



EUROPEAN COMMISSION
EUROSTAT

Directorate D Government Finance Statistics (GFS) and quality

Luxembourg
ESTAT/D-1/LA/GD/gh D(2018)

Ms Jennifer Banim
Assistant Director General
Economic Statistics
Central Statistics Office
Ardee Road, Rathmines
IRL - Dublin 6

Subject: Sector classification of Approved Housing Bodies

Ref.: Your letter of 20 December 2017

Dear Ms Banim,

Thank you for your letter dated 20 December 2017 requesting the opinion of Eurostat on the sector classification of Approved Housing Bodies. Eurostat has closely examined the dossier provided by the Irish Central Statistics Office and it is now in a position to express its view on the sector classification.

1. The accounting issue for which an opinion is requested

The issue to be analysed is the sector classification of Approved Housing Bodies (AHBs) under ESA 2010.

Background

Social housing is provided by both local government and the AHBs through a number of mechanisms, including direct provision of acquired or constructed units, rental of privately owned units through short and medium term leases, financial support of approved housing bodies to buy or build new units, the rental accommodation scheme and, finally, housing assisted payments.

Approved Housing Bodies provide and manage social rented housing. They build, they buy, they lease, they refurbish. They are private, non-profit making organisations formed for the purpose of relieving housing need to people who cannot afford to buy their own homes, or rent. AHBs provide housing in response to a range of different needs including families on low incomes and households with special needs, such as older persons, people with disabilities and homeless persons.

These organisations can take a number of legal forms, such as incorporated bodies, trust bodies or societies. They are also known as Voluntary Housing Associations or Housing Co-operatives.

Such bodies must obtain so called "approved status", according to the Housing Act (Miscellaneous Provisions) 1992¹, from the Department of Housing, Planning and Local Government (DHPLG). A body seeking to obtain, and to retain, approved status must:

- have as primary objective the relief of housing need, or poverty, or hardship, or the welfare of Travellers, and the provision and management of housing,
- have in its memorandum of association or registered rules, provisions prohibiting the distribution of any surplus, profit, bonus or dividend to members and requiring that the assets of the body be applied solely towards its objects.

AHBs work in cooperation with Local Authorities (LA). AHBs take nominations from the LA's social housing waiting list to fill available accommodation provided by the AHB. When a vacancy arises, potential tenants are nominated to the AHB by the LA (from the LA's housing waiting list). Only in case when the LA list is extinguished will the AHB be able to rent to tenants of its own choosing.

According to the Voluntary Regulation Code (VRC)² for AHBs, bodies are classified into three 'tiers' as follows:

- Tier 1 - Small AHBs with 0 - 50 units without development plans for more units. AHBs in Tier 1 have developed and completed projects, have housing units in management and have no further development plans.
- Tier 2 - AHBs with between 50 and 300 units or with development plans in place to provide more units. Tier 2 will also include those AHBs with less than 300 units that are applying for, or are in receipt of loans from the Housing Finance Agency (HFA), private finance or from other sources.
- Tier 3 - All AHBs with more than 300 Units. These AHBs include those bodies with more than 300 units and any Tier 2 organisations whose development plans are particularly sizable.

As reported by the Irish statistical authorities, at December 2017, there were 547 entities listed as having AHB's status, of which only 251 AHBs have signed up to the VRC from which 182 belongs to Tier 1, 51 to Tier 2 and 18 to Tier 3.

Currently, the AHBs are classified in the Non-Profit Institutions Serving Households sector (S.15).

During the 2017 EDP dialogue visit to Ireland, following a discussion on social housing, it was agreed that the Irish Central Statistics Office (CSO) was to review the sector classification of AHBs in the light of European System of Accounts (ESA 2010) and of the

¹ <http://www.irishstatutebook.ie/eli/1992/act/18/enacted/en/html>

² <https://www.housingagency.ie/Regulation/The-Code.pdf>

rules for determining the classification of Non-Profit Institutions (NPIs) controlled by government.

On the 20 December 2017, the CSO provided a note analysing the housing sector in Ireland according to ESA 2010 rules. The CSO assessment covers the largest 15 AHBs of Tier 3, which is approximately 80% of the AHB housing stock in Ireland. The remaining AHBs which have been recently reclassified to Tier 3 will be reviewed in the next tranche of assessments.

Documentation provided to Eurostat by the Irish statistical authorities:

- *AHB Classification Cover Letter to Eurostat;*
- *Summary of Financial Schemes for Provision of Social Housing containing the background information on all types of agreement in operation for social housing provision;*
- *Document on Sources of capital Funding of AHBs*
- *Assessment file consisting of the individual assessment of 15 AHBs.*

2. Methodological analysis

Institutional sectors are defined in ESA 2010 chapter 2. The government sector and the market/non-market delineation criteria are described in more detail in ESA 2010 chapter 20.

In addition, the Manual on Government Deficit and Debt (MGDD 2016) includes detailed provisions for the sector classification of non-profit institutions in national accounts (see section I.2.3). In particular, it clarifies the notion of control applicable for non-profit institutions.

Applicable accounting rules

- Paragraphs 20.13-20.16 on *NPIs classified to the general government sector* of the ESA 2010;
- Paragraphs 20.19-20.34 on *market/non-market delineation* of the ESA 2010;
- Guidance provided by the MGDD 2016 in part I.2.3, *The concept of a government-controlled institutional unit, Control of non-profit institutions.*

Availability of national analysis

The CSO focused its analysis on the level of control which government has over AHBs, as defined in paragraph 20.15 of ESA 2010.

In order to determine the level of control, it focused on three indicators: (1) contractual agreements 20.15 (c) of ESA 2010, (2) degree of financing 20.15 (d) of ESA 2010 and (3) risk exposure 20.15 (e) of ESA 2010. According to ESA 2010, a single indicator, among these, can be sufficient to establish control.

As a result of the review, the CSO proposed to Eurostat to reclassify the 14 AHBs to the Local Government subsector (S.1313) while one AHB which is not predominantly involved in

social housing would remain classified outside the government sector, but housing assets and related transactions re-routed to S.1313.

The relationship between government and AHBs

The task of AHBs is to provide affordable rented housing for people who cannot pay private sector rents or buy their own homes; or for particular groups, such as older people or homeless people. Their role is articulated in government policy³ as a key mechanism in implementation of housing strategy and the relationship with government is operationalised through various funding schemes⁴.

According to the Irish statistical authorities, when deciding on whether to support an AHB application for funding, under one of these schemes, the government is clearly considering the overall delivery of housing services in the geographic area under its remit, taking into account the number of AHBs already operating in a particular area⁵ and the contribution that a given housing project⁶ will make to the area in which it is located.

Thus, the CSO considers that the relationship between the functioning of the AHBs under the relevant funding schemes and the implementation of government policy on social housing is clearly established by these provisions.

Finally, the CSO concludes that it may therefore be considered that, at a minimum, the provisions paragraph 57 in chapter I.2.4.5.1 of MGDD 2016 should apply to the housing assets held by the AHBs and that these assets and the associated transactions which can be said to represent “investing in fixed assets for public policy needs” should be re-routed to the government accounts.

Indicators of Control

In its assessment, the CSO concludes that there is no government influence through the appointments of officers. The appointment of officers to the board or equivalent in all of the 15 AHBs is solely a matter for the members of the AHB in accordance with their governing documents. In addition, the CSO considers that the AHBs control their own rules of membership and are solely responsible for the appointment of key personnel.

However, and as described by the Irish statistical authorities, the AHBs reviewed have access to capital funding by entering into a range of contractual agreements with government, namely the Capital Loan and Subsidy Scheme (CLSS), the Capital Assistance Scheme (CAS), the Capital Advance Leasing Facility (CALF) and the Payment and Availability Agreement (P&A). There are number of features which indicate control via contractual agreements by government, such as the fact that local authority (LA) can nominate 75% or more of tenants (depending on the scheme), government guidance on rent setting (in some schemes this being more prescriptive than in others), government guidance on design and construction (in case of

³ Housing Act, 1992

⁴ The CSO provided a detailed description of these schemes and the features affecting the assessment of control in the document *Summary of Financial Schemes for Provision of Social Housing*.

⁵ “Where it is practicable and compatible with the needs of occupants in the approved housing body’s housing accommodation, housing authorities should seek to have communal facilities used to serve local community needs (e.g., meals-on-wheels, recreation and social services etc.)” (Paragraph 6.7 of Memorandum VHU:2/02)

⁶ “In addition the housing authority should be satisfied that the housing project will make a useful contribution to the relief of housing needs in the area where it is located” (Paragraph 3.22)

CAS and CLSS schemes) and the level of financing provided under contractual agreements, which brings the expenditure on construction by AHBs fully in the scope of public procurement policy (CLSS, CAS).

Furthermore, other elements of control may be observed in the conditions held for a voluntary housing body to retain its AHB status. For example, its assets must be directed to the relief of housing needs. This results in the fact that it is debatable whether it can be considered that the transfer of assets under the CLSS and CAS would be unconditional, as under the conditions needs for retaining AHB status, these assets must continue to be used for social housing. Also, government seeks to protect the tenants by prohibiting commercial activity and risk taking where it is considered that these may adversely affect the AHB's housing activity.

Therefore, as explained by the Irish statistical authorities, it may be seen that government, in setting the conditions around the design and construction of the assets, their involvement in rent setting and their constraints on commercial activity by the AHB, is acting in the role of landlord, with the AHB as agent.

The paragraph 15 (c) I.2.3 of the MGDD 2016 states, in relation to contractual agreements, *“When such contracts are the main, if not total, part of the activity of the NPI, it is clear that government would be able to influence the general policy of the NPI. However, control should be assessed if the approval of government would be required for exiting from contracts with government.”* It can be seen that any individual AHB can indeed exit their commitments to government by repayment of their outstanding liabilities, most likely through the surrender of the funded properties. However, in this event, it is unlikely that the AHB would continue to function, and its tenants would become tenants either directly of the LA or of another AHB also acting as agent of the LA (as under the normal rules governing charitable bodies, on wind-up an AHBs assets must transfer to another body with similar aims and objectives).

To conclude, according to the Irish statistical authorities, for those voluntary housing bodies which have AHB status, there is sufficient evidence contained within the available funding schemes to indicate that such bodies are ultimately controlled by government under these schemes.

The assessment of each individual AHB has been undertaken by the CSO with reference to the extent to which these schemes dominate the financing of the AHB. Where CAS and CLSS funding predominate in the total financing, it is the view of the Irish statistical authorities that such a body should be considered under the control of the local government subsector. Where such funding represents only a minority of the funding of the organisation or where the mix of activities is such that housing is not the principal activity, then the unit is not to be classified in the government and a rerouting of the housing activity to the government accounts in accordance with paragraph 57 in chapter I.2.4.5.1 of MGDD 2016 seems appropriate.

In the context of the AHBs reviewed to date by the Irish statistical authorities, the great majority of the fixed assets on their balance sheets could be observed to be financed by CAS and CLSS funding. In fact, up to the end of 2015, the amount of private funding accessed by the AHBs was extremely small and less than 1% of total financing, while the rest is provided directly by government.

In addition to the above, the government may be seen to be exposed to certain financial risks, in particular in the new P&A arrangements, via the Continuation Agreement, which makes government a party to the borrowing agreement between the AHB and the third party funder.

Taking into account the importance of two schemes, CAS and CLSS, the CSO, in its letter, provides a summary of the assessment of the level of control exerted by government through these agreements.

Key Features of Capital Assistance Scheme

	<i>Feature of Scheme</i>	<i>Control Indicator</i>	<i>Paragraph Ref. in Memorandum VHU: 2/02.</i>
1.	<i>Under this scheme the capital loans (up to 100%) are non-repayable to the LA, assuming the conditions of the scheme are adhered to. This is viewed in the national accounts framework as a grant provided by government. This indicates financing by government.</i>	<i>Degree of Financing</i>	<i>Paragraph 4.2</i>
2.	<i>The LA decides upon the eligible tenants for the housing units that are provided under this scheme. This indicates control by government.</i>	<i>Contractual Agreements</i>	<i>Paragraph 4.5 (i) and 3.17 (ii)</i>
3.	<i>Up to a maximum of 25% of accommodation may be allocated to persons that are freely nominated by the AHB. These freely chosen tenants are generally taken from the LA housing list. This indicates a degree of AHB autonomy.</i>	<i>Feature of autonomy</i>	<i>Paragraph 4.5 (ii)</i>
4.	<i>The market value of land, which the AHB owns or is obtained for a fee, may be included in calculating the approved cost. This indicates financing by government.</i>	<i>Financing</i>	<i>Paragraph 3.9</i>
5.	<i>There are very explicit and prescriptive guidelines, set by the Department, relating to the design and construction of housing units funded under the CAS. This indicates control by government.</i>	<i>Contractual Agreements</i>	<i>Paragraph 7.4 Paragraph 7.5</i>
6.	<i>The rules and policy on Public Procurement must be adhered to by AHBs during the construction of housing units. This indicates control by government.</i>	<i>Contractual Agreements</i>	<i>Section 13⁷</i>

⁷ SI 284-2016 European Union (Award of Public Authority Contracts) Regulations 2016

Key Features of Capital Loan and Subsidy Scheme

	<i>Feature of Scheme</i>	<i>Control Indicator</i>	<i>Paragraph Ref. in Memorandum VHU: 2/02.</i>
1.	<p><i>The terms of the Scheme provide that the Department may pay a subsidy towards the full amount of the loan repayments and interest charges incurred by the approved housing body (credited directly by the housing authority to the approved body's mortgage loan account), subject to continued compliance by the approved housing body with the terms of the Scheme.</i></p> <p><i>This indicates financing by government.</i></p>	<i>Degree of Financing</i>	<i>Paragraph 5.2 Paragraph 5.8</i>
2.	<p><i>It is a requirement of the Scheme that 75% of the dwellings are occupied by tenants qualified for local authority housing whose tenancies have been approved by the local authority in accordance with the terms of the Scheme.</i></p> <p><i>This indicates control by government.</i></p>	<i>Contractual Agreements</i>	<i>Paragraph 5.4(c)</i>
3.	<p><i>The LA can take back the housing asset if the conditions of the CLSS scheme are not met.</i></p> <p><i>This indicates control by government.</i></p>	<i>Contractual Agreements</i>	<i>Paragraph 3.16 Paragraph 3.17</i>
4.	<p><i>Where the circumstances of a tenant changes to the extent that they would no longer qualify for LA housing, the subsidy towards the loan repayments incurred by the AHB will continue to be paid by the Department.</i></p> <p><i>This indicates the presence of an income guarantee by government</i></p>	<i>Degree of Financing</i>	<i>Paragraph 5.9</i>
5.	<p><i>LAs pay an annual management and maintenance allowance to AHBs towards the upkeep of the housing units. This payment is made on the condition that the tenants are chosen from the LA housing waiting list.</i></p> <p><i>This indicates financing and control by government.</i></p>	<i>Degree of Financing</i>	<i>Paragraph 9.10</i>
6.	<p><i>There is a highly prescriptive formula for the setting of rent-payment levels. This formula includes, for example, definitions of household income for the purpose of determining rents and the definition of a dependent child, as well as a rent calculation formula based on these definitions.</i></p> <p><i>This indicates control by government.</i></p>	<i>Contractual Agreements</i>	<i>Paragraph 9.8</i>
7.	<p><i>The parameters relating to the construction and design of housing units, followed by AHBs, are closely aligned to Government guidelines for those housing units funded under the CLSS.</i></p> <p><i>This indicates control by government.</i></p>	<i>Contractual Agreements</i>	<i>Part 7</i>
8.	<p><i>The rules and policy on Public Procurement must be adhered to by AHBs during the construction of housing units.</i></p> <p><i>This indicates control by government.</i></p>	<i>Special Regulations</i>	<i>Section 13⁸</i>

⁸ SI 284-2016 European Union (Award of Public Authority Contracts) Regulations 2016

Non-market nature of AHBs

According to the Irish statistical authorities, AHBs are considered as having a non-market nature due to their principal aim, which is the relief of housing needs, to assist with cases of poverty or hardship, and the delivery and management of housing. Additionally, AHBs must have in their Memorandum and Articles of Association or registered rules, provisions preventing the distribution of any surplus, profit, bonus or dividend to its members. Moreover, they must ensure that their assets are used solely towards their objects.

Another key aspect of the capital funding schemes is government influence on rent setting by the AHB. In the case of the CLSS and CAS schemes, rent levels are related to the total household income of the tenant and do not respond to changes in the market or economic signals. Although the need to meet costs is a factor in the setting of rents in the case of CAS, the price does not influence the AHB's decisions regarding the supply of housing, nor do the prices determine the levels of demand. These organisations are thus providing housing at prices that are not economically significant and the quantitative market/non-market test therefore should not apply to AHBs whose rents are predominantly set under CAS and CLSS.

When it comes to the P&A agreement, the rents paid by the LA on behalf of the tenant may be considered to be economically significant. However, at the moment this income does not represent a sufficient proportion of any AHB's sales to enable them to be considered as market operators. Moreover, even if the P&A income were to reach levels where it dominated the income of AHBs, the qualitative criteria, including the requirement for genuine competition with other providers, would have to be assessed before any possible application of the quantitative market/non-market test.

Conclusions

Eurostat agrees with the analysis undertaken by the Irish CSO. Based on the analysis above and in the framework of the ESA and MGDD rules, Eurostat considers that the AHBs are controlled by government due to several reasons which include the degree of financing, contractual agreement, special regulations and risk exposure (in particular, in the context of the new P&A agreements, via the Continuation Agreement).

Moreover, Eurostat considers that AHBs have a non-market nature due to their principal aims and other existing provisions. Furthermore, the prices charged for renting cannot be seen as being economically significant, due to the fact, among others, that they do not seem to respond to change in the market or to economic signals and have little influence on how much the producer is prepared to supply and on the quantities demanded.

As a consequence and accordingly to ESA 2010 rules and the MGDD (I.2.3 paragraph) the AHBs, being NPIs controlled by government and not being market producers, should be classified in the government sector.

Procedure

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 Council Regulation 479/2009, as amended, 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.

Yours sincerely,

(eSigned)

Luca Ascoli
Acting Director