



EUROPEAN COMMISSION



EUROSTAT

The Director-General

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Mr Xavier Musca
Directeur Général du Trésor et
de la Politique Économique
Agence France Trésor
139, rue de Bercy
F - 75572 Paris Cedex 12

Subject: Methodological treatment of the projects on securitisation of the EU receivables by France – ex ante consultation of Eurostat

Your letter: Nr 6663 dated 27 December 2007

Dear Mr Musca,

Following your letter of 27 December 2006, I am in a position to give you our view on the appropriate ESA 95 accounting treatment of a securitisation operation of EU receivables related to the implementation by France of the EU Common Agriculture Policy.

Please find enclosed the methodological analysis prepared by Eurostat on the issue.

The main conclusion of the Eurostat analysis is that there is still considerable uncertainty to which extent the transfer of risks and rewards to the buyer is effectively achieved by the draft contract. At this stage, it is therefore doubtful whether the operation can be considered as a true sale of assets or as government borrowing.

Yours sincerely,

H. Carré

Enclosure

cc.: Mr Jean-Michel Charpin, Director-General of INSEE



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The accounting issue for which a clarification is requested

The issue for which an opinion is being sought is a determination of the correct ESA95 accounting treatment of a securitisation operation of the EU receivables related to the implementation by France of the EU Common Agricultural Policy (CAP).

Eurostat received the first letter on the above mentioned subject on 12 October 2006 and sent to Mr Musca on 30 November 2006 a formal reply that the securitisation operations seemed to have the nature of government borrowing due to an insufficient transfer of risks.

On 27 December 2006 Eurostat received new documents (amended contract) on the project in question, following up on the Eurostat response to and methodological analysis of the initial proposal.

The main differences between the initial proposal of 12 October 2006 and the proposal of 27 December 2006 are as follows:

- transferability: the buyer does not need anymore the consent of the French government to resell the portfolio (or a part) of receivables;
- transfer of risks:
 - the risk of later payments by the EU has been transferred to the buyer; and
 - deletion of the explicit substitution clause.

Methodological analysis by Eurostat

After an examination of the provided information, Eurostat has reached the following provisional views.

As already indicated in our first reply of 30 November, the buyer would be a consortium of financial institutions classified outside the general government sector, which is fulfilling the preliminary condition of a sale by securitisation as specified in the ESA95 manual on government deficit and debt.

In order to determine whether the securitisation operation could be treated as a sale or not, an assessment of the balance of risks and rewards between the two parties involved in the securitisation operation is needed.

Concerning the transferability, it is noted that the buyer does not need anymore the prior agreement of the French government to sell part or the entire portfolio of the receivables in question.

As far as the transfer of risks is concerned, it is noted that if the reimbursement arrives late due to delayed payments from the EU, the bank is at risk, as it will forgo possible interest. Nevertheless, the late interest payments will be transferred to the buyer, if obtained from the

EU. In this respect, we understand that in case of delayed reimbursement, the EU should always pay late interest. Thus, the risk of late payments from the EU would appear de facto non-existent or limited for the buyer.

Concerning the risk relating to a refusal of payment by the EU due to the administrative mistakes made by the French government or to a fraudulent behaviour of some farmers, the scheme foresees an opening of a dispute settlement. Eurostat can not definitively evaluate the transfer of risk in such a case, due to the facts that:

- (1) the conditions under which, and the extent to which, the calculation of the payment made by the Commission can take into account compensatory payments or refusal of clearance that relate to the claim are uncertain (contract clause 7.2(a)(b));
- (2) the conditions under which the responsibility of mistakes lays onto the French government (for instance in case of fraud) are unclear, notably potentially leading to compensatory payments after the dispute settlement period (contract clause 6.1.3(d)(i)(bb) and 7.2(b));
- (3) the amount that the buyer will receive from the French government as compensatory payment is subject to free negotiations between the government and the buyer. No limit for such payment is set in relation to the disputed receivables. It is not clear on which basis the compensatory amounts will be determined, in case that the French government recognises its administrative fault (contract clause 6.1.3(d)(iii)(x)).

Although the contract clause designed to measure, for the purpose of the contract, the payment made by the Commission not technically carried out (because of netting) is generally sound to accommodate specific administrative arrangements in place between national treasuries and the Commission, the contract clause does not seem to explicitly exclude compensations or deductions that pertain to the claim itself. In addition, the contract seems to limit the adverse impact of the "*exception d'inexécution*" even of those that are internal to the claim itself, notably related to mistakes made by the French government or a fraudulent behaviour of some farmers.

Thus, such an absence of clear delineation of what constitutes a French government responsibility and the absence of capping of compensation would be seen as evidence of a possible lack of transfer of risk.

Conclusion

On the basis of the above mentioned consideration, it is Eurostat's view that there are still considerable uncertainties to which extent the transfer of risks and rewards to the buyer is effectively achieved by the draft contract. At this stage, it is doubtful whether the operation can be considered as a true sale of assets or as government borrowing.

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 French 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.

In this context, we would like to recall 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 3605/93 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.

On 5 February Eurostat asked INSEE whether they had any objections if we published the first official Eurostat advice on the issue *Treatment of projects on securitisation of EU receivables by France* (Eurostat letter No. 30345 dated 30 November 2006). The reply from INSEE was received on 9 February stating that Eurostat should directly address DGTPE for the permission to publish the above mentioned methodological advice.

We would therefore like to receive an indication whether there are any specific objections if we would publish both Eurostat methodological advice concerning the *Treatment of projects on securitisation of EU receivables by France*. In case there are objections, we would appreciate to receive them in writing. In any case (regardless of whether there are objections or not) we would like to receive an answer on this issue no later than 14 March 2007.

Eurostat
Directorate C: National and European Accounts
Luxembourg, 2 March 2007