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EUROSTAT

Directorate D: Government Finance Statistics (GFS)

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**Subject: Article 10 par.1 Council Regulation (EC) 479/2009 clarification request
Sector classification Papageorgiou General Hospital**

Reference: Your letter B1-348 of 8/12/2023

Dear Ms Stravropoulou,

Thank you for the letter requesting Eurostat's opinion on the sector classification of Papageorgiou General Hospital. In accordance with Council Regulation (EC) No 479/2009 article 10, paragraph 1, after examining your request, please find below Eurostat's view on the sectorisation of the above-mentioned unit in the light of ESA 2010.

1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS REQUESTED

The issue to be analysed is the sector classification of Papageorgiou General Hospital. The entity provides hospital services to the citizens of Thessaloniki and Northern Greece and started operating in 1999.

The Papageorgiou General Hospital is currently classified in the general government sector, as is the case for all public hospitals in Greece. A national court decision issued in June 2022 has ordered ELSTAT to annul the classification of the entity in the general government sector. The decision of the court is based on the argument that the entity has decision making autonomy in the exercise of its principal function.

ELSTAT has provided a translation of the court ruling and a note describing the legal framework that governs the unit.

2. METHODOLOGICAL ANALYSIS

2.1. *Accounting provisions*

Institutional units and groupings of units are defined in ESA 2010 chapter 2. The distinction between market and non-market producers is introduced in ESA 2010 chapter 3. ESA 2010 chapter 20 defines the general government sector. It includes specific provisions for public control (20.18) and public sector control (20.309-20.310) as well as for the market/non-market delineation (20.19-20.31). Moreover, chapter 1.2.4.6. of the Manual of Government Deficit and Debt (2022 edition) deals with the specific case of public hospitals.

2.2. *Description of the case*

In May 1991, the Greek State and the Papageorgiou Foundation signed a contract for the construction of the Papageorgiou General Hospital.¹ The Hospital started operations in August 1999 and is engaged in a standing cooperation with the School of Medicine of the Aristotle University of Thessaloniki.

The Hospital is fully integrated into the National Health System and is supervised by the Ministry of Health. It has the legal form of a private law entity. However, procurements of all kinds, leases, purchases or sales of real estate, preparation of studies and execution of Hospital projects are carried out in accordance with the provisions applicable to legal entities under public law (see article 16 of the legal framework which governs the Hospital).

According to article 1.2 of its legal framework, the Hospital is a public benefit entity and cannot be turned into a profit-making business. Its income of all kinds will be allocated to cover its operational costs, the maintenance, renewal and modernization of its medical and other equipment. Crucially, any surplus will be made available to the Greek State.

According to article 5 of its legal framework, the Hospital receives an annual grant from the State, to be determined by a joint decision of the Ministers of Finance and Health, Welfare and Social Insurance. In accordance with the Internal Regulations of the Hospital, the amount of the annual grant from the State cannot be lower than the expenditure for the salaries of the staff who serve at the Hospital.

The Hospital is governed by a seven-member Board of Directors appointed by decision of the Minister of Health and Welfare. Of the seven members of the Board of Directors, three are nominated by the Papageorgiou Foundation, one is nominated by the Senate of the Aristotle University of Thessaloniki and three are selected by the Minister of Health and Welfare. The Board of Directors is responsible for the administration and management of the Hospital. Each member of the Board of Directors has one vote and decisions are taken by an absolute majority.

The establishment of job positions for intern physicians and their placement is performed according to the provisions in force for state hospitals. For the procedure, qualifications, method and selection criteria of staff, the provisions that apply each time for the filling of positions in the National Health System medical sector are applied.

¹ See Law No. 1964, Government Gazette A 146/26.9.1991.

The Greek State has the following powers:

- In the event that the Foundation and/or the Aristotle University of Thessaloniki fail to exercise their right to nominate members of the Board of Directors (BoD), the members of the Board of Directors are chosen by the Minister of Health.
- Departments and Hospital Units of the National Health Service (NHS) may be established and operated in the Hospital, with staff who serve in them or seconded staff from other NHS hospitals, by decision of the Minister of Health, upon approval of the BoD of the Hospital.
- The medical staff of the Departments and Units of the NHS who serve at the Hospital are subject to a Special Disciplinary Council, which is established by decision of the Minister of Health.
- The Minister of Health appoints two chartered accountants every year to carry out a regular audit of the financial management of the Hospital for the previous year. The Minister may at any time order an extraordinary audit of the financial management of the Hospital.
- The Internal Operating Regulations of the Hospital are drawn up by the Board of Directors and approved by the Ministers of Finance and Health. The Internal Regulation specifically regulates issues regarding the organization, structure and operation of the Hospital's medical, administrative and other services, the allocation of beds, the service status, the obligations of the staff and every detail necessary to achieve the Hospital's goals in the general framework of the NHS. It also regulates the number, categories, specialties and qualifications of all staff, within the framework of the provisions of the presidential decree on the "Uniform framework for the organization of Hospitals".
- A joint decision of the Ministers of Finance and Health determines the remuneration of the Board of Directors. The same applies to the monthly salary of the General Director of the Hospital.
- If for any reason the legal entity of the Hospital is dissolved, the buildings and any equipment shall become the property of the Greek State.
- Any amendment to the contract should be ratified by law to become effective.

2.3. Eurostat's analysis

a) *Institutional unit*

The fact that the legal framework of the Hospital stipulates that the Board of Directors "has the most extensive rights and the broadest and unlimited authority to act as a legal entity in the exercise of the relevant powers of administration and management" is not necessarily sufficient by itself to conclude on the autonomy of decision of the unit. The economic substance principle is an inherent and fundamental concept in ESA 2010, taking precedence over the legal form.

Out of the seven members of the Board of Directors of the Hospital, three are nominated by the Minister of Health and one by the University of Thessaloniki (which is classified in the general government sector). It is not clear if these four members nominated by entities

belonging to the government sector could be government employees (having an existing employment relationship with government or a political mandate). In such case, the Board of Directors of the Hospital would be made up, in its majority, by government officials. According to the Manual on Government Deficit and Debt (see section 1.2.2, Concept of an institutional unit), in the case of entities where the majority of the management board is staffed by government officials, and not simply nominated by government, it can be very difficult to judge whether the management board takes decisions autonomously from government or, on the contrary, acts in the interest of the public administration policy requirements.

Moreover, the Ministers of Finance and Health must directly approve certain key decisions concerning the principal function of the hospital, such as the Internal Operating Regulations and the establishment of Departments and Hospital Units of the National Health Service in the Hospital.

The two elements above (possible majority of government officials in the BoD and government approval of decisions concerning the principal function of the hospital) could raise doubts on the decision-making autonomy of the Hospital.

Nevertheless, concluding whether the entity is an institutional unit or not is not essential at this stage, as the continuation of the analysis would in any case point out to a classification of the Papageorgiou General Hospital inside government, as it will be shown below.

b) Control

The ESA 2010 sector classification criteria is not based on the legal form of an entity. The fact that the Hospital has the legal form of a private law entity does not necessarily imply that, in national accounts, the entity is controlled by the private sector.

As stated in the previous section, four of the seven members of the Board of Directors are nominated by units classified within the general government sector (three by the Minister of Health and one by the University of Thessaloniki). According to ESA 2010 paragraph 20.309 (a) on public sector control, the right to appoint a majority of the governing board of an entity, directly or indirectly, is sufficient to determine control. This can be through the direct rights of a single unit or the collective rights of many units. Following ESA 2010 20.309 (a), the Papageorgiou General Hospital is controlled by general government; it is a public unit.

Additionally, public control would be also most likely established in this case by 20.309 (f) on contractual agreements and 20.309 (i) other indicators of control. Concerning 20.309 (f), the Hospital is regulated by a contract signed between the State and the Papageorgiou Foundation, ratified by law and any amendment to the contract needs to be ratified by law. Concerning 20.309 (i), the allocation of any profit would go to the Greek State and the same would happen with the building and the equipment in case the entity is dissolved.

c) Market/ non-market nature

Given that the Papageorgiou General Hospital is a public hospital, as seen above, the next step would be to assess its market or non-market nature.

Concerning the quantitative market/non-market test, the figures to carry out the test have not been provided to Eurostat. It should be taken into account that the annual grant from the State, which is most likely the main source of financing, cannot be considered as sales when

carrying out the quantitative market/non-market test. Moreover, special attention should be paid when carrying out the test in case that the mechanism of clawbacks and rebates² in force for public hospitals is also applicable to this Hospital.

Chapter 1.2.4.6. of the Manual on Government Deficit and Debt (MGDD) introduces guidance for the specific case of public hospitals. According to the decision tree for assessing the sector classification of public hospitals (page 42 of MGDD 2022 edition), competition with private hospitals should be checked before carrying out the 50% test.

Paragraph 136 of the MGDD chapter 1.2.4.6. states that the presence of real market competition should be carefully checked by verifying if public hospitals are really competing in practice with private hospitals. According to paragraph 139, any government intervention/support which would cover the business risk of public hospitals, would highlight a difference between public and private sector hospitals and would reflect a situation of de facto no real market competition. The same paragraph further indicates that, if the hospitals are public and the conditions of a real market competition would not be satisfied, they are to be classified in the general government sector.

Similarly to public hospitals that are part of the NHS, the Hospital receives an annual grant from the State. In the case of the Papageorgiou General Hospital, the grant should cover at least the salaries of the staff who serve at the Hospital. Based on the above provisions, this continuous support by government indicates that there is no real market competition. In case the Papageorgiou Hospital benefits from the mechanism of clawbacks and rebates³ in force for public hospital, the same conclusion of no real market competition would apply.

Without the support from government, it is likely that the hospital would be bearing persistent losses. According to the decision tree in the MGDD, this reason is sufficient by itself to reclassify the hospital in the government sector, regardless of the result of the 50% test. Therefore, the Papageorgiou General Hospital is to be considered as a non-market unit.

3. CONCLUSION

Based on the information available, it cannot be established whether the unit meets the criteria of an institutional unit, in particular if it has decision-making autonomy.

Nevertheless, it appears evident that the unit is publicly controlled and that it has a non-market nature. Eurostat therefore considers that the Papageorgiou General Hospital should be classified in the general government sector.

² Clawbacks and rebates for public hospitals are currently recorded as negative D.632 at the time they are offset/cleared.

³Clawbacks and rebates were introduced by the Greek government from year 2012, as a measure to limit health expenditure. They concern the social security fund EOPYY and public hospitals. Clawbacks consist of automatic refunds if the limit set in the budget for pharmaceutical and health related expenditure is exceeded. The difference between the credits foreseen in the budget and the amounts paid has to be “refunded” by the providers of goods/services. Rebates are refunds calculated as a percentage of the payables that EOPYY/public hospitals owe to providers (expenditure for goods/services provided, but not paid).

4. PROCEDURE

This preliminary view of Eurostat is based on the information provided by the Greek authorities. If this information turns out to be incomplete, or the implementation of the operation differs in some way from the information currently available and the assumptions made above, 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 and the note on ex-ante advice. Eurostat therefore publishes all official methodological advice (ex-ante and ex-post) given to Member States on its website.

Yours sincerely,

(e-Signed)

Rasa Jurkoniene
Acting Director