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Ms Maria Jeznach
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Central Statistical Office of Poland
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PL - 00925 Warsaw

Subject: Statistical classification of the Bank Guarantee Fund

Ref: Your email and accompanying notes dated 26.08.2014

Your emails of 04.09.2014 and 05.09.2014

Dear Ms Jeznach,

Thank you for the notes on the Bank Guarantee Fund received on 26 August 2014 and the additional information provided on the 2nd September 2014 and in the emails of the 4 and 5 September 2014.

After having analysed the documentation provided, I would like to inform you about Eurostat's view on the statistical classification of the Bank Guarantee Fund (hereinafter the *Fund*) according to ESA2010 methodology.

Accounting issue

The Polish authorities have asked Eurostat for advice concerning the statistical classification of the Bank Guarantee Fund in the context of the implementation of ESA2010 and of the Manual of Government Deficit and Debt (MGDD), 2014 edition, Chapter I.5, paragraphs 7-14 (protection funds). The accounting issue is to determine whether the Bank Guarantee Fund constitutes an institutional unit under ESA2010, and if not, which entity should be regarded as the unit controlling its main activities.

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The decision in this respect could influence the delimitation of general government in case the government acts as a controlling unit.

Documentation provided

The Polish Central Statistical Office (CSO) provided Eurostat with the following documentation concerning the Bank Guarantee Fund:

- Note presenting the basic information on the Bank Guarantee Fund,
- Note with answers to the questions asked in the draft Eurostat guidance note on the Financial supervisory authorities, protection funds and resolution funds presented by Eurostat in the Financial Accounts Working Group in June 2014,
- The Act on the Bank Guarantee Fund (hereinafter the *Act on BFG*) of 14 December 1994 (consolidated text, Journal of Laws of 2009 No.84, item 711, as amended),
- The Statute of the Bank Guarantee Fund (hereinafter the *Statute*) of 13 August 2013 (Journal of Laws of 2013, item 967),
- Information on the foreseen modifications in the legislation relating to the provisions on the resolution functions of the Bank Guarantee Fund

Main Features of the Bank Guarantee Fund

The Fund was created by an act of Parliament under the ‘Act on the Bank Guarantee Fund’ of 14 December 1994 with an aim to protect the interests of depositors and the stability of the financial system. It follows the provisions set in the Statute of 13 August 2013 established by the Minister of Finance after the consultation with the President of the National Bank of Poland (NBP) and the Chairman of the Polish Financial Supervision Authority (KNF). The two above mentioned acts set up the Fund as a separate entity with a legal personality governed by the public law. The Act on BFG defines the legal framework of assistance activity of the Fund, including, inter alia, the upper limit of the obligatory payments to the Fund by entities covered by the guarantee system, i.e. banks and credit unions. The Act on BFG and the Statute specify in detail the tasks, the organisational structure, the financial resources and the activities of the Fund.

The Fund is supervised by the Minister of Finance on the basis of the criteria of legality and compliance with the Statute. In case of irregularities, the procedure allows for the intervention of the Minister of Finance (art. 3.6 of the Act on BFG) who can, inter alia, request the dismissal of the members of the Fund Management Board responsible for irregularities.

The Act on BFG and the Statute specify in detail the composition and responsibilities of the main bodies of the Fund, i.e. the Fund Council and the Fund Management Board. The Fund Council exercise control and supervision over the activities of the Fund. It consists of eight members including a Chairman that is appointed and recalled by the Minister of Finance after obtaining an opinion of the President of the NBP and the Chairman of the KNF. Other seven members are appointed and dismissed by the Minister of Finance (2 members), the President of the NBP (2 members), the Chairman of the KNF (1 member) and the Polish Bank Association (2 members). The Fund Council adopts resolutions by a majority of votes in the presence of at least four members. In case of a tie vote, the vote of the chairman of the Fund Council, which is appointed by the Minister of Finance, is decisive.

The Fund Management Board directly manages the Fund and represents it towards the third parties. It is composed of three to five members appointed and recalled (at any time) by the Fund Council.

The Act on BFG and the Statute also establish the financial resources of the Fund to stem from the following sources:

- 1) Contributions paid by private entities including, among others, mandatory annual contributions payable by entities covered by the guarantee system i.e. domestic banks, branches of foreign banks and credit unions.
- 2) External sources including loans or subsidies granted from the state budget or short-term loans granted by the National Bank of Poland. This kind of financing is supplementary and complementary to own resources of the Fund and may occur in certain statutory case, i.e. inter alia, in the event of a threat to financial stability.
- 3) A one-off payment brought by the Ministry of Finance and the National Bank of Poland at the beginning of activities of the Fund in 1995.

The above mentioned financial resources are allocated into a number of funds, each having a particular role; e.g. the statutory fund, the assistance fund, the fund for restructuring of cooperative banks, supplementary fund and the stabilisation fund etc. With the use of these funds, the Bank Guarantee Fund fulfils its role of a deposit protection scheme and a resolution fund. The events triggering the activation of the various funds, the amounts involved, the procedures to be followed and the deadlines for repayments are also described in the above mentioned legal acts.

In particular, the Act on BFG stipulates the procedures in the event of insufficient funds in the Bank Guarantee Fund for the disbursement of guaranteed funds to bank depositors (Article 16a and 16b) and credit union depositors (Article 38r).

For bank deposits, it foresees that in event of insufficient funds, the Minister of Finance may, after obtaining the opinion of the president of NBP and the Chairman of KNF, raise the rate used in establishing guaranteed deposit protection funds by banks (within the defined limits), and may also raise the rate of the mandatory annual contribution for the current year (also within the defined limits) paid by the banks. It may also extend a grant in form of subsidy from the state budget or treasury securities.

In case of credit unions, the Minister of Finance may raise the rate of the mandatory annual contribution for the current year (within the defined limits) or grant a subsidy or a loan from the state budget.

Methodological analysis by Eurostat

Applicable accounting rules

The following accounting rules are relevant for the analysis.

- ESA 2010, Chapter 20 The government accounts
- The Eurostat Manual on Government Deficit and Debt (MGDD), Implementation of ESA 2010, 2014 edition, Part I Delimitation of the general government sector.

Autonomy of decision

Concerning the deposit protection activity of the Fund, Eurostat takes note that the significant majority of the daily activities of the Fund as well as the administrative tasks are specified in a great detail in legislation. In particular, the events triggering the activation of the Funds, the determination of the amounts concerned and the procedure to be followed are pre-described in the above mentioned legal acts. The Fund has some powers as regards the modulation of the members' mandatory annual contributions; however it is limited by the maximum level of the contribution stipulated in the Act on BFG. The legislation also established the rules for allocation of the Fund's assets (Art.16.3 and 16.4 of the Act on BFG) and stipulates the Fund's investment capacities. The range of independent decisions of the bodies of the Fund is limited, being the main decisions (namely those concerning the additional funding) not taken by the Fund itself, but by a different authority. In this aspect of its activities, the Fund acts much like an 'auto-pilot' and lacks the autonomy of decision.¹ Regarding the resolution functions, Eurostat acknowledges that the Fund has wider possibilities for the independent decisions. However, it should be noted that additional activities in the scope of assistance provision can be imposed at any time to the Fund as well as the mode for their implementation (art. 4.3 of the Act on BFG).

All the above confirms that the unit does not have autonomy of decision. Therefore, in terms of National Accounts, the Bank Guarantee Fund does not constitute an institutional unit.

Controlling unit

Having established that the Fund is not an institutional unit according to ESA 2010, the next step is to identify which entity is the controlling unit of the Fund, i.e. who is taking the main decisions related to the protection and resolution schemes.

In this aspect, Eurostat put particular attention into the analysis of the composition and the responsibilities of the Fund Council, as defined in Article 6 of the Act on BFG. Eurostat concludes that 4 out of 8 members of the Council are appointed and dismissed by the government institutions – 3 by the Minister of Finance and one by the Chairman of the Polish Financial Supervision Authority. In addition, the Chairman of the Fund Council, appointed by the Minister of Finance, has a decisive vote in case of the tie vote.

Moreover, there are cases foreseen in the legislation where the Minister of Finance may directly intervene in the activities of the Fund. This relates particularly to the situations when the guaranteed deposits funds established by banks and available own funds of the Fund turn out to be insufficient. In such events, the Minister of Finance can take decision on granting the addition funding to the Fund. It may raise the rate used in establishing guaranteed deposit protection funds by banks (within the defined limits), and may also raise the rate of the mandatory annual contribution for the current year (also within the defined limits). The Minister of Finance may also extent a grant in form of subsidy from the state budget or treasury securities. It applies for the bank's deposits and, with some modulation, for the credit unit deposits.

¹ The fact that the Fund has financial and administrative autonomy according to the legislation does not necessarily mean that it has, in practice, autonomy of decision in ESA terms.

In addition, the Minister of Finance may determine, by the way of a regulation, additional activities of the Fund in the scope of assistance provision for the entities covered and the mode of their implementation (Art. 4.3 of the Act on BFG).

Furthermore, the Fund is supervised by the Minister of Finance on the basis of the criteria of legality and compliance with the Statute. In case irregularities, the Minister of Finance may request the Fund Council to recall the member of the Fund Management Board responsible for the occurrence of irregularities.

The financial report of the Fund is approved by the Council of Ministers. The refusal to approve the financial report by the Council of Ministers leads to the dismissal of all the members of the Fund bodies (Art. 17.5 of the Act on BFG).

Taking all the above elements of control into consideration, Eurostat is of a view that the government (i.e. Ministry of Finance) is the controlling unit of the Bank Guarantee Fund. Hence, the Bank Guarantee Fund should be under ESA2010 classified in the same sector as its controlling unit, i.e. in the general government sector (S.13).

Conclusions

Eurostat considers that the Bank Guarantee Fund mostly functions as an "autopilot" unit, in the sense that limited scope of decisions need to be taken in the day-to-day management and the Funds being passive holders of assets/liabilities. The normal activity of the Fund is clearly set in the related legislations both at national level and at European Level².

The Bank Guarantee Fund is controlled by the government through voting rights in the Fund Council as well as a number of cases where the Ministry of Finance has a right to intervene and take direct decision influencing the functioning of the Fund. In particular, it refers to obtaining non-regular resources when the available own funds of the Fund are not sufficient. Therefore, the BGF is not an institutional unit as defined in the ESA 2010.

Therefore, the Fund should be classified in the same sector as its controlling unit, i.e. in the general government sector (S.13) since its creation and the impact should be recorded in the quarterly and annual government accounts as well as in the EDP figures.

Procedure

This preliminary view of Eurostat is based on the information provided by the country 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. To this end Eurostat would request to be informed of the final details of the operation (contract and accompanying papers where relevant) when they are available, or (should this be the case) information that the planned operation has been abandoned.

² Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes and Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

Eurostat intends to publish this methodological advice on the Eurostat web site. In case you have objections concerning this specific case, we would appreciate if you let us know. In any case (regardless of whether you have objections or not) we would like to receive an answer from you on the issue no later than **30 September 2014**.

Yours sincerely,

Luca Ascoli
(e-signed)
Head of Unit