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EUROSTAT

Directorate D: Government Finance Statistics (GFS)

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Subject: Recording of cancellation of payables, related to penalties and fines to be paid by CFR Cai Ferate to private energy suppliers

Dear Ms Ciucea,

Following our EDP visit on 19-20 June 2013, we are now in a position to give you our preliminary view on the statistical recording of the cancellation of payables, related to fines and penalties due to accumulation of unpaid bills by CFR Cai Ferate towards private energy suppliers.

1. BACKGROUND AND DESCRIPTION OF THE CASE

During the April 2013 EDP Notification, Eurostat noticed a significant improvement of net lending/net borrowing of CFR Cai Ferate, as well as a significant decrease in payables.

During the EDP visit on 19-20 June 2013, Eurostat further investigated the significant decrease in payables by CFR Cai Ferate. The Romanian statistical authorities explained that the decrease in payables was due to the payment of energy bills towards private energy suppliers as well as to the cancellation of payables, related to fines and penalties due to the accumulation of unpaid bills by CFR Cai Ferate towards private energy suppliers. It was confirmed that the cancellation of payables due to fines and penalties had been recorded as revenue in the accounts of CFR Cai Ferate, which partially explains also the improvement in B.9 of the company in 2012.

The Romanian statistical authorities explained that these debt cancellations had been recorded as a capital transfer in the companies' account due to the fact that it was considered a bilateral agreement between the creditor and debtor to cancel part of the outstanding liabilities incurred by CFR Cai Ferate to private energy suppliers.

In addition to the information provided in the meeting, the Romanian statistical authorities have provided the relevant government ordinance (nr 25/2012), which specifies the conditions under which the Romanian government provides a loan of 769.780 million to CFR Cai Ferate in order to pay the bills towards private energy suppliers. In the ordinance, it is also specified that the loan will be provided by the government only if the private energy suppliers will agree with the cancellation of payables of the company, related to historical fines and penalties. The Romanian statistical authorities provided also several conventions on debt cancellations between CFR Cai Ferate and the five private energy suppliers. These conventions are specifying the conditions and the amounts of the cancelled debt between the individual energy supplier companies and CFR Cai Ferate.

2. METHODOLOGICAL ANALYSIS

After the discussion in the EDP visit and a careful examination of the documents provided by the Romanian statistical institute (NSI), Eurostat has reached the following view.

Analysis of the case

We are dealing with the specific case where private companies have been cancelling some claims towards government. The question is whether this can be seen as a true "mutual agreement" between government and the suppliers or whether it should be considered as an unilateral action by government, without the agreement of the counterparts.

Eurostat's view is that this cancellation does not have the true nature of a mutual agreement, but is rather a unilateral action by government. This is confirmed by the above mentioned government ordinance nr 25/2012, which specified the conditions under which the Romanian government provides a loan of 769.780 million to CFR Cai Ferate in order to pay the bills towards private energy suppliers. In the ordinance it is also specified that the loan will be provided by the government only if the private energy suppliers will agree with the cancellation of payables of the company, related to historical fines and penalties. Furthermore, the government ordinance nr 25/2012, writes that CFR Cai Ferate is on the verge of bankruptcy. It is therefore questionable if, without the so called "agreement" on the cancellation of payables between government and the private energy suppliers, the company would be able to pay at all its debt towards energy suppliers. In fact, the ordinance of government makes clear that government will provide a loan to CFR Cai Ferate (which is the only way for the electricity companies for being paid for the part of their claims) only if the electricity companies will renounce to another part of their claims.

Therefore, despite the fact that the cancellation of payables, related to fines and penalties may legally look as a debt cancellation, it is not to be considered a transaction, but rather as an imposition of the will of government. As a consequence, the cancellation of payables should be recorded as a revaluation of suppliers' receivable and government payables to be recorded into the revaluation account and not as a capital transfer D99.

3. CONCLUSIONS

In line with the ESA 95 rules and the MGDD and the reasoning above, it is Eurostat's view that the cancellation of fines and penalties by electricity suppliers towards government should not be considered as a transaction but as a revaluation of government claims with a corresponding reduction of suppliers' receivables in the Revaluation account.

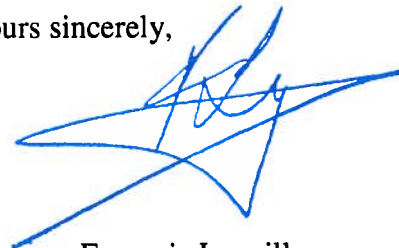
Eurostat therefore asks the Romanian Statistical authorities to implement Eurostat's advice on the issue and to provide the revised 2012 data in the October 2013 EDP notification.

4. 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.

In this context, we would like to remind you that Eurostat is committed to adopting a fully transparent framework for its decisions on debt and deficit matters in line with the amended Council Regulation 479/2009 and the note on ex-ante/ex-post advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat intends, therefore, to publish all official methodological advice (ex-ante and ex-post) given to Member States, 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 12 August 2013.

Yours sincerely,



François Lequiller
Director