



Luxembourg,  
ESTAT/D-1/LA/RJ/PdR/MA/ps D(2023)

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**FRANCE**

**Subject: Subscription of the French State to the EDF capital increase in March 2022**

**Reference:** Your request for formal advice of 7 June 2023, N°2023\_13860\_DG75-G041.

Dear Mr Houriez,

Following bilateral discussions in the EDP dialogue visits to France on 9-10 November 2022 and on 12 December 2022, a videoconference on 1 March 2023, subsequent bilateral exchanges in April 2023, the discussions held in the April 2023 EDP Notification as well as your official request for advice dated 7 June 2023, Eurostat would like to provide you with its opinion regarding the statistical recording of the subscription of the French State to the EDF capital increase in March 2022.

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

The issue for which an opinion is being sought is the statistical recording of the participation of the French State to the EDF capital increase in March 2022, according to the current ESA 2010 regulation and the Manual on Government Deficit and Debt (MGDD 2022)<sup>1</sup>.

In March 2022, EDF has undertaken a recapitalisation for an amount of EUR 3.16 billion, representing 498 257 960 new shares, thus for a price of EUR 6.35/share. The French State has subscribed to the capital increase for approximately EUR 2.7 billion, i.e., around 83.88% of the capital increase, equal to its prior participation in the EDF. Private investors have subscribed to the remaining capital increase (circa EUR 0.5 billion).

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<sup>1</sup> [Manual on Government deficit and debt - Implementation of ESA 2010 \(europa.eu\)](#)

This capital increase occurred in the context of significant losses incurred by the EDF which were anticipated already at the time of the capital increase (amounting to EUR 18.2 billion in the financial year 2022). Therefore, the State, as owner of around 83.88% of EDF, saw its net worth deteriorate by EUR 15.3 billion.

Moreover, the capital increase occurs simultaneously with a price cap on the increase in regulated electricity sales tariffs (TRVe; ‘price cap’) and an allocation of an additional volume of regulated access to historical nuclear energy (ARENH+). Together, these policy measures related to EDF operations have led to an imputed cost for the French general government accounts, in year 2022, of EUR 2.1 billion and 8.2 billion respectively.

In July 2022, the French Government confirmed its intention to acquire the entire share capital of EDF, launching for that purpose a takeover bid (Offre Publique d’Achat; OPA), specifying a planned offer of EUR12.00/share and of EUR 15.52/OCEANE (convertible bond), for a total estimated cost of EUR 9.6 billion. By November 2022, the French State had expensed EUR 4.6 billion euro in acquiring shares and convertible bonds.

## **2. ANALYSIS OF THE CASE BY INSEE**

In its letter dated 7 June 2023, INSEE reviews the recording of the ARENH+ and of the regulated electricity sales tariffs price cap. INSEE proposes to record these as subsidies on products in 2022, against an other accounts payable in the first case and a reduction of equity asset in the second case. A compensation of EDF, if and when occurring in a later period, will be treated symmetrically as a tax on products, against a redemption in the other accounts payable in the first case and an acquisition in the State equity asset in the second case. Eurostat agreed with the treatment put forward by INSEE and already implemented with the April 2023 EDP Notification.

INSEE evaluates also the EUR 2.7 billion State capital increase into EDF occurring in March 2022.

In its letter, INSEE acknowledges as a relevant element that the capital increase by the State occurs in a context of significant EDF losses, amounting to EUR 18.2 billion, which still remain significant (at EUR 7.9 billion) after removing from the analysis the effect of ARENH+ and the ‘price cap’ already reflected as expenditure of government.

Moreover, INSEE recognises in its letter that the existence of simultaneous private investment is “*an indicator*” for the methodological analysis, although being, in INSEE’s view, a sound validation of a market-minded intervention by the French State.

Likewise, INSEE recognises that the declarations of the presidential candidate E. Macron, one day before the capital increase operation, may have fuelled certain assumptions for private investors, although considering these to be purely speculative assessments to be left outside a methodological analysis.

Finally, following an estimate of EDF shares by an independent expert (Finexsi), at between EUR 7.17 and EUR 10.59 per share, INSEE considers that the price per share of the capital increase (EUR 6.35 per share) to be well within market conditions.

Following the above, INSEE considers that the EUR 2.7 billion capital increase of the French State into EDF is to be recorded as an equity injection, with no impact in the net lending/net borrowing of the French general government accounts.

### 3. METHODOLOGICAL ANALYSIS AND CLARIFICATION

#### 3.1 *Applicable accounting rules*

The applicable accounting rules are the following:

- ESA 2010 paragraphs 4.165 (b), 20.198 and 20.200;
- MGDD 2022 chapter 3.2 on capital injections.

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

In year 2022, EDF losses amounted to roughly EUR 18.2 billion, whereas the cost of the ARENH+ and the price cap were of EUR 10.3 billion (included/imputed in general government expenditure in 2022). There was thus a remaining loss of roughly EUR 8 billion, which is well above the EUR 2.7 billion capital injection by the French State during the recapitalisation of EDF in March 2022.

It should be noted that the “remaining loss” would likely be eliminated if the AREHN itself had been considered to imply a subsidy at least in 2022, in addition to AREHN+, which would then have probably completely changed the analysis of the capital injection itself. The AREHN is indeed an exceptional arrangement that obliges EDF to provide a fixed volume to competitors at a fixed price (administratively determined), even if EDF does not have the capacity to produce those volumes. Eurostat has noted before that, although AREHN exists since 2011, the specific circumstances of 2022 has illustrated that the AREHN *de facto* encompassed a subsidy, which INSEE could have chosen to show as such. Eurostat acknowledges the technical difficulties to do this, mentioned by INSEE during previous discussions, and has thus accepted the choice of INSEE not to proceed along these lines.

In the meanwhile, and as announced by President E. Macron (as presidential candidate) the day before the capital increase (in March 2022), the French State launched in July 2022 an OPA intended at acquiring the entire capital of EDF.

#### *General rules*

ESA 2010 paragraph 20.198 indicates that capital injections – “*payments to public corporations (...) that aim at capitalising or re-capitalising the beneficiary corporation*” – need to be ‘capital injection tested’, so to determine if the transaction should be recorded as a non-financial transaction, a financial transaction or a combination of both.

ESA 2010 paragraph 20.198a further elaborates that when the capital injection covers accumulated losses, exceptional losses or future losses, or it is provided for public policy purposes, the injection should be recorded as a capital transfer.

Moreover, ESA 2010 paragraph 4.165 (b) also refers that “*Other capital transfers (D.99) include (...) transfers from general government to non-financial corporate (...) to cover (...) exceptional losses from causes beyond the control of the enterprise (even in the case of a capital injection)*”.

The general rules of ESA 2010 thus point to recording the EUR 2.7 billion capital increase of the French State into EDF, in the context of its exceptional ‘remaining losses’ of EUR 8 billion, as a capital transfer.

### *Qualification of simultaneous private investors*

Notwithstanding the general rules, ESA 2010 paragraph 20.198b indicates that when government is instead acting as a normal shareholder, with valid expectations of future returns, then the transaction is to be treated as an acquisition of equity. To assess such situation, ESA 2010 paragraph 20.198b further refers that “*when private investors are part of the capital injection, and the conditions for private and government investors are similar*” may serve as an indicator that “*the payment is likely to be acquisition of equity*”.

Thus, the joint private investor criterion is taken in the ESA 2010 as an indicator of the likelihood of future profits. However, the first aspect to consider in the analysis is whether the private parties’ investment is being made on a “*similar basis*” as government. Generally, this can be analysed by reference to the time of injection, the type of instrument, the quantities concerned, and the permanence as a shareholder, amongst other. Secondly, the ESA para 20.198b specifically points out that such capital injections with joint private participation on a similar basis are “*likely*” to be transactions in equity, and not ‘*necessarily*’ so.

In the view of Eurostat, the participation of private investors in the EDF capital increase cannot be seen as being made under the same conditions as those of the State. Firstly, because government led the public to believe that shares issued may be bought back in a not-too-distant future, thus influencing the behaviour of private agents, and, secondly, because the State bought back the position acquired by the private shareholders at a higher value per share than the initial investment and in a short timeframe.

While acknowledging an eventual influence of the presidential candidate on fuelling speculation, INSEE considers nonetheless that such are speculative elements. However, notwithstanding the uncertainties on if and how such a presidential announcement would be implemented, this element in itself legitimately put a significant question mark on the real motives of investors, as it was more likely that a buyback by government would have to be carried out at a sufficiently high price (notably to avoid successful recourses in court). Indeed, it is also a fact that private investors made a considerable profit in just a few months – from investing at 6.35€/share and reselling at 12€.

Moreover, the presence of those private investors is then ephemeral, and thus artificial, as they have participated in the capital increase of EDF in March 2022 and have re-sold their position to government less than one year after. The private agents have thus factually invested in a quick and sizeable gain, leaving the French State as the *de facto* sole investor in a corporation with sizeable losses. Paragraph 29 (b) of MGDD chapter 3.2 alerts to this fact when qualifying private participation while referring that “*the private investors’ share of equity in the corporation should not be diluted by the government’s new shares acquisition (which would reduce their participation to a level where they could not exercise influence).*” The subsequent OPA by the French State in a period of time smaller than one year *de facto* almost immediately dilutes the private participation, turning it in a temporary and tentatively artificial technicality.

Eurostat thus considers that the ESA 2010 clear requirements that the capital injection should be made on the same footing is not met.

### *Qualification of a market price for quoted shares*

In its letter, INSEE refers to one additional reasoning to justify recording the operation as a financial transaction. To INSEE, the fact that the shares of EDF are quoted in the market, and that the capital increase is made at a price (EUR 6.35/share) lower than an independent firm

valuation (from EUR 7.17 to EUR 10.59/share) also indicates that the transaction is made on market-driven basis.

MGDD Chapter 3.2 paragraph 34 indeed mentions that “*A capital injection that results in government acquiring quoted shares of equal value is a straightforward case. It has generally to be recorded as an acquisition of equity (F.5). The fact that the shares are quoted means that the shares may be traded on the market by private investors (...) and therefore that the corporation is respecting some minimum market requirements in the long run.*”

Nevertheless, MGDD Chapter 3.2 paragraph 35 subsequently clarifies that “*normally, a condition is that the public corporation has not accumulated net losses*” and that “*even in such cases, any part of the capital injection (in excess of the accumulated losses) (...) may be recorded as financial transaction*”.

Moreover, ESA 2010 paragraph 20.200 indicates that “*Given that capital injections increase the own funds of the unit invested in, it is likely to also lead to an increase of the investor’s equity stake in the invested unit*” though then alerting that “*Such an increase in equity is not used as a criterion to judge the nature of the capital injection*”. In this context, the fact that a share is quoted and can thus be resold for a known price does not by itself justify a net lending/net borrowing-neutral recording for a capital injection (i.e., even if government is actually acquiring an asset for clearly the same value as that of the injection).

That is, the MGDD considers that the quoted market shares observation does not prevail over the existing losses, except for the amount higher than those losses (which is not observed in this particular case), while the ESA 2010 *de facto* overrules the observance of ‘quoted market shares’ as a criterion.

Eurostat thus considers that the fact that EDF shares are quoted and that the price per share paid by government is below the market quote or an estimated fair value does not assist as an indicator of the transaction being of a financial nature in the context of the observed losses.

#### **4. CONCLUSIONS**

Considering the elements above, Eurostat considers that, following the general rules, the EUR 2.7 billion participation of the French State in the recapitalisation of EDF is to be recorded as a capital transfer impacting the net lending/net borrowing of the French general government accounts. This is because the capital injection is below (and well below) the ‘remaining losses’ of EUR 8 billion for 2022, in the absence of considering AREHN to be containing a (significant) subsidy in the year 2022.

Eurostat considers that the similarity of conditions of the private participation in the capital increase is not met, notably considering its brief character and quick dilution of private participation following the OPA, such that it does not serve as a sufficiently strong indicator to judge the operation as an equity injection. Moreover, the MGDD rules indicate that quoted shares do not prevail over the observed losses, while ESA 2010 paragraph 20.200 implies that such is not methodologically sound as an indicator for the capital injection test.

## 5. PROCEDURE

This view of Eurostat is based on the information provided by the French 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 adopting 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)

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Director