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Mr Gosse van der Veen,
Director General
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Subject: Illiquid assets back-up facility ING bank

**Ref.: MoF email of 5 March 2009,
Our letter of 13 March 2009,
Your letter dated 8 December 2009**

Dear Mr van der Veen,

In your email of 5 March 2009 you made a request for clarification on the appropriate recording of the illiquid assets back-up facility for ING bank.

The accounting issue

Eurostat believes that the issue relating to the correct EDP accounting treatment of the illiquid assets back-up facility for ING bank needs further clarification. The Dutch Statistical Office should be involved in the follow-up. Eurostat would appreciate to have its view on the issue before a follow-up meeting with the Dutch authorities could possibly be organised.

Documentation provided

Statistics Netherlands have provided a description of the case and proposed the accounting treatment.

Description of the case

The Dutch state and ING group entered into a transaction ING illiquid asset back-up credit facility (further – the back up facility). 80% of ING's EUR 27.7 billion portfolio of Alt-A residential mortgage-backed securities (RMBS) is acquired by the Dutch State. This transfer takes place at a discount of 10% of par value. The State therefore becomes 80% of any results of the portfolio.

ING remains the legal owner of the securities involved and will remain exposed to 20% of any results on the portfolio. The State repays the 72% of the notional amount of the securities to ING by fixed payments. ING will pay to Government portfolio cash flows and an annual Guarantee fee, while the government will pay ING an annual management fee and a funding fee.

Initially the Dutch Ministry of Finance considered the deal as having the character of a guarantee with an upward potential. No transfer of assets is foreseen, thus the government deficit/surplus would be impacted by rather small amounts, the guarantee fee, management fee, etc.

Eurostat raised questions and asked for further clarification of the arrangement in the letter dated 13 March 2009.

After their investigation Statistics Netherlands came to the conclusion that the arrangement involved the transfer of economic ownership from the ING group to Government and thus the assets were to be reclassified on government balance sheet. The CBS assumes that the counterpart transaction is a loan from the ING group to government. The guarantee fee is considered as a financial asset and recorded as long term securities (F.332). The time of recording proposed by the CBS is the second quarter of 2009.

Methodological analysis and clarification by Eurostat

After examination of the provided information and reasoning, Eurostat has reached the following views.

Applicable accounting rules

Council Regulation 2223/96 incorporates the national accounts concepts and definitions of the European System of Accounts (ESA 95) in Community Legislation in its entirety and directly applicable in all Member States.

Relevant ESA1995 paragraphs are 5.134, 5.136. The ESA95 Manual on government deficit and debt chapter on cases of Court with retroactive effect is relevant.

Eurostat's decision and corresponding guidance note "*The statistical recording of public interventions to support financial institutions and financial markets during the financial crisis*", dated 15 July 2009 (hereinafter – "Eurostat decision" and "Guidance note").

Availability of national accounting analysis

The Dutch authorities provided a description of the case and proposed the accounting treatment.

Analysis

Classification of the government intervention

With respect to the classification of government intervention, we share the view of the Dutch statistical authorities that in spite of the fact that the ING group is the legal owner of the securities, it is the government who has the economic ownership of the assets covered by the back-up facility, as it is government which takes the majority of risks and rewards taking into account that government not only takes the risk but also is proportionally entitled to the reward.

We take note that the CBS recorded acquisition of securities (F.332) by the Dutch State from ING with a counterpart – synthesized loan (F.42) from ING to the Dutch State.

Valuation of Assets

The Dutch government paid 80% of the nominal value, discounted by 10%, 21.6 billion EUR (or about 72% of the nominal value of securities).

ESA95 paragraph 5.134 reads: "*financial transactions are to be recorded at transaction values*", paragraph 5.136 foresees that where the "*financial transaction is undertaken other than for purely commercial considerations, the transaction value is identified with the current market value of the financial assets and/or liabilities involved*". In case a price paid by government is greater than the market price for the assets, a capital transfer is to be recorded for the difference between the two values at the time of purchase.

Eurostat decision "*The statistical recording of public interventions to support financial institutions and financial markets during the financial crisis*" chapter 6 "*Purchase of assets and defeasance*" provides steps to determine the market price of the financial assets. In this context it is our understanding that there was no market adequately operating, the transaction was undertaken not in a way to determine a market value (i.e. via auction), the price paid was lower (discounted by 10%) than in the business accounts of a seller and the price paid could not be compared to the average price in adequately operating market for similar securities. Therefore we would agree with the conclusion of the Dutch statistical authorities that the price paid could be considered to be a market value of the acquired asset.

Classification of guarantee fee

As the Dutch government has the economic ownership of the assets, and consequently bears all risks and rewards, the classification of so called "guarantee fee" paid by ING to government has to be reconsidered. As in national accounts the transaction is recorded as a true sale and not as a government guarantee, the so called "guarantee fee" in fact does not represent a payment from the debtor to the guarantor. The Dutch statistical authorities in their analysis suggest that the so called "guarantee fee" additionally reduces the acquisition price of securities, thus it is to be recorded as financial asset, long term securities F.332, and not as a transaction in products. In addition the CBS suggests that the "guarantee fee" is to be split in a principal and interest.

Time of recording

The Dutch statistical authorities consider that the transaction took place on 1 April 2009, when it was approved by the DG Competition and it is to be recorded in the second quarter of 2009.

ESA95 Manual on Government deficit and Debt, Part III "Implementation of accrual principle", chapter III.4 "*Cases of Court decisions with retroactive effect*" reads: "... *claims and liabilities may be recorded in the accounts when established with sufficient certainty, when known and accepted y both parties. Generally these characteristics are resulting from: a contractual agreement ...*". When the Dutch State entered into agreement with the ING in January 2009, there was no controversy and dispute between the parties and cash flows occurred already in the first quarter of 2009. The purpose of the screening by DG COMP was not to resolve a disagreement between the contractual parties and there was no certainty that the contract was to be terminated or altered. Considered all of the above, Eurostat does not share the view of the Dutch statistical authorities and believes that the transactions are to be registered in the first quarter of 2009.

Conclusion

On the basis of the above considerations, it is Eurostat's preliminary view that the transaction is to be recorded as acquisition of securities (F.332) by the Dutch State from ING with a counterpart – synthesized loan (F.42). The price paid could be considered to be a market value of the acquired asset. The guarantee fee is to be recorded as long-term securities (F.332) and the transactions should be registered in the first quarter of 2009.

Open issues

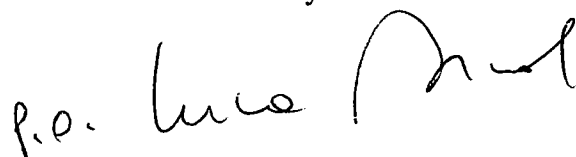
Eurostat would appreciate if the Dutch statistical authorities would keep us informed on their further communication with the DG Competition and all decisions related to the ING case.

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 adopt a fully transparent framework for its decisions on debt and deficit matters in line with 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 is therefore publishing all official methodological advice (ex-ante and ex-post) given to Member States on the Eurostat website. 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 March 2010.

Yours sincerely,

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

Maria Helena Figueira
Acting Director