



EUROPEAN COMMISSION



EUROSTAT

Directorate C: National and European Accounts

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Ms Alfonsina Caricchia
Istituto Nazionale di Statistica
Head of National Accounts
Via Cesare Balbo 16
IT - 00184 Roma

Subject: Classification of the social security bodies privatised according to the legislative decree no. 509/1994

Ref.: Your letters dated 29/04/2008

Dear Ms Caricchia,

Following your letter of 29 April 2008, I am in a position to give you our advice on the appropriate statistical classification of the social security bodies privatised according to the legislative decree no. 509 of 1994.

The accounting issue for which a clarification is requested

The issue for which an advice is being sought concerns the sector classification of the social securities bodies privatised by the legislative decree no 509/1994.

Documentation provided

ISTAT's letter (29/04/2008) was accompanied by an analysis on the classification of the social security bodies concerned carried out by Istat, as well as by the following background documents: The legislative decree no.509 of 1994 and the Court Sentence of 12 December 2007.

Description of the case

According to the analysis contained in the methodological note provided by ISTAT, the juridical nature of several social security bodies managing compulsory social security schemes has changed from public statute to private statute by the legislative decree no. 509/1994 which, however, maintained their original function as well as the obligatory participation in the relevant social security schemes. In 1996, the legislative decree no 103/1996, provided for the establishment of new social security bodies for those who have not been covered up to then by any social security scheme. The decree no 103/1996 has also provided for the new bodies to be regulated by the decree no. 509/1994.

We believe that the entities concerned are as of today 100% controlled and owned by government or assimilated entities.

According to the Italian Constitution the compulsory social insurance schemes should be of a public nature. As a consequence, in the framework of the Constitutional requirements, the Italian government has apparently the exclusive right to defining the level of both the contributions and the benefits for the compulsory social security schemes and has exercised that right by modifying the level of contributions and benefits several times since 1994. In addition to that, the Law no 335/1995 aiming at harmonising the conditions of retirement as well as the criteria for defining the level of contribution for the entire system of compulsory pension schemes (both private and public with a view of achieving economic as well as social protection policy goals), included also the social security bodies regulated by the legislative decree no. 509/1994.

According to the Financial Law no 311/2004, ISTAT is required to publish the list of the units included in the general government sector according to ESA 95, in the Official Journal of the Italian Republic. This list includes all bodies managing social security schemes, which have decision-making autonomy and keep a complete set of accounts. Therefore, ISTAT has also included in this list those bodies whose juridical person changed with the legislative decree no. 509/1994.

From 1995 onwards, all Financial Laws introduced expenditure limits concerning all public units included in the list published by ISTAT. In 2005 the Association of Private Social Security Bodies (ADEPP) and the large majority of associates appealed to the competent regional administrative court (TAR, Lazio) against to the Ministry of Labour and Social Security, the Ministry of Treasury, Inps and ISTAT, in order to be excluded from the list of general government units published by ISTAT.

On 12 December 2007, the Court, although acknowledged that including those social security bodies within the general government sector (into the subsector 1314) was fully consistent with the criteria set by ESA95, nevertheless it accepted the appeal deciding that the "inclusion of the appealed institutions into the list of public administrations subjected to a budget constraint" is unlawful.

Methodological analysis by Eurostat

Applicable accounting rules

ESA95 paragraphs 2.74 and 4.88 are applicable in this case.

Availability of national accounting analysis

ISTAT provided a methodological analysis of the case. ISTAT's view is that the social security bodies privatised by the legislative decree no. 509/1994 should be classified in the sub-sector of social security funds of the general government (S. 1314). ISTAT's view is based on the Italian legislation providing that all compulsory social security schemes are subject to the authority of the government, which has the power to settle or approve the level of contributions and benefits regardless of the juridical nature of the social security bodies.

Analysis

After an examination of the analysis and the documentation provided by ISTAT, Eurostat has the following opinion.

Eurostat based its opinion on the rules of ESA95 specifically paragraphs 2.74 and 4.88.

ESA95 paragraph 2.74 states: "*Definition: The subsector social security funds includes all central, State and local institutional units whose principal activity is to provide social benefits and which fulfil each of the following two criteria:*

(a) by law or by regulation certain groups of the population are obliged to participate in the scheme or to pay contributions;

(b) general government is responsible for the management of the institution in respect of the settlement or approval of the contributions and benefits independently from its role as supervisory body or employer (see paragraph 4.89).

There is usually no direct link between the amount of the contribution paid by an individual and the risk to which that individual is exposed."

ESA95 paragraph 4.88 states: "*....Social insurance schemes may be classified according to the following types: (a) social security schemes, covering the entire community, or large sections of the community, that are imposed, controlled and financed by government units; ..."*

Considering carefully the information and the documentation provided by ISTAT, Eurostat agrees with the view that the bodies privatised by the legislative decree no. 509/1994 are of a nature of social security schemes, covering the entire community, or large sections of the community, that are imposed, controlled and financed by government units. Therefore these bodies should be classified in the institutional sector S.13. This opinion is based on the following analysis:

All bodies for which the legislative decree 509/1994 conferred private statutes are managing compulsory social security schemes. While they have decision making autonomy and keep a complete set of accounts, it is the government that settles or approves their policy concerning the level of contributions and benefits. The government is deriving that right from the institutional framework that considers compulsory social security schemes as being of public nature.

Furthermore, it seems that within the institutional framework, several aspects of the policy of all social security bodies, either under private or public legal statutes, are regulated by the same laws. Thus, the criteria for setting the level of contributions and benefits and the requirements for establishing entitlement to pension are fixed by the law no. 335/1995, the protection of maternity is fixed by the law no 151/2001, article 70 updated by the law no. 115/2003 and the law no. 289/2003 providing for the benefits relating to childbirth, and the contribution periods required for establishing entitlement to pension benefits are defined by the legislative decree no. 42/2006.

Government control the level of both contributions and benefits, and in particular the benefits do not depend on a return on accumulated assets, which case is regulated by Decision of 2 March 2004 relating to "defined contributions funded scheme for which there does not exist any government guarantee for the risk of defaulting payments".

We understand that in case of financial difficulties, entities in question are taken over by some government bodies, with the effect of protection pensioners and other affiliated parties from losing accumulated rights, in a manner a de facto guarantee of payment exists. Thus those schemes are financed by government imposed contributions or by government transfers, and can thus be deemed financed by government.

We also note that, according to the legislative decree no. 509/1994, the privatised social security bodies are supervised by the competent ministries which delegate members in the board of auditors as well as in the board of directors of the involved social security bodies. The competent ministries have the authority to designate commissaries in cases of financial problems and appoint liquidators when the financial viability of a social security scheme proves to be unattainable.

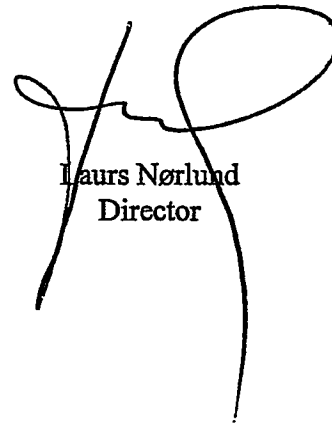
Conclusion

On the basis of the above considerations, Eurostat agrees with the ISTAT's decision to classify the social security bodies under private statutes foreseen under legislative decree no. 509/1994 in the institutional sector general government (S.14) as these are involved in social security schemes, covering the entire community, or large sections of the community, that are imposed, controlled and financed by government units.

Procedure

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 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. 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 20 June 2008.

Yours Sincerely,



Laurs Nørlund
Director