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Assunto: Statistical treatment of a concession sale before privatisation

Dear Mr. Lequiller,

Thank you for your letter stating Eurostat's final view on the statistical treatment of ANA's concession contract sale before privatization.

INE thanks Eurostat for the long discussion on this subject. The discussion is now closed after the examination of all relevant documentation, notably the concession contract with ANA and the results from the privatization process.

Eurostat's advice was asked by INE given the complexity, the amount involved and the timing of this operation along with the fact that the MGDD is not sufficiently explicit on the recording of one-off operations involving the sale of a non-financial intangible non-produced asset before a privatization, as recognized by Eurostat's letter of 14 September 2012.

In the initial request for advice, INE has expressed doubts if the sale of the concession contract before the privatization of ANA would change the usual treatment of a sale of a non-financial intangible non-produced asset as a non-financial operation.

The nature of this type of assets is such that the fact of being used before for production of services does not imply a reduction of their economic value due to their depreciation. In fact, the economic value of a concession contract for a period in the future can be approximated by the present value of the stream of net revenues estimated to be provided by the asset throughout that period.

Furthermore, INE has presented three additional arguments:

1. There were no **enforceable ownership rights** by ANA over the concession before the signature of the concession contract in 14 December 2012, because: (i) since the creation of ANA as a corporation under public ownership it was explicitly foreseen that the assignment of the concession of the airport civil service would be settled through the respective concession contract<sup>1</sup> and reinforced in the successive

<sup>1</sup> N° 3 of article 12° of Decree-Law n° 404/98 of 18 of December.



decree-laws<sup>2</sup> <sup>3</sup>; (ii) there was no specification of the terms of trade of the concession (onerous or for free) and there was a lack of an *ex ante* transfer possibility (renting or selling) by ANA;

2. **The changing economic environment from public to private ownership** reinforces the need for a concession contract not only because it was foreseen since the creation of ANA but also because a contract can only be changed by mutual agreement of both parties. This is not allowed by a concession exclusively and unilaterally derived from a decree-law.
3. Only if the price paid for the concession contract would be higher than its market value, the difference between the two should be considered an equity withdrawal from ANA, because the State would be abusing its ownership rights to unilaterally establish the terms of trade with ANA (not operating on a commercial, arms length basis from government in a **principal-agent relationship** wide concept).

Eurostat's view is based on the belief "that the ownership rights were enforced not only in economic terms (ANA was already benefiting from the permission to operate the airports and this permission was given for free) but also substantially in legal terms (the concession was assigned to ANA in a number of Decree Laws providing a quite detailed framework, including a concession contract)."

"As to the transferability of the concession to a third party", Eurostat refers "that the government itself could therefore impose a transfer of the concession contract to any third party of its choice and at any time, if it wished do to so."

The changing economic environment from public to private ownership only "explain why a concession contract needs to be signed before the privatization takes place" without changing "the treatment of the concession sale as a withdrawal of equity in National Accounts, given that no new value is added to ANA in terms of National Accounts."

The conditions of the arm's length principle "are not met by the relationship between the State and ANA, given that ANA will be still a 100% government-owned entity at the moment of the signature."

INE maintains the opinion that the MGDD is not sufficiently explicit on the recording of one-off operations in the context of privatization involving a sale of a non-financial intangible non-produced asset. In the Hungarian case mentioned by Eurostat, where there was no sale of a non-financial intangible non-produced asset as in ANA's case, the arguments for the decision taken were not sufficiently presented.

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<sup>2</sup> Article 2<sup>nd</sup> of Decree-Law n<sup>o</sup> 33/2010 of 14 of April and N<sup>o</sup> 2 of article 5<sup>th</sup> of Decree-Law n<sup>o</sup> 254/2012 of 28 of November.

<sup>3</sup> Even the basis of concession approved by Decree-Law n<sup>o</sup> 33/2010 of 14 of April (which for the first time provides a detailed framework of the concession) is only applicable when the concession contract is signed, as it is explicitly said in article 2<sup>nd</sup> of the previous Decree-Law.



The high proceeds from the privatization clearly indicates an implicit value of the concession above what was paid by ANA, meaning that there was no extraction of value by the State. The economic meaning of an equity withdrawal is a return of equity to its owner without giving something in exchange. In this case, in exchange for the acquisition of the concession, ANA received a non-financial intangible non-produced asset from the State.

In sum and while maintaining its different view on the substantive nature of the case, INE will apply the advice in the EDP notification of April as previously indicated to Eurostat. For INE the procedure was clear from the beginning, asking for ex-ante advice would not entail that the Eurostat advice should only be followed if it would be convergent with INE's view. Eurostat has the responsibility, granted by the EU institutions, of ensuring that the EDP notifications reflect what it believes to be the General Government deficit and debt across Members States accordingly with ESA 95 rules. INE obviously does not dispute that responsibility and, on the contrary, intends to enhance its cooperation with Eurostat.

Yours sincerely

Carlos Coimbra