

Directorate D: Government Finance Statistics (GFS)

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Subject: Recording of payments related to the reimbursement of social contribution incorrectly calculated in 2011-2012

Ref.: Your letter n. 45353 dated 16 May 2012

Dear Ms Ciucea,

Following your letter under ref., I am now in a position to give you our preliminary view on the statistical treatment of the reimbursement of social contributions for pensioners incorrectly calculated and collected in 2011-2012.

The accounting issue for which a clarification is requested

The ex-ante issue for which an advice is being sought concerns the recording of payments related to the reimbursement of social contribution incorrectly calculated and collected in 2011-2012. In particular, it should be clarified when is the appropriate time of recording of the government expenditure related to the reimbursement established by the Constitutional Court decision, and whether there is any impact on the government accounts.

Documentation provided

The Romanian statistical authorities provided a brief description of the case and of their proposed treatment in national accounts. The Romanian authorities have also provided the Government Ordinance (nr.17/2012) related to this issue as well as an explanatory memorandum of Government Ordinance which specifies the amounts that should be reimbursed and the impact on the government budget.

Description of the case

Between January 2011 and April 2012, due to an incorrect interpretation of the Tax code, the payment of social contributions for health of 5.5% of the pensions was applied for the entire amount of the pension instead of being applied only for amounts exceeding 740 RON. In 2012, the Constitutional Court decided that this percentage was incorrectly applied. In order to implement the Court Decision, the Government issued an Emergency Ordinance establishing measures for the reimbursement of the incorrectly collected contributions.

According to this Ordinance:

- for the amounts already collected between January and March 2011, reimbursement will be made in equal instalments in June-August 2012;
- for the amounts collected between April 2011 and April 2012, reimbursement is planned to be made by December 31 2013

Moreover, the explanatory memorandum of Government Emergency Ordinance nr.17/2012 stipulates that the calculated impact on the government budget related to the reimbursement of social contributions should be 286.100 million lei in 2012 and 1.240.000 in 2013.

Methodological analysis and clarification by Eurostat

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

Applicable accounting rules

Council Regulation 2223/96 incorporates the national accounts concepts and definitions of the European System of Accounts (ESA95) in Community Legislation. In particular, §§ 1.57 and 4.107 concerning the time of recording, are applicable. The third edition of the Manual on Government Deficit and Debt (MGDD) provides further elements for interpreting the accounting rules of ESA95. Of particular relevance in this case is Part II.7 on court decisions with retroactive effect due to the fact that the right of the pensioners to be reimbursed were recognized through a court decision by the Constitutional Court.

Availability of national accounting analysis

The Romanian statistical authorities proposed three possible ways to record these obligations:

- (1) in the year 2011 and 2012, when the formula was incorrectly applied;
- (2) in 2012 when the decision to reimburse these amounts was taken;
- (3) in 2012 and 2013 when the amounts will be effectively reimbursed.

Analysis

Eurostat bases his opinion on the available information concerning the recording of payment obligations established by Court decision with retroactive effect and on the relevant rules of national accounts to be applied in this case. According to the Manual on government deficit and debt, section II.7. , concerning Court decisions with retroactive effect, it is stated that claims and liabilities are to be recorded "*at the time at which there is sufficient certainty about their existence and size*". Furthermore, it also states that "*the timing of recording will depend not only on when the Court decision is made, but also upon when the amount to be paid is known with some certainty*".

As a consequence, due to the fact that the Constitutional Court Decision recognized the right to the reimbursement of the pensioners in 2012, and that the Government Ordinance and its explanatory memorandum, specifying the exact amounts to be reimbursed, were both issued in 2012, the impact on the government account of this reimbursement should be in 2012.

We recall that a cash recording of such amounts in the year in which they will be paid, notably in 2012 and 2013, would be inconsistent with the accrual principle of ESA 95.

Conclusion

Following the above and the national accounts rules on the time of recording following the Constitutional Court Decision and Government Ordinance 17/2012, Eurostat expects that the full amount of 1 526 000 millions (as indicated in the explanatory memorandum of Government Emergency Ordinance nr. 17/2012) should be recorded as government expenditure (and with counterpart "other accounts payable" for amounts not paid in cash) in the year 2012, the year in which this amount has been determined with certainty. It is our understanding that the recording should be done in the second quarter of 2012, taking into account the issuance date of the Government Ordinance 17/2012.

Procedure

There is no explicit Community legislation which governs a procedure by which Eurostat gives its views on operations which have not yet been enforced. Nevertheless, Eurostat is prepared to give a preliminary view on the statistical classification of such operations provided that it is in possession of all of the necessary background information. The preliminary view is given in accordance with the guidelines for ex-ante advice published on the Eurostat web-site.

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 when they are available, or (should this be the case) information that the planned operation has been abandoned.

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 advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat intends, therefore, to publish all future 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 30 June 2012.

Yours sincerely,



François Lequiller
Director