the manner of use and the distribution of maintenance costs.

In relation to 20.15 (d) degree of financing, Eurostat took note that the foundation is predominantly financed from government grants. In 2018, revenues totalled at EUR 45 million and sales of tickets and subscriptions reached EUR 32 million thereof. The foundation received grants for an amount of EUR 67 million, of which public grants made up EUR 45 million (66%). Eurostat took note from the information provided by ISTAT that ratios of public grants are stable and exceed 66% over the period 2015-2018.

Concerning the risk exposure, which is the indicator of control defined in ESA 20.15 (e), Eurostat understood that it is the State that bears the risk by revolving financing, in case of financial difficulties of the entity, to a maximum of 30 years. In addition, the State allocates specific financial resources that are intended to reduce the foundation's debt.

Based on the analysis above and on the information provided in a note from ISTAT, *Teatro alla Scala di Milano* can be considered a government controlled NPI.

#### Market/non-market nature

According to information provided by ISTAT in the note, revenues include sales of tickets and subscriptions, revenues from off-sites tours and events, advertising and other commercial revenues. Grants received from government and from private contributors are not included in the sales. ESA 20.29 reads: "*The ability to undertake a market activity will be checked notably through the usual quantitative criterion (the 50 % criterion), using the ratio of sales to production costs (as defined in paragraphs 20.30 and 20.31). To be a market producer, the public unit shall cover at least 50 % of its costs by its sales over a sustained multi-year period.*" Accordingly, results of the market/ non-market test for *Teatro alla Scala di Milano*, as presented in the note of ISTAT, fall constantly below 50% in the period 2015-2018.

#### Ruling of the national Court against ISTAT

In relation to decision of the national Court that obliged ISTAT to exclude *Teatro alla Scala di Milano* from the list of general government units, Eurostat would like to point out at considerable deviations in the interpretation of relevant ESA provisions. The first major objection of the Court was a lack of evidence of coordinated actions among government institutions controlling the unit. From the ESA 2010 perspective, the lack of evidence is irrelevant. In this context, ESA 20.309 clearly states that "*Control of a resident public sector unit is defined as the ability to determine the general policy of the unit. This can be through the direct rights of a single public sector unit or the collective rights of many*".

The provision thus implies that for the public control to be established, collective rights might be exercised, without referring to how the action of controlling units is effectively coordinated. This would go beyond ESA 2010, which exclusively refers to groups of units. Referring to group of units represents the general approach followed in national accounts, where economic units are grouped in (sub-)sectors, based on their principal activity and function (ESA 2.33). By doing so, (sub-)sectors are treated as one macroeconomic agent (ESA 2.31). In the case in point, individual government units, pursuing the same goal, thus exercise the control in a collective manner.

The second major objection by the Court suggested that the contributions made by private partner could be assimilated to sales and thus considered for the market/ non-market test. According to ESA 2010, any payment to be considered as sales must be directly linked to the volume or value of the output, i.e. to output at basic prices (ESA 2010 3.33). For regular

contributions made to NPIs, this is not the case, i.e. no direct consideration is provided in exchange. Therefore, these contributions are recorded as a part of the secondary redistribution of income, in the item D.75 ‘miscellaneous current transfers’ (ESA 2010 4.126), and consequently fall outside the scope of transactions included in the market/ non-market test (ESA 2010 3.33).

Taking into account the above, *Teatro alla Scala di Milano* should be considered a non-market producer. The foundation is deemed to be a government controlled entity because it fulfils indicators of control of an NPI, as defined by ESA, in particular ESA 20.15 (a), (b), (d) and (e). The foundation should therefore remain classified in general government (S.13).

### 2.3.2. *Accademia Nazionale di Santa Cecilia*

#### Institutional unit:

According to the information provided by the Italian statistical authorities in the note, Eurostat understands that *Accademia Nazionale di Santa Cecilia* is deemed to be an institutional unit under ESA 2010 paragraph 2.12.

#### Public control:

*Accademia Nazionale di Santa Cecilia* is a non-profit institution established for public policy purposes according to a specific law. The law also stipulates functions, objectives and operational provisions included in the Statute. The law also establishes that public administrators are present in the foundation’s bodies. The foundation is controlled and supervised by the Ministry, which also verifies compliance of the entity’s activity with law. Failing these commitments, the foundation is not entitled to receive public grants.

Government exercises control over the foundation via enabling instrument as defined in ESA 20.15 (b) *other provisions of the enabling instrument, such as the obligations in the statute of the NPI*. It is the Ministry that controls and supervises the entity, mainly in the context of its status of a ‘special organisation form’ assigned to specific foundations, complying with the Ministry’s requirements. In particular, the Ministry exercises control over the foundation when it directly approves the Statute of the foundation by means of a decree. In agreement with the Ministry of Economy and Finance, it approves the staffing plan. Both ministries must be informed on the need for the chart revision procedure if the necessary economic-financial sustainability requirement is no longer satisfied.

Similarly to the previous foundation, also *Accademia Nazionale di Santa Cecilia* is predominantly financed from government grants, thus complying with the indicator of control in ESA 20.15 (d) degree of financing. In the period 2015-2018, over 56% of its revenue originated from the government. Furthermore, the Ministry provides funding to cover the wages of teachers. The foundation is also entitled to receive a certain proportion of taxes, in particular the radio and television fee collected by RAI, the Italian public broadcasting company. *Accademia Nazionale di Santa Cecilia* is also entitled to acquire funding from the art bonus measurement, which is a tax credit equal to 65% of charitable contributions made by individuals and companies in favour of public cultural heritage. According to the law, the foundation has the right to use, free of charge, all the premises necessary for conducting its activity, i.e. theatres, auditoriums, etc. As ISTAT further explained, these assets are recognized in the company’s statements as an intangible asset without any amortization cost accrued to the entity.

Eurostat took note that the indicator of control relating to the risk exposure, as defined in ESA 20.15 (e), is fulfilled, as it is the State that bears the risk by revolving financing, in case of the entity's financial difficulties, to a maximum of 30 years and, in addition, it allocates specific financial resources to the foundation, which are aimed to reduce the debt.

Based on the analysis above and on the information provided in a note from ISTAT, *Accademia Nazionale di Santa Cecilia* can be considered a government controlled NPI.

#### Market/non-market nature

Similarly to the previous case of foundation, the market/ non-market test, as presented in the ISTAT's note, shows results below 50% in the period 2015-2018, pointing to the non-market character of the foundation.

#### Ruling of the national Court against ISTAT

In its ruling, the national Court disputed the presence of control, by referring to the fact that the Board of Directors consists of fourteen members, out of which only three are nominated by government. The Court in addition argued that the common supervision carried out by the Ministry did not prove the existence of control, as it did not go beyond standard supervision.

Concerning the notion of control, Eurostat considers that in specific cases, where the national law tightly regulates the activity of a unit so that the room of manoeuvre is very narrow, the government participation in the managing bodies may not be decisive. Already the existence of a specific legislation may provide a sufficient evidence for the assessment whether a unit is publicly controlled or not (MGDD, chapter 1.2.3.2, par. 38c). This is the case of *Accademia Nazionale di Santa Cecilia* and of its Statute that follows the Legislative Decree 29 June 1996 n. 367. The Decree identifies the objectives of the foundation, established on a non-profit basis, lays down general provisions for the contribution by private parties, regulates the management bodies, their composition and their functions, including the Chairman, the Board of Directors, the Superintendent and the Board of Auditors.

Eurostat considers that *Accademia Nazionale di Santa Cecilia* should be considered a non-market producer. It complies with the indicators of control of an NPI, as defined by ESA 20.15 (b), (d) and (e) and ESA 20.309 (i) and, therefore, it is deemed to be a government controlled entity. The foundation should therefore remain classified in general government (S.13).

### **3. CONCLUSIONS**

Considering the elements above, Eurostat is of the opinion that both foundations are non-market producers controlled by government and, therefore, should remain classified in the general government sector (S.13), as decided by ISTAT based on ESA 2010 criteria for public control and non-market production.

### **4. PROCEDURE**

This view of Eurostat is based on the information provided by the Italian authorities. If this information turns out to be incomplete, or the implementation of the operation differs in some way from the information presented, Eurostat reserves the right to reconsider its view.

In this context, we would like to remind you that Eurostat is committed to adopt a fully transparent framework for its decisions on debt and deficit matters in line with Council Regulation 479/2009, as amended, and the note on ex-ante advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat is therefore publishing all official methodological advice (ex-ante and ex-post) given to Member States on its website.

Yours sincerely,

(e-Signed)

Luca Ascoli  
Director