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Eurostat Guidance Note

SECTOR CLASSIFICATION OF CENTRAL STOCKHOLDING ENTITIES IN NATIONAL ACCOUNTS IN ESA 2010

Executive Summary

This note provides guidance on how to classify the Central Stockholding Entities (CSEs) in national accounts (ESA 2010) in order to ensure consistency of treatment across EU Member States.

According to Council Directive 2009/119/EC¹, a CSE may be established in EU Member States to ensure the maintenance of emergency crude oil and/or petroleum stocks to be used in the event of a crisis.

Eurostat considers that a government controlled CSE should be classified in the general government sector (S.13).

In the case of a privately controlled CSE, government delegates its obligation of maintaining emergency stocks and such an entity is classified in the non-financial corporations sector (S.11).

If a privately controlled CSE (classified in S.11) receives mandatory payments from the economic operators, all such payments should be considered as taxes on products (D.21) and re-routed through government accounts (S.13), as the CSE collects these payments with the delegated authority of government.

1. Introduction

The availability of oil stocks and the safeguarding of energy supply are essential elements of public security for EU Member States, for the European Union and the International Energy Agency. Council Directive 2009/119/EC (further referred to as Directive) introduced changes to the obligation of EU Member States to maintain minimum stocks² of crude oil and/or petroleum products. One of the changes of this Directive is the introduction of the concept of Central Stockholding Entities (CSEs). In this context, some EU Member States have created

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0119&from=EN>.

² The total oil stocks maintained at all times within the Community for their benefit correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.

a new CSE and some others have nominated already existing agencies or bodies as CSEs, while some MS did not establish specific institutional arrangements.

This note provides guidance on how to classify the Central Stockholding Entities (CSEs) in national accounts (ESA 2010), if established, in order to ensure consistency of treatment across EU Member States.

2. Maintaining minimum stocks of crude oil and/or petroleum

2.1. Obligation of maintaining minimum stocks of crude oil and/or petroleum

Council Directive 2009/119/EC states that maintaining minimum stocks of crude oil and petroleum to be used in the event of a crisis is an obligation of EU Member States. In particular, Member States have to ensure that these oil stocks are:

- Maintained at all times within the Community for their benefit and correspond to the minimum levels defined in this Directive (article 3),
- Available and physically accessible at all times for the purposes of this Directive. This includes taking all necessary measures to prevent all obstacles and encumbrances that could hamper the availability of emergency stocks and specific stocks³ and establishing arrangements to identify, account and control those stocks so as to allow that they are verified at any time⁴ (article 5).

In addition, in the event of a major supply disruption, EU Member States shall:

- Have procedures in place, including contingency plans,
- Take measures in order to release quickly, effectively and transparently some or all of their emergency stocks and specific stocks,
- Impose general or specific restrictions on consumption in line with the estimated shortages, inter alia, by allocating petroleum products to certain groups of users on a priority basis (article 20.1).

Government obligation

When implementing a system to store the emergency oil stocks, governments may manage directly the emergency stocks (i.e. the acquisition, maintenance and sale of oil stocks) or confer these powers to a CSE set up or nominated by government. In addition, some other arrangements may also exist. Article 7.3 of the Directive foresees that, for a specified period, CSEs or government may delegate tasks relating to the management of emergency stocks, with the exception of sale and acquisition of specific stocks. Such tasks can only be delegated to:

- 1) Another EU Member State within whose territory such stocks are located, or
- 2) The CSE set up by that EU Member State government, or
- 3) The economic operators.

However, in the case where government imposes stockholding obligations on economic operators, it should be highlighted that it remains an obligation of the government to comply with the Directive, not of the economic operators. In particular, article 8 of the Directive states

³ The difference between emergency and specific stocks is explained in the next section of this document.

⁴ This requirement also applies to any emergency stocks and specific stocks that are commingled with other stocks held by economic operators.

that economic operators subject to imposition of stockholding obligations by EU Member States are doing so on the account of government⁵.

This is also the situation for the other cases, since article 11 stresses that the delegations to CSEs and economic operators shall in no way alter the obligations incumbent upon each EU Member State pursuant to the Directive (article 7 and 8).

2.2. Emergency stocks

Within the emergency stocks, the Directive describes a sub-type of emergency stocks to be used by EU Member States in the event of a crisis: the “specific stocks”.

Specific stocks

Article 9 of the Directive determines that when Member States have voluntarily decided to maintain specific stocks, they shall be (legally) owned by the EU Member State or the CSE set up by the EU Member State and shall be maintained on the territory of the Community. They have to be constituted on the basis of decisions taken by the EU Member States⁶ and should correspond to actual needs in the event of a crisis. They should also have a separate legal status to ensure full availability, should such a crisis occur. To that end, the EU Member States government concerned should ensure that appropriate steps are taken to protect those stocks unconditionally against all enforcement measures. In addition, where specific stocks are commingled with other oil stocks, EU Member States governments or their CSEs shall make the necessary arrangements to prevent those commingled products from being moved, to the extent of the proportion constituting specific stocks, without prior written authorisation by the owner of the specific stocks and by the authorities of, or the CSE established by the EU Member State government in whose territory the stocks are located (article 10 of the Directive).

Emergency stocks which are not specific stocks

The Directive does not require that the emergency stocks have to be (legally) owned by EU Member States. Nevertheless, it mentions that there should be no restrictions or limitations on the right of ownership of those stocks that could hamper their use by government in case of oil supply disruption.

2.3. Characteristics of the CSEs

Article 7.1 of the Directive specifies that the establishment of a CSE is not compulsory, but in case EU Member States decide to set up one, they should respect the following conditions:

- No EU Member State may set up more than one CSE,
- It shall take the form of a body or service without profit objective and acting in the general interest,
- Its main purpose shall be to acquire, maintain and sell oil stocks for the purpose of the Directive,

⁵ Each EU Member State shall adopt such laws, regulations, or administrative provisions as may be appropriate in order to ensure, by 31 December 2010, that the total oil stocks maintained correspond to the provisions of this Directive (article 3).

⁶ At this stage, the volumes to be owned by the CSEs or the EU Member States should be set at a level determined independently and voluntarily by each of the EU Member States concerned (whereas 16). However, each EU Member State that has not made a commitment for the full duration of a given calendar year to maintain at least 30 days of specific stocks, shall ensure that at least one-third of their stockholding obligation is held in the form of products composed in accordance with paragraphs 2 and 3 of article 9.

- Payments by the operators for the services of the CSE shall not exceed the full costs of the services rendered and may not be required until the stocks are constituted.

3. Relevant statistical rules

The general rules to be applied when analysing the sector classification of a unit are mainly described in Chapter 2 (Units and groupings of units) and in Chapter 20 (Government Accounts) of ESA 2010, as well as in Part I (Delimitation of the general government sector) of the Manual of Government Deficit and Debt (MGDD).

Two issues need to be analysed: the control of the unit and the market or non-market nature of its output.

Control

According to ESA 2010 paragraph 20.18: *“Control over an entity is the ability to determine the general policy or programme of that entity (...)”*. The criteria to be used for corporations are indicated in ESA 2010 paragraphs 2.38 and further detailed in paragraph 20.309. ESA 2010 paragraph 2.38 specifies that:

“General government secures control over a corporation as a result of special legislation, decree or regulation which empowers the government to determine corporate policy.

The following indicators are the main factors to consider in deciding whether a corporation is controlled by government:

- (a) government ownership of the majority of the voting interest;*
- (b) government control of the board or governing body;*
- (c) government control of the appointment and removal of key personnel;*
- (d) government control of key committees in the entity;*
- (e) government possession of a golden share;*
- (f) special regulations;*
- (g) government as a dominant customer;*
- (h) borrowing from government.*

A single indicator may be sufficient to establish control, but, in other cases, a number of separate indicators may collectively indicate control.”

There are some other criteria defined ESA 2010 20.15 in the case of non-profit institutions:

“(...)”

- (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.*

A single indicator can be sufficient to establish control. However, if an NPI that is mainly financed by government remains able to determine its policy or programme to a significant extent along the lines mentioned in the other indicators, then it would not be considered as being controlled by government. In most cases, a number of indicators will collectively indicate control. A decision based on these indicators will be judgmental in nature”.

Market or non-market output

According to ESA 2010 paragraph 20.23, when the output is sold to corporations: *“Economically significant prices normally result when two major conditions are fulfilled:*

(1) the producer has an incentive to adjust supply either with the goal of making a profit in the long run or, at a minimum, covering capital and other production costs, including consumption of fixed capital, by sales; and

(2) consumers are free to choose on the basis of the prices charged”.

ESA 2010 paragraph 3.19 also mentions the freedom of consumers to purchase or not to purchase, as a criterion which may be used in order to assess the market nature of an activity.

Rerouting

According to ESA 2010 paragraphs 1.73: *“A transaction that appears to the units involved as taking place directly between units A and C may be recorded in the accounts as taking place indirectly through a third unit B. Thus, the single transaction between A and C is recorded as two transactions: one between A and B, and one between B and C. In this case the transaction is rerouted”.*

4. Analysis of the sector classification of the CSEs

4.1. Control of the CSEs

Given the strategic nature of the emergency oil stocks, there is always an element of government control in the CSEs via excessive regulation (see ESA 2010 20.309 (h)).

The main activity of CSEs is limited to the acquisition, maintenance and selling of oil stocks for the purpose of the Directive, which is a matter of national public policy of EU Member States. It should be noted that CSEs are not supposed to make any profit from their activity and may even be loss making (“not exceed costs”, article 7.1 of the Directive).

In addition, the characteristics and use of the emergency stocks is clearly defined in the Directive. Government will decide when these stocks will be used in case of emergency (article 20) and can take measures in order to release the stocks quickly, effectively and transparently, impose general or specific restrictions on its consumption and allocate them to certain groups of users on a priority basis. In addition, government limits through regulation the current use of these stocks since they can only be purchased, maintained and stored for the purpose of the Directive and not for commercial purposes.

In particular, the minimum level of stocks should be kept at all times and only fluctuations in the volume of specific stocks due to individual stock replacement operations could be permissible in order to allow necessary operations such as those required for ensuring freshness of the stocks, for ensuring compliance with changed product specifications, or for issuing new tenders for storage.

To sum up, the activities of CSEs, the objective and the characteristics and use of the emergency stocks are strictly regulated by EU and national law. These limitations are foreseen so as not to jeopardise the availability, physical accessibility and use of these stocks in the event of crisis. These limitations should be taken into account when considering other indicators of government control.

In practice four basic cases may be distinguished:

Case 1 - CSE is part of the general government sector (e.g. they are budgetary or extra-budgetary units, etc.),

Case 2 - CSE is a public corporation controlled by government,

Case 3 - CSEs is an NPI/association whose members are the economic operators,

Case 4 - CSE is a private corporation owned by private economic operators.

In both cases 1 and 2, government controls the CSE's general policy (ESA 2010 paragraph 20.18).

In case 3, the main issue is whether government is effectively controlling the CSE when it is an association/NPI whose members are the economic operators. Control is usually exercised by holding the majority of voting rights, keeping veto powers or appointing the majority of members of the board. In other cases, government controls the CSE through other means such as limiting the activities that the CSE can pursue, controlling the use of the emergency stocks and deciding on the provisions of the statute of the CSE. Sometimes it is also foreseen that the loans of the CSE are guaranteed by government (ESA 2010 paragraph 20.309). If the only, or more preponderant, activity of the unit is to comply with the obligation imposed by government, the unit should be seen as acting *de facto* as an agent of government and it should be classified within the general government sector. Only if the unit undertakes other activities than to comply with the stockholding requirements imposed by government, it could be concluded that government does not determine the general policy of the unit. In this particular case the unit could be classified outside the general government sector.

Another exception might be found in case 4, where the CSE is a private corporation owned by private operators. This is currently not a common case, as the Directive foresees that the CSE shall take the form of a body or service without profit objectives and acting in the general interest. Therefore, in this case it should be thoroughly checked whether government is controlling the CSE by other means. If there is no indication of government control (as described by ESA 2010 paragraph 20.309), the CSE could be considered as a private unit and classified in the non-financial corporations sector (S.11).

4.2. Economic nature of the payments

The key issue is whether the payments/contributions received by CSEs from economic operators are to be classified as sales of services or taxes.

Eurostat considers that the payments made by the economic operators to the CSE cannot be considered as sales of services when the economic operators are obliged to meet the stockholding obligations on behalf of government, by making compulsory payments to the CSE (ESA 2010 20.23) for which the economic operators do not receive any benefit.

If a CSE is government controlled, it should be classified in general government (S.13) and CSEs' activities related to the emergency stock maintenance should be considered as non-market production because the stockpiling level required by government goes beyond the stockpiling undertaken for commercial purposes. All the payments made by the economic operators to government controlled CSEs should be considered as taxes on products D.21, (even if they may not be considered as such in the national legislation). The fees, the operators have to pay, are set by government or using an agreed formula, which means that the stocking unit does not react to market signals (changing the price, adjusting product capacity, etc.) similarly to the case of a market activity.

The imposition of a certain level of oil stocks is mainly a matter of national policy (and thus government imposes the level of payments exercising its sovereign function) and not something which the operators would need to do for commercial considerations. In addition,

the Directive effectively prohibits the CSE from profit-seeking behaviour, thus a classification of any output as market output would require very careful consideration.

If the CSE is privately controlled, the nature of the payments made by the economic operators to the CSE should be analysed. If all the payments from the economic operators to the CSE are on a voluntary basis and the economic operators can choose how to store the emergency stocks (i.e. they can fully decide between storing the emergency stocks themselves, through the CSE or by delegating the obligation to another economic operator), these payments could be considered as sales of services.

4.3. Rerouting

If the CSE is privately controlled and it is receiving mandatory payments from the economic operators, these payments should be considered as taxes (D.21) and should be rerouted through government accounts, as the CSE is collecting these payments with the delegated authority of government (ESA 2010 paragraphs 1.73-1.75).

In this case, economic operators are obliged by national legislation to comply with government's stockholding obligations by making compulsory financial contributions to the national CSE. Therefore, in this case it cannot be said that an effective market exists and that the CSE is providing a service for which it is charging economically significant prices in line with ESA 2010 3.19, as the economic operators are not free to choose how to store the emergency stocks, etc.

5. Conclusions

A government controlled CSE should be classified in the general government sector (S.13) due to its specific nature (as outlined in the Directive). Moreover, the obligation of maintaining emergency stocks to be used in the event of a crisis is placed on a government unit.

All the payments made by the economic operators to government controlled CSEs (classified in S.13) should be considered as taxes on products D.21, even if they may not be considered as such in the national legislation.

If the CSE is privately controlled, it should be classified in the non-financial corporations sector (S.11). In this case, government has delegated its obligation of maintaining emergency stocks to a private entity.

If the privately controlled CSE is receiving mandatory payments from the economic operators, these payments are to be considered as taxes and are re-routed through government accounts (S.13), as it is through the delegated authority of government that the CSE is collecting these payments.

However, in case a privately controlled CSE receives voluntary contributions/payments from the economic operators, these payments can be treated as sales of services.