EUROPEAN COMMISSION
EUROSTAT

Directorate D: Government Finance Statistics (GFS)

23 December 2019

Decision of Eurostat on government deficit and debt

The statistical recording of the 2015 contributions to National Resolution Funds

1. Introduction

In response to the financial crisis, on 12 June 2014 the European Commission adopted the Banking Resolution and Restructuring Directive[1] (BRRD), in order to harmonise the instruments for the restructuring and the resolution of banks in the Member States. The BRRD had to be transposed into national law by the Member States by the end of 2014 and became effective on 1 January 2015. The BRRD instruments include an obligation on the Member States to establish a prefunded National Resolution Fund (NRF).

From 1 January 2016, the Single Resolution Mechanism (SRM), as part of EU-wide rules for credit institutions in the euro area (non-euro area Member States may also join), entered into force. The SRM consists of a Single Resolution Board, which is responsible for the managing, reorganisation and resolution of credit institutions in financial distress, and a Single Resolution Fund (SRF). The contributions raised by SRB/SRF for the year 2016 and thereafter are to be considered as an EU tax, recorded in national accounts as paid directly by banks to the SRB/SRF, since Member States NRFs are acting as agents of the EU (i.e., SRB/SRF).[2]

Following the BRRD, the NRFs were responsible for calculating and collecting contributions from credit institutions and certain investment firms in all EU Member States in 2015. For Banking Union Member States,[3] the amounts collected by the NRFs in 2015 had to be transferred, if unspent for national resolution measures, to the SRB/SRF, by 31 January 2016.

According to Article 8(2) of Implementing Regulation (EU) 2015/81[4], the SRB shall take into account the 2015 contributions effectively passed to the SRF, by deducting them from the

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014L0059-20190627&qid=1576657596365&from=EN
[2] https://ec.europa.eu/eurostat/documents/1015035/7204121/Eurostat-Guidance-Note-Statistical-implications-new-resolution-legislation.pdf/c8cc98a2-5edd-43d0-8d7e-5f449c2de004
[3] Up to date, Banking Union Member States are only those part of the euro area.
[4] Council Implementing Regulation (EU) 2015/81.

amounts due later on during the so-called "initial period" of eight years. Pursuant to this provision, the SRB can decide, each year, to deduct one-eighth (1/8) of the contributions collected in 2015 from the amounts due during the period 2016 to 2023.

Article 8 (2) of the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund[5] allows for the possibility that a Member State of the Banking Union transfers only part of the 2015 contributions to the SRB/SRF in 2016 if it has carried out some banking support measures in 2015.

This note provides Eurostat's decision on the statistical treatment of the 2015 contributions collected by the NRFs and transferred to the SRB/SRF by the end of January 2016. It clarifies, in particular, the nature of these contributions (national tax or EU tax), the treatment of deductions of the 2015 contributions from the contributions due in the period 2016 to 2023, and the recording of the specific case where a Member State has used for national resolution measures a part or the full amount of contributions collected in 2015.

This decision is made in accordance with the process defined by Article 10.2 of Regulation 479, as amended. The opinion of the Committee for Monetary, Financial and Balance of Payments Statistics (CMFB) was sought. This is included in annex.

2. The issue

The contributions to the NRFs collected under the BRRD and the contributions to the SRB/SRF collected under the SRM regulation are to be considered in national accounts as taxes as they are compulsory and unrequited (notably as other taxes on production - D.29h). There is also a common view that the contributions collected under the SRM regulation from 2016 onwards shall be treated as EU taxes imposed and directly received by the SRB/SRF classified in the rest of the world (S.212).

Since the SRM provisions concerning the SRF entered into force from 1 January 2016, the euro zone Member States collected the 2015 contributions earmarked to the national resolution financing arrangement based on the BRRD, not the SRM. Thus, it needs to be considered whether the 2015 contributions have the nature of a national tax or an EU tax.

The treatment of the 2015 contributions should be governed by the general principle of recording economic substance over legal form, as stated in ESA 2010 paragraph 20.164. Based on this general principle, the 2015 contributions could be considered as nationally defined prepayments of an EU defined tax under the BRRD.

A deduction mechanism mentioned in Article 8 (2) of Implementing Regulation (EU) 2015/8, applicable in the period 2016 to 2023, requires that the SRB has to decide each year on the deduction of a part of the 2015 contributions. The tax expenditure to be recorded in the account of the financial corporations (and the tax revenue in the accounts of the SRB/SRF) during the period 2016 to 2023 is therefore the amount effectively paid (amounts due after deduction), which shows similarities with a tax refund system.

There is the possibility that a Member State transfers only part of the 2015 contributions to the SRB/SRF (Article 8 (2) of the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund) if it carried out banking support measures in

[5] http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208457%202014%20INIT

2015. However, the use of this possibility does not exempt the concerned Member State from transferring the necessary funds to the SRB/SRF to achieve its target level. The matter is whether, in such a case, a payable is to be recorded to the SRB/SRF or not, and whether the spending on resolution measures financed by these funds is to be considered as a resolution process carried out by the Member State on its own behalf or on behalf of the SRB/SRF.

3. The decision

Eurostat decides that the contributions raised by National Resolution Funds (NRFs) in 2015 under Directive 2014/59/EU and which have to be transferred to the Single Resolution Fund (SRF) by 31 January 2016 are to be recorded as an EU tax. Therefore, the 2015 contributions are directly recorded as other taxes on production (D.29h) in the non-financial accounts of the SRB/SRF (S.212) in 2015. Thus, the actual net cash flow inflows to the NRF resulting from the 2015 contributions should lead to an entry in the financial accounts (other accounts payable F.89) of the NRF (and therefore also in the general government accounts when the NRF is classified inside the general government sector).

The established deduction mechanism which provides the possibility for the SRB to deduct one-eighth (1/8) of the contributions collected in 2015 from the amounts due during the period 2016 to 2023 is to be considered as a tax refund system. The tax revenue (D.29h) to be recorded in the accounts of the SRB/SRF is the actual cash inflow in each year in the period 2016 to 2023.

Furthermore, Eurostat considers that the possibility to use a part or the full amount of the 2015 contributions for national resolution measures granted by Member States in 2015 does not preclude the recording of an EU tax. This means that the 2015 contributions must be recorded as an EU tax accruing in 2015 (no tax advance), with the SRB/SRF being deemed to receive the entire amount (cash transferred to the SRB/SRF plus the amount retained by the Member State). As regards the difference between the actual cash received and the amount accrued, a capital transfer payable (D.99p) is recorded in the accounts of the SRB/SRF benefitting the financial institution concerned by the supporting measure. The Member State is deemed to act, for this amount, on behalf of the SRB/SRF when it is carrying out support measures in 2015.

This decision does not apply to Member States not participating in the Banking Union. In this case, the Member States are not acting on behalf of the EU and the contributions therefore represent a national tax.

Annex

CMFB

COMMITTEE ON MONETARY, FINANCIAL AND BALANCE OF PAYMENTS STATISTICS

CMFB Opinion

on the nature of the banking levies collected under the Banking Recovery and Resolution Directive in 2015 and transferred to the Single Resolution Board/Single Resolution Fund in 2016

1. At Eurostat's request (9 February 2017) and in line with article 8(2) of Council Regulation (EC) No 479/2009, I as the CMFB Chair, with the assistance of the CMFB Executive Body, asked the CMFB Members on 7 March 2017 to express their opinion on the nature of the banking levies collected under the Banking Recovery and Resolution Directive (BRRD) in 2015 and transferred to the Single Resolution Board/Single Resolution Fund (SRB/SRF) in 2016. The deadline for reply was 21 March 2017.
2. A total of 48 institutions provided their opinions. 24 national statistical institutes, 23 national central banks and the ECB returned the questionnaire within the specified time.
3. The CMFB Members were invited to reply to three questions concerning: (1) the identification of the nature (national or EU)of the 2015 levies (taxes) paid by banks , (2) the time of recording and (3) the recording of resolution operations carried out in 2015.
4. A majority of Members expressed the opinion that the SRB/SRF is to be considered as the counterpart to the banks and therefore the banking levies should be considered as EU taxes. They argued that the levies are to be interpreted as (nationally defined) prepayments of an (EU defined) tax under the BRRD. A minority of Members were of the opinion that the levies should be recorded as national taxes as the BRRD is not automatically applicable in Member States (MS). In addition, the MS could use the 2015 contributions for national resolution measures if carried out before 2016.
5. Concerning the timing of recording, a majority of Members were of the opinion that if the levies are considered as EU taxes in 2015, they should be recorded as an EU tax leading to deductions as a tax refund in the period 2016 to 2023 from the EU taxes to be paid. A limited number of Members preferred the two other proposed options i.e.: (1) the levies are to be considered as a prepayment of an EU tax, accruing over 8 years **or** (2) the levies are to be considered as a prepayment of an EU tax accruing in 2016 (financial advance for 1 year), which then leads to deductions as a tax refund in the period 2016 to 2023.
6. A majority of Members were of the opinion that in case of resolution operations in 2015, the levies should be considered as an EU tax for the full amount (according to the modalities agreed in question 2), and the resolution measures are deemed to be carried out on behalf of the EU (capital transfer (D9) from SRB/SRF to deposit taking corporations except the central bank). A limited number of Members preferred the two other proposed options i.e.: (1) the levies are to be considered as a national tax for the full amount, and the unused amount corresponding to the cash passed to the SRF in 2016 is recorded as a capital transfer (D9) in 2015 (from general government to SRB/SRF) **or** (2) levies should be partitioned between a part to be considered as an EU tax (the amount transferred to the SRF) and a part to be considered as a national tax for the amount retained by the Member State (matched by

a capital transfer (D9) representing the resolution from general government to deposit taking corporations except the central bank).

7. The CMFB therefore advises to record the transactions in accordance with the opinions of the majority of its members, that is: **a)** The 2015 contributions raised by the national Resolution authority/National Resolution Fund to be transferred to SRF in 2016 shall be recorded as an EU tax in 2015 leading to deductions as tax refunds from the EU taxes to be paid in the period 2016 to 2023. **b)** If a Member State has used all or part of the contributions for national resolution measures in 2015, the 2015 contributions are still to be considered as an EU tax for the full amount and the resolution measures are deemed to be carried out on behalf of the EU.
8. In addition to this Opinion, all the anonymised answers from CMFB Members have been transmitted to Eurostat and will be kept in the records of the CMFB secretariat.

(Signed)

Kirsten Wismer
CMFB Chair

Copenhagen, 6 April 2017