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Mr Jean-Luc Tavernier
General Director
Institut National de la Statistique
et des Etudes Economiques (INSEE)
18, boulevard Adolphe Pinard
75675 Paris Cedex 14
France

**Subject: Classification of the Fonds de garantie des dépôts et de résolution (FGDR)
in national accounts**

Ref.: Dialogue visit discussion of 25-26 June 2014
Your letter (No. 04/DG75-G401/) sent to Mr Radermacher on the 04th of March 2015
Our letter from 16th of March 2015
Your email on 25th of September 2015
Our Note on FGDR issue from 10 December 2015
Your reply to our Note, from 9 February 2016
Our reply to your Note of 9 Feb 2016, sent by email on 21 March 2016
Your Note to the EDP Notification April 2016 sent on 1st of April 2016
Our email of 8 April 2016, reply to the FGDR issue with reference to your explanatory
note from 1st of April 2016
The Request for clarification in the context of the April 2016 EDP Notification from 14
April 2016

Dear Mr Tavernier,

Thank you for the information provided during the dialogue visit of 25-26 June 2014 and in the above-mentioned letters and notes. After a careful examination of the issue by Eurostat, we take this opportunity to sum up the position of Eurostat concerning the classification of the *Fonds de garantie des dépôts et de résolution* (hereinafter the "FGDR") in national accounts.

This letter consolidates the related correspondence and includes the latest developments, completing it with related references from ESA 2010 and specific legislation, both French and EU.

I. THE ACCOUNTING ISSUE TO BE CLARIFIED

Eurostat expresses its opinion on the correct classification of the FGDR, which is the operator of the deposit guarantee and investment compensation schemes as well as of the resolution scheme in France.

The sector classification of this entity was discussed during the Eurostat EDP dialogue visit to France of June 2014¹ and via further correspondence in 2015 and 2016.

At the same time, the sector classification of ‘statutory protection funds’, and potential addition or revision to the MGDD, was an item discussed in EDP Statistics Working Group (**EDPS WG**) of June 2016². After a review by a dedicated expert meeting on 4–July 2016, a specific questionnaire was launched by Eurostat during the summer 2016 in order to collect the views of EU Member States. The results of the questionnaire³ were presented in the Task Force of methodological issues that took place in September 2016. Based on the replies and the discussion of the Task Force meeting that ensued, there is broad agreement to have a common sector classification of statutory protection funds in the government sector, allowing very limited justified exceptions for specific cases. Eurostat and the other multilateral institutions attending the Task Force support this approach.

Background of the case

In March 2016, INSEE has reclassified the FGDR outside S.13 from 2015 onwards, against the opinion of Eurostat who issued a reservation to this effect⁴.

The **FGDR** is a legal unit under private law created by French law 99-235 of 25 June 1999 relating to savings and financial security, which hosts both the statutory deposit guarantee and the resolution funds. The mission of the FGDR is to serve the public interest and its purpose is to indemnify the depositors in the event of their deposits or other repayable funds being unavailable. By securing customers' assets, the FGDR also helps to ensure the stability of the French banking system.

FGDR operates three separate guarantee schemes:

- a. a Deposit guarantee scheme for the protection of depositors;
- b. an Investor compensation scheme for the protection of investors;
- c. a Guarantee of Performance Bonds for the protection of business professionals.

Prior to September 2015, the legal framework had been reviewed by INSEE and Eurostat and it was judged at that time that important decisions affecting the FGDR were in fact taken by the ministry of finance. Therefore the FGDR was considered lacking autonomy of decision and controlled by government, and was thus classified in general government in the April 2015 notification with the agreement of both INSEE and Eurostat.

In August 2015, the Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions

¹ See Action Point 26 (previous AP27)

² See item [C.8.b - Sector classification of national statutory protection funds](#)

³ 26 Member States plus the ECB and the IMF have provided replies

⁴ Provision of deficit and debt data for 2015 – first notification, Eurostat Press release no.76/2016 – 21 April 2016

and investment firms, known as Banking Recovery and Resolution Directive (hereinafter the "**BRRD**"), was transposed into French legislation by the Ordonnance no. 2015-1024/20.08.2015⁵. This Ordonnance is modifying the *Code monétaire et financier* (hereinafter the "**CMF**"), which concatenates laws taken on the various aspects of money and finance jurisdiction. These new laws also introduced changes to the governance of the FGDR: it appears that under the new framework many important decisions are now taken by the *Autorité de contrôle prudentiel et de résolution* (hereinafter the "**ACPR**"), which is the French banking and insurance supervisory authority.

Setup of the FGDR

The FGDR is headed by a Board of Directors/Management Board acting under the control of a Supervisory Board which comprises 12 representatives of the FGDR's adherents (the Banks). The Supervisory Board nominates the members of the Board of Directors (at least 2 people) and designates its President, who will exercise its functions after the approval of the Ministry of Economy (*ministre chargé de l'économie*). A censor designated by the Ministry of Economy is assisting the Supervisory Board's meetings.

In the following paragraphs, the governance setup of the FGDR under the new legal provisions is described in more detail. The CMF also describes the inter-relations between FGDR and ACPR, and how the ACPR intervenes in the governance setup of the FGDR.

The main actions of the FGDR in which ACPR has a word to say are described in CMF Article L312-5:

- the guarantee mechanism is implemented at the request of the ACPR, and FGDR needs the ACPR's approval for the way of acting;
- the Resolution College of the ACPR can inform the FGDR about a financial institution subject to a resolution decision, asking the FGDR to intervene in favour of the said unit in a way that the Resolution College of the ACPR decides;
- the FGDR can participate, upon request of a central body referred to in CMF Article L511-30, to the action of this central body by taking over part of the cost of measures to ensure the solvency of a credit institution affiliated to the central body or, if deemed necessary by the ACPR, intervene upon request of the latter; when, after the implementation of one or more of the actions taken on the basis of the section 4 of Chapter III of Title I of Book VI of CMF, the assessment mentioned in CMF Article L613-57.II shows a creditor of the person subject to a resolution procedure, or funds deposit guarantee and resolution under the deposit guarantee mechanism, suffered losses higher than it would have incurred if the person concerned was subject to liquidation judiciary as part of Book VI of the Commercial Code, the compensation to which the person is entitled to be paid by the FGDR on the instruction of the Resolution College of ACPR.

⁵ JORF no 0192/21.08.2015

Moreover:

- The CMF Article L312-7 and the Ministerial Decree of 27 October 2015⁶ on the FGDR's financial resources define the conditions relating to the resources of the FGDR, which is financed solely by its members. The payment of contributions to the FGDR is a prerequisite for conducting their business in France. Contributions are paid in the form of dues, or members' certificates or certificates of membership.
- The ACPR decides the way of calculation of these contributions to the deposits guarantee mechanism (CMF Article L312-8-1.I).

According to CMF Article L312-16, a ministerial decree (*ministre chargé de l'économie*) fixes several conditions and modalities concerning the functioning of the FGDR, including in particular and amongst other, the following:

- the conditions, time limits and modalities of the guarantee described in CMF Articles L312-4-1 and L312-5;
- the ceiling of compensation by member and by depositor (or other beneficiary) as well as the conditions under which this ceiling can be passed over;
- the legal characteristics of the association certificates as well as the ceilings to which the FGDR can resort to such certificates;
- the criteria which the ACPR takes into account in order to give the opinion described in the 3rd paragraph of CMF Article L312-10.I. These criteria relate in particular to the minimum amount of financing means, which the FGDR must have in its disposal in order to exercise its missions mentioned in CMF Article L312-5;
- the conditions and time limits in which a part of the contributions to the FGDR can remain unpaid;
- the conditions of intervention of the FGDR and the calculation of contributions of the members in case of application of a guarantee regime described in art. 120 of the Law 2008-1443 for the Finances, as amended;
- the modalities of calculation of the votes of the members for the election of members to the Supervisory Board;
- the conditions under which, under the authority of the Resolution College of the ACPR, the FGDR collects and transfers the part of contributions mentioned in CMF Article L312-8-1.II;
- various other conditions (9^o – 15^o of the same article) prescribing the FGDR's role, applicable ceilings, modalities of functioning, levels of intervention, and the conditions under which the FGDR can intervene in various situations.

⁶https://www.garantiedesdepots.fr/sites/default/files/arrete_du_27_octobre_2015_pour_application_du_4deg_l_312-16_comofi.pdf

Setup of the ACPR

The **ACPR** is charged with preserving the stability of the financial system and protecting customers, insurance policyholders, members and beneficiaries of the persons that it supervises. The ACPR's statutory objectives are set out in CMF Article L612-1.

The structure of the ACPR is mainly based on two different and independent decision-making bodies:

- the **Supervisory College** – which decides on all matters of the ACPR, except resolution;
- the **Resolution College** – which is tasked with supervising the preparation and implementation of measures to prevent and resolve banking crises.

There is also the Sanctions Committee – which can decide independently the type of sanctions to be applied for a specific case, but the decision to apply sanctions lies with the Supervisory College or the Resolution College (depending on the nature of the case).

The secretariat of the ACPR is ensured by the Banque de France staff, notwithstanding the need for appropriate 'separation' when conducting tasks for the Resolution College (see below). The governor of the Banque de France chairs both the Supervisory and Resolution Colleges. He proposes the name of the general secretary (*secrétaire general*), who is however appointed by the ministry of finance. The general secretary seems to be the real administrative head of ACPR, as (among others responsibilities) it organises and manages the ACPR services (CMF Article L612-15) and makes proposals to ACPR to decide/establish and spend its own budget (CMF Article L612-18).

The Supervisory College of the ACPR

As defined in CMF Article L612-5, the Supervisory College consists of 19 members:

- a) the president of the college is the governor of the Banque de France;
- b) the president of the Financial markets authority (*Autorité de marchés financières*);
- c) two members chosen on the basis of their competence in financial & judicial matters and on insurance and banking matters; chosen by the president of the National Assembly and the President of the Senate respectively;
- d) the president of the Accounting standards authority (*Autorité de normes comptables*);
- e) one member of the Council of State (*Conseil d'Etat*), proposed by its vice-president;
- f) one member of the High Court (*Cour de cassation*), proposed by its first president;
- g) a senior auditor in the Court of auditors (*Cour des comptes*);
- h) a vice president and two other members; these are chosen on the basis of their competence in insurance, customer protection, quantitative or actuarial techniques or other similar useful expertise, by the relevant authority of these domains;
- i) eight other members, chosen on the basis of their competence in various relevant domains (banking, insurance, etc.).

A ministerial decree (*ministre chargé de l'économie*) appoints for 5 years the members mentioned in points e) to i), with the exception of the vice-president who is appointed by a joint decree of the ministers responsible for economy and for social security, after receiving

a positive recommendation from the commissions of finance of the National Assembly and the Senate.

Aside from the fact that three members are civil servants and two members are head of public entities appointed by government, five members are chosen and directly appointed by government, either the executive or legislative branches or related agencies, and most members are finally appointed by government as implied in CMF Article L612-5. This arguably provides some influence over the Supervisory College, which is albeit likely to be insufficient on its own to deem ensuring government control, in the sense of the ESA 2010 and MGDD.

The budget and internal functioning and organisational issues of ACPR are decided by this college in plenary format (CMF Article L612-12), although the resolution part of the ACPR has its own section decided by the Resolution College. Specific issues are decided by a "restricted format" of the college, comprising 8 members, two of which are the governor of the Banque de France (president) and the vice-president. The remaining 6 members are chosen by the college, between the members of positions d) to i) (CMF Article L612-6).

In any formation of the college (full or restricted), decisions are taken by majority. In case of equal votes, the opinion of the president prevails (CMF Article L612-13).

The Resolution College of the ACPR

The composition of the Resolution College is defined in CMF Article L612-8-1. The 6 members are as follows:

- a) the president of the college is the governor of the Banque de France;
- b) the Treasury Director - participates in the meetings and has a veto on a broad number of decisions (CMF Article L612-8-1-I); by contrast, the Treasury director may also attend the meetings of the Supervisory College, but cannot take part in the votes (CMF Article L612-11);
- c) the president of the Financial markets authority (*Autorité de marches financières*);
- d) the vice-governor proposed by the governor of the Banque de France;
- e) the president of the Commercial, financial and economical chamber (*Chambre commerciale, financière et économique*) of the High Court (*Cour de cassation*);
- f) the president of the Board of Directors/Management Board of FGDR.

The decisions are taken by majority. In case of equal votes, the opinion of the president prevails (CMF Article L612-13). The Treasury Director, however, has veto rights for decisions “*that could impact, immediately or later, public finance, or having significant impact on the financial system or on the economy*” (CMF Article L612-8-I). Thus, it appears to Eurostat that the Treasury Director has a veto right on a very broad scope of key decisions.

The Resolution College has its own separate budget (CMF Article L612-8-1-III), reflecting the EU legislation (BRRD) requirement for a ‘separation’ of supervisory and resolution function, thus explicitly foreseeing a ‘Chinese wall’, where the Member State designates the authority responsible for the prudential supervision of institutions as a NRA.

The Supervisory College and the Resolution College make also decisions that may have an impact on FGDR and especially on the level of its resources (CMF Article L312-8-1).

II. METHODOLOGICAL ANALYSIS AND CLARIFICATION BY EUROSTAT

II.1. Accounting provisions

Institutional units and groupings of units are defined in ESA 2010 chapter 2. The general government sector is further defined in ESA 2010 chapter 20. Moreover, chapter I.5 of the MGDD deals with the sector classification of units engaged in financial activities and has a specific section for so-called ‘protection funds’.

II.2. Eurostat's analysis

The FGDR provides coverage for depositors and investors and supports institutions in distress by financing different kinds of measures. As such, it can be considered a protection fund, as defined in the MGDD chapter I.5.

The analysis to determine the appropriate sector classification of the FGDR starts with examining the interrelations between five entities: the FGDR, the ACPR Resolution and Supervisory Colleges, and the Banque de France and the State (section II.2.a). It then elaborates on a direct interpretation of ESA 2010 for classifying ‘statutory protection schemes’, which is currently under review in European statistical circles, which may ultimately lead to a clarifying update of the MGDD (section II.2.b). It finishes with using the usual decision in tree, in the context of existing MGDD 2016 guidance.

II.2.a) FGDR and the ACPR Resolution and Supervisory Colleges

The description of part I have clearly established that the analysis must be carried out with respect to three separate entities: the FGDR, the Resolution College, and the Supervisory College. In the rest of the analysis, the plausible links between these entities remain to be established: between themselves and also in relation to the Banque de France and the State – essentially to determine (i) who is its parent, if a given entity is not considered being an institutional unit, or (ii) otherwise who controls it.

The ACPR itself is likely not to be found an institutional unit, being constituted by two independent boards dealing with two separate activities with two different budgets. Certainly, the secretariat of the ACPR is constituted by one of the Directorates of the Banque de France, in a manner that the Supervisory College and its activities may be considered a local kind-of-activity Unit (KAU) of the Banque de France. However, even if the staff of the Resolution College is drawn from the Banque de France, it must be separated according to EU legislation (Chinese wall), in such a manner that it puts in doubt that the former would also be seen as a local KAU of the Banque de France.

In this context, there are reasons to believe that the parent of the FGDR is the Resolution College and that the parent of the latter is the State rather than the Banque de France (section II.2.c will detail this).

One important difficulty is to determine whether each analysed entity has autonomy of decision, which involves borderline cases. In contrast, it may be simpler to identify the parent of an entity, i.e. the entity that owns or that controls it. As an example, the fact that Banque de France may not be allowed to finance the FGDR or the Resolution College activities would seem to prevent to recognize the former as parent of the two latter.

Autonomy of decision for protection funds

Indeed, as pointed out in the MGDD chapter I.5, protection funds often act much like "auto-pilots", in particular with respect to the 'activation decision', in a manner that could challenge the autonomy of decision required to recognise these entities as institutional units under ESA 2010.

According to the MGDD, one crucial point is to assess whether the governing body of such entities is entitled to take relevant decisions, or whether relevant decisions would have to be confirmed by another authority.

The MGDD indicates that while the 'activation decision' is mainly automatic – as concerns guarantee funds – important criteria to judge the autonomy of decision are the funding decisions: first, the fixing of regular contributions; second, and more crucially, the decision on exceptional funding (exceptional contributions, grants and/or loans).

In relation to this, the mere fact that an entity could force the Treasury to finance it, suggests extraordinary powers and that the entity is governmental in nature.

II.2.b) General analysis of statutory protection funds

The FGDR was set up by government by enacting legislation in the context of conducting public policies. It is a statutory protection fund in the sense that it is established and regulated by law and not by contractual agreement. Therefore, it would rather likely meet the criteria of being a 'government unit' as per ESA 2010 20.06 to 20.12, to the extent that it is conducting activities that are generally within the remit of government prerogatives: notably redistribution of wealth, quasi-executive or quasi-judicial powers.

Public policy purpose of protection funds and nature of their activity

ESA 2010 20.06-20.07 state that:

- *"government units are legal entities established by political process which have legislative, judicial or executive authority over other institutional units within a given area. Their principal function is to provide goods and services to the community and to households on a non-market basis and to redistribute income and wealth"*
- *"a government unit usually has the authority to raise fund through compulsory transfers from other institutional units".*

Compliance with the EU Directives on deposit guarantee schemes⁷ and banking resolution⁸ is an obligation for EU Member States and the transposition into national legislation is normally the responsibility of the respective governments. As a result, most EU governments have established protection funds by enacting specific legislation that are referred to as "statutory" or "government sponsored".

Given that such statutory protection funds are set up by governments for financial stability purpose and that it is the obligation of Member States to have in place such arrangements in

⁷ [Directive 2014/49/EU](#)

⁸ [Directive 2014/59/EU](#)

which participation is compulsory, it could be concluded that their function is to pursue public policies. They are akin to autonomous government agencies that conduct what are essentially government policies. Moreover, the legislations enacted the funding of these entities by raising funds through compulsory transfers from financial corporations.

Regarding resolution, it is worth mentioning that resolution authorities can, in the name of financial stability, decide to cancel part of the claim or even the whole claim held by creditors, outside normal liquidation procedures. Such extraordinary prerogatives are government in nature, e.g. redistributing wealth or exercising quasi-judiciary powers. The related resolution fund would provide the financial resources needed to undertake the measures as decided by the resolution authority. The fact that EU resolution mechanisms were designed to ensure financial stability without any more putting taxpayers at risk (promoting bail-ins instead of bail-outs) does not preclude classifying resolution entities inside government together with the assets they maintain. Indeed, liabilities of general government are not necessarily indirect obligations of taxpayers (as long as the government entity does not benefit from statutory or contractual guarantees).

Another redistributive character of the protection funds is the relative insensitivity of the fees collected to the risk that is being 'insured', implying an intention to redistribute. This insensitivity is also carried out for policy reasons, also in due consideration of signalling effects.

Concerning government-sponsored deposit guarantee schemes, there is often a legitimate doubt regarding their genuine activity or production, and who is the effective purchaser of the service to be provided. In general, when no purchaser or beneficiary can be easily identified, this may point at a collective consumption (by government). Although sometimes perceived as conducting some kind of insurance activity, one may wonder if the risk covered by deposit guarantee schemes does not, in fact, belong to the 'uninsurable risk' category or, alternatively, to nonmarket insurance in the absence of competition (or in view of the fact that the fee collected is not commensurate to the risk and much lower than what willing insurers would charge, thus containing a redistributive element). Indeed, the fact that fees are considered as taxes (MGDD chapter I.5 paragraph 14) may suggest that guarantee funds are not selling services to insured banks (or to depositors).

Taking into account that units should be classified inside government according to the economic nature of their activity, it could be concluded that protection funds sponsored by government should be classified in the government sector.

The arguments above are mostly relevant for entities created or sponsored by government. By contrast, guarantee funds that would be voluntarily organised by banks, private investors, foreign insurers or other specialised parties, outside the sponsorship of government, could be treated differently, and their fees could presumably be considered as payments for a market service.

Notwithstanding the above, the usual criteria for assessing the sector classification of entities can be analysed as well, for cross checking purposes, which is carried out in section II.2.c below. For these entities, the difficulty would be mainly to determine whether they can be considered institutional units and, in particular, whether they have autonomy of decision. The EU Directives for deposit guarantee and for banking resolution already narrowly define the framework, the funding and the main activities for the related protection funds, seeking harmonisation across MS. This general framework is then transposed into

national legislation, normally narrowing further the conditions under which these entities operate. As a result, autonomy of decision may be questioned.

II.2.c) The analysis using the traditional decision tree for the FGDR

For sector allocation of the FGDR there are three main aspects to assess: *i.* the autonomy of decision, *ii.* the economic nature of its principal activity (its market or nonmarket character) and *iii.* if the government exercises control. As indicated in section II.2.a, a complicating factor is the need to find the parent of the FGDR, if it is found to have no autonomy of decision.

i. Autonomy of decision

FGDR and potential parents

Both INSEE and Eurostat agree that the FGDR does not seem to have sufficient autonomy of decision by itself, in the meaning of ESA 2010 – being essentially an autopilot. As a result, one needs to identify who is the parent of the FGDR: the Resolution College, the Supervisory College, or directly the State or Banque de France.

INSEE and Eurostat also agree that the ACPR is not – a priori – in itself one institutional unit, but comprises two separate entities (the two Colleges). In case the parent of the FGDR is either of the two Colleges, the issue is then whether the FGDR taken together with the College deemed to be its parent has autonomy of decision, or not, and if not who, in turn, is the parent of these two entities grouped together.

The State as potential direct or indirect parent of the FGDR

The list of conditions set in CMF Article L312-16 is detailed and exhaustive, and strictly pre-defines the conditions and modalities under which FGDR and the ACPR Resolution College can function. The FGDR can therefore be viewed as an "auto-pilot": all important conditions and modalities are pre-defined by ministerial decrees.

Even if some of these conditions and modalities follow as a consequence of transcribing the BRRD into French law, Eurostat holds the view that the specific transcription of the BRRD into French law imposes a significant control by government on the functionality of the FGDR, even after the new legislation enacted in 2015, in such a manner that the FGDR parent could be considered as the State. The articles describe conditions for any decision to such an extent and detail that the remaining "room of manoeuvre" for the FGDR (and its controlling unit) is indeed minimal, if existent at all.

The ACPR has some decision powers on some issues, but this is de facto not so decisive, as one of the most relevant constituent of ACPR (namely, the Resolution College) is in fact controlled by government (through veto powers). As a result, according to another line of reasoning, the State may still be the parent of the FGDR, albeit only indirectly.

Respective role of the Supervisory College and Resolution College

As can be seen from various articles of the CMF and related ministerial decrees⁹, the ACPR has only an advisory role in many cases, the functions and procedures to be applied by the FGDR and the ACPR being predetermined in a great extent and detail. The aforementioned ministerial decrees describe in detail all the applicable procedures and modalities to be used by the FGDR and the ACPR in application of the CMF.

This is the case, for example, of art.2, par. D of the Ministerial Decree of 27 October 2015¹⁰. This paragraph specifies that the Supervisory College of the ACPR computes the contributions of the members of the FGDR. The article defines in detail the procedure and time limits within which the FGDR and the ACPR can issue opinions and deliberations. Additionally, as already mentioned, (CMF Article L312-16) the ministry (*ministre chargé de l'économie*) pre-defines the criteria that the ACPR can take into account for a number of decisions.

By contrast, the college of resolution of the ACPR can seize the funds of the FGDR, including funds of the deposit guarantee compartment of the FGDR, in a number of resolution cases (CMF Article 312-5.III). The college of resolution can de facto mobilise resources of both the Deposit Guarantee and the resolution departments of the FGDR. Therefore, it is our view that the FGDR can be seen as ancillary to the Resolution College's activity (and not to those of the Supervisory College). In any case, these decisions (to use the funds in the context of resolution) lie entirely with the Resolution College.

Thus, the role of the Supervisory College concerning the FGDR relates to more secondary aspects, such as determining contributions (within strict limits defined by legislation). As a result of this, following both the letter of the MGDD and general principles, in case the parent would not be deemed to be the State but one of the two Colleges, the parent would necessarily be the Resolution College.

The State as parent of the Resolution College

Government controls resolution through the college of resolution of the ACPR, in which the Director of the Treasury has a veto for all important decisions. As such the State may be thought as the parent (not Banque de France) of the Resolution College, in case the latter would not be found to be an institutional unit.

Article 3 par. 6 of the BRRD requires that the resolution authority must inform the competent ministry (of its decisions pursuant to the Directive) and "*unless otherwise laid down in national law, have its approval before implementing decisions that have a direct fiscal impact or systemic implications*".

Thus, the ministry's approval would be required before implementing a decision, and not before taking a decision in the first place. The Directive leaves room to the Member States to lay down different provisions in national law regarding this point.

The French transposition of the BRRD appears to Eurostat to be imposing stronger conditions, in that no material decision of the resolution authority can be adopted without

⁹ the Ministerial Decrees are listed in the website of the FGDR: <https://www.garantiedesdepots.fr/en/document-database/official-texts>.

¹⁰ *Arrêté pris pour l'application du 4° de l'article L. 312-16 du code monétaire et financier du 27 Octobre 2015*

the approval of the Treasury Director. Thus, we maintain that, as a result of the specific veto power of the Treasury Director, the control power is given to government. No important resolution decision can be taken without the agreement of the Treasury Director, which is a clear indication of government control according to ESA 2010 or MGDD.

In fact, as any decision on a resolution project would have as a consequence an impact on the FGDR resources and on the contributions, we may conclude that the agreement of the Treasury Director is vital for all key decisions impacting the FGDR.

Apart from the above, as defined in the Ministerial Decree of 27 October 2015 for the application of CMF Article L312-16¹¹, the State directly bears the costs of guaranteeing the amounts of the so-called 'Livrets A' accounts. Therefore, it is government that is directly responsible to pay any compensation covering said amounts, although the FGDR would be tasked to carry out the administering in case of activation of the guarantee.

The case of the 'Livrets A' is another example of government assigning tasks to the FGDR and legislating about the FGDR in a manner that puts a question mark on its autonomy. Parenthetically, the guaranteeing of 'Livrets A' as part of government activities may easily suggest that the entity guaranteeing other deposits is indeed also carrying governmental tasks.

For all the above reasons, Eurostat considers that the Resolution College of the ACPR is clearly under government control and it is Eurostat's view that, in practice, government controls the FGDR, through various means, and that the FGDR should therefore remain in S.13.

Banque de France as implausible direct or indirect parent of the FGDR

It is not very plausible to argue that the direct parent of the FGDR is the Banque de France, given the lack of direct involvement of Banque de France in FGDR affairs except through the Resolution College. In addition, the fact that Banque de France cannot finance the FGDR as this would be against EU law makes it unlikely to be a plausible parent. Finally, one question is whether the published consolidated accounts of Banque de France include the FGDR in its perimeter.

In summary

To sum up, in Eurostat's view, the FGDR is largely an auto-pilot and thus lacks autonomy of decision. In determining who is its parent (who controls it, or owns it), Eurostat's view is that it is either controlled directly by government, or alternatively via the ACPR. Most important decisions are decided by Government, either way.

Autonomy of decision of the FGDR+Resolution College

If it was established that the parent of the FGDR was the ACPR Resolution College, one would need to establish if the two entities together (FGDR+Resolution College) had autonomy of decision. Eurostat believes that arguments may be put forwards in favour and against. The fact that the Resolution College does take crucial decisions would point to answering by the affirmative. However, the numerous ministerial interventions, including

¹¹ [Arrêté pris pour l'application du 6° de l'article L. 312-16 du code monétaire et financier du 27 Octobre 2015](#)

the veto rights of the Treasury on key day-to-day decision (not only on strategic orientations of the entity), would point to the negative.

However, there is no need to decide on this delicate issue, because, in both cases, the entity FGDR+Resolution College is to be consolidated with general government – given the answers to point ii below.

Segregated assets

A curious objection has been raised arguing that FGDR assets are earmarked for deposit guarantee and for resolution, and thus cannot be used by the Treasury for other purposes, this would prevent classifying the FGDR inside general government. However the existence of segregated assets is not a classification criterion. The Treasury has no direct access to other government units' cash, unless a cash-pooling arrangement is established voluntarily between units.

The fact that Banque de France treasurer would neither be able to tap these earmarked assets would not preclude classifying the FGDR inside the central bank sub-sector either – in case the Banque de France would be analysed to be the parent.

ii. Economic nature of its principal activity (market/nonmarket)

The FGDR hosts the statutory deposit guarantee scheme and the resolution fund set up by the French government in order to comply with EU legislation. Its main role is to pursue public policy objectives (financial stability) and it is mainly financed by raising funds through compulsory transfers from financial corporations, considered to be taxes by the MGDD. It has already been noted that, given the way they are set-up, these fees contain a clear redistribution element.

In addition, the fees are largely fixed by legislation, which make them unlikely to meet the economically significant test. They cannot be easily assimilated to insurance fees, either because what is supposed to be insured in fact belongs to the 'uninsurable risk' category or, alternatively, to nonmarket insurance, in the absence of competition (as the fee collected is much lower than what would be charged by willing insurers and not commensurate to the risk, thus containing a redistribution component).

More in general, the fees do not meet the economically significant price criteria, as they are not set in a manner that can effectively affect the supply and the demand of the 'service' provided (ESA 2010 20.19).

Eurostat's view (nearly unanimously supported by NSI) is that statutory protection funds established by government to perform some government policy have a nonmarket character, and these units do not produce an output meeting the market criteria.

iii. Control (public/private)

In the decision tree, the control criteria amount to deciding whether the institutional unit is public or private. In this case, there is no dispute that the FGDR is publicly controlled.

Any nonmarket subsidiary of a public market producer needs to be reclassified inside government. This would be the case for instance if the FGDR+Resolution College were to be considered an institutional unit controlled by the Banque de France. Then, even in this case, the entity would need to be classified inside general government.

II.2.d) Summary of the analysis

In sum, taking into account all of the above, the situation as regards the FGDR and the ACPR can be summarised as follows:

1. The ACPR comprises two main entities: the Resolution College and the Supervisory College, aside from the Sanctions Committee. Given that the Sanctions Committee has only disciplinary powers, we conclude that the core functions and decisions of the ACPR are undertaken by the Supervisory College and the Resolution College.
 - a. Notwithstanding further information that may point towards a different conclusion, the Supervisory College together with its secretariat (a department of the Banque de France) may be classified in the central bank subsector S.121, notably on consideration that its staff is part of the Banque de France and given that the influence of government does not seem to amount to having control.
 - b. The Treasury Director has an important veto power on the Resolution College's material decisions (those involving resolution activities), notably on any decision that would require exceptional funding. Given this veto power and the nature of its activity, the Resolution College together with its independent budget is to be classified in the central government subsector S.1311.
2. In practice and de facto, the leading player in the ACPR with respect to the FGDR activities is the Resolution College. This is because, as noted in the MGDD, the most critical condition to determine the classification of a 'protection fund' is who decides on exceptional resources. In this case, clearly the Resolution College will have the lead role, not the Supervisory College.
3. In the context of a resolution activity, the Resolution College can seize all funds of the FGDR: not only the funds of the resolution compartment but also the funds earmarked for deposit guarantee if needed.
4. Eurostat has good reason to believe, based on recent experience in other Member States, that in practice the resolution activity will take the lead in a real banking failure case, in place of an outright liquidation (that would immediately trigger activation of the guarantee fund). Therefore, the Resolution College de facto will act first in a real case, should it be necessary. The guarantee compartment is thus ancillary to the Resolution College, a unit classified inside government.

III. CONCLUSION

The FGDR is a statutory protection fund, set up by the French government for financial stability purpose, following the transposition of EU Directives into national legislation. It can be considered that it carries out public policy purposes and it is mainly financed by compulsory transfers from financial corporations.

Following ESA 2010 20.06-20.07, it would therefore be classified as a government unit considering the economic nature of its activity.

Moreover, the traditional analysis applying the usual decision tree, based on existing MGDD guidance and ESA 2010 principles, yields the same result of classifying the FGDR inside government (presumably together with the Resolution College).

Although the legislation is quite complex, it is our view that, in effect, government controls the FGDR in two main ways:

- a. First, directly, through legislation (e.g. CMF Article L312-16 and the related ministerial decrees);
- b. Second, indirectly, via the ACPR's Resolution College, because government has a significant veto power over any material decision of the Resolution College and the Resolution College can use the funds of the FGDR for a resolution activity, if necessary.

Based on the elements above, Eurostat considers that, following ESA 2010 rules, the FGDR must be classified in the general government sector. This view is in line with recent advice provided by Eurostat concerning the classification of similar entities in other EU Member States.

IV. PROCEDURE

This 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, or there may be inaccuracies in the assessment due to the translation risk, 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 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, as amended. Eurostat therefore publishes all official methodological advice given to Member States on its website.

Yours sincerely,

(e-Signed)

Eduardo Barredo Capelot
Director