

Directorate C: National and European Accounts

Luxembourg, 11 -02- 2011
ESTAT/C-3/FL/LA/VK/mg (2011) 169459

Dr. Konrad Pesendorfer
Director General
Statistics Austria
Guglgasse 13
A-1110 Vienna
Austria

Subject: Methodological treatment of the debt of the Austrian railway company ÖBB

Dear Dr. Pesendorfer,

The attention of Eurostat has been raised recently by a series of articles in the Austrian press indicating some risks for the Austrian public finances due to a noticeable government financial support to the Austrian railway company ÖBB and its increasing indebtedness.

Following the examination of the available information on the economic performance of the Austrian railway company ÖBB, and taking into account similar recent cases in other Member States, Eurostat would like to express its preliminary view on the methodological treatment of the debt of the Austrian Railway ÖBB.

Background of the issue

The ÖBB Group is responsible for transporting passengers and goods, ensuring the operation and maintenance of railway infrastructure. The Republic of Austria owns 100% of ÖBB-Holding AG, which is the strategic holding company of ÖBB Group. ÖBB-Holding AG holds 100% of the shares in its three subsidiaries, which are ÖBB-Personenverkehr AG, Rail Cargo Austria AG and ÖBB-Infrastruktur AG.

The ÖBB is a public corporation classified outside the general government sector in the Austrian national accounts.

In the past, the government financing of the Austrian company ÖBB was realised via the mechanism of *Rechststrägerfinanzierung*, when government borrowed funds on its own account and provided (lent) these funds to the company (on-lending). In the context of the restructuring of the ÖBB in 2004, government cancelled the related claims against the ÖBB (6.3 bill Euro) which was, following a Eurostat recommendation, recorded in national accounts as a debt cancellation, implying a negative impact on the government deficit.

Since 2005, there has been an indefinite subsidy agreement between the Austrian Federal Government and the ÖBB. The subsidy agreement is based on a so-called "master plan" which determines the investments of ÖBB for the following six year period and must be approved by the Federal Ministry of Transport, Innovation and Technology and the Federal

Ministry of Finance pursuant to § 43 Federal Railway Act 2003 (Bundesbahngesetz). The master plan is to be revised every year (taking into account new investment needs) and extended for another year. Accordingly, the subsidy agreement is also to be renewed annually within the revolving term of six years and extended to the following six years.

A large part of the financing of the infrastructure is undertaken by means of issuing bonds by the ÖBB in the market. As stated in the ÖBB annual report 2009: "*Pursuant to § 47 Federal Railway Act, the Federal Government is obliged to provide ÖBB-Infrastruktur AG with sufficient funds so as to be in a position to comply with its tasks, to maintain its liquidity and to meet its equity requirements. Pursuant to § 66 Federal Budget Act (Bundeshaushaltsgesetz), the Federal Ministry of Finance is authorized to assume, on behalf of the Federal Government, liability for bonds, loans, credits and any other loan transactions, including financial charges, taken on by ÖBB- Infrastruktur AG for financing the railway infrastructure.*"

It is understood that, starting in 2007, new rules for financing of the railway infrastructure construction have been in place. According to the ÖBB annual report 2009, "*ÖBB-Holding Group will continue to raise the funds necessary for erecting new projects on the capital market through subgroup ÖBB-Infrastruktur; however, as from 2007 the Republic of Austria will pay 70% (75% as from 2014) of the amortization instalments and interest expenses distributed over a period of 30 years. The subsidy to be granted, which from today's perspective will amount to 70% (75% as from 2014) of annual capital expenditure, will be constantly reviewed and adjusted according to current requirements depending on future infrastructure rentals, if necessary. In 2009, subsidies amounting to about 222.0 million EUR (prior year: about 137.0 million EUR) were granted.*" It is Eurostat's understanding that these payments from government to ÖBB have been recorded as government expenditure in national accounts.

In addition, as stated in the ÖBB 2009 annual report, "*There are guarantee commitments by the Federal Government for all bonds and liabilities to banks amounting to about 8,961.6 million EUR (prior year: about 8,241.6 billion EUR). Moreover, liabilities to EUROFIMA of about 1,738.9 million EUR (2009: about 1,729.9 billion EUR) are also covered by guarantee commitments by the Federal Government.*" The total debt of the ÖBB group is more than 15 bill Euro (in 2009).

Methodological analysis and clarification by Eurostat

Applicable accounting rules

Council Regulation 2223/96 incorporates the national accounts concepts and definitions of the European System of Accounts (ESA95) in Community Legislation. The third edition of Manual on Government Deficit and Debt (MGDD) published by Eurostat provides further elements for interpreting the accounting rules of ESA95. Of particular relevance in this case is MGDD Part VII on debt related transactions and guarantees.

Analysis

National accounts principles (ESA95) imply that the accounting treatment of operations should reflect economic reality (nature of entities and their economic behaviour), and not legal or administrative criteria. In case of potential or apparent conflict between ESA95 provisions, national accounts decidedly give priority to substance over form.

After an examination of the available documentation on the ÖBB case, and recollection of similar cases in other Member States, Eurostat has reached the following views.

There is clear evidence that the Austrian government is obliged to provide subsidies to the ÖBB on a regular basis in order to cover 70% (75% as from 2014) of the amortization instalments and interest expenses in relation to the debt of the ÖBB. This indicates that debt legally contracted by the ÖBB is in fact being indirectly repaid by the Austrian government. It is understood that the obligation of government to subsidise the ÖBB in order to repay its debt is explicitly stipulated in the official agreement between the Federal Government and the ÖBB which is based on a legal act. It means that for 70-75% of the debt contracted by the ÖBB, the government is "de jure" a debtor, since there is irrefutable obligation for government to repay this part of the debt. Repayment of the debt will be distributed over a period of 30 years.

There is also another important element, namely the existence of government guarantees. According to the 2009 annual report, 10.7 bill Euro of the company debt is guaranteed by the Federal Government. In addition, the following is stated in the report: *"Pursuant to § 47 Federal Railway Act, the Federal Government is obliged to provide ÖBB-Infrastruktur AG with sufficient funds so as to be in a position to comply with its tasks, to maintain its liquidity and to meet its equity requirements. Pursuant to § 66 Federal Budget Act (Bundeshaushaltsgesetz), the Federal Ministry of Finance is authorized to assume, on behalf of the Federal Government, liability for bonds, loans, credits and any other loan transactions, including financial charges, taken on by ÖBB- Infrastruktur AG for financing the railway infrastructure."* Consequently, one might consider that all the risks relating to the debt of the ÖBB are taken by government and so, "de facto" all the debt is to be considered as government debt.

Part VII. 4.2.2 of the MGDD provides guidance for treatment of cases where it is known that government will repay debt. According to the guidance, when it is known with certainty that, despite the borrowing being legally carried out by the corporation, it will be government that repays the borrowing, and there is evidence provided in legal documents, such as the budget, in such cases the debt is considered to be sequentially first issued by the corporation and then assumed by government. The debt assumption should be recorded as capital transfer from government to the corporation.

It is Eurostat view that the evidence about the obligation of the Austrian government to repay 70% of the debt (principal and interest) is irrefutable and thus this part of the ÖBB debt should be recorded as government debt via debt assumption. Debt assumptions should be recorded at time of actual borrowing by the company. If the obligation to pay 70% of the company debt was established in 2007, it is expected that the first debt assumption will be recorded for 2007 and would refer to the debt contracted in 2007. However, the debt assumption may relate also to liabilities incurred before 2007, if the obligation of government to repay 70% of the ÖBB debt relates also to the outstanding amount of debt incurred in the past. If new debt is issued in the following years of the master plan, the debt assumption is recorded in the year of issuance of new debt.

In relation to the government guarantees of 10.6 bill Euro granted to the ÖBB, it should be examined whether there have been repeated guarantee calls and if so, assumption of the related part of the debt should also be considered.

Part VII. 4.2.3 of the MGDD provides guidance for treatment of cases where it is judged that government is repaying or will repay the debt. These are cases where there are repeated calls

on the guarantee. It is recommended to record a debt assumption for the outstanding debt if government repayments of the debt occur in three consecutive years, and this situation is expected to continue.

Similar cases in other Member States

I would like to draw your attention that, in a similar case in France (SAAD), the observation of the functioning of the arrangement for the financing of the railway infrastructure led to the advice, agreed by the French authorities, to consider the related debt as government debt and to record a debt assumption, implying an increase of the government debt as well as of deficit. For further details, see the related Eurostat advice of 6 September 2007 published on the Eurostat website¹.

Some common features could be identified also in the ISPA case in Italy, where most of the risks connected with the financing of the railway infrastructure and the related debt were with government. Consequently, according to the Eurostat decision of 23 May 2005², the debt issued by ISPA had to be recorded as government debt³.

There are also similar cases in other Member States (e.g. in Romania and Slovakia), where the guaranteed debt of several public corporations (including the infrastructure railway company) was recognised as government debt since inception and a debt assumption had been recorded, because there was a clear evidence that the debt will be repaid from government funds.

Conclusion

Eurostat's analysis is that part of debt of the ÖBB is to be considered as government debt, when there is clear evidence that there is an existence of a "*de jure*" obligation to service the debt from government funds. For the remaining part of the debt benefiting from the government guarantees, it should be also examined whether government could be considered as being "*de facto*" liable to repay the debt.

The inclusion of the ÖBB debt into the government balance sheet should be recorded via a debt assumption, where the increase of government liabilities will be counterbalanced through the recording of a capital transfer expenditure. Further related government payments will be recorded as repayment of the government debt (principal and interest).

The revision of the recording of the ÖBB debt and the related transactions should be included in the April 2011 EDP notification.

Open issues

The Austrian authorities are invited to provide Eurostat, by 1st March 2011, with a note:

- describing the current recording in national accounts of government payments to the ÖBB- Infrastruktur, including quantification of the amounts, by year (2006-2010);

1

http://epp.eurostat.ec.europa.eu/portal/page/portal/government_finance_statistics/documents/FR_2007.3_SNC_F_debt_allocated_to_SAAD.pdf

2

http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/publication?p_product_code=2-23052005-AP

3

It should be noted that after the decision of Eurostat was released, the debt of ISPA was legally included in the government balance sheet.

- quantifying the outstanding debt of the ÖBB which should be assumed by government, as recommended above, by year;
- quantifying the impact on the general government deficit and debt of the proposed revision, by year;
- clarifying the recording of transactions relating to the guaranteed debt, specifying possible guarantee calls, debt assumptions, related claims, etc;
- clarifying whether there are any claims against the ÖBB booked in government accounts and if yes, whether there have been or, are expected to be, any write-offs;
- analysing the sector classification of the ÖBB based on the results for 2006-2009, including quantification of sales (of which transfers from government) and costs used for the 50% test, and justification of the amounts paid by government which are considered to be sales.

Role of Eurostat

It is to be recalled that Eurostat's main role is to ensure, with the help of national statistical institutes, and in full independence, that the deficits and debts notified by Member States to the EU Commission in the context of the Excessive Deficit Procedure, as foreseen in the Treaty, are calculated in a sound manner and in compliance with the recognized accounting rules (ESA 1995). Council Regulation 479/2009, as amended, on the quality of the fiscal data also regulates the way Eurostat conducts this work, in full transparency and with powers to change the data or to express reservations in case of doubt on whether the appropriate accounting rules have been followed. The Regulation explicitly foresees the obligation of the national statistical authorities to judge on the appropriate accounting rules, and to call for a Eurostat advice only in case of doubts.

Beyond the adherence to the accounting rules, that Eurostat must scrupulously enforce, Eurostat must guarantee equality of treatment across Member States, which is essential to the credibility of the system as a whole. Whereas Eurostat recognizes the need for a stable accounting framework of ESA 1995 interpretations so to support "*proper policy formulation and government action*", this cannot be at the cost of contradicting accounting rules nor of impairing the equality of treatment across Member States.

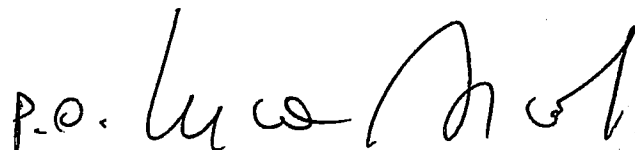
Procedure

This preliminary view of Eurostat is based on the available information on the ÖBB case. If this information turns out to be incomplete, Eurostat reserves the right to reconsider its view.

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, as amended. 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 01.03.2011.

Following your letter under reference, Eurostat would like to receive additional information on the above-mentioned issue in order to be a position to give its opinion on the appropriate statistical case you have presented.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'p.o. Lequiller', written in a cursive style.

François Lequiller
Director