

Oggetto: contabilizzazione del “Bonus Edilizi”, richiesta di valutazione inadempimento degli obblighi professionali e ulteriori responsabilità

PREMESSO CHE

Il Regolamento (UE) n.549/2013, che istituisce il sistema europeo dei conti 2010 (Sec2010) opera una distinzione tra crediti “pagabili” e “non pagabili”:

- sono non pagabili i crediti d'imposta limitati all'importo del debito fiscale nell'anno o negli anni fiscali di riconoscimento del credito. In questo caso il credito che eccede l'imposta dovuta è perduto dal beneficiario;
- sono pagabili i crediti d'imposta per i quali, invece, l'intero ammontare del credito d'imposta è, in ogni caso, pagato al beneficiario, anche garantendo il pagamento (rimborso) della parte eccedente nei casi in cui l'agevolazione riconosciuta sia maggiore del debito fiscale del contribuente.

Il SEC 20.167 recita: *“I crediti d'imposta possono essere dovuti, nel senso che qualsiasi importo del credito che eccede l'imposta dovuta sarà pagato al beneficiario. Al contrario, alcuni crediti d'imposta non sono pagabili e vengono descritti come “sprecabili”. Sono limitati all'entità del debito fiscale.”*

Il SEC2010 ha previsto una diversa modalità di registrazione nei conti delle Amministrazioni Pubbliche delle due tipologie di credito fiscale, al fine di evidenziarne la differente natura (SEC4.81 e 20.167-20.168). Tale distinzione rileva ai fini del trattamento contabile dei crediti fiscali, in quanto i crediti considerati non pagabili sono registrati come riduzione del carico fiscale e, pertanto, delle entrate complessive nell'anno di utilizzo, mentre i crediti pagabili vengono registrati nella loro interezza come spesa nell'anno in cui viene riconosciuto il diritto all'intero ammontare dell'agevolazione.

In Italia le detrazioni fiscali da bonus edilizi (es. bonus casa ed ecobonus) prima del 2020 hanno assunto sempre la forma di crediti non pagabili essendo espressamente previsto, dalla normativa Nazionale, che l'importo del credito in eccedenza non potesse essere richiesto a rimborso per come previsto dal SEC2010 20.167.

Con l'entrata in vigore (efficacia) del decreto-legge n. 34 del 2020 (cd. Rilancio) è stata introdotta la possibilità di usufruire di alcune agevolazioni fiscali in materia edilizia e di

efficientamento energetico, sotto forma di detrazione del 110%, il cosiddetto Superbonus110 regolato dall' art. 119 del decreto Rilancio. E' stata inoltre introdotta la possibilità, sia per i beneficiari del Superbonus che per quelli dei bonus "minori" già esistenti (es. bonus casa ed ecobonus), di optare in alternativa alla detrazione spettante di uno sconto sul corrispettivo, ovvero di poter cedere il credito ad altri soggetti, comprese banche e intermediari finanziari (art 121).

La disciplina della trasferibilità dei crediti di imposta inizialmente prevedeva la possibilità di cessioni in numero illimitato verso soggetti terzi, e sebbene il meccanismo fosse nato sulla scorta di precedenti provvedimenti sotto forma di incentivo, essa (la trasferibilità) rappresentava una grande innovazione nel panorama degli incentivi edilizi; per tale motivo con missiva del 29 maggio 2021 ISTAT chiedeva il parere ("advice") a Eurostat, e più nello specifico tale richiesta di consulenza ha riguardato il momento di registrazione nei conti pubblici nazionali della spesa (incentivo) di due provvedimenti di agevolazione per famiglie e imprese: il Superbonus110% e il credito di imposta connesso alla cosiddetta "Industria 4.0".

Per quanto riguarda il Superbonus 110% Eurostat nel suo parere di giugno 2021, in virtù della illimitata trasferibilità a terzi del credito fiscale, indica essere un caso 'borderline' non chiaramente riconducibile sia alla casistica "tax credit non-payable" che a quella "payable", ed esplica l'intenzione di sviluppare il tema dei crediti d'imposta trasferibili nell'aggiornamento del Manual on Government Deficit and Debt – Implementation of ESA 2010 (MGDD). Nel frattempo Eurostat concludeva che la misura avrebbe dovuto continuare a essere registrata nei conti nazionali come "non-payable". (ALLEGATO 1)

Il decreto Rilancio (art 119 e 121 DL 34/2020) convertito in Legge n.77/2020 è stato modificato e integrato innumerevoli volte con specifici decreti convertiti in legge, in particolare tali modifiche al testo originario hanno imposto importanti limitazioni ai precetti che regolano la cessione dei crediti di imposta. Nel merito, dopo l'introduzione delle diverse limitazioni previste a più riprese, tra il principale il DL 4 - 2022 e più precisamente all'art.28 (Decreto Sostegni-Ter), il meccanismo della cessione dei crediti ha subito un forte rallentamento fino a fermarsi quasi completamente; il beneficio fiscale è stato formalmente confermato, ma poi è stata resa materialmente molto difficile la sua fruizione per via della difficoltà e sovente impossibilità a poter dare trasferimento ai crediti d'imposta maturati. Ancora oggi le difficoltà a cedere a terzi il credito fiscale sono molto elevate.

Da subito per i cittadini committenti, liberi professionisti e imprese la situazione è risultata molto critica, come è desumibile dalla relazione conclusiva redatta dalla Commissione Parlamentare di Inchiesta sul Sistema Bancario che in data 24 Giugno 2022 ha inviato un apposito questionario alle 11 "significant" banche nazionali concludendo, che, nel biennio 2020-2022, solo 29 MLD erano riferibili a crediti accettati e liquidati e che vi erano ben 47 MLD in fase di lavorazione, fermi (bloccati)

evidentemente per inoperatività provvisoria del meccanismo delle cessioni dei crediti fiscali. (ALLEGATO 2)

I crediti incagliati sono stati il motivo di numerose proteste del settore edilizio sfociate in manifestazioni tenutesi nelle piazze. Negli ultimi 2 anni se ne contano oltre 20, quasi tutte svoltesi nella città di Roma. Innumerevoli volte l'argomento è stato riportato dai media nazionali, sia tramite quotidiani che in trasmissioni radiofoniche e televisive. Quindi il problema è chiaramente di dominio pubblico.

Il 1° febbraio 2023 è stato pubblicato l'aggiornamento del Manuale sul debito e sull'indebitamento (MGDD edizione 2022), per anche delineare la classificazione dei crediti d'imposta trasferibili, prima citata nel Sec2010 che prevede i casi dei crediti d'imposta pagabili e non pagabili. In particolare, la nuova edizione del Manuale analizza una serie di casistiche, assumendo come orientamento generale, ai fini del riconoscimento della "pagabilità" del credito, la presenza di un'altissima probabilità (prossima al 100%) che il credito d'imposta in un modo o nell'altro sarà fruito per intero, o quasi per intero, nel futuro, sicché la pubblica amministrazione perderà, di fatto, risorse equivalenti. (ALLEGATO 3)

Dall'audizione presso la VI Commissione Finanze della Camera dei Deputati del Direttore dell'Agenzia delle Entrate sul Decreto-legge 16 febbraio 2023, n. 11 è emerso che, relativamente al sistema bancario, risultano bonus edilizi acquistati dal 15 ottobre 2020 e detenuti al 1° marzo 2023 complessivamente a 51.297,40 milioni di euro, equivalenti a circa il 46,3 % dei crediti generati (ALLEGATO 4), dato che esprime la reale dimensione dell'incaglio della trasferibilità degli stessi.

In seguito all'aggiornamento dell' MGDD, Istat il 24 febbraio 2023 ha chiesto ad Eurostat un nuovo parere formale, sulla scorta del quale Istat è giunto a classificare i crediti di imposta di cui al *superbonus* e al *bonus facciate* come crediti 'pagabili'; in sostanza è stata concordata con Eurostat una riclassificazione di natura contabile, e i crediti fiscali in conseguenza sono stati registrati come spese per il loro intero ammontare nel momento in cui il beneficio è maturato, ossia nel momento in cui si è sostenuta la spesa. Eurostat nel parere ha accolto tale classificazione con riserva e in attesa di ricevere da Istat gli elementi che potessero dare conto dell'effettiva fruizione dei crediti d'imposta, dato evidente con la corrispondenza intercorsa tra i due enti in cui Eurostat ha espresso perplessità, vista l'essere a conoscenza di crediti fiscali soggetti a sequestro cautelativo da parte della magistratura indagante per talune ipotesi di frode, prevalentemente ascrivibili a bonus facciate oltre che alle innumerevoli rimozioni pubbliche dei cittadini coinvolti che ebbero a dimostrare l'incaglio dei crediti maturati perchè impossibilitati ad esercitarne la trasferibilità. (ALLEGATO 5)

Eurostat, il 26 settembre 2023, ha pubblicato la "Consulenza metodologica sulla rilevazione statistica del Superbonus 110%, Transizione 4.0 e altri crediti d'imposta sulle "ristrutturazioni edilizie" del febbraio 2023; La vostra nota sulla nuova normativa sul Superbonus 110% del 28 giugno 2023 e ulteriori chiarimenti del 9 luglio 2023 e del

10 agosto 2023.” In tale documento di consulenza Eurostat ha ammesso provvisoriamente la classificazione in pagabili dei crediti di imposta trasferibili e differibili del superbonus 110% e del bonus facciate per le annualità 2020-2021-2022 ed anche 2023, con riserva. Infatti, “Eurostat sottolinea che sia questo parere che il parere iniziale del febbraio 2023 si basano su il presupposto che gli importi dei crediti d'imposta che alla fine andranno perduti si realizzeranno trascurabili (per i crediti d'imposta 2020-2023).” “Questa opinione di Eurostat si basa sulle informazioni fornite dalle autorità italiane. Se queste informazioni risultano incomplete o l'attuazione dell'operazione differisce significativamente dalle informazioni presentate, Eurostat si riserva il diritto di riconsiderare il parere su questo consiglio ed eventualmente anche sul consiglio iniziale. In questo contesto, vorremmo ricordare che Eurostat si impegna ad adottare pienamente un quadro trasparente per le sue decisioni in materia di debito e disavanzo in linea con il Consiglio Il Regolamento 479/2009, come modificato, e la nota sulla consulenza ex ante, che è stata presentata al CMFB e approvati dalla Commissione e dal CEF. Eurostat pubblica quindi tutto consulenza metodologica ufficiale (ex-ante ed ex-post) fornita agli Stati membri sul proprio sito web”.

Le riserve di Eurostat appaiono fondate perché i dati ricevuti da Istat parrebbero non essere ritenuti esaurienti, fors'anche per via che appare oltre che ben nota la drammatica situazione vissuta da decine di migliaia di cittadini italiani che sono in possesso di crediti di imposta trasferibili relativi ai bonus edilizi ma non trovano soluzione per darne cessione ed i cessionari non sono indisponibili all'acquisto. (ALLEGATO 6)

Visto quanto premesso e considerato, a parere degli scriventi dovrebbe essere verificato se la classificazione e l'imputazione della spesa nei bilanci pubblici risulti errata, con profili di responsabilità da parte di Eurostat nell'esercizio delle attività di vigilanza e di coordinamento sia con il SEC2010 che con MGDD.

Si ritiene che siano molti gli elementi che facciano protendere per un'errata classificazione dei crediti “superbonus” e ‘bonus facciate’ in pagabili rispetto alla precedente classificazione operata in non pagabili coerente sia con il comma 3 dell'art 121 del Decreto Rilancio che con SEC2010, e che, a fronte di un tema di tale rilevanza, bisognerebbe valutare se la risposta riportata nelle consulenze da parte di Eurostat sia stata o meno adeguata, coerente ed eventualmente contraddittoria.

Già da primi scambi tra Eurostat e Istat emerge un'analisi superficiale delle tematiche problematiche, più nello specifico come sopra rappresentato il decreto Rilancio aveva introdotto a norma dell'art. 121 la possibilità di poter optare per la cessione del credito e dello sconto in fattura oltre che per il Superbonus anche per i bonus ordinari, tra cui bonus facciate, ecobonus, sisma bonus e bonus casa e non si comprende quindi perché in virtù dell'applicabilità della medesima normativa sia stata affrontato solo il tema del Superbonus e del bonus facciate. E' d'evidenza essere stata attuata e non adeguatamente vigilata, rispettivamente dai due enti statistici (Istat – Eurostat), con approccio disomogeneo, la classificazione dei crediti fiscali derivanti da Superbonus e Bonus Facciate in modo differente rispetto a quelli (crediti) degli altri bonus edilizi, in entrambi i casi dotati della medesima disciplina giuridica che ne regola la

trasferibilità, oltre che non dare adeguata considerazione e peso alla specifica fruizione. Inoltre, Eurostat avrebbe dovuto fin da principio dirimere la questione adempiendo al dovere di coordinamento tra le varie autorità statistiche a livello dell'Unione, invece di condividere meramente la classificazione operata da Istat (seppur con riserva, perché no al contrario in "non payable" più cautelativo), poiché tale attività di consulenza metodologica (in ultimo quella del 26 Settembre 2023) ha determinato incertezza ed arbitrio lasciando altresì spazio alle autorità italiane di dare e di ricorrere a interpretazioni poco aderenti rispetto a quelle previste dal SEC 2010 ma anche da quelle incluse nell'ultima edizione di MGDD.

A rigore il SEC 2010 precisa che un credito per essere classificato pagabile deve essere anche rimborsato e comunque non essere sprecato neppure in sua parte (è un'obbligazione per lo Stato), ma indipendentemente da questo punto che verrà trattato poco più avanti, è palese che la classificazione del *superbonus* e del *bonus* facciate come crediti pagabili non abbia ragione di essere, in quanto il bonus facciate è stato oggetto di innumerevoli presunte frodi con sequestro cautelativo, che secondo l'audizione dell'Agenzia delle Entrate di marzo 2023 ammontano al 58% sul totale complessivo delle frodi oggetto di attività di indagine degli inquirenti rispetto a tutto lo stock dei bonus edilizi, per cui nei confronti di tali crediti c'è un forte pregiudizio e la cessione del credito è diventata pressoché impossibile, con altissime probabilità che lo stesso beneficio (tax credit) rimanga in capo ai beneficiari incapienti, a differenza dei crediti superbonus che, pur essere il meccanismo più sicuro e controllato, soffre di due "elementi": il primo acclara che il credito è in via generale ripartito in soli 4 anni successivi di compensazione (10 anni il bonus facciate) (diventa impossibile per la maggior parte dei beneficiari poterne usufruire pienamente in compensazione, nei fatti una tale detrazione presupporrebbe un'imposta correlata a redditi molto alti); il secondo elemento pone evidente l'impedimento di poter trasferire i crediti a terzi determinando così un ingente spreco per via dell'insufficiente capienza fiscale dei beneficiari.

Inoltre, la maggior parte dei crediti sprecati o che andranno ad essere sprecati non saranno mai oggetto di comunicazione all'agenzia delle entrate, in quanto l'esercizio dell'opzione avviene solo nel momento in cui è stato trovato un cessionario, per cui è facile immaginare che anche nella quantificazione dei crediti andati sprecati bisognerebbe riporre particolare attenzione.

Aggiungiamo inoltre che il capitolo MGDD del 2022 sulla registrazione dei crediti d'imposta nelle intenzioni di Eurostat avrebbe dovuto fornire elementi per distinguere nel migliore dei casi i crediti d'imposta per i quali dovrebbe essere riconosciuta una spesa/passività pubblica (crediti pagabili) rispetto ai crediti fiscali non pagabili, ma nel fare questa distinzione MGDD è in netto contrasto con quanto previsto dal SEC 2010. Inoltre lo stesso MGDD presenta paragrafi contraddittori tra loro.

Nel merito e generando aleatorietà nel perimetrare la classificazione dei crediti trasferibili "pagabili e no pagabili" i punti di MGDD tra di loro in contrasto sono specificamente i 31, 32, 33 ma anche il 37 con il 38, e paradossalmente i 31-32-33 con il 37 e gli stessi 31- 32-33 con il 38.

A titolo esemplificativo poniamo in evidenza la discrasia tra le indicazioni riportate dai punti 37 e 38 circa la possibile scelta nell'operare la classificazione dei crediti di imposta trasferibili in pagabili oppure non pagabili e i derivanti effetti sui bilanci pubblici dello Stato e della UE.

Con il punto 37 è indicato nel manuale (MGDD) che se il credito d'imposta è trasferibile a terzi tale credito d'imposta deve essere considerato come un credito d'imposta dovuto e deve essere registrato nei conti nazionali come attività del contribuente e come passività di governo, mentre il punto 38 indica quando il credito d'imposta può essere trasferito a qualsiasi soggetto (ad eccezione delle parti correlate), il rischio che andrà perduto è molto basso ed è quindi da considerarsi un credito d'imposta dovuto, a meno che non esista prova che importi non trascurabili verranno sprecati. Quando il credito d'imposta è trasferibile solo a parti correlate (ad esempio, solo al fornitore dei beni / servizi che hanno fatto scattare il credito di imposta, famiglia o membri o società dello stesso gruppo), allora potrebbe essere necessaria una valutazione per esaminare se, in pratica, tali crediti di imposta potrebbero andare perduti per importi non trascurabili (nel qual caso il credito di imposta rimarrebbero non pagabili).

Da un lato (punto 37) si indica che il solo principio di trasferibilità porti alla classificazione dei crediti di imposta pagabili, nel 38 l'approccio è invece probabilistico e non perentorio nel perimetrare la classificazione: delle due l'una!

Un aspetto che assume rilevanza sulla dubbia attività esperita da EUROSTAT è indicata con la consulenza metodologica a favore di Istat del 26 settembre 2023, dove è riportato il seguente periodo, "Sebbene il paragrafo 20.167 del SEC affermi che "i crediti di imposta possono essere dovuti, nel senso che qualsiasi importo del credito che eccede il debito d'imposta sarà pagato al beneficiario", **e' stato concordato** tale credito d'imposta potrebbe anche essere considerato esigibile ai sensi del SEC 2010, anche se non verrà mai pagato al beneficiario iniziale, in quelle circostanze in cui il credito d'imposta concesso sarà maggiore, probabilmente essere utilizzato ad un certo punto dal beneficiario originale o da un cessionario, sia perchè il credito d'imposta può essere ceduto ad un numero significativo di controparti o essere liquidato il totale delle tasse."

Parrebbe di capire o di presumere che sia stata concordata la violazione dei disposti previsti dal 20.167 del SEC in modo che potesse essere classificato pagabile un credito che nei fatti non è rimborsato al beneficiario da parte dell'emittente del credito stesso (lo Stato).

Il sospetto di favoreggiamento di uno Stato Membro UE (Italia) sorge anche per via del fatto che la classificazione dei crediti superbonus e bonus facciate in pagabili abbia consentito all'Italia di riparametrare i dati macroeconomici italiani del Deficit in rapporto al PIL per gli anni 2020-2021-2022, periodo in cui (compreso il 2023) non era vigente il rispetto del patto di stabilità europeo. Infatti la registrazione della spesa complessiva di tali incentivi edilizi con classificazione pagabili ha determinato i seguenti dati Deficit / PIL 2020 (9,6%) - 2021 (8,8%) - 2022 (8%), mentre con la precedente classificazione

in non pagabili il Deficit su PIL era 2020 (9,5%) - 2021 (7,2%) - 2022 (5,6%) come da ALLEGATO 7 – cifr. pag.21 del documento della Corte dei Conti Italiana.

I dati complessivi ed omogenei dell'Area Euro (EA19) e dell'UE, come espresso da parte di Eurostat, hanno risentito del cambio di classificazione dei crediti d'imposta italiani da non pagabili come da SEC2010 a pagabili (classificazione arbitraria) (https://ec.europa.eu/eurostat/databrowser/view/gov_10dd_edpt1/default/table?lang=en).

Riteniamo che debba essere rispettato il criterio della gerarchia delle fonti (del diritto), dove la fonte di rango inferiore non debba derogare quella prevalente o di porsi in contrasto con il contenuto di quella sovraordinata; per quanto attiene il presente documento assume e riveste particolare rilievo il carattere di "sprecabilità" dei crediti, dove permane la difficoltà e l'impossibilità ad essere trasferiti (ceduti), pertanto **si chiede a codesto Ente (OLAF) di valutare l'operato di Eurostat, stante il palese grave inadempimento degli obblighi professionali all'interno delle istituzioni europee, oltre che di valutare eventuali altre responsabilità riscontrabili dai fatti riportati nel presente documento.**

I reati rilevati, in ipotesi secondo le nostre analisi, sono la falsificazione dei bilanci pubblici e/o favoreggiamento, e quindi una ipotesi di frode commessa da uno Stato membro dell'Unione (Italia) favorita sia per via della aleatorietà e contraddittorietà del manuale aggiornato da Eurostat (MGDD), utilizzato da Istat, manuale che presenta elementi contraddittori al suo interno, oltre che essere palesemente in contrasto con il regolamento apicale europeo SEC2010. La classificazione dei crediti operata da Istat, e la conseguente rendicontazione (con anche la rettifica) dei bilanci italiani parrebbe aver inciso sia sugli aspetti di finanza del bilancio UE che dell'attività statistica comunitaria di omogeneizzazione dei dati economici.

Riteniamo, inoltre, che il comportamento di funzionari Eurostat dimostri un possibile comportamento volontario nel violare le norme di condotta professionale dell'UE a cui si dovrebbe applicare la tolleranza zero.

Si riportano a seguire i riferimenti dell'esponente:

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Luogo e data

Formia (Roma - iITALIA) 15 febbraio 2024

IN FEDE
Toth Norbert



Luxembourg,
ESTAT/D-2/LA/GB/DI/ab D(2021)

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Subject: Clarification on the recording of the “Bonus 110%” and of the tax relief relating to the “Transition Plan 4.0”

Reference: Your e-mail of 21 May 2021

Dear Mr Blangiardo,

Thank you for your note dated 21 May 2021 on the recording of two tax reliefs, the so-called “Bonus 110%” and the tax relief relating to the so-called “Transition Plan 4.0”. Following the information provided, Eurostat would like to clarify some aspects concerning the two tax reliefs.

1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS REQUESTED

The issue, for which an opinion is being sought, is the clarification on the correct ESA 2010 accounting treatment of the so-called “Bonus 110%” and of the tax relief relating to the so-called “Transition Plan 4.0”. ISTAT, the Italian statistical office, requested in addition a clarification on some operational guidelines relating to the recording of tax credits in general.

1.1. Documentation provided

ISTAT provided to Eurostat by e-mail dated 21 May 2021 a note describing the features of two tax reliefs. The note also included ISTAT’s statistical analysis of the above tax relieve measures recording in national accounts.

1.2. Description of the case

Among the measures implemented by the Italian government to mitigate the economic impact of COVID-19 pandemic, two new tax reliefs for households and businesses were introduced. The so-called “Bonus 110%” might be used by beneficiaries that carry out measures aimed at increasing the energy efficiency of residential buildings and undertake anti-seismic interventions. The tax credit, equal to 110% of the expenses incurred from 1 July 2020 to 30 June 2022, can be used in three possible ways:

- (1) By an original beneficiary as a deduction from the gross income tax in the tax declaration over five years (and in five equal annual instalments¹) and always within the limits of the beneficiary's tax liability of each year.
- (2) By an original beneficiary as a discount on the invoice (partial or total).
- (3) By a transferee, if the original beneficiary opts to transfer the tax credit to third parties, e.g. suppliers of the services, financial institutions. The transferee can use the tax credit for the full amount or for an amount not yet used by the original beneficiary and under the same conditions, i.e. to offset the gross income tax and within the limit of the tax liability for the year. A multiple transfer of the tax credit is allowed.

The tax relief relating to the so-called "Transition Plan 4.0" builds up on the already existing facility, which was extended by the Budget Law 2021 until the end of 2022. It is provided to Italian companies for investments in new capital assets, specified by legislation, with the purpose to stimulate private investments and technological transformation of production systems. The size of the tax relief varies according to the type and value of assets acquired.

In contrast to the “Bonus 110%” scheme, this tax credit can be used to offset the total fiscal debt, i.e. including also other types of taxes, not only income taxes, and social contributions. The beneficiaries can either reduce their fiscal debt in the following three or five years in equal instalments or, in case the apportioned yearly amount exceeds the fiscal debt in a given year, they can carry forward the tax credit to the following years. In such case, the time limit does not apply and the taxpayer can offset the fiscal debt until the tax credit is fully used up².

2. METHODOLOGICAL ANALYSIS AND CLARIFICATION

2.1 Applicable accounting rules

The applicable accounting rules are the following:

- ESA 2010 chapter 20, paragraphs 20.167-20.168
- The Manual on Government Deficit and Debt (MGDD), Recording of tax credits in section 2.2.2

2.2 Availability of national accounting analysis

In their note of 21 May 2021, the Italian statistical authorities provided to Eurostat a methodological analysis, according to which the two tax reliefs are seen as two very different

¹ Four equal instalments are allowed for the expenses incurred in 2022.

² A possibility of the transfer of the tax credit to third persons was under discussion at the time of sending the request for advice. According to information available to Eurostat later on, this possibility was not included in the final proposal.

measures in terms of parameters and in the modalities on how beneficiaries and/or third parties can use them. Consequently, ISTAT considered that the “Bonus 110%” had features of a non-payable tax credit while the tax relief relating to the “Transition Plan 4.0” was a payable tax credit. On this basis, a few operational guidelines for the recording of tax credits were proposed by ISTAT in their note, with the intention to be consulted with Eurostat.

2.3 Methodological analysis and clarification by Eurostat

2.3.1. “Bonus 110%”

ESA 20.167 reads: *“Tax credits can be payable, in the sense that any amount of the credit that exceeds the tax liability will be paid to the beneficiary. In contrast, some tax credits are non-payable, and described as ‘wastable’. They are limited to the size of the tax liability.”* The treatment in national accounts depends therefore on the type of tax credit. Non-payable tax credits are recorded as reducing government tax revenue.

The recording is different for payable trade credits (ESA 20.168): *“In contrast, this is not the case for payable tax credits, which by definition can affect non-taxpayers as well as taxpayers. As they are payable, payable tax credits are classified as expenditure and recorded as such for their total amount.”*

One possibility for using the “Bonus 110%” is a deduction to the tax liability (gross income tax) of an original beneficiary taxpayer over the following five years in five equal tranches (or in four annual instalments respectively). Thus, each year the taxpayer reduces the tax liability by a proportional part of the tax relief. In the situation when the tax credit exceeds the tax liability of the year, the amount in excess cannot be claimed from government and thus it is lost. In this case, the tax credit seems to fulfil the definition of the non-payable tax credit. From the point of view of this individual tax payer, it is limited to the size of the tax liability and the part not used is de facto ‘wasted’ for the taxpayer.

Alternatively, however, the original beneficiary might transfer the tax credit to third persons for the full amount or for the amount not yet used. If the tax credit is transferred, the transferees (suppliers, financial institutions, etc.) can use it to offset their tax liability in the five (or four respectively) following years up to the limit of the annual tax liability. The amount of the tax credit exceeding the tax liability is lost if not used but, alternatively, it can also be transferred further for the part not yet used. Thus, a multiple transferability of the tax credit is allowed in this particular case.

One might consider that the nature of the tax credit does not change after introducing the possibility of its transfer to third persons, and might still be seen as a non-payable tax credit. In particular, this would be the case when taking into account the fact that the amount of the tax credit is, in each modality, limited to the size of the tax liability and that the exceeding amount cannot be in any case reimbursed by government. However, it might also be argued that the possibility of transferring the tax credit to other beneficiaries brings a new element, which has to be taken into account in the assessment of the tax credit, as it might be considered that the tax credit (or the part not yet used) will be finally, in substance, not lost and will be claimed at the end by one or more transferees, mainly in the case of multiple transfers.

The transferability of tax credits is a concept not developed in the ESA 2010 and no precise guidance on the treatment of such phenomenon in national accounts is at present provided.

Eurostat thus considers that transferable tax credits should be seen as borderline cases between non-payable and payable tax credits and, before providing any operational guidance, as requested by ISTAT, and introducing precise rules for their recording, a methodological analysis and discussion with the statistical community is required. Eurostat intends therefore to develop the issue of transferable tax credits with the view to include it in the forthcoming update of the MGDD.

2.3.2. Tax relief relating to the “Transition Plan 4.0”

The beneficiaries of this tax credit are companies investing into specific categories of capital assets determined by legislation. The eligible companies then might use the tax credit to offset the total fiscal debt in three or five respectively equal instalments. It has to be stressed that the fiscal debt relates to the overall debt position of the beneficiary and can also include other tax obligations (e.g. VAT) and social contributions. This is an important element implying that government, by extending the scope of tax debts eligible for deduction, aims to provide a wide support to companies in a certain area. In this way, the tax credit relating to the “Transition Plan 4.0” might be deemed to be a subsidy, as correctly indicated by ISTAT in the note. ESA 4.81, the second indent, reads the following: *“Subsidies and social benefits made available via the tax system in the form of tax credits and the incidence of linking payment systems with the tax collection system are increasing. Tax credits represent tax relief and so reduce the tax liability of the beneficiary.”* Thus, the recording as expenditure rather than a reduction in tax revenues seems fully justified for the tax credits that would have the nature of a subsidy.

If the yearly apportioned amount of the tax credit is higher than the total fiscal debt in that particular a year, the amount in excess cannot be claimed for reimbursement by government. It might however be carried forward to offset the fiscal debt in following years. The parameter of three/five equal instalment in fact defines the maximum amount to be used in a year but in practice it does not limit the use of the tax credit in time. Accordingly, the tax credit might reduce the total fiscal debts of a beneficiary for an unlimited number of years until it is fully exhausted.

Although the tax credit described above will not be settled in cash, it will not be wasted and eventually will be “paid” (settled via offsets). Therefore, de facto, it has a nature of a payable tax credit. The likelihood that the government will provide the full amount of the tax credit to the beneficiary is therefore very high, though no associated cash flows might be observed in time. For all these reasons, Eurostat considers that the tax credit should be considered as a payable tax credit, as it would have the nature of a subsidy.

It has to be noted that specific guidance on cases of (permanently) reportable tax credits or tax credits reportable for longer time period is not elaborated in the ESA 2010 text. As in the case of the “Bonus 110%”, Eurostat intends to undertake the methodological analysis, discuss and consult with the Member States with the aim to update the MGDD accordingly.

3. CONCLUSIONS

Given the possibility to transfer the “Bonus 110%” by an original beneficiary to third persons, including a multiple transfer, Eurostat considers that the tax credit is a borderline case and cannot be clearly assigned to either a non-payable or payable tax credit. In contrast, the tax credit relating to the “Transition Plan 4.0” has features of the payable tax credit taking

into account the unlimited use in time by a beneficiary and the possibility of offsetting other tax obligations, not necessarily linked to the underlying tax. In a view of the forthcoming MGDD update, Eurostat intends to introduce specific methodological guidance that would cover the cases of transferable tax credits and the tax credits reportable for longer or unlimited period of time.

4. PROCEDURE

This view of Eurostat is based on the information provided by the Italian 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, 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 is therefore publishing all official methodological advice (ex-ante and ex-post) given to Member States on its website.

Yours sincerely,

(e-Signed)

Luca Ascoli
Director

XVIII LEGISLATURA

Doc. **XXIII**
n. **39**

COMMISSIONE PARLAMENTARE DI INCHIESTA SUL SISTEMA BANCARIO E FINANZIARIO

(istituita con legge 26 marzo 2019, n. 28)

(composta dai deputati: Ruocco, Presidente, D'Ettore, Vicepresidente, Buompane, Buratti, Centemero, Cestari, Coin, D'Alessandro, Fassina, Foti, Segretario, Maniero, Martino, Pagano Ubaldo, Raduzzi, Rizzone, Tabacci, Vazio, Zanettin, Zanichelli e Zennaro e dai senatori Laus, Vicepresidente, Bagnai, Buccarella, Calderoli, Castiello, De Bertoldi, Dell'Olio, Di Piazza, Ferrazzi, Ferro, Lannutti, Marino, Paragone, Pellegrini Marco, Perosino, Pesco, Quagliariello, Rivolta, Schifani e Steger)

RELAZIONE CONCLUSIVA SULL'ATTIVITÀ SVOLTA

(Relatore: on. Ruocco)

Approvata dalla Commissione nella seduta del 6 ottobre 2022

*Comunicata alle Presidenze il 6 ottobre 2022
ai sensi dell'articolo 1, comma 2, della legge 26 marzo 2019, n. 28*

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Premessa

La presente relazione, predisposta ai sensi dell'articolo 1, comma 2, della legge 26 marzo 2019, n. 28, (legge istitutiva) dà conto delle attività svolte nelle diverse aree oggetto di indagine e dei risultati raggiunti dalla Commissione parlamentare di inchiesta sul sistema bancario e finanziario.

Tali attività rientrano nell'ambito delle materie e dei principi dettati dalla legge istitutiva, tenuto conto delle precisazioni che il Presidente della Repubblica, nel promulgare la legge, ha indirizzato ai Presidenti dei due rami del Parlamento, con lettera del 28 marzo 2019.

La Commissione si è costituita il 6 febbraio 2020, con l'elezione del Presidente e dell'Ufficio di Presidenza.

In seguito all'insorgere dell'emergenza pandemica che ha colpito l'Italia dalla fine del mese di febbraio 2020 e durante tutta la fase del c.d. *lockdown* si è comunque organizzato un ciclo di audizioni sulle iniziative della *Task Force* per la liquidità del sistema bancario nell'emergenza sanitaria da Covid-19, che ha avuto avvio il 15 aprile 2020, nel rispetto delle misure previste sia nell'ordinamento generale che in quello interno delle Istituzioni parlamentari per prevenire la diffusione del contagio nelle sedi del Parlamento. La predetta *Task force* è stata costituita tra MEF, MISE, Banca d'Italia, ABI, Mediocredito Centrale e Sace, per assicurare l'efficiente e rapido utilizzo delle misure di supporto alla liquidità adottate dal Governo con il decreto legge n. 18/2020, c.d. "Cura Italia", e ulteriormente ampliate con il decreto legge n. 23/2020, c.d. "Liquidità", (rispettivamente convertiti dalle leggi n. 27 e n. 40 del 2020).

Nel corso della legislatura, la Commissione ha partecipato a varie iniziative legislative e regolamentari in ambito nazionale ed europeo per favorire il *level playing field* e mitigare anche i rischi di esclusione finanziaria di alcune categorie di utenti.

L'operato della Commissione si è svolto in proficua interazione con le altre Commissioni parlamentari, la Magistratura, la Banca d'Italia, la CONSOB, l'IVASS, nonché la Pubblica Amministrazione e le Università. Sono stati rafforzati i rapporti con la Guardia di Finanza ed è stato altresì avviato un confronto con le principali associazioni di categoria e con gli operatori del mercato al fine di meglio individuare profili di attenzione e definire soluzioni, anche in termini di autoregolamentazione, più efficaci ed efficienti.

Parimenti rilevante è stato il processo di progettazione e realizzazione del “Sistema di segnalazione”, in collaborazione con la Guardia di Finanza, volto a consentire le segnalazioni di eventuali profili di criticità nei rapporti bancari da parte di famiglie e imprese.

Attraverso il Sistema di segnalazione, di cui meglio si dirà nel prosieguo della presente relazione, la Commissione ha avuto la possibilità di monitorare le criticità esistenti nei rapporti tra clienti e intermediari, avviando attività di approfondimento e indagine con riferimento a gruppi omogenei di segnalazioni ovvero a casi specifici caratterizzati da particolari profili di rilevanza.

Va evidenziato fin d’ora che, nel dare riscontro alle segnalazioni ricevute, la Commissione ha operato in un contesto di leale collaborazione con gli intermediari finanziari e le Autorità di vigilanza anche al fine di favorire la più efficace applicazione della normativa licenziata dal Governo volta ad attenuare gli effetti negativi sull’economia dovuti alla pandemia da Covid-19. Inoltre, su iniziativa della Presidente della Commissione, sono state altresì presentate due proposte di legge volte ad affrontare alcuni profili di criticità del mercato dei crediti deteriorati (NPL - *non performing loans*).

La chiusura anticipata (e improvvisa) della legislatura non ha consentito alla Commissione di portare a compimento alcuni importanti cicli di audizioni e altra attività conoscitiva su temi di particolare interesse e rilievo.

Si darà conto di ciò nelle parti della relazione dedicate ai singoli temi di indagine.

Inoltre, non è stato possibile svolgere un approfondimento sul mercato dei c.d. “cryptoasset”, tema di indagine previsto nel programma della Commissione e che avrebbe dovuto essere portato avanti nel periodo settembre-dicembre 2022. L’attualità di tale tematica, in rapporto alle questioni relative alla tutela del risparmio dei cittadini, è peraltro venuta a porsi prepotentemente all’attenzione delle cronache nazionali proprio nel mese di agosto 2022 con riferimento a quella che molti hanno definito come prima “crypto-truffa” italiana, ossia il crack della New Financial Technology Ltd., società avente sede a Londra, ma promossa da cittadini veneti che prometteva agli investitori, tramite asserite operazioni di arbitraggio su criptovalute, rendimenti mensili pari a circa il 10 per cento.

PARTE I – L'ATTIVITÀ DELLA COMMISSIONE

1.1. Normativa istitutiva e avvio dei lavori

La Commissione d'inchiesta sul sistema bancario e finanziario è stata istituita con legge 26 marzo 2019, n. 28 (pubbl. in G.U. 1 aprile 2019, n. 77).

L'articolo 3 della legge istitutiva attribuisce alla Commissione un ampio novero di compiti riguardanti il sistema bancario e finanziario nella sua interezza. La legge ha, quindi, innovato e ampliato l'ambito delle competenze della precedente Commissione parlamentare di inchiesta sul sistema bancario e finanziario istituita nel corso della XVII legislatura, in quanto i compiti di quest'ultima erano riferiti all'accertamento di vicende e comportamenti che hanno provocato crisi di istituti bancari e alla verifica delle iniziative assunte per farvi fronte.

Per questo motivo, nel promulgare la legge istitutiva, il Presidente della Repubblica ha indirizzato in data 28 marzo 2019 una lettera ai Presidenti delle Camere.

In tale lettera, il Presidente della Repubblica, tenuto conto dell'ampiezza dei compiti attribuiti alla Commissione (che possono riguardare anche banche non coinvolte in crisi e che svolgono regolarmente la propria attività), ha anzitutto ribadito il potere del Parlamento di istituire commissioni di inchiesta in settori della vita istituzionale, economica o sociale, fermo restando che ciò deve anche tener conto dei limiti alle attività delle commissioni derivanti dalla Costituzione e puntualmente indicati nella giurisprudenza della Corte costituzionale.

Il Presidente della Repubblica ha, quindi, precisato che, nel caso specifico, le indicazioni ampie e generali previste dal testo normativo non devono sfociare in un controllo puntuale da parte della Commissione Parlamentare sull'attività creditizia o di investimento, attività che costituiscono esercizio della libertà di iniziativa economica tutelata dall'articolo 41 della Costituzione. Il Presidente della Repubblica ha, poi, richiamato il generale principio di non interferenza con le attività delle Autorità di vigilanza, nazionali ed europee e il principio di leale collaborazione, in quanto trovano applicazione anche nei rapporti tra inchiesta parlamentare e inchiesta giudiziaria.

La Commissione si è costituita nella seduta del 6 febbraio 2020 con l'elezione del Presidente e dell'Ufficio di Presidenza.

Nella seduta del 26 febbraio 2020, la Commissione ha adottato la “Deliberazione sul regime di divulgazione degli atti e dei documenti”, nonché la “Deliberazione di acquisizione dell’intera documentazione raccolta dalla Commissione parlamentare di inchiesta sul sistema bancario e finanziario nella XVII legislatura”, deliberate dall’Ufficio di Presidenza integrato dai rappresentanti dei Gruppi della Commissione stessa. È stato contestualmente costituito l’Archivio della Commissione, tenuto dai militari del Nucleo speciale della Guardia di Finanza presso le Commissioni parlamentari di inchiesta.

Nella successiva seduta del 4 marzo è stato approvato il “Regolamento interno”, previo esame degli emendamenti presentati.

Il 14 luglio la Commissione ha poi adottato il “Programma di attività della Commissione parlamentare di inchiesta sul sistema bancario e finanziario per il periodo luglio 2020 – marzo 2023”, previamente deliberato dall’Ufficio di Presidenza integrato dai rappresentanti dei Gruppi.

In esso, che sostanzialmente individua gli obiettivi che la Commissione intende perseguire, si è ritenuto che, conformemente alla natura “di inchiesta” della Commissione stessa, sia necessario procedere ad esaminare i profili di criticità nel funzionamento del sistema bancario e finanziario. Tali profili sono stati ripartiti in tre distinti ambiti:

- il primo è dedicato ad esaminare le problematiche emerse nel rapporto fra le banche e gli altri intermediari finanziari con le rispettive clientele;
- il secondo è riferito alle criticità del sistema bancario, finanziario e assicurativo, relative ai profili gestionali, di assetto proprietario e del sistema dei controlli interni;
- il terzo, strettamente collegato agli esiti dei primi due, concernente l’analisi degli assetti della vigilanza bancaria e finanziaria e le possibili iniziative di carattere legislativo.

1.2. Obiettivi della Commissione

Il primo ambito di azione definito dal Programma approvato dalla Commissione riguarda l’esame delle problematiche emerse nel rapporto fra le banche, gli altri intermediari finanziari e le rispettive clientele.

Si tratta di un ambito che sostanzialmente, per le banche e gli altri intermediari creditizi (quali le società di credito al consumo o quelle attive nel *leasing*, nel *factoring*, piattaforme di *social lending*, ecc.), ha ad oggetto la verifica del rispetto, formale e sostanziale,

della normativa sulla trasparenza bancaria (compresi i servizi di pagamento); per i servizi di intermediazione – sia che siano offerti dalle banche, dalle SIM, da SGR o da altri intermediari – ha, invece, ad oggetto la verifica del rispetto, formale e sostanziale, delle regole di comportamento.

Con riferimento a tali terreni di indagine, per l'individuazione dei temi specifici, si è ritenuto di fare riferimento agli esiti delle attività svolte dalle due strutture arbitrali attive: l'ABF, Arbitro Bancario e Finanziario, e l'ACF, Arbitro Controversie Finanziarie.

Il secondo ambito di intervento della Commissione si riferisce alle criticità del sistema bancario, finanziario e assicurativo relative ai profili gestionali (compresi gli aspetti relativi alla *corporate governance*, ai limiti al cumulo degli incarichi e ai divieti di *interlocking*), di assetto proprietario e del sistema dei controlli interni (compreso il ruolo delle società di revisione) ed è stato anch'esso definito non seguendo un approccio generalista, quanto piuttosto facendosi guidare dalle concrete "vicende" emerse in questi ultimi anni su tali profili.

Con riferimento agli assetti proprietari, il Programma fa riferimento, tra l'altro, agli aspetti relativi alla trasparenza e alle dinamiche del mercato del controllo del sistema finanziario – che devono essere effettuati nel rispetto dell'articolo 41 della Costituzione e della regolamentazione di settore – soprattutto con riferimento all'operatività posta in essere da soggetti *extra* UE. Tema, questo, che ha visto il sistema bancario italiano a lungo in posizione di ritardo rispetto ai sistemi degli altri Paesi europei, ed il cui forzato e tardivo recupero (su sollecitazione dell'EBA) ha prodotto – com'è noto – ripetute operazioni di rafforzamento patrimoniale che hanno determinato un sostanziale cambiamento degli assetti proprietari di molte realtà bancarie italiane (con un significativo ridimensionamento delle Fondazioni, sostituite dalla presenza di Investitori Istituzionali stranieri) nonché l'arrivo – nella *sub industry* del *debt collecting* – di Fondi speculativi (i cc.dd. "Fondi Avvoltoio") e di *servicer* di matrice e proprietà estera.

Non va trascurato come l'approccio, prima tardivo e poi accelerato, nella gestione di NPL (*non profit loans*) abbia per altro verso concorso a determinare profili di criticità nel modello di *business* di quella parte del sistema bancario (tra cui rientrano le banche territoriali costituite in forma di società cooperativa) che, non avendo né per dimensione né per tipologia giuridica di assetto proprietario accesso al mercato dei capitali di rischio, ha cercato nelle rispettive comunità locali il reperimento, spesso forzato, di nuovi mezzi

patrimoniali (azioni e obbligazioni subordinate). In tale ambito, si è ritenuto altresì opportuno orientare l'analisi – per favorire la tempestiva rilevazione dei crediti deteriorati, la loro corretta classificazione nell'informativa contabile e limitare il *moral hazard* del ritardo nella loro rilevazione – verso l'operato, gli obblighi e le responsabilità delle società di revisione, il sistema dei controlli interni nonché la regolamentazione di settore primaria e secondaria.

In materia si è ritenuto opportuno approfondire anche gli aspetti relativi alla disciplina e alla gestione dei crediti classificati come inadempienze probabili (c.d. "crediti UTP" o "crediti *unlikely to pay*") tra i quali, ad esempio, i profili di trasparenza informativa, contabili e gestionali di tali posizioni per individuare possibili iniziative anche di carattere legislativo, finalizzate a ristrutturare le posizioni debitorie ovvero a favorire la concessione di nuova finanza alle imprese (il tema sarà approfondito nei paragrafi 2.1 e 2.2).

È di ogni evidenza come la coincidenza – in capo alla stessa comunità locale – di contestuali ruoli di soggetti depositari, prenditori dei finanziamenti nonché di potenziali sottoscrittori delle emissioni di azioni sia stata la causa di rilevanti situazioni di conflitto di interesse che hanno causato danni patrimoniali per decine di migliaia di piccoli clienti e azionisti.

La Commissione ha esaminato con attenzione gli aspetti attinenti ai profili di criticità emersi nell'operatività delle banche popolari locali e, in particolare, della Banca Popolare di Bari (oggetto di specifica trattazione nel successivo paragrafo 2.3). Attraverso tale approfondimento si è inteso anche meglio comprendere la sussistenza di eventuali criticità nell'azione delle due Autorità di vigilanza, al fine di verificare se possa essere ipotizzabile un modello che, rispetto a quello attuale, sia maggiormente caratterizzato da una più netta configurazione dei rispettivi campi per finalità di intervento (stabilità vs. trasparenza).

Si tratta di aspetti sui quali risulta importante riporre l'attenzione, anche nella prospettiva di una prossima prevedibile ondata di NPL che, a seguito del marcato deterioramento del quadro economico europeo e globale nell'ultimo anno, potrebbero rendere non esigibili molti dei crediti in essere del sistema bancario e finanziario nei confronti delle aziende attive in certi settori o comunque in situazione di marginalità reddituale.

In tale contesto, risulta utile approfondire l'esame di eventuali misure per la rivitalizzazione del rapporto banca-impresa, logorato dalle vicissitudini di questi anni e invece fondamentale per il recupero della competitività del sistema-Italia.

In particolare, è risaputo che i crediti deteriorati presenti nei bilanci bancari non sono qualitativamente uniformi: una parte è effettivamente espressione di posizioni del tutto deteriorate, mentre un'altra parte è invece da ricondursi alle difficoltà finanziarie che, a causa della protratta congiuntura avversa, hanno colpito imprese fundamentalmente sane e produttive. Dunque, a causa di fattori esogeni, tali imprese ora si vedono preclusa la possibilità di accesso a nuovi e vitali finanziamenti stante lo stigma di "cattivi pagatori" con cui sono classificate nell'ambito della Centrale dei Rischi della Banca d'Italia.

A tale proposito, può osservarsi come ormai nei bilanci bancari queste esposizioni creditizie siano già rettificate per tenere conto dell'entità attesa della loro svalutazione. Pertanto, sembrerebbe ragionevole e opportuno un intervento volto ad allineare il valore contabile di questi debiti nei bilanci delle imprese-debitrici al valore contabile netto a cui gli stessi sono ormai iscritti nei bilanci bancari. Una simile misura, riducendo l'indebitamento complessivo delle imprese sane e transitoriamente in difficoltà, potrebbe consentire il recupero della capacità di accesso al credito a condizioni eque e la piena ripresa dell'attività produttiva a beneficio non solo della proprietà e dei dipendenti ma anche degli stessi creditori e dell'Erario, che negli ultimi anni ha sofferto una significativa perdita di gettito proprio imputabile al fenomeno sopra descritto.

Sempre nella prospettiva di preparare il Paese a meglio affrontare la prossima prevedibile ondata di NPL, si ritiene utile verificare se non sia il caso di rivedere o perfezionare il funzionamento delle garanzie pubbliche (GACS) sui *bond* (senior) emessi in occasione di operazioni di cartolarizzazione di NPL. Così come occorre approfondire se sia opportuno introdurre anche nel contesto nazionale una scelta fatta in passato da altri Paesi: cioè la creazione di una *bad bank* a capitale nazionale sulla quale far confluire ed alla quale affidare la gestione aggregata, e con evidenti economie di scala e di scopo, delle posizioni problematiche provenienti da vari intermediari bancari.

Infine, l'esame di queste stesse vicende ha guidato l'attenzione della Commissione verso il tema, connesso, dell'intervento pubblico nel capitale delle aziende di credito e – in modo ancor più rilevante – della sua natura, finalità e soprattutto del suo esito atteso, per

comprendere se si tratti di un fenomeno temporaneo o, invece, dell'attuazione di un disegno di tipo strategico.

Sul punto, come è noto, alla questione della partecipazione detenuta dal Tesoro nel capitale del MPS, si è di aggiunta la decisione dell'intervento del Medio Credito Centrale al fine di assumere un ruolo di rilevanza nel processo di ricapitalizzazione della Banca Popolare di Bari.

Il terzo ambito del Programma di attività della Commissione, infine, è rappresentato dall'analisi degli assetti di vigilanza bancaria e finanziaria e dalle possibili e conseguenti iniziative di carattere legislativo.

In Italia, ai sensi del Testo unico delle disposizioni in materia di intermediazione finanziaria (TUF), vigilano sul sistema finanziario la Banca d'Italia, la CONSOB, l'IVASS e la COVIP. Dette autorità collaborano tra loro, anche mediante scambio di informazioni, al fine di agevolare le rispettive funzioni, e non possono reciprocamente opporsi il segreto d'ufficio. La Banca d'Italia e la CONSOB collaborano altresì, anche mediante scambio di informazioni, con le Autorità e i comitati che compongono il Sistema europeo di vigilanza finanziaria (SEVIF) e con la Banca Centrale Europea (BCE) al fine di agevolare le rispettive funzioni.

Con riferimento agli assetti di *governance* delle singole Autorità nazionali si registrano differenti modelli che potrebbero condurre, in alcuni casi, anche a composizioni *sub-ottimali* dei diversi collegi. A titolo esemplificativo, si registrano differenze nel numero e nella durata degli incarichi, nella presenza o meno di personale delle Autorità stesse negli organi di vertice, nell'applicazione del tetto agli stipendi, nei contratti nazionali di riferimento, nei procedimenti di nomina, nella presenza di divieti in termini di assunzione di incarichi per *ex* esponenti delle Autorità di vigilanza ovvero per i dipendenti delle stesse.

Sarebbe, quindi, auspicabile armonizzare e semplificare la disciplina prevedendo regole più chiare finalizzate, ad esempio, a garantire una composizione multidisciplinare dei collegi, con esponenti in parte provenienti dal mercato e in parte espressione della stessa Autorità. I modelli di *governance* dovrebbero garantire il reclutamento, anche sul mercato, di personale altamente qualificato nonché la valorizzazione dell'esperienza lavorativa e delle specifiche competenze maturate dal personale delle Autorità stesse.

Ciò detto, la Commissione si è proposta di analizzare gli attuali assetti della vigilanza nazionale ed eventualmente individuare soluzioni e semplificazioni di carattere normativo da proporre al Legislatore.

Una proposta potrebbe essere quella di superare il vigente modello “ibrido” (per finalità e per soggetti), con il passaggio ad altri modelli di semplificazione degli attuali assetti della vigilanza, garantendo anche una più netta suddivisione dei poteri e delle relative responsabilità.

Senza pretesa di esaustività, si evidenzia che sono stati effettuati diversi studi - anche attraverso analisi di valutazione dell’impatto della regolamentazione (VIR) e analisi comparate fra i sistemi di vigilanza vigenti nei principali Paesi UE - fra i seguenti approcci alla supervisione del sistema finanziario: a) il modello del Regolatore Unico, che prevede l’accentramento della vigilanza su un’unica Autorità di controllo; b) il modello “puro” per finalità TP (c.d. *Twin Peaks*), da cui deriverebbe l’articolazione della vigilanza in capo a due sole autorità, specializzate l’una per la stabilità e l’altra per la correttezza dei comportamenti e per la trasparenza informativa; c) il “modello europeo”, da cui deriverebbe la “replica” in chiave nazionale del modello di vigilanza attualmente operante a livello europeo sul sistema finanziario basato, per la vigilanza micro-prudenziale, su tre autorità di settore: l’EBA per il settore bancario, l’ESMA per i mercati finanziari e l’EIOPA per il comparto delle assicurazioni e dei fondi pensione.

1.3. L’attività conoscitiva della Commissione

L’insorgere dell’emergenza pandemica da Covid-19, con il suo evidente e immediato impatto negativo sul sistema economico e finanziario del Paese, ha indotto la Commissione a dedicare la prima parte dei suoi lavori allo svolgimento di un ciclo di audizioni (aprile-settembre 2020) sulla verifica delle iniziative della *task force* per la liquidità del settore bancario volte all’attuazione delle misure previste dai decreti-legge “Cura Italia” (decreto-legge 17 marzo 2020, n. 18, convertito con legge 24 aprile 2020, n. 27) e “Liquidità” (decreto-legge 8 aprile 2020, n. 23, convertito con legge 5 giugno 2020, n. 40).

Le predette audizioni hanno avuto avvio nella seduta del 15 aprile 2020, con l’intervento del Capo del Dipartimento Vigilanza Bancaria e Finanziaria (Paolo Angelini) e del Capo del Servizio Stabilità finanziaria (Giorgio Gobbi) della Banca d’Italia. Il programma di audizioni è poi proseguito nelle seguenti sedute:

- 22 aprile: audizione del Direttore Generale dell'Associazione Bancaria Italiana (ABI), Giovanni Sabatini;
- 23 aprile: audizione dell'Amministratore Delegato di Mediocredito centrale (con particolare riferimento alla gestione del Fondo di garanzia), Bernardo Mattarella;
- 29 aprile: audizione del Dirigente Generale Sistema Bancario e Finanziario-Affari Legali del Ministero dell'economia e delle finanze, Stefano Cappiello;
- 6 maggio: audizione del Presidente (Rodolfo Errero) e dell'Amministratore Delegato (Pierfrancesco Latini) di Sace;
- 13 maggio: audizione del Direttore generale per gli incentivi alle imprese del Ministero dello sviluppo economico, Laura Aria.

La Commissione ha quindi predisposto e inviato (in data 12 maggio) ai 148 Istituti bancari operanti in Italia un questionario sull'applicazione della normativa di cui ai decreti legge n. 18 e n. 23 del 2020. Dalle risposte degli istituti è stato possibile individuare alcune linee di tendenza sull'applicazione delle misure riguardanti il sistema bancario contenute nei predetti decreti, che sono state esaminate e discusse dalla Commissione nella seduta del 27 maggio 2020. Nella stessa seduta si è altresì convenuto di riconvocare in audizione i rappresentanti della Banca d'Italia e dell'ABI, su alcune questioni emerse dall'analisi del questionario, e di procedere all'audizione anche di rappresentanti di Istituti bancari, per verificare la concreta attuazione delle misure a sostegno della crisi.

Nella seduta del 4 giugno è stato audito il Ministro dell'economia e delle finanze, On. Roberto Gualtieri.

Nella seduta del 28 maggio si è proceduto all'audizione del Presidente della CONSOB, Prof. Paolo Savona, in merito alla situazione dei mercati finanziari a seguito della crisi economico-finanziaria causata dalla pandemia sanitaria, alla luce dell'evoluzione dei mercati borsistici e degli interventi introdotti dal legislatore per il sostegno alle aziende ed imprese colpite dalla crisi. Ulteriori approfondimenti in materia sono stati resi nella seduta del 14 luglio da esponenti della CONSOB, nelle persone del Presidente, Prof. Paolo Savona, della Vice Direttrice Generale, Tiziana Togna, e della Responsabile Divisione Mercati, Maria Antonietta Scopelliti.

Nelle sedute del 10 e dell'11 giugno sono intervenuti nuovamente in audizione, rispettivamente, Giovanni Sabatini, Direttore Generale dell'Associazione Bancaria Italiana, e Paolo Angelini, Capo del Dipartimento Vigilanza bancaria e finanziaria della Banca

d'Italia, per aggiornare le informazioni già riferite alla Commissione sulle iniziative della *Task Force* per la liquidità del sistema bancario nell'emergenza sanitaria.

Con l'audizione, nella seduta del 17 giugno, del Responsabile Divisione Banca dei Territori (Stefano Barrese) e del Responsabile Divisione *Corporate ed Investment Banking* (Mauro Micillo) di Intesa Sanpaolo Spa, ha avuto inizio il ciclo di audizioni di Istituti bancari e Associazioni di categoria di settore sull'applicazione delle misure per la liquidità di cui ai decreti-legge n. 18 e n. 23 del 2020.

In tale ambito, sono stati successivamente auditi:

- 23 giugno: il Presidente dell'Associazione Nazionale fra le Banche Popolari, Corrado Sforza Fogliani;
- 7 luglio: il *Co-Head Commercial Banking Western Europe* (Francesco Giordano) e il *Co-Head Commercial Banking Italy* (Andrea Casini) del Gruppo Unicredit Spa;
- 21 luglio: il Presidente (avv. Augusto Dell'Erba) e il Direttore generale (Sergio Gatti) di Federcasse;
- 28 luglio: il Condirettore generale (Salvatore Poloni) e il Responsabile commerciale (Matteo Faissola) di Banco BPM S.p.A.;
- 5 agosto: il Vice Direttore generale e *Chief Commercial Officer* (Frederik Geertman) di UBI Banca; il Vice Direttore generale vicario (Stefano Rossetti) nonché il Responsabile Direzione Pianificazione e Politiche creditizie (Paolo Corradini) di BPER Banca S.p.A.;
- 8 settembre: il Responsabile Direzione *Chief Lending Officer* di Banca Monte dei Paschi di Siena S.p.A., Fabrizio Leandri;
- 9 settembre: l'Amministratore delegato di Mediobanca S.p.A., Alberto Nagel.

All'esito delle attività finalizzate a verificare l'effettivo impatto dei provvedimenti normativi volti a fronteggiare l'impatto negativo sull'economia determinato dal persistere dello stato pandemico, particolare rilievo assumono le circolari del luglio 2020 realizzate, su impulso della Commissione, da ABI, Federcasse e Assopopolari, per sensibilizzazione gli istituti di credito alla più corretta applicazione delle disposizioni concernenti i finanziamenti coperti da garanzia statale. Le Circolari citate hanno chiarito che, in sostanza, la garanzia pubblica sostituisce le garanzie normalmente richieste per ottenere un finanziamento e che è possibile acquisire ulteriori garanzie di tipo personale o di tipo reale,

assicurativo ovvero bancario, esclusivamente sulla quota di finanziamento non coperta dalla garanzia statale.

Una seconda parte dei lavori della Commissione è stata dedicata alle crisi bancarie, con particolare riferimento a quelle di Banca Monte dei Paschi di Siena e Banca Popolare di Bari, con l'avvio di un ciclo di audizioni, iniziato nel mese di settembre 2020.

Per le vicende inerenti MPS, con l'audizione del 22 settembre 2020 dell'Amministratore delegato della Banca, Guido Bastianini, è stata posta l'attenzione: sull'operazione di acquisizione di Banca Antonveneta da parte di MPS; sulle operazioni finanziarie di reperimento delle risorse necessarie all'acquisizione della citata banca; sugli aumenti di capitale eseguiti dalla predetta banca nel periodo 2010 – 2020; sull'operazione Hydra; sulla sintetica prospettazione dei contenziosi in corso; sulla qualità del portafoglio crediti della banca con i tassi di recupero delle sofferenze e delle inadempienze probabili nonché le previsioni effettuate dalla banca stessa in termini di possibile deterioramento della qualità del credito; sulle operazioni svolte, con riferimento agli ultimi cinque anni per ridurre l'esposizione in NPL e in crediti UTP.

Successivamente, l'Amministratore delegato, Guido Bastianini, nelle sedute del 27 aprile e del 12 luglio 2021, ha fornito alla Commissione l'approfondimento da questa richiesto in merito ad alcune notizie di stampa riguardanti lo stato della Banca e il suo futuro, anche con riferimento alle motivazioni della sentenza penale di primo grado emessa nel contesto del procedimento n. 955/2016 riguardante MPS.

Con l'audizione della Viceministra dell'Economia e delle Finanze, Laura Castelli, in data 27 luglio 2021, la Commissione ha inteso essere aggiornata in merito alla situazione della Banca Monte dei Paschi di Siena, con particolare riferimento: a un imminente aumento di capitale; a eventuali interlocuzioni con soggetti bancari in vista di una possibile fusione, ovvero di cessione anche parziale degli sportelli; alle intenzioni del MEF circa la possibile proroga del termine ad oggi stabilito per le operazioni di aggregazione aziendale perfezionate nel 2021 e al possibile incremento dell'incentivo netto per il potenziale acquirente di MPS ai sensi dell'articolo 1, commi 233 e 243, della legge 30 dicembre 2020, n. 178; ad eventuali interlocuzioni avviate con la DG *Competition* della Commissione europea per posticipare il termine per la dismissione della partecipazione da parte del MEF; alle valutazioni del MEF sulle motivazioni della sentenza relativa al processo MPS e alle possibili conseguenti iniziative.

Da ultimo, l'Amministratore delegato di UniCredit S.p.A., Andrea Orcel, e l'Amministratore delegato di MPS, Andrea Bastianini, con due distinte audizioni svolte in data 8 novembre 2021, hanno fornito alla Commissione le informazioni da questa richieste in merito alla chiusura dei negoziati relativi alla potenziale acquisizione di MPS, come rappresentato al mercato con il comunicato congiunto UniCredit-Mef del 24 ottobre 2021.

Con riferimento alla crisi della Banca Popolare di Bari, in esito alle dei Commissari straordinari della Banca, Antonio Blandini ed Enrico Ajello (audizioni del 23 settembre 2020) e dell'Amministratore delegato di Mediocredito centrale Spa, Bernardo Mattarella (audizione del 29 settembre 2020), sono stati approfonditi taluni aspetti relativi alla gestione della stessa Banca e, in particolar modo, le attività poste in essere nel periodo decorrente dal 13 dicembre 2019, data di scioglimento degli organi con funzioni di amministrazione e controllo, con conseguente sottoposizione della Banca alla procedura di amministrazione straordinaria.

Con riguardo ai successivi sviluppi e alle iniziative del nuovo Consiglio di Amministrazione della Banca, nella seduta del 3 novembre 2021, sono stati auditi il Presidente della Banca Popolare di Bari S.p.A., Gianni De Gennaro, e l'Amministratore delegato, Giampiero Bergami.

Con l'audizione della Sottosegretaria di Stato al Ministero dell'Economia e delle Finanze, Maria Cecilia Guerra, avvenuta l'11 luglio 2021, è stato affrontato il tema del sistema bancario del Mezzogiorno e del posizionamento strategico e territoriale della partecipata Banca Popolare di Bari.

Il tema delle partecipazioni dello Stato nel settore bancario e l'approfondimento sulle strategie pianificate dal Ministero per l'adeguata valorizzazione delle varie partecipate di Stato nel settore bancario, tra cui Banca Monte dei Paschi di Siena e Banca Popolare di Bari, è stato successivamente oggetto dell'audizione del Ministro dell'Economia e delle Finanze, Daniele Franco, nella seduta del 26 aprile 2022.

Il 12 luglio 2022, nell'ultima seduta antecedente allo scioglimento anticipato delle Camere (avvenuto con Decreto del Presidente della Repubblica del 21 luglio 2022, n. 96), la Commissione, avendo ravvisato l'opportunità di acquisire aggiornamenti sui contenuti e sugli obiettivi del nuovo piano industriale MPS 2022/2026, ha audito l'Amministratore delegato di Banca Monte dei Paschi di Siena, Luigi Lovaglio.

Un terzo ciclo di audizioni, compreso nel periodo ottobre 2020 – aprile 2021, si è incentrato sui modelli di business degli operatori attivi sul mercato degli NPL e dei crediti UTP.

In tale ambito, sono stati auditi:

- il 27 ottobre, l'Amministratore Delegato di DoValue Spa, Andrea Mangoni;
- il 3 novembre, il Direttore Generale di Credito Fondiario Spa, Iacopo De Francisco;
- il 10 novembre 2020, l'Amministratore Delegato di Intrum Italy Spa, Marc Knothe;
- il 17 novembre, l'Amministratore Delegato di Cerved Group Spa, Andrea Mignanelli;
- il 24 novembre, l'Amministratore Delegato di IFIS-NPL Servicing Spa, Luciano Colombini;
- il 1° dicembre, l'Amministratore Delegato di Prelios Credit Servicing Spa, Riccardo Serrini;
- il 9 dicembre, l'Amministratore Delegato di Guber Banca Spa, Francesco Guarneri;
- il 12 gennaio 2021, il Direttore Generale di Phoenix Asset Management Spa, Roberto Tavani;
- il 2 febbraio, il Vice Presidente, Rodolfo Girardi, e il Direttore della Direzione Affari Economici, Finanza e Centro Studi, Flavio Monosilio dell'Associazione Nazionale Costruttori Edili (ANCE);
- il 3 febbraio, l'Amministratrice Delegata di Asset Management Company Spa (AMCO), Marina Natale;
- il 16 febbraio, la professoressa di diritto dell'economia presso la Facoltà di Scienze bancarie, finanziarie e assicurative dell'Università Cattolica del Sacro Cuore, Antonella Sciarrone Alibrandi e l'Amministratore delegato di Hoist Finance S.p.A., Clemente Reale;
- il 13 aprile, il Presidente, Giuseppe Maino, e il Direttore generale, Mauro Pastore, di ICCREA Banca;
- il 20 aprile, l'Amministratore Delegato di Sistemica S.p.A., Francesco Magliocchetti.

Nella seduta del 21 dicembre 2021, la Commissione ha approvato la Relazione sull'attività svolta (DOC XXIII, n. 17), predisposta ai sensi dell'articolo 1, comma 2, della legge istitutiva.

La Commissione ha anche avviato un'attività di studio sull'assetto organizzativo e gestionale delle fondazioni bancarie al fine di formulare le proposte di carattere legislativo più idonee a garantire la tutela del risparmio.

Tale attività ha avuto inizio l'11 gennaio 2022 con le audizioni del Presidente dell'Associazione di Fondazioni e Casse di Risparmio (ACRI), Francesco Profumo e del Presidente della Fondazione Pescarabruzzo, Nicola Mattoscio.

A seguito di quanto emerso nella puntata della trasmissione "Report" andata in onda lunedì 13 dicembre 2021 su un'emittente del Servizio pubblico, la Commissione ha deliberato di svolgere un approfondimento sulla vicenda della vendita di diamanti ai propri clienti da parte dei maggiori istituti di credito operanti sul territorio nazionale.

In tale ambito, hanno avuto luogo le audizioni del Direttore Generale della Banca d'Italia, Luigi Federico Signorini (8 febbraio 2022); del Capo di Gabinetto dell'Autorità garante della Concorrenza e del mercato, Maria Tuccillo (8 marzo 2022); del Presidente della CONSOB, Prof. Paolo Savona, e del Responsabile della Divisione Tutela dei Consumatori della CONSOB, Mauro Lorenzoni (15 marzo 2022); e, infine, dei giornalisti della trasmissione Report -RAI Sigfrido Ranucci ed Emanuele Bellano (3 maggio 2022).

Nella seduta del 15 febbraio 2022, con l'audizione di Francesco Capriglione, professore straordinario di Diritto dell'economia, la Commissione ha dato avvio, ai sensi dell'articolo 3, comma 1, lettera c), della legge istitutiva, a un'attività di Valutazione di Impatto della Regolamentazione (VIR) sugli effetti prodotti dalla Riforma del 2016 sull'operatività delle Banche di Credito Cooperativo, nell'ottica di individuare, ove necessario, appositi interventi normativi idonei a migliorare l'assetto normativo e superare eventuali vincoli regolamentari che, determinando difficoltà operative gestionali, limitino il ruolo mutualistico delle banche di credito cooperativo. L'indagine è proseguita nelle successive sedute del 22 e del 28 febbraio, con l'audizione, in entrambe le date, del Presidente di Federcasse, Augusto dell'Erba.

Il 10 marzo 2022 ha avuto luogo il seguito dell'audizione, che si era svolta il 13 ottobre 2020, del Direttore generale del Dipartimento del Tesoro del Ministero dell'economia e delle finanze, Alessandro Rivera, sull'operatività dell'Amministrazione Centrale dello Stato in

strumenti finanziari derivati, avendo l'Ufficio di Presidenza della Commissione deliberato di proseguire l'attività di monitoraggio in materia, nella prospettiva di valutare la complessiva operatività posta in essere nonché, più in generale, le strategie pianificate dal MEF in materia di strumenti finanziari derivati.

A seguito della decisione della Banca d'Italia dell'11 giugno 2021 di sottoporre la Banca del Sud S.p.A. alla procedura di amministrazione straordinaria, la Commissione ha programmato audizioni per acquisire informazioni in merito.

A tal fine, nelle sedute del 15 luglio 2021 e del 1° marzo 2022 sono stati auditi i Commissari straordinari di Banca del Sud, Paolo D'Alessio e Livia Casale, per aggiornamenti sulle attività poste in essere e programmate dai medesimi per assicurare la continuità aziendale della banca, sul necessario rafforzamento patrimoniale e sulla tutela degli azionisti e dei clienti della stessa banca.

In tale ambito, il 21 marzo 2022 ha avuto altresì luogo l'audizione di Rossella Paliotto, Presidente della Fondazione Banco Napoli quale azionista di maggioranza relativa di Banca del Sud S.p.A.

A seguito di notizie di stampa e di diverse segnalazioni ed esposti ricevuti, la Commissione, con riferimento ai profili di sua competenza relativi alla tutela del risparmio, ha inteso acquisire informazioni sullo stato della procedura di fallimento della DEIULEMAR Compagnia di Navigazione S.p.A, ascoltando a tal fine, nella seduta del 22 marzo 2022, i Curatori fallimentari Paola Mazza, Alfonso Iovane e Vincenzo Di Paolo.

Dando seguito alla precedente audizione del 15 giugno 2021, il 4 aprile 2022 la Commissione ha nuovamente ascoltato il Presidente della Commissione tecnica del Fondo Indennizzo Risparmiatori (FIR), Gianfranco Servello, per aggiornamenti in merito allo stato di attuazione della legge 30 dicembre 2018, n. 145, e successive modificazioni, che ha istituito il FIR presso il Ministero dell'Economia e delle Finanze.

La Commissione ha inteso altresì conoscere, sul medesimo oggetto, le valutazioni delle associazioni dei risparmiatori, con l'audizione, il 5 luglio 2022, dei rappresentanti delle Associazioni "Noi che credevamo nella Banca popolare di Vicenza e in Veneto Banca", Luigi Ugone, e "Consumatori attivi", Barbara Venuti, e acquisendo altresì i contributi pervenuti da parte delle Associazioni "Gruppi Azionisti banca Etruria" e "Vittime del Salvabanche".

A seguito della pubblicazione di diversi studi ed indagini nonché di segnalazioni ed esposti ricevuti, l'Ufficio di Presidenza della Commissione ha deliberato di svolgere

approfondimenti sui modelli distributivi del settore bancario e sulle possibili pressioni commerciali inerenti la vendita ai clienti di prodotti finanziari, tematica che investe profili inerenti la tutela del risparmio, il corretto funzionamento del sistema bancario e finanziario nonché il benessere lavorativo.

Nella seduta del 17 maggio 2022 la Commissione ha quindi audito i rappresentanti delle cinque associazioni sindacali maggiormente rappresentative dei dipendenti bancari: FABI, First CISL, Fisac CGIL, UILCA, UNISIN.

L'indagine è proseguita con le audizioni, il 24 maggio 2022, dei rappresentanti delle associazioni di consulenza finanziaria indipendente NAFOP (Giuseppe Romano), AssoSCF (Luca Mainò) e IFA CONSULTING (Nicola Benini) e, il 21 giugno 2022, del Direttore Generale dell'Associazione Bancaria Italiana (ABI), Giovanni Sabatini e del Presidente del Comitato per gli Affari sindacali e del lavoro di ABI, Salvatore Poloni.

Il 31 maggio 2022, la Commissione ha svolto l'audizione dell'Amministratore Delegato, Philippe Donnet, e del Presidente, Andrea Sironi, di Assicurazioni Generali S.p.A., avendo l'Ufficio di Presidenza della Commissione ravvisato l'opportunità, a seguito dell'assemblea degli azionisti dello scorso 29 aprile 2022, di svolgere un'attività conoscitiva in merito alle dinamiche di *governance* e azionarie che avevano coinvolto Assicurazioni Generali S.p.A.

Il tema delle sofferenze bancarie è stato ripreso e approfondito con le audizioni del 14 giugno 2022 di Francesco Pisapia, Partner Ernst & Young, Financial Services Leader e di Michele Thea, Partner Ernst & Young, *Non Performing Exposures Europe Leader*.

Nella seduta del successivo 28 giugno 2022, la Commissione ha proceduto all'audizione di Raffaele Lener, professore ordinario di Diritto commerciale e Diritto dei mercati finanziari e Consulente della Commissione per riferire, nella sua qualità di coordinatore del Gruppo di lavoro in materia di sofferenze bancarie istituito dall'Ufficio di Presidenza nel mese di luglio 2021, sulla definizione di apposite proposte di interventi legislativi per il settore degli NPL e dei crediti UTP, partendo dall'analisi di due disegni di legge recanti "Disposizioni per la gestione dei crediti in sofferenza garantiti da ipoteche o contratti di locazione finanziaria relativi a immobili" (A.C. n. 3109) e "Disposizioni per la definizione transattiva dei crediti bancari in sofferenza" (A.C. n. 3110).

Oltre alle audizioni sopra citate, si segnala che nel periodo di attività la Commissione ha svolto le seguenti ulteriori audizioni:

- il 2 marzo 2021, Stefano De Polis, Segretario generale dell'Istituto per la Vigilanza sulle Assicurazioni (IVASS) in merito alle vicende della Cattolica Assicurazioni S.p.A.;
- il 23 marzo 2021, Paolo Bedoni e Carlo Ferraresi, rispettivamente Presidente e Amministratore Delegato di Cattolica Assicurazioni S.p.A. in merito alle vicende della predetta società;
- il 16 marzo 2021, Francesco Bedino, ex Presidente di Bene Banca, e Silvano Trucco, ex Direttore Generale di Bene Banca, in merito alle vicende che hanno condotto al commissariamento di Bene Banca nel 2013;
- il 1 luglio 2021, Arturo Schininà e Saverio Continella, rispettivamente Presidente e Direttore generale della Banca Agricola Popolare di Ragusa;
- il 12 ottobre 2021, Franca Berno e Alberto Maria Tedoldi, Presidente e Capo dell'Ufficio legale dell'Associazione TuConFin, in merito alle attività poste in essere da Banca Barclays, con specifico riferimento alla commercializzazione e alla gestione di mutui indicizzati al franco svizzero;
- il 29 marzo 2022, Andrea Bulgarella, imprenditore, del Gruppo Bulgarella S.p.A., per acquisire maggiori informazioni sulle vicende relative ai suoi rapporti con il sistema bancario, anche a sostegno della relativa attività istruttoria in corso presso il Sistema di segnalazione gestito in collaborazione con la Guardia di Finanza.

Nel mese di maggio 2022 l'Ufficio di Presidenza della Commissione, attesa l'attinenza e il particolare interesse per le attività della Commissione, ha deliberato di acquisire gli atti del convegno svoltosi il 9 maggio presso la Sala del Refettorio della Camera dei deputati, dal titolo: *"La finanza sostenibile al servizio del Paese: situazione attuale e strategie future"*, in cui autorevoli esponenti del mondo politico, accademico e finanziario hanno promosso analisi e riflessioni in materia di ESG (Environmental Social and Governance), sotto i profili normativo, socio-economico e finanziario.

Si segnala che nel mese di giugno 2022, l'Ufficio di Presidenza ha deliberato di svolgere un approfondimento sull'operatività del sistema bancario in materia di cessione del credito (*Superbonus 110%* e altri *bonus*). A tal fine, il 24 giugno è stato inviato un questionario per la raccolta di dati e informazioni alle 11 banche nazionali classificate come "significative" soggette alla vigilanza diretta della BCE, a Cassa Depositi e Prestiti S.p.A. e Poste Italiane S.p.A.

Inoltre, con l'obiettivo di svolgere approfondimenti sulla normativa in materia di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo, la Commissione ha richiesto e acquisito, nel mese di luglio 2022, specifica documentazione da parte dell'Unità di Informazione Finanziaria per l'Italia (UIF) presso la Banca d'Italia.

Le attività istruttorie testé menzionate risultavano peraltro prodromiche allo svolgimento di specifiche attività di indagine che lo scioglimento anticipato delle Camere del 21 luglio 2022 ha impedito di proseguire.

1.4 L'istituzione del Sistema di segnalazione in collaborazione con la Guardia di Finanza

Come si è avuto modo di rilevare (cfr. paragrafo 1.1.), l'ambito delle funzioni attribuite alla Commissione d'inchiesta sul sistema bancario e finanziario, istituita con legge n. 28 del 26 marzo 2019, diversamente dall'omologa Commissione istituita nel corso della precedente Legislatura, non riguarda esclusivamente l'accertamento di vicende e condotte che hanno provocato situazioni di crisi o di dissesto di intermediari, ma coinvolge l'intera e complessiva operatività del sistema bancario e finanziario.

In tale contesto, fin dal mese di marzo 2020 è stato in uso presso la Commissione, in via sperimentale, un Sistema di segnalazioni che ha permesso a cittadini e imprese di segnalare alla Commissione profili di criticità riscontrati nei rapporti con le banche e gli intermediari non bancari al fine di acquisire dati e informazioni di supporto all'individuazione delle strategie e attività della Commissione stessa.

Tali segnalazioni hanno riguardato, specie nella prima fase, anche le misure adottate dalle Istituzioni per far fronte all'emergenza epidemiologica.

L'attività di tale sistema rientra senz'altro nell'ambito delle competenze previste dalla legge n. 20 del 2019, istitutiva della Commissione, come meglio precisate e delineate dalla lettera del Presidente della Repubblica del 28 marzo 2019 che ne ha accompagnato la promulgazione.

Infatti, l'attività di raccolta e gestione delle segnalazioni integra e rafforza la leale e proficua collaborazione tra le Autorità competenti in materia bancaria e finanziaria nel rispetto delle rispettive competenze previste per legge.

Il Sistema di segnalazione ha consentito alla Commissione di integrare il programma dei lavori qualora dalle segnalazioni siano emerse questioni di particolare rilevanza o

criticità, di supportare le attività poste in essere dagli organi preposti alla vigilanza del sistema bancario e dei mercati finanziari e di ottenere riscontri circa l'efficacia di tali attività.

Gli esiti dell'attività di gestione delle segnalazioni e le relative statistiche hanno fornito lo spunto e costituito il presupposto per avviare numerose iniziative della Commissione, fra le quali si evidenziano: (i) il ciclo di audizioni in materia di sofferenze bancarie, volto ad approfondire i modelli di business degli operatori del mercato degli NPL e dei crediti UTP; (ii) il ciclo di audizioni sulle criticità nei rapporti tra sistema bancario e gli operatori del gioco legale; (iii) il ciclo di audizioni sul Fondo Indennizzo Risparmiatori (FIR); (iv) apposite richieste di chiarimenti e trasmissione di relazioni dalla Commissione alle diverse Autorità per le valutazioni di competenza.

In una fase iniziale le segnalazioni pervenute hanno riguardato quasi esclusivamente prestiti garantiti e moratorie. Nel corso dei mesi successivi, le fattispecie oggetto di segnalazione hanno iniziato a comprendere diverse e ulteriori tipologie di criticità, quali le segnalazioni alla centrale rischi, la gestione di NPL e di crediti UTP, i pagamenti o, più in generale, ai finanziamenti bancari, etc.

Peraltro, in considerazione di taluni limiti tecnici del sistema (che, come si è detto, era stato avviato in via sperimentale), del considerevole incremento delle segnalazioni ricevute, del progressivo ampliamento dell'oggetto delle segnalazioni, con conseguente incremento della complessità della necessaria istruttoria, è emersa la necessità di progettare un nuovo sistema di segnalazione.

Si è ritenuto, in particolare, che le modifiche dovessero riguardare non solo l'aspetto informatico, ma anche quello organizzativo e della specializzazione del personale addetto alla gestione del sistema.

Pertanto, su iniziativa della Presidente della Commissione e previa autorizzazione dell'Ufficio di Presidenza, sono state avviate interlocuzioni con la Guardia di Finanza, alla quale è stato chiesto di collaborare nella gestione di un nuovo sistema di segnalazione, anche tramite assegnazione di personale specializzato.

L'iniziativa è stata accolta con favore e si è concretizzata con la redazione di appositi protocolli d'intesa.

Sono stati predisposti, in particolare, il "Protocollo d'intesa per la cooperazione tra la Commissione parlamentare di inchiesta sul sistema bancario e finanziario e la Guardia di Finanza" nonché il "Disciplinare per la cooperazione" tra le medesime Istituzioni, che sono

stati approvati dall'Ufficio di presidenza della Commissione nella riunione del 12 maggio 2021, sottoscritti il 30 giugno 2021 dalla Presidente Carla Ruocco per conto della Commissione e dal Generale C.A. Giuseppe Zafarana per conto della Guardia di Finanza e, infine, ratificati dalla Commissione in sede plenaria nella seduta del 1° luglio 2021 (cfr. Allegato 1).

Il 18 novembre 2021, è stato, quindi, rilasciato in esercizio il nuovo sistema informatico di segnalazione quale servizio gratuito volto a garantire ai cittadini, alle famiglie, alle imprese e a ogni altro soggetto o ente di segnalare alla Commissione le criticità riscontrate nei confronti delle banche o di intermediari non bancari e, quindi, avviare con il coinvolgimento diretto della Guardia di Finanza segnalazioni ed eventuali iniziative finalizzate alla tutela sostanziale del risparmio ai sensi dell'articolo 47 Cost.

Le attività e i risultati del sistema informatico di segnalazione sono oggetto di specifica trattazione nella Parte III della presente relazione.

PARTE II - TEMI

2.1. I crediti deteriorati

L'Italia è uno dei Paesi in cui il volume di crediti deteriorati (NPL) è cresciuto più rapidamente per effetto della crisi economica del 2008 e successivamente aggravata dal persistere della crisi sanitaria provocata dalla pandemia da Covid-19.

In tale contesto, ulteriori profili di criticità stanno derivando dall'invasione russa in Ucraina e dalle connesse crisi geopolitica ed energetica e dalle conseguenti spinte inflazionistiche.

L'aumento delle sofferenze è stato molto significativo per tutte le categorie di clienti, anche se con intensità diverse.

Per le famiglie consumatrici e le famiglie produttrici, il valore è quasi triplicato, mentre tra le società non finanziarie si è registrata una crescita di quasi cinque volte.

L'aumento dello *stock* è stato determinato in questi anni da una forte crescita delle sofferenze in ingresso correlata sostanzialmente al ciclo economico negativo.

Con riferimento, invece, alla gestione degli NPL da parte del sistema bancario, il volume degli stessi dipende dalla capacità del sistema bancario di evitare la trasformazione degli UTP in NPL e dai tempi di recupero dei crediti che, in Italia, sono strettamente legati alla durata delle procedure concorsuali ed esecutive.

Promuovere in tempi brevi lo sviluppo del mercato dei NPL richiede una serie di condizioni aggiuntive.

Occorrerebbe, come emerso nel corso delle audizioni, coinvolgere nel mercato investitori istituzionali con un orizzonte di medio-lungo periodo e che possono finanziarsi a tassi di interesse simili a quelli delle banche, quali ad esempio i Fondi pensione, nonché promuovere fondi *ad hoc* di *private equity* e *private debt* o fondi di credito per favorire il ritorno *in bonis* delle posizioni a sofferenza.

Si osserva, d'altra parte, come nei bilanci bancari queste esposizioni creditizie siano ormai già state prudenzialmente rettificata in considerazione della preventivata difficoltà nel loro recupero.

Pertanto, appare ragionevole e opportuno un intervento finalizzato ad allineare il valore contabile di questi debiti nei bilanci delle imprese-debitrici al valore contabile netto a cui gli stessi sono ormai iscritti nei bilanci bancari.

Per scoraggiare eventuali comportamenti di *moral hazard* da parte dei debitori, si potrebbe, ad esempio, prevedere che gli stessi potranno accedere al beneficio dell'"allineamento" contabile presentando un piano attestato - redatto con i profili e limiti previsti dalla disciplina del vigente del Codice della crisi d'impresa - che acclari la realizzabilità del piano di risanamento nella prospettiva della continuazione dell'attività d'impresa e della salvaguardia dell'occupazione.

Una simile misura, riducendo l'indebitamento complessivo delle imprese sane ma in temporanea difficoltà di liquidità, comunque non in stato di insolvenza, ben potrebbe consentirne il recupero della capacità di accesso al credito a condizioni eque e la piena ripresa dell'attività produttiva a beneficio non solo della proprietà e dei lavoratori dell'impresa, ma anche degli stessi creditori e dell'Erario (il quale ha osservato, negli ultimi anni, una significativa perdita di gettito imputabile proprio al fenomeno sopra descritto).

Sempre in questa prospettiva, si è esaminata la possibilità di rivedere anche il funzionamento delle garanzie pubbliche (GACS) sui *bond* (senior) emessi in occasione di operazioni di cartolarizzazione di NPL (cfr. paragrafo 2.1.3).

La dimensione dell'impegno di ricapitalizzazione e del fenomeno dei crediti problematici (significativa è l'incidenza ormai raggiunta dagli *stock* dei crediti problematici sul *core capital* delle banche) pone la questione dell'opportunità di costituire in Italia, soprattutto con riferimento alle banche locali, come già fatto in Spagna e in Grecia, una c.d. "*bad bank*", cioè una struttura che, rilevando una parte dei crediti deteriorati o in deterioramento, le alleggerisca dalle esigenze di maggiore capitalizzazione e consenta il riavvio del canale di nuovi finanziamenti.

Per i grandi gruppi bancari, capaci individualmente di mobilitare portafogli di crediti deteriorati di importi significativi, la via seguita è stata quella di procedere anzitutto alla segregazione, in tutto o in parte, di detti crediti in appositi veicoli societari (talvolta con la creazione di vere e propri veicoli societari), per poi attivare procedure competitive per l'individuazione di operatori "*partner*" da associare nell'attività di recupero: tipicamente, fondi chiusi specializzati.

Attraverso l'adozione di complessi meccanismi negoziali, le banche conferenti non hanno ulteriormente svalutato i crediti oggetto di conferimento. Ad esempio, mediante la creazione di accordi di continuo aggiustamento fra il prezzo pagato al momento della cessione e il valore delle quote del veicolo in ragione della maggiore o minore successo

dell'attività di recupero. Per le banche locali, invece, la situazione è più complessa e accorrebbe trovare soluzioni di sistema.

L'esame di queste stesse vicende ha guidato l'attenzione della Commissione verso il tema connesso dell'intervento pubblico nel capitale delle aziende di credito e – in modo ancor più rilevante – sulla sua natura, finalità e soprattutto sul suo esito atteso, per comprendere se si tratti di un fenomeno temporaneo ovvero di un disegno di tipo strategico.

Secondo la regolamentazione italiana, i crediti deteriorati sono suddivisi in: sofferenze, inadempienze probabili e crediti scaduti.

La suddivisione nelle predette categorie riflette la gravità del deterioramento: più seria per le sofferenze, meno rilevante per i crediti scaduti.

Si ritiene che l'aumento degli NPL sia il principale rischio che le banche italiane si trovano oggi a fronteggiare; rischio, peraltro, destinato ad aggravarsi allo scadere della vigenza della normativa di tutela e garanzie all'uopo licenziata dal legislatore per limitare gli impatti negativi sull'economia in virtù del persistere dello stato pandemico.

La regolamentazione induce le banche a classificare i prestiti, a riconoscere prontamente le perdite e a gestire in modo attivo i crediti deteriorati.

Gli intermediari hanno fatto significativi progressi nella gestione di questi attivi; il mercato secondario degli NPL, pur rimanendo lontano da un paradigma di piena concorrenza, si è notevolmente sviluppato nell'ultimo quinquennio. Si tratta di condizioni necessarie per far sì che, pur a fronte di una crisi di portata eccezionale come quella attuale, il sistema bancario possa continuare a sostenere l'economia anche quando verranno meno le misure di sostegno pubblico adottate per fronteggiare l'emergenza Covid. Ambiti di flessibilità nell'applicazione delle regole prudenziali in materia di NPL sono stati introdotti negli ultimi mesi e altri se ne possono individuare.

La consistenza degli NPL nei bilanci delle banche ha continuato a ridursi: alla fine dello scorso settembre era pari a 126 miliardi al lordo delle rettifiche di valore e a 60 miliardi al netto (20 e 10 miliardi in meno rispetto alla fine del 2019). Il rapporto tra queste consistenze e il totale dei finanziamenti è diminuito al 5,5 per cento al lordo delle rettifiche e al 2,7 al netto. In prospettiva di un peggioramento della qualità del credito, nei primi nove mesi del 2020 le banche italiane hanno aumentato le rettifiche su crediti *in bonis* a imprese e famiglie: il tasso di copertura, dato dal rapporto tra le rettifiche di valore e l'ammontare lordo dei prestiti, per questi crediti è aumentato di circa 10 punti base, allo 0,76 per cento.

L'incremento delle rettifiche è stato guidato dai crediti, passati dallo stadio 1 allo stadio 2, della classificazione dei crediti in *bonis* prevista dal principio contabile IFRS 9 (si rammenta che tutti i crediti, al momento dell'erogazione, vengono classificati in stadio 1 e che le banche sono tenute a effettuare la riclassificazione allo stadio 2 quando osservano un significativo aumento del rischio di credito). I crediti classificati in stadio 2 sono aumentati del 22,3 per cento; la loro incidenza sul totale dei crediti (inclusi quelli deteriorati) è passata, al lordo delle rettifiche di valore, dall'8,1 al 9,4 per cento.

La crescita degli NPL è stata contenuta da vari fattori. In primo luogo, gli NPL si manifestano fisiologicamente con un certo ritardo rispetto alle difficoltà dell'economia.

Inoltre, le moratorie – sia quelle *ex lege* sia quelle concesse autonomamente dalle banche – e l'offerta di garanzie pubbliche sui prestiti hanno evitato la trasmissione dello *shock* al credito e ai tassi di interesse. Hanno contribuito anche le misure di politica economica – il sostegno ai redditi delle famiglie e all'attività di impresa – grazie alle quali il reddito disponibile si è contratto meno del PIL. Infine, le misure espansive di politica monetaria adottate dalla BCE hanno mantenuto i tassi d'interesse su livelli molto bassi, contenendo l'aumento delle spese per interessi di famiglie e imprese.

Nel corso degli ultimi mesi sono scadute e non sono state rinnovate moratorie per varie decine di miliardi; la moderata crescita dei crediti deteriorati osservata sinora segnala che la quasi totalità di questi debitori ha ripreso a pagare le proprie rate. Tuttavia, è possibile che tra i debitori con moratorie ancora attive l'incidenza di coloro che potrebbero avere difficoltà a riavviare i rimborsi sia nettamente più elevata (le moratorie non rinnovate potrebbero essere quelle richieste prevalentemente a fini precauzionali). Il Governo ha nel frattempo prorogato le moratorie *ex lege* ma fino al 30 giugno 2022.

Dato il fortissimo impatto della crisi pandemica sull'attività economica le ricadute sui debitori, e quindi sui bilanci delle banche, saranno significative. Secondo stime di mercato, il flusso complessivo di NPL attribuibile alla crisi scatenata dalla pandemia sarebbe compreso tra i 60 e i 100 miliardi, a seconda dello scenario macroeconomico. Date le caratteristiche dell'attuale fase congiunturale, qualunque stima riguardante i futuri NPL deve essere interpretata con particolare cautela. Molto dipenderà dall'intensità della ripresa, e quindi da fattori quali l'andamento della pandemia, la vitalità del tessuto produttivo, la capacità di sfruttare appieno il programma *Next Generation EU*.

In occasione dell'audizione della Dr.ssa Marina Natale, Amministratore Delegato di Amco S.p.A., intermediario finanziario iscritto all'Albo di cui all'articolo 106 TUB e controllato al 99,78% dal MEF, è emerso che, alla data del 31 dicembre 2020, la medesima società gestiva circa 34 mld. di euro di NPE (*Non Performing Exposures*), relativi a circa 229.000 controparti.

Di questi, il 58% è composto da sofferenze (pari a circa 20 mld. di euro) e il 42% da crediti *unlikely to pay* (pari a circa 14 mld. di euro).

Sempre in termini di masse gestite, è emerso che il 74% circa viene gestito *in house* e il 26% in *outsourcing*. Dalla relazione depositata è emerso che al 31 dicembre 2020, Amco S.p.A. ha un organico di 287 persone (a cui si sommano 88 distaccati da Banca MPS).

Dalla relazione è altresì emerso che nel corso dell'ultimo biennio, Amco S.p.A. ha acquisito diversi portafogli di NPE generati da banche italiane, tra i quali, quello delle *ex* banche Venete, Banca del Fucino, Istituto di Credito Sportivo, Banca Carige, Creval, Igea-Fucino, Banca Popolare di Bari, Banco BPM e Banca MPS ricoprendo, pertanto, un ruolo di rilievo nel settore dei NPE in Italia.

Particolare attenzione è stata rivolta dalla Commissione: alla necessità di gestire le posizioni deteriorate per favorire il ritorno in *bonis* di imprese e famiglie, alla recente operatività svolta da Amco S.p.A. sulle esposizioni deteriorate di MPS, sulle cessioni di portafogli NPE delle *ex* banche Venete nonché sul portafoglio *ex* Banco di Napoli.

Nell'ambito delle audizioni dei principali operatori sul mercato dei crediti deteriorati è stata confermata da più parti la necessità di rivedere a livello europeo la regolamentazione in materia di sofferenze, anche alla luce dello scenario peggiore stimato dalla BCE, che ha quantificato in 1.400 miliardi di euro le nuove sofferenze per le banche europee.

È emersa altresì la necessità di incentivare a livello nazionale, anche attraverso la costituzione di una *bad bank* pubblica e di una fiscalità di scopo, soluzioni di sistema e di mercato volte a favorire la piena cancellazione dai bilanci bancari delle posizioni deteriorate (*derecognition*), anche attraverso l'erogazione di nuova finanza e il ritorno in *bonis* delle posizioni di imprese e famiglie.

In tale contesto, la Commissione europea sta sollecitando i singoli Paesi a costituire *bad bank* per la gestione dei crediti deteriorati presenti nei bilanci delle banche, i cui importi sono destinati ad aumentare considerevolmente nei prossimi anni a causa della crisi sanitaria in atto. È difatti chiaro come l'incertezza nella

quale viviamo abbia avuto e avrà forti ripercussioni non solo sui privati, che hanno difficoltà a ripagare i propri prestiti e finanziamenti, ma anche sulle aziende, che necessitano ora di nuovo credito per controbilanciare la significativa riduzione del fatturato. Queste esigenze potrebbero innescare una reazione a catena con le banche che, anche a seguito delle nuove direttive EBA in tema di *default*, vedranno inevitabilmente deteriorarsi i propri attivi e dovranno quindi riclassificare come “deteriorate” diverse posizioni, subendo così un peggioramento del proprio rischio di credito.

Ciò, se accompagnato dal conseguente appesantimento dei requisiti patrimoniali richiesti alle banche, dalla contrazione di consumi e investimenti e dalle nuove difficoltà di accesso al credito, potrebbe causare il più significativo rallentamento dell’economia europea dalla crisi del 2008.

In conclusione, gli esiti delle attività conoscitive svolte dalla Commissione suggeriscono la necessità di rivedere, sia in ambito europeo sia in ambito nazionale, la regolamentazione sul sistema bancario quanto meno per le seguenti profili: (i) aumentare la capacità del sistema finanziario di erogare credito a famiglie e imprese per favorire il ritorno *in bonis* delle posizioni NPE, in particolar modo degli UTP; e (ii) evitare l’uscita dei debitori dal sistema bancario con conseguenti difficoltà per le imprese ad ottenere la necessaria liquidità ed evitare, pertanto, le possibili ingerenze della criminalità organizzata.

Diversi studi dimostrano, d’altra parte, come le difficoltà di accesso al credito da parte di imprese e famiglie, nonché la pandemia in corso, possano anche facilitare l’ingerenza della criminalità nel Paese.

2.1.1. Normativa europea sul *Calendar Provisioning* e sulla classificazione della clientela delle banche (c.d. “*Default*”)

Il tema in oggetto, emerso incidentalmente nel corso di diverse audizioni in materia di NPL, è stato specificamente approfondito dalla Commissione attraverso le audizioni del Direttore generale dell’ABI, Antonio Sabatini e del Governatore della Banca d’Italia, Ignazio Visco, svoltesi rispettivamente il 14 dicembre 2020 e il 10 febbraio 2021.

In tale ambito, la Commissione ha svolto approfondimenti e chiesto le valutazioni di competenza ai diversi auditi circa i possibili impatti sul sistema bancario e sul tessuto produttivo delle normative europee sul *calendar provisioning* e sulla classificazione della clientela delle banche.

Per l'Associazione di categoria gli aspetti più preoccupanti della normativa sono l'eccesso di automatismi, le nuove regole di classificazione di *default* nonché gli stringenti limiti alle misure di concessione con cui le banche possono supportare un cliente in difficoltà, che non potranno far altro che determinare effetti restrittivi sull'offerta di credito, necessaria per l'auspicata ripresa economica, e incentivare la rapida chiusura delle posizioni problematiche con ricorso a procedure giudiziarie in danno degli ex debitori.

Entrando nel merito, la classificazione in *default* di un'esposizione creditizia genera ricadute sui requisiti patrimoniali delle banche anche per l'interazione con l'approccio "*di calendario*" introdotto in Europa per i crediti deteriorati. Tuttavia, è opportuno ricordare l'esistenza di due distinte misure in materia: da un lato, quella tracciata dalla Commissione Europea, nota come *backstop* prudenziale e, dall'altra, quella prevista dalla BCE, nota come *Addendum* (sul punto si rinvia alla comunicazione della BCE "*Addendum to the ECB Guidance to banks on non-performing loans: supervisory expectations for prudential provisioning of non-performing exposures* e *Communication on supervisory coverage expectations for NPEs*").

Per il *backstop* la differenza tra il livello di copertura effettuato dalla banca e quello prescritto dalla misura costituisce una deduzione automatica dal capitale di vigilanza; per l'*Addendum* la differenza viene valutata nell'ambito del dialogo tra la banca e la vigilanza, e contribuisce alla quantificazione dei requisiti di capitale (c.d. "secondo pilastro") che quest'ultima stabilisce per i singoli intermediari.

La Banca d'Italia, pur non applicando l'*Addendum* alle banche meno significative, ha richiesto loro di elaborare dei piani di riduzione degli *stock* di NPL nell'ambito di una azione di vigilanza tendente a ridimensionare il fenomeno.

Per tutti gli NPL classificati come tali prima del 1° aprile 2018 (quindi lo *stock* di NPL in essere a quella data), si applicano aspettative di vigilanza simili a quelle dell'*Addendum*, ma declinate in maniera differenziata a seconda del peso degli NPL netti sugli attivi delle banche.

Entrambe le misure stabiliscono, ai soli fini prudenziali (e non anche quindi ai fini delle valutazioni di bilancio), percentuali minime di svalutazione delle esposizioni deteriorate, crescenti in funzione degli anni trascorsi dalla loro classificazione come NPL.

Al termine di tale periodo le esposizioni deteriorate dovranno quindi risultare interamente svalutate prudenzialmente (vale a dire, completamente coperte da svalutazioni contabili o dal patrimonio di vigilanza).

Le due misure differiscono per alcuni aspetti sostanziali. In primo luogo, il *backstop* prudenziale è una norma primaria vincolante per tutte le banche dell'Unione Europea; l'*Addendum* indica, invece, le aspettative della BCE nei confronti delle sole banche soggette alla sua vigilanza diretta e ha natura non vincolante.

In secondo luogo, il *backstop* si applica a tutti i prestiti erogati a partire dal 26 aprile 2019 (riguarda quindi il "flusso" dei nuovi prestiti erogati a partire da allora), una volta che essi vengano classificati come NPL; l'*Addendum* si applica, invece, ai prestiti erogati prima del 26 aprile 2019 e classificati come NPL successivamente al 1° aprile 2018.

Se, da un lato, la svalutazione fino al 100% degli NPL in tempi certi assicura che questi ultimi non si accumulino nei bilanci bancari senza adeguate svalutazioni, dall'altro è doveroso regolamentare le posizioni dei debitori ceduti, compresi i loro diritti e tutele, atteso che la fattispecie degli NPL finora è stata, purtroppo, analizzata esclusivamente dalla prospettiva della banca.

La svalutazione costituisce, per le banche, una salvaguardia importante, se si considera che in molti Paesi, compreso il nostro, gli elevati livelli di NPL sono stati – nonostante le sollecitazioni, le ispezioni mirate e gli interventi prudenziali dell'Autorità di vigilanza – tra le cause principali delle crisi bancarie degli ultimi anni. Inoltre, di fronte ad un accumulo eccessivo di NPL è altrettanto vero che devono essere salvaguardati anche i debitori ceduti, distinguendo quali versino effettivamente in stato di insolvenza e quali, invece, versano in uno stato di crisi temporanea di liquidità.

L'esigenza di salvaguardare anche il debito ceduto non pare soddisfatta dalla disciplina del *backstop*, sebbene modificata, in risposta alla crisi pandemica nell'ambito del Regolamento (UE) n. 873/2020 (c.d. "*Quick Fix*" del CRR), che ha introdotto un'ampia serie di aggiustamenti alla normativa prudenziale.

In particolare, per le esposizioni con garanzia pubblica il meccanismo del calendario è stato sospeso fino al termine del settimo anno dall'ingresso nello stato di deterioramento, prevedendo una svalutazione del 100% a partire dall'ottavo anno. Nel corso del negoziato propedeutico all'adozione del *Quick Fix* la delegazione italiana (guidata dal MEF), alla luce del blocco dell'attività dei tribunali avvenuto la scorsa primavera e dei rallentamenti tutt'ora

in essere in più Paesi, ha proposto la disapplicazione del *backstop* per un periodo di due anni, con conseguente allungamento del periodo massimo entro il quale raggiungere la svalutazione integrale delle esposizioni.

La proposta non è stata accolta a causa della netta opposizione della grande maggioranza dei paesi membri dell'Unione, inclusi alcuni di quelli che negli anni passati avevano più sofferto del problema degli NPL.

Quanto all'*Addendum*, la BCE ha chiarito che la sua applicazione verrà effettuata caso per caso, con la necessaria flessibilità.

Per valutare il possibile impatto di breve-medio periodo del *backstop* per le banche italiane possiamo partire dall'osservazione che dall'introduzione di questa misura (fine di aprile 2019) a oggi sono stati erogati circa 280 miliardi di crediti verso le imprese, di cui 5 miliardi sono già stati classificati come NPL. Di questi, circa 2,5 miliardi sono privi di garanzie ammissibili in base alle norme del *backstop*: considerando che essi hanno già subito rettifiche per circa il 45 per cento del valore nominale e che andranno interamente svalutati entro i tre anni successivi al momento della classificazione a NPL, essi genereranno ulteriori svalutazioni per 1,4 miliardi.

La modesta dimensione di questo importo, il fatto che per i crediti deteriorati non garantiti la copertura possa essere pari a zero nei primi due anni, il graduale miglioramento atteso nella situazione sanitaria, inducono a ritenere che il rischio di effetti pro-ciclici del *backstop* nell'anno in corso sia moderato.

Dei 280 miliardi di crediti alle imprese, circa 145 sono non garantiti e attualmente *in bonis*; qualora dovessero divenire NPL dovranno essere interamente svalutati non prima della fine del 2023. Per questi ultimi, anche facendo ipotesi molto conservative, le rettifiche di valore che le banche dovrebbero apportare sarebbero nel complesso gestibili: qualora il tasso di ingresso in *default* annuo fosse pari all'8 per cento (un valore molto elevato, pari alla media di quello osservato nel triennio 2012-2014, quando i flussi di NPL hanno raggiunto il loro picco) e fosse applicata una svalutazione integrale (come richiesta dal *backstop*), le perdite che le banche dovrebbero riconoscere nei tre anni successivi all'ingresso in *default* sarebbero pari a circa 11 miliardi.

Dei 135 miliardi di finanziamenti garantiti, circa 50 godono della garanzia dello Stato che in caso di *default* può essere escussa; gli effetti dell'approccio di calendario su questa seconda componente sono quindi trascurabili.

In caso di peggioramento dell'emergenza pandemica e dei suoi impatti economici il Governo italiano potrebbe valutare se riproporre sul tavolo europeo un allentamento del *backstop* prudenziale. Come già accennato, finora sui tavoli tecnici europei non si è tuttavia registrato alcun interesse da parte di altri Paesi a riaprire la discussione su questo tema, probabilmente anche perché la normativa in questione incide solo sui paesi caratterizzati da tempi molto lunghi di recupero dei crediti.

I criteri per identificare le esposizioni in stato di *default* prudenziale da parte delle banche sono disciplinati dal Regolamento (UE) n. 575/2013 in materia di requisiti di capitale delle banche (c.d. "CRR"), entrato in vigore il 1° gennaio 2014, da un Regolamento delegato della Commissione Europea pubblicato nel 2018 e dalle correlate Linee guida dell'EBA pubblicate nel 2016. Queste regole sono frutto di un complesso processo, caratterizzato da un intenso dibattito tra le Autorità europee e nazionali e da varie fasi di consultazione, a cui ha contribuito l'industria bancaria.

Le principali novità introdotte dalle nuove regole riguardano: la componente relativa della soglia di rilevanza (la quota del prestito scaduto o sconfinante in rapporto all'esposizione totale), che viene fissata all'1% a fronte del 5% previsto dalla precedente disciplina nazionale; il divieto di compensare le esposizioni scadute o sconfinanti con i margini disponibili sulle altre linee di credito accordate al medesimo debitore (in passato ciò era possibile); l'esigenza di classificare come NPL le esposizioni oggetto di una misura di concessione solo quando ciò comporta una riduzione del valore attuale dei flussi attesi dalla banca superiore all'1% (in precedenza questa soglia non era definita).

Nel complesso, la nuova disciplina introduce criteri relativamente più stringenti per la classificazione a *default* dei debitori rispetto a quella previgente nel nostro paese; dalle evidenze relative alle quattro banche italiane che hanno scelto di applicare le nuove regole già nel corso del 2019, gli effetti della nuova disciplina appaiono tuttavia avere un impatto moderato sulla consistenza dei crediti deteriorati: in media ponderata, l'aumento degli NPL di queste banche al momento dell'introduzione della nuova definizione è stato pari al 2 per cento (e fortemente concentrato tra i crediti scaduti); l'*NPL ratio* al lordo delle rettifiche di valore è aumentato dal 7,63 al 7,78 per cento. L'aumento delle rettifiche di valore è stato pari allo 0,7 per cento.

L'entrata in vigore della nuova disciplina è coincisa con un periodo di incertezza economica legata alla pandemia COVID-19. Un suo posticipo sarebbe tuttavia stato assai

difficile. Le autorità europee, nel fissare al 1° gennaio 2021 l'introduzione delle nuove regole (pubblicate come già detto tra il 2016 e il 2018), avevano considerato che la loro adozione avrebbe richiesto rilevanti e complesse attività di adeguamento da parte delle banche, anche per i profili organizzativi e informatici. Avevano pertanto raccomandato alle banche di avviare per tempo le attività propedeutiche all'applicazione delle nuove regole. Una sospensione o uno slittamento dell'applicazione delle nuove regole avrebbe comportato rilevanti costi per gli intermediari, a fronte di vantaggi per la clientela che, nella gran parte dei paesi europei, non vengono percepiti. Le nuove regole sono infatti un compromesso tra quelle relativamente tolleranti di alcuni Paesi, come il nostro, e quelle vigenti in altri Paesi, prive di ogni tolleranza nei confronti di prestiti sconfinanti o scaduti.

Il Regolamento delegato della Commissione europea consentiva alle autorità competenti di fissare una soglia di rilevanza relativa superiore all'1 per cento (comunque mai oltre al 2,5 per cento) solo al ricorrere di condizioni molto stringenti. In base a queste condizioni, un semplice aumento dei crediti deteriorati (determinato dall'applicazione della nuova definizione di *default*) non sarebbe stato sufficiente a permettere di innalzare la soglia.

Gli spazi per interventi normativi nazionali per mitigare gli effetti della nuova disciplina erano molto limitati; essi riguardavano essenzialmente la possibilità, al ricorrere di determinate condizioni, di modificare la soglia oltre la quale un'obbligazione in arretrato è considerata rilevante ai fini della disciplina del default. Per quanto riguarda le banche significative dell'area dell'euro, la BCE ha confermato l'applicazione della soglia di rilevanza relativa dell'1 per cento prevista nel Regolamento delegato; ha inoltre adottato nel giugno 2020 un indirizzo con cui richiede alle autorità nazionali di adottare la soglia dell'1 per cento anche per le banche meno significative.

Per gli intermediari finanziari non appartenenti a gruppi bancari e per i gruppi finanziari – a cui la nuova disciplina del default è applicabile dal 1° gennaio 2021 – è stato previsto un periodo transitorio in base al quale, fino al 31 dicembre 2021, la soglia di rilevanza relativa è stata mantenuta al 5 per cento.

Dalle audizioni degli esponenti della Banca d'Italia, della CONSOB e dell'Ance è emerso come, tendenzialmente, i ritardi della giustizia civile costituiscano la principale causa delle difficoltà nella riduzione degli NPL nel nostro Paese. Gli indicatori disponibili segnalano che la distanza che ci separa dalla media europea rimane significativa. Progressi

su questo fronte consentirebbero di avviare rapidamente procedure di ristrutturazione d'impresa, quando possibili, o procedere al recupero dei crediti.

Diversi studi, finalizzati all'elaborazione di strategie per la riduzione degli NPL, auspicano l'istituzione di società di gestione dei crediti deteriorati (AMC).

Si è già sperimentato quanto l'assenza di questo strumento, in Europa e nei singoli Paesi, abbia pesato nel risolvere crisi di portata generale, come quella del 2008-2011. A livello europeo si discute oramai da tempo dell'ipotesi di creare un *network* tra AMC nazionali e l'idea sembra da valutare con favore.

Nel corso dell'audizione della Prof.ssa Sciarrone Alibrandi dell'Università Cattolica del Sacro Cuore, tenutasi il 16 febbraio 2021, è emerso come l'intera *policy* di gestione degli NPL, concepita a livello europeo, sia nata e si sia sviluppata all'interno di una prospettiva di sistema bancario e finanziario per aumentare la redditività delle banche, favorire il c.d. *deleveraging* e accrescerne la stabilità. Si è posto altresì in luce il circolo vizioso che si è venuto a manifestare, soprattutto nell'attuale contesto pandemico: (i) la presenza di crediti di dubbio realizzo comporta sia la riduzione della redditività della banca, sia la necessità di adeguati accantonamenti, che limitano la possibilità di erogare credito; (ii) per compensare le risorse assorbite da tali accantonamenti senza ridurre l'erogazione di credito occorre procedere ad aumenti di capitale; (iii) tuttavia, la banca che presenta indici di NPL anomali è una banca la cui qualità di azione imprenditoriale è quanto meno discutibile; (iv) tale circostanza genera sfiducia nel mercato e alza il costo della raccolta del capitale, il quale a propria volta limita la capacità di erogare nuovo credito; (v) la limitata capacità di erogare deprime ulteriormente la redditività, e alza ulteriormente il costo del capitale; (vi) l'aumentato costo del capitale limita la raccolta e, quindi, sia la capacità di procedere agli accantonamenti necessari, sia la capacità di generare utili mediante l'erogazione di nuovo credito.

Tutto ciò non potrà far altro che determinare effetti restrittivi sull'offerta di credito e incentivare la rapida chiusura da parte degli intermediari delle posizioni problematiche con ricorso a procedure giudiziarie in danno di famiglie ed imprese nonché significativi rischi anche in termini di scalate ostili e di necessari salvataggi pubblici.

Possibili soluzioni, su iniziativa della Presidente della Commissione, sono contenute in due proposte di legge (A.C. nn. 3109 e 3110) presentate il 12 maggio 2021 e volte a

produrre un effetto deflattivo dei contenziosi nei Tribunali e a permettere alle aziende sane – ma in temporanea difficoltà – di superare la momentanea crisi di liquidità.

In materia è stato successivamente costituito un apposito gruppo di lavoro con la partecipazione dei rappresentanti dei principali gruppi bancari italiani, per condividere e migliorare le citate proposte di legge (cfr. paragrafo 2.2.3.). Strumento quest'ultimo, di mercato, innovativo e complementare rispetto alle tradizionali procedure esecutive.

Gli approfondimenti svolti dalla Commissione confermano, soprattutto con riferimento alle cosiddette “banche meno significative” soggette alla vigilanza delle rispettive autorità nazionali, la necessità di utilizzare tutti gli ambiti di flessibilità e di proporzionalità contenuti nelle attuali normative europee relative al *calendar provisioning* e alle nuove regole in tema di classificazione della clientela (cosiddetto *default*).

La cessione degli NPL ad operatori specializzati non sempre significa risolvere i problemi di imprese e famiglie. In molti casi, tale scelta ha esclusivamente avviato la fase liquidatoria di imprese che, pur versando temporaneamente in una situazione di deficit finanziario, erano sane in termini soprattutto di posizionamento sui loro mercati di riferimento.

In conclusione, appare necessario avviare un dialogo a livello UE per rivedere la regolamentazione e le norme attuative in materia di sofferenze bancarie e per favorire soluzioni, di sistema e di mercato volte alla gestione attiva delle posizioni deteriorate, limitando i prevedibili effetti restrittivi sull'offerta di credito derivanti dal *calendar provisioning*.

2.1.2. L'attività di *debt collecting*: il processo di concentrazione e la *Bad Bank*

La dimensione dell'impegno di ricapitalizzazione e del fenomeno dei crediti problematici, in particolar modo con riguardo alla significativa incidenza ormai raggiunta dagli *stock* dei crediti problematici sul *core capital* delle banche, riapre il tema della opportunità di costituire in Italia, soprattutto con riferimento all'operatività delle banche locali, una *bad bank*, cioè una struttura che, rilevando una parte dei crediti “cattivi”, le alleggerisca dalle esigenze di maggiore capitalizzazione e consenta il riavvio del canale di nuovi finanziamenti.

Come già accennato, per i grandi gruppi bancari, capaci individualmente di mobilitare portafogli di crediti *non performing* di importi significativi, la via seguita è stata quella di

procedere anzitutto alla segregazione, in tutto o in parte, di detti crediti in appositi veicoli societari (talvolta con la creazione di vere e proprie società di scopo), per poi attivare procedure competitive per l'individuazione di "*partner*" da associare nell'attività di recupero: tipicamente, fondi chiusi specializzati americani. La soluzione è l'adozione di complessi meccanismi negoziali che consentano alle banche conferenti di non dover subire un'ulteriore svalutazione dei crediti oggetto di conferimento. Per le banche locali occorre, invece, trovare una soluzione di sistema.

In questa cornice, l'ipotesi di una *bad bank* che contribuisca ad accrescere la liquidità e fornisca forme di garanzia agli investitori istituzionali potrebbe contribuire in modo determinante alla crescita del mercato dei NPL.

Un tema che – per l'appunto – ha visto il sistema bancario italiano a lungo in posizione di ritardo rispetto ai (comportamenti tenuti dai) sistemi degli altri paesi europei, ed il cui forzato e tardivo recupero (su sollecitazione dell'EBA) ha prodotto – com'è noto – ripetute operazioni di rafforzamento patrimoniale che hanno determinato un sostanziale cambiamento degli assetti proprietari di molte realtà bancarie italiane (con un significativo ridimensionamento delle Fondazioni sostituite dalla presenza di Investitori Istituzionali stranieri) nonché l'arrivo – nella *sub industry* del *debt collecting* – di Fondi speculativi (i cc.dd. «Fondi Avvoltoio») e di *servicer* di matrice e proprietà straniera.

Concludendo, in materia appaiono fondamentali le strategie definite dal MEF per l'adeguata valorizzazione delle varie partecipate di Stato nel settore bancario, tra cui rientrano Banca Monte dei Paschi di Siena, Banca Popolare di Bari S.p.A. (controllata da Mediocredito Centrale S.p.A.), Invitalia S.p.A., Sace S.p.A., Cassa Depositi e Prestiti S.p.A. e AMCO S.p.A.

2.1.3. Le garanzie sulla cartolarizzazione delle sofferenze (GACS)

Sempre nell'ambito dell'attività conoscitiva rivolta al mercato dei NPL, la Commissione ha esaminato il funzionamento delle garanzie pubbliche (GACS) sui *bond* (*senior*) emessi in occasione di operazioni di cartolarizzazione di crediti deteriorati. Sul punto l'attenzione è stata rivolta a comprendere se lo strumento GACS abbia permesso di ridurre o comunque attenuare il problema dei NPL nelle banche italiane. Il tema è rilevante, visto che in totale, dal 2015 a metà 2019, le banche hanno ceduto oltre 200 miliardi di crediti deteriorati, di cui 69 miliardi tramite cartolarizzazioni con GACS, che hanno dato luogo a

emissioni di *asset backed securities* (ABS) per 16 miliardi di euro, per un prezzo medio del 23-24% del valore lordo.

In materia è stata sentita, con audizione del 10 febbraio 2021, la Banca d'Italia che ha ribadito come il ricorso alle operazioni di cartolarizzazione di posizioni in sofferenza sia stato lo strumento principale utilizzato dalle banche per la cessione dei crediti in sofferenza.

In particolare, la garanzia pubblica sui titoli di classe *senior* si è dimostrata – sin dalla sua creazione nel 2016 – un valido strumento nella realizzazione di tali operazioni. Nel 2019, circa il 90 per cento del valore delle sofferenze cedute per mezzo di cartolarizzazioni era assistito da GACS.

A partire dal 1° agosto 2016, il MEF ha concesso la GACS sulla *tranche senior* di 27 operazioni di cartolarizzazione. Il valore nominale lordo dei crediti ceduti dalle banche oggetto delle citate operazioni è pari a € 75 miliardi. A fronte di tale importo – dopo le rettifiche di valore e gli sconti di cessione operati sui portafogli ceduti – sono stati emessi titoli (cc.dd. *tranches*) per € 17,7 miliardi. Le *tranches senior* assistite dalla GACS, in fase di emissione, avevano un valore complessivo di € 14,4 miliardi. Le *tranches mezzanine* e *junior* all'emissione ammontavano complessivamente a € 3,3 miliardi. I rimborsi effettuati sulle *tranches senior* a partire dalla data della loro emissione ne hanno diminuito la consistenza da complessivi € 14,4 miliardi a € 10,5 miliardi, riducendo corrispondentemente l'esposizione dello Stato. Sulla base dei dati forniti dai *servicers* e delle informazioni contenute nei rapporti delle società di *rating*, 11 delle 27 operazioni presentano recuperi in linea con il piano, mentre 16 di esse evidenziano un ritardo. Per queste ultime, a fronte di incassi attesi pari a € 3,7 miliardi, i recuperi effettivi sono stati pari a € 3,2 miliardi. Nella grande maggioranza dei casi i ritardi sono dovuti agli effetti della pandemia. In pochi casi i ritardi hanno natura strutturale, e possono ricondursi a insufficienti incentivi dei *servicers* o alle caratteristiche specifiche dell'operazione; si tratta di operazioni realizzate prima del 2019, quando con il DL n. 22/2019 sono stati introdotti una serie di correttivi al funzionamento della GACS, proprio per correggere questi aspetti, alla luce dell'esperienza maturata nei primi tre anni di operatività della garanzia pubblica.

L'Associazione Nazionale Costruttori Edili (ANCE) sul punto ha riportato come al 2020 le operazioni assistite da GACS mostrano una *performance* di recupero in calo, a causa dei primi effetti della pandemia.

Ricercando alcuni esempi nel mercato, la Banca Popolare di Sondrio S.p.A. al fine di ridurre lo *stock* di NPL, nel contesto della strategia NPL 2020-2022, ha realizzato un'importante operazione di cartolarizzazione di crediti deteriorati. In particolare, nel giugno 2020 è stata conclusa la cessione di un portafoglio di sofferenze per un ammontare lordo di circa 1 miliardo di euro. Per la *tranche* Senior è stata prestata la GACS da parte dello Stato. La menzionata operazione ha prodotto un forte miglioramento nella qualità degli attivi di gruppo, portando l'*NPL ratio* lordo al 9,17% del 30 giugno 2020 (rispetto al 12,30% del 31 marzo) e l'*NPL ratio* netto al 4,44% (rispetto al 5,37%); anche il *Texas ratio* ha registrato un significativo beneficio, passando dal 56% di fine 2019 al 45,2% di fine giugno 2020.

In questa prospettiva anche Federcasse, in vista del forte aumento dei crediti deteriorati, non a causa delle politiche di offerta delle banche ma per l'oggettivo deterioramento dell'economia, ha elaborato e prospettato alcune condizioni che le Autorità Italiane dovrebbero adoperarsi a raggiungere, tra cui la conferma e la stabilizzazione nel medio termine delle GACS.

Alla medesima conclusione giunge anche l'analisi di Banca d'Italia, che ritiene consigliabile un'estensione delle GACS, come strumento che si è rivelato efficace per agevolare la vendita di crediti deteriorati. Quest'ultima sul punto sta svolgendo approfondimenti a livello tecnico per proporre misure volte ad accrescere l'efficienza dello schema di garanzia pubblica alla luce dell'esperienza maturata, in modo da allineare ulteriormente gli interessi di tutti i soggetti coinvolti nell'operazione (banche cedenti, *servicers*, investitori e garante).

Gli approfondimenti svolti dalla Commissione hanno acclarato che, sebbene lo strumento della GACS abbia agevolato la vendita di crediti deteriorati da parte del sistema bancario, allo stesso tempo però l'intera *policy* concepita a livello europeo per la gestione degli NPL (tra cui sicuramente il *calendar provisioning*) è stata concepita in una prospettiva che: (i) limita la capacità del sistema finanziario di erogare - soprattutto in fase di difficoltà o tensione finanziaria - nuovo credito a famiglie e imprese; (ii) vede lo Stato garantire il rendimento minimo degli investitori che acquistano i crediti deteriorati (ad oggi, tali garanzie costano ai cittadini 10,5 miliardi di euro); (iii) pone i debitori al di fuori del sistema bancario con rilevanti difficoltà ad ottenere nuova liquidità.

2.2. Sofferenze bancarie: situazione attuale e profili di attenzione

L'attività conoscitiva svolta dalla Commissione, attraverso l'analisi degli assetti e dei comportamenti posti in essere dai principali *competitor* del settore bancario e finanziario, anche alla luce della situazione pandemica e delle conseguenze economiche che stanno condizionando il sistema economico del nostro Paese, ha condotto, su iniziativa della Presidente della Commissione, all'elaborazione di due proposte di Legge, presentate il 12 maggio 2021: "Disposizioni per la definizione transattiva dei crediti bancari in sofferenza" (A.C. n. 3110); "Disposizioni per la gestione dei crediti in sofferenza garantiti da ipoteche o contratti di locazione finanziaria relativi a immobili" (A.C. n. 3109).

In particolare, la proposta di legge A.C. 3110, recante "*Disposizioni per la definizione transattiva dei crediti bancari in sofferenza*" incentiva, su base volontaria per l'intermediario e per il debitore, la definizione transattiva di esposizioni deteriorate definendo anche il concetto di "*proposta [transattiva] ragionevole*".

La proposta di legge A.C. 3109, reca, invece, "*Disposizioni per la gestione dei crediti in sofferenza garantiti da ipoteche o contratti di locazione finanziaria relativi a immobili*" e promuove la possibilità per il debitore, mediante cessione dell'immobile ad un fondo immobiliare riservato, di continuare ad utilizzare in locazione l'immobile (sia esso abitazione o sito produttivo) ad un canone calmierato per dieci anni, con facoltà di riacquisto nello stesso lasso temporale. Anche tale proposta incentiva, su base volontaria per l'intermediario e per il debitore, la possibilità di utilizzo del fondo immobiliare riservato per gestire crediti in sofferenza garantiti da ipoteche o contratti di locazione finanziaria relativi a immobili.

La pandemia da COVID-19 ha prodotto e purtroppo continua a produrre significative perdite in termini di produzione, di forza lavoro e di esportazioni nel tessuto produttivo nazionale. Tale scenario, già preoccupante per l'Italia, si è ulteriormente aggravato con l'invasione russa in Ucraina, la crisi geopolitica, il caro energia e le spinte inflazionistiche.

Per rilanciare le aziende e rassicurare le famiglie, i proponenti hanno ritenuto necessario introdurre norme dirette a favorire la ristrutturazione delle posizioni deteriorate piuttosto che abbandonarle definitivamente all'insolvenza.

In materia, occorre tenere presenti anche i potenziali effetti per il bilancio dello Stato conseguenti al rilascio agli investitori in NPL delle garanzie pubbliche, tra cui le GACS, la cui eventuale escussione appare sempre più probabile. Sul punto, infatti, una recente indagine di mercato realizzata da *Scope* segnala che, ad oggi, i volumi medi di recupero dei

crediti in sofferenza (in sede giudiziaria o extragiudiziale) sono pari al -57,3% rispetto ai 6 mesi precedenti l'emergenza Covid-19, da settembre 2019 a febbraio 2020. Altrettanto critiche appaiono le recenti stime da parte della BCE che, nello scenario peggiore, quantificano in 1.400 miliardi di euro le nuove sofferenze per le banche europee. Infine, appare opportuno evidenziare che l'andamento delle sofferenze degli ultimi mesi è stato largamente attenuato dalle misure governative di sostegno al credito (moratorie su prestiti e rilascio delle garanzie pubbliche per i nuovi finanziamenti) che, ad oggi, in Italia ammontano a circa 300 miliardi di euro.

I crediti deteriorati vantati dalle banche non sono qualitativamente uniformi: una parte è effettivamente espressione di posizioni del tutto deteriorate; altra parte è, invece, da ricondursi a transitorie difficoltà finanziarie che, a causa della protratta congiuntura avversa e del persistere dello stato pandemico, hanno colpito imprese fondamentalmente sane e produttive.

È altresì pacifico che se, da un lato, i crediti deteriorati determinano un effetto rilevante ai fini dell'accesso al credito, dall'altro, incrementano il rischio per lo Stato di intervento nel sistema bancario per tutelare il risparmio.

Dunque, a causa di fattori esogeni, un rilevante quantitativo di imprese e famiglie si possono vedere preclusa la possibilità di accesso a nuovi e vitali finanziamenti stante lo stigma di "cattivi pagatori" con cui sono state precedentemente classificate nell'ambito dei sistemi privati di informazioni creditizie, dell'archivio della Centrale dei rischi della Banca d'Italia e dalla centrale di allarme interbancaria.

Da non trascurare, peraltro, appare la circostanza che ormai nei bilanci bancari i predetti crediti sono stati rettificati (per effetto del *calendar provisioning* della vigilanza bancaria) e quindi, anche tenuto conto della persistenza pandemica, appare indifferibile un intervento legislativo finalizzato a togliere definitivamente, tramite accordi transattivi, queste poste deteriorate dai bilanci delle banche senza ulteriori perdite e rettifiche e deduzioni a fini fiscali, nonché favorire l'allineamento del valore del debito iscritto nel bilancio delle imprese debitrici al valore contabile del bilancio bancario.

Al fine di tutelare la libera volontà delle parti, è apparso opportuno prevedere, nella citata proposta di legge A.C. 3110, che gli accordi tra debitore e creditore, propedeutici alla strutturazione dell'operazione, siano formalizzati con la mediazione civile o con atto pubblico.

Con particolare riferimento agli effetti contabili in materia di NPL si evidenzia che l'implementazione in maniera automatizzata e tempestiva dei *provisioning e write-off* delle posizioni deteriorate, per effetto del *calendar provisioning*, genera difformità tra i bilanci delle banche (soggetti creditori) e quelli delle imprese (soggetti debitori). Pertanto, nella proposta di legge A.C. 3110 si propone anche l'introduzione di misure, nel rispetto della libertà delle parti coinvolte, volte a favorire l'allineamento contabile delle differenti contabilizzazioni.

Siffatti interventi ben si conciliano con l'intero impianto normativo licenziato dal legislatore negli ultimi anni, finalizzato al recupero, e non alla "punizione" del debitore mediante il ricorso a strumenti di composizione della crisi diretti a ritardare ovvero evitare, in ipotesi di positiva soluzione, sia le procedure esecutive (mobiliari, presso terzi ed immobiliari) sia le dichiarazioni di fallimento che, di fatto, rivestono carattere residuale.

Il protrarsi dello stato pandemico e la crisi geopolitica in atto non potranno che avere forti e negativi riflessi sul tessuto economico e sociale del nostro Paese con calo del PIL, tensioni finanziarie, calo dei consumi, aumento della disoccupazione con crisi aziendali sia nell'ambito delle maxi imprese che nelle PMI; in tale contesto sono destinati ad aumentare i già consistenti portafogli NPL delle banche; da qui l'indifferibile necessità di intervenire per favorire accordi transattivi, limitando i costi per lo Stato (in particolare rilascio delle GACS), delle posizioni deteriorate di imprese, liberi professionisti e famiglie.

La proposta di legge A.C. 3109, fondandosi sulle medesime premesse, intende incentivare, attraverso l'introduzione di una fiscalità di scopo, l'utilizzo di Fondi immobiliari riservati, italiani o UE come definiti dall'articolo 1 del TUF, per gestire le sofferenze immobiliari detenute dalle banche, dagli intermediari finanziari e dalle società titolari della licenza di recupero stragiudiziale di crediti.

Tali strumenti permetterebbero, nel rispetto delle previsioni di cui ai principi contabili IFRS 9 e IFRS 10, della normativa sugli aiuti di Stato, della disciplina sulle parti correlate e sui conflitti di interesse, la *derecognition* contabile in capo all'intermediario e il mancato assoggettamento dei Fondi immobiliari riservati, italiani o UE, alla normativa di vigilanza BCE in materia di *calendar provisioning*.

In estrema sintesi, nel rispetto delle citate normative, la proposta consente: a) al fondo immobiliare riservato, italiano o UE (soggetto completamente terzo rispetto al creditore ed al debitore) di acquistare l'immobile dal debitore originario garantendo a quest'ultimo delle tutele, definite nel regolamento del fondo, tra cui, la locazione dell'immobile stesso per un

periodo, almeno decennale, ad un canone agevolato e la possibilità di acquistare l'immobile, ad un prezzo predeterminato e costante, per tutta la durata della locazione; b) all'ex debitore, per il tramite del fondo immobiliare riservato, italiano o UE, di estinguere il proprio debito nei confronti del creditore e di ottenere la cancellazione dell'ipoteca in sede di atto pubblico di compravendita dell'immobile; c) al creditore di natura bancaria la *derecognition* contabile della sofferenza, il mancato assoggettamento alla normativa di vigilanza in materia di *calendar provisioning* e l'ottenimento immediato del controvalore del credito in sofferenza.

La realizzazione degli effetti di cui sopra impone che: il gestore del fondo immobiliare riservato, italiano o UE, il creditore, il debitore e l'investitore non rientrino in alcun modo in situazioni di conflitto di interesse, non siano parti correlate; non vi siano operazioni tra parti correlate; ai sensi dell'IFRS 10, non vi sia nessun soggetto in grado di esercitare una "notevole influenza" su uno o più degli altri soggetti.

Le citate tutele e tutti i rapporti tra le varie controparti dei fondi immobiliari riservati, italiani o UE, potranno trovare puntale definizione nei regolamenti di gestione approvati o dalla Banca d'Italia o dalle corrispondenti Autorità UE. Al fine di tutelare la libera volontà delle parti, l'articolato prevede che gli accordi tra debitore, creditore e fondi immobiliari riservati, italiani o UE (soggetto terzo), propedeutici alla strutturazione dell'operazione, siano formalizzati con la mediazione civile o con atto pubblico.

Per limitare fenomeni di *misselling*, la partecipazione ai fondi immobiliari riservati, italiani o UE, è riservata esclusivamente a investitori professionali e alle categorie di investitori individuate dal regolamento di cui all'articolo 39 TUF.

L'iniziativa legislativa in questione deve necessariamente introdurre anche una fiscalità di scopo, sia dal lato banca che dal lato impresa, che incentivi l'utilizzo di soluzioni di mercato (ricorso a fondi immobiliari riservati, italiani o UE) per favorire il ritorno *in bonis* delle posizioni deteriorate.

Per condividere e migliorare le citate proposte di legge, l'Ufficio di Presidenza della Commissione ha deliberato di istituire un apposito Gruppo di lavoro, che si è riunito per la prima volta il 22 luglio 2021, definendo un apposito programma di lavoro e, da ultimo, una proposta di articolato, discussa e approvata in data 28 giugno 2022 dall'Ufficio di Presidenza della Commissione.

In conclusione appare ragionevole e opportuno introdurre ulteriori strumenti normativi - da affiancare alle GACS, alla Legge 30 aprile 1999, n. 130 (Disposizioni sulla

cartolarizzazione dei crediti), ecc. - volti a favorire, su base volontaria per l'intermediario e per il debitore, la cancellazione dai bilanci bancari delle posizioni deteriorate (*derecognition*) con l'ottenimento immediato del controvalore del credito in sofferenza nonché il possibile ritorno in *bonis* dei debitori.

2.2.1. Costituzione del gruppo di lavoro in materia di sofferenze bancarie

La Commissione, successivamente alla presentazione delle due proposte di Legge su iniziativa della Presidente (A.C. 3110 e A.C. 3109), ha costituito un apposito gruppo di lavoro coordinato dal Prof. Raffaele Lener.

Hanno preso parte e contribuito al Gruppo di lavoro i seguenti soggetti: Unicredit S.p.A., Intesa Sanpaolo S.p.A., Amco S.p.A., Banca Popolare dell'Emilia-Romagna S.p.A., iQera Italia S.p.A., Banca di Credito Cooperativo di Roma S.C.p.A., Cassa Depositi e Prestiti S.p.A., Banca Monte dei Paschi di Siena S.p.A., Banco BPM S.p.A., Iccrea Banca S.p.A., Banca IFIS S.p.A., Università Cattolica di Milano, Prelios SGR S.p.A., Intrum Italy S.p.A., Deutsche Bank S.p.A., IBL Banca S.p.A., doValue S.p.A., Guber Banca S.p.A., REV - Gestione Crediti S.p.A., Gardant S.p.A., CBA Studio Legale e Tributario, T8P Consulting Ltd., P.M.S..

Obiettivo del Gruppo di lavoro è stato quello di definire e condividere apposite proposte di interventi legislativi per il settore degli NPL/UTP - partendo dall'analisi delle due proposte di legge precedentemente illustrate - per porre rimedio alla crescita dei crediti deteriorati.

Le nuove incertezze sull'andamento dell'economia globale causate dalla guerra in Ucraina, dalla crisi geopolitica, dal caro energia, dalle spinte inflazionistiche rendono improcrastinabile la necessità di trovare soluzioni per gestire la significativa mole di crediti deteriorati e di crediti classificati come inadempienze probabili che è venuta creandosi in seguito alla pandemia (mole che, peraltro, sembra sia destinata a crescere¹).

¹ Come confermato dall'audizione del 14 giugno u.s. di Ernst and Young, nella persona dei Dott.ri Francesco Pisapia e Michele Thea, l'ammontare delle esposizioni deteriorate rispetto alle esposizioni complessivamente erogate dal sistema bancario sono ancora superiori alla media dell'UE (4,9 % contro il 2,1 %) e le esposizioni classificate come inadempienze probabili nel 2021 (oltre 140 mila sono le imprese a rischio) per la prima volta hanno superato le esposizioni classificate come deteriorate. Inoltre, sempre in tale occasione, si è evidenziato che nel triennio 2021-2024 la quantità complessiva di esposizioni deteriorate mostra una tendenza alla crescita (attestandosi entro il 2024 sulla soglia dei 400 miliardi di euro). Siffatto andamento, ove dovesse verificarsi, richiederà particolare attenzione per evitare che ciò causi eccessive sofferenze nel sistema bancario.

In tale contesto, meritano poi particolare attenzione i crediti classificati a Stage 2, aumentati del 70% negli ultimi due anni. Infine, ulteriori profili di attenzione si registrano nella durata media delle aste immobiliari che si attesta a circa 6 anni con ribassi medi sul prezzo dei lotti in asta di circa il 30% (periodo 2019-21).

2.2.2. Proposta di articolato per la definizione transattiva dei crediti bancari in sofferenza

Sulla Proposta di Legge n. 3110 *“Disposizioni per la definizione transattiva dei crediti bancari in sofferenza”* il Gruppo di lavoro, pur condividendo le finalità della stessa, ha evidenziato diversi profili di attenzione/criticità tecniche e operative come di seguito sintetizzate.

In primo luogo, per quanto attiene all’eccessiva ampiezza delle tipologie di credito o al novero dei soggetti creditori ammessi alla misura, il cui ambito di applicazione soggettivo e oggettivo andrebbe ristretto.

In secondo luogo, quanto alla fase procedurale, le tempistiche di pagamento del debito e l’eventuale dilazione di pagamento che obbliga il creditore fino al termine massimo di due anni, rischia di favorire proposte meramente dilatorie e essere insostenibile per gli stessi creditori.

Infine, profili di attenzione sono stati evidenziati anche con riferimento ai possibili comportamenti *“opportunistici”* da parte dei debitori. E’ stata sottolineata anche l’eventuale ipotesi di mancato pagamento del debitore o il mancato pagamento nei termini prescritti che dovrebbe comportare non solo il rimborso del credito originario ma anche il pagamento degli interessi, nonché la decadenza dai benefici fiscali appositamente introdotti.

In virtù delle citate osservazioni e, tenuto conto che in Parlamento sono state presentate ulteriori e simili proposte legislative, si è ritenuto opportuno affrontare i citati profili di attenzione nell’ambito dei lavori parlamentari.

2.2.3. Proposta di articolato su FIA Immobiliare ESG per famiglie e imprese

La Proposta di articolato (cfr. Allegato 2) introduce un nuovo meccanismo per la soluzione e il *“trattamento”* delle esposizioni del sistema creditizio classificate come deteriorate ovvero come *“inadempienze probabili”* con garanzia immobiliare o *leasing* immobiliari.

In particolare, la proposta introduce una particolare operazione negoziale “trilaterale” per la completa estinzione dell’esposizione deteriorata che abbia un valore non superiore a 500 mila euro (in caso di esposizione contratta da persone fisiche) o di 5 milioni di euro (in caso di esposizione contratta da persone giuridiche).

L’operazione in questione si può qualificare, in un certo senso, come un singolare *rent-to-buy* immobiliare realizzato da tre parti: l’intermediario creditore, il debitore e un OICR terzo acquirente.

Tramite l’operazione, un Fondo immobiliare terzo compra dal proprietario (e debitore) l’immobile posto a garanzia del credito non *performing*. L’acquisto libera integralmente il debitore dai suoi gravami (relativi a questo debito, ovviamente) verso il soggetto creditore. Il Fondo (salvo diverso interesse da parte dell’ex debitore) concede in locazione per 10 anni all’ex debitore l’immobile oggetto dell’operazione ad un canone annuo non superiore al 5% del prezzo di acquisto dell’immobile. L’ex debitore che decide di prendere in locazione l’immobile riceve dal Fondo *un’opzione* per il riacquisto dell’immobile della durata di 10 anni ad un valore prestabilito. Dalle analisi svolte il canone di affitto concesso dal fondo all’ex debitore è mediamente pari ad 1/2 delle locazioni di mercato per immobili simili e ad 1/4 dell’importo della rata del mutuo divenuto sofferenza.

L’operazione delineata dalla Proposta è un mezzo totalmente volontario. Sarà l’intermediario creditore, nei fatti, a valutare di quale strumento avvalersi per conseguire il recupero del credito. D’altro canto, il cliente esposto aderirà all’operazione solo se ritiene nel proprio interesse.

Nell’operazione delineata assume un ruolo centrale il terzo acquirente, il quale è necessariamente un OICR chiuso appositamente costituito per il compimento di siffatte operazioni.

Tecnicamente, l’OICR è inquadrabile nella fattispecie dei FIA chiusi, riservati a investitori professionali e di tipo immobiliare. Il fondo potrebbe anche essere negoziato su un mercato regolamentato «riservato» (ad esempio il MIV-segmento professionale).

È il FIA ad avere sostanzialmente l’iniziativa e a dare davvero inizio all’operazione.

Infatti, dopo essere stato *sollecitato* dal creditore, il FIA propone al debitore di acquistare l’immobile inizialmente costituito in garanzia del credito e di versare al creditore la somma pattuita quale prezzo dell’immobile a fronte dell’estinzione del credito dal medesimo garantito. Se, invece, la sollecitazione arriva dal debitore, il FIA proporrà al

creditore la somma massima che è disposto a pagare per l'immobile. Se il creditore accetta, si potrà procedere con i successivi adempimenti.

Il FIA, in quanto *sollecitato* o dal creditore o, in alternativa, dal debitore, dovrà nei fatti raggiungere con il creditore un'intesa preliminare sul prezzo di vendita dell'immobile, così da identificare la somma utile per la totale transazione del credito deteriorato (o in deterioramento).

In questa maniera, FIA e intermediario creditore determinano sostanzialmente la somma che sarà pattuita con il debitore quale prezzo di vendita in occasione del successivo acquisto immobiliare.

Si evidenzia che la partecipazione del debitore, è *compliant* alle previsioni di cui alla Legge delega n. 206 del 26 novembre 2021 in materia di PNRR.

Il prezzo al quale il FIA acquista l'immobile (prezzo che consente di chiudere l'esposizione debitoria del cliente presso l'intermediario) ha un limite.

Infatti, il prezzo di vendita non può superare uno dei quattro parametri previsti dall'articolo 3, comma 1, lettera *a*), della Proposta, ossia:

- a) il valore contabile netto del credito iscritto al bilancio dell'intermediario creditore;
- b) il prezzo di cessione del credito (nel caso in cui l'intermediario abbia ricevuto l'esposizione da altro intermediario);
- c) il valore che può costituire la possibile base d'asta, determinato con apposita (o comunque recente) perizia di stima; e
- d) il valore indicato dalla CTU prodotta nell'ambito del procedimento esecutivo ovvero il valore posto a base d'asta per l'eventuale incanto fissato in data immediatamente successiva a quella dell'accordo.

Raggiunta, dunque, l'intesa con l'intermediario, il FIA dovrà stipulare con il debitore la compravendita del bene immobile inizialmente ipotecato da quest'ultimo, versando, tuttavia, il prezzo d'acquisto direttamente nelle mani dell'intermediario: è solo in questo momento che l'obbligazione di pagamento verso l'intermediario può dirsi estinta.

In sostanza, con il compimento dell'operazione delineata dalla Proposta, il FIA si obbliga con il debitore a versare al creditore (e agli altri creditori eventualmente concorrenti) il prezzo dell'immobile pattuito in sede di compravendita, estinguendo così integralmente le obbligazioni contratte del debitore e garantite con il medesimo immobile. Il FIA potrebbe,

tra l'altro, intervenire anche in sede di asta offrendo la somma pattuita nel pieno rispetto della *par condicio creditorum* e della gerarchia dei creditori.

Mette conto notare, poi, che il FIA può accedere ai benefici della Proposta (e, dunque, può compiere le operazioni in esame) se i crediti non superano il valore contabile netto di 500 mila euro (nel caso di debiti contratti da persone fisiche) o di 5 milioni di euro (nel caso di debiti contratti da persone giuridiche).

Completato l'acquisto secondo lo schema appena descritto, il FIA e il debitore hanno la possibilità di determinare anche la sorte dell'immobile oggetto dell'operazione in seguito alla iniziale compravendita.

In particolare, le norme della Proposta conferiscono al debitore (a questo punto, *ex-debitore*) il diritto – potestativo – di concludere con il FIA, contestualmente o successivamente alla compravendita, un contratto di locazione dell'immobile ceduto.

Tale locazione dovrà rispettare gli specifici limiti imposti dalla Proposta.

Il contratto dovrà, infatti, avere durata non inferiore a dieci anni e il canone, calcolato su base annuale, dovrà essere di importo non superiore al 5% del prezzo di acquisto dell'immobile.

Il creditore che abbia deciso di concludere il contratto di locazione, può anche riservarsi il diritto di riacquistare l'immobile dal FIA in qualsiasi momento, versando come corrispettivo il prezzo inizialmente pattuito in sede di compravendita, maggiorato del 10 %.

Le norme della Proposta non si soffermano in maniera specifica sulla forma e sul contenuto degli accordi che sostanziano l'operazione.

Per come delineata, l'operazione sarebbe tendenzialmente regolata da un contratto di transazione, concluso nell'ambito di una procedura di mediazione o con atto pubblico.

Poiché l'operazione implica comunque la conclusione di negozi traslativi di diritti reali su beni immobili, si renderà comunque necessario l'intervento del notaio, richiesto, come noto, a pena di nullità.

Quanto al contenuto, il contratto concluso tra le parti può comporsi in modi vari.

Esso può, infatti: (i) essere un unico (e complesso) contratto di transazione, in cui le parti regolano la sorte del credito deteriorato, la conseguente compravendita immobiliare da parte del FIA, l'eventuale rapporto di locazione e la conseguente opzione di riacquisto a favore del debitore; ovvero (ii) un contratto di transazione che contenga, al contempo, un

contratto preliminare con il quale le parti *programmano* anche i vari contratti attuativi dell'operazione e determinano, dunque, i rispettivi obblighi.

Lo schema contrattuale delineato *sub* (i) necessiterà in ogni caso della forma dell'atto pubblico (e, quindi, di un intervento notarile), in quanto esso contiene un negozio traslativo di diritti reali su beni immobili.

Per contro, non contenendo un negozio traslativo di diritti reali su beni immobili, lo schema *sub* (ii) potrà indifferentemente essere concluso in forma di atto pubblico o nell'ambito del procedimento di mediazione, rendendosi necessario l'intervento notarile solo nella successiva fase di attuazione del contratto.

La Proposta prevede, infine, talune norme di coordinamento e di incentivazione fiscale vera e propria.

In particolare, l'articolo 3, comma 2, e l'articolo 4 della Proposta intendono, da un lato, semplificare la gestione dei particolari aspetti fiscali e contabili dell'operazione conclusa tra le parti e, dall'altro, ad offrire a queste parti un opportuno incentivo ad avvalersi del nuovo strumento recato dalla Proposta.

Ciò, nell'evidente – e, invero, duplice – intenzione dei proponenti, da un lato, di rendere più efficiente il mercato dei crediti deteriorati (o classificati come inadempienze probabili), offrendo agli intermediari un ulteriore strumento per la loro gestione e, dall'altro, di dare modo al debitore di adempiere ai propri debiti in forme e secondo linee maggiormente rispondenti alla sua situazione patrimoniale, potenzialmente mutata anche in seguito alle recenti situazioni di crisi.

In particolare, un primo gruppo di incentivi è teso a semplificare, più che a incentivare in senso *strettamente* economico, la gestione degli oneri e degli adempimenti connessi all'operazione.

Rientrano in questo gruppo, infatti, le norme che esonerano gli accordi dalle imposte di bollo e di registro, l'esenzione dalle imposte ipotecarie e catastali della cancellazione delle ipoteche conseguenti alla conclusione degli accordi transattivi tra intermediario, debitore e FIA, nonché le norme che impongono un regime sostitutivo per le eventuali sopravvenienze attive rilevate dal debitore nel proprio bilancio (chiaramente, nel caso in cui il debitore sia una impresa obbligata alla tenuta delle scritture contabili).

È, poi, un incentivo fiscale vero e proprio la norma contenuta nell'articolo 4, comma 1, ultimo periodo, della Proposta, in quanto essa attribuisce all'intermediario un credito di

imposta pari al totale delle perdite sul credito estinto con l'operazione, suddiviso nei successivi cinque anni fiscali.

Quanto alla causa che caratterizza l'operazione, la Proposta non sembra regolare attività di recupero – in senso stretto – del credito deteriorato in capo all'intermediario.

È vero che l'operazione tra intermediario, debitore e FIA ha come obiettivo rendere il più possibile efficiente il recupero del credito, ma in realtà essa tende a trasformare il rapporto contrattuale che ne costituisce la fonte.

In sé, dunque, l'operazione potrebbe sembrare una particolare forma di patto marciano.

Come noto, il patto marciano è il patto con cui il debitore conclude una prima cessione al creditore del bene offerto in garanzia, perché quest'ultimo lo venda a un terzo, per conto e nel miglior interesse del debitore.

In questa maniera, il creditore si soddisfa con il ricavato della vendita del bene, restituendo l'eventuale valore residuo al debitore.

Tuttavia, il caso che ci occupa, pur rispondendo a una logica molto simile a quella del patto marciano, ha uno schema e porta a risultati di natura diversa da quelle tipiche del patto marciano.

La Proposta prevede, infatti, che l'operazione si realizza proprio con l'intervento del terzo acquirente (anche se su *sollecitazione* dell'intermediario creditore o del debitore).

Il prezzo di acquisto del bene, poi, viene determinato sulla base dei rigidi criteri fissati dalla Proposta medesima.

Infine, dopo aver ceduto il bene inizialmente ipotecato, il debitore può chiedere – e ottenere – di locare l'immobile e può finanche riservarsi una opzione di riacquisto alla conclusione del rapporto di locazione.

Se ne deve concludere, dunque, che l'operazione ha una funzione economica (ed è, dunque, caratterizzata da una causa) diversa da quella tipica del patto marciano.

L'operazione, infatti, è solo apparentemente funzionale ad attività di recupero di un credito, e realizza un rapporto sostanzialmente più complesso.

Non porta semplicemente all'estinzione del credito, ma crea un rapporto nuovo e incompatibile con il precedente.

L'operazione, inoltre, agevola al contempo il debitore nella liquidazione del bene per assolvere alle proprie obbligazioni e, di fatto, ottenere in breve tempo miglioramenti nella

propria valutazione del merito creditizio (compromessa dalla precedente classificazione dell'esposizione come deteriorata).

Peraltro, mette conto notare che il rapido miglioramento della reputazione creditizia del debitore che consegue, almeno in astratto, all'operazione può ragionevolmente portare a pensare che si abbassino significativamente le probabilità che il debitore venga attratto nel c.d. "circuito usurario" o, più in generale, che egli sia esposto a pericolosi fenomeni di economia sommersa e a organizzazioni criminali.

Da altra prospettiva, il FIA, pur agevolando il recupero del credito da parte dell'intermediario creditore e garantendo al debitore il mantenimento della disponibilità dei propri beni, sta comunque investendo nell'immobile che costituiva la garanzia dei precedenti - crediti. Instaurando eventualmente con l'ex-debitore un nuovo (e auspicabilmente duraturo) rapporto di locazione.

Con canoni di locazione derivanti dall'immobile, il FIA può così realizzare in tempi brevi dei rendimenti sull'investimento effettuato con l'operazione di acquisto.

Quanto alla finalità della Proposta, c'è da dire che essa è mossa da una spiccata finalità *solidaristica* e sembra ispirarsi, quanto a finalità sociali, anche alle recenti politiche sugli investimenti "ESG".

Innanzitutto, indice della finalità *solidaristica* è la *fiscalità di scopo*, in quanto prevista al fine di incentivare economicamente gli intermediari ad avvalersi delle norme della Proposta e a evitare che dall'operazione possano subire perdite più gravi di quelle che potrebbero subire avvalendosi degli strumenti di recupero attualmente conosciuti².

In questo senso, le norme della Proposta forniscono uno strumento di recupero (*recte*, di liquidazione e recupero) che si aggiunge a quelli esistenti e permette all'intermediario di avvalersene senza dover sopportare significativi sacrifici economici.

L'operazione oggetto della proposta, infatti, si aggiunge alle operazioni di cartolarizzazione, alle cessioni di portafogli e ai più *semplici* incarichi di recupero che, pur essendo caratterizzate da costi più contenuti per gli operatori, non sempre permettono l'adozione di soluzioni "negoziate" con la prospettiva di un recupero maggiormente dilazionato nel tempo.

² Quali, ad esempio, cartolarizzazioni, cessioni a soggetti autorizzati *ex art.* 115 TULPS, ecc.

L'articolato proposto prevede inoltre che il Creditore possa essere anche una SPV di cartolarizzazione. L'utilizzo del FIA potrebbe, pertanto, agevolare il recupero delle posizioni debitorie assistite da garanzia immobiliare o leasing immobiliare, ridurre il rischio GACS per lo Stato nonché riabilitare il debitore.

Dal lato del debitore, poi, le norme manifestano in modo ancora più marcato questo carattere *solidaristico*.

Ne è, infatti, un primo indice la struttura dell'operazione in sé: trasformando di fatto un mero rapporto di credito in un più complesso rapporto di locazione, l'operazione nei fatti impedisce al debitore di *perdere* la disponibilità dei propri beni propri immobili (naturalmente, se ed in quanto il debitore ne abbia interesse e ne faccia richiesta al FIA), agevolandone il ritorno in bonis nei confronti del sistema bancario.

A questa evidenza, poi, si aggiungono i particolari vincoli che la Proposta impone al prezzo di vendita dell'immobile, alla durata della locazione e alla determinazione del prezzo di riacquisto in caso di riscatto.

Con riferimento a quest'ultimo aspetto può dirsi che dalla Proposta sembra emergere una natura del FIA tendenzialmente conforme ai nuovi principi ESG.

Il FIA, infatti, potrà locare l'immobile al debitore (eventualmente interessato) a un canone vincolato e parametrato al prezzo di acquisto dell'immobile e che, a quanto risulta, si stima sia comunque più vantaggioso dei canoni normalmente applicati nel mercato.

Ciò sembra manifestare una, sia pur particolare, sostenibilità dell'investimento del FIA per quel che concerne i suoi effetti e le sue ricadute *sociali*.

In definitiva, le norme contenute nella Proposta offrono agli operatori del settore uno strumento certamente nuovo per il recupero delle esposizioni deteriorate o delle inadempienze probabili e la riabilitazione finanziaria dei debitori, consentendogli un rinnovato accesso al credito. Un aspetto rilevante della proposta è che il debitore, a seguito degli accordi conclusi e totalmente volontari con il Fondo e il creditore, è integralmente liberato dalle obbligazioni pregresse. Più precisamente, con l'accordo trilaterale il debitore si copre dal rischio che la garanzia escussa, ad esempio in sede di asta, possa essere inferiore al debito originario.

Si potrebbe, perciò, affermare che le norme della Proposta sono caratterizzate da una maggiore attenzione del legislatore alla libertà negoziale delle parti, tendono a salvaguardare in modo nuovo (e auspicabilmente più efficiente) le ragioni del creditore,

conciliandole con la concreta situazione patrimoniale del debitore, con l'obiettivo di valorizzare al meglio gli immobili inizialmente offerti in garanzia.

Va precisato, in ogni caso, che gli operatori del settore potranno *giovarsi* delle nuove misure solo dopo che l'Agenzia delle Entrate e la Banca d'Italia avranno esercitato le rispettive deleghe regolamentari.

Le previsioni della Proposta, infatti, per trovare concreta applicazione necessitano che le predette autorità provvedano all'emanazione delle norme secondarie attuative degli incentivi fiscali e di coordinamento con la disciplina regolamentare "ordinaria" della Banca d'Italia in materia di gestione collettiva del risparmio.

La proposta di articolato prevede comunque dei termini, pari a 120 giorni dall'entrata in vigore della Legge, per l'esercizio delle deleghe regolamentari.

Tale proposta, come già detto, è stata discussa e approvata in data 28 giugno 2022 dall'Ufficio di Presidenza della Commissione. L'imprevisto scioglimento anticipato della Legislatura non ha permesso alla Commissione di avviare le attività legislative finalizzate all'approvazione della proposta di articolato in oggetto.

2.3. Il ruolo dello Stato nel capitale del sistema bancario: dal Monte dei Paschi di Siena alla Popolare di Bari

La Commissione ha effettuato audizioni volte ad approfondire il ruolo dello Stato nel sistema bancario anche alla luce delle vicende inerenti la Banca Popolare di Bari e Banca MPS.

In riferimento a banca Monte dei Paschi di Siena, si osserva come essa abbia eseguito in più occasioni aumenti di capitale per complessivi 18,5 miliardi di euro finalizzati a consentire il rispetto dei vincoli regolamentari in tema di patrimonio di vigilanza, su cui avevano inciso le rilevanti rettifiche di valore su crediti e, più in generale, le ricorrenti perdite di esercizio. Di detto importo, circa 6 miliardi di euro sono stati utilizzati al fine di rimborsare i cc.dd. "Tremonti Bond" e i Nuovi Strumenti Finanziari (cc.dd. "Monti Bond") sottoscritti dal MEF.

Nello specifico in riferimento ai quattro aumenti di capitale:

- nel 2011 sono state create le condizioni per il rimborso dei cc.dd. "Tremonti Bond" (1,9 miliardi di euro) e per anticipare l'allineamento ai più stringenti requisiti patrimoniali richiesti da Basilea 3;

- nel 2014 sono state create le condizioni patrimoniali per il riscatto parziale di nominali 3 miliardi di euro di Nuovi Strumenti Finanziari sui 4 miliardi originariamente erogati oltre interessi e oneri e accessori, MPS è stata dotata di un *buffer* di sicurezza funzionale all'assorbimento degli impatti negativi che sarebbero potuti derivare dal *comprehensive assessment* e si è allineata alla *best practice* di mercato in Italia in termini di Patrimonio di Classe 1 (c.d. "CET 1");
- nel 2015 sono state create le condizioni patrimoniali per colmare gli impatti negativi derivanti dallo scenario avverso dello stress test condotto da BCE nell'ambito del *comprehensive assessment*, sono stati integralmente rimborsati i Nuovi Strumenti Finanziari residui per nominali 1,071 miliardi di euro ed è stato creato un buffer addizionale ai fini del rispetto ai requisiti regolamentari richiesti dalla BCE nell'ambito del *Supervisory Review and Evaluation Process* (SREP);
- nel 2017 è stata ripristinata un'adeguata dotazione patrimoniale a seguito dell'impossibilità di portare a termine l'operazione di rafforzamento patrimoniale annunciata il 26 luglio 2016 che indusse MPS a inoltrare, il 23 dicembre 2016, un'istanza alla BCE di sostegno straordinario e temporaneo per l'accesso alla ricapitalizzazione precauzionale straordinaria.

L'intervento dello Stato ha reso necessaria l'attivazione del principio di condivisione degli oneri (*burden sharing*). In tale ambito, il MEF ha sottoscritto un aumento di capitale di 3,9 miliardi di euro e gli obbligazionisti hanno sottoscritto un aumento di capitale 4,5 miliardi di euro eseguito tramite conversione delle obbligazioni subordinate.

In seguito, il MEF ha promosso un'offerta pubblica volontaria parziale di scambio e transazione rivolta ai titolari delle azioni ordinarie della Banca derivanti dalla conversione, a seguito del *burden sharing*, del prestito obbligazionario subordinato denominato "€ 2.160.558.000 Tasso variabile Subordinato *Upper Tier II* 2008 - 2018". Successivamente il MEF ha acquistato 198.521.533 azioni per un corrispettivo di 1,5 miliardi di euro, vincolato alla sottoscrizione di un'obbligazione senior emessa dalla Banca di pari valore nominale con cedola 0,657%.

Sempre con riferimento a Banca Monte dei Paschi di Siena S.p.A., si ricorda che durante l'udienza del 15 ottobre 2020, il Tribunale di Milano ha emesso sentenza di condanna in primo grado nei confronti degli *ex* amministratori Alessandro Profumo e Fabrizio Viola per false comunicazioni sociali in relazione alla semestrale del 30 giugno 2015

e per manipolazione del mercato in relazione ai comunicati stampa relativi all'approvazione dei bilanci al 31 dicembre 2012, 31 dicembre 2013 e 31 dicembre 2014 e alla semestrale del 30 giugno 2015. La Banca ha dovuto registrare un danno patrimoniale di 400 milioni di euro per accantonamenti conseguenti alla condanna.

Alla luce della citata sentenza, stante il mancato avvio dell'azione di responsabilità nei confronti degli *ex* amministratori, la Commissione ha deciso di approfondire la vicenda anche attraverso apposite audizioni.

In materia, ha assunto rilievo l'audizione della Vice Ministra dell'Economia e delle Finanze, Laura Castelli, del 27 luglio 2021 in merito alla situazione di Banca Monte dei Paschi di Siena, con particolare riferimento: (i) ad un imminente aumento di capitale; (ii) ad eventuali interlocuzioni con soggetti bancari in vista di una possibile fusione ovvero di cessione, anche parziale, degli sportelli; (iii) alle intenzioni del MEF circa la possibile proroga del termine – ad oggi stabilito per le operazioni di aggregazione aziendale perfezionate nel 2021 – e al possibile incremento dell'incentivo netto per il potenziale acquirente di MPS, ai sensi dell'articolo 1, commi 233-243, della legge 30 dicembre 2020, n. 178; (iv) a eventuali interlocuzioni avviate con la DG *Competition* della Commissione europea per posticipare il termine per la dismissione della partecipazione da parte del MEF; (v) alle valutazioni del MEF sulle motivazioni della sentenza relativa al processo MPS e alle possibili conseguenti iniziative.

Successivamente la Commissione ha audito l'Amministratore delegato di Gruppo UniCredit, Andrea Orcel e l'Amministratore delegato di MPS, Andrea Bastianini che, con due distinte audizioni tenutesi l'8 novembre 2021, hanno fornito alla Commissione le informazioni da questa richieste in merito alla chiusura dei negoziati relativi alla potenziale acquisizione di MPS, come rappresentato al mercato con il comunicato congiunto Unicredit-MEF del 24 ottobre 2021.

Con specifico riferimento alle trattative tra UniCredit e il MEF, dalla relazione depositata è emerso che *“al netto di normali scostamenti dovuti a singole poste, l'ammontare di capitale necessario per dare esecuzione all'operazione coerentemente con quanto concordato nel termsheet era più significativo di quanto il MEF si aspettasse e quindi, come recentemente pubblicamente dichiarato dal dott. Rivera, considerato dal MEF eccessivo”*. Allo stesso tempo, una capitalizzazione inferiore rispetto a quanto emerso avrebbe significato per UniCredit

“concludere l’operazione a termini diversi da quelli concordati e annunciati pubblicamente e sulla base dei quali si era formato il consenso dei nostri stakeholder”.

Nel corso delle audizioni sono stati approfonditi gli aspetti principali delle interlocuzioni avute con il MEF, le condizioni richieste da Unicredit (tra cui il perimetro dell’operazione, il personale considerato in esubero, il richiesto aumento di capitale, il perimetro dei crediti sia NPE che in bonis oggetto della trattativa) nonché le valutazioni di competenza che hanno condotto la banca alla chiusura del negoziato.

Successivamente, in data 12 luglio 2022, la Commissione, ha audito il nuovo Amministratore delegato di Banca Monte dei Paschi di Siena, Luigi Lovaglio, per acquisire aggiornamenti sui contenuti e sugli obiettivi del nuovo piano industriale MPS 2022/2026.

Oggetto di attenzione da parte della Commissione sono state le tematiche relative: a) all’aumento di capitale, alla strutturazione e alle tempistiche del medesimo, agli eventuali effetti diluitivi in capo al MEF e alle possibili interlocuzioni e manifestazioni di interesse già riscontrate sul mercato; b) ai contenuti e alle interlocuzioni avviate con la DG *Competition* della Commissione europea e sul nuovo termine per la migliore valorizzazione della partecipazione da parte del MEF e sugli impegni da assumere; c) al piano esuberi (tempistiche, contenuti, risorse umane interessate, impatti economici, ecc.); d) al ridimensionamento della rete distributiva (tempistiche, contenuti, criteri seguiti, zone geografiche individuate, impatti economici, ecc.).

L’audizione ha confermato che la proroga dei termini del negoziato con la DG *Competition* sulla cessione della partecipazione pubblica nella banca rappresenta un punto significativo per il rilancio della banca a beneficio dei contribuenti, dei dipendenti e, più in generale, del sistema bancario nazionale e dell’economia italiana.

Rilevante appare altresì l’aumento di capitale di 2,5 miliardi di euro atteso entro la fine del 2022, come previsto dal Piano Industriale 2022-2026 – approvato il 22 giugno 2022 dal Consiglio di Amministrazione – che prevede circa 3.500 uscite entro il 2022 da realizzare, mediante il ricorso su base volontaria alle prestazioni straordinarie del *“Fondo di Solidarietà per la riconversione e riqualificazione professionale, per il sostegno dell’occupazione e del reddito del personale del credito”*, per un periodo fino a 7 anni, con data ultima di accesso al 30.11.2022. Per questo scopo, il Piano prevede l’utilizzo di circa Euro 800 milioni, sugli Euro 2,5 miliardi di aumento di capitale, per finanziare il periodo di pre-pensionamento. Il *cost/income ratio* è atteso passare dal 71% del 2021 al 60% nel 2024 e al 57% nel 2026.

L'individuazione di un *Anchor Investor* rappresenta una tappa fondamentale per il futuro della banca; il sostanziale cambiamento degli assetti proprietari della banca sarà fortemente influenzato dalla sua presenza o meno, dalla nazionalità e dalla tipologia di investitore.

Con riferimento, invece, a Banca Popolare di Bari S.p.A., dal mese di ottobre 2019 MCC S.p.A. ha avviato un processo di valutazione e di attuazione di un intervento in BPB secondo la tempistica di seguito indicata:

- in una prima fase, sono state valutate iniziative tattiche (cessione di crediti e altre iniziative di *capital relief*) dirette a consentire il ripristino di adeguati coefficienti patrimoniali della medesima banca;
- successivamente, con l'entrata in vigore del decreto-legge 16 dicembre 2019, n. 142 convertito con modificazioni dalla legge del 7 febbraio 2020 e successive modificazioni, recante "*Misure urgenti per il sostegno al sistema creditizio del Mezzogiorno e per la realizzazione di una banca di investimento*", sono state messe a punto e finalizzate intese e attività che hanno consentito la ricapitalizzazione della Banca e la sua trasformazione da società cooperativa in società per azioni lucrativa, con l'obiettivo aggiuntivo di non far gravare su MCC e, quindi, sulle finanze pubbliche, le perdite relative alla precedente gestione;
- infine, dal 30 giugno 2020 (data dell'assemblea che ha trasformato la Banca Popolare di Bari in S.p.A.), sono state poste in essere le seguenti attività:
 - la sottoscrizione, insieme al FITD, dell'aumento di capitale;
 - il trasferimento allo stesso MCC della gran parte delle azioni sottoscritte dal FITD;
 - la copertura integrale delle perdite pregresse a carico del FITD;
 - l'adozione di misure volte a tutelare il radicamento territoriale della Banca e la sua base sociale, quali: a) la ricostituzione a carico del FITD di un capitale minimo di 10.000.000 di euro in favore della totalità degli azionisti, b) l'assegnazione a loro favore della parte non trasferita a MCC di nuove azioni per un controvalore pari a 20.000.000 di euro, c) l'offerta di un accordo transattivo a quei soci che avevano aderito ad almeno uno degli aumenti di capitale della Banca eseguiti nel 2014 e nel 2015, e d) l'assegnazione gratuita di *warrant*.

In questo quadro, particolari sono stati gli interventi diretti del Fondo Interbancario di Tutela dei Depositi a sostegno delle banche in crisi, supportandole sul piano finanziario

al fine di evitare il ricorso a forme di risoluzione; discostandosi pertanto dall'originario obiettivo della mera tutela dei depositanti.

Risulta che le azioni poste in essere da MCC siano state imposte da senso di urgenza e dalla consapevolezza delle criticità, pregresse ed attuali, inerenti la Banca Popolare di Bari, con perdite di circa 15 milioni di euro mensili, come confermato dall'accelerazione di MCC nel processo di nomina degli organi sociali di BPB.

In particolare, il progetto strategico che MCC intende realizzare, nel rispetto del decreto-legge n. 142 del 2019, con la creazione di un distretto finanziario del Sud Italia che, mediante la condivisione di investimenti e *best practices*, nonché secondo modalità implementative differenziate, consenta di dare una risposta concreta alle esigenze di credito delle imprese, soprattutto piccole e medie del Sud Italia, può essere così sintetizzato: promuovere la collaborazione e le sinergie di costo tra banche e istituti finanziari del Sud Italia; abilitare gli investimenti evolutivi (*smart lending*, *corporate banking*, finanziamenti alle PMI, progetti di inclusione sociale, nonché progetti sostenibili e *green*); collegare le comunità del mezzogiorno mediante *partnership* pubblico-private nell'ecosistema finanziario.

Sul punto, date le condizioni di estrema difficoltà economica del Sud e il crescente divario rispetto al Centro-Nord, va attentamente valutata la possibilità di stimolare lo sviluppo del Mezzogiorno anche attraverso il consolidamento e il rafforzamento del relativo sistema bancario, volano necessario per il finanziamento e il rilancio delle imprese e del territorio.

La Banca Popolare di Bari, anche alla luce del recente riassetto societario, rappresenta un importante strumento per intervenire su alcuni problemi del sistema finanziario del Mezzogiorno. Il posizionamento all'interno del Gruppo Invitalia-MCC, il cui capitale sociale è interamente detenuto dal Ministero dell'Economia e delle Finanze, potrebbe farle assumere un ruolo strategico nel processo di aggregazione delle piccole realtà bancarie del Mezzogiorno e, pertanto, favorire la nascita di un polo bancario in grado di supportarne il tessuto produttivo.

Con riguardo ai successivi sviluppi, e alle iniziative del nuovo Consiglio di Amministrazione, sono stati auditi il Presidente della Banca Popolare di Bari S.p.A., Gianni De Gennaro e l'Amministratore Delegato, Giampiero Bergami, oltre a un rappresentante politico del Ministero dell'Economia.

Dalla relazione depositata è emerso che il Piano Industriale della Banca Popolare di Bari, aggiornato a febbraio 2021, è esclusivamente focalizzato su una crescita per linee interne, non prevedendo alcuna ipotesi di acquisizione o di integrazione societaria con altri istituti di credito. Peraltro, giova sottolineare come le ipotesi di aggregazione per linee esterne rimangano prerogativa della Capogruppo Mediocredito Centrale.

Dalla relazione è emerso altresì che *“il cost/income è pari al 155,5%”*; dato su cui la Commissione ha espresso timori e preoccupazioni.

Successivamente alla decisione del dr. Giampiero Bergami di dimettersi dall’incarico di Amministratore Delegato, in data 22 dicembre 2021, il CdA di BPB ha nominato Cristiano Carrus come nuovo Amministratore Delegato.

In data 23 maggio 2022, a seguito delle dimissioni del Prefetto Gianni De Gennaro di dall’incarico di Presidente e membro del CdA, il Consiglio di Amministrazione di Banca Popolare di Bari ha deliberato la nomina di Massimiliano Cesare come Presidente e membro del Consiglio di Amministrazione di BPB.

Circa i contenziosi con gli azionisti della banca, dalle interlocuzioni avute, è emerso che una possibile soluzione potrebbe consistere nel lancio di un’Offerta Pubblica di Acquisto (OPA) da parte dell’azionista di controllo MCC sulle azioni della Popolare di Bari per il *delisting* del titolo. Si ricorda che tali azioni sono sospese dalle negoziazioni dallo scorso 4 dicembre 2019. Tale iniziativa potrebbe, tra l’altro, rappresentare una possibile soluzione *“transattiva”* ai contenziosi legali già attivati e potenziali.

Sulla possibilità di estendere l’operatività del FIR ad altre significative vicende che hanno coinvolto molti risparmiatori, tra cui, in particolare, la Banca Popolare di Bari. Dalle interlocuzioni avute con il MEF è emerso che l’intervento del FIR è specificamente diretto ad indennizzare situazioni patologiche di risparmiatori danneggiati dalle banche oggetto di risoluzione o di liquidazione coatta amministrativa, ovvero di soggetti non più operanti sul mercato e quindi non più in grado di operare il risarcimento per propri fatti illeciti.

L’istituzione del FIR è stata frutto di un lungo confronto con la Commissione europea e l’attività del Fondo deve rispettare i vincoli normativi di riferimento europei.

L’ipotesi di un fondo, alimentato da risorse pubbliche, che intervenga in luogo di una società operante sul mercato ed emittente strumenti finanziari, quale è Banca Popolare di Bari, per risarcire i risparmiatori a fronte di responsabilità per danno ingiusto che fossero accertate in capo a detto soggetto emittente che continui ad operare sul mercato,

configurerebbe un'ipotesi di aiuto di Stato a favore dell'emittente incompatibile con la normativa europea, vanificando così il percorso di rilancio della Banca fin qui compiuto e le prospettive future della banca. Infatti, una banca che risulti beneficiaria di un aiuto di Stato deve essere posta in risoluzione in base al quadro normativo europeo.

È stato altresì evidenziato che le vicende della BPB hanno visto coinvolti circa 70.000 azionisti rispetto ai quali, in occasione dell'intervento di ricapitalizzazione della Banca Popolare di Bari effettuato a giugno 2020, la banca, il Mediocredito Centrale e il Fondo Interbancario di Tutela dei Depositi hanno definito alcune proposte "di risarcimento e incentivo" a favore della base sociale. Tra queste l'accordo transattivo che ha previsto la corresponsione di un indennizzo monetario, pari a € 2,38 per ogni azione, a una ampia porzione di soci che avevano sottoscritto gli aumenti di capitale del 2014 e del 2015. Come da comunicato stampa della banca del 14 settembre 2020, alla proposta ha aderito circa il 63% dei soci destinatari.

Con l'adesione all'Offerta Transattiva, gli azionisti hanno rinunciato ad ogni pretesa nei confronti di BPB.

È stato altresì evidenziato che la banca è uscita dall'Amministrazione Straordinaria, e ha avviato un complesso processo di rilancio che ha richiesto (in base al decreto legge n. 142 del 2019 convertito, con modificazioni, dalla legge 7 febbraio 2020, n. 5, rubricato "Misure urgenti per il sostegno al sistema creditizio del Mezzogiorno e per la realizzazione di una banca di investimento") una ricapitalizzazione anche con l'impiego di risorse pubbliche, all'esito di un negoziato con la Commissione europea.

Il *Next Generation Eu* rappresenta, poi, una grande occasione per il Sud e le somme del Piano Nazionale di Ripresa e Resilienza (PNRR) devono avere come destinazione primaria quella di realizzare una perequazione territoriale che ponga la parte più svantaggiata della Nazione nelle condizioni di competere col resto dell'Europa.

Appare opportuno evidenziare come la concreta implementazione del PNRR, con specifico riferimento al Meridione, richieda una rapida attuazione del progetto "Banca per il Sud". Su tale aspetto dalle audizioni svolte è emerso che le strategie di *business* e i processi di crescita della controllata Popolare di Bari sono prerogativa della Capogruppo Mediocredito Centrale.

Come già detto, nella gestione e valorizzazione delle varie partecipate di Stato nel settore bancario sono fondamentali le strategie definite dal MEF.

Passando all'operatività dell'Amministrazione Centrale dello Stato in strumenti finanziari derivati, il 13 ottobre 2020 si è svolta l'audizione del Direttore Generale del Dipartimento del Tesoro.

Tale audizione ha riguardato l'operatività del MEF in strumenti finanziari derivati in relazione agli anni 2017-2020. Dalla documentazione depositata è emersa però l'opportunità di proseguire l'attività di approfondimento anche con riferimento ai periodi precedenti considerato, tra l'altro, che i primi contratti risalgono agli inizi degli anni 90.

Il 10 marzo 2022 ha avuto luogo il seguito dell'audizione del Direttore generale del Dipartimento del Tesoro del Ministero dell'economia e delle finanze, Alessandro Rivera, sull'operatività dell'Amministrazione Centrale dello Stato in strumenti finanziari derivati.

Gli ulteriori approfondimenti hanno riguardato: (i) la complessiva operatività svolta dal MEF con riferimento agli strumenti finanziari derivati sottoscritti con determinate controparti bancarie; (ii) le attività poste in essere dal MEF, le strategie pianificate per ridurre l'esposizione complessiva in strumenti finanziari derivati nei confronti delle diverse controparti nonché i significativi esborsi a carico dello Stato; (iii) le possibili valutazioni di competenza del MEF per migliorare la gestione del debito pubblico e l'operatività in strumenti finanziari derivati anche in termini di strutture tecniche, modelli decisionali e *governance* alla luce della recente Sentenza 12 maggio 2020, n. 8770, delle Sezioni Unite civili della Corte di Cassazione.

Dalla relazione presentata è emerso che nel corso del 2021 lo Stato ha registrato perdite pari 2,9 miliardi di euro e il nozionale del portafoglio risultava al 31 dicembre 2021 pari a circa 103,8 miliardi di euro, con un incremento di poco superiore a 8 miliardi rispetto a giugno 2020.

L'aumento è legato all'incremento della stipula di contratti di tipo "*cross currency swap*" per la copertura di nuove emissioni in dollari nel 2020 e per nuovi derivati sottoscritti per l'avvio di un programma di allungamento della *duration* del portafoglio.

Per lo Stato il *mark to market* dei derivati al 31 dicembre 2021 è negativo (pari a circa - 23 miliardi di euro) e, considerata la fase di decrescita dei tassi di interesse dell'ultimo decennio, ha registrato sempre valori negativi.

Dall'audizione è emerso altresì che i derivati di copertura "*Interest Rate Swap*" coprono circa il 4% del debito pubblico nazionale e potrebbero, sebbene in misura molto marginale,

avere un effetto positivo sull'innalzamento dei tassi di interesse derivante dalle politiche monetarie restrittive della BCE.

Gli approfondimenti hanno evidenziato l'opportunità di avviare apposite iniziative, anche di carattere legislativo, per migliorare la gestione del debito pubblico e l'operatività in strumenti finanziari derivati, anche in termini di strutture tecniche, modelli decisionali e di *governance* anche alla luce delle significative perdite registrate nei vari anni per il bilancio pubblico.

2.4. Le vicende delle Banche popolari venete

La Commissione ha svolto un ciclo di audizioni in merito alle più recenti vicende che hanno riguardato le Banche popolari venete (Veneto Banca e Banca popolare di Vicenza).

A tal fine, nella seduta del 26 gennaio 2021, ha ascoltato il Procuratore della Repubblica reggente di Treviso Massimo De Bortoli; il 9 marzo 2021, il Procuratore Capo della Repubblica di Vicenza, Lino Giorgio Bruno e i Sostituti procuratori Gianni Papeschi e Luigi Salvadori; il 23 marzo 2021, i Commissari liquidatori di Veneto Banca, Giuseppe Vidau, Alessandro Leproux e Giuliana Scognamiglio, con particolare riferimento allo stato della procedura di liquidazione coatta amministrativa; il 30 marzo 2021 Commissari liquidatori di Banca popolare di Vicenza, Claudio Ferrario, Giustino Di Cecco e Francesco Schiavone Panni, sempre in merito allo stato della procedura di liquidazione coatta amministrativa; infine nella seduta del 13 aprile 2021 è stato audito Giovanni Schiavon, *ex* Presidente del Tribunale di Treviso ed *ex* amministratore di Veneto Banca.

La Banca Popolare di Vicenza, presieduta per vent'anni da Gianni Zonin, e Veneto Banca, gestita sostanzialmente dall'amministratore delegato e direttore generale Vincenzo Consoli, non erano quotate.

Come emerso dalle audizioni, nel settembre 2008 con il crac di Lehman Brothers i mercati finanziari di tutto il mondo sono crollati: le azioni di tutte le banche quotate sono precipitate; in tale contesto storico i soci della BpVi erano compiaciuti per la scelta fatta a suo tempo dal Presidente Gianni Zonin di non aver quotato la banca: *"Tutte le banche in Borsa sono crollate – era il ragionamento trionfalistico degli azionisti – e noi siamo sempre attorno ai 60 euro"*; sicché sino all'anno 2013 si è protratta l'errata percezione del reale valore delle azioni in capo agli azionisti della banca, nonostante diversi addetti del settore fossero comunque consapevoli del fatto che il valore delle azioni di BpVi e di Veneto Banca era sopravvalutato.

Parimenti atipico si è rivelato l'aumento di capitale sociale di BpVi (di circa un 1 miliardo di euro) volto, tra l'altro, all'acquisizione di Veneto Banca atteso che negli anni – al di là di delle valutazioni sulla possibile fusione – si sono registrate diverse operazioni di collocamento di azioni da parte BpVi in contesti di operazioni di affidamento (finanziamenti cc.dd. baciati) per recuperare liquidità sul mercato *retail*, finalizzate – tra l'altro – alla potenziale operazione di fusione con Veneto Banca.

In tale contesto anomalo, nonostante il significativo incremento degli NPL - che avrebbero dovuto richiedere significative rettifiche di bilancio - la banca continuava a realizzare operazioni bacciate nei confronti della clientela bancaria con percezione e convinzione, da parte dei risparmiatori e azionisti di BpVi, che le azioni della stessa banca fossero “*equiparabili*” ai libretti postali.

Con le modifiche del quadro normativo nell'anno 2014 e, in particolare, con l'istituzione del Meccanismo di Vigilanza Unico (SSM) che sarebbe diventato pienamente operativo dal 1° novembre 2014, la Banca d'Italia e la BCE hanno avviato un processo di revisione della qualità degli attivi dei principali gruppi bancari (incluse Veneto Banca e Banca Popolare di Vicenza), il cosiddetto *Asset Quality Review*, nonché un esercizio di stress test funzionale a valutare l'eventuale carenza di patrimonio in scenari avversi (il cosiddetto *Comprehensive Assessment*).

In relazione a questi esercizi di valutazione e verifica degli attivi da parte delle Autorità di vigilanza prudenziale, le banche hanno avviato nei primi mesi del 2014 importanti operazioni di rafforzamento patrimoniale. In particolare, nel 2014 le due banche venete hanno deliberato aumenti di capitale, rispettivamente, per circa 700 milioni di euro, Banca Popolare di Vicenza, e per circa 500 milioni di euro, Veneto Banca.

Ulteriori criticità sono emerse con l'entrata in vigore della riforma che nel 2016 ha imposto la trasformazione in società per azioni alle banche popolari con oltre 8 miliardi di euro di attivo e con la richiesta della BCE alle due banche, risalente invero al 2015, di deliberare ulteriori ingenti operazioni di aumento di capitale. Tali operazioni, finalizzate anche alla trasformazione in Spa e alla quotazione in borsa, sono state deliberate nella prima parte del 2016 (circa 1 miliardo di euro per Veneto Banca e 1,5 miliardi di euro per Banca Popolare di Vicenza).

Entrambe le operazioni sollecitate non si sono perfezionate in ragione del ridotto numero di adesioni sicché, il 23 giugno 2017, la Banca Centrale Europea ha dichiarato lo

stato di “*dissesto o rischio di dissesto*” per Veneto Banca S.p.A. e Banca Popolare di Vicenza S.p.A.

Lo stesso giorno il Comitato di Risoluzione Unico (CRU), Autorità Europea per la gestione della crisi delle banche, oltre a confermare la valutazione della BCE, ha ritenuto che l’avvio di una procedura di risoluzione (prevista dalla BRRD) non fosse nell’interesse pubblico ai sensi della normativa europea, con ciò dichiarando che la gestione dei passi successivi della crisi delle due banche sarebbe stata gestita al livello nazionale.

In virtù della predetta decisione da parte della BCE il Governo e la Banca d’Italia hanno deciso l’avvio della procedura di liquidazione coatta amministrativa prevista dal Testo unico bancario e dal decreto-legge 25 giugno 2017, n. 99. Questa soluzione è stata preparata nell’arco di pochi giorni, dopo l’abbandono dell’ipotesi della ricapitalizzazione precauzionale, perseguita nei mesi precedenti.

Dall’analisi della documentazione acquisita e dalle audizioni svolte è emerso che le banche venete si sono trasformate nel giro di pochi anni – per il tramite di una serie di operazioni straordinarie, di acquisizioni di altre realtà bancarie in difficoltà e di complementari e contestuali operazioni di aumenti di capitale – da banche territoriali in realtà bancarie cc.dd. “sistemiche”.

La loro veste giuridica di società cooperative, rette dal voto capitaro e non quotate, tipica del fine mutualistico, appariva del tutto inadatta per società nel frattempo cresciute a dismisura, con decine di migliaia di soci sparsi su tutto il territorio nazionale.

È apparso altresì evidente come in un processo di crescita così “impetuoso” la *governance* interna non si sia evoluta adeguatamente, lasciando uno spazio eccessivo ad incontrastate figure di “capi azienda” che, anche a seguito del concludersi della crisi economica, hanno commesso errori di gestione e posto in essere condotte dolose per le quali sono ancora in corso procedimenti giudiziari (sentenza del Tribunale di Vicenza – appellata e proc. penale pendente avanti il Tribunale di Treviso).

Con riferimento alle indagini della Magistratura su Veneto Banca, sono emersi taluni fatti, meritevoli di ulteriore approfondimento, che potrebbero avere contribuito a determinare la prescrizione di alcuni reati a causa dei tempi necessari alla trasmissione dei fascicoli conseguente a conflitti di competenza territoriale fra le Procure coinvolte.

Nella vicenda, profili di attenzione si sono registrati sul ruolo svolto dalla vigilanza bancaria. In materia di risparmio tradito meritevole di attenzione appare la possibilità di

rafforzare, attraverso appositi interventi legislativi, l'operatività dell'ABF, Arbitro Bancario e Finanziario, e dell'ACF, Arbitro Controversie Finanziarie, per la tutela "effettiva" del risparmio.

2.4.1. Il Fondo Indennizzo Risparmiatori (FIR)

Con riferimento alla tutela effettiva dei risparmiatori, è apparso di fondamentale importanza prevedere una forma di monitoraggio periodico dello stato di attuazione della legge 30 dicembre 2018, n. 145, e successive modificazioni, che ha istituito presso il Ministero dell'Economia e delle Finanze il Fondo Indennizzo Risparmiatori (FIR), con una dotazione iniziale di 525 milioni di euro per ciascuno degli anni 2019, 2020 e 2021.

Sul punto la Commissione ha acquisito la relazione scritta di un rappresentante politico del MEF, l'allora Sottosegretario di Stato Pier Paolo Baretta, datata 27 gennaio 2021, che evidenzia diverse criticità nell'erogazione degli indennizzi. Emerge, inoltre, la necessità di valutare eventuali modifiche normative, che possano rendere più snelle ed incisive le procedure, anche alla luce della recentissima sentenza della Corte di Giustizia dell'Unione Europea sulla questione Tercas.

Il Fondo in questione è nato come risposta al diffuso clima di malessere determinatosi tra i soci, gli obbligazionisti e gli azionisti, in relazione alla messa in liquidazione di quattro banche (Banca Etruria, Banca Marche, CariFerrara e CariChieti) e alla cessione delle due venete (Popolare di Vicenza e Veneto banca).

I destinatari delle prestazioni del Fondo sono i risparmiatori, intendendosi come tali le persone fisiche, imprenditori individuali, anche agricoli o coltivatori diretti, organizzazioni di volontariato o associazioni di promozione sociale, di cui, rispettivamente, agli articoli 32 e 35 del codice del terzo settore (decreto legislativo 3 luglio 2017, n. 117) e microimprese, come definite dalla raccomandazione 2003/361/CE della Commissione, del 6 maggio 2003. Per indennizzare i risparmiatori, come già riportato, il Fondo è stato dotato di una copertura finanziaria complessiva di 1.575.000.000 di euro, per gli anni 2019-2021. La dotazione finanziaria del FIR è confermata secondo le disposizioni legislative originarie della legge n. 145 del 2018 e non ha, quindi, subito riduzioni.

La prestazione erogata dal Fondo varia, nel suo importo, a seconda dello strumento finanziario:

- per gli azionisti l'indennizzo è pari al 30% del costo d'acquisto, ovvero del prezzo medio in caso di più acquisti, inclusi gli oneri fiscali sostenuti durante il periodo di possesso delle azioni.
- per titolari di obbligazioni subordinate, la percentuale di indennizzo è innalzata al 95%, ivi inclusi gli oneri fiscali, del costo di acquisto delle stesse.

Sia per gli azionisti che per i titolari di obbligazioni subordinate, inoltre, la misura dell'indennizzo non può superare il limite massimo complessivo di 100.000 euro per ciascun avente diritto, ed è corrisposto al netto di eventuali rimborsi ricevuti a titolo di transazione con le banche o di ogni altra forma di ristoro, rimborso o risarcimento, nonché, quanto ai soli obbligazionisti, del differenziale cedole percepite rispetto a titoli di Stato di durata equivalente, calcolato dal Fondo Interbancario di Tutela dei Depositi (FITD).

L'accesso alle prestazioni del FIR può avvenire tramite due procedure:

- una procedura "*ordinaria*", subordinata alla valutazione, da parte della Commissione tecnica, del danno subito dai risparmiatori a causa delle violazioni massive del T.U.F. poste in essere dagli istituti di credito;
- una procedura "*forfettaria*" riservata agli aventi diritto che dimostrino di possedere un reddito complessivo ai fini dell'imposta sul reddito delle persone fisiche inferiore ai 35.000 euro nell'anno 2018 (al netto di eventuali prestazioni di previdenza complementare erogate sotto forma di rendita) ovvero un patrimonio mobiliare di valore inferiore ai 100.000 euro.

Alla chiusura della finestra temporale di presentazione delle domande di accesso al FIR sono risultati registrati oltre 92 mila utenti e pervenute complessivamente n. 144.245 domande di indennizzo, di cui l'87% afferisce alla cosiddetta procedura forfettaria e il 13% a quella ordinaria.

Tra le domande, oltre 140 mila sono state inviate da persone fisiche, mentre circa 2 mila da persone giuridiche. Sono pervenute anche 685 domande dall'estero. Quanto al numero degli strumenti finanziari contenuti nelle domande pervenute, si evidenzia che oltre 180 mila sono costituiti da azioni, mentre circa 21 mila da obbligazioni. È emerso che le adesioni sono state superiori al 70%: per le quattro banche regionali, i ristori sono stati di circa 167 milioni di euro a fronte della liquidazione di più di 14.000 istanze sulle circa 16.000 pervenute. Per quanto riguarda le banche venete, gli obbligazionisti subordinati hanno presentato 8.090 istanze, per un importo complessivo poco sotto i 50 milioni di euro.

Quanto alle istanze di arbitrato giunte dai titolari di bond subordinati emessi dalle banche poste in liquidazione, su 1.770 richieste di arbitrato pervenute all'Anac, quelle che presentavano i requisiti richiesti dalla normativa (e quindi valutabili) sono state 1.685, l'80% delle quali è stato accolto (1.357). Rispetto a una richiesta globale pari a 78,2 milioni di euro, i due Collegi arbitrali dell'Autorità anticorruzione hanno stabilito a favore dei detentori dei bond subordinati ristori per 44,4 milioni (56,8%).

Per monitorare la concreta operatività del FIR, la Commissione ha svolto un ciclo di audizioni che ha coinvolto la Sottosegretaria di Stato al Ministero dell'Economia e delle Finanze, Alessandra Sartore (4 maggio 2021), il Presidente della Commissione Tecnica che istruisce le pratiche del FIR, Gianfranco Servello (15 giugno 2021), nonché, su profili diversi di interesse del FIR, il Segretario generale dell'IVASS, Stefano De Polis (20 luglio 2021).

In data 5 luglio 2022 sono stati auditi anche i rappresentanti delle Associazioni dei risparmiatori "Noi che credevamo nella Banca popolare di Vicenza e in Veneto Banca" e "Consumatori attivi" per acquisire le valutazioni di competenza sul funzionamento del Fondo Indennizzo e sui possibili profili di attenzione anche alla luce di alcune recenti pronunce giurisprudenziali.

Preso atto di diversi profili di criticità, la Commissione è, dapprima, intervenuta per prorogare l'operatività della Commissione tecnica del fondo al 31 dicembre 2022 e, contestualmente, ha iniziato ad elaborare appositi emendamenti per migliorare il funzionamento del FIR.

L'imprevisto scioglimento anticipato della Legislatura non ha consentito purtroppo alla stessa Commissione di costituire un apposito gruppo di lavoro, coordinato dall'On. Zanettin e composto dai vari rappresentanti delle Associazioni di categoria, per definire appositi interventi legislativi finalizzati a rimuovere i profili di criticità emersi nel corso dell'audizione.

La Commissione ha comunque inviato alla Commissione tecnica le relazioni presentate durante l'audizione per le valutazioni di competenza.

All'esito dell'attività di svolta, è risultato che al 31 agosto 2022 la Commissione tecnica ha valutato n. 144.845 domande per un controvalore di oltre 1 miliardo di euro di cui:

- n. 125.748 istanze afferenti al regime forfettario per un importo di 775.266.415,27 euro;

- n. 19.097 istanze afferenti al regime ordinario per un importo di 238.125.571,19 euro.

Con riferimento al numero e all'importo dei pagamenti effettuati, risultano complessivamente eseguiti n. 145.675 ordinativi secondari di pagamento per un totale di oltre 969 milioni di euro.

Tali dati testimoniano l'importante lavoro svolto dalla Commissione in termini di monitoraggio dell'operatività del FIR, di *moral suasion* nonché di effettiva tutela del risparmio.

2.4.2. Il fallimento della Deiulementar

La società Deiulementar Compagnia di Navigazione S.p.a. (di seguito Deiulementar), oggi in fallimento, è stata costituita nel 1969 su iniziativa dei Sig.ri Michele Iuliano, Giuseppe Lembo e Giovanni Battista Della Gatta ed aveva quale oggetto sociale - sostanzialmente - l'esercizio dei trasporti marittimi per vie d'acqua con navi di proprietà e/o di terzi nonché l'acquisto, la vendita, la costruzione, la trasformazione, la demolizione, l'armamento, la gestione, la localizzazione e il noleggio in ogni sua forma e tipo di navi.

Dalla costituzione della predetta società sino all'intervenuta dichiarazione di fallimento la proprietà della predetta società è sempre stata delle famiglie Della Gatta, Iuliano e Lembo sia direttamente che indirettamente per il tramite di società ai medesimi riconducibili.

Nell'esercizio dell'attività tipica della Deiulementar, come da oggetto sociale, non sono mancati investimenti in altri settori quali il turistico/alberghiero nonché il settore immobiliare per il tramite di società partecipate pur tuttavia senza snaturare o ridimensionare l'attività tipica del trasporto internazionale marittimo di merci.

Nello specifico, dall'anno 2005, la società, oggi in fallimento, iniziava ad operare in maniera sempre più significativa sul mercato "*over the counter*" dei contratti derivati sui noli marittimi (c.d. "*Forward Freight Agreement*").

L'operatività della Deiulementar, ed i relativi risultati economici venivano, quindi, sensibilmente influenzati, oltre che dalle scelte gestionali, anche dal contesto internazionale (andamento economico e politico dei mercati di riferimento) e soprattutto dalla capacità di tonnellaggio disponibile a livello mondiale; in particolare, i risultati reddituali venivano

condizionati dalla volatilità dell'andamento dell'indice BDI (*Baltic Dry Index*), precipitato vertiginosamente nel luglio 2008, con una perdita di oltre il 90% del proprio valore.

Ad una situazione economica e finanziaria già deteriorata in conseguenza di marginalità economiche significativamente decrescenti e di una posizione finanziaria netta anch'essa in diminuzione, tanto da essere già negativa dal 2009 (per effetto della distribuzione dei dividendi e per l'assorbimento di risorse da parte della gestione ordinaria), si aggiungeva ad inizio 2012 la ricognizione delle passività inerenti l'emersa circolazione irregolare di certificati obbligazionari cc.dd. "fuori bilancio".

In particolare, Deiulement quando ancora *in bonis*, a seguito di censimento, iscriveva nella situazione patrimoniale al 31 dicembre 2011 un "fondo rischi ed oneri" per complessivi Euro 725 milioni, registrando così una perdita di esercizio pari a Euro 843 milioni ed un patrimonio netto negativo di Euro 845 milioni.

Con sentenza emessa dal Tribunale di Torre Annunziata il 2 maggio 2012 Deiulement veniva dichiarata fallita, producendosi conseguenze sociali a dir poco disastrose sul piano finanziario, in quanto il dissesto coinvolgeva non meno di tredicimila piccoli risparmiatori, in gran parte residenti a Torre del Greco, con un danno complessivo stimabile, all'epoca, in un importo vicino al miliardo di Euro.

Le vicende che hanno condotto al dissesto della Deiulement sono state compiutamente ricostruite nell'ambito del procedimento penale n. 38454/2012 RGNR, istituito dalla Procura della Repubblica presso il Tribunale di Torre Annunziata e poi proseguito dalla Procura della Repubblica presso il Tribunale di Roma sulla base delle indagini svolte dalla Guardia di Finanza e della documentazione raccolta nell'ambito delle stesse.

Nel procedimento penale sono stati rinviati a giudizio, nel novembre 2012, diversi membri delle famiglie di armatori Della Gatta (Angelo, Pasquale e Micaela Della Gatta, e Luigi Boccia), Iuliano (Giovanna Iuliano e Maria Luigia Lembo) e Lembo (Giuseppe e Leonardo Lembo) – in qualità di amministratori, anche di fatto, della Deiulement - per numerosi reati, tra i quali (ed anzi in primis) la raccolta abusiva del risparmio tra gli investitori, realizzata mediante l'utilizzo di diversi conti correnti bancari (per la precisione, n. 18 conti correnti) aperti presso diversi istituti di credito ed intestati per la maggior parte al socio fondatore ed amministratore unico della Deiulement, il comandante Michele Iuliano, nonché ad altri soggetti comunque riconducibili alla società o allo stesso Michele Iuliano.

Conti correnti nei quali sono transitate le ingenti somme corrisposte da un elevatissimo numero di piccoli risparmiatori che, nel corso del tempo, avevano creduto e investito in quella che rappresentava una delle maggiori società armatoriali d'Europa.

Il procedimento penale in questione è stato definito in primo grado dal Tribunale penale di Roma con sentenza dell'11-21 luglio 2014, n. 12113/2014, che – in relazione ai reati ascritti di bancarotta per distrazione ed abusiva attività bancaria – ha inflitto severe condanne ai vari membri delle famiglie Della Gatta, Lembo e Iuliano.

Decisione confermata in sede di Appello e successivamente dalla Suprema Corte di Cassazione, la quale, però, ha disposto rinvio alla Corte di Appello per la rimodulazione della pena.

Considerate le ricadute della vicenda in termini di risparmio tradito, in data 22 marzo 2022 – a seguito di notizie di stampa e di diverse segnalazioni ed esposti ricevuti anche per il tramite del Sistema di segnalazione – la Commissione ha svolto l'audizione dei Curatori Fallimentari della società Deiulemar Compagnia di Navigazione S.p.A. con la finalità di comprendere la percentuale di soddisfo per i circa 11.000 obbligazionisti chirografari che hanno investito in titoli di credito irregolari circa 800 milioni di euro.

Dall'audizione è emerso che, a fronte di un attivo realizzato di circa 98 milioni di euro, è stato accertato un passivo di circa 919 milioni di euro di cui 727 milioni circa in favore dei creditori obbligazionari irregolari.

Durante l'audizione i curatori hanno evidenziato che *“gli istituti di credito verso cui la procedura sta agendo, abbiano colposamente agevolato, in concorso con gli amministratori di diritto e di fatto della Deiulemar le operazioni illecite relative al cosiddetto prestito obbligazionario irregolare”* e per questo *“auspicano [...] un eventuale intervento ad hoc per un ristoro anche parziale ai 10.869 obbligazioni coinvolti”*.

Inoltre, come sottolineato dagli stessi Curatori, le indagini della Guardia di Finanza, nonché le verifiche svolte dalla curatela e della società Deloitte hanno permesso di acclarare che le obbligazioni “irregolari” transitavano sui 18 conti correnti personali del Sig. Michele Iuliano.

L'audizione ha altresì evidenziato che allo stato – atteso le pendenze dei giudizi ancora in primo grado e l'alea degli stessi – non è possibile ipotizzare quali potranno essere le somme realizzabili da ripartire in futuro che dipenderanno anche e soprattutto dall'esito

della liquidazione giudiziale della procedura Deiulement SDF (fall. 24/2013), procedura che ha anch'essa giudizi e trattative in corso.

In materia è stata resa dal Tribunale di Torre Annunziata sentenza con la quale la BOV (Bank Of Valletta) è stata condannata in favore della procedura SDF al pagamento della somma di euro 361.174.000,00, pari al controvalore delle quote società conferite nei trusts, oltre interessi legali dalla data della domanda sino all'effettivo pagamento (somma già sottoposta a sequestro).

La Commissione aveva già programmato di audire i curatori della DEIULEMENT Società di fatto; attività purtroppo interrotta dallo scioglimento anticipato delle Camere.

Considerato l'impatto negativo che la vicenda ha generato nel tessuto economico e sociale, a parere della Commissione un'ulteriore forma di ristoro potrebbe anche arrivare dalla possibilità delle banche coinvolte nell'emissione di obbligazioni irregolari di indennizzare volontariamente gli obbligazionisti truffati.

Meritevoli di approfondimenti sono, infine, le riferite ipotesi di mancata segnalazione da parte delle banche alla Vigilanza creditizia delle significative somme transitate sui conti personali del Sig. Michele Iuliano.

Circa la possibilità di estendere l'operatività del FIR ad altre significative vicende che hanno coinvolto molti risparmiatori, tra cui, in particolare, la società Deiulement.

Dalle interlocuzioni avute con il MEF è emerso che l'intervento del FIR è specificamente diretto ad indennizzare situazioni patologiche di risparmiatori danneggiati dalle banche oggetto di risoluzione o di liquidazione coatta amministrativa, ovvero di soggetti non più operanti sul mercato e quindi non più in grado di operare il risarcimento per propri fatti illeciti. Pertanto, la fattispecie in considerazione non rientra nel perimetro applicativo del FIR come definito ai sensi della legge istitutiva del FIR.

2.5 La vendita dei prodotti finanziari: le pressioni commerciali

A seguito della pubblicazione di diversi studi ed indagini nonché di segnalazioni ed esposti ricevuti, l'Ufficio di Presidenza della Commissione ha deliberato nel mese di aprile di svolgere approfondimenti sui modelli distributivi e di consulenza del settore bancario e sulle possibili pressioni commerciali inerenti la vendita ai clienti di prodotti finanziari, tematica che investe profili inerenti la tutela e l'efficace impiego del risparmio, il corretto

funzionamento del sistema bancario e finanziario, il livello generale di educazione finanziaria nonché il benessere lavorativo.

Nella seduta del 17 maggio 2022, la Commissione ha quindi audito i rappresentanti delle cinque associazioni sindacali maggiormente rappresentative dei dipendenti bancari: FABI, First CISL, Fisac CGIL, UILCA, UNISIN.

L'indagine è proseguita con le audizioni, il 24 maggio 2022, dei rappresentanti delle associazioni dei consulenti finanziari indipendenti NAFOP (Giuseppe Romano), delle società di consulenza finanziaria indipendente AssoSCF (Luca Mainò) e di IFA CONSULTING SCF (Nicola Benini), e, il 21 giugno 2022, del Direttore Generale dell'Associazione Bancaria Italiana (ABI), Giovanni Sabatini, e del Presidente del Comitato per gli Affari sindacali e del lavoro di ABI, Salvatore Poloni.

Le audizioni hanno confermato che nell'ultimo decennio il sistema bancario e finanziario ha registrato significativi cambiamenti, quali, la diffusione di nuovi di modelli di *business*, di servizi e di prodotti, processi di riorganizzazione e di ottimizzazione delle risorse, la progressiva riduzione dei volumi dell'attività creditizia tipica in favore del sempre maggior peso dei servizi e delle attività di investimento nonché significative pressioni competitive derivanti soprattutto dal *Fintech*.

Tali dinamiche pongono profili di attenzione sulla tutela del risparmio, sulla bassa educazione finanziaria, sul corretto funzionamento del sistema bancario e finanziario nonché sul benessere lavorativo; condizioni tutte necessarie per il perseguimento del miglior interesse del cliente.

Ulteriori problematiche sono emerse poi in relazione alla fase di profilatura della clientela e all'applicazione delle conseguenti regole di condotta (valutazione di appropriatezza/adequatezza) soprattutto nel caso delle cc.dd. "riprofilature strumentali" e delle operazioni "bacciate". Ciò a discapito del perseguimento del miglior interesse del cliente che deve, invece, orientare il comportamento degli operatori professionali che prestano servizi di investimento.

Le audizioni hanno altresì confermato che l'importanza del benessere lavorativo è condizione essenziale per assicurare lo svolgimento delle attività bancarie nel pieno interesse del cliente. La tutela del risparmio esige risposte politiche e assume una rilevanza sociale e non esclusivamente sindacale.

I rappresentanti delle associazioni sindacali hanno peraltro rappresentato e documentato alcuni dei casi più clamorosi di indebite pressioni commerciali, quali: umiliazioni verbali, minacce di trasferimento o di revoca delle ferie o del *part-time* in caso di mancato raggiungimento dei *budget*; inserimento da parte dei responsabili di nuovi appuntamenti con i clienti all'insaputa del lavoratore; organizzazione di "tornei", gare o sfide tra aree territoriali o filiali per confrontare o premiare i risultati dei dipendenti, politiche remunerative fortemente collegate ai risultati di vendita.

È opinione della Commissione che i fenomeni di risparmio tradito richiedono un necessario rafforzamento degli strumenti e delle politiche di vigilanza in materia per verificare il rispetto, formale e sostanziale, della disciplina di settore.

In tale prospettiva si potrebbero dotare le singole Autorità di vigilanza di nuovi poteri di indagine, tra cui, ad esempio, il *mystery shopping* che permetterebbe agli stessi Organi di vigilanza di verificare il comportamento effettivamente tenuto dagli intermediari nei confronti della propria clientela.

Nella stessa prospettiva e per rafforzarne l'operatività, si potrebbe, ad esempio, valutare l'opportunità di estendere ai giudizi dell'ACF e dell'ABF, istituti già presenti nell'ordinamento giuridico italiano, ed in particolare nell'arbitrato, in cui per rendere esecutivo il provvedimento arbitrale la parte interessata deve proporre istanza, all'uopo depositando il lodo in originale o in copia conforme unitamente alla convenzione di arbitrato, nella cancelleria del Tribunale territorialmente competente nel cui circondario si trova la sede dell'Arbitrato.

Tali interventi normativi potrebbero certamente rafforzare l'assetto normativo e il corretto funzionamento del sistema bancario e finanziario.

Resta fermo – come da normativa vigente – che gli intermediari profilino in senso sostanziale, ovvero acquisendo dai clienti le informazioni chiave in tema di obiettivi temporali di investimento, grado di tolleranza ai rischi finanziari (*risk tolerance*), situazione economico finanziaria patrimoniale, grado di competenze/esperienze ed educazione finanziaria dei clienti e non come mero obbligo formale previsto dalla MIFID o peggio per adeguare (al contrario) i prodotti finanziari da collocare. La corretta profilatura è la prima protezione degli interessi dei clienti affinché non siano compromessi da possibili pressioni commerciali ovvero da esigenze di finanziamento o di *budget* del prestatore del servizio.

Meritevole di approfondimento appaiono altresì i modelli remunerativi e i percorsi professionali del personale bancario.

Infine, le audizioni hanno evidenziato che in Italia il servizio di consulenza prestata da soggetti indipendenti, seppur normativamente inquadrata e vigilata, assume dimensioni e forme di pubblicità ancora molto marginali; rimane spesso confusa con la consulenza prestata dagli intermediari tradizionali cui non è richiesto il requisito di indipendenza. Le associazioni dei consulenti indipendenti hanno ribadito la necessità di modificare nel TUF (adeguandolo allo standard internazionale) l'attuale definizione di "*consulenti finanziari autonomi*" in "*consulenti finanziari indipendenti*" proprio per scernere ed evidenziare il requisito di indipendenza soggettiva previsto in via esclusiva dalla Legge alla categoria. I consulenti indipendenti, come dimostrano le casistiche internazionali, costituiscono un importante argine, non sempre conosciuto dalla clientela, alle possibili pressioni commerciali e conflitti di interesse connesse alla distribuzione dei prodotti finanziari nonché un ulteriore punto di riferimento per l'educazione finanziaria dei risparmiatori. A parere della Commissione la bassa educazione finanziaria dei risparmiatori non deve essere la giustificazione per possibili condotte irregolari da parte degli intermediari.

2.5.1. La vendita di diamanti da investimento

A seguito di quanto emerso nella puntata della trasmissione "Report" andata in onda lunedì 13 dicembre 2021 su un'emittente del Servizio pubblico, la Commissione ha deliberato di svolgere un approfondimento sulla vicenda della vendita di diamanti ai propri clienti da parte dei maggiori istituti di credito operanti sul territorio nazionale.

Si tratta di una vicenda che ha coinvolto circa 71.000 risparmiatori «truffati» per un valore complessivo di circa 1,8 miliardi di euro.

In tale ambito, hanno avuto luogo le audizioni del Direttore Generale della Banca d'Italia, Luigi Federico Signorini (8 febbraio 2022), del Capo di Gabinetto dell'Autorità garante della Concorrenza e del mercato, Maria Tuccillo (8 marzo 2022), del Presidente della CONSOB, Prof. Paolo Savona e del Responsabile della Divisione Tutela dei Consumatori della CONSOB, Mauro Lorenzoni (15 marzo 2022) oltre ai giornalisti della trasmissione Report -RAI Sigfrido Ranucci ed Emanuele Bellano (3 maggio 2022).

Le audizioni hanno avuto ad oggetto la ricostruzione della dimensione del fenomeno della vendita di diamanti attraverso i canali bancari, le iniziative di rimborso avviate dalle

banche nei confronti dei clienti nonché la ricostruzione normativa del riparto delle competenze fra le varie autorità di vigilanza in funzione della natura del prodotto o servizio offerto.

Dalla documentazione trasmessa e dalla ricostruzione dei fatti è emerso che la vendita dei diamanti attraverso il canale bancario sia stata configurata come un'attività *"connessa a quella bancaria"* sebbene sia emerso un significativo coinvolgimento nell'attività distributiva di diversi istituti di credito.

Su tale ultimo aspetto, particolare attenzione è stata posta dalla Commissione sugli elementi e sulle verifiche svolte sulle diverse banche, anche di natura ispettiva, che hanno condotto la Banca d'Italia a ritenere non riconducibile ad un'attività finanziaria la compravendita dei diamanti attraverso il canale bancario.

In ordine alla posizione del dott. Carlo Bertini all'interno della Banca d'Italia e alle sue vicende professionali lo scioglimento anticipato delle Camere non ha consentito alla Commissione di procedere con l'audizione dell'interessato.

Dalle indagini svolte è altresì emersa l'assenza di *"meccanismi contrattuali"*, eventualmente anche collegati al contratto principale di vendita del diamante, che potessero delineare la ricorrenza di un'offerta al pubblico di un prodotto finanziario. Non è stata poi ravvisata la presenza di una promessa di rendimenti di natura finanziaria predeterminati o determinabili.

Quanto riscontrato non ha permesso l'esercizio di poteri cautelari nonché sanzionatori da parte della CONSOB.

L'AGCM – direttamente competente per il caso in questione sulla base delle norme a tutela della correttezza commerciale – ha concluso il procedimento per pratiche commerciali scorrette nell'ottobre 2017 con l'irrogazione di sanzioni pecuniarie, quali: 4 milioni di euro per Unicredit; 3,35 milioni di euro per Banco BPM; 3 milioni di euro per Banca Intesa e 2 milioni di euro per Banca MPS. Sono state sanzionate anche le due società operanti nel commercio di diamanti (IDB per 2 milioni di euro e DPI per un milione di euro).

L'AGCM ha ritenuto gravemente ingannevoli e omissive le modalità di offerta dei diamanti; ha ritenuto inoltre che sussistessero responsabilità anche in capo agli istituti di credito con i quali le società operavano.

Sul punto è stato peraltro evidenziato che i reati contestati dall'Autorità Giudiziaria riguardano la truffa e l'autoriciclaggio.

La vicenda dei diamanti appare significativa, non solo per il numero di risparmiatori coinvolti, ma anche perché nell'attuale crisi geopolitica seguita all'invasione dell'Ucraina da parte della Russia, i risparmiatori vengono attratti dai cosiddetti "beni rifugio", tra cui anche i diamanti e, più in generale, i beni materiali.

Sebbene alla data del 30 settembre 2021, gli intermediari coinvolti nella vicenda - a seguito delle azioni di *moral suasion* da parte delle Autorità di vigilanza - hanno effettuato rimborsi pari a circa € 1,2 miliardi (il 93% delle richieste di rimborso ricevute dai clienti sono state accolte dalle banche) occorre evitare che fenomeni analoghi possano ripetersi, ad esempio, con riferimento alla circolazione delle cripto-attività nell'ambito di piattaforme di scambio *online*.

In conclusione, la vicenda diamanti conduce a riflettere sull'efficacia degli attuali assetti della vigilanza bancaria e finanziaria e sulle possibili iniziative di carattere legislativo. Ai fini di un'effettiva tutela del risparmio ai sensi dell'articolo 47 della Costituzione, come già detto, occorre dotare le singole Autorità di vigilanza di nuovi poteri di indagine, tra cui, ad esempio, il *mystery shopping* che permetterebbe agli stessi Organi di vigilanza di verificare il comportamento effettivamente tenuto dagli intermediari nei confronti della propria clientela.

2.6 La cessione dei crediti derivanti da *bonus* fiscali

Nel mese di giugno 2022, l'Ufficio di Presidenza della Commissione ha deliberato, anche a seguito della pubblicazione di diversi articoli di stampa nonché di segnalazioni ed esposti ricevuti attraverso il Sistema di Segnalazione³, di acquisire alcuni dati e informazioni sulla cessione del credito *Superbonus* 110% e degli altri *bonus* - agevolazioni fiscali introdotte dagli articoli 119 e 121 del Decreto Legge n. 34/2020 (Decreto Rilancio) e successive modifiche e integrazioni - a istituti di credito e intermediari finanziari.

Attraverso il predetto Sistema la Commissione aveva, tra l'altro, riscontrato un peggioramento dei tassi di sconto applicati alla cessione dei crediti e una forte riluttanza da parte degli istituti bancari ad accogliere le pratiche presentate.

Nel 2020, infatti, con il Decreto Rilancio è stata notevolmente ampliata la facoltà dei cittadini di fruire dei benefici fiscali derivanti da vari interventi edilizi che danno diritto ad

³ Il sito dedicato è accessibile tramite il link dedicato:

<https://quest02.camera.it/limesurvey3/index.php/298368?lang=it>

altrettanti *bonus*, attraverso gli strumenti dello sconto in fattura (riconosciuto direttamente dal fornitore) o della cessione del credito d'imposta corrispondente alla relativa detrazione.

L'esercizio delle predette facoltà è stato previsto, in particolare, in relazione ai principali *bonus* edilizi, tra cui: *Superbonus* 110%; *Eco-bonus* (non *Superbonus*); *Sisma-bonus* (non *Superbonus*); *Bonus* facciate; *Bonus* ristrutturazioni.

Tramite la cessione, ovvero lo sconto in fattura, si rende possibile per cittadini e imprese una rapida monetizzazione del beneficio, in alternativa a una fruizione dello stesso che, altrimenti, sarebbe necessariamente diluita in un arco pluriennale, sotto forma di detrazione da utilizzare nelle dichiarazioni dei redditi.

Il numero e la consistenza dei crediti circolati restituiscono inequivocabilmente la portata del fenomeno e testimoniano il massiccio ricorso ai predetti strumenti da parte di cittadini e imprese.

In particolare, alla data del 31 dicembre 2021, le prime cessioni e gli sconti in fattura comunicati all'Agenzia delle Entrate⁴ attraverso l'apposita piattaforma telematica sono stati:

- quasi 4,8 milioni (0,1 milioni nel 2020 e 4,7 milioni nel 2021);
- per un controvalore complessivo di oltre 38,4 miliardi di euro (0,6 miliardi nel 2020 e 37,8 miliardi nel 2021).

In data 24 giugno 2022, è stato, pertanto, inviato un apposito questionario alle 11 banche «*significant*» nazionali, Cassa Depositi e Prestiti e le Poste.

Le risposte concernenti, tra l'altro, il numero delle richieste ricevute, quelle annullate ed erogate, i tassi di sconto applicati nonché le tempistiche registrate sono pervenute alla Commissione nel periodo 11- 28 luglio 2022.

L'indagine mira, tra l'altro, ad esaminare le procedure messe in atto dalle banche per l'erogazione del credito ivi comprese quelle per il calcolo delle soglie dei tassi nonché a fornire un contributo conoscitivo di tipo empirico, che potrà risultare utile al fine di stimolare possibili e necessari interventi legislativi.

⁴ Fonte: Audizione del 10 febbraio 2022 del Direttore dell'Agenzia delle Entrate Avv. Ernesto Maria Ruffini presso il Senato della Repubblica - V Commissione Bilancio sul Decreto-legge 27 gennaio 2022, n. 4 "Misure urgenti in materia di sostegno alle imprese e agli operatori economici, di lavoro, salute e servizi territoriali, connesse all'emergenza da Covid-19, nonché per il contenimento degli effetti degli aumenti dei prezzi nel settore elettrico".

Di seguito si riporta, dapprima, l'evoluzione del quadro normativo e del contesto giurisprudenziale, successivamente, si espongono i principali esiti dell'indagine. Infine, si sintetizzeranno possibili soluzioni per riattivare il circuito della cessione dei crediti fiscali.

La normativa relativa alle agevolazioni fiscali dei *Bonus* edilizi di cui al Decreto Rilancio è stata oggetto nel tempo di numerosi interventi sia a livello normativo sia a livello di prassi applicativa da parte dell'Agenzia delle Entrate.

In particolare, sotto il profilo normativo, il Legislatore è intervenuto in sette successive occasioni, anche al fine di introdurre misure più stringenti di contrasto alle frodi nel settore delle agevolazioni fiscali ed economiche e, segnatamente, con:

- 1) il decreto-legge 11 novembre 2021, n. 157 (il "Decreto Antifrodi"), non convertito, ma il cui contenuto è stato interamente trasfuso nella legge 30 dicembre 2021, n. 234;
- 2) la legge 30 dicembre 2021, n. 234 ("Legge di Bilancio per il 2022");
- 3) il decreto-legge 27 gennaio 2022, n. 4 (il "Decreto Sostegni Ter"), convertito, con modificazioni, dalla legge di conversione 28 marzo 2022, n. 25;
- 4) il decreto-legge del 25 febbraio 2022 n. 13, non convertito, ma il cui contenuto è stato interamente trasfuso nella legge 28 marzo 2022, n. 25;
- 5) il decreto-legge 1 marzo 2022, n. 17 ("Decreto Energia"), convertito, con modificazioni, dalla legge 27 aprile 2022, n. 34;
- 6) il decreto-legge 21 marzo 2022, n. 21 ("Decreto Ucraina"), convertito, con modificazioni, dalla legge 20 maggio 2022, n. 51;
- 7) il decreto-legge 17 maggio 2022, n. 50 ("Decreto Aiuti").

Sotto il profilo della prassi applicativa, l'Agenzia delle Entrate è intervenuta con diversi provvedimenti, anche nell'ambito dei chiarimenti forniti periodicamente dalla stessa sul proprio sito *internet*, tra cui:

- 1) il provvedimento del Direttore dell'Agenzia delle Entrate dell'8 agosto 2020;
- 2) la circolare n. 24/E dell'Agenzia delle Entrate dell'8 agosto 2020;
- 3) la circolare n. 30/E dell'Agenzia delle Entrate del 22 dicembre 2020;
- 4) la circolare n. 19/E dell'Agenzia delle Entrate del 27 maggio 2022; e, da ultimo,
- 5) la circolare n. 23/E dell'Agenzia delle Entrate del 23 giugno 2022 con la quale, tra l'altro, sono state previste ulteriori disposizioni in merito agli oneri di verifica a carico dei cessionari dei crediti fiscali.

È evidente che il quadro normativo e la relativa prassi applicativa si sono evolute nel tempo e che l'operatività delle banche ne ha dovuto necessariamente tener conto.

Nel corso dell'operatività della misura di agevolazione fiscale in discorso – come rappresentato dal Comandante Generale della Guardia di Finanza Giuseppe Zafarana in occasione del suo intervento al Quirinale del 21 giugno 2022 – sono emersi fenomeni fraudolenti per un ammontare complessivo a oggi di circa euro 5,6 miliardi.

Tali vicissitudini sono emerse nell'ambito di diverse indagini avviate dall'Autorità giudiziaria, che hanno portato all'adozione, tra l'altro, di sequestri preventivi dei crediti di imposta ceduti a terzi cessionari in buona fede che non hanno concorso nelle irregolarità relative ai rapporti sottostanti.

Ne sono derivati diversi procedimenti giudiziari, in alcuni casi tuttora pendenti, con esiti parziali discordanti tra loro. Più in particolare, si sono formati due orientamenti giurisprudenziali contrapposti, attualmente al vaglio della Corte di Cassazione.

In sintesi:

- in base ad un primo orientamento, il cessionario di buona fede non perde il diritto di utilizzare il credito fiscale da esso acquistato anche in caso di gravi irregolarità nei rapporti sottostanti;
- in base ad un secondo orientamento, il cessionario di buona fede non può utilizzare il credito fiscale da esso acquistato in presenza di gravi irregolarità nei rapporti sottostanti.

La materia è stata quindi interessata da diversi interventi giudiziari delle Corti di merito che hanno dato luogo a orientamenti differenti; si è però in attesa del pronunciamento della Cassazione che dovrebbe dirimere la questione offrendo ulteriori elementi di valutazione.

Nel frattempo si evidenzia che in materia di controlli e di profili di responsabilità in tema di utilizzo dei crediti fiscali è intervenuta la Circolare AGE n. 23/E dello scorso 23 giugno 2022 che ha specificato *“Occorre rilevare che il livello di diligenza richiesto dipende dalla natura del cessionario, soprattutto con riferimento agli intermediari finanziari o ai soggetti sottoposti a normative regolamentari per i quali è richiesta l'osservanza di una qualificata ed elevata diligenza professionale. La sussistenza della diligenza è sempre esclusa nei casi di compartecipazione all'operazione illecita. Inoltre, la valutazione circa la sussistenza o meno del profilo della diligenza, in punto di configurabilità del concorso nella violazione, va condotta anche sulla base dei seguenti*

indici: profili oggettivi e soggettivi dell'operazione di compravendita sintomatici della falsità del credito: (i) assenza di documentazione o palese contraddittorietà rispetto al riscontro documentale prodotto; (ii) incoerenza reddituale e patrimoniale tra il valore e l'oggetto dei lavori asseritamente eseguiti e il profilo dei committenti beneficiari delle agevolazioni in esame; (iii) sproporzione tra l'ammontare dei crediti ceduti ed il valore dell'unità immobiliare; (iv) incoerenza tra il valore del credito ceduto e il profilo finanziario e patrimoniale del soggetto cedente il credito qualora non primo beneficiario della detrazione; (v) anomalie nelle condizioni economiche applicate in sede di cessione dei crediti; (vi) mancata effettuazione dei lavori".

L'indagine in oggetto si fonda sulle risposte ad un apposito questionario fornite da 11 banche significative nazionali (Intesa Sanpaolo, Unicredit, Banco Bpm, Iccrea, Mediobanca, Cassa Centrale Banca, Bper, Monte dei Paschi, Credem, Banca Popolare di Sondrio, Banca Carige), Cassa Depositi e Prestiti e Poste Italiane.

Le banche comprese nel campione rappresentano in maniera significativa – pari a circa il 78%⁵ – il mercato delle cessioni dei crediti fiscali in Italia.

L'analisi dei dati mostra come, nel corso del 2021, gli operatori bancari e finanziari hanno assunto un ruolo significativo nel mercato dell'acquisto dei crediti fiscali. In tale contesto si è assistito al ruolo preponderante e crescente acquisito dalle banche cc.dd. commerciali.

Ciò è dipeso soprattutto dalla capillarità territoriale delle banche tradizionali e dai rapporti diretti e continuativi con i propri clienti (persona fisica o giuridica).

L'analisi non include, pertanto, i dati forniti da CDP che – pur avendo contribuito all'avvio dello strumento – ha, ad oggi, acquistato crediti fiscali per una quota estremamente residuale di tale mercato, pari a circa l'1% del totale dei crediti acquistati dall'intero sistema di istituti cessionari.

L'indagine di seguito riportata sintetizza l'operatività complessiva dei citati intermediari, nel periodo giugno 2020- giugno 2022, con riferimento alla cessione dei Crediti *superbonus* 110%, dei Crediti con recupero in 10 anni e dei Crediti con recupero in 5 anni.

⁵ Il 78% è dato dal rapporto fra il controvalore delle cessioni "erogate" di crediti fiscali effettuate dalle banche oggetto dell'indagine (pari a complessivi 29,8 €/mld.) e il controvalore complessivo di circa 38,4 €/mld. rilevato al 31 dicembre 2021 dall'Agenzia delle Entrate (Fonte: Audizione del 10 febbraio 2022 presso il Senato della Repubblica - V Commissione).

I dati sono stati elaborati in forma aggregata e in forma anonima, nel rispetto della normativa in materia di tutela del segreto statistico e di protezione dei dati personali e si basano sulle informazioni acquisite attraverso il citato Questionario.

Numero delle richieste ricevute, annullate, declinate e nette

La Tabella di seguito riportata evidenzia il numero delle richieste ricevute, annullate, declinate e nette (periodo giugno 2020 - giugno 2022) relative alla cessione dei Crediti *superbonus* 110%, dei Crediti con recupero in 10 anni nonché dei Crediti con recupero in 5 anni.

Complessivamente alle banche rientranti nell'indagine sono arrivate 1.829.820⁶ richieste di cessioni di crediti fiscali.

Tipologia di credito	Numero richieste ricevute	Numero richieste annullate	Numero richieste declinate	Numero richieste al netto di annullate e declinate
Crediti con recupero in 10 anni	1.307.297	204.994	139.334	962.969
Crediti <i>superbonus</i> 110%	509.573	87.957	42.218	379.398
Crediti con recupero in 5 anni	12.950	3.540	1.642	7.768
Totale complessivo	1.829.820	296.491	183.194	1.350.135

Con riferimento alle diverse tipologie di crediti fiscali dalla suddetta Tabella emerge che:

- il 26% circa delle richieste relative ai crediti con recupero in 10 anni e ai crediti *superbonus* 110% sono state annullate⁷ e declinate⁸;
- il 40% circa delle richieste relative ai crediti con recupero in 5 anni è stata annullata e declinata.

⁶ Per numero di richieste ricevute si intende il numero di pratiche riferite al medesimo soggetto istante (persona fisica o persona giuridica). Non sfugge, in concreto, la possibilità per il medesimo soggetto istante di richiedere cessioni per le diverse tipologie di crediti fiscali.

⁷ Per richieste "annullate" si intendono tutte le fattispecie riconducibili all'incompletezza oggettiva e documentale della richiesta di cessione del credito (assenza di alcuna valutazione da parte della banca).

⁸ Per richieste "declinate" si intendono tutte le fattispecie riconducibili a valutazioni effettuate da parte della banca sulla richiesta di cessione del credito.

Le richieste nette sono state, pertanto, pari a:

- 962.969 per i crediti con recupero in 10 anni (pari al 71%);
- 379.398 per i crediti *superbonus* 110% (pari al 28%);
- 7.768 crediti con recupero in 5 anni (pari all'1%).

Le banche rientranti nell'indagine hanno, pertanto, gestito complessive 1.350.135 richieste di cessioni di crediti fiscali (richieste al netto di quelle annullate e declinate).

Numero delle richieste nette (in lavorazione, deliberate e erogate)

La Tabella di seguito riportata evidenzia il numero delle richieste nette - ripartite fra quelle in lavorazione, quelle deliberate e quelle erogate (periodo giugno 2020- giugno 2022) e relative alla cessione dei Crediti *superbonus* 110%, dei Crediti con recupero in 10 anni nonchè dei Crediti con recupero in 5 anni.

Tipologia di credito	Numero richieste al netto di annullate e declinate	Di cui in lavorazione	Di cui deliberate	Di cui erogate
Crediti con recupero in 10 anni	962.969	345.234	93.086	524.649
Crediti <i>superbonus</i> 110%	379.398	166.478	105.879	107.041
Crediti con recupero in 5 anni	7.768	2.583	804	4.381
Totale complessivo	1.350.135	514.295	199.769	636.071

Il 38% delle richieste (pari a complessive 514.295) sono in fase di lavorazione.

Il 62% delle richieste (pari a 835.840) sono state deliberate o erogate.

In particolare, le richieste erogate (pari al 47% delle richieste) sono state pari a:

- 524.649 per i crediti con recupero in 10 anni (pari all'82%);
- 107.041 per i crediti *superbonus* 110% (pari al 17%);
- 4.381 per crediti con recupero in 5 anni (pari all'1%).

Valore complessivo della cessione dei crediti fiscali e importi medi

Le banche oggetto dell'indagine nel periodo giugno 2020 - giugno 2022 hanno accettato cessioni di crediti fiscali per complessivi 29.783.680.261 €.

Le richieste erogate per tipologia di crediti fiscali sono state pari a:

- 16.285.261.704 € per i crediti con recupero in 10 anni (pari al 55%);

- 13.077.384.173 € per i crediti *superbonus* 110% (pari al 44%);
- 421.034.384 € per crediti con recupero in 5 anni (pari all'1%).

Gli importi medi delle cessioni dei crediti sono stati pari a:

- 31.040 € per i crediti con recupero in 10 anni;
- 122.172 € per i crediti *superbonus* 110%;
- 96.105 € per crediti con recupero in 5 anni.

Di seguito si riporta una tabella di sintesi.

Tipologia di credito	Valore complessivo della cessione del credito (€)	Importo medio della cessione del credito (€)
Crediti con recupero in 10 anni	16.285.261.704	31.040
Crediti <i>superbonus</i> 110%	13.077.384.173	122.172
Crediti con recupero in 5 anni	421.034.384	96.105
Totale complessivo	29.783.680.261	46.824

Percentuale di sconto applicata sul valore nominale dei crediti d'imposta (erogato)

Le banche oggetto dell'indagine nel periodo giugno 2020- giugno 2022 hanno applicato un tasso medio di sconto sul valore nominale dei crediti d'imposta pari a:

- 7,93% per i crediti *superbonus* 110%;
- 8,41% per crediti con recupero in 5 anni;
- 17,82% per i crediti con recupero in 10 anni.

Il costo finanziario delle cessioni e quindi l'applicazione dei tassi di sconto ha tenuto conto della durata dei crediti fiscali (4, 5 o 10 anni).

Dai dati trasmessi, emerge che nel biennio considerato, i tassi di sconto applicati alle varie tipologie di crediti fiscali hanno registrato, sebbene in misura non rilevante, un *trend* crescente.

Il maggior incremento si è registrato con riferimento alle cessioni dei crediti *superbonus* 110% i cui tassi di sconto sono passati dal valore medio del 7,43% del 2020 a 8,85% del 2022.

Di seguito si riporta una tabella di sintesi sull'andamento delle condizioni economiche, applicate nel biennio 2020- 2022, evidenziando per le varie tipologie di crediti fiscali, il tasso di sconto minimo, medio e massimo.

Tipologia di credito	Percentuale di sconto applicata		
	Percentuale minima (%)	Percentuale media (%)	Percentuale massima (%)
Crediti superbonus 110%			
2020	6,12%	7,43%	9,09%
2021	6,31%	7,52%	9,19%
2022	6,43%	8,85%	10,63%
Crediti con recupero in 5 anni			
2020	6,36%	8,10%	12,50%
2021	7,17%	8,52%	12,64%
2022	7,32%	8,63%	13,74%
Crediti con recupero in 10 anni			
2020	13,45%	17,70%	20,00%
2021	13,75%	17,84%	20,00%
2022	13,96%	17,93%	20,00%

Tempi medi per la cessione del credito (dalla ricezione della richiesta all'effettiva erogazione)

Dal questionario è emerso che le banche oggetto dell'indagine nel periodo giugno 2020 - giugno 2022 hanno impiegato (dalla ricezione della richiesta all'effettiva erogazione) un numero medio di giorni di calendario pari a:

- 109 per i crediti *superbonus*;
- 75 per crediti con recupero in 5 anni;
- 86 per i crediti con recupero in 10 anni.

Dai dati trasmessi, emerge che nel biennio considerato, i giorni di calendario impiegati dalle banche per le varie tipologie di crediti fiscali hanno registrato un *trend* crescente.

In particolare, i maggiori incrementi si sono registrati con riferimento alle cessioni dei:

- crediti con recupero in 5 anni i cui tempi medi sono passati da 56 giorni di calendario nel 2020 a 97 giorni di calendario nel 2022 (+72%);
- crediti *superbonus* 110% i cui tempi medi sono passati da 85 giorni di calendario nel 2020 a 134 giorni di calendario nel 2022 (+ 58%).

Preoccupanti appaiono poi i tempi massimi registrati che mediamente, per le varie tipologie di crediti, sono prossimi ai 6 mesi.

I numerosi interventi sia a livello normativo sia a livello di prassi applicativa da parte dell'Agenzia delle Entrate nonché il contrasto giurisprudenziale hanno impattato/rallentato l'operatività degli intermediari.

Si riporta di seguito una Tabella di sintesi sulle tempistiche registrate.

Tempi per la cessione del credito (dalla ricezione della richiesta all'effettiva erogazione) - giorni di calendario			
Etichette di riga	Tempi minimi	Tempi medi	Tempi massimi
Crediti superbonus 110%			
2020	18	85	157
2021	20	107	191
2022	20	134	183
Crediti con recupero in 5 anni			
2020	38	56	82
2021	20	71	170
2022	20	97	190
Crediti con recupero in 10 anni			
2020	28	77	245
2021	20	87	191
2022	20	95	146

Operatività dei singoli intermediari per tipologia di crediti (erogato)

L'analisi dei dati ha evidenziato un mercato fortemente concentrato. I primi tre intermediari oggetto di analisi coprono il 70% circa delle cessioni dei crediti fiscali.

Di seguito si riporta una tabella di sintesi sull'operatività dei diversi intermediari, nel periodo giugno 2020 - giugno 2022, con riferimento ai crediti con recupero in 10 anni, ai crediti *superbonus* 110% nonché ai crediti con recupero in 5 anni.

Banca	Crediti con recupero in 10 anni	Crediti <i>superbonus</i> 110%	Crediti con recupero in 5 anni	Totale complessivo	% sul campione
Banca 1	7.513.353.626	2.607.572.973	220.532.984	10.341.459.583	34,72%
Banca 2	2.699.580.603	4.478.730.714	41.458.963	7.219.770.280	24,24%
Banca 3	1.831.138.025	1.192.341.821	32.034.571	3.055.514.417	10,26%
Banca 4	1.091.967.920	1.086.411.915	22.075.438	2.200.455.273	7,39%
Banca 5	817.839.440	977.339.630	50.992.439	1.846.171.509	6,20%
Banca 6	625.865.006	704.615.294	16.140.206	1.346.620.506	4,52%
Banca 7	562.483.975	745.229.425	15.176.754	1.322.890.153	4,44%
Banca 8	474.613.083	548.636.813	9.276.137	1.032.526.033	3,47%
Banca 9	465.079.152	212.736.586	6.018.055	683.833.793	2,30%
Banca 10	94.608.798	363.570.333	4.627.252	462.806.383	1,55%
Banca 11	69.814.794	103.851.619	2.701.586	176.367.999	0,59%
Banca 12	38.917.282	56.347.049	0	95.264.331	0,32%
Totale complessivo	16.285.261.704	13.077.384.173	421.034.384	29.783.680.261	100%

Capienza fiscale complessiva dei crediti acquistati/acquistabili dalle banche

La capienza fiscale complessiva è una grandezza che rappresenta, in linea di principio, l'ammontare complessivo dei versamenti tributari/contributivi che la banca prevede di effettuare in un arco temporale definito e che potenzialmente sono disponibili per la compensazione con i crediti fiscali da "*Bonus Edilizi*".

Rappresentando un dato prospettico, tale grandezza è influenzata da molteplici variabili, in larga misura non governabili (modifiche al contesto normativo, modifiche

nell'operatività dell'azienda ed eventi societari che incidono sull'entità dei debiti tributari/contributivi), conseguentemente la sua misura è determinata a seguito di un processo di stima improntata a criteri di prudenza, anche per tenere conto dei fattori di variabilità esogeni non governabili e imprevedibili.

Dal questionario inviato è emerso che la capacità fiscale delle banche interessate è, su base annua, complessivamente pari a 16.231.582.747 €.

Moltiplicando tale valore annuo per 5 e per 10 si ottiene la capienza fiscale massima "teorica" delle banche oggetto del questionario per un arco temporale di 5 anni (pari a 81.157.913.737€) e di 10 anni (pari a 162.315.827.474 €).

Tale stima "teorica" per un certo arco temporale (nello specifico, 5 e 10 anni), diviene "assorbibile" in funzione della "combinazione" tra le varie tipologie di crediti acquistati, ovvero oggetto di proposta di acquisto, per effetto del diverso profilo temporale previsto per il loro utilizzo in compensazione (4, 5 o 10 anni). In definitiva, nell'arco temporale considerato la capacità fiscale massima effettivamente impegnata assume misure completamente diverse qualora i crediti acquistati siano compensabili esclusivamente in 4 o 5 anni, piuttosto che in 10 anni.

Non sfugge, in concreto, che nell'ipotesi in cui la "domanda" da parte del mercato nei confronti delle banche sia ascrivibile pressoché esclusivamente a crediti di tipo "Superbonus", una volta consumata la capacità fiscale per il primo quinquennio considerato, la capacità teorica per il secondo quinquennio è destinata a rimanere inutilizzabile, stante il blocco dell'operatività indotto dalla saturazione della capacità fiscale del primo periodo.

Ciò premesso, la capienza fiscale complessiva "stimata" (nello specifico, 5 e 10 anni) rappresenta il *plafond* massimo stimato relativo a tutte le pratiche di richiesta di cessione crediti (in lavorazione, deliberate ed erogate).

Di seguito si riporta una tabella di sintesi sulla la capienza fiscale complessiva "stimata".

	Stima annua	Stima a 5 anni	Stima a 10 anni
Capienza fiscale banche oggetto dell'indagine	16.231.582.747	81.157.913.737	162.315.827.474

Passando, invece, all'analisi dei crediti fiscali acquistati (crediti erogati) e potenzialmente acquistabili (pratiche in lavorazione o deliberate) da parte delle banche emerge che, nel biennio 2020-2022, le stesse banche hanno assunto impegni per crediti fiscali pari complessivamente a 76.989.096.317€.

Di seguito si riporta una tabella di sintesi sul processo di stima degli impegni assunti dalle banche con riferimento alle richieste in lavorazione, deliberate e erogate.

	Numero richieste in lavorazione e deliberate	Importo medio delle cessione del credito già erogate (€)	Stima del impegno finanziario (numero richieste in lavorazione/deliberate x importo medio delle pratiche erogate)
Crediti con recupero in 10 anni	438.320	31.040	13.605.583.753
Crediti superbonus 110%	272.357	122.172	33.274.325.923
Crediti con recupero in 5 anni	3.387	96.105	325.506.382
Totale			47.205.416.057
Richieste già erogate (impegni effettivi)			29.783.680.261
TOTALE			76.989.096.317

Dal confronto della capienza fiscale complessiva “stimata” (nello specifico, a 5 anni e pari complessivamente a 81.157.913.737 €) con la stima degli impegni assunti dalle banche (pratiche in lavorazione, deliberate e erogate e pari complessivamente a 76.989.096.317 €) emerge che la capienza fiscale è sostanzialmente interamente impegnata, nell'ipotesi che le pratiche in lavorazioni e deliberate giungano a buon fine e trascurando eventuali operazioni future di cessione a terzi.

Numero e valore complessivo dei crediti ceduti a terzi

Con riferimento alla possibilità di cedere a terzi i crediti fiscali, dalle risposte ricevute è emerso che, ad oggi, solamente due banche del campione considerato hanno intrapreso tale operatività.

In particolare, sono stati ceduti a terzi un valore complessivo di crediti pari a 712.533.805 € (pari al 2,39% del controvalore complessivo dei crediti fiscali acquistati dalle banche oggetto di indagine).

Si riporta di seguito una tabella di sintesi.

Banca	Valore complessivo dei crediti ceduti a terzi (€)
Banca 3	368.257.060
Crediti con recupero in 10 anni	195.629.357
Crediti con recupero in 5 anni	1.563.175
Crediti superbonus 110%	171.064.528
Banca 6	344.276.746
Crediti con recupero in 10 anni	88.201.862
Crediti con recupero in 5 anni	582.043
Crediti superbonus 110%	255.492.841
Totale complessivo	712.533.805

L'imprevisto scioglimento anticipato delle Camere non consente alla Commissione di completare il programma prefissato, ossia di procedere quantomeno alle audizioni già programmate dell'Agenzia delle Entrate e della Banca d'Italia.

Durante il periodo della *prorogatio*, come precisato dal Presidente della Camera – nelle comunicazioni rese in Assemblea il 22 luglio – per la Commissione *“secondo la prassi costante non è ammessa la prosecuzione dell'attività d'indagine, anche se prevista in programmi già approvati, mentre sono consentite la definizione e l'approvazione di relazioni conclusive (nei termini stabiliti dai rispettivi atti istitutivi) e la definizione dei criteri per la conservazione e la pubblicazione dei documenti acquisiti o formati nel corso dell'inchiesta”*.

Ciò detto, il questionario ha confermato che migliaia di cittadini e imprese hanno fatto pieno affidamento sulla misura.

Le diverse segnalazioni ricevute confermano la necessità di riattivare il circuito della cessione del credito al sistema bancario e a terzi per scongiurare la chiusura di migliaia di

imprese con importanti ricadute occupazionali, di gettito fiscale complessivo prodotto dalla filiera edile e di emersione del lavoro sommerso e di significativi rischi di contenzioso.

Profili di attenzione sono emersi in merito alle tempistiche che le banche hanno impiegato (dalla ricezione della richiesta all'effettiva erogazione) per procedere all'erogazione del credito (in media prossime ai 90 giorni di calendario).

In materia, hanno influito, da un lato, i continui interventi normativi e, dall'altro, la circostanza che gli intermediari hanno esternalizzato soprattutto a società di revisione le analisi documentali (permessi edilizi, progetti, certificazioni, relazioni asseverate, bonifici bancari, fatture, ecc.) volte a verificare la spettanza del credito.

Profili di attenzione emergono sulla capacità delle stesse di far fronte, con tempistiche ragionevoli, alla significativa mole delle richieste da processare.

Resta fermo – come da normativa di settore – che le banche che ricorrono all'esternalizzazione di funzioni aziendali presidiano i rischi derivanti dalle scelte effettuate e mantengono la capacità di controllo e la responsabilità sulle attività esternalizzate nonché le competenze tecniche e gestionali essenziali per re-internalizzare, in caso di necessità, il loro svolgimento.

Ulteriori profili di attenzione si sono registrati sul costo finanziario delle cessioni e quindi sull'applicazione dei tassi di sconto. La definizione delle condizioni economiche ha tenuto conto della durata dei crediti fiscali (4, 5 o 10 anni).

In materia potrebbero rilevare le analisi statistiche periodiche della Banca d'Italia che calcola i Tassi Effettivi Globali Medi (TEGM) applicati nel corso del tempo dagli intermediari – rilevati su delega del Ministero dell'Economia e delle Finanze ai sensi della Legge n.108/96 (antiusura) – in base a categorie omogenee di operazioni definite annualmente dal MEF stesso.

Sebbene non perfettamente confrontabili, il Factoring e i Finanziamenti per anticipi su crediti presentano diversi punti di contatto con il meccanismo della cessione dei crediti fiscali. In particolare, nel costo del servizio di Factoring e dei Finanziamenti per anticipi su crediti rilevano aspetti che non dovrebbero essere considerati nella cessione dei crediti fiscali verso lo Stato quali, ad esempio, le caratteristiche della controparte e le eventuali garanzie di buon fine del credito.

Da monitorare poi, nel rispetto dell'articolo 41 della Costituzione, sono le pratiche in lavorazione e deliberate che dovrebbero impegnare nei prossimi mesi la capienza fiscale

complessiva “stimata” delle banche oggetto del questionario di ulteriori 47.205.416.057 di euro (stima dell’impegno finanziario, ossia numero richieste in lavorazione e deliberate moltiplicate per l’importo medio delle cessioni già erogate) portandola complessivamente a 76.989.096.317 di euro.

Alla luce dei dati su esposti possibili interventi, sia a livello normativo sia a livello di prassi applicativa, potrebbero essere attuati per riattivare il circuito della cessione dei crediti fiscali, quali la possibilità:

- di estendere dagli attuali 4/5 anni a 10 anni il periodo di utilizzo dei crediti *superbonus* 110%. Tale proroga se, da un lato, può consentire alle banche di recuperare una certa capacità fiscale, dall’altro può tuttavia peggiorare i tassi di sconto applicati dal sistema bancario ai soggetti cedenti (dall’attuale 9% a circa il 18%);
- di limitare la responsabilità solidale in caso di cessioni a terzi in modo da tutelare e incentivare i terzi ad acquistare i crediti fiscali liberando, pertanto, la capacità fiscale finora impiegata dal sistema bancario. In tal modo, di fatto l’eventuale responsabilità solidale verrebbe limitata al primo cessionario, soggetto bancario⁹ che ha peraltro svolto le verifiche richieste dalla normativa. Ad oggi, infatti, le cessioni a terzi sono state attivate solamente da due intermediari e hanno riguardato un valore complessivo estremamente basso dei crediti fiscali (712.533.805 di euro, pari al 2,39% del controvalore complessivo). In materia, come già detto, si sono formati due orientamenti giurisprudenziali contrapposti, attualmente al vaglio della Corte di Cassazione. Il pronunciamento della Suprema Corte dovrebbe dirimere la questione offrendo ulteriori elementi di valutazione.
- di responsabilizzare maggiormente il titolare del credito fiscale (il soggetto cedente) attraverso, ad esempio, la riduzione della percentuale del credito fiscale maturato. Con particolare riferimento ai crediti *superbonus* 110% si potrebbe, ad esempio, ridurre la percentuale dal 110% ad una inferiore, parametrata all’effettivo miglioramento della classe energetica. Tale modifica potrebbe, da un

⁹ La materia dei controlli e dei profili di responsabilità in tema di utilizzo dei crediti fiscali è stata oggetto di apposita Circolare AGE n. 23/E dello scorso 23 giugno 2022 che, come già detto, ha specificato alcuni indici circa la sussistenza o meno del profilo della diligenza del cessionario.

lato, rafforzare l'azione di contrasto alle frodi, dall'altro, "calmierare" i prezzi del settore edile impegnando il soggetto cedente a sostenere, tramite capitali privati e personali, parte dei costi di realizzazione delle opere edili. In materia, però occorre rilevare che nell'Audizione dello scorso 10 febbraio 2022 del Direttore dell'Agenzia delle Entrate, avv. Ernesto Maria Ruffini, presso il Senato della Repubblica – V Commissione Bilancio – sul Decreto-legge 27 gennaio 2022, n. 4, è stato evidenziato che le frodi che hanno riguardato il *Superbonus* 110% sono state pari al 3% del totale rilevato. Molto significative sono state, invece, le frodi che hanno coinvolto il *Bonus* facciate (pari al 46% delle frodi) e l'*Eco-bonus* (pari al 34% delle frodi).

2.7 Vicenda Game- Stop, Trading on line e finanza digitale

Recentemente, sui mercati finanziari internazionali, si è verificato un fenomeno senza precedenti.

Come è noto, le quotazioni dei titoli dei mercati finanziari, in particolare di quelli azionari e della forma più semplice ed utilizzata di "*riv*" (i *futures*), si muovono per iniziativa e sotto la spinta dei grandi investitori. I piccoli investitori che agiscono autonomamente (i cd. "*retailers*"), anche avvalendosi delle più recenti tecnologie informatiche (*traders on line*), muovendo ciascuno di essi piccole quantità e non essendo tra loro coordinati, non hanno invece la possibilità di influire sul prezzo degli strumenti finanziari.

Tuttavia, nel corso del mese di gennaio 2020, un significativo numero di *retailers*, attivi sulla piattaforma social "*Reddit*" e utilizzatori della *trading app* "*RobinHood*", ha iniziato ad acquistare le azioni della "*GameStop Corp*", contrastando le vendite allo scoperto che – con finalità ribassiste – un gruppo di *hedge funds* aveva iniziato ad effettuare sul titolo.

Questa azione ha prodotto un significativo aumento della volatilità e fluttuazioni dei prezzi, non previste né prevedibili dagli analisti tecnici, che si sono propagate su molti mercati, compresi gli indici azionari statunitensi (come il Nasdaq e l'S&P500).

Le peggiori conseguenze sono state subite proprio dagli "*Istituzionali*": molti *hedge funds* e altri fondi di investimento che avevano aperto posizioni ribassiste, di fronte all'improvviso rialzo hanno dovuto chiudere le loro posizioni in perdita. Di conseguenza, occorre ricordarlo, hanno subito ingenti perdite anche i soggetti che avevano affidato i loro capitali e risparmi ai predetti fondi.

Appare ragionevole ritenere che questa attività congiunta dei piccoli “traders”, che stanno iniziando a coordinarsi sui *social media* per diventare influenti sulle quotazioni, possa ripetersi in futuro. Occorre, quindi, domandarsi quali possano essere gli auspicabili interventi di regolamentazione per un regolare svolgimento dei mercati finanziari.

La vicenda “GameStop”, con le implicazioni appena descritte, appare rientrare negli ambiti di competenza della Commissione, che ha il compito, tra l’altro, di indagare su fenomeni, vicende e circostanze che possano determinare, direttamente o indirettamente, un rischio per il risparmio, anche attraverso fenomeni che influenzano la stabilità dei mercati finanziari.

È noto, infatti, come circa il 95% delle persone che, attratte dalla falsa prospettiva di facili guadagni, si affacciano al *trading online* senza alcuna adeguata preparazione, subendo perciò perdite. Le perdite diventano, poi, ingenti per quei soggetti (invero, non pochi) che sviluppano una sorta di ossessione per il *trading*, del tutto analoga alla “ludopatia”.

In questo contesto, come lamentato anche dalla CONSOB in una sezione dedicata del suo sito *internet*, si inserisce una moltitudine di *brokers* stranieri che, pur privi della prescritta autorizzazione, riescono comunque ad attuare in Italia campagne pubblicitarie molto aggressive e persuasive (tramite telefono, *e-mail* e *internet*), offrendo leve irragionevoli (anche 1:1000) e *bonus* di ogni genere, pur di attrarre nuovi clienti.

Si tratta, per di più, di *brokers market makers* che non forniscono le quotazioni ufficiali dei mercati regolamentati ma si limitano a riprodurre tali quotazioni, anche offrendo un particolare strumento derivato ad alto rischio che si chiama CFD (*Contract for difference*). In sostanza, questi *brokers* non si pongono quali intermediari tra clienti e mercati, ma quotano essi stessi gli strumenti finanziari, dichiarando che le loro quotazioni corrispondono a quelle ufficiali. In realtà, sembra che non sempre vi sia tale corrispondenza, facendo sorgere il dubbio che, talvolta, le quotazioni siano “alterate” al fine di generare maggiori perdite per i clienti. Dubbio alimentato dal fatto che, con evidente conflitto di interessi, il guadagno dei *brokers market makers*, che quotano essi stessi gli strumenti finanziari senza operare da intermediari, coincide con le perdite dei clienti.

Al contrario, i *brokers non market makers* dovrebbero essere più affidabili, perché si pongono quali intermediari tra clienti e mercati regolamentati, limitandosi a collocare gli ordini dei clienti su tali mercati e guadagnando sulle commissioni pagate dai clienti sugli ordini eseguiti, al netto dei costi di borsa.

Questi *brokers*, quindi, non sono in conflitto di interesse con i loro clienti: anzi, hanno interesse a che costoro rimangano il più possibile sul mercato, per continuare a guadagnare sulle commissioni. A tal fine, offrono spesso corsi di formazione tenuti da analisti tecnici dei mercati finanziari e da traders qualificati.

Traendo spunto dalla vicenda “*GameStop*”, l’attività di studio della Commissione si è estesa ad un fenomeno strettamente connesso e ormai dilagante nei mercati finanziari: il *Trading online* (TOL), al fine di approfondirne disciplina, criticità e prospettive.

Da ultimo è emersa la necessità di un’attività di approfondimento sulle strategie e sulle recenti proposte legislative della Commissione Europea in materia di finanza digitale e, più in generale, sui profili di attenzione e sulle opportunità derivanti dal *Fintech* per gli emittenti e il risparmio nazionale.

La Commissione ha ritenuto di iniziare l’attività conoscitiva in materia con tre successive audizioni di Maria Antonietta Scopelliti, Segretaria generale della CONSOB (25 maggio, 8 giugno e, specificamente sul tema della finanza digitale, 6 luglio 2021), al fine di illustrare alla Commissione le principali tematiche d’interesse, anche nell’ottica di una proficua collaborazione finalizzata all’individuazione, ove necessario, di interventi normativi che possano regolare i cambiamenti in atto nei mercati dei servizi finanziari, in termini di diffusione di modelli di *business*, di servizi e di prodotti innovativi nonché fornire all’Istituto idonei strumenti per la tutela degli investitori e per l’efficienza e la trasparenza del mercato dei capitali.

Il 16 novembre 2021 è stato altresì audito il Presidente di Borsa Italiana S.p.A., Prof. Andrea Sironi, per approfondire le strategie in materia di finanza digitale e comprendere i profili di attenzione e le opportunità derivanti dal *Fintech* nonché il fenomeno “*GameStop*” e l’impatto prodotto dal *trading online* sui mercati finanziari e sul risparmio.

Le audizioni, nel loro complesso, hanno confermato che il *Fintech* rappresenta un grande fattore di sviluppo, suscettibile di far progredire interi settori dell’industria, di condizionare le interazioni tra gli individui, e l’azione della Pubblica Amministrazione soprattutto alla luce della pandemia di COVID-19 che ha amplificato la tendenza, da parte dei consumatori e delle imprese, all’utilizzo dei servizi finanziari digitali.

Dalla documentazione trasmessa alla Commissione è emerso altresì che la presenza degli investitori *retail* sul mercato azionario di Borsa Italiana - sia mediante operatività diretta sia mediante ordini trasmessi ai propri intermediari - si attesta stabilmente e

mediamente tra il 25%-30% degli scambi nel corso degli anni 2020 – 2021, con punte che salgono oltre il 75% sui titoli di minore capitalizzazione o su titoli interessati da fenomeni di elevata volatilità.

L'elevata presenza di investitori al dettaglio nei mercati domestici impone, pertanto, di cogliere le significative opportunità derivanti dal Fintech, soprattutto con riferimento alle PMI, per avvicinarle ai mercati di capitale ed agevolarne il *funding* e l'irrobustimento patrimoniale, ma anche di prevedere, gestire e, se del caso, vietare l'assunzione di rischi eccessivi.

Si è ritenuto parimenti opportuno approfondire gli strumenti di repressione dell'abusivismo: in tal senso l'articolo 7-*octies* del TUF (*Poteri di contrasto all'abusivismo*) attribuisce taluni poteri alla CONSOB tra cui il potere di *"ordinare ai fornitori di connettività alla rete internet ovvero ai gestori di altre reti telematiche o di telecomunicazione, o agli operatori che in relazione ad esse forniscono servizi telematici o di telecomunicazione, la rimozione delle iniziative di chiunque nel territorio della Repubblica, attraverso le reti telematiche o di telecomunicazione, offre o svolge servizi o attività di investimento senza esservi abilitato"*. Sembrerebbe, infatti, che alcune imprese di investimento stabilite in Europa, operanti in regime di libera prestazione di servizi in Italia, violino, in tutto o in parte (assenza di meccanismi di *stop&loss*, leva oltre 400%, ecc.), le misure di divieto e restrizione adottate dalla CONSOB in materia di opzioni binarie e Contratti per differenza (CFD).

Da tempo poi si registra sul mercato un interesse crescente, a livello europeo e internazionale verso le cripto-attività. In assenza di un quadro regolamentare di riferimento, l'operatività in cripto-attività presenta rischi di diversa natura, come, ad esempio, la volatilità delle quotazioni e l'assenza di tutele legali e contrattuali, segnalati più volte dall'Unità di Informazione Finanziaria e dalla CONSOB, e solo parzialmente mitigate dalla recente entrata in vigore del provvedimento del MEF che ha dato vita al registro speciale dei fornitori di servizi in cripto-attività all'interno di quello degli OAM.

Quello delle cripto-attività resta un mercato estraneo agli schemi regolativi ideati per le attività finanziarie, eccetto che per finalità di antiriciclaggio. Tuttavia, sia l'aspettativa di ottenere significativi guadagni, sfruttando le oscillazioni di mercato tipiche della maggior parte delle cripto-attività, sia quella di usufruire di strumenti di pagamento o di beni finanziari svincolati dalla necessità di una loro intermediazione, sono le principali ragioni

che anche nel nostro Paese attraggono il risparmio di migliaia d'investitori retail per la gran parte non consapevoli delle specificità finanziarie e giuridiche di questi strumenti.

In attesa dell'approvazione definitiva della proposta di regolamento europeo MiCA, la cui entrata in vigore è attesa per il 2024, si pongono sfide che il Legislatore nazionale non dovrebbe trascurare considerando la sua dimensione e l'impatto che ha sul sistema finanziario ed economico internazionale ma anche raccogliere attivamente per non porre il sistema Paese in una condizione di svantaggio competitivo di tipo regolamentare.

L'auspicio è che alla luce dei lavori in fase di definizione o già esauriti su molti dei tavoli internazionali accreditati a tale scopo, il Parlamento possa dar vita a proposte che affrontino quegli aspetti che restano nel suo ambito di competenza e che sono strategici per garantire la modernità e la competitività del sistema economico nazionale unitamente alla protezione dei consumatori. Tra queste proposte, si pone senz'altro all'attenzione primaria del legislatore una disambiguazione della natura giuridica delle cripto-attività così come una più compiuta disciplina in materia fiscale.

In conclusione, le attività di approfondimento svolte in materia dalla Commissione evidenziano la necessità di definire una cornice normativa comune ed armonizzata per gestire le innovazioni derivanti dal *FinTech*, per limitare i possibili fenomeni di risparmio tradito nonché eventuali arbitraggi normativi ma al contempo valorizzare le opportunità imprenditoriali sane del settore e scongiurare la fuga di imprese, talenti e capitali.

La trasformazione in atto nel mercato finanziario diventerebbe così l'occasione per cogliere con rinnovato spirito di attenzione il quadro delineato dall'articolo 47 della nostra Costituzione esaltandone al contempo il profilo della tutela e il *favor* verso forme di risparmio popolare che contribuiscano a rafforzare il sistema produttivo e finanziario del Paese.

Per la prima volta, infatti, l'Italia si è dotata di una *sandbox* regolamentare, uno spazio protetto dedicato alla sperimentazione digitale nei settori bancario, finanziario e assicurativo. La sperimentazione consentirà agli operatori *FinTech* di testare soluzioni innovative, in costante dialogo con le autorità di vigilanza: Banca d'Italia, CONSOB, IVASS.

La Commissione valuta altresì positivamente la possibilità di estendere l'attività di contrasto agli abusivismi finanziari anche alle iniziative pubblicitarie condotte tramite il *web* e i *social media* e riferibili a soggetti non autorizzati alla prestazione di servizi e attività di investimento.

Lo scioglimento anticipato delle Camere non ha consentito alla Commissione di poter avviare un ciclo di audizioni per analizzare e approfondire il fenomeno delle cripto-attività anche al fine di proporre appositi interventi legislativi.

2.8 Gioco legale e sistema bancario

All'esito dell'audizione, svoltasi il 19 aprile 2021, del Direttore generale dell'ABI, Giovanni Sabatini, la Commissione ha ritenuto opportuno audire in data 17 maggio 2021 alcuni rappresentanti di vertice di Unicredit (Andrea Casini), Banca Nazionale del Lavoro (Andrea Munari) e ICCREA Banca (Eugenio Adamo), in merito a talune criticità, rilevate tramite il Sistema di segnalazione, nei rapporti fra il sistema bancario e gli operatori del settore del gioco legale.

Nel corso delle audizioni è emerso come l'assetto normativo in materia di antiriciclaggio (in particolare, le disposizioni della Banca d'Italia) ponga il settore del gioco e delle scommesse tra quelli particolarmente esposti al rischio di riciclaggio, nonostante il presidio dello Stato sia garantito dall'adozione di un modello amministrativo incentrato sulla concessione di un servizio.

Le aziende del gioco d'azzardo, infatti, hanno potuto segnalare attraverso la piattaforma web dedicata, diverse problematiche nelle relazioni con gli istituti finanziari e, nello specifico, hanno lamentato la mancata concessione di prestiti garantiti dallo Stato, il diniego di apertura di nuovi rapporti bancari, l'unilaterale chiusura di conti correnti da parte degli istituti bancari nonché il diniego di fidejussioni.

Con l'obiettivo di svolgere approfondimenti anche sulla normativa in materia di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo, la Commissione aveva programmato di audire l'Unità di Informazione Finanziaria per l'Italia (UIF) presso la Banca d'Italia.

Strettamente collegate alla materia sono anche le disposizioni di Banca d'Italia in materia di adeguata verifica della clientela su cui la Commissione avrebbe svolto approfondimenti, che, in diversi casi, precludono di fatto i rapporti fra intermediari, consumatori e imprese.

Le attività istruttorie testé menzionate risultavano prodromiche allo svolgimento di specifiche attività di indagine che lo scioglimento anticipato delle Camere, intervenuto, come detto, il 21 luglio 2022, ha impedito di proseguire.

La Commissione aveva altresì in programma di promuovere con le associazioni di categoria, la Banca d'Italia e l'ADM la definizione di un protocollo per tener conto delle peculiarità del settore e consentire agli operatori bancari di dare il necessario supporto ad un settore presidiato dallo Stato.

Allo stato, la Commissione valuta positivamente le diverse iniziative parlamentari nonché il crescente dibattito d'Aula relativo all'obbligatorietà per gli istituti di credito di garantire un rapporto di conto corrente con servizi di pagamento per la gestione del denaro di consumatori e imprese, soprattutto laddove operino attraverso un modello amministrativo incentrato sulla concessione di un servizio.

2.9 Le fondazioni bancarie: assetti organizzativi, gestionali e profili di attenzione

Le Fondazioni sono persone giuridiche private senza fini di lucro che perseguono esclusivamente scopi di utilità sociale e di promozione dello sviluppo economico, secondo quanto previsto dai rispettivi statuti.

Sono sottoposte alla vigilanza del Ministero dell'Economia e delle Finanze che esercita i poteri di controllo, ordinari e straordinari, espressamente previsti dal Decreto Legislativo 17 maggio 1999, n. 153, e che, in generale, verifica *“il rispetto della Legge e degli statuti, la sana e prudente gestione delle fondazioni, la redditività dei patrimoni e l'effettiva tutela degli interessi contemplati dagli statuti”* (articolo 10, comma 2).

Per quanto concerne gli esponenti di vertice delle fondazioni, il Ministero emana, sentite le organizzazioni rappresentative delle fondazioni, atti di indirizzo di carattere generale aventi ad oggetto, tra l'altro, *“i requisiti di professionalità e onorabilità, le ipotesi di incompatibilità e le cause che determinano la sospensione temporanea dalla carica dei soggetti che svolgono funzioni di indirizzo, amministrazione, direzione e controllo presso le fondazioni e la disciplina del conflitto di interessi, nonché i parametri di adeguatezza delle spese di funzionamento tenuto conto di criteri di efficienza e di sana e prudente gestione”* (articolo 10, comma 3, lett. e).

Il citato Decreto specifica altresì, all'articolo 4, comma 1, lett. i), che gli Statuti delle fondazioni debbano prevedere che *“i componenti degli organi della fondazione sono nominati per periodi di tempo delimitati e possono essere confermati per una sola volta”*.

Con il Protocollo d'intesa Acri-MEF del 22 aprile 2015, il Ministero e l'ACRI hanno inteso declinare operativamente alcuni dei principi espressi dal citato Decreto,

individuando indirizzi basilari sui temi della *governance*, della gestione del patrimonio e dell'attività istituzionale.

In particolare, il Protocollo si pone esplicitamente l'obiettivo di garantire, in coerenza con il citato articolo 4, comma 1, lett. i), del Decreto, il "*periodico ricambio degli organi delle Fondazioni al fine di mantenere un elevato grado di responsabilità nei confronti del territorio*".

In tale ambito, la Commissione ha quindi avviato un'attività di studio sull'assetto organizzativo e gestionale delle fondazioni bancarie, anche al fine di formulare le proposte di carattere legislativo più idonee a garantire la tutela del risparmio, inaugurata l'11 gennaio 2022 con le audizioni del Presidente dell'Associazione di Fondazioni e Casse di Risparmio Spa (ACRI), Francesco Profumo, e del Presidente della Fondazione Pescarabruzzo, Nicola Mattoscio.

Lo scioglimento anticipato della Legislatura ha purtroppo impedito alla Commissione di proseguire con il ciclo delle audizioni già programmate.

Gli approfondimenti svolti hanno comunque evidenziato una scarsa trasparenza, anche sui siti internet delle varie Fondazioni, in ordine agli aspetti relativi alla *corporate governance* delle stesse. Particolari profili di attenzione si registrano in merito al processo di nomina e di cessazione (durata del mandato) degli Organi di vertice delle Fondazioni stesse e alla ricostruzione storica degli avvicendamenti avvenuti tra gli stessi e distinti per le funzioni di indirizzo, di amministrazione e di controllo.

Analoghi profili di attenzione si registrano inoltre sui compensi percepiti – intesi come ogni forma di pagamento o beneficio, incluse eventuali componenti accessorie ("*allowances*") - corrisposti, direttamente o indirettamente, in contanti, strumenti finanziari o servizi o beni in natura ("*fringe benefits*") – dalla Fondazione agli Organi di vertice ivi compreso il personale rilevante delle stesse.

In materia, meritevole di attenzione appare la possibilità di rafforzare, anche attraverso appositi interventi legislativi, la trasparenza informativa delle Fondazioni in ordine ai citati profili di attenzione e relativi alla *corporate governance* delle stesse.

2.10 La finanza sostenibile: situazione attuale, profili di attenzione e strategie future

Negli ultimi anni gli investimenti sostenibili hanno conosciuto una crescita significativa ed è cresciuto il numero di società quotate nell'area euro e in Italia assistite da uno *score* ESG.

Sul fronte dell'offerta di strumenti finanziari sostenibili, l'Europa vede confermato il suo ruolo trainante: a giugno 2022, l'aggregato globale delle emissioni di obbligazioni ESG è, infatti, riferibile ai Paesi europei per il 50% circa mentre il patrimonio di fondi comuni di investimento ESG europei pesa più dell'80% sul dato globale.

Nei maggiori Paesi dell'area euro le emissioni di obbligazioni ESG sono riferibili in gran parte alle società finanziarie, seguite da quelle operanti nei settori utilities e trasporti e, dal 2020, a emittenti pubblici.

Con riguardo al comparto dei fondi ESG, a marzo 2022 si contano quasi 5 mila fondi europei, con un patrimonio complessivo prossimo a 2.300 miliardi di dollari, in crescita del 40% rispetto al primo trimestre dell'anno precedente. Analoga tendenza si osserva in Italia, dove alla fine del primo trimestre del 2022 il numero di fondi ESG è superiore a 1.900 (1.266 a marzo 2021), mentre il patrimonio promosso si è portato a 431 milioni di euro (295 a marzo 2021).

Considerate le possibili ricadute in termini di tutela del risparmio, è apparso di fondamentale importanza avviare un'attività di ricostruzione normativa nonché di monitoraggio sui profili di sostenibilità degli strumenti finanziari distribuiti dagli intermediari, ponendo particolare attenzione sul rischio del c.d. "*greenwashing*" ovvero l'utilizzo di una finta veste formale sostenibile come marchio al solo scopo di accrescere l'attrattività di un prodotto finanziario.

L'analisi svolta ha evidenziato che l'Unione Europea ha posto la sostenibilità ambientale e sociale al centro delle proprie politiche di sviluppo. Due tappe sono state fondamentali, entrambe approvate nel 2015, quali: l'Agenda 2030 dell'ONU e l'Accordo di Parigi sul clima, con i quali sono stati fissati ambiziosi obiettivi per i Governi.

Il Legislatore Europeo, per tradizione e vocazione regolatore delle iniziative di mercato, ha messo a disposizione degli Stati un'avanzata legislazione e un ricco impianto normativo.

La Commissione Europea si è posta inoltre l'obiettivo di promuovere la trasparenza dell'informativa societaria e la creazione di valore aggiunto a lungo termine, prevenendo e riducendo i fenomeni di *greenwashing*.

Per arginare i possibili fenomeni distorsivi, capaci di ostacolare la transizione verso un sistema economico più sostenibile, il Legislatore Europeo ha elaborato un articolato sistema di obblighi informativi che coinvolge sia le società sia gli intermediari finanziari.

Alle prime è richiesto di comunicare l'impatto della loro attività sull'ambiente e sulla comunità (c.d. esternalità), ai secondi di illustrare le modalità di integrazione dei fattori ESG nello loro scelte di investimento e nelle decisioni relative alla *governance* delle società delle quali sono azionisti.

Infine, sempre la Commissione europea, con un'iniziativa innovativa rispetto ad altre legislazioni, al fine di rendere tale informazione più omogenea ed affidabile, ha elaborato una tassonomia per la classificazione delle attività ecosostenibili.

Dal punto di vista normativo in materia assumo rilievo il Regolamento (UE) 2019/2088 relativo all'informativa sulla sostenibilità nel settore dei servizi finanziari e il Regolamento (UE) 2020/852 relativo all'istituzione di un quadro che favorisce gli investimenti sostenibili e recante modifica del regolamento (UE) 2019/2088.

L'Europa ha, quindi, emanato un impianto normativo avanzato rispetto ad altre realtà giuridiche (quali Stati Uniti e Cina), con l'ambizione di voler rendere l'Europa nel 2050 il primo continente ad impatto climatico zero.

Sul piano pratico, la nuova e diffusa consapevolezza della necessità di affrontare la sfida della sostenibilità ha portato all'introduzione di strumenti per il monitoraggio e la comparazione degli obiettivi di sostenibilità che le imprese mirano a raggiungere.

Si tratta, in particolare, di certificazioni, di strumenti di valutazione e di codici di comportamento ed etici. Ciò è avvenuto, in un primo tempo, attraverso una autoregolamentazione da parte delle imprese, in un secondo momento, invece, sotto forma di eteroregolamentazione e di vigilanza pubblica.

In parallelo e con l'obiettivo di stimolare riflessioni in materia di ESG (*Environmental, Social and Governance*) e avviare possibili iniziative legislative. Su iniziativa della Presidente, lo scorso 9 maggio 2022 è stato organizzato presso la Camera dei Deputati un apposito convegno intitolato *"La finanza sostenibile al servizio del Paese: situazione attuale e strategie future"*.

In particolare, nella prima parte del convegno è stata presentata una sintetica ricostruzione della normativa di riferimento, ponendo l'attenzione sul rischio di *greenwashing* e sulla necessaria tutela del risparmio ex articolo 47 Cost. Sono poi stati illustrati i principali dati del mercato ESG in Italia e in Europa, con un *focus* specifico al Mezzogiorno d'Italia.

La seconda parte è stata dedicata agli interventi di autorevoli rappresentanti politici, per evidenziare gli obiettivi da raggiungere, gli interessi strategici, le ricadute sul benessere dei cittadini, le iniziative realizzate e programmate, per colmare, tra l'altro, i divari territoriali.

Infine, la terza parte ha previsto l'intervento degli intermediari finanziari, i quali hanno rappresentato la loro effettiva operatività in materia ESG (*best case*), evidenziando, tra l'altro, le metriche e i processi aziendali utilizzati per definire i criteri di *scoring* in materia nonché per raccogliere, verificare e monitorare, nel corso del tempo, i fattori ESG delle imprese affidate e degli strumenti finanziari distribuiti. Particolare enfasi è stata dedicata all'illustrazione degli eventuali profili di criticità contenuti nella regolamentazione nonché delle problematiche riscontrate nell'operatività degli intermediari.

Nel corso del convegno, autorevoli esponenti del mondo politico, accademico e finanziario hanno promosso analisi e riflessioni in materia di ESG (*Environmental Social and Governance*), sotto i profili normativo, socio-economico e finanziario.

A seguito delle analisi svolte e del dibattito pubblico sono emerse possibili iniziative che potrebbero, a parere della Commissione, incentivare lo sviluppo della finanza sostenibile.

A titolo esemplificativo, nell'ottica di rafforzare la capacità di attrazione di capitali e di investimenti sostenibili uno stimolo maggiore potrebbe arrivare dall'inclusione dei criteri ESG anche nelle gare d'appalto pubbliche; coerentemente con la scelta, già operata dal Legislatore, di prevedere tra i criteri per partecipare alle gare previste dal PNRR anche l'impegno a presentare la rendicontazione non finanziaria sulla sostenibilità sociale e ambientale dei processi produttivi (c.d. "*rating di sostenibilità*").

Ulteriori incentivi potrebbero poi arrivare dal riconoscimento da parte dello Stato di una maggiore considerazione del bilancio sociale, da intendersi, ad esempio, quale documento necessario per poter accedere a misure di finanza agevolata e interventi pubblici.

Sempre, nell'ottica di rafforzare una relazione banca-impresa in materia di ESG, il Legislatore, nazionale ed europeo, oltre ad approntare una fiscalità di scopo potrebbe anche definire una normativa prudenziale "premiante" in termini di minore patrimonio di vigilanza per gli intermediari che supportano l'economia *green*.

Questo ha impatti particolarmente rilevanti soprattutto per le PMI che, oggi, hanno come canale di finanziamento preferenziale e spesso esclusivo il prestito bancario. In alcuni casi, soprattutto con riferimento all'importo massimo e alla durata, questi ultimi non sono sempre adeguati a sostenere piani di investimento e di ammodernamento verso l'eco-innovazione e la minimizzazione degli impatti ambientali.

Tuttavia, non può essere sufficiente un approccio "*minimal*" confinato nel rispetto del principio "*do not significant harm*", ossia non arrecare un danno rilevante, che costituisce uno dei principi della tassonomia europea in tema di finanza sostenibile.

Potrebbe, invece, risultare necessario integrare la dimensione di "*added value*", in termini di impatto sociale ambientale: uno dei punti fondamentali essendo il PNRR il più importante programma di investimento pubblico.

La crescita di una finanza sostenibile guarda anche ai fattori sociali. In ambito ESG, la "*S*" della parola "*Social*" indica la necessità di rispettare i diritti umani, l'uguaglianza, la parità di genere e di migliorare le condizioni di lavoro di tutti.

In materia sarà fondamentale anche la capacità del sistema finanziario di gestire le sofferenze bancarie, fenomeno che affligge migliaia di famiglie e imprese, attraverso il ricorso a strumenti di mercato innovativi e complementari rispetto alle tradizionali procedure esecutive.

Nel piano d'azione della Commissione europea adottato il 9 dicembre 2021 inerente la promozione dell'economia sociale, si riconosce il fondamentale ruolo (con la conseguente necessità di sviluppare quadri coerenti di tutela) di talune forme di impresa tra cui quelle cooperative (e le connesse specificità del modello mutualistico) e le società che più in generale antepongono le finalità sociali a quelle di lucro individuale, reinvestono la maggior parte degli utili nella realizzazione delle loro funzioni sociali, e sono caratterizzate da una *governance* democratica e/o partecipativa. In tale ambito, la funzione e il ruolo economici e sociali che le BCC svolgono - anche nelle fasi di ciclo negativo dell'economia - è confermato anche in questa fase storica, dai numeri e più in generale dalla letteratura internazionale che confermano quanto sia fondamentale la funzione sociale delle BCC per il finanziamento delle economie delle comunità, per la tenuta dell'occupazione e della coesione sociale.

In conclusione, le attività di approfondimento svolte dalla Commissione evidenziano la necessità, da un lato, di rafforzare la cornice normativa comune ed armonizzata e, dall'altro, di una maggiore armonizzazione delle prassi di vigilanza per garantire un *level*

playing field e limitare i possibili fenomeni di risparmio tradito nonché eventuali arbitraggi normativi.

2.11 La riforma delle banche di credito cooperativo

Nel corso di quest'ultimi anni, le banche di credito cooperativo sono state oggetto di una pluralità di interventi normativi – anche di impulso sovranazionale – che hanno trovato il loro culmine nella legge 8 aprile 2016, n. 49, che istituisce i gruppi bancari cooperativi.

Per via di tali interventi, nonostante rimangano a tutti gli effetti banche resilienti, senza scopo di lucro individuale e radicate nel territorio di appartenenza attraverso un legame con lo stesso e storicamente associate al supporto dell'economia reale del nostro Paese, le BCC sono adesso considerate *significant banks*, ossia banche di dimensioni significative con rilevanza sistemica assoggettate alla vigilanza diretta della Banca Centrale Europea (BCE), in conseguenza dell'adesione ad un Gruppo bancario cooperativo (GBC), creato per esigenze di pubblico interesse.

La citata riforma del 2016 è stata ispirata essenzialmente dalla promozione di una migliore patrimonializzazione del settore e da nuove forme di vigilanza quale conseguenza dell'aggregazione di istituti di credito di piccola dimensione in un gruppo creditizio di significative dimensioni.

Questi intenti furono realizzati dal Legislatore italiano, dapprima, con il D. L. n. 18 del 2016, rubricato «Misure urgenti concernenti la riforma delle banche di credito cooperativo, la garanzia sulla cartolarizzazione delle sofferenze, il regime fiscale relativo alle procedure di crisi e la gestione collettiva del risparmio», convertito poi con la legge n. 49 del 2016, successivamente, integrata dal cd. «Decreto Milleproroghe», convertito in legge 21 settembre 2018, n. 108.

Le modifiche più importanti hanno riguardato il Capo V, Sezione II, del Testo unico bancario, che hanno normato, rinnovandola, la categoria delle BCC: ciò è avvenuto attraverso la modifica degli articoli 33, 34, 35, 36, 150-*bis* e 150-*ter*, e soprattutto con la riformulazione *ex novo* di due articoli (il 37-*bis* e il 37-*ter*), che introducono il nuovo paradigma del Gruppo bancario cooperativo, disciplinando la sua composizione e della sua costituzione.

Quanto al numero di gruppi di BCC, ad oggi sono stati costituiti due gruppi di livello nazionale, ossia il “Gruppo Bancario Cooperativo Iccrea”, con a capo “ICCREA Banca

S.p.A.” e il “Gruppo Bancario Cooperativo Cassa Centrale Banca”, la cui capogruppo è “Cassa Centrale Banca – Credito Cooperativo Italiano S.p.A.”, oltre a un'altra forma di aggregazione a carattere regionale, composta dalle “Casse Raiffeisen dell’Alto Adige” non configurabile come gruppo cooperativo *stricto sensu* in quanto coerente con un IPS approvato ed autorizzato dalla Banca d’Italia nel novembre 2020.

In materia, a seguito di diverse segnalazioni ed esposti ricevuti, la Commissione, ha avviato un’attività di Valutazione di Impatto della Regolamentazione (VIR) sugli effetti prodotti dalla Riforma del 2016 sull’operatività delle BCC nell’ottica di individuare, ove necessario, appositi interventi normativi idonei a migliorare l’assetto normativo e superare eventuali vincoli regolamentari che, determinando difficoltà operative gestionali, limitino il ruolo mutualistico delle banche di credito cooperativo.

In particolare, nella seduta del 15 febbraio 2022, la Commissione ha udito il Professore straordinario di Diritto dell’economia, Francesco Capriglione. L’indagine è poi proseguita nelle successive sedute del 22 e del 28 febbraio, con l’audizione, in entrambe le date, del Presidente di Federcasse, Augusto dell’Erba.

Dalla documentazione acquisita e dalle indagini svolte è emerso che i principali profili di criticità derivanti dalla riforma delle BCC sono l’allontanamento dei centri decisionali delle BCC rispetto ai territori dove si opera e l’assoggettamento delle stesse – attraverso l’adesione obbligatoria ad un gruppo bancario – alla vigilanza della BCE.

Di particolare rilievo appare altresì la circostanza che le BCC siano tenute a rispettare requisiti particolarmente stringenti e onerosi stabiliti dalla disciplina prudenziale (*ratios* patrimoniali, requisiti di idoneità degli esponenti, ecc.) e dalla normativa riguardante la risoluzione delle banche in caso di crisi (*bail-in* e MREL).

Profili di attenzione sono poi emersi con riferimento all’incongruenza tra l’essere “ente piccolo e non complesso” e il dover rispettare le regole previste per le grandi banche europee.

Tale circostanza non consente, pertanto, di applicare nel concreto i principi di proporzionalità delle norme e delle prassi di vigilanza, come richiederebbero, invece, le peculiari caratteristiche giuridiche, i connotati dimensionali e i profili di operatività tutt’altro che complessi delle BCC.

Durante le audizioni particolare attenzione è stata dedicata all’approfondimento della possibilità per le BCC di aderire a «sistemi di tutela istituzionali» (IPS). Come anche alla

possibilità di migliorare il quadro normativo e regolamentare europeo, oggetto di revisione proprio in queste settimane nell'ambito del recepimento di Basilea 3 *plus*, con misure di proporzionalità, ove possibile coerenti con il piano d'azione per la promozione dell'economia sociale adottato dalla Commissione europea nel dicembre scorso, come già descritto nel paragrafo precedente.

Su quest'ultimo punto, l'imprevisto scioglimento anticipato delle Camere non ha consentito alla Commissione di completare il programma prefissato, ed in particolare, di procedere all'audizione della Banca d'Italia.

In conclusione, le banche territoriali – soprattutto in questa fase dell'emergenza epidemiologica e di crisi geopolitica – rappresentano un punto di riferimento per la ripresa dell'economia reale e sociale, in particolar modo delle aree periferiche, per cui ne deve essere garantito il ruolo territoriale e ne deve essere preservata l'autonomia decisionale nei rapporti con la capogruppo.

Considerato che lo scopo delle società cooperative a mutualità prevalente è quello di rendere un servizio ai soci e alle comunità di riferimento, a parere della Commissione, appare necessario avviare con tempestività una decisa e concreta attività di *moral suasion* sul Governo italiano e sul Parlamento europeo affinché le norme bancarie europee in corso di definizione, nel rispetto del principio di proporzionalità delle norme, tengano conto delle specificità delle BCC e della loro "*funzione sociale*" costituzionalmente riconosciuta, in quanto cooperative a mutualità prevalente e senza fini di speculazione privata.

PARTE III – IL SISTEMA DI SEGNALEZIONE

3.1. La struttura del Sistema di segnalazione

Il sistema informatico di segnalazione è divenuto pienamente operativo dal 18 novembre 2021, a seguito sottoscrizione, in data 30 giugno 2021, del “Protocollo d’intesa per la cooperazione tra la Commissione parlamentare di inchiesta sul sistema bancario e finanziario e la Guardia di Finanza” e del relativo “Disciplinare per la cooperazione”, da parte della Presidente della Commissione e del Generale C.A. della Guardia di Finanza, documenti ratificati dalla Commissione in sede plenaria nella seduta del 1° luglio 2021 (cfr. Allegato 1 e paragrafo 1.4.).

Tale sistema ha sostituito il precedente, utilizzato in via sperimentale fin dai primi mesi di attività della Commissione, consentendo una gestione più appropriata e coerente con i principi di leale collaborazione tra autorità competenti in materia bancaria e finanziaria e nel rispetto sia dell’autonomia privata, che delle competenze previste per legge.

L’articolo 1 del Protocollo, nel delineare l’ambito della collaborazione, prevede che:

1. Le parti si impegnano a collaborare, nel quadro delle rispettive attribuzioni e allo scopo di realizzare forme di scambio informativo, per lo sviluppo di strategie di contrasto e prevenzione delle violazioni riferibili:

- a) alle procedure inerenti ai finanziamenti, ai prestiti garantiti dallo Stato e alle moratorie su finanziamenti, ex lege e volontarie, come previsti, in particolare, dal decreto-legge 17 marzo 2020, n.18 convertito, con modificazioni, dalla legge 5 giugno 2020, n.40 e successive modifiche ed integrazioni.*
- b) alla gestione da parte degli intermediari bancari e finanziari, nonché dei soggetti di cui all’art.115 TULPS, delle esposizioni creditizie (NPL e UTP).*

Come si è detto, il sistema informatico permette a cittadini e imprese di segnalare alla Commissione profili di criticità riscontrati nei rapporti con le banche/intermediari non bancari (ad esempio soggetti di cui all’articolo 115 TULPS).

Per il tramite dello stesso, la Commissione acquisisce dati e informazioni, valorizzabili nella prospettiva *risk-based* in chiave programmatica, di supporto all’individuazione delle strategie/attività della stessa, e in qualità di *trigger* per l’attività di indagine e legislativa.

In particolare, le segnalazioni possono avere ad oggetto:

- Moratorie¹⁰;
- Finanziamenti¹¹;
- Segnalazioni SIC, CR e CAI¹².

Per l'efficace ed efficiente gestione delle segnalazioni è stato redatto un apposito manuale operativo, con allegati gli *standard* di lettera da inviare alle diverse parti interessate. Le segnalazioni sono processate, come da protocollo, attraverso il sito dedicato, accessibile tramite un apposito *link*.

Alla gestione delle segnalazioni è stato preposto un apposito *Team* composto da: Dr. Toni Marcelli, responsabile e coordinatore del Sistema di segnalazione e consulente della Commissione; Avv. Diego Cortina, consulente della Commissione; Dr. Pierluigi Tuccinardi, consulente della Commissione; 3 militari del Corpo della Guardia di Finanza assegnati alla Commissione per lo svolgimento delle attività oggetto del citato Protocollo.

In concreto, l'attività quotidiana del personale addetto si è articolata in un costante e continuo confronto, anche per le vie brevi, con gli istanti, per meglio definire l'oggetto della segnalazione, e con gli istituti bancari ed intermediari segnalati, per meglio comprendere, esaminare e tentare di definire bonariamente la criticità nel rispetto e nell'interesse delle rispettive posizioni.

3.2 Attività svolta e dati statistici

In data 12 luglio 2022 l'Ufficio di Presidenza ha approvato la relazione semestrale sulle attività svolte e sui risultati raggiunti.

In particolare, la Commissione ha valutato positivamente l'attività del Sistema di segnalazione. Infatti, con riferimento ai dati delle sole segnalazioni risultate complete e processate, ha rilevato che quasi il 70% delle stesse ha avuto esito positivo oppure sono state

¹⁰ In particolare: i) Moratorie ex DL "Cura Italia" PMI (congelamento prestiti a revoca, proroga prestiti a scadenza, sospensioni rate/canoni); ii) Moratorie ex DL "Cura Italia" Famiglie/Lavoratori autonomi e liberi professionisti (Fondo Gasparrini); iii) Moratorie private promosse da Associazioni di categoria.

¹¹ In particolare: i) Finanziamenti fino a 30.000€ (garantiti al 100% dallo Stato); ii) Finanziamenti superiori a 30.000€; iii) Finanziamenti aggiuntivi all'importo già finanziato (iter semplificato per €25.000); iv) Rinegoziazione del debito; v) Cessione del quinto; vi) Credito ai consumatori; vii) Mutuo; viii) Apertura di credito bancario; ix) Leasing; x) Altro.

¹² In particolare: i) Sistemi privati di informazioni creditizie (SIC); ii) Centrale dei rischi (CR); iii) Centrale di allarme interbancaria (CAI); iv) Altro.

ritirate dal segnalante (presumibilmente, in buona parte a seguito del raggiungimento di un accordo con la controparte bancaria).

In concreto, ciò significa che piccoli imprenditori hanno avuto i mezzi per iniziare o portare avanti la loro attività economica, giovani famiglie l'opportunità di acquistare una casa, rinegoziare un prestito, ecc.

La Commissione ha anche rilevato come l'attività di *moral suasion* ovvero di mediazione effettuata dal *Team* della Commissione preposto all'attività sia risultata preziosa anche per l'operatività degli istituti bancari, evitando, infatti, agli stessi di adottare decisioni difformi e non *compliant* alla normativa di riferimento, e, in ultima analisi, possibili e future controversie con i clienti per fattispecie analoghe.

Infine, non deve essere sottovalutata la circostanza che spesso, attraverso l'interazione con cittadini e imprese, il personale dedicato al sistema ha svolto anche una vera e propria attività di "educazione finanziaria", fornendo assistenza ai vari utenti su nozioni, concetti e regolamentazione di settore e, quindi, rafforzando la conoscenza e la consapevolezza di diritti/doveri dei vari segnalanti nel rapporto con il sistema bancario.

Subito dopo l'approvazione della prima relazione semestrale, avvenuta in data 12 luglio 2022, è intervenuto lo scioglimento anticipato delle Camere (21 luglio 2022).

Pertanto, fermo restando che, con lo scioglimento si interrompono tutte le attività di indagine della Commissione parlamentare di inchiesta, anche quelle relative ad ambiti portati all'attenzione della Commissione dal Sistema di segnalazione, l'Ufficio di Presidenza integrato dai rappresentanti dei Gruppi, nella riunione del 25 luglio, ha ritenuto di tener attivo il sistema informatico e il *Team* dedicato fino al 15 settembre 2022, anche al fine di poter concludere la gestione delle pratiche aperte.

Si dà quindi conto, di seguito, dei dati relativi all'attività complessiva del Sistema di segnalazione, dall'entrata in funzione, il 18 novembre 2021, al 15 settembre 2022.

Sono complessivamente pervenute 351 segnalazioni, di cui:

- 161 risultate complete e processate;
- 117 irricevibili in quanto non rientranti nelle fattispecie oggetto del Protocollo (ad esempio, relative a servizi e attività di investimento di cui al TUF).
- 73 con caratteristiche di richiesta di informazioni, chiarimenti (quesiti).

Con specifico riferimento alle 161 segnalazioni complete, le stesse hanno riguardato persone fisiche e giuridiche e sono così ripartite:

- persone fisiche: 131
- persone giuridiche (società di capitali/società di persone): 30

Le segnalazioni oggetto di doglianze hanno riguardato le seguenti macro aree:

- finanziamento (mutui, prestiti, apertura di credito in C/C): 87
- esposizioni creditizie deteriorate (NPL / UTP): 26
- altro: 32
- segnalazioni presso SIC, CR, CAI¹³: 16

Sul totale delle segnalazioni ricevute si registrano gli esiti seguenti:

- esito positivo: 57 (pari al 35% del totale)
- ritiro della segnalazione da parte del segnalante (causa raggiungimento di intese tra le parti in assenza di invio della segnalazione da parte dell'Ufficio all'intermediario): 54 (34%)
- esito negativo: 50 (31%)

In generale, le segnalazioni ricevute sono omogeneamente diffuse sul territorio in termini numerici, casistica ed istituti/intermediari destinatari delle segnalazioni.

La durata media dei singoli procedimenti è stata di circa 81 giorni (dalla fase della prima segnalazione alla fase dell'esito positivo/negativo tra le parti).

Il fascicolo medio di ogni segnalazione è formato da circa 30 pagine (istanza più allegati richiamati nella stessa segnalazione).

Occorre evidenziare che nell'ultimo periodo si è registrata una spiccata prevalenza di segnalazioni inerenti la "cessione dei crediti" (in particolare sul *superbonus* 110%), fenomeno che impatta sul fabbisogno di liquidità di imprese e famiglie.

Gli strumenti utilizzati per favorire la gestione delle diverse segnalazioni sono: corrispondenza via e-mail, telefono, *video call*.

Nello specifico la gestione delle complessive 351 segnalazioni ha comportato nei 216 giorni lavorativi (periodo 18 novembre 2021 - 15 settembre 2022):

- l'invio di esplicite richieste di integrazioni tramite mail (attinenti sia alla completezza documentale sia al merito delle stesse): 97

¹³ In particolare: i) Sistemi privati di informazioni creditizie (SIC); ii) Centrale dei rischi (CR); iii) Centrale di allarme interbancaria (CAI).

- un servizio di assistenza telefonica/video call su base giornaliera: 5 contatti (per complessivi 1080 contatti di assistenza).

3.3. Le principali questioni evidenziate dal Sistema di segnalazione

Come si è detto, le informazioni tratte dall'attività di gestione delle segnalazioni, pur riferite a casi singoli, hanno spesso consentito alla Commissione di intercettare anche profili di criticità nei rapporti tra cittadini o imprese e istituti bancari o finanziari aventi carattere generale.

Si è trattato di informazioni particolarmente preziose, che talvolta si sono incrociate con questioni già poste all'attenzione della Commissione per altra via, e che sono state utili per integrare il programma dei lavori della Commissione stessa.

Tra le principali questioni intercettate attraverso il Sistema di segnalazione rientrano le problematiche relative alle pressioni commerciali nella vendita di prodotti finanziari nonché alla vendita dei diamanti da parte di Istituti bancari (cfr. paragrafo 2.5 e 2.5.1); il collocamento e le difficoltà di smobilizzo dei titoli da parte degli azionisti del Gruppo Bancario Banca Agricola Popolare di Ragusa; le problematiche connesse alla cessione dei crediti d'imposta derivanti da *bonus* fiscali e in particolare dal cd. *superbonus* 110% (cfr. paragrafo 2.6); le sofferenze bancarie (cfr. paragrafo 2.2); la procedura di amministrazione straordinaria della Banca del Sud S.p.A.; le recenti dinamiche di *governance* e azionarie che hanno coinvolto Assicurazioni Generali; la posizione dell'ing. Giuseppe Bivona, partner di *Bluebell Partners Limited*, sul caso Monte dei Paschi di Siena; la chiusura unilaterale dei conti correnti da parte di Fineco, ecc.).

Particolare interesse ha poi destato una problematica relativa ai rapporti col sistema bancario da parte di un imprenditore che era oggetto di indagini penali poi concluse con l'archiviazione (cfr. paragrafo 3.3.1) nonché la questione relativa alla commercializzazione in Italia dei mutui *barclays* indicizzati al franco svizzero, che saranno esaminate più nel dettaglio nei paragrafi seguenti (cfr. paragrafo 3.3.2).

3.3.1 La vicenda Bulgarella

In data 2 febbraio 2022 l'ing. Andrea Bulgarella ha attivato il sistema informatico di segnalazione rappresentando: (i) di essere il socio di riferimento, sia direttamente che indirettamente per il tramite delle proprie controllate, di diverse società che operano nel

settore edile e turistico alberghiero; (ii) di avere azionato, nei confronti delle banche ed a seguito delle restrizioni delle agevolazioni creditizie da parte delle medesime, contestazione analitica dei saldi di conto corrente bancario definitisi con transazione; (iii) di essere stato penalmente indagato, indagine conclusasi con richiesta di archiviazione del procedimento; (iv) di aver ristrutturato il debito *ex* articolo 182-*bis* L.F.; (v) che le banche rifiutano l'apertura di conti correnti, e quindi dei servizi collegati quali POS ecc., ovvero chiudono i rapporti di conto corrente in essere anche con saldo attivo; (vi) che la predetta situazione è fonte di notevole danno e pregiudizio essendo impossibilitato ad operare sul mercato con le proprie attività.

Al fine di acquisire maggiori informazioni sul caso specifico, la Commissione ha ritenuto di audire personalmente l'imprenditore e la sua audizione si è tenuta il 29 marzo 2022.

Dalla documentazione trasmessa e dalle informazioni ottenute, anche successivamente all'audizione, nonostante l'indagine penale si sia conclusa con la richiesta di archiviazione del procedimento, sembrerebbe che la stessa indagine abbia di fatto compromesso i rapporti con il sistema bancario e finanziario. Tale circostanza risulta fortemente ostativa ai fini del normale proseguimento dell'attività imprenditoriale.

Sussiste quindi una problematica, che riveste senz'altro carattere generale – casi simili sono, infatti, stati segnalati alla Commissione tramite il Sistema di segnalazione -, relativa alla necessità di garantire un rapporto di conto corrente con servizi di pagamento per la gestione del denaro di consumatori e imprese, specie qualora gli stessi siano stati oggetto di indagini conclusesi in loro favore.

La Commissione ha, quindi, rilevato la necessità di ricostruire la normativa e le disposizioni di attuazione in materia di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo, ivi compreso, gli effetti e le limitazioni che le segnalazioni producono in capo al soggetto segnalato e le procedure e le attività per "sanare" le eventuali segnalazioni "superate" dagli eventi successivi (ad esempio, per archiviazione delle indagini o per assoluzione da parte dell'Autorità giudiziaria) o derivanti da comportamenti opportunistici da parte dei segnalanti (ad esempio, atteggiamenti meramente cautelativi, approcci burocratici, adozione di strumenti automatici di individuazione delle operazioni sospette, ecc.).

Strettamente collegate alla materia sono poi le disposizioni di Banca d'Italia in materia di adeguata verifica della clientela che impongono agli intermediari di tener conto di tutte le informazioni, pubbliche e private, riferite alla clientela.

La Commissione ha, pertanto, ritenuto di dover svolgere ulteriori approfondimenti, convocando anzitutto per un'audizione il direttore Claudio Clemente dell'Unità di Informazione Finanziaria per l'Italia (UIF) presso la Banca d'Italia, al fine sia di acquisire informazioni di carattere generale sull'applicazione della normativa in materia di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo sia di ricostruire la vicenda concreta sulla base delle informazioni e segnalazioni ricevute.

Contestualmente, la Commissione ha richiesto specifica documentazione da parte della stessa Unità di Informazione Finanziaria per l'Italia (UIF) relativa alla normativa in materia di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo, ivi compreso, gli approfondimenti sulla vicenda Bulgarella.

Lo scioglimento anticipato delle Camere, intervenuto il 21 luglio 2022, ha tuttavia impedito lo svolgimento della citata audizione nonché ulteriori approfondimenti che sarebbero stati necessari in merito alle disposizioni di Banca d'Italia in materia di adeguata verifica della clientela che, in diversi casi, precludono di fatto i rapporti fra intermediari, consumatori e imprese.

Peraltro, dagli approfondimenti che è stato possibile svolgere, emergono particolari profili di attenzione sulla circostanza che le segnalazioni derivanti da comportamenti opportunistici o "superate" dagli eventi successivi (ad esempio, per archiviazione delle indagini o per assoluzione da parte dell'Autorità giudiziaria, ecc.) possano di fatto compromettere in maniera significativa il rapporto del soggetto segnalato con il sistema bancario e finanziario. Le difficoltà di accesso al credito da parte di imprese e famiglie agevolano, tra l'altro, l'ingerenza della criminalità organizzata nell'economia reale del Paese.

In considerazione della conclusione anticipata dell'attività di indagine, la Commissione deve limitarsi a rilevare che il caso specifico evidenzia la sussistenza di un duplice profilo di criticità:

- l'affidabilità e l'indipendenza delle fonti informative utilizzate, specie se si tratta di banche dati private utilizzate dal sistema bancario e finanziario. Occorre garantire,

in particolare, che le informazioni trattate da tali soggetti siano adeguate e aggiornate.

- le grandi difficoltà ad operare da parte di imprenditori che comunque risultano segnalati.

Con riferimento al primo profilo, dovrebbe intervenire nell'ambito della normativa di riferimento, ivi compreso il "codice privacy".

Con riferimento al secondo potrebbe ipotizzarsi l'estensione anche alle imprese del cosiddetto conto corrente di base - inclusivo dei servizi di pagamento - oggi previsto per le sole persone fisiche.

La Commissione valuta quindi positivamente le diverse iniziative parlamentari nonché il crescente dibattito d'Aula relativo all'obbligatorietà per gli istituti di credito di garantire un rapporto di conto corrente con servizi di pagamento per la gestione del denaro di consumatori e imprese.

3.3.2 La vicenda dei Mutui *Barclays* indicizzati al franco svizzero

Altra segnalazione di rilievo ha riguardato la commercializzazione in Italia dei mutui in Euro indicizzati al franco svizzero (CHF) da parte di Banca *Barclays* su cui la Commissione ha svolto approfondimenti sui comportamenti tenuti dalla stessa Banca nel corso degli anni, soprattutto in termini di trasparenza informativa e di correttezza comportamentale verso i debitori.

Le indagini svolte hanno acclarato che, ad oggi, i Mutui CHF non vengono più commercializzati in Italia. Le problematiche riguardano, pertanto, esclusivamente i mutui già commercializzati ed in fase di ammortamento.

Preso atto delle diverse pronunce giurisprudenziali, del Provvedimento dell'Autorità Garante della Concorrenza e del Mercato 13 giugno 2018, n. 27214 e della Sentenza della Corte di Cassazione 31 agosto 2021, n. 23655, anche su apposita attività di *moral suasion* da parte della Commissione, la banca ha manifestato la propria disponibilità a soluzioni commerciali e/o bonarie delle vertenze nei confronti dei mutuatari che lo richiedono.

Considerato l'impatto negativo che la vicenda ha generato sui debitori, la Commissione valuta positivamente - quale forma di ristoro - la possibilità della stessa banca di rivedere volontariamente - non limitandosi solamente alle esplicite istanze ricevute - i meccanismi di indicizzazione dei mutui o di trovare accordi transattivi.

Tale iniziativa potrebbe, tra l'altro, produrre un effetto deflattivo sui contenziosi, già attivati e potenziali, presso i vari Tribunali od organismi arbitrali o conciliatici, tra cui l'Arbitro Bancario e Finanziario.

Lo scioglimento anticipato delle Camere ha tuttavia impedito lo svolgimento del monitoraggio periodico sulla vicenda da parte della Commissione sui comportamenti effettivamente tenuti dalla banca.

PARTE IV – CONCLUSIONI

La Commissione si è costituita nella seduta del 6 febbraio 2020, con l'elezione del Presidente e dell'Ufficio di Presidenza.

Nell'espletamento dei propri compiti, la Commissione ha partecipato a varie iniziative legislative e regolamentari in ambito nazionale ed europeo per favorire il *level playing field* e mitigare anche i rischi di esclusione finanziaria di alcune categorie di utenti. L'operato della Commissione si è svolto in proficua interazione con le altre Commissioni parlamentari, la Magistratura, la Banca d'Italia, la CONSOB, l'IVASS e la Pubblica Amministrazione. Sono stati rafforzati i rapporti con la Guardia di Finanza e con le Università.

È stato rafforzato il dialogo con le principali Associazioni di categoria e con gli operatori del mercato nell'ottica di meglio individuare profili di attenzione e definire soluzioni, anche in termini di autoregolamentazione, più efficaci e efficienti.

Parimenti rilevante è stato il processo di progettazione e realizzazione del Sistema di segnalazione, in collaborazione con la Guardia di Finanza, per favorire le segnalazioni di eventuali profili di criticità nei rapporti bancari da parte di famiglie e imprese.

Il sistema ha permesso alla Commissione di intercettare profili di criticità nei rapporti tra clienti e intermediari e ad avviare le possibili attività della stessa tra cui, ad esempio, audizioni, richieste di dati e informazioni e segnalazioni alla Procura della Repubblica.

È stato offerto un servizio gratuito a cittadini e imprese, con tempistiche certe, per rafforzare la tutela sostanziale del risparmio *ex* articolo 47 della Costituzione. Ciò ha permesso che piccoli imprenditori hanno avuto i mezzi per iniziare o portare avanti la loro attività economica, giovani famiglie l'opportunità di acquistare una casa, rinegoziare un prestito, etc.

È auspicio della Commissione che l'operatività del Sistema di segnalazione possa proseguire anche all'interno dei lavori delle prossime Legislature. In proposito, la Commissione stessa ha apprezzato le attività svolte dalla Guardia di Finanza e dalla Camera dei Deputati.

Le citate attività si sono svolte nel mezzo di un periodo complesso per l'economia nazionale e globale.

La pandemia da COVID-19 ha prodotto e purtroppo continua a produrre significative perdite in termini di produzione, di forza lavoro e di esportazioni nel tessuto produttivo

nazionale. Tale scenario, già preoccupante per l'Italia, si è ulteriormente aggravato con l'invasione russa in Ucraina, la crisi geopolitica, il caro energia e le spinte inflazionistiche.

L'aumento dei prezzi delle materie prime e la conseguente inflazione rappresentano una tassa ineludibile per il Paese anche in termini di erosione di risparmio reale nazionale.

In tale contesto le politiche restrittive della BCE e il debito pubblico "non" infinito stanno aggravando la situazione del sistema produttivo nazionale.

La difficile congiuntura economica ha reso altresì evidente l'importanza delle politiche pubbliche nel mitigare le disuguaglianze e, più in generale, il disagio economico e sociale, soprattutto quando l'attività produttiva e le relazioni sociali vengono sottoposte a *shock* di particolare gravità e intensità.

L'impatto della crisi è stato notevolmente attutito dagli ingenti interventi attuati dal Governo negli ultimi anni per tutelare la salute della popolazione, per sostenere i redditi dei lavoratori e delle famiglie più povere, per assistere le imprese e i settori più colpiti dalla crisi, per assicurare la continuità dell'erogazione del credito e per mitigare l'impatto del rincaro del costo dell'elettricità e del gas.

Fondamentali sono state, pertanto, le misure per salvaguardare il reddito disponibile pro-capite: fattore significativo per garantire una domanda interna di beni e consumi, il rilancio degli investimenti, l'occupazione, la crescita del PIL e il gettito fiscale (necessario per l'attività redistributiva da parte del Stato).

Nonostante un periodo non privo di incertezze e difficoltà, il sistema bancario e finanziario italiano è stato in grado di offrire – soprattutto grazie alle moratorie su prestiti e alla concessione di finanziamenti garantiti dallo Stato – un adeguato sostegno al settore produttivo.

Di seguito si sintetizzano i principali aspetti e profili di attenzione, emersi nelle varie aree oggetto di esame, i risultati raggiunti e le possibili soluzioni.

Con specifico riferimento all'operatività del sistema bancario nazionale si ravvisa la necessità di avere una strategia e una visione di sistema delle varie partecipate di Stato nel settore bancario.

L'intervento pubblico nel capitale delle aziende di credito e – in modo ancor più rilevante – la sua natura, finalità e gli esiti attesi non devono limitarsi ad un fenomeno temporaneo e di ultima istanza ma devono, invece, mirare alla realizzazione di un disegno

di tipo strategico a beneficio dei contribuenti, dei dipendenti e, più in generale, del sistema bancario nazionale e dell'economia italiana.

In materia, la partecipazione in Banca Monte dei Paschi di Siena S.p.A. è, ad esempio, un *asset* strategico per creare una banca di respiro nazionale in grado di competere con altri *player* primari. La nascita del terzo polo bancario richiede però il necessario supporto dell'azionista pubblico che, nel corso del tempo, potrà anche trasformarsi in un investitore istituzionale di minoranza.

Nell'ambito dell'aumento di capitale di 2,5 miliardi di euro, atteso entro la fine del 2022 – come previsto dal Piano Industriale 2022-2026 – l'individuazione di un *Anchor Investor* rappresenta una tappa fondamentale per il futuro della banca; il sostanziale cambiamento degli assetti proprietari della banca sarà fortemente influenzato dalla sua presenza o meno, dalla nazionalità e dalla tipologia di investitore.

Date le condizioni di estrema difficoltà economica del Sud e il crescente divario rispetto al Centro-Nord, va poi attentamente valutata la possibilità di stimolare lo sviluppo del Mezzogiorno anche attraverso il consolidamento e il rafforzamento del relativo sistema bancario, volàno necessario per il finanziamento e il rilancio delle imprese e del territorio.

La Banca Popolare di Bari, anche alla luce del recente riassetto societario, rappresenta un importante strumento per intervenire su alcuni problemi del sistema finanziario del Mezzogiorno.

Se da un lato, i processi di consolidamento sono strategici nel processo di rafforzamento dell'industria finanziaria italiana, dall'altro, occorre allo stesso tempo considerare un *asset* positivo la presenza di più istituti di credito e quindi la concorrenza di mercato.

Nel corso delle varie audizioni, infatti, si sono registrate non solo differenze operative tra i diversi modelli di banca (significative, non significative e territoriali) ma anche diverse sensibilità del *management*. Queste differenze sono positive e rappresentano il Paese.

In materia, dalla documentazione acquisita e dalle indagini svolte è emerso che i principali profili di criticità derivanti dalla riforma delle BCC sono connessi all'assoggettamento delle stesse – attraverso l'adesione obbligatoria ad un gruppo bancario – alla vigilanza della BCE.

E, dunque, all'incongruenza tra l'essere "ente piccolo e non complesso" e il dover rispettare le regole previste per le grandi banche europee.

Considerato che lo scopo delle società cooperative a mutualità prevalente è quello di rendere un servizio ai soci e alle comunità di riferimento, a parere della Commissione, appare necessario avviare con tempestività una decisa e concreta attività di *moral suasion* sul Governo italiano e sul Parlamento europeo affinché le regole bancarie europee in corso di ridefinizione con il "Pacchetto bancario 2021", nel rispetto reale del principio di proporzionalità delle norme, tengano conto delle specificità delle BCC e della loro "*funzione sociale*" costituzionalmente riconosciuta, in quanto cooperative a mutualità prevalente e senza fini di speculazione privata.

Diverse audizioni hanno poi evidenziato l'opportunità di rafforzare l'azione di vigilanza, ivi intesa in termini di trasparenza informativa, sulle dinamiche di *governance* e azionarie del settore finanziario-assicurativo. Ulteriori approfondimenti appaiono opportuni sulla disciplina, introdotta dalla c.d. Riforma sul Risparmio¹⁴, relativa alle modalità di elezione dei consigli di amministrazione delle società quotate, ivi compresa la facoltà eventualmente prevista in via statutaria per il Consiglio di amministrazione uscente di presentare una lista di candidati per il rinnovo del Consiglio medesimo.

Particolari profili di attenzione poi si registrano in merito al processo di nomina e di cessazione (durata del mandato) degli Organi di vertice delle Fondazioni stesse e alla ricostruzione storica degli avvicendamenti avvenuti tra gli stessi e distinti per le funzioni di indirizzo, di amministrazione e di controllo.

Analoghi profili di attenzione si registrano inoltre sui compensi percepiti – intesi come ogni forma di pagamento o beneficio, incluse eventuali componenti accessorie (cc.dd. "*allowances*") – corrisposti, direttamente o indirettamente, in contanti, strumenti finanziari o servizi o beni in natura (c.d. "*fringe benefits*") – dalla Fondazione ai propri organi di vertice, compreso il personale che ricopre ruoli dirigenziali chiave nelle stesse.

In materia, meritevole di attenzione appare la possibilità di rafforzare, anche attraverso appositi interventi legislativi, la trasparenza informativa delle Fondazioni in ordine ai citati profili di attenzione e relativi alla *governance* delle stesse.

¹⁴ In particolare: Legge 28 dicembre 2005, n. 262, recante "Disposizioni per la tutela del risparmio e la disciplina dei mercati finanziari", e Decreto legislativo 29 dicembre 2006, n. 303, recante "Coordinamento con la legge 28 dicembre 2005, n. 262, del testo unico delle leggi in materia bancaria e creditizia (T.U.B.) e del testo unico delle disposizioni in materia di intermediazione finanziaria (T.U.F.)".

Significativa è stata poi l'attività della Commissione per assicurare l'efficiente e rapido utilizzo delle misure governative di sostegno al credito (moratorie su prestiti e rilascio delle garanzie pubbliche per i nuovi finanziamenti) di cui al D.L. n. 18/2020 (cc.dd. "Cura Italia") e ulteriormente ampliate con il D.L. 23/2020 (c.d. "Decreto Liquidità"), convertiti rispettivamente, dalle leggi n. 27 e n. 40 del 2020.

L'invio del questionario, il ciclo di audizioni e l'attività legislativa svolta sono state preziose per assicurare la rapida e corretta implementazione delle citate misure governative.

Particolare rilievo hanno assunto le circolari del luglio 2020 realizzate, su impulso della Commissione, da ABI, Federcasse e Assopopolari, per sensibilizzare gli istituti di credito alla più corretta applicazione delle disposizioni concernenti i finanziamenti coperti da garanzia statale. Le Circolari hanno chiarito che, in sostanza, la garanzia pubblica sostituisce le garanzie normalmente richieste per ottenere un finanziamento e che è possibile acquisire ulteriori garanzie di tipo personale o di tipo reale, assicurativo ovvero bancario, esclusivamente sulla quota di finanziamento non coperta dalla garanzia statale.

Nell'industria finanziaria italiana è poi in corso da tempo un processo di rafforzamento del ruolo degli investitori istituzionali nell'allocazione del risparmio privato. Oltre un terzo della ricchezza finanziaria delle famiglie è oggi investito in strumenti del risparmio gestito. Su tale ultimo aspetto le società prodottrici nazionali rappresentano una quota residuale del mercato.

Non marginali appaiono, pertanto, i timori che significative quote del risparmio nazionale possano essere investite in altre economie produttive che non raramente sono in competizione con il sistema produttivo nazionale.

Strumentali e direttamente collegati all'effettiva allocazione del risparmio nazionale sono i modelli distributivi del settore bancario e le possibili pressioni commerciali inerenti la vendita ai clienti di prodotti finanziari, tematica che investe profili inerenti la tutela del risparmio, il corretto funzionamento del sistema bancario e finanziario nonché il benessere lavorativo.

Le audizioni hanno confermato che nell'ultimo decennio il sistema bancario e finanziario ha registrato significativi cambiamenti, quali, la diffusione di nuovi modelli di *business*, di servizi e di prodotti, processi di riorganizzazione e di ottimizzazione delle risorse, la progressiva riduzione dei volumi dell'attività creditizia tipica in favore del

sempre maggior peso dei servizi e delle attività di investimento nonché significative pressioni competitive derivanti soprattutto dal *Fintech*.

Tali dinamiche pongono profili di attenzione sulla tutela del risparmio, sul corretto funzionamento del sistema bancario e finanziario nonché sul benessere lavorativo; condizioni tutte necessarie per il perseguimento del miglior interesse del cliente.

Ulteriori problematiche sono poi emerse in relazione alla fase di profilatura della clientela e all'applicazione delle conseguenti regole di condotta (valutazione di appropriatezza o di adeguatezza) soprattutto nel caso delle cc.dd. "riprofilature strumentali" e delle operazioni "bacciate". Ciò a discapito del perseguimento del miglior interesse del cliente che deve, invece, orientare il comportamento degli operatori professionali che prestano servizi di investimento.

Le audizioni hanno altresì confermato che l'importanza del benessere lavorativo è condizione essenziale per assicurare lo svolgimento delle attività bancarie nel pieno interesse del cliente.

La tutela del risparmio esige risposte politiche e assume una rilevanza sociale e non esclusivamente sindacale. Negli approfondimenti svolti sono peraltro emersi alcuni dei casi più clamorosi di indebite pressioni commerciali, quali: umiliazioni verbali, minacce di trasferimento o di revoca delle ferie o del part-time in caso di mancato raggiungimento dei budget; inserimento da parte dei responsabili di nuovi appuntamenti con i clienti all'insaputa del lavoratore; organizzazione di "tornei", gare o sfide tra aree territoriali o filiali per confrontare o premiare i risultati dei dipendenti, politiche remunerative fortemente collegate ai risultati di vendita.

Sui rischi degli investimenti finanziari occorre sottolineare che gli stessi non possono essere annullati, ma devono essere meglio rappresentati dagli intermediari ai risparmiatori e presidiati con prudenza e attenzione dalle società che li gestiscono. Di certo la bassa educazione finanziaria dei risparmiatori non deve essere la giustificazione per possibili condotte irregolari da parte degli intermediari.

È opinione della Commissione che i fenomeni di risparmio tradito richiedono un necessario rafforzamento degli strumenti e delle politiche di vigilanza in materia per verificare il rispetto, formale e sostanziale, della disciplina di settore.

Significativa, infatti, è stata l'attività della Commissione in termini di monitoraggio dell'operatività del FIR, di *moral suasion* nonché di effettiva tutela del risparmio. All'esito

dell'attività svolta, è risultato che al 31 agosto 2022 la Commissione tecnica ha complessivamente eseguito n. 145.675 pagamenti per un totale di oltre 969 milioni di euro.

Tali dati testimoniano l'importante lavoro svolto dalla Commissione in termini di monitoraggio dell'operatività del FIR, di *moral suasion* nonché di effettiva tutela del risparmio.

La vicenda dei diamanti da investimento appare altrettanto significativa, non solo per il numero di risparmiatori coinvolti, ma anche perché nell'attuale crisi geopolitica seguita all'invasione dell'Ucraina da parte della Russia, i risparmiatori vengono attratti dai cosiddetti "beni rifugio", tra cui anche i diamanti e più in generale, i beni materiali.

Sebbene alla data del 30 settembre 2021, gli intermediari coinvolti nella vicenda - a seguito delle azioni di *moral suasion* da parte delle Autorità di vigilanza - hanno effettuato rimborsi pari a circa € 1,2 miliardi (il 93% delle richieste di rimborso ricevute dai clienti sono state accolte dalle banche) occorre evitare che fenomeni analoghi possano ripetersi, ad esempio, con riferimento alla circolazione delle cripto-attività nell'ambito di piattaforme di scambio online.

La vicenda diamanti conduce a riflettere sull'efficacia degli attuali assetti della vigilanza bancaria e finanziaria e sulle possibili iniziative di carattere legislativo.

In tale prospettiva si potrebbero dotare le singole Autorità di vigilanza di nuovi poteri di indagine, tra cui, ad esempio, il *mystery shopping* che permetterebbe agli stessi Organi di vigilanza di verificare il comportamento effettivamente tenuto dagli intermediari nei confronti della propria clientela.

Nella stessa prospettiva e per rafforzarne l'operatività, si potrebbe, ad esempio, valutare l'opportunità di estendere ai giudizi dell'ACF e dell'ABF, istituti già presenti nell'ordinamento giuridico italiano, ed in particolare nell'arbitrato, in cui per rendere esecutivo il provvedimento arbitrale la parte interessata deve proporre istanza, all'uopo depositando il lodo in originale o in copia conforme unitamente alla convenzione di arbitrato, nella cancelleria del Tribunale territorialmente competente nel cui circondario si trova la sede dell'Arbitrato.

Un tema specifico e da affrontare entro la fine dell'anno riguarderà sicuramente i crediti deteriorati e i crediti classificati come inadempienze probabili.

Le nuove incertezze sull'andamento dell'economia rendono improcrastinabile la necessità di trovare soluzioni per gestire la prossima prevedibile ondata di NPE (*Non*

Performing Exposures) che, a seguito del marcato deterioramento del quadro economico, potrebbero rendere non esigibili molti dei crediti in essere del sistema bancario e finanziario nei confronti delle aziende attive in certi settori o comunque in situazione di marginalità reddituale.

Nell'ambito delle audizioni dei principali operatori sul mercato dei NPL è stata confermata da più parti la necessità di rivedere a livello europeo la regolamentazione in materia di sofferenze, anche alla luce dello scenario peggiore stimato dalla Bce, che ha quantificato in 1.400 miliardi di euro le nuove sofferenze per le banche europee.

Appare, pertanto, necessario avviare un dialogo a livello UE per rivedere la regolamentazione e le norme attuative in materia di sofferenze bancarie e per favorire soluzioni, di sistema e di mercato, volte alla gestione attiva delle posizioni deteriorate, limitando i prevedibili effetti restrittivi sull'offerta di credito derivanti dal *calendar provisioning*.

La Commissione valuta poi positivamente la proposta di articolato sul FIA Immobiliare ESG per famiglie e imprese (cfr. Allegato 2) – definita all'interno di un apposito gruppo di lavoro coordinato dal Prof. Raffaele Lener – per introdurre un nuovo meccanismo per la soluzione e il “trattamento” delle esposizioni del sistema creditizio classificate come deteriorate ovvero come inadempienze probabili con garanzia immobiliare o *leasing* immobiliari.

L'imprevisto scioglimento anticipato delle Camere non hanno consentito alla Commissione di poter avviare le attività legislative finalizzate all'approvazione della citata proposta di articolato.

L'operazione in questione si può qualificare, in un certo senso, come un singolare *rent-to-buy* immobiliare realizzato da tre parti: l'intermediario creditore, il debitore e un OICR terzo acquirente.

Tramite l'operazione, un Fondo immobiliare terzo acquista dal proprietario (e debitore) l'immobile posto a garanzia del credito *non-performing*. L'acquisto libera integralmente il debitore dai suoi gravami (relativi a questo debito, ovviamente) verso il soggetto creditore. Il Fondo (salvo diverso interesse da parte dell'ex debitore) concede in locazione per 10 anni all'ex debitore l'immobile oggetto dell'operazione ad un canone annuo non superiore al 5% del prezzo di acquisto dell'immobile. L'ex debitore che decide di

prendere in locazione l'immobile riceve dal Fondo un'opzione per il riacquisto dell'immobile della durata di 10 anni ad un valore prestabilito.

Strettamente collegata alla tematica delle posizioni NPE è la normativa in materia di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo e le disposizioni di Banca d'Italia in materia di adeguata verifica della clientela.

Dagli approfondimenti svolti sono emersi particolari profili di attenzione sulla circostanza che le segnalazioni derivanti da comportamenti opportunistici e/o "superate" dagli eventi successivi (ad esempio, per archiviazione delle indagini o per assoluzione da parte dell'Autorità giudiziaria, ecc.) possano di fatto compromettere in maniera significativa il rapporto del soggetto segnalato con il sistema bancario e finanziario. Le difficoltà di accesso al credito da parte di imprese e famiglie agevolano, tra l'altro, l'ingerenza della criminalità organizzata nell'economia reale del Paese.

La Commissione valuta, pertanto, positivamente le diverse iniziative parlamentari e il crescente dibattito d'Aula relativo all'obbligatorietà per gli istituti di credito di garantire un rapporto di conto corrente con servizi di pagamento per la gestione del denaro di consumatori e imprese, soprattutto laddove operino attraverso un modello amministrativo incentrato sulla concessione di un servizio.

Con esplicito riferimento agli approfondimenti svolti in materia di cessione del credito *Superbonus* 110% e degli altri *bonus* – agevolazioni fiscali introdotte dagli articoli 119 e 121 del D.L. 34/2020 (c.d. "Decreto Rilancio") e successive modifiche e integrazioni – la Commissione ritiene opportuno riattivare il circuito della cessione di tali crediti fiscali a istituti di credito e intermediari finanziari.

Le diverse segnalazioni ricevute confermano la necessità di riattivare il circuito della cessione del credito al sistema bancario e a terzi per scongiurare la chiusura di migliaia di imprese con importanti ricadute occupazionali, di gettito fiscale complessivo prodotto dalla filiera edile e di emersione del lavoro sommerso e di significativi rischi di contenzioso.

Sebbene in materia dei controlli e dei profili di responsabilità in tema di utilizzo dei crediti fiscali sia intervenuta apposita Circolare AGE n. 23/E del 23 giugno 2022 – con la quale sono stati individuati alcuni indici circa la sussistenza o meno del profilo della diligenza del cessionario – tra le possibili soluzioni rientra l'opzione di limitare la responsabilità solidale in caso di cessioni a terzi in modo da tutelare e incentivare i terzi ad

acquistare i crediti fiscali liberando, pertanto, la capacità fiscale finora impiegata dal sistema bancario.

In tal modo, di fatto l'eventuale responsabilità solidale verrebbe limitata al primo cessionario, soggetto bancario che ha peraltro svolto le verifiche richieste dalla normativa.

Ad oggi, infatti, le cessioni a terzi sono state attivate solamente da due intermediari e hanno riguardato un valore complessivo estremamente basso dei crediti fiscali (712.533.805 di euro, pari al 2,39% del controvalore complessivo).

Infine, tematiche globali come il *FinTech*, le cripto-attività, la finanza sostenibile non possono che richiedere risposte globali, quanto meno a livello UE.

Quello delle cripto-attività resta un mercato estraneo agli schemi regolativi ideati per le attività finanziarie, eccetto che per finalità di antiriciclaggio. In attesa dell'approvazione definitiva della proposta di regolamento europeo MiCA, la cui entrata in vigore è attesa per il 2024, si pongono sfide che il Legislatore nazionale non dovrebbe trascurare considerando la sua dimensione e l'impatto che ha sul sistema finanziario ed economico internazionale ma anche raccogliere attivamente per non porre il sistema Paese in una condizione di svantaggio competitivo di tipo regolamentare.

In materia, infatti, le attività di approfondimento svolte dalla Commissione evidenziano la necessità, da un lato, di rafforzare la cornice normativa comune ed armonizzata e, dall'altro, di una maggiore armonizzazione delle prassi di vigilanza per garantire un *level playing field* e limitare i possibili fenomeni di risparmio tradito nonché eventuali arbitraggi normativi.

Il tema della vigilanza richiama gli assetti della vigilanza bancaria e finanziaria. In Italia, ai sensi del TUF, vigilano sul sistema finanziario la Banca d'Italia, la CONSOB, l'IVASS e la COVIP.

Con riferimento agli assetti di *governance* delle singole Autorità nazionali si registrano differenti modelli che potrebbero condurre, in alcuni casi, anche a composizioni *sub-ottimali* dei diversi collegi.

A titolo esemplificativo, si registrano differenze nel numero e nella durata degli incarichi, nella presenza o meno di personale delle Autorità stesse negli organi di vertice, nell'applicazione del tetto agli stipendi, nei contratti nazionali di riferimento, nei procedimenti di nomina, nella presenza di divieti in termini di assunzione di incarichi per *ex* esponenti delle Autorità di vigilanza ovvero per i dipendenti delle stesse.

In materia sarebbe auspicabile armonizzare e semplificare la disciplina prevedendo regole più chiare finalizzate, ad esempio, a garantire una composizione multidisciplinare dei collegi, con esponenti in parte provenienti dal mercato e in parte espressione della stessa Autorità. I modelli di *governance* dovrebbero garantire il reclutamento, anche sul mercato, di personale altamente qualificato nonché la valorizzazione dell'esperienza lavorativa e delle specifiche competenze maturate dal personale delle Autorità stesse.

Si potrebbe, ad esempio, superare il vigente modello *"ibrido"* (per finalità e per soggetti) con il passaggio ad altri modelli di semplificazione degli attuali assetti della vigilanza, garantendo anche una più netta suddivisione dei poteri e delle relative responsabilità.

Dagli approfondimenti finora condotti, il *"modello europeo"*, da cui deriverebbe la *"replica"* in chiave nazionale del modello di vigilanza attualmente operante a livello europeo sul sistema finanziario, appare quello maggiormente appropriato anche per garantire una migliore collaborazione e agevolare le rispettive funzioni tra le autorità nazionali e le autorità e i comitati che compongono il SEVIF e la Banca Centrale Europea (BCE).

È auspicio della Commissione che i citati profili di attenzione e le soluzioni proposte possano fungere da indirizzo e supporto ai lavori delle prossime Legislature.

ALLEGATO 1

**PROTOCOLLO D'INTESA PER LA COOPERAZIONE TRA LA
COMMISSIONE PARLAMENTARE DI INCHIESTA SUL SISTEMA
BANCARIO E FINANZIARIO E LA GUARDIA DI FINANZA**

La **Commissione parlamentare** di inchiesta sul sistema bancario e finanziario (di seguito indicata come "la Commissione") nella persona della Presidente, On. Carla Ruocco;

La **Guardia di Finanza**, nella persona del Comandante Generale, Gen. C.A. Giuseppe Zafarana,

di seguito congiuntamente indicate come "le Parti",

VISTA la legge 26 marzo 2019, n. 28, recante "Istituzione di una Commissione parlamentare di inchiesta sul sistema bancario e finanziario";

VISTI gli articoli 2 e 3 del decreto legislativo 19 marzo 2001 n. 68, recante "Adeguamento dei compiti del Corpo della Guardia di Finanza, a norma dell'articolo 4 della legge 31 marzo 2000, n. 78";

VISTO l'articolo 2-ter del decreto legislativo 30 giugno 2003, n. 196, recante "Codice in materia di protezione dei dati personali, recante disposizioni per l'adeguamento dell'ordinamento nazionale al regolamento (UE) n. 2016/679 del Parlamento europeo e del Consiglio, del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE;

VISTO il Regolamento (UE) n. 2016/679 del Parlamento europeo e del Consiglio del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE (regolamento generale sulla protezione dei dati);

VISTO il decreto del Presidente della Repubblica 15 gennaio 2018, n. 15, recante "Regolamento a norma dell'articolo 57 del decreto legislativo 30 giugno 2003, n. 196, recante l'individuazione delle modalità di attuazione dei principi del Codice in materia di protezione dei dati personali relativamente al trattamento dei dati effettuato, per le finalità di polizia, da organi, uffici e comandi di polizia";

VISTO il decreto legislativo 18 maggio 2018, n. 51, recante "Attuazione della direttiva (UE) 2016/680 del Parlamento europeo e del Consiglio, del 27 aprile 2016, relativa alla protezione delle persone fisiche con riguardo al trattamento dei dati personali da parte delle autorità competenti a fini di prevenzione, indagine, accertamento e perseguimento di reati o esecuzione di sanzioni penali, nonché alla libera circolazione di tali dati e che abroga la decisione quadro 2008/977/GAI del Consiglio";

VISTO il decreto legislativo 10 agosto 2018, n. 101, recante "Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2016/679 del Parlamento europeo e del Consiglio del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE (Regolamento generale sulla protezione dei dati)";

CONSIDERATA la necessità di rafforzare e rendere maggiormente incisiva la cooperazione tra la Guardia di finanza e la Commissione parlamentare di inchiesta sul sistema bancario e finanziario;

CONSIDERATO che è stato realizzato un sistema informatico (di seguito indicato come "il sistema informatico") che consente ai cittadini, alle famiglie, alle imprese e a ogni altro soggetto o ente di segnalare alla Commissione le criticità riscontrate nei confronti di banche o intermediari non bancari;

CONSIDERATO che il sistema informatico, consistente in un questionario accessibile via internet, consente di acquisire informazioni la cui gestione costituisce uno strumento che concorre all'esercizio dei compiti della Commissione;

CONVENGONO QUANTO SEGUE:

Articolo 1

(Ambito della collaborazione)

Le parti si impegnano a collaborare, nel quadro delle rispettive attribuzioni e allo scopo di realizzare forme di scambio informativo, per lo sviluppo di strategie di contrasto e prevenzione delle violazioni riferibili:

- a) Alle procedure inerenti ai finanziamenti, ai prestiti garantiti dallo Stato e alle moratorie su finanziamenti, ex lege volontarie, come previsti, in particolare, dal decreto-legge 17 marzo 2020, n.18 convertito, con modificazioni, dalla legge 24 aprile 2020, n.27, e dal

decreto-legge 8 aprile 2020, n.23, convertito, con modificazioni, dalla legge 5 giugno n. 40 e successive modifiche ed integrazioni;

- b) Alla gestione da parte degli intermediari bancari e finanziari, nonché dei soggetti di cui all'art. 115 TULPS, delle esposizioni creditizie deteriorate (NPL e UTP).

Articolo 2

(Collaborazione di personale della Guardia di Finanza con la Commissione)

1. Ai fini dell'effettuazione delle verifiche formali per il riscontro della completezza documentale delle segnalazioni pervenute mediante il sistema informatico, il personale della Guardia di Finanza in forza al Nucleo speciale Commissioni parlamentari d'inchiesta collabora con la stessa. Detto personale viene appositamente assegnato dal Corpo della Guardia di Finanza per le specifiche funzioni suindicate che restano, quindi, separate da quelle dei militari già assegnati all'Archivio della Commissione.
2. Al termine delle verifiche formali di cui al comma 1, le segnalazioni ritenute complete sono inviate alla Commissione per le valutazioni di merito delle stesse.
3. La Commissione può altresì avvalersi del personale della Guardia di Finanza di cui al comma 1, nell'ambito delle valutazioni di cui al comma 2, per l'eventuale svolgimento delle seguenti attività:
 - a) comunicazione delle segnalazioni ricevute alle autorità di vigilanza per il seguito di competenza;
 - b) trasmissione delle richieste di informazioni all'intermediario segnalato;
 - c) comunicazione ai segnalanti degli esiti delle attività istruttorie poste in essere;
 - d) trasmissione materiale di eventuali denunce di reato alla competente Procura della Repubblica.
4. Le attività di cui ai commi da 1 a 3 sono definite dal Disciplinare previsto dall'articolo 3.

Articolo 3

(Disciplinare)

1. Le modalità operative del rapporto di collaborazione oggetto del presente Protocollo sono definite con apposito Disciplinare, concordato tra le Parti.

2. Il Disciplinare definisce, in particolare, la struttura organizzativa preposta alla gestione del Sistema informatico e le relative procedure.
3. Il personale della Guardia di Finanza di cui all'articolo 2, comma 1, potrà essere autorizzato dalla Commissione a comunicare al Comando Tutela Economia e Finanza della Guardia di Finanza fatti o atti di potenziale rilievo per le relative attività istituzionali.

Articolo 4

(Trattamento dati Personali)

1. Con riguardo ai trattamenti di dati personali effettuati in attuazione del presente protocollo, le parti osservano i principi di correttezza, liceità, trasparenza e necessità dettati dal regolamento (UE) n. 2016/679, nonché le disposizioni del D.Lgs. n. 196/2003, del D.Lgs. n. 101/2018, del D.Lgs. n. 51/2018 e del d.P.R. n.15/2018.
2. A tal fine, in attuazione degli articoli 32 del citato Regolamento e 25 del D.Lgs. n. 51/2018, le Parti, che operano in qualità di titolari autonomi nell'ambito delle rispettive competenze e delle proprie finalità, adottano le misure tecniche e organizzative adeguate a garantire e dimostrare la conformità alle disposizioni di cui al comma 1, nonché il rispetto dei principi ivi previsti, anche con riguardo ai flussi normativi tra le parti.
3. I dati oggetto di scambio tra le parti devono essere adeguati , pertinenti e limitati rispetto alle finalità per le quali sono trattati e la trasmissione avviene con modalità idonee a garantire la sicurezza e la protezione dei dati, osservando i criteri individuati dal Garante per la protezione dei dati personali in materia di comunicazione di informazioni tra i soggetti pubblici.

Articolo 5

(Ratifica)

1. Il presente Protocollo e il Disciplinare di cui all'articolo 3 sono sottoposti a ratifica da parte della Commissione, secondo le disposizioni del relativo regolamento interno.

Roma, 30 giugno 2021

per la Commissione parlamentare di
inchiesta sul sistema bancario e finanziario

LA PRESIDENTE
On. Carla Ruocco

per la Guardia di Finanza

IL COMANDANTE GENERALE
Gen. C.A. Giuseppe Zafarana

**DISCIPLINARE PER LA COOPERAZIONE TRA LA COMMISSIONE
PARLAMENTARE DI INCHIESTA SUL SISTEMA BANCARIO E FINANZIARIO E
LA GUARDIA DI FINANZA**

Premessa

La **Commissione parlamentare** di inchiesta sul sistema bancario e finanziario (di seguito indicata come "la Commissione") nella persona della Presidente, On. Carla Ruocco;

La **Guardia di Finanza**, nella persona del Comandante Generale, Gen. C.A. Giuseppe Zafarana,

di seguito congiuntamente indicate come "le Parti";

CONSIDERATO che è stato realizzato un sistema informatico che consente ai cittadini, alle famiglie, alle imprese e a ogni altro soggetto o ente di segnalare alla Commissione le criticità riscontrate nei confronti di banche o intermediari non bancari (di seguito indicato come "il Sistema informatico");

CONSIDERATO che il Sistema informatico, consistente in un questionario accessibile tramite internet, consente di acquisire informazioni la cui gestione costituisce uno strumento che concorre all'esercizio dei compiti della Commissione;

VISTO il Protocollo per la cooperazione tra la Commissione parlamentare di inchiesta sul sistema bancario e finanziario e la Guardia di Finanza (di seguito indicato come "il Protocollo"), finalizzato alla gestione del Sistema informatico e delle relative segnalazioni;

VISTO, in particolare, l'articolo 1 del Protocollo, con il quale le Parti si impegnano a collaborare, nel quadro delle rispettive attribuzioni e allo scopo di realizzare forme di

scambio informativo, per lo sviluppo di strategie di contrasto e prevenzione delle violazioni riferibili alle materie e agli ambiti normativi ivi indicati;

CONVENGONO che il presente Disciplinare costituisca attuazione del rapporto di collaborazione convenuto con il Protocollo, definendo la struttura organizzativa preposta alla gestione del Sistema informatico e le relative procedure operative.

Articolo 1

(Presidenza e Ufficio di Presidenza della Commissione)

1. La Presidenza della Commissione:

- a) svolge i compiti di gestione, coordinamento e supervisione del Sistema informatico, nonché la valutazione di merito delle segnalazioni, come attribuiti dal Protocollo alla Commissione e descritti dal presente Disciplinare;
- b) ai fini di cui al comma 1, può avvalersi dei consulenti della Commissione;
- c) si avvale del personale della Guardia di Finanza per lo svolgimento delle attività di verifica formale delle segnalazioni, di cui all'articolo 2, comma 1, del Protocollo; può altresì avvalersi del medesimo personale per lo svolgimento delle ulteriori attività previste dall'articolo 2, comma 3, del Protocollo;
- d) redige i report statistici e le proposte di relazione di cui al comma 2, lettere a) e b) del presente articolo.

2. L'Ufficio di Presidenza, integrato dai rappresentanti dei Gruppi, della Commissione:

- a) valuta i report statistici sull'andamento delle segnalazioni e sulla gestione del Sistema informatico, presentati dalla Presidente con cadenza almeno bimestrale o, comunque, quando richiesto da un componente dell'Ufficio di Presidenza;
- b) approva la proposta di relazione semestrale sull'andamento della gestione delle segnalazioni, presentata dalla Presidente entro i mesi di giugno e dicembre di ogni anno, e ne dispone la comunicazione alla Commissione in seduta plenaria;
- c) delibera le iniziative conseguenti alla valutazione dei report statistici e delle relazioni semestrali, o a segnalazioni di particolare rilevanza, disponendo, in particolare, ove ritenuto opportuno o necessario, lo svolgimento di ulteriori approfondimenti o attività istruttorie in relazione a specifiche segnalazioni o gruppi di segnalazioni, lo svolgimento di audizioni, l'inoltro di richieste di chiarimenti e relazioni scritte, nonché altre richieste documentali;

- d) autorizza la comunicazione al Comando Tutela Economia e Finanza della Guardia di Finanza di eventuali fatti o atti, emersi all'esito delle valutazioni di merito di cui all'articolo 2 del Protocollo, che appaiano di potenziale rilievo per le relative attività istituzionali, ferma restando la riservatezza degli atti e documenti di cui all'articolo 5, comma 2, della legge 26 marzo 2019, n. 28;
- e) su proposta della Presidente, conferisce ad un consulente della Commissione l'incarico di svolgere le funzioni di coordinamento tecnico delle attività di cui al comma 1 del presente articolo.

Articolo 2

(Guardia di Finanza)

1. I compiti attribuiti alla Guardia di Finanza dal Protocollo e dal presente Disciplinare sono esercitati dal personale addetto alla Commissione.

Articolo 3

(Procedure operative)

1. Le procedure operative per la gestione del sistema informatico e delle relative segnalazioni sono stabilite dall'Allegato al presente Disciplinare.

Roma, 30 giugno 2021

per la Commissione parlamentare di
inchiesta sul sistema bancario e finanziario

per la Guardia di Finanza

LA PRESIDENTE
On. Carla Ruocco

IL COMANDANTE GENERALE
Gen. C.A. Giuseppe Zafarana

ALLEGATO**AL DISCIPLINARE PER LA COOPERAZIONE TRA LA COMMISSIONE
PARLAMENTARE DI INCHIESTA SUL SISTEMA BANCARIO E FINANZIARIO E LA
GUARDIA DI FINANZA****PROCEDURE OPERATIVE****A) DEFINIZIONI****1) Presidenza della Commissione**

La Presidente della Commissione ed il personale di diretta collaborazione assegnato alla sua segreteria.

2) Coordinatore

Il consulente della Commissione incaricato dello svolgimento delle funzioni di coordinamento tecnico delle attività di cui all'articolo 1, comma 1, del Disciplinare.

3) Personale della Guardia di Finanza

Il personale indicato dall'articolo 2 del Protocollo, come descritto dall'articolo 2 del Disciplinare.

4) Segnalazione

La classificazione di un documento come "segnalazione" consegue alla sussistenza dei seguenti requisiti:

a) Requisiti oggettivi:

- riguarda le materie e gli ambiti normativi come individuati dal Protocollo;
- contiene doglianze circa i danni economico-patrimoniali subiti;
- contiene segnalazioni di comportamenti, situazioni o fatti, ritenuti dall'istante illegittimi, irregolari o comunque anomali, che coinvolgono intermediari bancari e finanziari ovvero i soggetti di cui all'articolo 115 TULPS.

- riporta fatti concreti, sufficientemente circostanziati e, se del caso, documentati.

Non sono considerate segnalazioni:

- le comunicazioni che abbiano, a causa del loro contenuto condizionale o interrogativo, le caratteristiche di una “richiesta di informazioni, chiarimenti o documenti” o di un “quesito”;
- le comunicazioni che contengano richieste di risarcimento indirizzate alla Commissione, alle quali sia attribuito il valore di atti di interruzione della prescrizione;
- le comunicazioni inconferenti o comunque non connesse alle materie come individuate dal Protocollo.

b) Requisiti soggettivi

Le segnalazioni:

- possono essere trasmesse da qualsiasi soggetto (persona fisica o ente);
- non possono essere trasmesse in forma anonima, sottoscritte con nomi di fantasia o allegando documenti scaduti, non veritieri ovvero artefatti.

c) Requisiti di forma e trasmissione della segnalazione

La segnalazione è trasmessa utilizzando esclusivamente il “canale web dedicato”. Eventuali segnalazioni trasmesse con modalità diverse (e-mail, contatto telefonico, PEC, FAX, ecc.) saranno considerate irricevibili.

5) Ammissibilità delle segnalazioni

- a) È ammissibile la segnalazione che si ritiene si possa gestire in quanto contenente elementi informativi su fatti, situazioni, soggetti rilevanti.
- b) È non ammissibile la segnalazione che si ritiene non possa essere gestita in quanto priva di elementi informativi su fatti, situazioni, soggetti rilevanti o contenente elementi ritenuti al di fuori dell’ambito delle competenze individuate dall’articolo 1 del Protocollo. Parimenti non ammissibili sono le segnalazioni che riportano informazioni erranee o fuorvianti.

B) PRINCIPI GENERALI**1) Competenze**

- a) La Presidenza della Commissione formula il giudizio preliminare di ammissibilità sulle segnalazioni e gestisce la trattazione nel merito delle segnalazioni.
- b) La Presidenza della Commissione è autorizzata ad accedere ai dati dei segnalanti ed è tenuta alla rigorosa osservanza della normativa sul segreto nei casi e nelle forme previsti dalla legge istitutiva della Commissione e dal relativo Regolamento interno.
- c) Le comunicazioni indirizzate al segnalante, all'intermediario, all'Autorità di vigilanza competente, relative all'integrazione della documentazione, all'archiviazione delle segnalazioni, alla segnalazione della criticità all'intermediario interessato e alla comunicazione dell'esito dell'istruttoria eventualmente svolta, sono effettuate tramite e-mail e caselle di posta dedicate, cui hanno accesso la Presidenza della Commissione ed il personale della Guardia di Finanza.
- d) Al fine di facilitare la trattazione delle segnalazioni, il personale della Guardia di Finanza collabora con la Presidenza della Commissione, svolgendo funzioni di verifica della completezza documentale, nonché, su richiesta della Presidente della Commissione o del Coordinatore, gli ulteriori compiti indicati dall'articolo 2, comma 3, del Protocollo.

2) Oggetto delle segnalazioni

Il Sistema di segnalazioni è un sistema informatico che consente agli utenti di segnalare le eventuali criticità riscontrate nei rapporti con intermediari bancari e finanziari, nonché con i soggetti di cui all'articolo 115 TULPS, nelle materie e negli ambiti normativi individuati dall'articolo 1 del Protocollo.

In particolare, le segnalazioni possono avere ad oggetto:

- a) Moratorie¹⁵;
- b) Finanziamenti¹⁶;

¹⁵ In particolare: i) Moratorie ex DL "Cura Italia" PMI (congelamento prestiti a revoca, proroga prestiti a scadenza, sospensioni rate/canoni); ii) Moratorie ex DL "Cura Italia" Famiglie/Lavoratori autonomi e liberi professionisti (Fondo Gasparini); iii) Moratorie private promosse da Associazioni di categoria.

¹⁶ In particolare: i) Finanziamenti fino a 30.000€ (garantiti al 100% dallo Stato); ii) Finanziamenti superiori a 30.000€; iii) Finanziamenti aggiuntivi all'importo già finanziato (iter semplificato per €25.000); iv) Rinegoziazione del debito; v) Cessione del quinto; vi) Credito ai consumatori; vii) Mutuo; viii) Apertura di credito bancario; ix) Leasing; x) Altro.

c) Segnalazioni SIC, CR e CAI¹⁷.

3) **Trattamento dei dati**

Il trattamento dei dati è effettuato in conformità al GDPR e i dati personali sono conservati per un periodo massimo di cinque anni.

La titolarità delle credenziali di accesso e utilizzo del sistema è attribuita alla Presidenza della Commissione.

C) **GESTIONE DELLE SEGNALAZIONI**

Le segnalazioni sono processate e registrate dal sistema informatico e, al termine del procedimento, è possibile per l'utente visionare il riepilogo dell'operazione e effettuarne copia.

1) **Verifiche formali di completezza documentale**

- a) Il personale della Guardia di Finanza esamina la documentazione relativa alla segnalazione per verificarne la completezza formale e documentale.
- b) Il personale della Guardia di Finanza, qualora la documentazione sia priva o carente di elementi obbligatori o essenziali, invia al segnalante, entro quindici giorni lavorativi dal ricevimento della stessa, una lettera contenente la richiesta di integrare le informazioni e i documenti mancanti. Il segnalante, nei successivi quindici giorni lavorativi dal ricevimento della stessa, fornisce le informazioni richieste. In difetto, la segnalazione è archiviata dal personale della Guardia di Finanza, che ne informa il segnalante.
- c) Il personale della Guardia di Finanza archivia le segnalazioni in caso di assenza, mancata comunicazione, errata allegazione del documento di identità.
- d) Il personale della Guardia di Finanza, verificata la completezza documentale entro il termine di 15 giorni lavorativi dalla ricezione della segnalazione, fatta salva la sospensione del predetto termine in caso di eventuali attività di integrazione di informazioni o documenti, invia la segnalazione alla Presidenza della Commissione per la valutazione di merito.
- e) Il personale della Guardia di Finanza, qualora ritenga che la segnalazione esorbits in modo manifesto dagli ambiti di competenza definiti dall'articolo 1 del Protocollo,

¹⁷ In particolare: i) Sistemi privati di informazioni creditizie (SIC); ii) Centrale dei rischi (CR); iii) Centrale di allarme interbancaria (CAI); iv) Altro.

sentito il Coordinatore, invia al segnalante una comunicazione nella quale si espongono sinteticamente le competenze individuate dall'articolo 1 del Protocollo.

2) Valutazione preliminare di merito della segnalazione

- a) La Presidenza della Commissione esamina i profili di coerenza della segnalazione rispetto alle competenze individuate dall'articolo 1 del Protocollo e, quindi, valuta nel merito i contenuti della segnalazione ricevuta dal personale della Guardia di Finanza.
- b) La Presidenza della Commissione, qualora la documentazione sia valutata carente di elementi sostanziali ritenuti essenziali, predispone ed invia entro quindici giorni lavorativi dal ricevimento della stessa da parte del personale della Guardia di Finanza, una lettera contenente la richiesta di integrare gli elementi mancanti. Il segnalante, nei successivi quindici giorni lavorativi dal ricevimento della stessa, integra la segnalazione. In difetto, la segnalazione è archiviata e la Presidenza della Commissione ne dà comunicazione al segnalante.
- c) Entro 15 giorni lavorativi dalla ricezione da parte del personale della Guardia di Finanza, la Presidenza della Commissione classifica le segnalazioni come ammissibili o non ammissibili. La Presidenza della Commissione può avvalersi della collaborazione di un consulente della Commissione per la valutazione di merito di una o più segnalazioni; in tal caso, il termine di cui al primo periodo è sospeso fino al completamento dello specifico incarico da parte del consulente e, comunque, per non più di 10 giorni lavorativi.

3) Trattazione delle segnalazioni rilevanti

- a) La Presidenza della Commissione invia all'intermediario la segnalazione ricevuta dall'istante al fine di favorire, in un'ottica di leale collaborazione, la prevenzione ovvero la rapida definizione della controversia, contribuire alla corretta applicazione delle norme vigenti in materia ovvero al superamento di criticità, eventuali inadempienze e difficoltà operative.
- b) All'intermediario è assegnato un termine di 30 giorni lavorativi per comunicare le proprie osservazioni e argomentazioni in merito all'applicazione della normativa bancaria e finanziaria alla fattispecie in questione. Trattandosi di attività svolta in ottica conciliativa e di collaborazione, il termine non è perentorio, né l'intermediario ha l'obbligo di riscontrare la richiesta. Del diniego di collaborazione sarà comunque data

evidenza nei report statistici e nelle relazioni di cui all'articolo 1, comma 2, del Disciplinare.

- c) La Presidenza della Commissione, laddove ne ravvisi la necessità ovvero l'opportunità, trasmette alle competenti Autorità di Vigilanza la corrispondenza ricevuta dal segnalante e dall'intermediario, chiedendo alle stesse un riscontro, corredato da osservazioni.
- d) La Presidenza della Commissione informa il segnalante degli esiti delle attività istruttorie poste in essere.

4) Trattazione delle segnalazioni non ammissibili

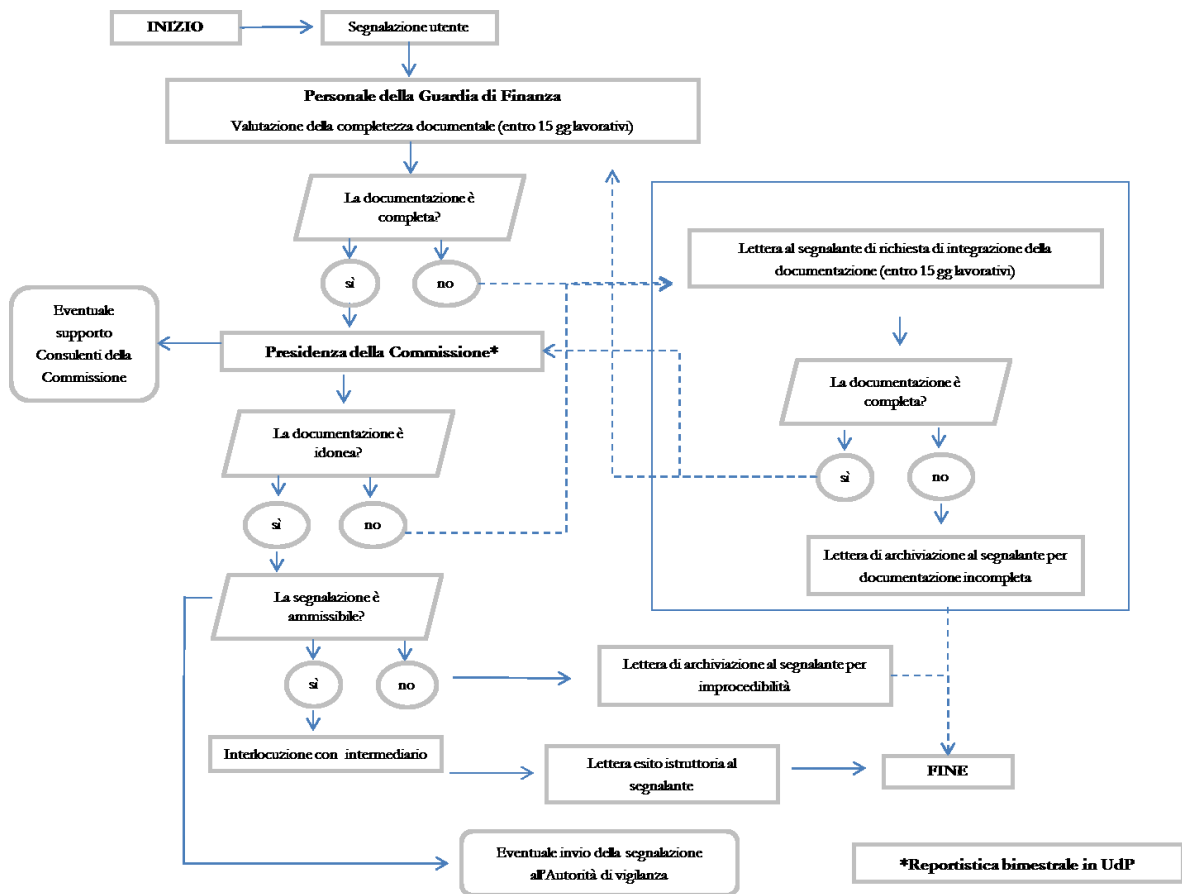
Le segnalazioni inammissibili sono archiviate. La Presidenza della Commissione ed il personale della Guardia di Finanza, nei rispettivi ambiti di competenza, informano il segnalante dell'avvenuta archiviazione.

5) Comunicazioni standardizzate

Per tutte le comunicazioni previste dal presente Allegato, indirizzate al segnalante, all'intermediario o alle Autorità di vigilanza, sono predisporre delle lettere contenenti testi standard.

D) SERVIZIO DI ASSISTENZA

Nella *homepage* del sito *internet* può essere indicato un indirizzo e-mail dedicato al quale inviare richieste di assistenza per la corretta compilazione della segnalazione nonché per segnalare eventuali problematiche di natura informatica. I tal caso, il servizio di assistenza è coordinato dalla Segretaria di Presidenza.



ALLEGATO 2

Proposta di articolato in materia di FIA Immobiliare ESG per famiglie e imprese
Art. 1. (Definizione) Ai fini della presente legge, per: 1. “Crediti in sofferenza” ed “Inadempienze probabili” si intendono i crediti garantiti da ipoteca iscritta su beni immobili ovvero derivanti da contratti di locazione finanziaria relativi a beni immobili, classificati come sofferenze o inadempienze probabili secondo le vigenti disposizioni della Banca d’Italia e del Regolamento (UE) 2015/227 del 9 gennaio 2015 (i “Crediti Deteriorati”), erogati o altrimenti vantati in qualità di cessionari da banche e intermediari finanziari iscritti nell’albo previsto dall’articolo 106 del decreto legislativo 1 settembre 1993, n. 385 ovvero acquistati da società titolari di licenza di recupero stragiudiziale dei crediti ai sensi dell’articolo 115 del Regio decreto 18 giugno 1931, n. 773 e da società veicolo SPV (“<i>Special Purpose Vehicles</i>”) costituite ai sensi della Legge 30 aprile 1999, n. 130. Nel prosieguo congiuntamente definiti anche come “Creditori” e, individualmente, come “Creditore”. 2. “Fondo immobiliare” si intende il FIA immobiliare chiuso e riservato, avente sede in Italia o in un altro Stato dell’Unione europea, disciplinato dal decreto legislativo 24 febbraio 1998 n° 58 (TUF), costituito da intermediari specializzati e vigilati ai sensi del citato decreto legislativo 24 febbraio 1998 n° 58. Sempre ai fini della presente legge, la partecipazione al Fondo immobiliare è riservata esclusivamente agli investitori professionali e alle categorie di investitori individuate dal regolamento di cui all’articolo 39 del decreto legislativo n. 58 del 1998. 3. “Net Book Value” o “Valore Netto Contabile” si intende il valore contabile del credito nominale, al netto delle svalutazioni e rettifiche effettuate, applicando il principio contabile IFRS 9 e le disposizioni della Banca Centrale Europea, le linee guida EBA e le disposizioni di vigilanza della Banca d’Italia.
Art. 2. (Soggetti e forma degli accordi) 1. I Creditori, al fine di rendere più efficiente ed efficace la gestione dei Crediti Deteriorati, possono far ricorso all’intervento di Fondi immobiliari.

Proposta di articolato in materia di FIA Immobiliare ESG per famiglie e imprese

2. I Fondi immobiliari, autonomamente ovvero su richiesta dei Creditori o dei debitori, possono formulare una proposta di acquisto degli immobili posti a garanzia dei Crediti Deteriorati affinché il relativo prezzo di vendita sia destinato al pagamento di tali esposizioni ("l'Operazione"). La proposta ricevuta dal Fondo immobiliare da parte del Creditore o Debitore non interrompe le azioni esecutive in corso, fino ad accordo raggiunto tra le parti.
3. Gli accordi tra i Creditori, i debitori dei Crediti Deteriorati e i Fondi immobiliari necessari alla conclusione dell'Operazione sono negoziati secondo buona fede e stipulati con la mediazione civile o con atto pubblico.

Art. 3.

(Agevolazioni fiscali in favore dei Fondi immobiliari e requisiti per la loro fruizione)

1. Al Fondo Immobiliare che partecipa all'Operazione sono concesse le agevolazioni fiscali previste dal comma 2 purché il regolamento di gestione e l'accordo conclusivo dell'Operazione ("l'Accordo") prevedano e soddisfino tutte le seguenti condizioni:
 - a) il prezzo di vendita dell'immobile posto a garanzia del Credito Deteriorato (il "Prezzo di Vendita") non sia superiore, in via alternativa, a uno dei seguenti valori:
 - i) al valore contabile netto di iscrizione del Credito Deteriorato nel bilancio del Creditore, aumentato delle sole spese connesse alla realizzazione dell'Operazione;
 - ii) al prezzo di cessione del credito, ove il Credito Deteriorato sia stato acquistato dal Creditore in virtù di un contratto di cessione di crediti, o se maggiore, il valore di iscrizione dello stesso nel bilancio del cessionario, aumentato delle sole spese connesse alla realizzazione dell'Operazione;
 - iii) al valore di vendita in sede d'asta dell'immobile determinato sulla base di una relazione di stima predisposta in data non anteriore a novanta giorni rispetto alla data di stipulazione dell'Accordo da un esperto indipendente in possesso dei requisiti previsti dall'articolo 17 del decreto del Ministro del Tesoro 24 maggio 1999, n. 228 e nominato congiuntamente dal Creditore e dal Fondo Immobiliare. Tale valutazione è, inoltre, conforme alle Linee Guida ABI per la valutazione degli immobili in garanzia delle esposizioni creditizie in sede di realizzo tramite procedura esecutiva ed è aumentata delle sole spese connesse alla realizzazione dell'Operazione;

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- iv) al valore indicato nella C.T.U. di stima disposta dal giudice nell'ambito del procedimento esecutivo ovvero alla base d'asta dell'incanto che si sarebbe dovuto tenere in una data immediatamente successiva a quella dell'Accordo;
- b) il Prezzo di Vendita sia destinato al pagamento dei creditori del debitore nel rispetto della gerarchia dei creditori e delle norme che regolano in generale le cause legittime di prelazione;
- c) il valore massimo del Net Book Value del credito deteriorato, di cui l'immobile rappresenta la garanzia collaterale, sia di euro 500.000 quando il debitore è una persona fisica e di euro 5.000.000 quando il debitore è una persona giuridica;
- d) l'Accordo ed il Regolamento del Fondo Immobiliare prevedano l'assunzione dell'obbligo da parte del Fondo immobiliare di locare l'immobile al medesimo debitore per un periodo non inferiore a dieci anni, a fronte del pagamento di un canone di locazione, definito su base annua, non superiore al 5% del Prezzo di Vendita. Il debitore ha la facoltà di comunicare al Fondo immobiliare il mancato interesse alla locazione dell'immobile oggetto dell'Operazione;
- e) l'Accordo ed il Regolamento del Fondo Immobiliare prevedano la facoltà per il debitore, nel periodo decennale di cui alla lettera d), di riacquistare in qualsiasi momento l'immobile versando un corrispettivo pari al Prezzo di Vendita maggiorato del 10%, fermo restando che il valore di riacquisto dell'immobile così determinato dovrà restare invariato per l'intero periodo decennale di cui alla lettera d);
- f) la commissione di gestione applicata dal Fondo immobiliare sia inferiore all'1% del patrimonio netto dello stesso;
- g) l'Accordo ed il Regolamento del Fondo immobiliare prevedano il divieto, per il Fondo immobiliare, di alienare o di locare l'immobile a terzi fino a quando il debitore originario corrisponda regolarmente il canone di locazione stabilito ai sensi della precedente lettera d);
- h) l'Accordo ed il Regolamento del Fondo immobiliare ed il contratto di locazione stipulato ai sensi della lettera d) prevedano la facoltà per il Fondo immobiliare di risolvere il contratto di locazione in caso di mancato pagamento di complessivi tre canoni di locazione consecutivi entro trenta giorni dalla scadenza di ciascuno di essi;
- i) l'Accordo ed il Regolamento del Fondo Immobiliare prevedano, in caso di mancato esercizio da parte del debitore del diritto di riacquisto entro il termine del periodo decennale di locazione, la facoltà per il Fondo immobiliare di vendere o di locare a terzi

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l'immobile a condizioni di mercato e, in ogni caso, senza l'osservanza delle condizioni previste dal presente articolo;

- j) l'Accordo ed il Regolamento del Fondo Immobiliare ed il contratto di locazione stipulato ai sensi della lettera d) prevedano il divieto, per il debitore originario, di sublocare a terzi l'immobile, pena la risoluzione del contratto di locazione.

2. Il Fondo immobiliare che rispetta le condizioni di cui al comma 1 beneficia delle seguenti agevolazioni fiscali:

- a) fermo restando il regime fiscale che si applica ai fondi immobiliari in via generale, le imposte indirette a carico del Fondo immobiliare, fino a quando è proprietario dell'immobile, sono le medesime che si applicherebbero al debitore e proprietario originario dell'immobile oggetto dell'Operazione;
- b) gli accordi transattivi definiti nel contesto delle Operazioni sono esenti da imposte di bollo e di registro;
- c) i redditi prodotti dalla detenzione delle quote dei Fondi immobiliari, anche se cedute a soggetti diversi dagli originari partecipanti, sono esenti dall'imposta sul reddito fino alla data di scadenza dei Fondi immobiliari;
- d) la cancellazione delle ipoteche iscritte sugli immobili di cui al presente articolo è esente da tassazione e i relativi oneri, per la parte residua, concorrono alla quantificazione del Prezzo di Vendita dell'immobile al Fondo immobiliare ai sensi dell'articolo 3, comma 1. Tali condizioni si applicano anche nel caso di acquisto dell'immobile da parte del Fondo Immobiliare in sede di asta o di proposta di acquisto in una procedura concorsuale, previo accordo preventivo con il debitore.

3. Con provvedimento del direttore dell'Agenzia delle entrate, da adottare entro centoventi giorni dalla data di entrata in vigore della presente legge, sono definite le modalità di attuazione delle disposizioni dei commi 1 e 2.

Art. 4.

(Effetti contabili per il debitore e per il creditore)

1. Il Creditore, a seguito dell'avvenuto pagamento da parte del Fondo immobiliare del prezzo di vendita dell'immobile posto a garanzia del Credito Deteriorato, come determinato dall'articolo 3, comma 1, lettera a), comunica senza indugio al debitore, a mezzo PEC ovvero a mezzo lettera raccomandata, l'intervenuta estinzione del Credito Deteriorato oggetto dell'Operazione. L'estinzione non opera in relazione: (i) agli eventuali

Proposta di articolato in materia di FIA Immobiliare ESG per famiglie e imprese

ulteriori crediti, diversi dai Crediti Deteriorati oggetto dell'Operazione, vantati dal Creditore nei confronti del relativo debitore; e (ii) alle garanzie reali e/o personali che assistono tali eventuali e ulteriori crediti.

2. La comunicazione di estinzione inviata dal Creditore è documento valido per il debitore ai fini della cancellazione dal proprio bilancio della passività relativa al Credito Deteriorato oggetto dell'Operazione. La sopravvenienza attiva nel bilancio dell'impresa è soggetta a un'imposta, sostitutiva dell'imposta sul reddito, nella misura dello 0,5 per cento dell'importo del debito cancellato dal bilancio dell'impresa.

3. Il Creditore che subisca perdite sul credito netto, come risultante dalle scritture contabili alla data dell'ultima registrazione, rispetto al prezzo di vendita dell'immobile posto a garanzia del Credito Deteriorato, come determinato dall'articolo 3, comma 1, lettera a), può utilizzare tali perdite come credito di imposta suddiviso nei successivi 5 anni d'imposta.

4. Con provvedimento del direttore dell'Agenzia delle entrate, da adottare entro centoventi giorni dalla data di entrata in vigore della presente legge, sono definite le modalità di attuazione del presente articolo.

Art. 5.

(Effetti)

1. L'intervenuta estinzione del Credito Deteriorato oggetto dell'Operazione comporta l'obbligo per il Creditore di provvedere tempestivamente, ai sensi di legge e dei regolamenti applicabili, alle opportune rettifiche segnaletiche presso la Centrale dei Rischi della Banca d'Italia, i sistemi privati di informazioni creditizie e la Centrale di allarme interbancaria della Banca d'Italia, sostenendone tutti gli oneri. Tali rettifiche devono essere eseguite entro sessanta giorni dall'invio della comunicazione di estinzione di cui al precedente articolo 4, comma 1, salva la conservazione di una mera annotazione contabile separata.

2. Con provvedimento della Banca d'Italia, da adottare entro centoventi giorni dalla data di entrata in vigore della presente legge, sono definite le modalità di attuazione del comma 1.

Art. 6

(Norme sanzionatorie e adeguamento della normativa settoriale)

1. In caso di inosservanza da parte dei Creditori delle disposizioni della presente legge, agli stessi si applica la sanzione amministrativa pecuniaria da 20.000 euro a 500.000 euro.

Proposta di articolato in materia di FIA Immobiliare ESG per famiglie e imprese

Detta sanzione è irrogata dalla Banca d'Italia secondo i criteri e le modalità stabiliti con provvedimento della medesima, da adottare entro centoventi giorni dalla data di entrata in vigore della presente legge.

2. Entro lo stesso termine stabilito dal comma 1, la Banca d'Italia:

- a) adegua alle disposizioni della presente legge il regolamento sulla gestione collettiva del risparmio adottato ai sensi dell'articolo 6, comma 1, lettera c), del decreto legislativo 24 febbraio 1998, n. 58; e
- b) definisce con apposito provvedimento le norme di condotta alle quali devono attenersi i Creditori e i Fondi immobiliari nelle negoziazioni con il debitore e gli schemi essenziali degli Accordi.

3. Con il provvedimento di cui alla lettera b) del comma precedente, la Banca d'Italia determina anche le particolari previsioni contrattuali che le parti debbono includere negli Accordi affinché questi ultimi non ricadano nell'ambito di applicazione del divieto di patti commissori previsto dagli articoli 1963 e 2744 del codice civile prevedendo altresì che il regolamento del Fondo rispetti le previsioni di cui al principio contabile IFRS 10 in materia di controllo di fatto, della disciplina sulle parti correlate nonchè in materia di conflitti di interesse.



Manual on Government Deficit and Debt – Implementation of ESA 2010

2022 edition



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of ESA 2010**

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PREFACE

In the context of the Excessive Deficit Procedure (EDP)⁽¹⁾, originally defined by the Maastricht Treaty (Article 104) and currently defined in the 2012 consolidated version of the Treaty on the Functioning of the European Union (TFEU) (Article 126), Eurostat, from 1994 onwards, has the mission to ensure a proper application of this conceptual reference framework, in order to obtain reliable and comparable statistics across the European Union.

The core of this conceptual framework is the European system of national and regional accounts in the European Union (referred to as ESA 2010) published in May 2013, enforceable (by Regulation (EU) No 549/2013) from 1 September 2014. ESA 2010 replaced the previous ESA 95 methodological framework. It is compatible with the System of National Accounts (SNA 2008), a worldwide applied national accounts methodological framework. Eurostat publishes the Manual on Government Deficit and Debt — ESA Implementation (MGDD) complementing or interpreting the general rules of ESA 2010.

The MGDD, first published in 1999, provides guidance on the appropriate statistical treatment of specific government operations as well clarifications on the issues raised in the European Union regarding government finance statistics. It is an indispensable complement to ESA 2010 and an important tool for statisticians and specialists dealing with public finance issues. It also helps to better understand the methodology applied to government finance data and compilation of the Statistics for the EDP.

This new edition of the MGDD focuses on some methodological aspects which have been closely considered since 2019 in the context of a specific Eurostat Task Force on EDP methodological issues and EDP Statistics Working Group (EDPS WG), composed by experts in EDP statistics, Government Finance Statistics and National Accounts from Eurostat, EU Member States and other institutions. Some of the chapters were prepared in response to the newly emerged events and developments, such as the national and supranational initiatives and measures implemented in the wake of the COVID-19 pandemics.

The following parts were amended in substance or newly included compared to the previous version of the MGDD:

In Part 1, Delimitation of the general government sector, section 1.6.2 Special purpose entities (SPE), was amended.

In Part 2, Time of recording, chapters 2.2 Recording of taxes and social contributions, 2.4 Recording of interest and 2.5 Military expenditure, were amended. A new section 2.6.4 Statistical recording of the EU Recovery and Resilience Facility (RRF) associated flows, was added.

In Part 3, General government and entities controlled by government, chapter 3.6 Impact on government accounts of transfer of pension obligations, was amended. A new chapter 3.5 Capital injections into foreign direct investment, was added.

In Part 4, Relations between government and the financial sector, chapters 4.5 Government interventions to support financial institutions: financial bailouts and defeasance and 4.7 Capital increases in multilateral development banks, were amended. New chapters 4.6 Securitisation of non-performing loans with government guarantees and 4.8 Recording of loans not expected to be fully repaid, were added.

In Part 6, Leases, concessions and PPPs, sub-section 6.3.1.5 Concession and chapter 6.5 Recording of EU Emission Trading System (ETS) allowances/permits, were amended. A new sub-section 6.3.1.6 Energy Performance Contracts, was added.

In Part 7, Debt related transactions and guarantees, chapter 7.4 Government guarantees was amended.

⁽¹⁾ See statistical aspects in Council Regulation (EC) No 479/2009, as amended by Council Regulation (EU) No 679/2010 and Commission Regulation (EU) No 220/2014.

Finally, in Part 8, Measurement of general government debt, chapter 8.1 Overview, sub-sections 8.2.2.1 Coverage of government debt for EDP purposes and 8.2.2.2 Valuation of government debt for EDP purposes, were amended. A new chapter 8.5 On-lending from supranational entities, was added.

In addition, editorial changes (without a change in substance) have been introduced in the Manual.

For the statistical recording of Public-Private Partnerships (PPPs) and Energy Performance Contracts (EPCs), please also refer to the dedicated guides available at <https://ec.europa.eu/eurostat/web/government-finance-statistics/methodology/guidance-on-accounting-rules>.

This 2022 edition was prepared under the responsibility of Luca Ascoli, Rasa Jurkoniene, Philippe de Rougemont and Olga Leszczyńska-Luberek from Eurostat Unit D-1 (Excessive deficit procedure, methodology and GFS)⁽²⁾ in cooperation with experts of the Task Force on EDP methodological issues and EDPS WG and other colleagues from Directorate D, who made a significant contribution to the present version of the MGDD. In this context special thanks go to Martim Assuncao, Daniela Comini, Galjinka Dominic, Thomas Forster, Vassil Georgiev, Daniela Ilavská, Floris Jansen, Gedmine Joniune, Didier Lebrun, Lourdes Prado, Vaida Savickaite and Laura Wahrig.

January 2023

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INTRODUCTION: SCOPE AND DEFINITIONS

The Excessive Deficit Procedure (EDP)

The Maastricht Treaty signed in 1992 foresaw the creation of the Euro. It organised the way in which multilateral fiscal surveillance would be conducted within the European Union. The provisions regarding the EDP are currently defined in the 2012 consolidated version of the Treaty on the Functioning of the European Union (TFEU).

The surveillance is based on the EDP which sets out schedules and deadlines for the Council, following reports from and on the basis of opinions by the Commission and the Economic and Financial Committee, on how to judge whether an excessive deficit exists in an EU Member State.

The TFEU obliges EU Member States to comply with budgetary discipline by respecting two criteria: a deficit to GDP ratio and a debt to GDP ratio not exceeding the reference values of 3 % and 60 % respectively, as defined in the Protocol⁽³⁾ on the EDP annexed to the TFEU.

Council Regulation (EC) No 479/2009, as amended by Council Regulation (EU) No 679/2010 and Commission Regulation (EU) No 220/2014, requires that EU Member States report EDP-related data to Eurostat twice per year at end of March and at the end of September. The data are reported in harmonised tables — the EDP Notification Tables. These tables are designed specifically to provide a consistent framework, with a link to national budgetary aggregates and between the government net lending/borrowing (B.9) and changes in government debt. EDP data should be fully consistent with GFS data supplied through the ESA 2010 Transmission Programme.

The latest EDP Notification Tables for each EU Member State as well as the historical Notification Tables, including a brief explanation of their contents and further information on Government Finance Statistics, can be found on the Eurostat EDP/GFS dedicated web page <https://ec.europa.eu/eurostat/web/government-finance-statistics/overview>.

Statistical Methodology

The reference values for deficit and debt are based on concepts defined in the European System of Accounts (ESA 2010). The surplus (+)/deficit (–) of the general government sector is in national accounts referred to as the net lending (+)/borrowing (–) (B.9). The government (EDP) debt is defined as the total consolidated gross debt at face value in the following categories of government liabilities (defined in ESA 2010): currency and deposits, debt securities and loans.

ESA 2010 is derived from, and broadly consistent with the worldwide manual for national accounts (2008 SNA). ESA 2010 is a legislative text in a user-friendly form. Since ESA 2010 is also a conceptual framework, it has been necessary for Eurostat to supplement it with additional guidance in the form of this Manual on Government Deficit and Debt, as well as Eurostat's decisions, guidance notes, clarifications and bilateral advice to EU Member States.

Eurostat, statisticians from the EU Member States and other interested parties meet several times per year in the *Excessive Deficit Procedure Statistics Working Group* to discuss methodological and practical issues relating to government statistics. The guidance in this Manual has benefited greatly from the expertise provided by this Working Group and, in addition, from the work of the dedicated *Task Force on EDP methodological issues*.

Key concepts for measuring government deficit and debt

ESA 2010 is a system for producing macro-economic statistics. As such, it records the economic reality of transactions rather than their legal form. This can involve looking through complex financial operations

⁽³⁾ Protocol (No 12) on the Excessive Deficit Procedure annexed to the Treaty on the Functioning of the European Union (ex. Protocol 19 annexed to the Maastricht Treaty).

to understand who bears the financial risks and who benefits from the rewards, irrespective of how the contracts have been constructed. In the context of measuring government deficit and debt, this need to consider the economic reality affects such matters as follows.

- The classification of units: where a unit is included in the government sector or not, as government deficit and debt are primarily affected by units classified to the government sector. This is determined by considering whether or not a unit is controlled by government and whether it is a non-market or market (financed mainly by its own sales) unit. Privately controlled market institutional units are not included in the government sector.
- The timing of transactions: ESA 2010 records transactions on an accrual basis, i.e., when the economic activity takes place, rather than when the cash is paid. The difference between cash and accrual amounts may be large in a single year, and therefore significant for the government deficit/surplus.
- The nature of a transaction: ESA 2010 distinguishes non-financial transactions such as consumption, wages and salary, subsidies or grants to cover losses, which directly affect the government deficit; and financial transactions as, e.g., the acquisition of financial assets or the repayment of debts, which do not.

Structure of the Manual

The following terms are used when referring to text within the Manual, based on the hierarchical structure shown in the table of contents on the next page.

- 1. Part
- 1.1 Chapter
- 1.1.1 Section
- 1.1.1.1 Sub-section

Each of the eight parts starts with an overview and ends with keywords and references. The links to legal texts are shown in the Annex.

LIST OF ABBREVIATIONS AND ACRONYMS

2008 SNA – System of National Accounts 2008
AAUs – Assigned Amount Units
CDS – Credit default swap
BPM6 – Sixth Edition of the IMF's Balance of Payments and International Investment Position Manual
DTAs – Deferred tax assets
EC – European Commission
ECB – European Central Bank
EDP – Excessive Deficit Procedure
EDPS WG – Excessive Deficit Procedure Statistics Working Group
EFC – Economic and Financial Committee
EFSF – European Financial Stability Facility
EFSM – European Financial Stability Mechanism
EIB – European Investment Bank
EMU – Economic and Monetary Union
ESA 2010 – European System of Accounts 2010
ESIFs – European Structural & Investment Funds
ESM – European Stability Mechanism
ESCB – European System of Central Banks
ETS – Emission Trading System
EU – European Union
Eurostat – Statistical Office of the European Communities
GDP – Gross Domestic Product
GFCF – Gross fixed capital formation (net acquisitions of fixed assets)
GFS – Government Finance Statistics
GNI – Gross National Income
IFRS – International Financial Reporting Standards
IMF – International Monetary Fund
IPSAS – International Public Sector Accounting Standards
IRS – Interest rate swap
ISWGNA – Inter-secretariat WG on National Accounts (UN, EC, IMF, OECD, WB)
LSCB – Loan Specific Cash Buffer
MGDD – Manual on Government Deficit and Debt – ESA implementation
NCB – National central bank
NPI – Non-profit institution
OECD – Organisation for the Economic Cooperation and Development
PAYE – A pay-as-you-earn tax
R&D – Research and Development
RoE – Return on equity
RoW – the rest of the world
RRF – EU Recovery and Resilience Facility
SPE – Special purpose entity
SURE – Support to Mitigate Unemployment Risk in an Emergency
TFEU – Treaty on the Functioning of the EU
UN – United Nations
VAT – Value added tax
WB – World Bank

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1

Delimitation of the general government sector

1.1. Overview

1. Government deficit and debt statistics report on the activity of the general government sector (S.13) as defined in the European System of National and Regional Accounts (ESA 2010). ESA 2010 paragraph 2.111 gives a general definition of the sector's main features. According to it, this sector *consists of institutional units, which are non-market producers whose output is intended for individual and collective consumption, and are financed by compulsory payments made by units belonging to other sectors, and institutional units principally engaged in the redistribution of national income and wealth*. This does not exclude that, for a minor part, government units may have other kinds of resources, such as property income and sales of goods and services, but the key distinctive point is the existence of the capacity to levy.⁽⁴⁾ In this regard, ESA 2010 paragraph 20.02 insists also on 'powers to raise taxes and other compulsory levies and to pass laws affecting the behaviour of economic units. ESA 2010 paragraph 20.06 adds *government units are legal entities established by political process, which have executive legislative, judicial authority over other institutional units within a given area*. However, this definition fits totally only for the units, which are designed as 'primary' units but ESA 2010 paragraph 20.10 mentions that other kind of entities may be established in order to carry out some specific activities. If they meet the criteria of institutional units (see below), they must be considered separate government units.
2. The qualification of institutional units as non-market producers, i.e., units providing all or most of their output (goods and services) free of charge or at prices that are not 'economically significant' (ESA 2010 paragraph 20.19), is fundamental for the proper delimitation of the general government sector. Therefore, the general government sector excludes all government-controlled units (as defined on the basis of different criteria, see ESA 2010 paragraph 20.307) that are considered as market producers ('public corporations'). The public sector consists of all general government units and public corporations outside government (ESA 2010 paragraph 20.303).
3. Under ESA, the general government sector is divided into four subsectors: central, state and local governments and social security funds. It may also be relevant, notably for practical reporting purpose, like in ESA 2010 (see chapter 20 Government accounts), to make a distinction between the 'core' or 'primary' units (such as 'budgetary central government' or 'regional/local authorities' budgets') and the other government entities with separate legal identities and various degree of autonomy. They are part of the given government subsector as controlled by the core units (and frequently mostly financed by transfers from them). The four sub-sectors are:
 - a) Central government (S.1311), which includes all administrative departments of the country (such as ministries, boards, authorities, etc.) globally considered a single unit⁽⁵⁾ and other central bodies whose competence (comprising legislative, judicial, taxation and executive powers) extends normally

⁽⁴⁾ ESA 2010 chapter 2 (Units and groupings of units) specifies in addition that such units may be engaged in other types of non-market production which covers cases of sales of goods and services on 'pseudo-markets', but such that the corresponding income does not cover the production costs.

⁽⁵⁾ Notably because they operate collectively, dependent on a single budget, under the responsibility of the Ministry of Finance, which in addition to 'controlling' most of the revenue, allocates expenditure limits to 'line ministries/spending departments' that generally do not have autonomous public accounts.

over the whole economic territory (as defined in ESA 2010 paragraphs 2.05 and 2.06).⁽⁶⁾ Non-profit institutions (NPIs), which are non-market producers and are controlled by central government with a competence on the whole economic territory are part of this subsector. The central government subsector is divided into two components, 'budgetary central government' and 'other central government bodies' (ESA 2010 paragraph 20.62);

- b) State government (S.1312), which consists of separate institutional units exercising some of the functions of government at a geographical level below that of central government and above that of local government. These government units have a full and exclusive competence (in the areas specified in constitution or fundamental law) on a state or regional territory. Normally the existence of significant legislative power is an element used to identify this subsector, which may also include other dependent bodies and state government controlled non-market NPIs;
 - c) Local government (S.1313), which consists of public administration whose competence (frequently small from legislative and judicial points of view), extends to only a local part of the economic territory. ESA 2010 paragraph 20.65 specifies that *statistics for local government cover a wide variety of government units* and also mentions that different local governments may overlap in the same geographical area, based on their respective functional responsibilities. A large number of non-market producers, of various statutes, may also be included along with numerous local government-controlled non-market NPIs⁽⁷⁾;
 - d) Social security funds (S.1314), which includes all central, state and local institutional units whose principal activity is to provide social benefits⁽⁸⁾ and which fulfil each of the following two criteria, as set out in ESA paragraph 2.117:
 - by law or by regulation certain groups of the population are obliged to participate in the scheme or to pay contributions; and
 - 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.
4. Statistical authorities frequently encounter units for which the sector classification is not straightforward and represent borderline cases. This part gives guidance on how to resolve such difficult cases with the aim to ensure full comparability across the European Union.
5. The government net lending/borrowing (B.9) (as well as government debt⁽⁹⁾) is primarily affected by units classified to the government sector, thus the proper sector classification of units matters greatly.

⁽⁶⁾ Except for the administration of social security funds which have their own subsector.

⁽⁷⁾ ESA 2010 paragraph 20.64 stresses that there should be a distinction between units that are fully dependent on central government but act locally and units part of the state and local subsectors that are not fully dependent on central government (for instance they have their own funding, discretion on expenditure, ability to appoint officers, etc.).

⁽⁸⁾ S.1314 is only relevant if 'an institutional unit is organized separately from the other activities of government units, holds its assets and liabilities separately, and engages in financial transactions on its own account', see ESA 2010 paragraph 20.12.

⁽⁹⁾ See Part 8 Measurement of general government debt.

1.2. Criteria for classifying units to the general government sector

1.2.1. The definition of the general government sector

1. The general government (S.13) sector includes all institutional units which are non-market producers controlled by government, whose output is intended for individual and collective consumption, and are financed by compulsory payments made by units belonging to other sectors; it also includes institutional units principally engaged in the redistribution of national income and wealth, which is an activity mainly carried out by government. It includes:
 - a) general government entities which exist through a legal process to have judicial authority over other units and administer and finance a group of activities, principally providing non-market goods and services, intended for the benefit of the community;⁽¹⁰⁾
 - b) non-market public producers, i.e., corporations and quasi-corporations controlled by government if their output is mainly non-market;
 - c) non-profit institutions recognised as independent legal entities which are non-market producers and are controlled by general government;
 - d) pension funds, recognised as separate institutional units ('autonomous') where there is a legal obligation to contribute, and where government manages the funds with respect of the settlement or approval of contributions and benefits.⁽¹¹⁾
2. The general government sector comprises four subsectors, as mentioned above, although the state government subsector applies only in a minority of the EU Member States. It excludes market public producers (public corporations, quasi-corporations or, by virtue of special legislation, entities recognised as independent legal entities), which are classified in the non-financial corporations (S.11) or financial corporation (S.12) sectors.
3. In order to decide whether an entity should be classified to the general government, it is necessary to determine whether:
 - it is an institutional unit,
 - it is a government-controlled institutional unit,
 - it is a non-market institutional unit.

These criteria are discussed in detail below including the qualitative criteria as well as some specific government-controlled entities for which market/non-market test is not relevant.

1.2.2. Concept of an institutional unit

4. ESA 2010 paragraph 2.12 sets out the rules according to which an entity can be considered an institutional unit:

An institutional unit is an economic entity characterised by decision-making autonomy in the exercise of its principal function. A resident unit is regarded as constituting an institutional unit in the economic territory where it has its centre of predominant economic interest if it has decision-making autonomy and either keeps a complete set of accounts, or is able to compile a complete set of accounts.

⁽¹⁰⁾ For sector classification of some particular units controlled by government, see chapter 1.6 Specific public entities.

⁽¹¹⁾ This is the definition of SSFs in ESA 2010 paragraph 2.117 (c). ESA 2010 paragraph 4.89 (a) also specifies that social security schemes are 'covering the entire community, or large sections of the community, that are imposed, controlled and financed by government units'. This means that resources of such schemes take the form of compulsory levies (social contributions or taxes) and that government is obliged to cover any gap between the resources and the benefits, including using its power to change some parameters.

To have autonomy of decision in respect of its principal function, an entity must be:

- a) *entitled to own goods and assets on its own right; it will be able to exchange the ownership of goods and assets in transactions with other institutional units;*
 - b) *able to take economic decisions and engage in economic activities for which it is responsible and accountable at law;*
 - c) *able to incur liabilities on its own behalf, to take on other obligations or further commitments and to enter into contracts;*
 - d) *able to draw up a complete set of accounts, comprised of accounting records covering all its transactions carried out during the accounting period, as well as a balance sheet of assets and liabilities.⁽¹²⁾*
5. ESA 2010 paragraph 2.13 recognises certain specific cases where an entity does not have the characteristics of an institutional unit and provides the following principles:
- if it is not possible to draw up a complete set of accounts for the entity, then the entity is not recognised as an institutional unit and its partial accounts are integrated with the accounts of the institutional unit that controls it;
 - if an entity, for which a complete set of accounts can be drawn up, has no autonomy of decision in the exercise of its principal function, then the entity is not recognised as an institutional unit and it is instead part of the unit that controls it;
 - individual entities being part of a group structure and for which a complete set of accounts can be drawn up, are considered institutional units even if they have partially surrendered their autonomy of decision to the central body (head office) responsible for the general direction of the group; the head office itself is also deemed to be an institutional unit distinct from the units which it controls (see chapter 1.6 on Specific public entities);
 - entities for which a complete set of accounts can be drawn up that do not have a separate legal status but have an economic and financial behaviour comparable to that of corporations (i.e., market producers) that is different from that of their owner(s), are deemed to have autonomy of decision and are classified as quasi-corporations in the financial or non-financial corporation sectors.
6. ESA 2010 also specifically mentions artificial subsidiaries and ancillary units and provides advice that such units do not meet the requirements to be recognised as institutional units since they are deemed considered to lack decision-making autonomy (regardless of the fact that they may be legal entities). This points to the fact that the term 'economic decision' is not to be understood in its legal dimension. Rather, 'the ability to take economic decisions and engage in economic activities' requires a genuine ability to actually take meaningful decisions and does not merely characterise the fact that legal capacity would by itself imply such an ability. This is, essentially, the application of the substance-over-form principle, which is an inherent principle in ESA 2010.
7. It must be stressed that the ESA 2010 sector classification criteria and the definition of an institutional unit are **not** based on the legal form of an entity. For some entities it may be concluded that they do not have the required autonomy of decision, which is not automatically evidenced by their legal status.
8. In this respect, an entity basically under auto-pilot, because for example it exists solely to implement contracts (often through subcontracting) that are agreed by other entities, or an entity that provides its output to a 'unique client'⁽¹³⁾, passively responding to its needs, is generally not deemed to be an institutional unit since it does not meet the ESA 2010 criteria concerning autonomy of decision. In particular:
- a) many resident special purpose vehicles (SPVs) or special purpose entities (SPEs) are basically auto-pilot devices (i.e., the rights, obligations and activities of such entities are mostly predefined and limited either by contractual or legal provisions)⁽¹⁴⁾ and as such are not institutional units. When such

⁽¹²⁾ It is possible to compile both flows accounts for the unit, showing net income and cash flow statements, and balance sheets showing its patrimonial situation. ESA 2010 specifies that the publication of such accounts is not a condition for being considered as an institutional unit. Only their existence, or potential existence, matters. This condition is not formally required for households.

⁽¹³⁾ The term 'unique client' means that the entity provides its output either to a single customer (frequently the 'parent' company — in some cases where legally separate it is the economic equivalent of this) or to other units in the same group of units (see ESA 2010 paragraph 20.24) such as a group of related entities (see ESA 2010 paragraph 2.13e).

⁽¹⁴⁾ In some extreme cases, the activities/decisions of the entities are fully determined at the time of the creation of the entity.

entities are non-residents, they are deemed institutional units by convention, although many of their operations may need to be rearranged when they are created or sponsored by government;

- b) generally speaking, an institutional unit requires employees or other staff, without which decision making is unlikely to be possible. However, entities with no staff but with an active 'board' (e.g., management board, board of directors or executive board) may be considered institutional units in some circumstances. In some cases, 'notional units' are established for accounting purposes even if they do not have decision-making autonomy, for example, when an entity is engaged in different activities and it is not possible to form separate institutional units for these activities. In such cases, the usual control indicators shall nonetheless be applicable;
 - c) entities with legal status that service a unique client have generally no autonomy of decision and are not recognised as institutional units in ESA 2010. They may be ancillary units or artificial subsidiaries. For example, an IT department, even if it is legally incorporated, will be considered as lacking autonomy of decision unless it is demonstrated that it sells a significant part of its output outside the parent or the group. Where one legal entity hosts all the staff while another legal entity hosts all the fixed assets of the group, neither can be considered to be separate institutional units because each cannot be deemed to have a production without the other. This situation may develop into something different if it can be shown that each are providing significant services outside the group (as employment-outsourcing company and asset-renting company to think of suitable examples). For the same reason, an incorporated factory that provides all its output to another subsidiary of the group also lacks autonomy of decision.
9. Decision-making autonomy does not have to encompass strategic business decisions like the sale and purchase of company divisions, relocations or the closure of establishments or undertakings etc. Such decisions will normally be taken by the parent entity, owning the attribute of control, without ruling out *a priori* the decision-making autonomy. At the same time, operational autonomy in some respects, such as ability to assign staff to a given task etc., may not amount to sufficient autonomy of decision in the exercise of the principal function if certain key parameters are outside the hands of the management board. This is why a factory in a group is not an institutional unit when it is incorporated. The factory director does not control the key elements that are the attribute of a (market) producer — such as fixing the price and/or the volume of the supply — and has merely the sole function as being as efficient as possible in producing the output specified by the group.
10. Ultimately, a parent is able to set (generally limit) the purpose (object) of its subsidiary. If it sets these parameters so narrowly that all decision-making autonomy is effectively surrendered, then the subsidiary loses its institutional unit status (see the case of SPEs). However, decision-making autonomy can also be constrained by the parent through interference⁽¹⁵⁾ in the activities of the subsidiary. Therefore, in order to maintain the sufficient degree of decision-making autonomy to qualify as an institutional unit, under ESA 2010, the narrower the purpose of the subsidiary is, the narrower the degree of parent interference is deemed acceptable.⁽¹⁶⁾
11. In general, the entire activity of a legal unit is classified to one sector. Exceptions are, for instance:
- when part of a non-market legal unit can be recognised as a market quasi-corporation (which is then classified outside the government sector);
 - when a notional unit needs to be created, such as in the case of some market regulatory agencies (see chapter 1.4), or
 - joint ventures, with two joint venture parties each owning 50 % of the shares of the joint venture company (see chapter 1.8);
 - when transactions and stocks need to be rearranged (see sub-section 1.2.4.5) for instance, when a public entity (notably a public financial institution) is managing special purpose funds on behalf of government;
 - certain types of pension funds (see chapter 1.3).

⁽¹⁵⁾ Both the scope and frequency of the interference should be taken into consideration when judging its restrictive effect on decision-making autonomy.

⁽¹⁶⁾ This rule should be understood in a broad sense, i.e., 'parent' can mean any entity or group of entities that alone or jointly may have the power to interfere.

12. For certain public legal units, it can be very difficult to judge whether the management board takes decisions autonomously from government. This is particularly the case for entities whose management board is made up, either in its entirety or, at the very least, in its majority by general government officials (i.e., those that belong to the legislative, administrative, and judicial part of the government)⁽¹⁷⁾. This peculiarity is frequently encountered with financial entities which are mainly providing financial services to its parent or other entities of the parent (group entities).
13. In the specific case of captive financial corporations, the issue is whether such entities have a sufficient degree of independence from their parent regarding the corporate decision-making process. Independence may be demonstrated by exercising some substantive control over its assets and liabilities to the extent of carrying the risks and reaping the rewards associated with assets and liabilities (see ESA 2010 paragraph 2.22). A lack of decision-making autonomy in respect of their principal function is assumed when there are government constraints both on the asset and liability side of the entity (see section 1.6.6 of this Manual).
14. In the case of entities where the majority of the management board is staffed by government officials, it is even more likely that they are operating within a narrowly-defined (public-service) remit. In fact, it is almost impossible to determine whether the management board decides autonomously from the government by acting like a normal shareholder (aiming at, for example, maximising profits), or whether it acts in the interests of the public administration policy requirements (for example, aiming to provide an optimal supply of a specific public service at low prices or prices which are not economically significant).
15. The appointment of the majority of the management board with government officials can be, in the case of financial entities⁽¹⁸⁾, an indicator that the entity does not have decision-making autonomy 'in the exercise of its principal function' and if this is the case, the entity should be classified in general government.
16. The ESA 2010 provisions regarding autonomy of decision and control (see section 1.2.1) provide a two-step procedure: firstly, to assess whether an entity has sufficient decision-making autonomy in the exercise of its principal function and, secondly, to determine who actually controls the entity. This follows the basic approach of national accounts to start with the definition and identification of units, which allows the measurement of the production in the respective territory, and then, as a second step, to group units with a similar behaviour to institutional sectors (see ESA 2010 chapter 2).
17. ESA 2010 may be viewed as materially diverging from the 2008 SNA (see paragraph 2.16 and paragraph 4.69) that specifically indicates that autonomy of decision is not required for institutional units and that legal status is generally sufficient to meet the institutional unit criteria.
18. Nonetheless, national accounts compilers commonly equate the existence of a legal entity with existence of an institutional unit. This is because business registers are a major data source input, and such registers are usually constructed from the legal basis of entities. Such a pragmatic approach is acceptable in view of the large number of entities to be analysed as, in general, legal entities will typically comply with the aforementioned requirements. They have the legal capacity to enter into contracts, incur and repay debts, acquire economic and/or legal ownership over assets, appear in court in their own right and be responsible for their activities. In most cases, it is also likely that their management board enjoy a sufficient degree of autonomy to make their own day-to-day operational decisions rather than being dependent on the decisions of others such as the parent. For the government sector accounts, the use of business registers as a data source is less of a consideration than it is for the other sectors of the economy. In addition, due to the specific importance of the EDP procedure, the requirements of ESA 2010 paragraph 2.12 have to be examined particularly carefully for the government sector.
19. For certain public legal units, the analyses of the control criteria may bring new findings to light, substantially questioning the decision-making autonomy of the legal entity. In such a case, it is recommended that compilers should reassess its decision-making autonomy.

⁽¹⁷⁾ A member of the management board is not considered a general government official if it has neither an existing employment relationship with general government nor a political mandate.

⁽¹⁸⁾ In the case of nonfinancial entities, the outcome of the 50% criterion would provide sufficient evidence that the entity undertakes market activity at prices that are economically significant and that the entity can make economic decisions independently of the units to which the government officials in the management board belong (see ESA 2010 paragraph 2.12).

1.2.3. Concept of a government-controlled institutional unit

1.2.3.1. GOVERNMENT-CONTROLLED ENTITIES RECOGNISED AS INSTITUTIONAL UNITS

20. A government-controlled institutional unit (otherwise known as a public producer or public sector unit) is an institutional unit, which is **directly** or **indirectly** controlled by resident general government units or other public producers. All other domestic producers are private producers.
21. All public producers are part of the 'public sector', as stated in ESA 2010 paragraph 20.303: *The public sector consists of general government and public corporations*. The term corporation must be understood in an economic rather than a legal sense, since it includes entities that do not have the legal status of a corporation but are market producers. In addition, non-profit institutions (i.e., those entities that are not allowed to distribute profits to their owners) which are controlled by government but are also recognised as market producers (see below) are part of the public sector (but not part of the general government sector) unless they lack autonomy of decision.
22. Control of an institutional unit by government (sometimes by a core government unit, as mentioned in ESA 2010 paragraphs 20.08–20.09 and 20.29, or collectively by public units as described in ESA 2010 paragraph 20.309⁽¹⁹⁾) determines whether or not this institutional unit is part of the public sector. The inclusion of a public sector unit in the general government sector (S.13) or not, ultimately depends on the criteria described in the section 1.2.4 Concept of a market or a non-market institutional unit.
23. The concept of government control in national accounts is the same for both non-financial and financial corporations. The control of non-profit institutions and educational units is addressed separately further below.
24. In ESA 2010 paragraph 20.18, control over an entity is defined as 'the ability to determine the general policy or programme of that entity'. Since we are considering economic accounts, the general policy or programme of an entity is usually linked with the key financial and operational policies of the concerned entity. ESA 2010 paragraph 20.309c provides some examples for these key factors which are the remuneration of staff and the pay and business strategy. Control of general policy is quite different to control of day-to-day operational tasks. Control of the general policy does not require interventions in the day-to-day business of the entity, even though certain interdependencies between general policy and the day-to-day business exist. However, control of the day-to-day business is different, to the extent that individual measures, tasks or activities are exactly specified and require explicit approval. In the latter case, the constraints are of a general nature and not limited to unique or at least exceptional issues, and accordingly the unit is deemed not to be an institutional unit because it has not decision-making autonomy. What is relevant is that the entity (or entities) that control another entity has the power to determine the general policies of the concerned entity.
25. Usually, an entity operates within the framework, the general policy or programme, that has been set for it and once that is established there is usually no need for its owner (or controlling entity) to intervene and correct the economic operations. The absence of such apparent interventions does not entail that control over the entity has not been established. Rather the concept of control is not related to actual interventions as such, but to the extent that power (or rights) to determine the general policy can be exercised, whether or not that power is actually used.
26. ESA 2010 refers to 'influence' in assessing whether an entity is controlled or not. As the instructions at ESA 2010 paragraph 20.309 emerged from the joint discussions of national and business accountants, the business terminology of 'dominant influence' as powers that could constitute control even also appears in ESA 2010 paragraph 20.309f.
27. ESA 2010 paragraph 20.309 sets out a list of indicators that allows the assessment about whether rights of influence are sufficient to judge whether control of a unit exists. Some of the indicators are considered as sufficient by themselves to establish control over a unit, while others are not individually sufficient but can provide evidence of control when considered collectively alongside other indicators.

⁽¹⁹⁾ In practical terms, in those cases where no single entity controls another, and if joint control can be ruled out, the private or public nature of the latter shall be decided by whether private or public entities controls the entity as an aggregate. After deciding whether it is public or private and whether it satisfies the additional necessary criteria to be classified inside government (e.g. qualifies as a non-market producer), it should then be classified into a sub-sector depending upon its activity (e.g. social security) or its geographical remit (level of government from national to local). In the unlikely event that such an entity may not qualify as an institutional unit, it should be consolidated with any of the units that belong to the sub-sector into which it would have been classified based on the previous paragraph.

28. According to ESA 2010 paragraph 20.310 each of the following three control indicators are individually sufficient to determine government control:

1) Rights to appoint, remove, approve, or veto a majority of officers, board of directors, etc.

The rights may be decided by different public units (whether classified either in the same sector/sub-sectors or not). The direct appointment and dismissal of key personnel is the most direct way to intervene and determine the general policy of an entity. Having the rights to remove appointees is also important as they indicate that if the appointees do not behave in the way that government wants then they may be removed or not reappointed.

2) Rights to appoint, veto or remove a majority of appointments for key committees (or sub-committees) of the entity having a decisive role on key factors of its general policy

The issue of veto powers, under the criteria mentioned above, requires specific attention. It is useful to recall that a veto gives the right to oppose some decisions, or to impose a decision, that is covered by the veto power. From a general perspective, the existence of veto powers by government or the public sector is sufficient by itself to conclude that the unit is controlled in cases where public units exclusively hold such rights. However, there may be cases where private units also hold similar veto powers for similar decisions, or cases where unanimity is required. The number of veto powers held by private units is not relevant; instead, the potential impact of them is to be considered.

Control of a unit normally means that the controlling units have, by themselves, a 'final last say' regarding the main important decisions. For instance, public control is typically determined if the veto powers by public sector entities cover the more important decisions than the veto powers held by others. As an example, government could have the main veto powers over decision-making such as dissolving the unit, merging it with another unit, modifying its status or significantly changing its activity. In other cases, government and others may each have the same level of veto powers, meaning that either party could block a decision. However, in this case, control would be also assessed by other additional criteria, notably the nature of the unit where government holds the power of veto. For example, if the unit in question obtains its resources predominantly from public units, such as under sale contracts and other arrangements (such as PPPs), government or another public unit would be deemed to have a greater influence (*de facto*) on the unit and therefore the unit would be classified to the public sector.⁽²⁰⁾

In some cases, the decision about majority appointment rights of the entire board of directors, or officers, can be misleading. It is entirely possible that the most important decisions about the general policy are not taken by the management board but instead by key committees. In such cases, it is more appropriate to additionally consider the appointment/veto rights over these committees rather than just the management board itself. ESA 2010 paragraph 20.309c gives some examples of key factors of the general policy that may be delegated to subcommittees: remuneration of senior staff, pay and business strategy.

3) Ownership of the majority of the voting interest

Ownership should be considered in aggregate (jointly) when voting rights are held by more than one public unit, notably when no one reaches a majority. In counting voting rights, both direct and indirect ownership should be considered. For example, consider a corporation which is 30 %-owned by central government, 40 %-owned by a public corporation which is itself 75 %-central government owned and 25 % privately-owned, with the remaining 30 % by a private corporation (which is 10 %-owned by government). In such a situation (often referred to as mixed group situation), the 30 % direct voting rights and the 40 % indirect voting rights held by the public corporation are added so that the public sector has effectively 70 % voting rights and hence control (see figure 1). The calculation of control (direct or indirect), here 70 %, is not the same as the calculation of ownership (direct or indirect), here 63 %. It can even happen that public control is not established while direct and indirect ownership is above 50 %.

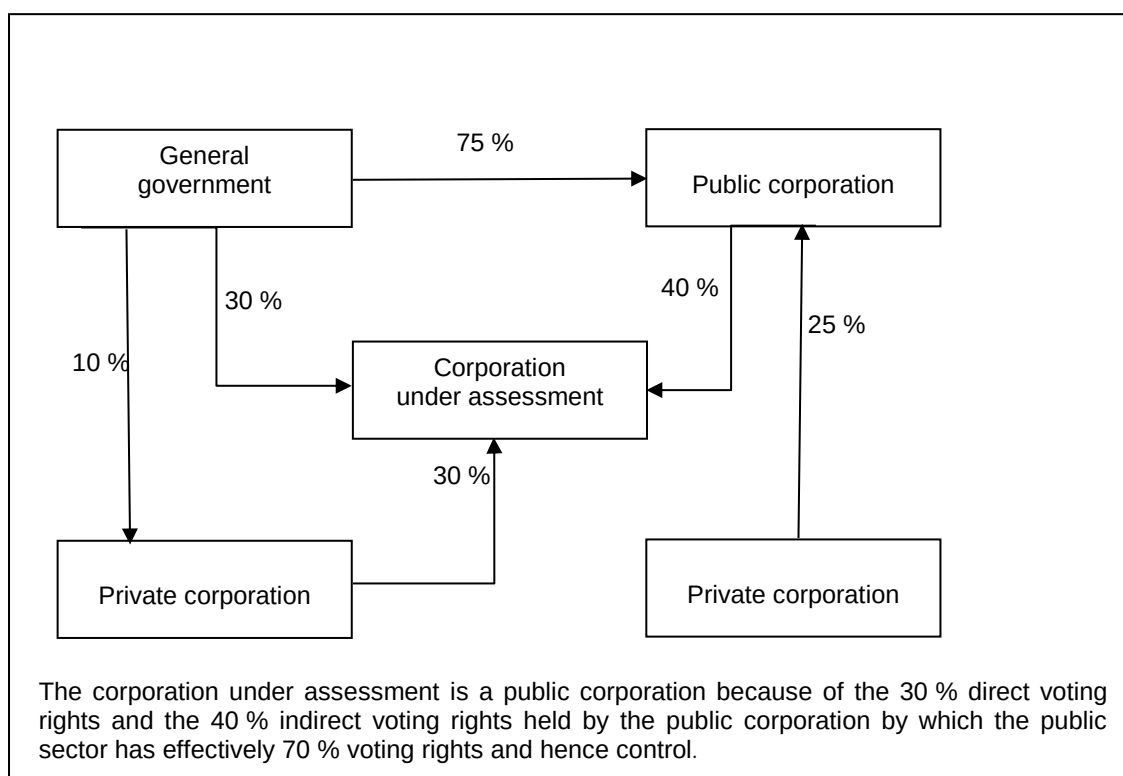
The existence of multiple voting rights attached to some shares must also be closely considered. As long as government can effectively control — directly or indirectly — more than 50 % of the voting rights, the unit is part of the public sector. In most cases, a corporation with less than 50 % public

⁽²⁰⁾ If at the end of the analysis, it is concluded that control is equally shared between public and private units, the ESA rules on joint ventures (see chapter 1.8) apply: the unit should be classified in the government sector if it is non-market and in the non-financial or financial corporation sector if it is market or considered a financial intermediary.

sector ownership would not be part of the public sector based on ownership criterion, but it could nevertheless still be part of the public sector if other indicators of control are also present.

There could be very marginal cases where public sector units hold an arithmetic minority of voting rights, but the other shareholders holdings concern much smaller amounts (i.e., the private shareholding comprises many small shareholders). In this case, it is very unlikely that a coalition of private shareholders, gathering at least 50 % + 1 rights, could oppose the public shareholding bloc and, thus, secure control over the corporation. In theory, the unit should be deemed to be private controlled under ESA 2010 since it is the power to control that matters, not whether it is actually exercised. However, in exceptional cases, a pragmatic approach could be relevant, for example assessing observed voting turnouts, which may show that public sector effectively has control through repeated majority of actual votes cast as a very large number of private shareholders might not vote or not vote in a unified manner. In such cases, which should be in any case analysed on a case-by-case basis, the unit could still be considered a part of the public sector.

Figure 1: Assessment of control on the basis of voting rights



29. Having analysed the outcome of the aforementioned 'sufficient-by-themselves' criteria, no sufficient evidence of government control is identified then other criteria (4–9 below) also have to be considered, as ESA 2010 paragraph 20.310 further specifies that *a number of separate indicators may collectively indicate control*. This is done on a case-by-case approach. As a result, a unit for which none of the criteria were sufficient by themselves to determine public sector control, could still be included in the public sector (even if majority owned by the private sector) by examining the totality of all the indicators.

4) Rights to appoint, veto or remove key personnel

This refers to the role of determining the general policy through a small number of 'influential members of the board', such as the chief executive officers and the chairperson. This will indicate control only if such key personnel are entitled to a degree of power (under various ways) which, *de facto*, gives them a decisive say in the major decisions related to the entity.

Government may have also less direct possibilities to exercise control over an entity via its role in the nomination, selection and election process established for key staff. Government may establish procedures that would create the impression that it is only to a minor or even negligible part involved in the appointment, removal or approval of key personnel of the concerned entity. However, when examined in closer detail, it becomes evident that government *de facto* essentially determines or, at the very least, is substantially involved in the appointments.

An example of an arrangement that is equivalent to the direct appointment of key personnel is when government delegates the right to elect the members of the supervisory board or the board of directors to a number of predefined private bodies (often-private non-profit institutions) and only government can replace the electing entities. While it may seem that government does not provide significant input into the appointment process, since the private bodies make the decisions and there is no possibility of rejecting them, if the delegated entities make decisions that government does not approve, a real possibility exists that they may be replaced by others. A decisive factor here is that government must *de facto* have the genuine right to appoint the key personnel; otherwise, it would not have been able to delegate that right. In such circumstances, there is at least some influence by government although this may not necessarily establish public control by itself.

5) Rights under special shares and options

'Golden shares' are sometimes created in the context of privatisation. Although, in principle, it is not any more possible for such arrangement to be granted in the EU on an ongoing basis, nevertheless the issue of legacy golden shares remain. If such shares cover powers over only some very specific contingent events and are restricted in scope and/or time, which is usually the case, they should then be considered as contingent 'reserve powers' and not considered as an indicator of control.

However, if these powers *de facto* influence the general policy of the unit, then they should be taken into account in the classification decision. If the contingent powers are actually utilised it is expected that this will be enough in itself to trigger immediate reclassification as a public unit, or even earlier, if it becomes evident that the government/public sector will, in the future, exert a decisive control on the strategy of the unit and on other key decisions.

The existence of shares purchase options, which would mean that during their lifetime a government/public unit would meet the first series of control criteria, could have the same effect. This is because the threat of the exercise of the option could give to the government/public sector a decisive influence on the strategy of the controlled unit and on other key decisions.

6) Rights to control via contractual agreements

This usually refers to the exclusive use by public sector entities of goods and services produced by an entity, which may indicate scope for there to be a dominant influence over the entity via contractual clauses. The contractual arrangements themselves would need to be investigated. This may also call into question the market nature of the unit in the case of output that is purchased by government (see sub-section 1.2.4.2 Specific cases of producers). If the entity is restricted from entering into sales with non-public units, then this is a clear indicator of public control.

7) Rights to control from agreements/permission to borrow

To indicate control, government/public sector should play a predominant role in setting the conditions of the borrowing (for example, maturity, rates, forms, location, counterpart, collaterals, etc.) and/or exert a narrow control of the use of the funds by the entity (for instance for a given acquisition of equipment or shares in other corporations).

8) Control via excessive regulation

In some industries (in particular those that involve public utilities), a tight regime regulation would strongly reduce the room for manoeuvre of the entities regarding the determination of their general policy. Generally, the typical situation would be an entity to set up to carry out a specific activity (through delegation by government) that cannot decide to change or complement it. Thus, this criterion should apply when there are restrictive conditions to exit or to diversify the activities of the unit.

9) Others

ESA 2010 paragraph 20.309i specifies that control may be obtained from provisions in the statute of an entity where public sector approval is required for some important decisions such as: the allocation of its profit; the development or the abandonment of activities; merger and acquisition operations; and dissolving and changing statutes. Some provisions of this kind may indicate control. ESA 2010 paragraph 20.309i also mentions that if an entity is fully, or close to fully, financed by the public sector then control via the funding stream may be restrictive enough to dictate the general policy. This is particularly relevant when the entity has no access (*de jure* or *de facto*) to other

financing sources: if the entity lost its public sector contracts, then it may not be able to replace them with other sales and so would be forced to close.

The ESA 2010 notion of control is different from the notion of independence. Many government entities operate with legal independence from the cabinet/council of ministers or core government unit. The fact that public control is determined is a statistical classification issue and should not be interpreted as if the institutional unit was not fully independent. For example, the fact that central banks are by convention part of the public sector does not preclude them being independent entities (see ESA 2010 paragraph 20.311). In the same manner, parliament, the constitutional courts and others are clearly part of the government function whilst being independent from government ministers.

1.2.3.2. GOVERNMENT-CONTROLLED ENTITIES NOT RECOGNIZED AS INSTITUTIONAL UNITS

30. In ESA 2010, the analysis of control is mainly related to institutional units in order to identify whether they are controlled by government or not, and thus as a step in determining the sector classification of institutional units (see ESA 2010 Diagram 20.1).
31. Control is, however, also of importance for entities that do not pass the institutional unit test since they do not have autonomy of decision regarding their principal function. ESA 2010 paragraph 2.13 requires that such entities are classified as a part of the institutional units that control them. This often arises when an institutional unit is composed of a number of legal units or when a main unit (such as core government) comprises a number of ministries or departments within their own set of accounts.
32. Separate entities without legal status can be created that are aggregated to a main unit and, although in these situations the parent entity is often obvious, there may be occasionally a genuine doubt about this. For example, an SPE created by a public corporation may in fact be under the direct control of government. It would be the case where, for example, the SPE in question cannot receive emergency funding from the public corporation but instead must appeal directly to government.
33. In some extreme cases, the notion of control of an entity may correspond with the notion of control of an asset, which is particularly the case when the entity exists simply to own, and possibly finance, an asset. Another example is an auto-pilot arrangement where the entity is *de facto* just a collection of assets and/or liabilities. ESA 2010 occasionally refers explicitly to control of an asset, for example, in the context of captive financial institutions (see ESA 2010 paragraph 2.22).
34. Control of an entity, irrespective of whether the entity is an institutional unit or not, usually in fact concerns the control of people who are taking decisions for the concerned entity, while the idea of controlling an asset itself is altogether different. Control of an asset implies the ability to direct the use of the asset and realise the benefits associated with the asset. This can be demonstrated, among other things, through exposure to both risks and rewards. In practice, further indicators of control might include, for example, the existence of a legal title to the asset, the physical possession of the asset, or the ability to sell the asset, or the right to receive the payments linked to the asset. The risks and rewards concept used in national accounts and the notion of control of an asset are similar in that both look at the economic ownership of an asset rather than the legal ownership.
35. When the assessment of the risks and rewards is not conclusive, for example, when an entity has neither transferred nor retained most of the risks and rewards, the notion of control of an asset acts as a useful complement the general risk and rewards concept, in order to determine on which balance sheet an asset is to be recognised.

Control of non-profit institutions

36. The notion of control is also applicable to non-profit institutions, which might have different features and different importance (in terms of size, effect on net lending/borrowing (B.9) and debt, etc.) among EU Member States and may have an activity to the benefit of different kinds of agents.
37. Similarly to the case of corporations (and equivalent entities), control of an NPI covers the ability to determine the general policy or programme of the NPI. However, here, there is a significant difference between market and non-market NPIs, determined according to the criteria below in sub-section 1.2.4.3 on the quantitative market/non-market test.

38. NPIs controlled by government and considered market producers (for instance because they sell services to corporations or to households, at economically significant prices) are classified in the sector non-financial corporations (S.11). On the contrary, ESA 2010 paragraph 20.13 states that 'NPIs that are non-market producers and are controlled by government units are units of the general government sector'. Concerning control of NPIs, ESA 2010 paragraph 20.15 indicates that the following five criteria should be considered⁽²¹⁾:

a) The appointment of officers

The government may have the right to appoint the officers managing the NPI under either the NPI's constitution, its articles of association or other enabling instrument.

b) Other provisions of the enabling instrument

On this point, 2008 SNA paragraph 4.92 is more explicit than ESA 2010. Notably, if statutorily government already determines the functions, objectives and operating provisions, the appointment of officers would become of secondary importance. However, control by government would result if government would have the right to revoke staff and to approve budget or financial arrangements. An NPI would be considered to be controlled by government if approval of government would be required to change the statute of the entity (or the type of activity carried out by the entity), or if the entity could not dissolve itself or terminate any relation with government without such approval.

c) Contractual agreements

Some NPIs may enter into contracts with government units in order to perform tasks defined by government, acting as a specialised operator, notably in social areas. 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.

d) Degree of financing

Although ESA 2010 paragraph 20.15 does not specify exactly which should be the degree of financing, 2008 SNA paragraph 4.92 indicates that government may control an NPI that is mainly financed by government. 'Mainly' must be as at least over 50 %. The control would be assessed if such financing would be permanent (and not on temporary basis) and/or if it would result in a narrow monitoring of the use of the funds and a strong influence from government on the general policy of the entity.

e) Risk exposure

This indicator is not developed in ESA 2010 but 2008 SNA paragraph 4.92 evokes government 'exposed to all, or a large proportion of, the financial risks associated with an NPI's activities.' In this case, the arrangement would constitute government control. Financial risk refers to ex-ante commitments taken by government on some liabilities incurred by the NPI, on possible disruptions of other sources of revenue apart from those received from government, etc.

39. ESA 2010 specifies that, in some cases, one indicator can be sufficient to establish control, but also that it is most frequently necessary to consider collectively a number of indicators and a case-by-case analysis may be frequently needed. In any case, a decisive point is the ability of the NPI to determine by itself or not its general policy.

Control of educational units

40. Many educational units (schools, colleges, vocational training, universities, etc.) are non-profit institutions and are generally largely funded by government. They represent a practical example for applying the ESA 2010 control criteria mentioned in the paragraph above. Most of them are financed by government funds above 50 %, since other sources, such as fees paid by parents or students or gifts, appear frequently as a minority source of funding. In some countries, government (at different levels) may take over directly some expenditure, such as teachers' salaries or building maintenance.

⁽²¹⁾ In ESA 2010 (like in 2008 SNA) these criteria are applied only to the case of a controlling government unit. However, they may also be relevant for market producers NPIs controlled by public units not part of the government sector.

41. As a matter of principle, the mere financing of the educational unit should not be, as such, a determining criterion in classifying government-supported educational units. It is likely that government exerts some influence on the use of its funds. However, if government influence only takes the form of the respect of standards (concerning teaching programmes, the quality of the education, material conditions, teachers' competences, etc.), which are imposed on any educational unit independent of its statute, then it is not control. It is also frequent that different kinds of schools (government units, private NPIs, etc.) are part of the education system. Thus, the application of similar standards or norms, to a large number of units, seems to be an important feature in the case of such NPIs.
42. This must be distinguished from direct involvement of government in significant decisions related to the school. By application of the general rule, if government appoints the managers (or approves their appointment or holds a revocation right) or gives instructions related to the everyday management of the school, thus leaving restricted decision-making capacity to educational unit's officers, the unit should be classified in the general government sector. Under these conditions, government is deemed to control such a unit if its approval is needed to create new classes or to specialise in some teaching areas, make significant expenditure in gross fixed capital formation (which could be mainly financed by government), borrow, recruit teachers, or if it can prevent the educational unit from ending its relationship with government.

1.2.4. Concept of a market or non-market institutional unit

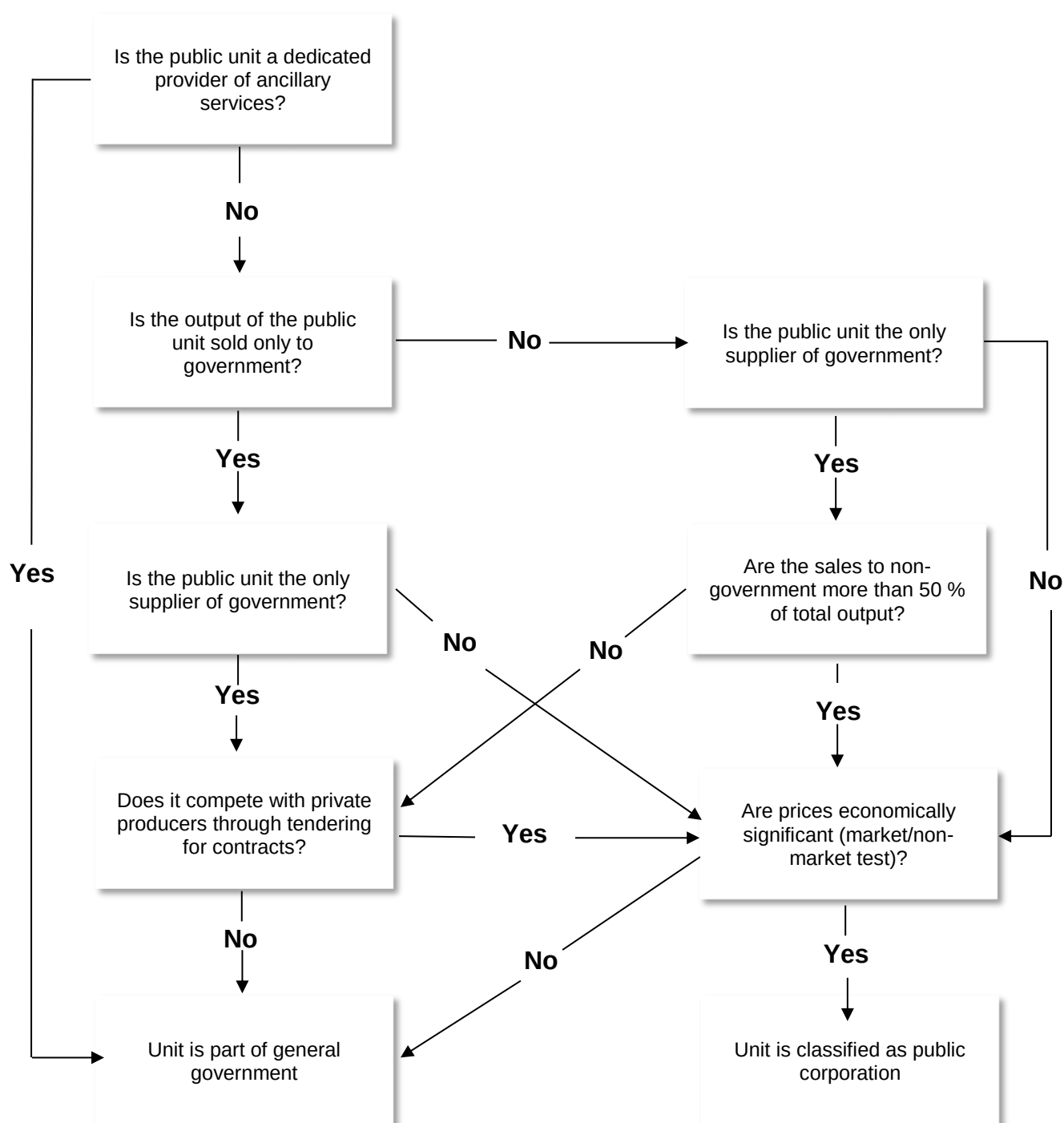
43. When the principal function of a public institutional unit is the redistribution of national income and wealth, it is to be classified, by definition, in the general government sector.
44. When the principal function of a public (government-controlled) institutional unit is financial intermediation activity, as defined in ESA 2010 paragraph 2.57, it must be classified outside the general government sector in the financial corporations' sector, i.e., the market/non-market test (see below) is not relevant to apply (ESA 2010 paragraph 20.34). However, it must be checked whether the entity is effectively carrying out financial intermediation (managing/acquiring financial assets and incurring liabilities on its own account) and/or auxiliary financial activities (see ESA 2010 paragraphs 2.95 and 2.96). If this is not the case, the unit would be classified in the general government sector.
45. In other cases, it is necessary to check whether the unit is market or non-market: in other words, if the unit finances its operational activity by selling goods and services at economically significant prices then it is a market producer. Market producers are classified to the corporations' sectors.
46. The general government sector includes only public non-market institutional units. When these non-market institutional units have some residual market activity, it is the case of secondary local kind-of-activity units (KAUs) which are not recognised as quasi-corporations and must be included in the general government sector (see ESA 2010 paragraph 2.144 and following).

1.2.4.1. THE CONCEPT OF 'ECONOMICALLY SIGNIFICANT PRICES'

47. ESA 2010 states that the distinction between market and non-market producers depends on whether or not prices charged for sales of goods and services are economically significant (see ESA 2010 paragraph 20.19 and following paragraphs). A price is said to be economically significant *when it has a substantial influence on the amounts of products the producers are willing to supply and on the amounts of products that the purchasers wish to acquire*. The capacity of producers and consumers to react to economic 'signals' is fundamental in assessing market behaviour. Conversely, a price is said to be not economically significant when it has little or no influence at all, on how much the producer is prepared to supply and have only a minor influence on the quantities demanded. It is thus a price that does not determine the observed levels of supply or demand.
48. Market producers sell their output at economically significant prices. Non-market producers are typically providing their output either free of charge or at prices that are not economically significant. A public market producer will act as a business unit subject to market forces such that it might have to close down, or be restructured, if it cannot survive by selling at those prices without the permanent support of government.⁽²²⁾

⁽²²⁾ From a general point of view, normally a private market producer cannot incur losses in the long run as this would mean a negative return on equity (with possible exceptions for some entities within a group). The case of a public market producer is different in the sense that in many cases one can assume that government would provide support for public policy reasons. Usually, the return on equity requirements would not apply in similar conditions for the private sector whereas, frequently, events triggering bankruptcy (such as negative equity) are not applicable to these entities. In terms of public finance, any government support to public market producers has an impact on government net

Decision tree



lending/borrowing (B.9) and possibly its debt. However, generally, government would decide corrective measures or restructuring plans when the burden becomes too heavy on public finances.

1.2.4.2. SPECIFIC CASES OF PRODUCERS

49. Independently of the results from the quantitative market/non-market test described in the sub-section 1.2.4.3, there may be cases needing specific analysis where a producer 'by its nature' is not considered a market producer. These would be relevant for a public producer. In the case of private producers (those not controlled by public sector as described above), the price is, by definition, deemed to be economically significant because of profit constraints.⁽²³⁾ On the contrary, public enterprises (mainly corporations) may be set up for public policy purposes, with various degrees of public support, which may influence the price of their output. Their market/non-market nature has to be considered through both a quantitative test below, which shows the conditions in which they can undertake market activity, and qualitative criteria, to establish whether they are undertaking market activity. The quantitative test result should not be considered the only relevant criterion determining the classification of the entity. It is also necessary to examine the specific nature of their activity and the specific links they have with government. It is assumed that the relevant information should be available for statisticians.⁽²⁴⁾

a) The public producer is not an institutional unit

The distinction between market/non-market makes sense only if the producer is an institutional unit and is not a dedicated provider of ancillary services to government, as defined in ESA 2010 paragraph 3.12. If this is the case, the entity is servicing almost exclusively government it is considered an integral part of the government unit it depends on. There are also cases where a unit controlled by government has to be classified within general government sector, so that the quantitative test is not appropriate (see below in chapter 1.6 Specific public entities).

b) The public producer sells its output both to government and other customers (corporations, households, non-residents)

If the public producer is the monopoly (only) supplier of its goods and services in the economy, it is presumed to be a market producer if more than 50 % of its output is sold to private units. In the case that more than 50 % of its output is sold to government units but government purchases the goods and services under the same conditions as other private units, i.e., under fully commercial terms (at very similar prices for the same goods or services), then government is deemed to be acting as a 'price taker' in economic analysis and the selling unit is treated as a market producer. In this case, it is likely that the producer would react to market signals.

If there are several suppliers (i.e., also private producers in the national economy or from abroad) and government buys more than 50 % of the output of the producer but there are several competing producers, the public producer is considered a market producer if the contracting process with government takes place in an actual open and fair competition (for instance through open tender procedures). It is also likely that the producer would react to market signals, whereas consumers would have a free to choose on basis of price and/or other aspects.

c) The public producer sells its output only to general government sector

In this case, the government sector is in a dominant position as the only buyer (a monopsony). This situation requires a close examination by national accountants as government has in general a significant influence on the level of the prices (it is *de facto* the 'price maker').

If the public producer is the only supplier to government for this kind of good or service, possibly for technical and economic reasons (such as scale of economy), it will normally be considered a non-market producer. The exception is the case of a clear and open competition with private producers. This would notably be evidenced by an open and fair tendering procedure for the initial selection on commercial terms. In addition, if such competition clearly exists,⁽²⁵⁾ the specific position of the public producer is not definitive where the contract is renewed after a given period with a competitive process.⁽²⁶⁾

⁽²³⁾ In some cases, this criterion must be considered at the level of the private group because of non-market-based transfer pricing between entities of the group.

⁽²⁴⁾ This means that, when assessing the coverage of the production costs by sales, it is important to identify the share of government units amongst the buyers, where relevant. There are also cases when it is well known that the production is exclusively (or almost) dedicated to government's use.

⁽²⁵⁾ This competition must be assessed not only by the presence of different firms on the domestic market but also by the degree of openness of the market to new producers.

⁽²⁶⁾ There are EU-wide rules concerning public procurements based on open competition.

50. Whatever the cases above, if this public producer is not the only supplier to government and is acting in real and open competition with other producers its market/non-market nature must always be checked through the quantitative test.

1.2.4.3. THE QUANTITATIVE MARKET/NON-MARKET TEST

51. To be considered as market, a producer must sell its products at an economically significant price. This, in practice, would be assessed through whether the sales of the producer cover a majority of the production costs. In distinguishing market and other non-market producers a quantitative market/non-market test (50 % criterion) is used, which compares 'sales' and 'production costs'.

52. **'Sales'** of goods and services according to ESA 2010 paragraph 20.30 and ESA 2010 paragraph 3.33 correspond to sales receipts plus all payments made by general government or the Institutions of the EU⁽²⁷⁾ and granted to any kind of producer engaged in the same type of activity. Other revenue sources, such as holding gains, dividends, investment grants or other capital transfers, must not be considered as 'sales'. Sales do not take into account taxes on products (D.21) and also own-account production is not considered as part of sales for this test.

In order to be assimilated to 'sales', these payments (to which any producer of the same activity should be entitled) must be directly linked to the volume or value of the output, and not only because the producer is engaged in such production. For example, in respect of public transport, government could choose to pay subsidies based on the number of tickets sold, such that the subsidies paid would vary directly with usage and cover the gap between the price charged to users (generally constrained by government) and the costs for the corresponding output. On the contrary, payments made to a producer irrespectively of the actual amount of tickets sold to final users, under the form of a global lump sum to cover operating deficit resulting from the insufficient coverage of costs by pricing, would not be added to the sales for the 50 % criterion. In practice, the payments included in the notion of 'sales' are labelled subsidies on products (D.31), defined in ESA 2010 paragraph 4.33 as *payable per unit of a good or service produced or imported*. However, ESA 2010 paragraph 3.33 (a) explicitly specifies that *the payments made by general government to cover an overall deficit of public corporations and quasi-corporations that constitute part of other subsidies on products as defined in ESA 2010 paragraph 4.35 (c) are not considered sales*.

Other subsidies on production (D.39) receivable (ESA 2010 paragraph 4.36) and other transfers from government are not included within 'sales receipts'. Therefore, any subsidy for which the total amount to be paid has been fixed *ex-ante* (possibly already partially or totally paid before the whole activity has been carried out), generally in the context of global budget negotiations focusing on factors such as maintenance of buildings, investment in technical equipment, payment for compensation of employees, etc. must not be considered as 'sales' when applying the 50 % criterion.

53. **'Production costs'**, for the purpose of the market/non-market test, are defined as the sum of intermediate consumption (P.2), compensation of employees (D.1), consumption of fixed capital (P.51c), other taxes on production (D.29) payable and the net interest charge (while other subsidies on production (D.39) receivable are not deducted). To ensure consistency between the concepts of sales and production costs when applying the 50 % criterion, the production costs exclude imputed costs made for own-account capital formation.

The net interest charge is defined in ESA 2010 paragraph 20.31 as: *interest (D.41), payable less interest (D.41), receivable*. The net interest charge is assumed as a plausible approximation of the cost of capital, which is mainly the cost of financing of the (fixed) assets used in production. In some cases, the net interest charge may be negative (e.g., when income from interest bearing assets is higher than interest payable or when a unit has no liabilities, but only interest-bearing assets, etc.). When the net interest charge becomes negative, it should be replaced by zero in the calculation of the market/non-market test. This reflects the idea that the net interest charge is an approximation of the cost of capital. In general, in case of a negative net interest charge, one should check carefully the economic nature of the unit, i.e., the applicability of the market/non-market test in the specific case, as well as the qualitative criteria mentioned above (see sub-section 1.2.4.2).

54. It should be stressed that the market/non-market test is applied to public producers (government controlled institutional units), after checking the qualitative criteria, as mentioned above in sub-section 1.2.4.2. The market/non-market test is used for public non-financial units, and it is also relevant for most public units engaged in financial auxiliary activities. The market/non-market test is not used for units

⁽²⁷⁾ See more details on the treatment of EU grants/subsidies in chapter 2.6 of this Manual.

engaged in financial intermediation, public holdings and some other specific public units. For government-controlled units, the qualitative criteria are to be checked first as they have priority over the quantitative criterion. In case that at least one of the qualitative criteria, as described in sub-section 1.2.4.2, would not be fulfilled, this would be a sufficient condition for this public unit to be classified in the general government sector (the market/non-market test would then not be applied). If the qualitative criteria would be met, the market/non-market test would be used for assessing the sector classification of the unit. However, the market/non-market test is not relevant for specific public entities described in chapter 1.6 of this Manual.

55. The market/non-market test should be applied by looking over a range of years on an individual institutional unit basis (even when entities are part of a group). In general, only when the market/non-market test holds above 50 % for several (at least 3) years or if, in some cases where the unit had passed the market/non-market test in year t-1 and it is strongly expected to hold it for near future, then the unit could be classified outside government. In some cases, when the unit had not passed the test for one year and it is expected not to pass it in the next two years, it should be immediately classified in the government sector. Minor fluctuations (or a result deemed to be a one-off exceptional case) in the ratio of sales to production costs from one year to another, do not necessarily need to result in a reclassification of institutional units (and of their local KAUs and output).
56. The market/non-market test decides also whether a government entity can be treated as a quasi-corporation (owned by the government): a quasi-corporation can be created only if the entity is a market producer.
57. For new public enterprises, the market/non-market test may be difficult to apply immediately due to the lack of data and/or because of a progressive gearing up.⁽²⁸⁾ The classification should therefore be based on a realistic business plan⁽²⁹⁾ and special attention should be given to check whether the unit is likely to become a market producer in a short period. If the new unit is created from a merger of previous units, the results of previous periods can be used as an indication of future performance.

1.2.4.4. PUBLIC UNITS IN LIQUIDATION

58. In this section, liquidation means a situation in which a unit (a corporation or an assimilated entity) starts to cease its productive activity. The following methodological provisions cover public (government-controlled) units engaged in the production of goods and services or in financial intermediation (as defined in ESA 2010 chapter 2), except those units which are covered by specific resolution and recovery procedures (normally classified in the deposit-taking corporations except the central bank (S.122)).
59. When a unit classified outside the government sector (i.e., meeting the criteria as to be considered as a market producer⁽³⁰⁾) enters into a liquidation process, progressively, its assets are realised ('monetised'), either through their sales or through the recovery of claims held by the unit (for instance, commercial claims on customers). The corresponding proceeds are used to pay the various creditors, in a pre-determined order based on legal provisions (for example in the case of staff or of tax) and on the nature of the debts towards the creditors (senior, junior, subordinated). The remaining cash, if any, as the net worth and the own funds may be negative, is distributed to the shareholders. ESA 2010 paragraph 5.141 states that *...equity is a financial asset that is a claim on the residual value of a corporation after all other claims have been met*. Generally, in a 'voluntary' liquidation, the unit will not show a negative net worth and government is likely to receive some cash.
60. The legal framework may impose the liquidation when the unit is not in a position to settle its obligations towards its creditors (the case of 'bankruptcy'). This may also happen after some special measures (such as a moratorium or restructuring) have failed to ensure the long-term solvency of the unit. The owner of the unit for various reasons may also voluntarily decide the liquidation. However, this distinction cannot result in different national accounts rules, which would apply independently of the origin of the liquidation. In fact, one could consider that, in the case of public units, the liquidation would result always

⁽²⁸⁾ This is notably the case for new units, which initially need significant capital expenditure and which will start to sell their services only after the completion of the work.

⁽²⁹⁾ The term 'realistic' should refer to several notions, such as the availability and quality of the data used, the plausibility of the hypotheses used in forecast, the competence of the authors, etc. However, when it turns out after some years that the business plan has not given the expected results, the ex-ante sector classification of the entity should be revised.

⁽³⁰⁾ In the case of liquidation of a unit in 'financial distress', the unit might already have failed the market/non-market test before entering into liquidation and, thus, would already have been reclassified in the government sector.

from a deliberate decision of the controlling unit, notably when government would judge that it is not worth continuing to support the unit.

61. It may also happen that a government-controlling unit decides to place a public unit, not classified in the government sector, under an 'inactive' status. This means that the unit would be 'dormant' with no explicit formal decision to close it down. Such situation may be temporary or last for many years.⁽³¹⁾ The provisions given below are also applicable to this case.⁽³²⁾⁽³³⁾
62. Liquidation process may take some time, independently of the time needed to realise/monetise the assets, which may be difficult to anticipate and depend largely on external factors. In other words, during the process the unit may still have some productive activity and obtain revenue from it. For instance, the unit may still have to honour some past orders. However, this is temporary and, as a rule, the unit is not deemed any longer to carry out its former activity. It is in addition normally closed to new business. This does not necessarily mean that there could not be, along the process, an active management of some assets and liabilities, such as sales of residual output or from inventories, renegotiations, restructuring and other technical arbitrages, but the unit has normally no longer access to capital markets.
63. There may be considerable differences as regards the way the liquidation would be conducted — either by the previous management or by a new management of the unit, or by an 'administrator'/'liquidator' entitled to take the main decisions on the liquidation, instead of the shareholders.⁽³⁴⁾ The liquidator cannot be considered as exerting control on the unit, in the sense of the definition in ESA 2010 paragraph 2.35, i.e., the ability to determine general policy, as his function is simply to realise value of the assets, compensate creditors of the unit in liquidation and legally close the business. However, the fact that government would be controlling or not the liquidation process should not be relevant for the sector classification of public units in liquidation. What only matters here is that the unit was considered as public prior to the liquidation. Furthermore, government will bear similar risks as any other shareholder in this process.
64. There may be substantial differences among EU Member States as far as liquidation procedures are concerned. In some countries, public corporations may benefit from a special legal status, such that the normal procedures related to bankruptcy (generally at the request of creditors which are holding claims on the units) would not be applicable. On the contrary, some public corporations may have a full 'commercial' status and therefore could be subject to the same legal provisions as any other market producer in the same situation. Nevertheless, this heterogeneity across EU Member States, should not affect the classification of the units under liquidation.
65. Any public unit, not included in the sector of financial corporations⁽³⁵⁾, in order to qualify as a public unit classified outside the government sector, must fulfil (amongst other)⁽³⁶⁾, the 50 % criterion, independently on whether it is in a liquidation process or not. In this respect, it must be underlined that there is no exception in ESA 2010 for such public units, stating that the 50 % criterion is not to be applied, in order to decide on its classification, if a unit enters into a liquidation process. The respect of the 50 % criterion is therefore to be considered as a 'condition *sine qua non*' for a public non-financial corporation⁽³⁷⁾ to be classified outside government.
66. Under these conditions, depending on the results of the quantitative market/non-market test (50 % criterion), in normal cases⁽³⁸⁾ the unit should be classified outside the general government sector as long as it passes the market/non-market test and reclassified to the general government sector if it fails it, with a possible impact on government net lending/borrowing (B.9) and government (consolidated) debt.

⁽³¹⁾ In some EU Member States, such status for corporations must not exceed a given period and, if it does so, the unit must be automatically liquidated.

⁽³²⁾ Usually, a dormant unit would fail the market/non-market test or the financial intermediation criteria (see ESA 2010 paragraphs 2.57–2.58). As a consequence, if public, such a unit should be reclassified in government. If the dormant unit would not satisfy the market/non-market test during three consecutive years, it should in any case be reclassified into the general government, unless there would be evidence after the first year that the unit will not satisfy the market/non-market test also in the next two years, in which case it should be reclassified in general government sector immediately.

⁽³³⁾ If data are no longer reported by a dormant unit, the last available (stock) data should be used, notably for the reporting of its debt, if any.

⁽³⁴⁾ The 'liquidator' may have a variable degree of independence, depending on legal provisions or specific arrangements. The liquidator may be accountable to a judge or to a committee of creditors, set up often in order to try to realise certain claims. Generally, in such circumstances, shareholders have no 'last say' in decisions related to the sale of assets.

⁽³⁵⁾ With the exception of financial auxiliaries.

⁽³⁶⁾ For instance, the qualitative criteria would continue to apply (e.g., the remaining sales could be only with government).

⁽³⁷⁾ Or for a financial auxiliary.

⁽³⁸⁾ When the unit would be neither in liquidation nor dormant.

The general rule is that the reclassification should take place after a maximum of three consecutive years of non-compliance with the 50 % criterion. However, when the market/non-market test is below 50 % for a single year and it is considered that it is unlikely that the result of the market/non-market test could reverse in the next two years, the reclassification must be implemented as soon as the market/non-market test is no longer met. In the case of a public unit under a liquidation process, as it is known from the outset that the unit will progressively cease its productive activity, the reclassification in government should be undertaken in the year when the unit fails the 50 % criterion for the first time.

67. In case of public units, except those units which are covered by specific resolution and recovery procedures (normally classified in the subsector S.122), which had been engaged in financial intermediation before they entered in liquidation, it must be checked whether such units should still be considered financial intermediaries. As soon as these units would not be allowed to issue new liabilities and acquire new assets, they cannot be seen as engaged in financial intermediation (as defined by ESA 2010) anymore.⁽³⁹⁾ In most cases, this would occur immediately after the entry in liquidation. As a result, they should be reclassified in general government sector.

In case a government-controlled unit with the features of a financial defeasance structure enters in liquidation, the provisions of chapter 4.5 Government interventions to support financial institutions: financial bailouts and defeasance should be followed.

68. It may happen that, at the start of the liquidation process, the debt of the public unit is, fully or partially, explicitly guaranteed by government (unconditional and at first demand). In addition, it is very likely that a bankruptcy would trigger an automatic call of the guarantee, as this is generally considered a default, which allows the holders of the debt to exercise their rights.⁽⁴⁰⁾ It is possible that, even if the unit was in a situation of severe financial distress before entering liquidation, the debt had not yet been called (and thus assumed by government) if the unit has benefited from transfers from government.⁽⁴¹⁾ Under these conditions, the debt should be considered assumed by the government unit that guaranteed the debt at the start of the liquidation process, i.e., a capital transfer expenditure (D.99) should be recorded, to the benefit of the relevant creditors, together with an increase in government debt⁽⁴²⁾, following the normal rules related to guarantees.⁽⁴³⁾
69. In some cases, there would be no explicit guarantee attached on the individual financial instruments previously issued by the unit in liquidation, but there would be some explicit provisions (notably in law or specific regulations) such that government would be irrevocably committed to take on all the unit's debt obligations. Also in this case, the provisions mentioned in the previous paragraph apply.
70. After the transfer of the debt obligations, the realisation/monetisation of the financial assets, during the liquidation process, would enter the financial accounts, without an impact on government net lending/borrowing (B.9) when the unit has been reclassified in the government sector. If the unit has not yet been reclassified, it would be recorded as capital transfer with a positive impact on government net lending/borrowing (B.9).

1.2.4.5. REARRANGED TRANSACTIONS

1.2.4.5.1. Introduction

Three modalities of rearrangement

71. Chapter 1 of ESA 2010, related to general features and basic principles, provides that '**rearranged transactions**' are recorded *...in order to bring out the underlying economic relationships more clearly*. Rearranged transactions include 'rerouting', 'partitioning' and 'recognising the principal party to a transaction'.

⁽³⁹⁾ This should not be confused with possible liquidity management or debt restructuring during the liquidation process.

⁽⁴⁰⁾ In some cases, the debt could be immediately liable for its whole amount (this is referred to as 'acceleration'); however, this has no impact on the recording of the assumed debt by government.

⁽⁴¹⁾ However, it must be checked whether such support does not fall under the case of 'disguised' or 'indirect' calls, as mentioned in sub-section 7.4.2.1.3 Case where it is judged that government repays or will repay the debt.

⁽⁴²⁾ The capital transfer expenditure should also apply if, in the absence of explicit government guarantees, there were other legal provisions, which would oblige government to compensate in any case the creditors of a public unit in case of liquidation. However, the capital transfer expenditure should not apply, in the absence of an explicit guarantee or other legal provisions, as government would be just the unique or principal shareholder with unlimited liability.

⁽⁴³⁾ However, in some cases where the liquidated unit does not show a negative net worth (for instance in case of voluntary liquidation, which could nevertheless trigger a call of guarantees) and where there is a high likelihood that the value of assets held by the unit will be recovered, this capital transfer could be reduced by the estimated value of these assets.

72. Concerning **'rerouting'**, ESA 2010 distinguishes two cases. A first type of rerouting is defined in ESA 2010 paragraph 1.73 as follows: *a transaction that appears to the units involved as taking place directly between units A and C may be recorded in the accounts as taking place indirectly through a third unit B. Thus, the single transaction between A and C is recorded as two transactions: one between A and B, and one between B and C. In this case the transaction is rerouted.*
73. In this regard, ESA 2010 paragraph 1.74 gives the example of the social contributions paid by employers on behalf of their employees. Recording a transaction corresponding to the actual cash flow, i.e., showing a transaction between the employer and the social security funds (or any other social protection unit) only shows a specific part of the economic reality — the cash flow. Through rearranging, the transaction is adapted to the concepts and definitions of ESA 2010, i.e., to show that the social contributions are a part of the compensation of employees. In this case, rerouting means the recording of two imputed transactions, i.e., the employers are considered to pay the amount to their employees (as part of compensation of employees), who then pay the same amount to the corresponding social protection unit (as social contributions).
74. A second type of rerouting is explained in ESA 2010 paragraph 1.75 as follows: *Another type of rerouting is that of transactions recorded as taking place between two or more institutional units, even though, according to the parties involved, no transaction takes place at all. An example is the treatment of property income earned on certain insurance funds, which is retained by insurance enterprises. The system records this property income as being paid by insurance enterprises to policyholders, who then pay the same amount back to the insurance enterprises as premium supplements.* Again, this is designed to capture the economic reality and adapt the actual situation to the concepts and definitions of ESA 2010. A further example for this type of rerouting is the treatment of retained earnings of foreign subsidiaries or branches. They are considered as property income of the parent company, which in turn is deemed reinvested in the form of equity. Such types of rerouting are often referred to as 'imputation'.
75. In this context, rerouting means recording a transaction as taking place through different units as compared to the cash movements, or as taking place in an economic sense when no actual transactions are observed in the source data. Implementing rerouting is required when a unit, which is in fact at the origin of the transaction, does not appear in the actual accounting records because of administrative arrangements, or because these records reflect the actual flows of payments. When necessary, the actual cash transaction reflected in basic data sources should be disregarded in the compilation process and rerouted to the units concerned.
76. **'Recognising the principal party to a transaction'** is described in ESA 2010 paragraph 1.78 as follows: *When a unit carries out a transaction on behalf of another unit (the principal) and is funded by that unit, the transaction is recorded exclusively in the accounts of the principal.⁽⁴⁴⁾* In this case, unit B, which carries out a transaction with unit C on behalf of unit A, just acts as an intermediary, as an agent. Thus the transaction must not be recorded in the accounts of the unit B, instead directly between the units A and C. For public corporations, it is not necessary that there is an explicit re-funding arrangement since the principal owns the agent.
77. The term 'partitioning' refers to different situations when *a transaction appearing to the parties as a single transaction is recorded as two or more differently classified transactions* (ESA 2010 paragraph 1.77). Partitioning, or splitting of an observed value, is, for example, necessary when a PPP is recorded on the government balance sheet in national accounts. Then, the unitary payments recorded in the public budget has to be split into at least three parts and allocated to different ESA transactions (repayment of loan, interest and intermediate consumption). Another well-known example is the calculation of FISIM, which involves partitioning the actual 'interest' flows into property income and intermediate consumption. Another example is the splitting between a capital transfer and a financial transaction in the case of an acquisition of a financial asset carried out on terms outside commercial considerations. Such cases, involving partitioning, are not covered in this section as appropriate guidance is provided in other sections of this Manual (i.e., 3.2.3.2.2 on loans, 3.6.2.4 on dividends, 6.1.2.5 on sale of service and 6.3.1.4 on leases.).

Terminology

78. The above terminology, describing different types of rearranged transactions, is often confused and in particular the term 'rerouting' is frequently (mis)used for operations falling under 'recognizing the principal party to a transaction'. In national accounts, the difference between 'rerouting' and 'recognizing

⁽⁴⁴⁾ This may cover only the collection (for instance local government 'using' service of central government) but also the redistribution of a tax, which contains components related to different units (for instance an income tax with one part for central government and one part for local).

the principal party to a transaction' is that, in the latter case, the involved transactions (other than the net claim existing between B and A reflecting the refund commitment of A, if any) should in principle not be recorded at all in the accounts of unit B even if they appear in its financial statements, while on the contrary 'rerouting' implies recording additional transactions.

79. In the guidance provided herewith, the generic term '**rearrangement**' is used. Deciding if a rearranged transaction should be 'rerouting' or 'principal party recognition' should then be subject of further analysis at a technical level.

Important points for consideration

80. First, the notion of rearranged transactions cannot be separated from the source data being considered/used. Indeed, the notion of rearranging does not exist by itself, but depends on the recording in the source data in comparison with the ESA transactions. The source data used can be very diverse (budget, cash flow statement, profit and loss, balance sheet, among others) and their reporting basis can be different and, sometimes, unit-specific (e.g., not necessarily following IFRS). In addition, the source data observed may be different or follow different accounting standards for the three parties typically involved. The notion of rearrangement that is pertinent for EDP/GFS generally concerns cases where the economic transaction to be recorded deviates from the recording in the source data of the unit of general government considered (e.g., the public corporation involved as an agent of government may itself correctly reflect the transaction).
81. Second, rearrangement of transactions must obviously respect the basic accounting rules of the system (ESA 2010), in particular: (1) balancing the rearranged transactions (e.g., recording rearranged financial transactions associated with rearranged nonfinancial ones in a balanced way), and (2) recording related rearranged stocks and other economic flows consistently with rearranged transactions. Thus, rearranged transactions often lead to a rearranged balance sheet, while at the same time the recognition/derecognition of an asset on/from a balance sheet obeys specific rules (e.g., risks and rewards analysis).
82. Third, and as a consequence, when involved entities have complete freedom to decide on undertaking an operation/activity within their mandate, rearrangement is aligned with the risks and rewards approach when deciding whether an asset should be recognized or derecognized in the account of an entity. However, such complete freedom is sometimes not ensured for an entity that belongs to a group. This is particularly relevant for the public sector, notably for relations between government and 100 % owned public corporations. Ownership is linked with the right to influence the corporation, for example, via the supervisory board, the shareholders' meeting or to appointment/removal of key staff is connected. Exercising the ownership rights is usually related to the concept of control in national accounts. Where government directly intervenes in day-to-day operational decisions of the public corporation and an operation/activity is carried out only because of a government request, the analysis of risks and rewards should be complemented by other factors in order to conclude about the appropriate presentation of the underlying economic substance in national accounts (i.e., whether it is really the corporation's transaction or whether it is acting as an agent of government).
83. Fourth, not all of the unit's activities will be rearranged since otherwise the unit might fail to have autonomy of decision in respect to its principal function.

Reasons and circumstances for rearranged transactions

84. Rearrangement of government transactions might be necessary in a number of circumstances involving various operations carried out by non-government units (predominantly public corporations). Government may be involved with transactions that are rearranged for two reasons of particular importance. First, because it is at the origin of the transactions in the context of policies aimed at influencing the behaviour of economic agents. Second, because government has, under its control, public units that are entrusted to perform some tasks. This is frequently the case with development banks but also other public units, and even, in some cases, private entities, which may contribute to the implementation of specific government interventions.
85. The objective of this sub-section is to specify under which conditions some transactions should be subject to rerouting via government accounts. Examples of such transactions are:⁽⁴⁵⁾
- a) loans granted to some units at the request of government (e.g., observed in the aviation industry);
 - b) trading market instruments for price stabilisation purposes (the gold or copper price);

⁽⁴⁵⁾ This list is not exhaustive.

- c) acquiring or holding of shares of public corporations at the request of government for industry policy reasons (e.g., observed in aviation, railways, defence industries and during privatisation processes);
- d) granting subsidies or investment grants to some units in the context of public policies (e.g., specific tax subsidies schemes supporting renewable energy);
- e) managing financial assets on behalf of government units (e.g., cash pooling undertaken by units classified outside general government);
- f) providing hedging of market risks on behalf of government;
- g) purchasing goods or services in order to support corporations;
- h) collecting compulsory contributions in the context of special arrangements set up by government⁽⁴⁶⁾;
- i) receiving fees for services which have the features of taxes in national account, etc.

Atypical transactions

86. Rearrangement should also be diligently considered with regard to atypical transactions carried out by non-government units. A transaction is considered as atypical if it is not part of the expected business of the unit. This is particularly the case when a transaction has the nature of a one-off or ad-hoc measure without reasonable justification derived from the basic mandate of the unit. A transaction is not considered as atypical if it is a meaningful addition or extension of the activities of the unit clearly communicated in advance or accompanied by an appropriate adjustment of the mandate of the unit. For example, if the mandate of the entity concerned generally limits its activities to support domestic economic entities and suddenly it is observed that it engages in foreign transactions, it would be indicative for rearrangement. It might be the case that the mandate generally permits an entity to enter into foreign transactions, but the transactions actually carried out are not in line with the general provisions of the mandate.
87. Atypical transactions can be often one-off events. However, in some cases, atypical transactions may also have a permanent nature, but they remain a secondary and separated part of total activity of the entity (this can for example be observed in the context of energy saving schemes).
88. Atypical transactions are often observed in the areas like social housing, development aid, military services, financial stability issues or sovereign loans.

Development banks

89. Rearrangement might be relevant in the context of activities of development banks, irrespective of whether they operate towards domestic or foreign markets. The activities and services of these banks are often defined by law or in very close co-operation with government.
90. In addition, development banks are usually engaged in activities, where commercial banks do not offer the full range of, if any, banking services, due to insufficient profitability, high risks or lack of collateral. As a result, development banks generally operate in areas where the market does not provide financial services, or alternatively, where the price for these services is seen as socially unacceptable. Their activities thus contain very often a grant or subsidy component.
91. Since development banks usually operate in a broader scope of activities, it allows government to direct funds to specific programmes/operations under the guise of the general policy mandate of the development bank.
92. Although the activities of development banks are characterised by strong links to the government, they are not automatically rearranged through government accounts. However, they should be closely analysed in this context.

Identifying transactions to rearrange

93. Identifying transactions for rearrangement is a demanding task, usually requiring a thorough analysis of all circumstances that contributed to the design and execution of a transaction. Thus, it is only possible to provide general guiding principles rather than an exhaustive list of such transactions.
94. The following three sub-sections lay out the general rules for the three potential rearrangement types when a non-government unit is (1) acting as a 'government agent' or at government's request, (2) sharing with government the risks and the rewards of a transaction/programme or (3) is carrying out non-commercial transactions. In addition, sufficient and indicative indicators are listed pointing at such potential rearrangement cases.

⁽⁴⁶⁾ For instance, government may impose a price on some transactions that does not reflect market conditions or may oblige economic agents to pay contributions, decided by government, to third parties when engaging in some activities or holding some assets.

95. The indicative circumstances/indicators are insufficient by themselves, but they require further examination. As soon as they are identified, it is expected that the facts will be investigated and analysed in detail. If, however, two or more indicative circumstances occurring at the same time, this may collectively suffice to demonstrate the need for rearrangement (principle of additivity). In addition, the decision whether a transaction or a programme should be rearranged or not is frequently judgmental in nature since the analyses of, for example, the exposure to risks and rewards include statistical and judgmental elements.
96. The indicators presented in this guidance do not claim to be exhaustive and, moreover, they are also characterized by the fact that they come often irregularly to the knowledge of national accountants via various information channels.
97. In order to identify potential rearrangement transactions, statisticians need to use a variety of data sources and non-standard methods to collect information. The statistical surveys are usually only able to capture cases which follow general principles. Hence, for many (especially new) cases, which are only identifiable under non-standard (e.g., oral statements of government officials) or indicative conditions, statisticians can rely only on information provided via news, articles, papers, reports, etc.

1.2.4.5.2. Rearranging of transactions carried out by non-government units when they act as 'government agents' or at government's request

98. Rearrangement of transactions should be undertaken when a unit acts solely or predominantly as an agent of government when carrying out some transactions. As it is recognised by ESA 2010 paragraph 20.204, *some operations originated by government units may involve the intervention of entities not ruled by the legal government framework, including public corporations. Though they will not be reported in the budget, and might escape the usual control procedures, it is appropriate to record them within government revenue and expenditure. This is because the ESA recognises when government is the principal party to an operation and the public corporation is acting as an agent.*
99. More precisely, a non-government unit, in most cases a public corporation, for example, a development bank, is asked to implement a transaction at the request of government. In this case, the non-governmental entity has limited freedom in defining the conditions of the transaction. As long as such transactions do not constitute the majority of activities, the entity is not to be reclassified inside general government, but the specific transactions are to be rearranged.
100. 'Acting at the request of government' does not cover the case where government merely provides a general mandate to the entity (stipulating its general policy and/or strategy of the unit) in its role as owner. A specific government request for a transaction, activity or program should be clearly distinguished from the business mandate of a corporation defining the tasks and/or business lines in which the entity may operate. The autonomy of decision of the non-government unit as a whole is not in question if the unit has autonomy of decision in exercising its principal function under its general policy/mandate/regular business.
101. In particular, development banks may be limited to carry out a limited number of business activities based on their mandate described by government in the context of the EU state aid rules. Such a government entrustment is materially different from the aforementioned specific government request for a transaction, activity or program and should therefore not be seen as triggering element for rearrangement.
102. Rearrangement should be applied as soon as government requests an entity to carry out a specific transaction whereby it *de facto* limits the operational autonomy of the entity with regard to a specific transaction (i.e., government initiates or orders the transaction with no meaningful possibility for the unit to oppose it).
103. Such a request may be explicitly associated with the agreement to take over all the risks and rewards of the assets involved, but not necessarily so (e.g., when involving fully-owned public corporations): (a) the agreement may involve some sharing of risks and/or rewards, or (b) even no agreement of refund exists at all, for instance on the understanding that the net worth of government will reflect the net worth of the public corporation. In this case, the analysis of risks and rewards is not decisive. Instead, the key aspect here is that the entity is instructed by government to enter into the transaction, limiting its capacity to independently conduct the activities.
104. An example is when a unit might be considered as a kind of 'accounting tool' for government. This may appear in official statements or documents, and even in the annual report of the unit, clearly mentioning that the unit is not accountable for the transaction. The latter may be presented segregated in the

financial statements. This may be important if the unit is borrowing financial resources on capital markets for its own activity.

105. There may be different reasons for which governments prefer to use the services of such units instead of undertaking the transaction directly, such as: the expertise of the unit in a specific area, their higher efficiency than government administration, their independence from government administration, their frequent relations with the beneficiaries, or the hope of an accounting effect in the domain of public finance. It has also been observed that government uses public corporations to support other entities if State Aid rules might prevent a direct government intervention.
106. As a general rule, if government aims at granting a benefit/support to an entity via a specific transaction or programme implemented by a non-government unit, the transaction/programme is to be rearranged to government. This applies particularly if the non-government unit has no freedom in setting a dedicated beneficiary/counterparty or setting substantial characteristics (e.g., volume, maturity, interest/price charged) of the specific transaction or programme for a group of entities.⁽⁴⁷⁾ In such a situation, the non-government unit acts rather like a government agent even if the non-government unit can define some characteristics and/or is bearing risks and/or reaping rewards related to this specific transaction/programme.
107. This general rule does not apply to cases in which the non-government unit is asked by government to only distribute government funds, which are already recorded in government accounts (e.g., on-lending of loans or distributions of subsidies/grants). Such government funds might be shown at the level of the non-government unit as subsidies on product while, at the same time, they might represent subsidies on production for the beneficiary (e.g., grant on interest charged). However, if there is evidence that the subsidy is primarily intended to support the non-government unit rather than the final recipient, the subsidy should be considered as subsidy on production to the non-government unit, which may result in the reclassification of the unit (if, in this case, the unit does not meet the quantitative 50 % criterion).
108. As a result, it should be analysed if government nominates the beneficiary/counterparty or aims at benefiting an entity via a specific transaction or programme.
109. In this context, any of the following indicators is considered **sufficient for rearrangement**:
 - a) There is evidence that government has requested the unit to carry out the specific transaction through instructions under various forms (decree, formal letter, official statement, etc.).⁽⁴⁸⁾ Among other things, it covers:
 - granting loans to some units at the request of government. It also includes the case when government signs an agreement to provide loans to third parties (usually third countries) where the provision of these loans and setting of the conditions are delegated to a non-governmental unit (most often a development bank);
 - acquiring or holding of shares of public corporations at the request of government for industrial policy reasons (e.g., in aviation, railways, defence industries and during privatisation processes);
 - b) government predetermines almost all⁽⁴⁹⁾ terms and conditions (e.g., interest rate, individual beneficiaries, repayments terms, loan amounts) of a transaction or a programme such that the unit's ability to effectively influence the contracts becomes negligible;
 - c) the general government officials are the majority of members in investment committees which actually decide if the unit should undertake a specific transaction(s). A general government official is considered to be a person representing the executive governmental powers and might even include the representatives of legislative or judicial powers of government (see section 1.2.2, paragraph 12 of this Manual).
110. Moreover, the following indicators are indicative for rearrangement:
 - a) there is other evidence that a transaction/programme has been carried out at the request of government with limited freedom of the non-government unit in defining the conditions. It concerns,

⁽⁴⁷⁾ This does not concern programmes under which a non-government entity has a complete freedom in undertaking and executing the transactions (see paragraph 82).

⁽⁴⁸⁾ Such instructions should be clearly distinguished from formal letters that might be exchanged to confirm that a transaction is compliant with the mandate of the entity.

⁽⁴⁹⁾ There might be situations where government determines only some terms and conditions of a transaction, but it is considered that these terms and conditions are the essential elements for the transaction. In such cases, the situation is considered to be equivalent to a situation where government determines almost all terms and conditions.

for example, statements made in the annual reports of the units in question, of supervisory authorities or of auditors, etc. In some cases, it may even concern oral statements by government officials;

- b) when a non-governmental unit carries out tasks for which a genuine government responsibility exists, or which covers stated public policy goals/commitments. In such cases, it should be analysed if the unit acts in its own interest or as an agent of government — even if there is no explicit reference that the entity is acting on behalf of government;
- c) when a transaction or programme was previously directly administered and recorded in the government accounts (with related stocks and flows) and then was transferred to the unit, either with only minor changes or with no change to the relevant parameters;
- d) loans that have become subject to Paris Club⁽⁵⁰⁾ negotiations if they have been provided not directly by the government but by other public financial institutions, frequently development banks. Rearrangement should be undertaken if government officials do not act in the interest of the public financial institution/development bank (i.e., maximizing recoveries or fulfilling the general mandate of the public financial institution/development bank). This is particularly the case if the negotiations result in a non-negligible debt cancellation component, thus the remaining part of the loan should be rearranged to government.

1.2.4.5.3. Rearrangement of transactions carried out by non-government units based on risks and rewards

- 111. An asset, under normal circumstances, is recorded in the balance sheet of the entity that will assume the risks and rewards related to the asset. Rearrangement should be undertaken when, *de jure* or *de facto*, the principal party assumes all risks and rewards of the asset that for some reasons does not already feature in its balance sheet (and presumably features instead in the balance sheet of the agent) or when it is appropriate to report, in the balance sheet of a party involved in the transaction, an asset and a matching liability to properly reflect its involvement or the sharing of risks and rewards (see above).
- 112. A priori, if correct accounting is applied, the source data should show the asset on the balance sheet of the principal when the latter assumes the risks and rewards. Conversely, the agent should not show the given asset on its balance sheet. In case it does, the asset may be located in a segregated part of the balance sheet, with a corresponding liability entry to neutralise the impact on the agent's net assets. However, in practice, all sorts of situations can be found in the source data (of both the principal and its agent) used by compilers. Rearrangement can thus be required.
- 113. Rearrangement may also be undertaken when a unit acts under substantial government involvement, taking no (or minor) risks but benefiting from the rewards, in certain conditions that are explained below.
- 114. Rather than merely acting as an agent of government, in this case the unit normally shows a higher involvement in the implementation of the transaction. For instance, the unit has incentives to perform at its best, and take rewards in the form of a larger operating margin (frequently paid by government). In this situation, the government influence is demonstrated by the involvement in the design of a programme (e.g., to support SMEs) or by the fact that the government imposes substantial conditions on the transaction or programme which usually belong to the core tasks of a corporation (e.g., volume, counterparty and/or price/interest charged).
- 115. Government usually takes over the risks through the existence of dedicated guarantees or other arrangements. In general, the sole existence of guarantees does not impact the classification of its assets and liabilities since the system generally treats guarantees as contingent liabilities. However, if the guarantee or guarantee-like arrangement is clearly linked with the substantial government involvement in designing a programme or a transaction, it is then considered as a dedicated guarantee arrangement that requires rearrangement.
- 116. In contrast to dedicated guarantees on assets or liabilities, the existence of a blanket guarantees on assets and/or liabilities, as well as some forms of implicit liabilities like an institutional liability, are not indicators for rearrangement, but should be closely analysed in the context of sector classification of the entity itself. They are more a global form of protection of the whole entity itself or of its creditors.

⁽⁵⁰⁾ The 'Paris Club' is a group of 'official creditors with which the developing countries can renegotiate their debt with creditor countries.'

117. In the context of the above, any of the following indicators is **sufficient** for rearrangement:

- a) government assumes most of the risks and most of the rewards on an asset, despite a non-governmental unit having legal ownership. Among others, it covers the cases when, on behalf of government, a non-government unit manages financial assets (e.g., cash pooling), provides hedging of market risks or trades market instruments for price stabilisation purposes (the gold or copper price);
- b) when government imposes substantial conditions on a transaction/programme and the entity is compensated for at least half of the related losses. This is notably the case where transactions or programmes are accompanied by additional government guarantees on the related assets and/or liabilities.

1.2.4.5.4. Rearrangement in the context of non-commercial transactions carried out by non-government units

118. Rearrangement should also be considered in the context of non-commercial transactions carried out by non-governmental units. In these cases, the mere characteristics of the activities (e.g., redistribution of income and wealth, structural losses) might provide sufficient evidence of the existence of government influence and might require rearrangement.

119. If a non-government unit carries out transactions that result *de facto* in the redistribution of income and wealth it is sufficient for rearrangement since this is a task of government. The redistribution of income is often disguised as a price adjustment (e.g., fees), whereas it has in substance the nature of a tax, subsidy or social benefit mechanism. This is particularly the case in government promotion of renewable energy where non-government entities collect taxes and provide subsidies under the guise of the existing energy price system. Similarly, government could use non-government entities to provide investment grants, interest/redemption subsidies or other grants to corporations, private households or non-profit institutions.

120. Rearrangement should also be applied if, while the unit acts in general as a market producer with regard to a specific transaction/programme, it cannot be demonstrated that the unit strives for economically significant prices for the products concerned, as defined in ESA 2010 paragraph 3.19 and ESA 2010 paragraph 20.23.

121. Rearrangement is also needed in the case when the non-government unit's own prices are pre-assigned or modified (high pricing or low pricing) in order to support public policy purposes. For example, government may ask a non-government unit to purchase/sell goods and services off/to a specific corporation at higher/lower prices in order to support another corporation.

122. However, transactions below the usual market terms do not always have to be related to government interventions and they are often observable in the context of business targets to increase supply or competition pressure on the price (e.g., opening markets for electricity or telephone). Providing services at below-market terms is also often observed in the context of cross-subsidising activities in private corporations (i.e., the return on some activities is supporting less profitable or even loss-making activities).

123. In the context of the above, the following indicators are **indicative** for rearrangement:

- a) the conditions used in the contract or agreement between the business partners and the non-governmental entity are set considerably below the terms usually applied by the entity, after accounting for subsidies on product. In particular, this is a case when the agreed terms do not allow to cover the related administration and borrowing cost (including opportunity cost of own funds). If the entity is constantly operating on non-market terms, a reclassification of the unit may be more appropriate than rearrangement;
- b) the contract or agreement between the business partners and the non-government entity involves a government subsidy on production (not on products) and only because of that the non-government entity is not constantly loss-making on these activities;
- c) the contract or agreement, which is carried out by the non-government unit, is fundamentally associated with losses after subsidies on products;
- d) the unit enters into rescue operations linked to financial and non-financial institutions/corporations, notably where previously no, or comparatively minor, business relations existed, and the assumed burden is out of proportion to the possible benefits resulting from such operations.

124. In contrast, exceptional or occasional occurrences of losses related to a specific transaction within a group of similar transactions or within programmes would not necessarily be considered as a decisive factor for rearrangement.

1.2.4.5.5. Recording of rearranged transactions

125. Amongst rearranged transactions, cases of rerouting or of partitioning do not create particular accounting difficulties. In contrast, principal party recognition may lead to difficulties that originate from the fact that cash flows are undertaken by an agent (e.g., a public corporation) that may or may not be refunded. Technically, various recording options might be possible depending on the characteristics of a transaction to be rearranged: financial or non-financial, funded/repaid or not by government, existence of segregated accounts (see examples below). However, as a general rule, the accounting should not only result in entries in non-financial accounts but also in financial accounts in order to show the economic reality that government is using the financing capabilities of an entity.
126. In the case of non-financial transactions, such as 'channelling' subsidies or investment grants to beneficiaries, it is likely that government provided or will provide the resources for undertaking the transactions. Normally, as government does not expect any return on the funds, the funding should already be included as an expense in the source data of government. In this case, it is appropriate to record the subsidies to beneficiaries directly/only in government accounts. Timing differences between the subsidy accrual and the government settlement may take the form of a government payable/receivable — perhaps a loan, (in recognition that the public entity is providing an advance to government), or an 'other accounts payable'. However, in other cases, when the transaction is financed by the public unit itself with no prospect of government refund an entry in equity is appropriate (withdrawal of equity from the public corporation).
127. In other cases, government may ask a unit to engage in a financial transaction on government's behalf. This frequently takes the form of loan disbursement for specific purposes (such as to foreign governments). It may also cover cases where government asks the unit to invest some funds in defined categories of financial assets (such as management of 'sinking' funds for debt amortisation, environmental funds, or natural disasters funds). Government may also ask a unit to carry some equity stakes on its behalf (recorded in the financial accounts, if there are effective expectations of return). Government may provide the necessary financing for the transaction/programme and, in this case, the impact on government liabilities has already taken place. Timing differences between the loan granted (or equity acquired) and payment may take the form of a government payable — in most cases a loan (in recognition that the public entity is providing an advance to government), or an 'other accounts payable'. However, in other cases, the transaction is financed by the unit itself and, in this case, the corresponding liability should be rerouted to government, through an imputed loan between the unit and government, 'mirroring' the features of the underlying borrowing.
128. The recording of rearranged transactions to government should always be 'gross' (no netting showing only the final impact on government net lending/borrowing — B.9) and should be implemented even in case where there is no impact on government net lending/borrowing and on the outstanding amount of government debt. The main reason is that government finance statistics are not restricted to the amount of government net lending/borrowing and debt. Many other indicators are widely used such as level of government expenditure and revenue, tax burden, etc.

1.2.4.5.6. Accounting examples (simplified)

129. In the following, four accounting examples are presented, all of which refer to the standard case of rearrangement involving a 100 % government-owned public corporations.
130. Accounting examples 1 and 2 refer to the case where a wholly government-owned development bank grants a loan to a small or medium-sized enterprise (SME, classified in S.11) in the framework of specific programme, in which the government has exercised substantial influence on the terms and conditions. The development bank maintains some room for manoeuvre in the implementation of particular transactions. Both examples are based on the following assumptions:
- at the start of year *t* the development bank has 1 000 in AF.2 assets and an equity liability of 1 000 in AF.5. The SME has 100 in AF.2 assets and the government has 1 000 in AF.5 assets (its equity in the development bank);
 - at the beginning of the year *t* the SME receives a 5-year loan from the development bank for the amount of 1 000. The loan issued carries interest of 2 %, which is settled in cash at the end of the year;

- the development bank refinances by issuing a debt security of 1 000 to the market at the start of the year. This carries interest of 2 % and is settled at the end of the year;
- any repayment of the loan by the SME would similarly need to be rearranged, i.e., the SME repays government and then government repays an identical amount to the development bank on its imputed debt instrument;
- the difference between the above examples is that in example 1 the development bank does not have separately managed accounts for assets and liabilities that are acquired or issued in the framework of the mentioned programme for SMEs, whereas in example 2 the development bank maintains a specific account for these transactions.

131. Accounting example 3 considers the case where the government wants to subsidize a certain SME but instead of granting the subsidy itself and borrowing the necessary funds on the capital market, the development bank is instructed to grant the subsidy. The government does not reimburse the subsidy granted by the development bank. Accounting example 3 is based on the following assumptions:

- at the start of year t the development bank has 1 000 in AF.2 assets and an equity liability of 1 000 in AF.5. The SME has 100 in AF.2 assets and the government has 1 000 in AF.5 assets (its equity in the development bank);
- at the beginning of the year t the SME receives a subsidy from the development bank for the amount of 1 000;
- the development bank finances the subsidy from its existing cash assets;
- using the financial capabilities of the development bank to finance the subsidy is recognised by recording an equity withdrawal in the government accounts.

132. Accounting example 4 is a modification of example 3 and it reflects the case when the development bank pre-finances the subsidy (i.e., government commits to reimburse the subsidy later on). Using the financial capabilities of the development bank to pre-finance the subsidy is reflected by the imputation of a loan from the development bank to government. At the time when the government reimburses the development bank for the pre-financed subsidy, the loan is repaid. All other assumptions are the same as in example 3.

Example 1

The development bank does not have segregated accounts meaning that the assets and liabilities acquired/issued in the context of rearrangement are held together with the development bank's own assets and liabilities.

Year t											
Opening balance sheet											
Development bank				SME				Government			
A	(S.12)	L		A	(S.11)	L		A	(S.13)	L	
AF.2	1 000	AF.5	1 000	AF.2	100			AF.5	1 000		
		B.90	0			B.90	100			B.90	1 000
Non-financial account											
Development bank				SME				Government			
U/ΔA	(S.12)	R/ΔL		U/ΔA	(S.11)	R/ΔL		U/ΔA	(S.13)	R/ΔL	
D.41	20	D.41	20	D.41	20			D.41	20	D.41	20
B.9	0			B.9	-20			B.9	0		

Financial account

ΔA		(S.12)	ΔL	ΔA		(S.11)	ΔL	ΔA		(S.13)	ΔL
Development bank				SME				Government			
F.4	1 000	F.3	1 000	F.2	980	F.4	1 000	F.4	1 000	F.4	1 000
		B.9F	0			B.9F	-20			B.9F	0

Closing balance sheet

A(S.12)L				A(S.11)L				A(S.13)L			
Development bank				SME				Government			
AF.2	1 000	AF.5	1 000	AF.2	1 080	AF.4	1 000	AF.5	1 000	AF.4	1 000
AF.4	1 000	AF.3	1 000					AF.4	1 000		
		B.90	0			B.90	80			B.90	1 000

Example 2

The development bank maintains a specific account to separate the activities with the SMEs from its other activities. As a result, all cash flows that concern its operations with the SMEs can be clearly identified - allowing the separation of the assets and liabilities to be rearranged. In such a case, the loan assets and their financing through securities issued by the development bank can be recorded directly in the government accounts.

Year t**Opening balance sheet**

A (S.12) L				A (S.11) L				A (S.13) L			
Development bank				SME				Government			
AF.2 1 000		AF.5 1 000		AF.2 100				AF.5 1 000			
		B.90 0				B.90 100				B.90 1 000	

Non-financial account

U/ ΔA	(S.12)	R/ ΔL	U/ ΔA	(S.11)	R/ ΔL	U/ ΔA	(S.13)	R/ ΔL	
Development bank			SME			Government			
			D.41	20		D.41	20	D.41	20
B.9	0		B.9	−20		B.9	0		

Financial account

ΔA	(S.12)	ΔL	ΔA	(S.11)	ΔL	ΔA	(S.13)	ΔL		
Development bank			SME			Government				
			F.2	980	F.4	1 000	F.4	1 000	F.3	1 000
	B.9F	0			B.9F	−20			B.9F	0

Closing balance sheet

A (S.12)		L	A (S.11)		L	A (S.13)		L
Development bank			SME			Government		
AF.2	1 000	AF.5 1 000	AF.2	1 080	AF.4 1 000	AF.5	1 000	AF.3 1 000
		B.90 0			B.90 80	AF.4	1 000	B.90 1 000

Example 3

Subsidy with no reimbursement by government: the development bank is providing a subsidy that is rearranged through the government accounts. The accounting example shows the rearrangement of the subsidy through the nonfinancial accounts and the financing of the subsidy via a government withdrawal of equity from the development bank.

Year t**Opening balance sheet year**

A (S.12)		L	A (S.11)		L	A (S.13)		L
Development bank			SME			Government		
AF.2	1 000	AF.5 1 000	AF.2	100		AF.5	1 000	
		B.90 0			B.90 100			B.90 1 000

Non-financial account

U/ΔA (S.12)		R/ΔL	U/ΔA (S.11)		R/ΔL	U/ΔA (S.13)		R/ΔL
Development bank			SME			Government		
					D.3 1 000	D.3	1 000	
B.9	0		B.9	1 000		B.9	-1 000	

Financial account

ΔA (S.12)		ΔL	ΔA (S.11)		ΔL	ΔA (S.13)		ΔL
Development bank			SME			Government		
F.2	-1 000	F.5 -1 000	F.2	1 000		F.5	-1 000	
		B.9F 0			B.9F 1 000			B.9F -1 000

Closing balance sheet

A (S.12)		L	A (S.11)		L	A (S.13)		L
Development bank			SME			Government		
AF.2	0	AF.5 0	AF.2	1 100		AF.5	0	
		B.90 0			B.90 1 100			B.90 0

Example 4

Subsidy with reimbursement by government: the government instructed the development bank to grant a subsidy to the SME with the commitment to reimburse, at a later stage, the necessary financial resources to the development bank. The accounting example shows the rearrangement of the subsidy through the nonfinancial accounts and the use of the financing capabilities of the development bank through the imputation of a loan to government.

Year t											
Opening balance sheet											
Development bank				SME				Government			
A	(S.12)	L		A	(S.11)	L		A	(S.13)	L	
AF.2	1 000	AF.5	1 000	AF.2	100			AF.5	1 000		
		B.90	0			B.90	100			B.90	1 000
Non-financial account											
Development bank				SME				Government			
U/ΔA	(S.12)	R/ΔL		U/ΔA	(S.11)	R/ΔL		U/ΔA	(S.13)	R/ΔL	
						D.3	1 000	D.3	1 000		
B.9	0			B.9	1 000			B.9	-1 000		
Financial account											
Development bank				SME				Government			
ΔA	(S.12)	ΔL		ΔA	(S.11)	ΔL		ΔA	(S.13)	ΔL	
F.2	-1 000			F.2	1 000				F.4	1 000	
F.4	1 000					B.9F	1 000			B.9F	-1 000
		B.9F	0								
Closing balance sheet											
Development bank				SME				Government			
A	(S.12)	L		A	(S.11)	L		A	(S.13)	L	
AF.2	0	AF.5	1 000	AF.2	1 100			AF.5	1 000	AF.4	1 000
AF.4	1 000					B.90	1 100			B.90	0
		B.90	0								

1.2.4.6. SPECIFIC CASE OF PUBLIC HOSPITALS

133. Public hospitals⁽⁵¹⁾ are a specific case⁽⁵²⁾ in the context of the sector classification of public producers. This is mainly because it is one of government's main responsibilities to organize health care services in each EU Member State, as it is part of its public policy to ensure that all the community can access health care providers.
134. Government organises the provision of health care services in numerous ways. For instance, it can regulate the supply of public and/or private hospitals by geographic area, or it can impose constraints on the provision of same services or can regulate a general system of prices with or without specifying the price for each specific treatment. The purpose of this sub-section is to identify the key points that compilers have to take into account when dealing with the classification of public hospitals. These are mainly the degree of control of government, the presence of a real competition with private hospitals and the absence of sustained financial losses of public hospitals.
135. Control over a hospital is recognizable from the list of indicators mentioned in ESA 2010 paragraph 20.309 (and in section 1.2.3 Concept of a government-controlled institutional unit). If government determines the general policy of the public hospital, the hospital would be considered as controlled by government. It is important in this context to assess the degree of control exercised by government. In some cases, it is such that, *de facto*, the public hospital cannot act with full autonomy. Notably, this would cover cases where its capital formation (for extension/renovation of buildings or for acquisition of expensive equipment) may be decided/vetoed by its controlling unit or by an authority responsible for health policy implementation. When government permission is required for acquiring machinery or complex equipment, or to borrow in the market to finance the acquisition of new assets, it is government (and not the hospital) which is empowered to take the economic decisions on the assets and liabilities of hospitals. In such cases, the public hospitals should be classified within the general government sector⁽⁵³⁾.
136. The presence of real market competition should be carefully checked by verifying if public hospitals are really competing in practice with private hospitals. This can be assessed by checking the presence of private hospitals operating in all the different fields and the willingness of the private sector to enter the market in all the fields. It is crucial, in this respect, to verify if the openness of the market is genuine or only theoretical. In other terms, it is necessary to check if public and private hospitals are effectively supplying, in practice, the same services in all areas and if there is a real possible choice for patients or prescribers. In cases where market competition would only be purely theoretical and not found in substance, public hospitals should be classified in government.
137. Thus, in a situation of real market competition, a hospital can decide which health services it wants to provide on the basis of profitability considerations, or it can decide to adjust the prices in order to influence the demand. There are situations where the prices can be set unilaterally by government (which is usually the dominant purchaser) or under a contractual agreement between parties, in a wider context, between the economic actors (government, hospitals and insurance health units). In this context, it would be necessary to verify if a specific system of prices that applies only for public hospitals exists, which would differ from the one for private hospitals (with the consequence that the public hospitals will have to be reclassified in the general government) instead of a pricing system applicable to both private and public hospitals. Moreover, it will also have to be checked whether the prices are set in such a way which would not allow *de facto* market competition, for instance it could be observed that prices for some medical services are too low to induce private units to participate in the provision of such services, as it would be unprofitable to do so.
138. Public hospitals, because of their statute of public producers in the sector of public health, might have an obligation to produce such services (which must be obligatorily provided by some units) which would likely *de facto* not cover their production costs, with the consequence that they would usually make losses. On the contrary, a private hospital can and will most likely decide not to enter into a market concerning the provision of unprofitable services as they could not survive making losses on a persistent

⁽⁵¹⁾ The term 'hospital' in this sub-section 1.2.4.6 refers to the health care institutions that provide medical, surgical, or psychiatric care and treatment for sick or injured people and which, in order to do so, use buildings and dedicated equipment and employ specialised staff. The NACE classification has, a specific code for hospital activities (86.1). However, this code has to be used only on an indicative basis, because other human health activities (86) or residential care activities (87) should be checked in this context.

⁽⁵²⁾ For this reason, since 2002, this Manual has always included a specific part on classification of public hospitals

⁽⁵³⁾ Public hospitals may be controlled by different government subsector according to institutional arrangements in Member States. However, when a hospital is in majority financed by social contributions to Social Security entities (and not from subsidies from government raising taxes), for practical reasons, it might be included in the subsector social security funds (S.1314).

basis. As a result, they are likely to provide only a limited range of profitable health care services whereas public hospitals, could provide a wider range of health care services and therefore run losses.⁽⁵⁴⁾ In such circumstances, where competition would be limited and public hospitals in most cases would run losses on an almost persistent basis due to government policy, public hospitals should be classified with the relevant controlling government subsector being responsible for covering the resulting deficits on a regular or irregular basis.⁽⁵⁵⁾

139. Government support to public hospitals may take different forms, such as the regular or irregular (e.g., every 5 years) coverage of their losses, commitment to assuming accumulated debt (as debtor of last resort), financing in total or for a dominant part, the acquisition of equipment, (especially when particularly expensive), etc.⁽⁵⁶⁾ Any government intervention (either observed by experience or foreseen from official commitments), which would cover the business risk of public hospitals, would highlight a difference between public and private sector hospitals and would reflect a situation of *de facto* no real market competition. Therefore, if the hospitals are public and the conditions of a real market competition would not be satisfied (as evidenced, amongst others, by public hospitals incurring regular losses or accumulating significant debts and government support being continuously observed on an aggregated basis and not for individual public hospitals separately), they are classified in the government sector.
140. In this respect, it is to be underlined that the classification of public hospitals in the government sector will also provide a more meaningful picture of government accounts. Their losses will be accounted in government net lending/borrowing (B.9) on a regular yearly basis according to the performance of the individual hospitals rather than when government might decide to cover the losses incurred by way (for instance) of assuming the debt of the hospitals every X years and possibly choosing the most favourable moment when to impact government accounts.
141. Notwithstanding the above⁽⁵⁷⁾, in those cases where a pricing system would be applied in its entirety to both public and private hospitals, covering most of the activities of the public hospitals subject to competition and where public hospitals would not be reimbursed simply on the basis of their costs and do not run losses on an almost continuous basis which would then be covered by government (as in this way government is *de facto* reimbursing the hospitals on the basis of the costs incurred), the consequent payments can be considered the result of a market activity and therefore used in the context of the market/non-market test. The test will constitute the possible last step in the decision tree for assessing the sector classification of public hospitals.

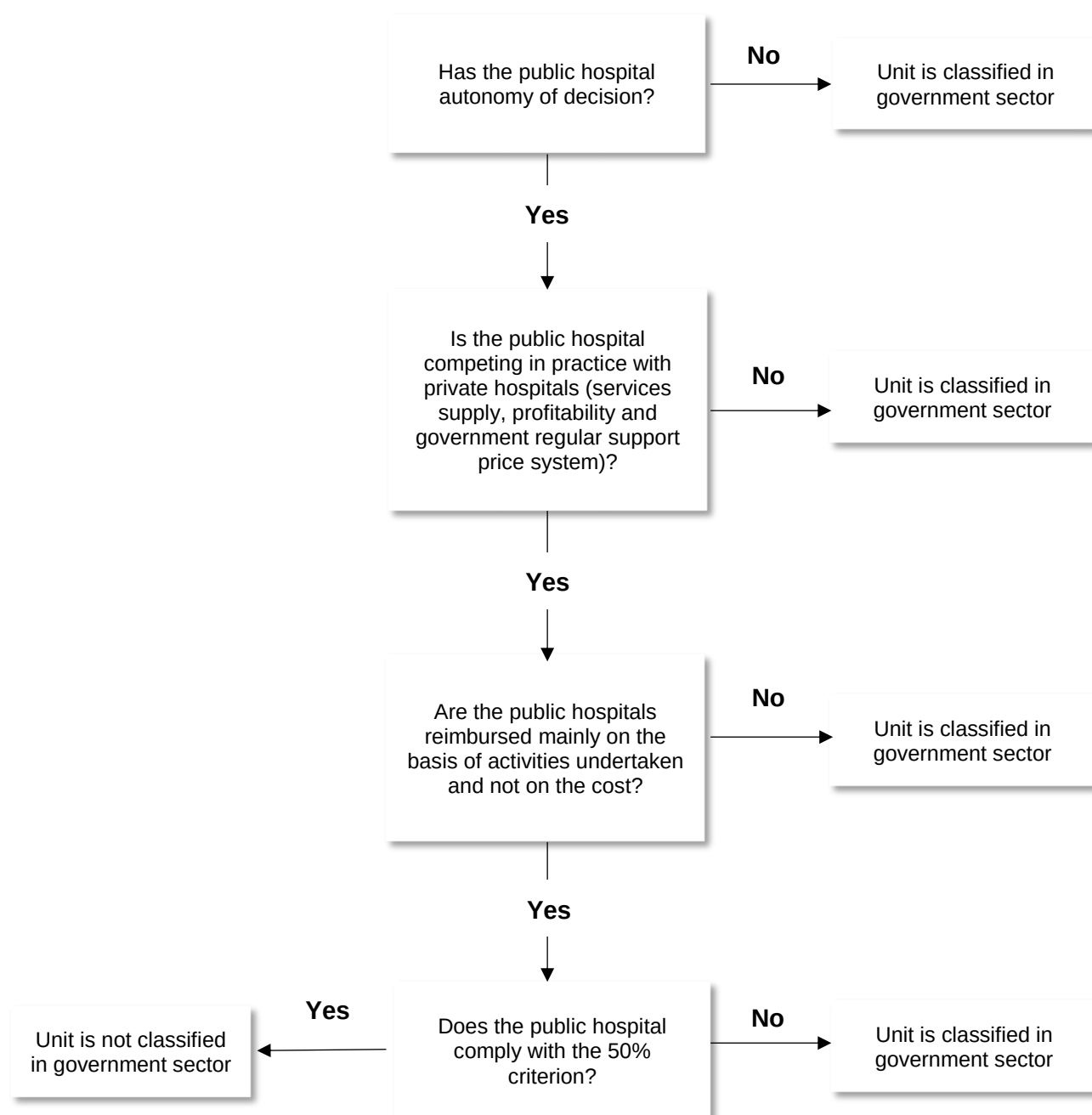
⁽⁵⁴⁾ The existence of quasi-permanent losses as such is not an indicator that there is not full competition. The fact that public hospitals are profitable (or at least, not incurring permanent losses) is also not a sufficient indicator that there is real market competition.

⁽⁵⁵⁾ Government may entrust public hospital with specific tasks, in addition to medical care, possibly as education and research. The payments received for these tasks should normally not be considered a market activity.

⁽⁵⁶⁾ Other indicators of government support are government guarantees, loans at favourable non-market conditions, if provided only to public hospitals.

⁽⁵⁷⁾ This is under the condition that public hospitals comply with the other rules for the existence of a real market competition (openness of the market, provision of the same services, lack of government support, etc.).

Decision tree for assessing the sector classification of public hospitals



1.2.4.7. SPECIFIC CASE OF PUBLIC TELEVISION AND RADIO BROADCASTING

142. Broadcasting is the distribution of audio or video content to a dispersed audience via any electronic mass communication medium. The institutional settings for broadcasting services has considerably changed over time and public broadcasting has been widely supplemented by private broadcasting. In addition, substantial technological developments have taken place in broadcasting.
143. Public broadcasting exists in all EU Member States, however not all Member States have established an earmarked user payment⁽⁵⁸⁾ from households (as well as from enterprises and other entities). In some EU Member States, government may directly impose such user payments or give the public broadcasting authority the right to levy them. In other EU Member States, specific user payments are not requested, and public broadcasting is financed from other sources.
144. Whereas, at the beginning of public broadcasting, the payment related to a monopolistic television or radio service, the situation is now considerably different, as the number of private broadcasters has increased. Thus, while in the past there was a clear and direct link between the user payment and the service received by watching/listening a public broadcaster (the only existing broadcasting entity), such a direct link no longer exists.
145. When a payment for public broadcasting is collected, the key issue is how to classify it in national accounts, i.e., either as a tax (a compulsory⁽⁵⁹⁾, unrequited transaction) or as sale of services (a requited transaction).
146. The basis on which the user payment for public broadcasting is collected varies across EU Member States, but two basic cases can be distinguished. In the first case, the user payment is based on some general condition, such as the residency of a potential user (an individual, a household or another concerned entity), their connection to the electricity network, the consumption of electricity, or their level of income, etc. In the second case, the user payment for public broadcasting may be based on the ownership/availability of a television/radio set or of some other relevant receiving device (a phone, laptop, computer, etc.).
147. In every case, it is important to analyse whether it is possible to *opt out* from making the payments requested for public broadcast services if one does not wish to watch/listen to public television/radio (i.e., one does not want to consume public broadcast services).
148. If it is not possible to *opt out* from making the payments for public broadcast services (e.g., by declaring that one does not possess any of the relevant devices related to compulsory payments or does not consume public broadcast services), this compulsory payment should be regarded as unrequited and treated in national accounts as a tax (D.59 (d) when paid by households and D.29 (e) when paid by other sectors). In this case, it is to be considered that a payment for public broadcasting is imposed on potential consumers of public broadcasting, who may not own (or have available) any device to consume public broadcasting or may not wish to consume public broadcast services. Similarly, a payment may be imposed on the owners of (or those having access to) some relevant receiving device, who may want to consume only private broadcast services⁽⁶⁰⁾. As a result, a (potential) user is prevented from having the possibility of making a deliberate choice while retaining the obligation to finance public broadcasting services.
149. If it is possible to *opt out* from the consumption of public broadcasting services while not affecting the ability to consume private broadcasting services, i.e., only those users who wish to consume public broadcast services would have to pay, then this would imply that they agree with the price for the service. The payment can therefore be considered requited and is thus, treated in national accounts as a sale of services.
150. If a user payment relating to public broadcasting is recognised as a tax in national accounts and is collected by an entity classified outside the government sector, such a payment has to be rerouted via the general government accounts (S.13) as a matter of principle, because only general government (and

⁽⁵⁸⁾ This subsection does not deal with the recording of 'rights to broadcast' licences/permits paid by TV/radio broadcasters themselves to the government in order to be allowed to perform broadcasting activities. These licences/permits should be treated according to the principles described in chapter 15 of ESA 2010 (Contracts, leases and licences), notably under the part on Permits to undertake specific activities (ESA 2010 paragraph 15.31 onwards). Some provisions are also included in this Manual (see Part 6 Leases, concessions and PPPs).

⁽⁵⁹⁾ If an obligation to pay for public broadcasting is imposed by government (by decree, regulation, law, etc.), it means that this payment is compulsory in the national accounts sense. There may be some specific exemptions from the obligation to pay (for example, for elderly people), however, these exemptions do not change the compulsory nature of the payment.

⁽⁶⁰⁾ If the obligation to pay is based not only on the ownership/availability of a relevant device but also on its use to consume broadcast services (either specifically public broadcast services or broadcast services generally), the payments should be recorded as taxes if the user cannot choose to opt out of paying for public broadcast services while at the same time remaining able to legally consume private broadcast services.

the rest of the world in specific circumstances) has the power to levy taxes. See an accounting example in sub-section 1.2.4.5 Rearranged transactions.

151. If a user payment is collected by government and then passed to a public broadcaster classified outside the general government sector, the payments from government to the public broadcaster shall be recorded as other subsidies on production (D.39). When the public broadcaster is classified within general government and this unit satisfies the conditions as regards recognising the principal party to a transaction as described in ESA 2010 paragraph 1.78, user payments will be recorded directly in that unit. If this is not the case, a current transfer (D.73) will be recorded from the unit satisfying the conditions of ESA 2010 paragraph 1.78 to the public broadcasting unit.
152. The classification of user payments for public broadcast services may have an impact on the sector classification of the public institutional units providing these services. For determining the sector classification of a public broadcaster, the ESA 2010 qualitative and quantitative (market/non-market test) criteria shall be applied (see section 1.2.4 of this Manual).

1.2.4.8. THE BORDERLINE BETWEEN TAXES AND SALES OF SERVICES

153. In assessing whether a unit is market or non-market, it is necessary to check whether a unit's income from non-government sources should be classified as sales or as something else. For example, payments made for permissions to carry out a given business or personal activity (usually evidenced by a licence), should be treated as sales of services only if the revenue is used to organize some proper regulatory function associated with the permission (such as checking the competence or the qualification of the person concerned, suitability or safety of the business premises, reliability or safety of the equipment employed, quality or standard of goods and services produced), and if the payments do not significantly exceed the cost of providing the service. However, the degree of obligations for the payers should also be considered, as there may be situations where economic agents cannot carry out a given activity without holding a specific permission, so that the price should in no way influence the number of permissions requested. Such payments should be treated as taxes if either of those conditions is not satisfied (see ESA 2010 paragraph 4.79 (d)) and, therefore, the unit collecting them classified within general government or, when in some cases not, the payments rerouted via government since only government has the power to levy taxes.

1.3. Pension institutions

1.3.1. Background

1.3.1.1. MAIN DEFINITIONS

1. Pension schemes provide an income after retirement from work and a survivor's pension to a surviving spouse in most cases. Some further risks might occasionally be insured under a pension scheme as well (sick leave, disablement). They can take the form of 'social insurance schemes', which includes both 'social security schemes' and 'employment related social insurance schemes other than social security schemes'. Protection against these risks could also be insured on a private insurance policy and through other (long-) term savings instruments arranged by individuals on their own initiative.
2. The entities managing social security schemes would normally be classified in the general government sector (S.13) whereas the entities managing the other employment related social insurance schemes would normally be classified in the subsector 'insurance corporations' (S.128), 'pension funds' (S.129) or the employer's sector (S.11, S.12, S.13 or S.14). Entities managing private insurance policies would be classified in the subsector 'insurance corporations' (S.128). Entities managing savings instruments will predominantly be allocated in the financial corporations' sector (S.12). Occasionally, depending on the country's legislation, they might also act as the insurer of an 'employment related social insurance schemes other than social security schemes'.
3. In national accounts, social insurance means collectively organised protection against a list of 'social risks or needs' such as, in the case of retirement pensions, the risk of not having an adequate income when being old. The main flows under a social insurance scheme are 'social contributions' (payments to the scheme) and 'social benefits' (payments by the scheme).

1.3.1.2. SOCIAL ASSISTANCE

4. In national accounts, social insurance differs from social assistance. ESA 2010 says that social assistance payments *meet the same needs as social insurance benefits but which are not made under a social insurance scheme requiring participation usually by means of social contributions* (see ESA 2010 paragraph 4.105) and they *are not conditional on previous payment of contributions and which are generally linked to an assessment of available income* (see ESA 2010 paragraph 4.85).

1.3.1.3. UNFUNDED AND FUNDED PENSION SCHEMES

5. In discussing the accounting of social insurance schemes, a distinction between 'unfunded' and 'funded' schemes should be made.
6. Unfunded schemes, frequently referred to as 'pay-as-you-go schemes', are schemes where the unit responsible for the scheme is not or only partially recognising in its accounts the outstanding liabilities to pay pension benefits in future. The pension benefits due during a year are primarily financed out of the pension contributions earned during the same year.
7. Funded schemes are arrangements where the unit responsible for the scheme is fully recognising the outstanding pension entitlements. The balance sheet will show a separate entry reflecting the pension entitlements. Also, the balance sheet will include earmarked investments to finance future pension benefits. The pension contributions earned during a year combined with interest flows from the investments will serve to supplement the pension entitlements for the active participants (and for the participants with postponed pension entitlements) and the pensioners in the scheme. The amount of the earmarked investments will increase accordingly.
8. Generally, the value of the earmarked assets will be well over the value of the pension entitlements; the difference serving as a buffer to accommodate the effect of any risks that might occur (especially from price risks on the financial markets, from interest rate changes or from the longevity risk). Supervisory authorities might set limits to the minimal amount of these buffers.
9. Short-term shortages, where the value of the earmarked investments is below the outstanding amount of the pension entitlements (probably increased by the amount of the mandatory buffers), might not endanger the classification of the scheme as being funded. Maintaining the classification as a funded scheme would occur under the precondition that the employer and sometimes the active participants will

inject additional pension contributions and/or that pension benefits will be reduced to restore the minimal level of the buffers.

10. If the scheme becomes underfunded, meaning the mandatory buffers become too small or even negative and the employer funds into it, this is to be recoded as an employer's contribution.
11. Social insurance schemes that are partially funded by design, so the earmarked investments are significantly below the scheme obligations, are classified as unfunded schemes.
12. The participants in a pension scheme, whether unfunded or funded, do not own directly the assets that are collectively held and managed (similarly to mutual funds) but they hold an individual claim on the pension entity (the pension entitlement).

1.3.1.4. DEFINED CONTRIBUTION AND DEFINED BENEFIT SCHEMES

13. With defined contribution schemes, the individual pension benefits depend on the value of the accumulated assets at or after retirement. Therefore, the individual households bear the financial risk of the performance of the earmarked assets: they are facing uncertainty concerning the level of the future pensions. Regularly (but this is not a required condition), the participants in the scheme may have some individual choice in the orientation of the investment of their funds in one or more market segments and/or of the investment manager.
14. The accumulation of the assets and the attribution to the individual participants is very similar to investing via a mutual fund. Normally, participants in the scheme cannot dispose of their holdings before retirement, see also ESA 2010 paragraph 17.54). With the aim of mitigating the risk from developments on the financial markets on the level of the pension benefits, the asset mix for participants — either on an individual or on a vintage basis — might be shifted to less volatile instruments some years before retirement.
15. Normally, a defined contributions scheme is funded though unfunded defined contributions schemes may exist. In the latter option, the scheme would use a financial market index as the yardstick to calculate the individual pension rights at retirement.
16. With defined benefit schemes, the benefits are calculated according to a scheme-specific formula. Often the number of years in service and the salary are the main ingredients of this formula (final pay, average pay). The outcome of this formula, sometimes in combination with a guaranteed minimum amount was solely decisive on the benefits to be granted in the past. The employer was obliged to supplement any deficit with the scheme in many cases. This means that if the value of the investments was less than the amount of the pension entitlements plus (part of) the buffers, the employer should pay an additional employer's contribution.
17. However, increasingly the employers stepped down from being solely responsible to supplement when needed in recent years. Accordingly, the scheme's formula was amended and/or the unconditionality of the pension promise to the participants was mitigated: a promise according to the formula often changed into a conditional entitlement. So, the formula reflects the envisaged entitlement without — circumstance driven — being legally enforceable (see also ESA 2010 paragraph 17.57).
18. These defined benefit schemes should have a clear surplus of the value of the earmarked assets over the pension entitlements according to supervisory regulations in many cases. This mandatory buffer might be up to over 30 % of the pension entitlements. One could fancy a defined benefit scheme being unfunded. Present accounting regulations, however, make the existence of unfunded defined benefit schemes fairly unlikely in the corporations' sector; most applicable accounting directives prescribe all obligations of the corporation to be included in its balance sheet. Accordingly, unfunded defined benefit schemes would mainly be seen with government.
19. Some social insurance schemes have characteristics from both defined contribution and defined benefit schemes. These schemes are treated as defined benefit schemes in national accounts and government finance statistics.⁽⁶¹⁾

1.3.2. Treatment in national accounts

20. ESA 2010 draws a line between social insurance and any other personal protection against social risks or needs (see ESA 2010 paragraph 4.84). In order for an individual policy to be treated as part of a social insurance scheme, the eventualities or circumstances against which the participants are insured

⁽⁶¹⁾ See also IAS 26 (Accounting and Reporting by Retirement Benefit Plans), paragraph 12 (Definitions Plans with mixed characteristics).

shall correspond to the risks or needs listed in ESA 2010. In addition, one or more of the following conditions shall be satisfied:

- a) participation in the scheme is obligatory either by law or under the terms and conditions of employment of an employee, or group of employees;
- b) the scheme is a collective one operated for the benefit of a designated group of workers, whether employees, self-employed or non-employed, participation being restricted to members of that group;
- c) an employer makes a contribution (actual or imputed) to the scheme on behalf of an employee, whether or not the employee also makes a contribution.

1.3.2.1. SECTOR CLASSIFICATION OF THE UNIT RESPONSIBLE FOR THE MANAGEMENT OF A SOCIAL INSURANCE SCHEME

21. Social insurance institutions should be classified according to their characteristics:

- a) A government unit is judged to be responsible for the management and scope of a scheme if participation is imposed by law or specific regulation and if it is controlled and financed by government units, the level of the main flows by setting (or approving in last resort) the rules. Note that this role of managing, control and financing differs from the role government might have in supervising institutions to ensure they are run according to prudent principles, see ESA 2010 paragraph 4.89 (a).

Such schemes qualify as 'social security schemes' (ESA 2010 paragraphs 2.117 and 4.89 (a)). The government department managing such schemes, where clearly identifiable, is classified within the subsector 'social security funds'. If the department unit is no separate (quasi) institutional unit, it should be classified in the subsector of government where the larger unit is classified.

This classification applies independent of the scheme being funded or unfunded. An unfunded scheme often relates to the state pension scheme where the pension benefits normally are of a 'flat rate' nature, possibly only dependent of the number of participating or contributory years. However, funded defined contribution pension schemes and private institutions managing the scheme's investments are not classified within the general government sector.

The financial investments that are held in the context of an unfunded scheme — predominantly a liquidity buffer — are recorded as assets of the scheme's entity and not of the beneficiaries.

- b) The employment related social insurance schemes other than social security schemes (including the scheme(s) for civil servants) could be organised within:

- **the unit of the employer**

In this case the employer organises the scheme exclusively for its own staff (or part of them in some cases), manages the scheme directly and is fully responsible for all underlying flows (some might be imputed flows in national accounts).

These schemes qualify as 'non-autonomous employer pension schemes'; if funded often also named 'book-reserve system' (ESA 2010 paragraph 2.106).

All flows, assets and liabilities are allocated to the unit and sector of the employer. In other words, such schemes can be classified in all institutional sectors except households.

The unit managing the scheme for government employees normally is assumed constituting a separate (quasi) institutional unit — contrarily to those with corporations — that should be classified as a pension fund (see next bullet).

- **a separate and dedicated unit (a pension fund)**

If the employer organises the scheme exclusively for the own staff (or part of them in some cases) or jointly with other employers, managed via a separate and dedicated entity outside the employers' unit this entity is called a pension fund. The pension fund is fully responsible for all underlying flows and stocks.

These schemes qualify as 'autonomous employer pension schemes'. All flows, assets and liabilities are allocated with the associated pension funds in the corresponding subsector (S.129).

- **an insurer**

In this case the employer organises the scheme exclusively for the own staff (or part of them in some cases) or jointly with other employers, through an insurance contract with a life insurer who is fully responsible for all underlying flows and stocks. These flows and stock are part of the life insurer's flows and stocks. All flows, assets and liabilities are reported in insurance corporations' subsector (S.128).

22. The role of pension funds and life insurers should be distinguished from the role of most other classes of institutions that might manage pension schemes on behalf of employers.⁽⁶²⁾ These other institutions would most often organise the scheme without being responsible and accountable for the scheme's obligations: they are the administrator and perform auxiliary activities and should be classified as such. Especially, insurers, banks and dedicated pension auxiliaries perform these activities. The pension entity itself should be classified separately. Occasionally, depending on a country's legislation, these other classes of institutions might be responsible and accountable for the scheme's obligations. The pension scheme's transactions should be reported with the institutional sector of those institutions.
23. In recent years, some countries have set up funded defined contributions pension schemes where government imposes or encourages participation, possibly collects contributions from employers/employees/self-employed and it may pay pension benefits to retirees. Also, government might fix the level of contributions and maybe possibly decide on the applicable the rules. Government has often outsourced the investment management to private sector managers (banks, insurers and brokers). Underfunded defined contributions pension schemes, the pension benefits predominantly depend on the accumulated assets. Under these conditions, not all the ESA 2010 criteria for classifying such schemes as social security schemes are fulfilled, as government is not fixing the level of the pension benefits and it does not 'control and finance' the scheme.
24. Moreover, as the full investment risk is with the policyholders/beneficiaries, these schemes are comparable to an investment fund. This implies that the entity managing such a pension scheme, constituting a separate institutional unit, should be classified as a financial institution in the appropriate subsector.
25. If government would guarantee the level of the benefits under a funded defined contributions pension scheme, implying that government would bear part of the risks, this as such is not a sufficient condition for classifying it as a social security scheme. This would only apply if the scheme were under a recurrent call during several years from which it is clear that the government guarantee is not for exceptional and temporary reasons. That situation might motivate government to take full control of the scheme and adjust the levels of contributions and benefits. This reclassification might also occur before a call on the guarantee has been made but where sufficient evidence exists that such a call would be inevitable in the near future. Reclassification would be at stake only if government participation in the benefits from a funded defined contribution scheme would be over the payment from the scheme's own resources.
26. Therefore, in the absence of government guarantees, the flows of contributions and benefits under funded defined contribution schemes are not recorded as government revenue or expenditure and do not have an impact on government net lending/borrowing (B.9).

1.3.2.2. GOVERNMENT GUARANTEE TO A FUNDED SCHEME

27. Even where government is not responsible for the management of a scheme that is not classified as social security scheme, it may have a 'strong interest' in the sustainability of the scheme, as part of its social protection policy. Government might closely follow the performance of non-government pension schemes notably, to ensure that nobody within the population would be left without an adequate pension.
28. In this context, where government considers that the degree of uncertainty for participants in a non-government pension scheme is not acceptable, for example because of operational risks, insufficient level of accumulated reserves, market collapse, the government may grant an explicit guarantee to protect the participants. Government acts as payer of last resort to ensure that benefits reach a level considered to be satisfactory.

⁽⁶²⁾ These other institutions should record insurance technical reserves (provisions) to reflect the pension obligations for which they are responsible. These reserves would not otherwise exist for these institutions.

29. The existence of a government guarantee, in conditions mentioned above, to a funded scheme that is not classified as a social security scheme, does not as such imply that the beneficiary pension scheme should be reclassified as a social security scheme.
30. The government guarantee must be considered a one-off guarantee (a contingent liability), not recorded in national accounts as a government liability according to the general ESA 2010 principles. In this respect, the risk borne by government is only a potential one as it depends on the occurrence of certain specific events. As a result, neither government expenditure nor government revenue is recorded as long as the guarantee is not called.
31. Government may support a scheme for exceptional and temporary reasons, for instance a short-term shock on financial markets (like in 1987, 1994, or 2008) so that the government intervention is limited in time and/or amount. This does not imply reclassifying the scheme as a social security scheme, unless government takes control of the scheme and directly adjusts the levels of contributions and benefits. This means that, in a first stage, any government support, although affecting government net lending/borrowing (B.9) would not have the automatic effect of reclassifying the scheme.
32. If government's support for the scheme is not implemented for exceptional and temporary reasons but is observed frequently and assumed permanent, national accountants should closely examine whether government has obtained some controls over the scheme such that conditions for classifying it as a social security scheme are fulfilled.
33. In the case of a defined contributions funded scheme, this reclassification as a social security scheme should be implemented only when the government is effectively ensuring the payment of benefits for an amount higher from than the one payable from the assets accumulated in the fund.
34. In the case of a funded defined benefit scheme, this reclassification as a social security scheme should be implemented only when the government is effectively ensuring the payment of benefits for an amount higher than 50 % of the actuarial value of the pensions from its own resources.

1.3.3. Rationale of the treatment

35. The level of pensions depends on the value of the accumulated assets that are invested on the market with a defined contributions funded scheme. Therefore, government is not controlling the level of the individual pension benefits because it has no direct influence on the market performance of the assets.
36. All pension funds where the participants bear the financial risk should be treated in the same way, whatever the nature — public or private — of the unit managing the scheme, or even the obligatory or voluntary nature of the scheme. They are savings accumulated by households. Managing assets on behalf of other units is a financial intermediation activity that is not normally a function of government. When managing such schemes, government is not acting for public policy purposes but is acting in a similar way to a financial institution.
37. Classifying a funded defined contributions funded scheme into the subsector of the managing entity, often S.125 'insurance corporations' S.128 or and 'pensions funds' (S.129) but possibly (depending on the country's legislation) another (sub)sector means that, although on the one hand the liability relating to the future pensions is not recorded as government liability and on the other that, the government securities held by the managing entity on behalf of the pension scheme pension fund should be are rightly recorded in government debt (not consolidated). Under these conditions, the structure of the entity's portfolio of the pension fund has no influence on the recording of government debt.

1.3.4. Transfer of pension entitlements from the second pillar

38. Occasionally, pension entitlements that are accumulated in the second pillar are transferred to the first pillar of the country's pension system, accompanied by the transfer of associated assets. The transfer might be voluntary, encouraged by government or compulsory. The treatment will depend on the exact features of such transfers at inception, which are not yet fully known: future role of individual accounts, calculation of the future value of the accounts, etc. Eurostat and the national statistical authorities will examine on bilateral basis the impact on government accounts.
39. The starting point of the recording would be an identical value of the transferred entitlements and the associated assets. Under this assumption, the transaction is financial in nature. Accordingly, the transfer has no impact on government net lending/borrowing (B.9). However, government debt may be indirectly affected through the consolidation of the government bonds that are amongst the assets.

1.4. Market regulatory agencies in agriculture

1.4.1. Background

1. This section discusses the sector classification of market regulatory agencies⁽⁶³⁾ and the treatment of their inventories, when these agencies operate within the domain of agriculture. The rules could also apply for market agencies intervening in other markets such as raw materials (this is not currently observed in the EU).⁽⁶⁴⁾
2. These are national agencies acting on behalf of the European Union or other units having both a market and a redistribution activity. They mainly concern agricultural products. Institutional arrangements vary between countries. Typically, their activities include the purchase and storage of agricultural products; giving direct subsidies to farmers, levying charges on producers and imports; giving subsidies for exports; giving grants for capital equipment and environmental improvements.⁽⁶⁵⁾
3. The Eurostat 2005 decision on the accounting treatment of transfers between the EU budget and EU Member States specifies that EU transfers should have no impact on government net lending/borrowing (B.9), as government is considered to act 'on behalf' of the EU. The Eurostat decision focused on the recording of some ESA transactions, such as subsidies or investment grants. As noted above, market regulatory agencies buy and sell products, in most cases on behalf of the EU, with the aim to stabilize prices by setting up inventories or buffers. From a national accounts point of view, general governments are not the economic owners of these inventories. However, allocating to the EU (rest of the world (S.2)) the changes in inventories would imply recording market regulatory agencies' purchases/disposals as exports/imports with the EU institutions, which would not be the relevant solution both from a conceptual and an accounting point of view.⁽⁶⁶⁾

1.4.2. Treatment in national accounts

4. ESA 2010 paragraphs 20.53–20.54 makes a clear distinction between 'market regulatory organisations' which are either exclusively or principally distributors of subsidies and those which are exclusively or principally engaged in buying, holding and selling agricultural or food products.
5. Market regulatory agencies channelling subsidies are classified in the general government sector (subsector central government). Market regulatory agencies engaged in transactions on markets are classified in non-financial corporations sector.
6. However, market regulatory agencies may be engaged in a mixture of both activities mentioned above. In such cases, ESA 2010 paragraph 20.54 states that the agency may be split into two institutional units, which may be implemented when there is evidence that one part of the activity of one unit is fundamentally different from another part (for instance in the case of quasi-corporations): the institutional unit being in market intervention activities is classified in the non-financial corporations sector. The second institutional unit distributing subsidies is classified in the general government sector.
7. When it is not possible to distinguish two separate institutional units (notably for accounting reasons or no clear management separation), the following rule should be applied to determine the 'principal activity'. Units should be classified to the general government sector if their costs incurred in market regulation compared to the total costs are less than 80 % and to the non-financial corporations sector if their costs incurred in market intervention compared to the total costs are more than 80 %.
8. The costs incurred are measured in the same way as the value of output of non-market services, i.e., as the sum of intermediate consumption, compensation of employees, consumption of fixed capital, and

⁽⁶³⁾ Also referred to in ESA 2010 as market regulatory organisations.

⁽⁶⁴⁾ As far as other regulatory bodies (which do not intervene directly on markets through 'buffer stocks'), such as national authorities for energy, telecommunications, transportation, etc., are concerned, the classification within the general government sector would depend on their significant role in the design of the framework of the activities together with the judicial power they are entitled to. Should the above conditions not be fulfilled, it would be necessary to look at the nature of their resources, which may largely take the form of taxes.

⁽⁶⁵⁾ However, in the context of the current EU Agricultural policy, the regulation of output prices has decreased to a rather minor activity, observed only for a restricted number of products.

⁽⁶⁶⁾ For more information, see Eurostat guidance note of 20 November 2008: [Recording of changes in inventories of Agricultural Market Regulatory Agencies](#).

other taxes on production less other subsidies on production, while interest payments are not included (see ESA 2010 paragraph 3.49).

9. However, where a market regulatory agency acting on behalf of the EU (i.e., in the context of EU common policies) is classified in general government, the creation of a quasi-corporation, rather than a notional unit, in the corporations sector (S.11) is recommended in order to capture the changes in agricultural inventories, and to avoid that such changes in inventories are recorded in national government accounts (as changes in government inventories, with an impact on the government net lending/borrowing (B.9), or in the rest of the world accounts (as exports and imports).
10. This recording would be mainly based on the view that the EU has economic ownership of those inventories, and not the national government, and that the market regulatory agencies are in fact acting on behalf of the EU: the EU exercising control and assuming risks and rewards associated to these inventories. Such a treatment is also in line with the convention of sector classification of market regulatory agencies (in S.11) stated in ESA 2010.

1.4.3. Rationale of the treatment

1.4.3.1. THE 80 % CRITERIA

11. The main reasons for fixing the threshold at the high level of 80 % are the following:

- it is not a 'normal' activity of for an enterprise (market producer) to distribute subsidies;
- in many cases the agency has a public legal status;
- in the context of the Common Agricultural Policy, the subsidy distribution significantly prevails on market interventions;
- a treatment ensuring stability over time for the classification of market regulatory agencies is needed.

1.4.3.2. ECONOMIC OWNERSHIP OF THE INVENTORIES

12. Given that a market regulatory agency would be 'acting on behalf of the EU' and thus would not use these inventories in its own production process, this institutional unit does not seem to be the economic owner of those inventories arising from its interventions on the market. The EU should be considered the economic owner of such inventories.
13. Nonetheless, in this case, the recording of exports/imports relationships with the EU does not seem desirable or plausible because this would entail recording export and import flows each time the agency buys or sells, inflating totals with limited analytical value. In addition, market interventions of regulatory agencies, although acting 'on behalf' of the EU, are made at national level, i.e., in the national markets
14. It is important to analyse the economic ownership of the inventories constituted by market regulatory agencies. In the case of public interventions on markets, the Commission bears all the financial risks including all the losses derived from the intervention in the market, as the aim of the EU common agricultural policy in this field is to avoid any financial impact on the EU Member State resulting from market interventions. The opposite situation also occurs when prices go up, the EU Member State repaying in full the difference to the Commission (gain on sale). In addition, the EU Member State is responsible for taking all necessary measures for its good conservation but, at the same time, has no control over these goods as the buying and reselling decisions are in the hands of the EU instances.

1.4.3.3. CLASSIFYING THE INVENTORIES IN THE CORPORATE SECTOR

A notional unit or a quasi-corporation

15. In national accounts, a possible solution (to avoid recording exports and imports upon each addition to or removal from inventories) would be to allocate the recording of such agricultural inventories (P.52) to the non-financial corporation sector (S.11). This would be consistent with the reasoning that general government is not the economic owner of the inventories resulting from market interventions. This approach would follow to some extent the convention stated in ESA 2010 paragraph 2.114 mentioned above.
16. The above view would imply that an artificial unit would be created to capture transactions in inventories within S.11, in those cases where the market regulatory agencies are classified in central government (S.1311).

17. One possibility would be to recognize a notional resident unit owned by the EU. The creation of a notional resident unit seems broadly in line with the ESA 2010 paragraph 2.29, which explains that notional resident units, even if they keep only partial accounts and may not always enjoy autonomy of decision, are treated as institutional units, by convention. Such a notional resident unit would hold inventories and it would be regarded as transacting in those. This implies the EU being the owner of the entity in national accounts.
18. Another possibility would be to recognize a quasi-corporation in national accounts, having the same purpose as a notional resident unit mentioned above (i.e., to capture transactions in inventories in case that a market regulatory agency is classified in central government). Normally, under ESA a complete set of accounts should be available. This is not ensured but, to the extent that the EU makes up for the losses arising from the holdings of inventories, relevant and comprehensive information is deemed to be available. This implies government being the owner of the entity in national accounts.
19. Both these treatments would avoid recording changes in acquisitions and disposals of inventories as exports/imports to the EU.
20. Summarizing, two options seem to be possible, according to who is viewed as the owner of the entity that is holding the inventories, to be classified in S.11:
 - **Option 1)** recognizing a quasi-corporation, implying that the owner of the entity remains government; or
 - **Option 2)** recognizing a notional unit, implying that the owner of the entity is the rest of the world (RoW).

1.4.3.4. NET WORTH OF GENERAL GOVERNMENT

21. Given it is argued that the EU owns the inventories, it is important to determine whether the changes in own funds of the entity owing to gains and losses on inventories at market value (which might be large from one period to the next) would impact either general government net worth, or the rest of the world net worth, or none of them.
22. It is important to determine whether the quasi-corporation option or the notional unit option would yield different, or very different, results from the point of view of the net worth of general government. It could be assumed as a preliminary conclusion that the result would be different as far as the net worth of the EU is concerned. This is because the latter would be impacted by gains and losses on inventories in the case of the notional unit option, but not in the case of the quasi-corporation option.
23. If the agency is an entity established by government, it is likely that some equity link will exist and will appear as an asset of general government when the agency is classified outside general government. However, changes in the price of inventories should not be reflected in the equity value of the entity (i.e., should not be reflected in the price of the asset of government) because by definition those gains and losses do not accrue to government but will eventually be returned to the EU or compensated by EU subsidies. Thus, in concept, the gains and losses should, at first sight, give rise to the appearance of a kind of payable/receivable with the EU, which would keep the own funds of the agency unchanged.
24. In ESA, 'own funds' are defined as net assets of units, excluding equity liabilities, while 'net worth' is defined as net assets of units, including equity liabilities. Thus, 'own funds' minus equity liabilities of units (i.e., equity issued) equals 'net worth'. See ESA 2010 paragraphs 7.02 and 7.06. The ESA net worth should thus not be confused with the business accounting notion of shareholders' equity or net worth. This business accounting notion of net worth is, in fact, closer to the ESA notion of own funds.
25. However, in concept, the time of the appearance of the payable/receivable also results from the time of recording of the subsidy, which accounting is specifically regulated in ESA.
26. This time of recording issue of subsidies would most likely lead to an impact on the own funds of the agency. However, conceptually, this should not affect the equity value of the agency. If the agency itself were to be sold, its valuation would be independent of the value of its inventories owing to the obligation of the EU to cover losses when incurred, or of the obligation of the agency to return gains to the EU.
27. Accordingly, gains and losses on inventories must be neutral from the perspective of general government net worth in all cases (notional unit or quasi-corporation), even if they are also neutral from the perspective of the EU net worth (quasi-corporation). Thus, holding gains and losses on market regulatory agencies inventories do affect only the non-financial corporations' (S.11) net worth, pending the recognition of the subsidy associated to the receivable/payable.
28. However, this will require that the valuation of the equity in the quasi-corporation will have to correspond to the financing provided to date, rather than being equal to its own funds: thus, the unit net worth would be either positive or negative, although only for short periods of time, owing to the gains and losses on

inventories not yet realised or recognized, and thus not yet compensated or returned to the EU. Such deviations could nevertheless be seen as a reasonable approximation of the convention that the net worth of the quasi-corporation should be zero (ESA 2010 paragraph 7.09).

1.4.3.5. VALUATION OF TRANSACTIONS IN INVENTORIES

29. In national accounts, the transactions related to interventions in the market should be recorded in application of ESA 2010 paragraph 4.33 and ESA 2010 paragraph 4.35, in the context of notional or quasi-corporation units. These ESA paragraphs would still be applicable for the cases of notional or quasi-corporation units.

30. The transaction value on resale must include the EU subsidy. Thus, changes in inventories will tend to compensate over time. The reimbursements made by the EU correspond to the difference between purchase and resale prices, which is shown in national accounts as subsidies paid by the EU.

1.4.3.6. ACCOUNTING TREATMENT IN THE FINANCIAL ACCOUNTS

31. The following discusses how to record in the financial accounts the links between the notional or quasi-corporation unit and the EU and/or government.

32. Under the **notional unit option**, the recording will be as follows: an acquisition of equity (F.5) by the EU is to be recorded, matched by an EU borrowing (F.4) from the entity financing the market regulatory agencies (often government itself). This would imply changing the present recording in the rest of the world financial accounts.

33. Under the **quasi-corporation option**, no entries are recorded in the rest of the world financial accounts, as the transactions in equity on the liability side of the quasi-corporation have a counterpart entry in the accounts of government.

34. Thus, in both cases the net change in inventories that is *de facto* financed by the entity in government (by way of borrowing from third parties or of drawing down on its liquidities) is recorded in the financial accounts of general government, instead of in the non-financial accounts as would otherwise be the case (under changes in inventories P.52): either as transaction in equity (F.5, quasi-corporation option) or as loans to the EU (F.4, notional unit option).

35. A theoretical advantage of the notional unit option, over the quasi-corporation option, is that it reflects the genuine economic ownership of the EU. However, a main disadvantage of the notional unit option is that this requires entries in the rest of the world (RoW) financial accounts that do not even exist when the regulatory agency unit is classified outside general government in the first place: thus the notional resident unit option seems to introduce an apparent asymmetric treatment between those market regulatory agencies that are classified in general government and those market regulatory agencies that are classified outside general government. This would seem to go against a homogeneous treatment across EU Member States.

36. In addition, the impact of the movement in the market value of inventories not yet covered by subsidies is likely to be small and temporary, and on average zero over time. In this context, the merit of imputing government lending to the EU and, simultaneously, EU financing of the inventories may be doubtful.

37. Finally, it should be reminded that strictly following a recording that portrays the change in the economic ownership would have implied recording imports and exports, which are deemed not to be particularly useful for analytical purposes (balance of payment). It may be noted, however, that both options leave the same impact on the government net lending/borrowing and debt.

1.4.3.7. 'SHELL' TREATMENT

38. When the notional unit or the quasi-corporation is seen as a 'shell', for simplicity purposes, it would be conceived in national accounts as only holding inventories and undertaking transactions in those, with counterpart entries in the financial accounts: equity liability. The 'shell' option would also mean that no reinvested earnings would be recorded.

39. Alternatively, these units can be conceived to be more complete entities, showing a more complete sequence of national accounts, such as generating a margin and incurring costs.

1.4.3.8. TIME OF RECORDING OF THE SUBSIDY

40. ESA 2010 paragraph 4.39 (a) indicates that the time of recording of *subsidies which take the form of the difference between the purchase price and the selling price charged by a government is at the time the goods are bought by the agency.*
41. When a product is bought for 120 by the agency in period T, and resold for 100 in the following period T+1, a subsidy on product is recorded in T. In T, the output of farmers (S.14/S.11) is then 120, the GDP 100, changes in inventories +100. In T+1, the output of farmers is 0, GDP is 0, final consumption is 100, and changes in inventories are –100.
42. However, ESA 2010 paragraph 4.39 (a) specifically indicates: *if the selling price is known at that time*, which needs to be interpreted. The resale price is a *priori* generally not known in advance. But an expected price is probably known: suppose it was 106 in the example above. Then 6 (=20–14) only is the non-expected element.
43. The reference in ESA 2010 above presumably intends to avoid that holding gains/losses enter the production account. Only the part that the scheme is expected to finance should contribute to output. But at the same time, in the case of agricultural market regulatory agencies, no holding gains and loss will ever be borne by farmers or by the agency: all the changes in price will be eventually assumed by the EU.
44. Finally, the selling price of the goods might have fallen to 102 by end of year T. This would be the value of inventories recorded on the balance sheet at the end of period T.
45. If ESA 2010 paragraph 4.39 (a) also covers cases when the selling price will be known only in the next period, then the amount to record as subsidy in T (and parallel acquisition of a receivable) by the agency is either:
- **Option 1)** the actual amount observed in T+1 (20); or
 - **Option 2)** the expected amount observed in T (14); or
 - **Option 3)** an amount reflecting the market price observed as of end of the year (18).
46. In option 1), the recordings are straightforward but imply a revision in the data, when the information is gradually available (notably for quarterly data). In option 2) and 3), one issue is how to record in T+1 the difference of 6 (=20–14) or 2 (=20–18). One approach is to enter those flows in the revaluation accounts of the financial accounts (thus recording subsidies on an expected basis), which seems difficult. Another approach is to record a subsidy on production in T+1 for the remainder (that could be either positive or negative) matched by an entry in change in inventories (although this might appear artificial). In doing so an entry in the revaluation account in the non-financial assets occurs (of $+4=6-(20-18) = (20-14)-(20-18) = 18-14$) in T+1 in option 2) compensating the holding loss arising in T (of $-4=14-18$). No revaluation occurs in option 3) neither in T+1 nor in T. It should be noted that in option 3), the net worth of the quasi-corporation is always zero. In option 1) or 2), the net worth deviates from zero, for either positive or negative amounts, but for limited time spans.

1.5. Units engaged in financial activities: general issues

1. This chapter discusses whether certain types of public units (i.e., controlled by government) undertaking financial activities, i.e., essentially acting on diversified financial instruments on both sides of their balance sheet, should be classified in the general government sector (S.13) or as public financial corporations in the financial corporations sector (S.12) (see ESA 2010 paragraphs 2.55 and 2.56 for the general definition of financial corporations).
2. Units principally engaged in financial intermediation, as defined in ESA 2010 paragraphs 2.56 to 2.58, are to be classified in one of the following subsectors of S.12: central bank (S.121), deposit-taking corporations, except the central bank (S.122), money market funds (S.123), non-monetary market investment funds (S.124), other financial intermediaries, except insurance corporations and pension funds (S.125), insurance corporations (S.128) and pension funds (S.129).
3. Units engaged in auxiliary financial activities, as defined in ESA 2010 paragraph 2.63, are to be classified in the financial auxiliaries subsector (S.126). It is recommended that captive financial institutions, as specified in ESA 2010 paragraphs 2.21–2.23 and ESA 2010 paragraphs 2.98–2.99, are classified within the captive financial institutions and money lenders subsector (S.127).

Supervisory authorities

4. According to ESA 2010, supervisory authorities of financial intermediaries and financial markets, when they are separate institutional units, are classified in the subsector of financial auxiliaries (S.126). In particular, the tasks corresponding to banking supervision, and possibly also insurance and pension supervision, are frequently conducted within the national central bank. This is the case in the euro area and in other EU Member States participating in the Single Supervisory Mechanism, where significant banking institutions have been directly supervised by the ECB since November 2014 onwards. The supervision of financial markets (or other related activities) is generally carried out by specific bodies and occasionally by the Ministry of Finance.
5. The crucial point is to decide whether these tasks are undertaken autonomously and separated from a hosting/parent institution, i.e., conducted by a separate institutional unit according to the general ESA 2010 definition. Notably, the issue is to assess whether governing bodies of supervisory authorities may take decisions in full independence from government bodies or, in general, from the hosting unit (for instance, the ‘Chinese wall’ between the supervisory and monetary policy decision-making in the case of a central bank). The existence of an autonomous budget, fed by its own resources, is also an important feature. If these conditions are not met, the entity cannot be considered autonomous and must be included in the hosting/parent unit.
6. Financial institutions must generally pay contributions to the supervisory authorities. It is considered that, in this case, the supervisory authorities render services to the supervised units. The services provided by the supervisory authorities should enhance the confidence of customers/shareholders, improve the quality of management, and facilitate the profitability and development of the financial institutions supervised. The owners of the supervised units also benefit from this supervision, particularly in the case of banks where rules ensuring solvency are significant. Although such contributions are compulsory and imposed by law or other kinds of regulations, they should be considered a compensation for a service and thus classified under ESA 2010 as payments for non-market output (P.131), provided that they are set up globally at level covering the supervision costs⁽⁶⁷⁾. This is generally the case, as such supervisory authorities do not manage special funds or do not have to accumulate reserves.⁽⁶⁸⁾

National protection funds

7. National protection funds are entities that manage funds in order to pay compensations to eligible creditors in the event of default by units of the financial sector. In the banking sector, this primarily takes

⁽⁶⁷⁾ They are generally adjusted according to the size of the supervised units.

⁽⁶⁸⁾ See ECB Press release of 27 May 2014, estimating banking supervision costs in the euro area to EUR 260 million and, as a result, the fixed the amount of fees to be paid by all banks in the area, according to their size.

the form of deposit protection funds/schemes which can intervene up to a specific amount in order to compensate depositors for a limited amount of lost deposits if the bank defaults (such deposits are referred to as 'secured deposits'). They may also cover a resolution fund, which specifically aims to support institutions in distress through different kinds of measures and financing, thus avoiding an immediate recourse to government support. Protection funds are often set up for financial stability purposes. Other such funds could exist with the additional aim of protecting investors in financial markets.

8. Deposit protection funds do not decide by themselves when and at which level they have to intervene and activate accumulated funds. A competent supervisory authority needs to carry out an assessment. The activation can be either automatic or triggered by a decision of the supervisory authority. The level of the compensation paid out may be fixed either by national or by EU law, notably for the deposits protection schemes.
9. A distinction is made between statutory protection schemes and contractual schemes (which are mostly voluntary). Statutory schemes are established and regulated by law, normally aiming at providing a service to the general public. Contractual schemes are often purely privately managed.
10. To ensure the minimum regulatory protection of deposits by government, European legislation⁽⁶⁹⁾ introduced in 2014 imposed the existence of statutory funds/schemes for which participation is compulsory. Such schemes include National Deposit Guarantee Funds (DGF) and, separately, National Resolution Funds (NRF).

Statutory schemes

11. All statutory schemes should be classified within the general government sector, because they can be regarded as a type of government unit within the meaning of ESA 2010 paragraphs 20.05–20.12. Even where this may be doubtful, an examination using the traditional decision tree approach (ESA 2010 Diagram 20.1) would lead to the classification as part of government, because these entities are publicly controlled and non-market.
12. By their constitution and their main purpose, the NRF and to some extent the associated DGF, may be seen outright as 'government units', being legal entities established by political process that have judicial or executive powers over other institutional units, and which redistribute wealth via compulsory payments from units belonging to other sectors (ESA 2010 paragraph 20.29). Both the NRF and DGF have been assigned public policy tasks of protecting the public's savings and ensuring financial stability. To this effect, they have a wide range of powers. The NRF has quasi-judicial powers in determining which creditors would be bailed-in, thus entailing redistribution of wealth between creditors. Both the NRF and the DGF can mobilise resources by levying taxes on banks and, often, by obtaining funds directly from government, in case of emergency. DGF and NRF funding is levied through contributions, at rates which do not meaningfully reflect the credit risks of the institutions they cover, thus entailing some redistribution between banks.
13. The NRF and DGF are publicly controlled non-market entities and as such, they are classified inside general government. Their activity is to ensure that depositors will be reimbursed, or to efficiently liquidate distressed banks as smoothly as possible in order to avoid systemic risk. This activity cannot be assimilated to market insurance, and, as such, these entities are not classified in the S.128 subsector. As the compensation payments required can be considerable and thus outside the capacity of any private operator, this coverage of risk activity should either be considered as non-insurable risk or as an insurable risk of a non-market nature. The entities are not financial intermediaries either, as they keep reserves/assets solely for the purpose of emergency and not for the purpose of conducting some kind of transformation of funds. Neither are they financial auxiliaries, as they do not sell a market service to banks and do have a balance sheet of a large size: they instead collect contributions that are economically considered as taxes levied to fund a public pool of resources that can be tapped upon emergency.
14. The contributions could hardly be considered as sales because they are unrequited. Moreover, an important consideration in any argument for classifying such statutory funds to the S.12 sector would be the need to identify the clients to whom they would 'sell' or provide their service. If plausible clients may

⁽⁶⁹⁾ Directive 2014/49/EU on Deposit Guarantee Schemes; Directive 2014/59/EU on the recovery and resolution of credit institutions and investment firms.

a priori be depositors, banks, or government, one cannot easily or effectively identify what is that statutory funds would be selling to depositors or to banks.

15. The NRF and the DGF are controlled by the public sector, either directly (through the intervention of the Ministry of Finance), or indirectly through the Central Bank (which is by convention a public sector entity) or the Financial Supervisor, or through legislation (by way of so-called 'excessive legislation' foreseen in ESA 2010 paragraph 20.309 (h), even in cases in which directors are predominantly appointed from the private sector. In some borderline cases, public control over some statutory protection funds resembles the public control exercised on some NPIs through the enabling instrument, as well as risk exposure (see ESA 2010 paragraphs 20.15 (b) and (e)).
16. It is more difficult to judge whether the entities have autonomy of decision. However, this is also not crucial for the classification, if it is established that the unit is public and non-market. Notwithstanding this point, the DGF is often a quasi-automatic entity, whose autonomy of decision can be put into question, particularly in the context of the Single Supervisory Mechanism (SSM), which regulates in detail a large part of the DGF activity. In addition, the DGF can be seen as ancillary to resolution to the extent that (a) resolution will often take place first, ahead of outright liquidation, and (b) the DGF may be called on to finance the NRF for amounts up to that which the DGF is saving through that resolution. Similarly, to the DGF, the NRF seems to operate largely on auto-pilot, but its authority — the National Resolution Authority (NRA) — certainly has some autonomy of decision.
17. When the NRA (and its associated NRF) is organised through the Central Bank (the Central Bank managing the NRA), then, under ESA 2010 rules, the latter cannot be the parent of the NRF (or the NRA and NRF), mostly because it is prohibited for the Central Bank to fund the NRF⁽⁷⁰⁾. An entity that cannot fund another cannot be its parent. As a result, the parent will be the Ministry of Finance. Thus, when the NRA is organised as part of the Central Bank, the latter is conducting government tasks on behalf of government, and, accordingly, national accounts recognise the principal party of the transactions carried out (through the NRF and the associated DGF) to be government.
18. The provisions above stem also from the necessity, under the European legal framework, to ensure homogeneity of classification of what is *de facto* a European scheme, which is then adjusted by Member States (through the national legal framework) to fit best national circumstances. Accordingly, a uniform classification across the EU is appropriate. For the sake of consistency, these provisions are applied to all statutory funds, even when they are not part of the European framework.
19. The requirements of the EU regulatory framework can be fulfilled in practice in various ways at national level. Sometimes more than one fund and/or scheme is set up to achieve the Regulation's targets, requiring an appropriate statistical assessment of these entities and existing mechanism.
20. Entities whose function is to fulfil the regulatory required targets that are normally covered by the DGF or the NRF are classified inside government because they are merely a modality to enforce a government scheme — even if some of the entities concerned are formally organised as private entities.
21. In some cases, statutory and contractual schemes are included in or managed by the same entity. In such cases, either the entity could be split into two units, or the entity should be classified inside government and the non-statutory component re-routed outside government accounts. As a practical implementation of rerouting, the managing unit could be separated from the specific fund, which is classified inside general government.

Other protection funds

22. Regarding other, mostly voluntary, protection schemes, such as contractual (non-statutory) protection funds, the relevant analysis may follow the following path. Protection funds act largely on 'auto-pilot'. Thus, the question of their decision-making power in activating accumulated funds is frequently not relevant. Such funds may also depend on another authority for activation. The crucial point here is to assess whether the governing body of a protection fund is entitled to take a decision independently or only to make some proposals (if any), which have to be confirmed by another authority (such as the Central Bank or the Ministry of Finance).

⁽⁷⁰⁾ The ECB has issued Opinions on some national laws regarding National Resolution Funds (NRFs) and Deposit Guarantee Schemes (DGS). In these opinions it is pointed out that the ESCB may not finance any NRF or DGS (except overnight, short-term or emergency financing) since it would breach the prohibition of 'monetary financing' under the Treaty. See the following: paragraph 3.1 of Opinion CON/2016/3; paragraph 2.3.2 of Opinion CON/2015/52; paragraph 3.2 of Opinion CON/2015/40; paragraph 4.1 of Opinion CON/2015/17; paragraph 2.2 of Opinion CON/2014/86; Opinion CON/2011/103 and Opinion CON/2012/22. See also page 30 of the ECB's 2014 Convergence Report.

23. Another issue is to assess whether these protection funds are free to set the level of contributions to be paid. Protection funds may have some power, especially regarding the ‘modulation’ of individual contributions according to estimated actual risks incurred by the participants. However, their room for manoeuvre is generally rather limited (for example, the criteria may be precisely set by another authority). Protection funds generally do not fix the global amount. Although they often have some power to redistribute the level of contributions among the units, they do not set the global amount of contributions to be raised.⁽⁷¹⁾
24. Moreover, when insufficient resources are available, it is important to assess whether a protection fund may make an entirely independent decision on the nature, amount, conditions and timing of possible irregular resources (exceptional contributions, borrowing on markets, advances from the Treasury, etc.) needed for financing the compensation or support. Protection funds may not have resources available for large defaults or resolutions. It is very likely that, at least, in the years after their establishment, they may have to rely on such exceptional resources.
25. In national accounts, the sector classification of these protection funds should also depend on the autonomy of decision of such bodies. If for most of the crucial decisions regarding their principal function, which should be distinguished from mere administrative tasks, a protection fund lacks in autonomy of decision-making power, it is not considered an institutional unit in national accounts and is included as part of the unit that mainly controls it. In this respect, the main criteria should refer to decision-making related to the resources of such protection funds, and, in particular, those related to exceptional resources, which may be needed.
26. The lack of autonomy of decision on the latter point would trigger the reclassification in the sector of the unit, which has the final say on that. If it is government, the entity should be classified in the central government subsector. Consequently, the fact that the protection fund may be entitled to take decisions related to the investment of the accumulated funds (generally under some restrictive guidelines) is not, as such, a criterion for deciding on the autonomy of decision.

Treatment of the fees payable to protection funds

27. When the fees payable are compulsory (and beneficiaries cannot opt out of the scheme unless leaving the activity in question), the levies paid by the relevant financial institutions to the protection funds are classified as taxes.⁽⁷²⁾ The reason is that protection funds do not render services exclusively to financial institutions, but rather to ‘the whole community’⁽⁷³⁾. Also, the level of individual contributions of the paying unit may not be strictly linked to the risks incurred by the protection fund.
28. In the rare case where a protection fund is classified outside the government sector, the levies should be re-routed via the central government subsector. The amounts then imputed from governments to protection funds are classified as current transfers. In case of use of funds, any rearranged transaction should also be B.9 neutral for general government.

Treatment of refundable contributions

29. Protection funds might, in some cases, arrange or accept that financial institutions pay contributions that are in principle refundable, unless they have been written-off upon certain triggering events such as a financial rescue or default of a financial institution. These reimbursable contributions might take the form of paid-in cash or of mere promise to pay (e.g., guarantees or commitments — see below). In specific cases, contributions may take the form of the acquisition of an instrument recognised as an asset in the bank’s own balance sheet (financial statement) and can carry interest.
30. Such reimbursable contributions to protection funds are recorded, at inception, in the financial accounts and not as revenue, thus implying recording the incurrence of a liability by the guarantee funds, as a kind of contingent tax pre-payment. When a triggering event occurs, the liability is redeemed, as if

⁽⁷¹⁾ Under a general objective set as a percentage of given categories of liabilities, the fund may have some flexibility on the path to reaching the objective during a transition period or, even, to adjust according to business cycles. However, this must be seen as a time arbitrage between regular contributions and exceptional resources.

⁽⁷²⁾ See ESA 2010 paragraphs 20.06 and 20.07 about the functions of government and its unique capacity to raise compulsory levies.

⁽⁷³⁾ A resolution fund does not cover the risk of insolvency, but, as specified by the European Commission, a ‘resolution would have to: 1) safeguard the continuity of essential banking operations, 2) protect depositors, client assets and public funds, 3) minimize risks to financial stability, and 4) avoid the unnecessary destruction of value.’

repaid, and a tax revenue is recorded — impacting government B.9 when the deposit guarantee fund is classified inside general government.

31. This liability of protection funds is recorded as other accounts payable (AF.8), reflecting the timing difference between the tax event and the corresponding pre-payment.

Treatment of contributions made through Irrevocable Payment Commitments

32. Under Directive 2014/49/EU on Deposit Guarantee Schemes, contributions levied can either take the form of cash payments or of Irrevocable Payment Commitments (IPCs). IPCs are a form of *ex-ante* contributions that is designed to provide some flexibility towards reaching the required target level of risk-based contribution without excessively impairing the lending capacity of credit institutions. IPCs are guaranteed by a formal pledge of low-risk assets, typically securities but possibly cash. The collateral is either transferred to the protection fund or registered in a central securities depository in favour of it. In any case, the assets must always be at the disposal of the protection funds and unencumbered by any third-party rights. IPCs can be either refundable or non-refundable (see the above section on refundable contributions for the implications of this).
33. Being just an alternative way to cash as a means to finance *ex-ante* contributions to protection funds, IPCs are, similarly, levies classified as taxes, provided that they are fully and appropriately collateralised. Under the EU regulatory framework, IPCs must always be fully collateralised. The presence of collateral ensures that the obligation to pay the levies is not weaker than in the case of cash payments and, therefore, counteracts the element of contingency that could be considered to be attached to IPCs. The collateral pertaining to IPCs is recorded in the balance sheets of the financial institutions.
34. The obligation to pay the levies arises when the collateral is pledged in favour of the protection fund and, following the accrual principle, at this time, fiscal revenue (D.29) is recorded (unless the contribution is refundable — see above), matched by a fiscal receivable (other accounts receivable — AF.89).
35. A member credit institution can potentially leave a protection fund (e.g., when joining another protection fund or in case of events such as a cross-border merger). Assuming that no triggering event has occurred and the national law regulating the scheme allows it, the credit institution's IPCs would then be redeemed/cancelled (depending on whether IPCs are refundable or non-refundable, which leads to different recording solutions).
36. In the case of non-refundable IPCs, the scheme will collect the collateralised assets, whether cash or securities, which is recorded as a transaction in financial assets matched by a corresponding redemption of the AF.89 fiscal receivable.
37. In the case of refundable IPCs, the collateral financial assets return to the credit institution through financial transactions. In the cases where non-refundable IPCs are cancelled, a tax refund transaction is recorded in the protection fund's non-financial accounts against a reduction in 'other accounts receivables' (fiscal receivable) in the financial accounts. Assuming the overall level of covered deposits in the economy remains the same, other protection fund's members will probably have to increase their contributions, maintaining practically stable the level of tax revenue of the protection fund at that time. This recording is necessary to prevent over-recording of tax revenue both at the time of cancellation and over the medium term.
38. In case of IPCs cancellations, there should not be any entry in 'other change in volume' (K.5). Such cancellations are considered transactions rather than 'other changes' in assets. Booking an 'other change in volume' would lead to inappropriately recording uncollected tax revenue (case of refundable IPC) or to undue entries in other economic flows for the collateral seized (case of non-refundable IPC).

1.6. Specific public entities

1.6.1. Overview

1. This chapter deals with some specific units under the control of government, which have a particular area of activity, such that the usual market/non-market criterion (and the decision tree in sub-section 1.2.4.1) is not relevant as far as their sector classification is concerned. The following cases are covered — special purpose entities (SPE), public head offices and public holding companies and their subsidiaries, restructuring and privatisation agencies, market regulatory bodies, entities having features of captive financial institutions, and central stock-holding entities.

1.6.2. Special purpose entities (SPE)

2. In general, special purpose entities (SPE, also called special purpose vehicles - SPV) are legal entities established to undertake the economic and financial transactions associated with a single legal contract or linked to a set of legal contracts.⁽⁷⁴⁾ ESA 2010 paragraph 2.17 specifies that SPEs are usually ... *created to fulfil narrow, specific or temporary objectives and to isolate a financial risk, a specific taxation or a regulatory risk*. The governing board of an SPE is usually a trust whose sole purpose is to ensure that the SPE implements the legal contract effectively. This board has no autonomy to direct the SPE to enter into another activity. The legal contract is usually constructed in a way that it makes very unlikely that the SPE will become insolvent or make large profits.
3. ESA 2010 paragraph 2.18 lists some usual characteristics that are assumed to be 'typical' of such entities. They must be considered to be indicative features which might be totally, partly or not observed.⁽⁷⁵⁾ ESA 2010 paragraph 2.19 states: *Whether a unit has all or none of these characteristics, and whether it is described as an SPE or some similar designation or not, it shall be treated in the same way as any other institutional unit by being allocated to sector and industry according to its principal activity unless the SPE has no independent rights of action*. ESA 2010 paragraph 2.20 further clarifies this by stating that ... *captive financial institutions, artificial subsidiaries and special purpose units of general government with no independence of action are allocated to the sector of their controlling body. The exception occurs when they are non-resident, in which case they are recognised separately from their controlling body. But in the case of government, the activities of the subsidiary shall be reflected in the government accounts*.
4. ESA 2010 does not provide details on the lack of 'independence of action' which is the term used for these entities. As already mentioned, there could be some tasks performed by the entity, provided that it has its own staff, etc. However, the lack of independence of action means clearly that there is no great amount of flexibility in respect of the principal function of such an entity (e.g., when facilitating borrowing of government and management of the debt that is incurred).
5. The case of SPEs set up by government is treated in ESA 2010 (see paragraph 2.27 and paragraphs 20.47–20.48). In the case of SPEs set up *with characteristics and functions similar to the captive financial institutions and artificial subsidiaries*, ESA 2010 paragraph 2.27 specifies that ...[s]uch units, if they are resident, shall be treated as an integral part of the general government and not as separate units, i.e., consolidated with its controlling unit (parent), as they are not institutional units. Similarly, ESA 2010 paragraph 20.47 states that *the SPE may be involved in fiscal operations, including securitisation of assets, borrowing on behalf of government, etc. Such SPEs are not separate institutional units when resident. These entities are classified according to the principal activity of the owner, and SPEs performing fiscal operations are classified to the general government sector*.
6. An SPE should be recorded as a separate unit only if it meets the autonomy of decision criteria and notably if it would be clear that the SPE does not act on behalf of government, which means that it can

⁽⁷⁴⁾ This is different from a 'conduit' that may be set up in the context of the issuance of some financial instruments (such as short-term bills or notes) but has no legal basis. In the case of a conduit, there is no separation from the 'parent unit'.

⁽⁷⁵⁾ Notably: no employees, no ownership of non-financial assets, being mainly managed by other units, always related to another corporation, often as a subsidiary. ESA 2010 paragraph 2.98 (c) also specifies that SPEs will have most of either their assets or their liabilities not transacted on open markets.

to a great extent decide, e.g., on the type and maturity of instruments to be issued and on any further decisions related to the management of the debt and/or the corresponding assets.

7. ESA 2010 paragraph 2.19 foresees the case of SPEs directly controlled by government, which might be classified outside the government sector (most likely in S.12). However, there should be in this case strong evidence that an SPE directly controlled by government could actually act 'independently' and not under a restrictive framework entirely defined by government. However, when an SPE is established to serve a government unit, the lack of independence of action, could be indicated, among other factors, by:
 - *de facto* management⁽⁷⁶⁾ of the SPE's debt by government (for instance by the Debt Management Office or the Treasury); or
 - the absence of the right or capacity to actively manage its assets in response to market conditions (arbitrage), such as government having the right to approve any significant decision in this matter; or
 - a contract or convention signed by government fully determining the SPE's operations.
8. SPEs set up by market public corporations (which are therefore formally government controlled from an accounting point of view: they also belong to the ESA 2010 public sector) for their own operations may be classified outside general government, and together with their controlling institutional unit, because government control is only indirect, unless there is explicit or implicit involvement of government and/or the SPE *de facto* acts on behalf of government.

Non-resident SPE

9. If the SPE entity is resident in another territory than that of its parent, which may be the case for securitisation operations or other financial purposes where such entities are often set up in active financial centres (issuance is easier and market deeper) or for other reasons, an SPE should be considered, by convention, as a separate institutional unit and according to ESA 2010 paragraph 2.27, ... *any transactions carried out by them abroad shall be reflected in corresponding transactions with government.*
10. ESA 2010 paragraph 20.48 provides some further details on this point. After recalling that *all flows and stock positions between the general government and the non-resident SPE are recorded in the general government and SPE accounts*, this paragraph adds that *in addition, when such non-resident SPEs undertake government borrowing or incur government outlays abroad, even when there are no flows recorded between the government and the SPE related to those fiscal activities, transactions are imputed in the accounts of both the government and the non-resident entity to reflect the fiscal activities of the government.* Thus, the transactions carried out by a non-resident SPE are recorded as such in the foreign territory, but imputed 'mirror' transactions (and potentially other flows) will be added between the SPE and government or between government and third parties.
11. For instance, any borrowing by the SPE will give rise to a claim on government and thus to an increase in government debt. In case of securitisation through non-resident SPEs, the sale of assets (financial or non-financial) would not be recognised as such in national accounts and the arrangement will result in new borrowing of government (*if a non-resident SPE engages in a securitisation operation without a sale of asset, the operation is considered to be a borrowing transaction of the government. The economic substance of this transaction is accounted for by imputing general government borrowing from the non-resident SPE for the same value and at the same time the SPE incurs a liability to the foreign creditor, see ESA 2010 paragraph 20.48*).
12. In practice, any borrowing by the SPE gives rise to an imputation of a claim of the SPE on government (an increase in government debt), matched by a corresponding increase in the equity stake of the government in the SPE (see BPM6 paragraph 8.25). When the SPE passes cash to government, the flow of funds is recorded as a withdrawal in the government equity stake in the SPE. Any expenditure carried out directly by the SPE benefiting a third party (that is not passing through the government) should be recorded as an imputed current or capital transfer expenditure of government toward the benefiting third parties (possibly consolidated, if the beneficiary is a unit classified inside the resident

⁽⁷⁶⁾ This could be presumed if the management of an SPE is fully carried out by members of the government entities or if all decisions are subject to an ex-ante approval by government. However, an SPE could still lack independence from government even when its Board is only made of so-called 'independent' non-government appointees, if its status and/or the contract with government strongly restrict its power of decision.

general government) with a matching decrease in government equity. Similarly, when the SPE engages in lending or equity acquisition, these are reported as transactions in these assets in government accounts against a matching decrease of the government equity in the SPE. Occasional SPE revenue (such as rentals, interest, or dividends, among others) are imputed as government revenue with an increase in the government equity in the SPE.

13. The imputed government debt towards the SPE is commonly being deemed a loan, which then leads to a mismatch with the SPE debt, which is often constituted by debt securities. Nonetheless, the face value of the imputed debt shall be the same as that of the SPE debt, and the interest expenditure of the SPE incurred on its debt is also to be recorded as government expenditure for the same amount (with a matching SPE interest revenue). As a result, premiums and discounts on debt securities issued by the SPE have the same impact on government account (GFS and EDP) as if the instruments had been directly issued by government, consistently with the guidance on on-lending from supranational entities in chapter 8.5.
14. However, recording a loan liability towards the SPE has a number of drawbacks: (a) the changes in market value of the debt of the SPE will not be shown as such in the ESA government accounts, but will be reflected through the equity stake of government in the SPE; in addition, (b) in case of early redemption of a debt security issued by the SPE, the market value and hence the transaction will differ from the nominal value, which will either create a difference between the transaction in debt security liabilities of the SPE and in the asset of the SPE against government (with the need for a balancing transaction in equity between them) or require a revaluation in the imputed loan (which would not be a very orthodox thing to do). It might therefore be considered, in consultation with BOP compilers, to record a debt security of government towards the SPE (instead of a loan), which would also allow for an easier recording of market value (and revaluations). In this respect, a key difference to the on-lending situation described in chapter 8.5 mentioned above is the absence here of two genuine institutional units. Rather, in the case of SPE borrowing, one unique institutional unit is involved, the other one being an institutional unit just by convention. An SPE cannot act as issuer of debt securities without the controlling institutional unit being subject to all risk and rewards, including the revaluation of the liability.
15. In summary, even when there are no cash flows occurring between the SPE and government, transactions should be nonetheless imputed in the accounts of both the general government and the rest of the world to reflect the fiscal activities of the government. These entries are made symmetrically for both the government and the SPE or the third party involved. These entries do not affect the transactions or positions between the borrowing entity (SPE) and its creditors, which are recorded as they occur with no imputations.
16. In order to avoid those complex imputations and to better reflect the activities of the government SPEs abroad within general government accounts (classification and ESA valuation of the government debt, as well as some transactions in debt that may need to be consolidated) EDP/GFS compilers have the option to follow a simpler consolidation approach for the government non-resident SPE, in consultation with BOP compilers (so to ensure cross domain consistency).
17. These special imputations of transactions and positions are adopted in order to ensure that all fiscal operations⁽⁷⁷⁾ undertaken are reflected in the transactions and positions of the government concerned.
18. Non-resident SPEs are recognised as separate institutional units in the ESA 2010 and in the 2008 SNA by convention, given that SPEs generally do not meet the institutional unit criteria. From a compilation perspective, compilers would indeed face difficulties to effectively consolidate within each parent (sometimes themselves SPE, etc.), without errors, the very large number of non-resident SPEs existing across the world (mostly private), with their large balance sheets and cross-border debtor/creditor relationships. The residency exception in the ESA/SNA to the institutional unit criteria is, hence, largely a pragmatic solution to avoid the compilation burden and significant errors when compiling cross-border positions and flows in the external sector accounts and associated Rest of the World accounts of the ESA/SNA.
19. However, it is recognised that, to the extent that SPEs abroad created by governments are not numerous and often well identified, it is easier to develop a specific treatment for them, different from non-government SPEs. As such, the government SPE rules discussed above could be seen more as an 'exception within an exception', although well justified.

⁽⁷⁷⁾ See ESA 2010 paragraph 20.204.

SPE engaged in financial activities

20. In some cases, a government controlled SPE will be formally set up with a financial institution status (which implies that it has to meet some supervision and regulatory obligations), in order to carry out some transactions on behalf of government. In these cases, if an SPE does not act independently and has thus a very restricted autonomy of decision, and if government really originates the transaction, then the SPE only acts on behalf of government — not placing itself at risk — and does not take asset management decisions. In this regard, ESA 2010 paragraph 2.57 states that ... *A financial intermediary does not act as an agent for these other institutional units but places itself at risk by acquiring financial assets and incurring liabilities on its own account.* If this is not the case, then such an SPE should be classified within the government sector. In practice, this would need a case-by-case analysis. If an SPE meets the conditions to be considered a separate institutional unit and at the same time benefits from extended powers for actively managing the assets and liabilities risks exposure, such that this activity qualifies as financial intermediation, it should be classified as a financial corporation (S.12).
21. ESA 2010 paragraph 2.90, in general, refers to 'financial vehicles corporations' (FVC) engaged in securitisation transactions (even though they are better known as SPEs) that are to be classified in other financial intermediaries, except insurance corporations and pension funds subsector (S.125), if they are recognised as a separate institutional unit.⁽⁷⁸⁾ For the financial corporations sector, this identification of the FVCs separately from the beneficiary entity unit can be analytically important. However, when the beneficiary from a securitisation transaction is a government unit, the sector classification follows rules mentioned in section 5.5.2 of this Manual.⁽⁷⁹⁾ As mentioned above, ESA 2010 paragraph 2.20 states that special bodies of general government with no independence of action are allocated to the subsector of their controlling government unit.

1.6.3. Public head offices, public holding companies and their subsidiaries

1.6.3.1. PUBLIC HEAD OFFICES

22. According to ESA 2010 paragraph 2.12 ...*an institutional unit is an economic entity characterised by decision-making autonomy in the exercise of its principal function...* Although there are other criteria, this one may be seen as fundamental. An important point is that when an entity is recognised as an institutional unit, its sector classification should be assessed individually. The main question in the classification of head offices and their subsidiaries is to judge whether this general rule prevails or whether there are, or there should be, any special rules concerning these entities. ESA 2010 paragraph 2.15 specifies that in groups of entities ...*each member of the group is treated as a separate unit if it satisfies the definition of an institutional unit.* Otherwise, it must be combined with the unit that controls it (see more details in sub-section 1.6.3.3).
23. In general, a head office is an institutional unit, which in ESA 2010 paragraph 2.14 (a) is defined as ...*a unit that exercises managerial control over its subsidiaries... and which is ... allocated to the dominant non-financial corporations sector of their subsidiaries, unless all or most of their subsidiaries are financial corporations, in which case they are treated as financial auxiliaries (S.126) in the financial corporations sector...* (see also ESA 2010 paragraph 20.35). Thus, a head office is significantly involved in the management of the other units (subsidiaries) in the group by providing some services, including the co-ordination of the group. This means that a head office exerts directing tasks and powers, which go beyond the simple regular participation in the Assemblies of the group's subsidiaries, and the most important decisions at a lower level are taken or approved by the directing bodies of the head office.
24. According to ESA 2010⁽⁸⁰⁾, a head office shall be distinguished from a holding company (see the following sub-section 1.6.3.2). Therefore, it is important to check, on a case-by-case approach⁽⁸¹⁾, the

⁽⁷⁸⁾ The ECB maintains a list of financial vehicles corporations in line with the legal framework for FVCs set out in Regulation (EU) No 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (recast) (ECB/2013/40). This list is not relevant for national accounts sector classification purposes.

⁽⁷⁹⁾ In particular, sub-section 5.5.2.8 Classification of the securitisation entity.

⁽⁸⁰⁾ As mentioned in ESA 2010 paragraph 20.36, in practice the term 'public holding companies' also covers what is described in ESA 2010 as 'head offices'. It is, however, important to make a clear distinction between these two types of entities in national accounts for sector classification reasons.

⁽⁸¹⁾ In some EU countries, in general, there may be a large number of entities that, are labelled 'holdings' that have in many cases an 'artificial'

actual role of such units in the direction of the group, their statute and internal regulations, their human⁽⁸²⁾ and physical means, the source of their revenue and the nature of their expenditure⁽⁸³⁾. The presence of private shareholders (with an actual influence on some decisions, at least important for the entities of the group) is also a relevant indicator to be considered.

25. A head office has to provide services to subsidiaries. In practice, this would not be the case if such bodies were set up for a restrictive purpose: for instance, to reorganise or restructure the subsidiaries and manage their total or partial disposal or set up for a limited period of time and not as a permanent structure.
26. Public head offices are classified in the non-financial corporations sector (S.11) if they control a group of market non-financial producers, or in the financial corporations sector (as S.126 financial auxiliaries) if they control a group predominantly engaged in financial services. In case there is a 'mixture' of activities, the sector classification of a public head office is decided on the basis of the predominant share of value added of its subsidiaries. Where a public head office controls mostly non-market subsidiaries it is classified in the general government sector (S.13).

1.6.3.2. PUBLIC HOLDING COMPANIES

27. According to ESA 2010 paragraph 2.14 (b), a holding company⁽⁸⁴⁾ is an institutional unit that holds the assets of subsidiary corporations, exerting control over them, but does not undertake any management activities, i.e., does not have an active role regarding the daily activity of the group. Holding companies mainly monitor the income distribution of their subsidiaries and reallocate the income to its own shareholder(s). More precisely, such entities do not provide other services to the entities in which they hold assets. According to ESA 2010 paragraph 2.14 (b), from a general perspective, holding companies must be considered a captive financial institution (S.127). However, this does not seem to be applicable to public holding.
28. Government may control a holding company, which by evidence acts simply as a government agent. Indications of this may be the limited lifetime for which it has been created and/or, generally limited, tasks it has been entrusted with.
29. A public holding company, which holds assets (equity and possibly other financial assets) of subsidiaries:
 - a) is classified within general government if:
 - it is a sort of 'shell', as it does not perform management and effective direction tasks over its subsidiaries but is rather a kind of 'accounting tool' as control over the subsidiaries is *de facto* exerted by government, or it provides some ancillary services to its controlling government unit (for instance collecting data from the group), **or**
 - it is, permanently or occasionally, used for typical government activities, like channelling or managing public subsidies, which implies redistributing national income and wealth. It is acting as an agent of government as government mainly provides its main resources redistributed within the group.

In both cases, the entity cannot be considered being independent in its decision making and therefore is not to be considered as an institutional unit and, thus, it is classified in the general government sector and not in the financial corporations sector (S.12), as it would be the case for private holding companies.
 - b) it is recognised as a 'head office' (see above). In this case, the sector classification of its subsidiaries must be assessed by reference to the standard classification rules.

nature. It seems that a 'mechanical approach' (formula to be applied automatically) is the only practical solution to their classification. This cannot be the case for units under the control of government as their sector classification greatly matters and for which a case-by-case analysis is always needed.

⁽⁸²⁾ In this regard, a very small number of staff may be indicator, notably in the context of a group with numerous subsidiaries, that the unit does not act as a head office but is rather a holding company.

⁽⁸³⁾ Thus, an entity which has mostly revenue under the form of dividends with very small, if any, management fees or/and sales of business services, and which repays all or most of the dividends to its government owner, would not be considered a head office according to ESA 2010.

⁽⁸⁴⁾ ESA 2010 paragraph 2.14 specifies 'Holding companies are described under ISIC Rev.4, Section K, class 6420 (NACE Rev. 2, K 64.20) as follows: This class includes the activities of holding companies, i.e., units that hold the assets (owning controlling- levels of equity) of a group of subsidiary corporations and whose principal activity is owning the group. The holding companies in this class do not provide any other service to the businesses in which the equity is held, i.e., they do not administer or manage other units'.

1.6.3.3. SUBSIDIARIES OF PUBLIC HOLDING AND HEAD OFFICES

30. According to ESA 2010 paragraph 2.13 (e), some subsidiaries are deemed to be institutional units *even if they have partially surrendered their autonomy of decision to a central body (the head office)*. Except for some entities in the group, which could be considered as providing ancillary services, strictly confined to providing services to the central body, the classification of subsidiaries has to be assessed on an individual basis. If two legally incorporated entities cannot be meaningfully considered separately, they should be treated as a single institutional unit. However, once each of the entities is deemed to be an institutional unit, the usual sector classification rules must strictly apply.
31. If a subsidiary is recognised as an institutional unit, and the unit is determined to be non-market, it should be classified in the general government sector, even if it is only indirectly controlled by government through the head office/public holding company. It should be noted that if a market institutional unit conducts some activities/transactions on behalf of government, the rules related to 'rearranged transactions' as mentioned in ESA 2010 paragraphs 1.72–1.78 must be applied.
32. Another aspect relating to government control is whether a non-market subsidiary that is only indirectly controlled by government can be classified in the general government sector. ESA 2010 paragraph 2.37 states: *In order to control more than half the shareholders' voting power, an institutional unit need not own any of the voting shares itself. A given corporation C could be a subsidiary of another corporation B in which a third corporation A owns a majority of the voting shares. Corporation C is said to be subsidiary of corporation B when either corporation B controls more than half of the shareholders' voting power in corporation C or corporation B is a shareholder in C with the right to appoint or remove a majority of the directors of C.*
33. As a result, corporation A also controls corporation C, 'in cascade'. It must be stressed that government control over a given unit has to be assessed in its entirety, i.e., as a combination of all interests of (all) government units (from possibly different government subsectors). ESA 2010 paragraph 2.38 refers also to other indicators of control (see chapter 1.2 Criteria for classifying units to the general government sector).
34. A consequence of classifying a subsidiary of a public holding/head office in the general government sector is that an equity liability (AF.5) would be recorded in the financial accounts of the general government sector. An alternative recording, that may be sometimes more appropriate, would be to record an imputed equity holding by government in the subsidiary. In this latter case, this AF.5 amount would be deducted in the consolidated financial accounts from general government AF.5 position, on the asset side.
35. Concerning the gross or net presentation of the equity liability of government, it might be useful to distinguish cases according to the owners of the corporation. If a public holding/head office is the sole owner, both net and gross presentations might be appropriate. However, if the subsidiary is not solely indirectly owned by government, then a gross presentation is more appropriate, in order to show the equity liability of general government to other sectors.

1.6.4. Restructuring and privatisation agencies

1.6.4.1. RESTRUCTURING AGENCIES

36. Government may control restructuring agencies, as mentioned in ESA 2010 paragraph 20.44, with the aim, for a given period, to 'restructure' several corporations (public but possibly also private), notably when they show persistent losses. This generally implies a dramatic change in the business model and a significant adjustment in the human and physical capacities of the restructured entities. In this context, such restructuring agencies may provide capital transfers, loans, acquire equity or grant one-off guarantees.
37. ESA 2010 paragraph 20.44 further explains *...the major criteria determining sector classification of restructuring agencies are whether such entities are financial intermediaries, the market character of the main activity and the degree of risk assumed by the public agency. In many cases, the degree of risk taken by the restructuring agency is low due to the fact that it acts with public financial support and on behalf of the government....* When restructuring agencies act on behalf of government, under its narrow control and with a clear support from government for its own funding, these entities should be classified within the government sector and not in the financial corporations sector.

38. ESA 2010 paragraph 20.44 also states that restructuring agencies can handle privatisation and defeasance. Guidance on defeasance structures (which are often part of a restructuring process) is given in Part 4 Relations between government and the financial sector.

1.6.4.2. PRIVATISATION AGENCIES

39. ESA 2010 paragraph 20.210 states that *Privatisation commonly involves the sale by government of shares or other equity in a public corporation....* Privatisation agencies hold shares in public corporations that the government intends to dispose of. Such units are not head offices in ESA 2010 terms, as they do not really intervene (or only in a marginal way) in the management of the corporations they hold, but are created with the aim of facilitating their disposal on market.
40. Privatisation agencies should be classified in the general government sector, because they manage assets on behalf of government, which is the ultimate owner of these assets, and their 'main function is to redistribute national income and wealth, channelling funds from one unit to the other', see ESA 2010 paragraph 20.45 (a).
41. In the case of a public head office that is engaged both in business market activities (in the sense of the coverage of costs by sales) and in the management of assets for privatisation for some of its subsidiaries, it might not be possible to split the unit into two separate institutional units. In this case, ESA 2010 paragraph 20.45 applies: ... *The unit is classified as a corporation, and any transactions made on behalf of the government should be rerouted through the general government.* Therefore, when one unit carries out transactions on behalf of another unit included in the general government sector, these transactions should be recorded in the accounts of government.

1.6.5. Market regulatory bodies and professional associations

1.6.5.1. MARKET REGULATORY BODIES

42. The market regulatory bodies (also named authorities, agencies, regulators, etc.) described in this chapter⁽⁸⁵⁾ are enabled through law with the powers to elaborate some regulations (norms, provisions, obligations, etc.). These regulations are legally binding and any actor on the market for a given activity is obliged to follow them, at the risk of possible sanctions such as prosecution. Thus, market regulatory bodies exert decision-making on some key variables, influencing the way in which units carry out an activity and receive revenue from it.
43. Market regulatory bodies may also be responsible for controlling norms, although this task could be delegated to a specialised unit without normative powers. In addition, market regulatory bodies may also exert ex-ante control on those agents wishing to participate in an activity in order to assess their competence, professional capacity (granting licenses/permits to operate) and provide some assurance to consumers on the professional expertise and qualification of those operating in the profession (doctors, lawyers, etc.). There are different models amongst EU Member States regarding the units responsible for such tasks. In recent decades, such units have been developed, e.g., in the telecommunication, transportation or energy industries.
44. The first paragraphs of ESA 2010 chapter 20 (Government accounts) are unambiguous about the classification of units that are involved in activities rendered to the community. These units are enabled with sovereign powers *affecting* the behaviour of economic units. Chapter 20 also makes a distinction between 'core government units' (depending on a public budget) and other government bodies that are recognised as autonomous institutional units. However, government may delegate some of its sovereign tasks to units that are not government bodies, which often have a non-profit status. When the majority of the activity of such units is oriented towards performing these sovereign tasks, under the narrow control of government (which may approve some decisions, the unit's budget, or confirm some sanctions), these units should be assimilated to government regulatory agencies and classified within the general government sector.

⁽⁸⁵⁾ These market regulatory bodies do not distribute subsidies or grants to producers and do not act on markets in order to smooth market fluctuations by purchasing/selling goods in a contra-cyclical perspective, both of which are covered by ESA 2010 paragraphs 20.53–20.54 and chapter 1.4 Market regulatory agencies in agriculture.

45. In many EU Member States, market regulatory bodies are usually considered as government units (in the central government subsector as they exert their authority on a whole country), whatever their legal status, the way the members are appointed, the degree of independence from executive units, etc. The reason is that they do not act only in the interest of the market operators, but also (and possibly essentially) for collective purposes, i.e., for the benefit of the community, notably in order to enhance the confidence of consumers and/or because of the importance of such activity in the production system.
46. Market regulatory bodies may be financed by government, but they may also be entitled to directly receive funds from the regulated agents, whether on a regular basis or not. The classification of such receipts must follow the general rules set out in ESA 2010. If the producer units (regulated agents) are required to pay globally an amount that corresponds to the cost incurred by the regulator in performing its missions, this should be recorded as a service fee (a sale of services). If the levies are largely above the regulatory costs ('out of all proportion to the costs' according to ESA 2010 paragraph 4.23 (e)), they must be recorded as a tax⁽⁸⁶⁾.

1.6.5.2. PROFESSIONAL ASSOCIATIONS

47. Apart from the market regulatory bodies described above, in most EU Member States there are also numerous 'professional associations', of which membership may be compulsory or voluntary. The main aim of these entities is 'defending' the interests of their members as a whole, notably by contracts with government or regulatory authorities, but they may also not be strictly confined to this. Notably, professional associations may also exert professional control on its members and other actors. Generally, professional associations use legal provisions established by government, but they may also have more or less extended normative and regulatory powers, acquired by government delegation, that influence the way in which some actors in their specific field carry out their activity. Government may, for instance, set up a general legal framework and these entities are then given the task of elaborating practical guidance on how to meet the requirements. Professional associations may even have the power to impose some (e.g., financial) sanctions in cases of professional negligence.
48. ESA 2010 paragraph 20.02 states that *powers to raise taxes and other compulsory levies and to pass laws...* is specific to government. The term 'laws' must be understood in a broad sense, as some norms may not take the form of a law voted by a Parliament but result in similar constraints on the economic agents in the conduct of some economic activities. As far as resources are concerned, any levy which is imposed on some economic agents only because they are engaged in an activity (or provide some services) and which, by evidence, is out of proportion to the cost of the service provided must be classified as a tax and recorded as government revenue. However, if the amounts raised can be identified as the actual counterpart of a service provision, they should be recorded as a sale of services (see also sub-section 1.2.4.8 Borderline between taxes and sales of services). In the case of a private body that performs some regulatory tasks but is not classified in the general government sector because the major part of its activities is lobbying/servicing exclusively for their members, the possible compulsory resources identified as taxes should be rerouted to government, which then would transfer to the unit an equal amount.
49. When professional associations provide services mainly for their members, they should not normally be classified in the general government sector. However, depending on the extent of the 'sovereign-nature' of tasks delegated by government, on the degree of possible influence over these associations in the design of the professional framework imposed on all relevant actors and on the extent of the control over their decisions by government, professional associations could be in some cases assimilated to government regulatory bodies, where such tasks represent the major part of their activity. Professional associations may be allowed to collect compulsory payments from their members. If these resources do not have the features of service fees, this may imply some rerouting to government as taxes.

1.6.6. Entities having the features of captive financial institutions

50. ESA 2010 created captive financial institutions as a new category of financial corporations (to be classified in subsector S.127), described in ESA 2010 paragraphs 2.21–2.23 and 2.98–2.99. Captive

⁽⁸⁶⁾ A market regulatory unit may also manage a fund (such as a guarantee fund) for which the levies should be recorded as taxes when the contributions to the fund are compulsory.

financial institutions are institutional units that do not engage in financial intermediation or in financial auxiliary services. They also should not be confused with artificial subsidiaries - as described in ESA 2010 paragraphs 2.24–2.25⁽⁸⁷⁾, which are not institutional units.

51. ESA 2010 paragraph 2.98 explains that captive financial institutions *...are neither engaged in financial intermediation nor in providing financial auxiliary services* (as listed in ESA 2010 paragraph 2.96), as they do not really place themselves at risk, and further that most of their assets or their liabilities are not transacted on open markets. This may mean that their assets take the form of non-negotiable instruments (by nature or because there is a unique counterpart) or that the assets would not be funded by banking (deposits) or financial markets (securities) at prevailing conditions, but through a bilateral relationship with their controlling unit, under possible various forms (loans, equity, other securities).
52. Captive financial institutions are considered institutional units according to ESA 2010 criteria (see ESA 2010 paragraph 2.12)⁽⁸⁸⁾. However, they have a limited capacity of decision as regards their current management and are very much dependent on their parent⁽⁸⁹⁾ (controlling unit) as regards the conduct of their activity. Thus, the influence of their controlling unit goes beyond the coverage of the notion of control in national accounts, which refers to the influence on the general policy and the strategy of the unit, i.e., the parental control goes beyond key decisions and a significant influence is also observed in 'day-to-day' activities, implementing the defined strategy.
53. Government-controlled entities may have functions similar to captive financial institutions, sharing similar features, i.e., acting mainly in the financial area (they do not produce goods and do not provide non-financial services), showing essentially financial assets on the assets' side of their balance sheet and with mostly property income as revenue, and in which government exerts a significant influence on their management. From a risk perspective, it is highly likely that government is supposed to automatically and immediately bear the negative consequences of any insufficient performance of the assets held by these entities, either explicitly or implicitly. As a rule, such entities controlled by government and having, at the same time, all the features as described in the following paragraphs below and summarised in paragraph 59 should be classified in the general government sector⁽⁹⁰⁾ and not in the financial corporations sector.⁽⁹¹⁾

Range of activities and distinct economic behaviour from commercial entities

54. The government-controlled entity carries out its activity within the framework of a limited range of activities and in narrow conditions (if not direct instructions for some individual interventions), which are mainly designed, significantly influenced, closely monitored and supervised by the parent unit, with no possibility to change. Although the unit has nevertheless a certain degree of independence in the daily management, it must however aim at the objectives specified by its controlling unit and is imposed some specific restrictions and constraints. It is important to note that the influence of the parent unit is simultaneously over the assets and over the liabilities. As a result, such 'captive' units act differently from private financial institutions, i.e., do not behave as 'normal' commercial entities, searching to extend the scope of their activities, specialising in some (more profitable) areas, arbitrating between different strategies and, in general, looking to obtain a market rate of return in similar activities. Government plays a predominant role in the conduct of the activities of the entity and does not require a market rate of return, i.e., the aim is not to ensure a return for government (such as a minimum return on equity rate). Such units do not provide services for the benefit of government units, but they carry out some financial tasks, almost exclusively in the context of public policy objectives, under the close monitoring of government. In fact, these entities represent an alternative to government performing the tasks directly.

⁽⁸⁷⁾ ESA 2010 explains that 'artificial subsidiaries' are wholly-owned by a parent corporation and provide some services to it or to other corporations in the same group. Such entities usually do not satisfy the definition of an institutional unit. They are close to entities providing ancillary services, except for the scope of the types of activity carried out.

⁽⁸⁸⁾ However, if an entity obviously lacks decision-making power, even for its daily activities, appearing as a kind of accounting tool or functioning as 'auto-pilot', the entity is not recognised in national accounts as an institutional unit and is automatically included in its controlling unit.

⁽⁸⁹⁾ The term 'parent' must be understood in a broad sense as the controlling unit. Entities having the features of captive financial institutions controlled by government must not necessarily be owned directly by government or be created by government in order to be classified in the general government sector.

⁽⁹⁰⁾ Even in cases where they would hold a banking licence and would be included in the ECB's MFI list.

⁽⁹¹⁾ The captive financial institutions and moneylenders subsector (S.127) then includes all captive financial institutions that are not controlled by government (or not directly controlled by government). There may be captive financial institutions whose parent would be a public corporation. Such captive financial institutions should normally be classified in the subsector S.127. The exception is if the unit performs some tasks for public interest and in fact acts on behalf of government and not for the benefit of its public parent. In this latter case, this would trigger a classification to government sector.

55. These activities and economic behaviour are different from the case of government entities providing ancillary services and/or artificial subsidiaries, (both not being institutional units) which mainly perform some tasks exclusively for a government-controlling unit (or possibly for several units of the same nature) and for which most of their assets do not take the form of claims on other sectors than government.

Constraints on the assets' side

56. Constraints on the assets side mean that the parent/controlling unit imposes conditions in which the unit may act, without the possibility of changing them (or very marginally) by its own initiative, as referred to, for instance, the nature of the assets it can hold, the type and size of its intervention, the return on some assets, the characteristics of the beneficiaries of the activity of the unit and other conditions which are precisely defined by the controlling unit with no room for manoeuvre, or very little, if any, left to the unit.⁽⁹²⁾ This would also include cases where an ex-ante authorisation would be required for a significant part of the activity of the unit (such as the granting of loans or acquisition of shares). For example, if most of the loans (in number or in principal amounts) granted by such unit (or of its investments in other financial instruments) need an ex-ante authorisation from the controlling unit, the assets are considered to be under the control of the latter and the unit would actually have features similar to a captive financial institution.

57. An example may be for instance a government controlled entity, which have been entrusted by government to carry out activities in the context of public policies, generally limited to some precise tasks related to them, such as granting loans under more favourable conditions than the markets, or investing in some specific units or sectors (as a leverage tool).⁽⁹³⁾ Examples of such policies are economic development, regional policy, new technology, climate change mitigation and adaptation, social integration, access to real estate ownership, access to tertiary education, etc. As mentioned above, the government-controlled unit would be obliged to conduct its interventions within a narrow framework defined by government, even if government would not necessarily have to formally approve/determine every single allocation of assets to every single beneficiary, which however may frequently be the case for operations of a significant size.

Constraints on the liabilities' side

58. The influence exerted on the liabilities side of the entity means that the unit would not be able to borrow without the authorisation of the parent unit or would mainly be financed by the parent unit or, in some cases, would have most of its borrowing explicitly guaranteed by its parent unit. Under these conditions, the unit would not be in a position to decide by itself on the resources that could allow it to extend the scope of its activities or to reorganise its interventions.

59. To summarise, a unit engaged in financial activities and controlled by government would have the features of a captive financial institution and thus would be classified in the general government sector, and not in the financial corporations sector (S.12), if at the same time the following conditions would be met:

- 1) the unit would carry out a limited range of activities in narrow conditions set by government (in the framework of public policy objectives),
- 2) government influence or constraints would be evidenced simultaneously on both:
 - assets' side and
 - liabilities' side of the unit, and
- 3) the unit would not behave like a 'normal' commercial entity (e.g., no expectation of a market rate of return on equity).

⁽⁹²⁾ In this regard, there is for instance a significant difference between a bank affiliate specialised in a category of credits (corporate, real estate, etc.) having a large autonomy to carry out this activity (for instance, just with some profitability objectives/benchmarks set by its parent) and a unit which would be imposed on by its banking parent to grant loans, in its own name, only to a precise category of agents (level of income, size of a firm, types of products, parameters, etc.), with a given margin, etc.

⁽⁹³⁾ However, there may cases where government has entrusted the unit to intervene in different areas of public policy, such as providing support to some enterprises (notably SMEs), and at the same time to households for social housing. This is carried out by distinct departments within the unit and, in some cases, by dedicated affiliates. The main point is nevertheless that for all these kinds of activities (or the majority of them), it should be assessed whether the unit has limited room of manoeuvre, as explained above.

60. For instance, a unit controlled by government and acting within narrow limits defined by government but financing itself directly on the market without support from government (i.e., without the need for government guarantees or subsidies), would not have (all) the features of a captive financial institution. However, when this influence or constraints would be evidenced on both assets and liabilities, the entity in fact would act mainly on behalf of the controlling unit (government).
61. Some examples of captive financial institutions are given in ESA 2010 paragraph 2.99. However, they do not explicitly refer to cases of captive financial institutions controlled by government. Nonetheless, these examples provide interesting information on some aspects of such entities. Notably, ESA 2010 paragraph 2.99 (d) deals with the case of 'units which provide financial services exclusively with own funds, or funds provided by a sponsor, to a range of clients and incur the financial risk of the debtor defaulting.' This case deserves particular attention when such entities are controlled by government, which, in addition to a narrow control of most of their activity, as described above, would provide most of their resources under different possible financial instruments (such as equity, deposits, loans, securities). An important feature, as already mentioned above, is that government generally does not provide funds with the aim of getting a market rate of return (see for instance chapter 3.2 Capital injection into public corporations), but gives priority to the fulfilment of some of its own policy objectives.⁽⁹⁴⁾ Under these conditions, the government-controlled unit would not have to ensure a sufficient rate of return for facing a market cost of borrowing, as a 'normal' financial institution would do.

Some specific cases

62. In the framework of the general rules described above and summarised in the previous paragraphs, there may be some additional aspects to consider. For example, it may happen that government is not the only provider of funds (sponsor), other units (such as banks) may be also involved. A classification as a government unit would apply regardless of the proportion of the funds provided by government if all the funds received by the unit would not receive a market rate of return (such as the return on equity required by normal private shareholders or the usual commercial rate of interest).⁽⁹⁵⁾ There could also be cases where the other resources providers would act as 'normal' investors and would require a rate of return close to the usual market rate. Nevertheless, due to the fact that government would exert a decisive influence on the entity (as described above) and would not require a similar rate of return, compared to the other providers of funds, this would also trigger a classification as a government unit in all cases where government would provide to the unit more than 50 % of the total resources (excluding accounts payable) under any form (equity, deposits, loans, securities, guarantees).
63. Government may also provide an explicit guarantee on financial instruments issued by the entity, which will allow the entity to receive funds at better conditions (normally benefiting from the rating of its guarantor) or even to have an access to the funds' market. This would be assimilated to the direct provision of funds if the guarantee would cover a majority of the non-government borrowing of the entity, would be unconditional and might be activated by creditors 'at first demand'. Here, *de facto*, the unit would not be placing itself at risk and the cost of borrowing would not reflect the level of risk of the unit that, due to the influence of government, would have only limited profits, if any. In such cases, the unit should be classified in the general government sector.
64. Finally, there might be cases where the unit could borrow on the markets but without any explicit government guarantee on its debt instruments. However, due to the narrow control of government on its activity and because of the crucial role of the unit in the context of important government policy, it is likely that the investors would have no doubt on a government support if needed and would 'price' this situation. In case the unit would not cover the market cost of its borrowing without the permanent support from government (which would appear in the form of subsidies for off-setting the gap between asset interest and liability interest, compensating some administrative costs, covering losses, etc.), this unit should be classified in the government sector.

⁽⁹⁴⁾ There might be cases where government would initially expect a rate of return not too far from market benchmarks (for instance, at least the cost of its long-term borrowing). However, where the unit would not be in a position to ensure it, it is unlikely that government would approve a change in the general policy, or even the exit from it, as it would be frequently observed for private investors.

⁽⁹⁵⁾ It could be questioned why such private investors (normally profit-oriented) could be involved in an entity with such features. One reason may be that they could, in this way, capture some other profitable activity with the beneficiaries of the interventions of the unit. Another reason could be that they have entered into a partnership with government that should be appreciated in a global way as regards the final profitability of all related operations and not simply at the level of this unit.

1.6.7. Central stock-holding entities (CSEs)⁽⁹⁶⁾

65. According to the 2009 Directive⁽⁹⁷⁾, a central stock-holding entity may be established in EU Member States to ensure the maintenance of emergency crude oil and/or petroleum stocks to be used in the event of a crisis. Governments may directly manage the emergency stocks or confer these powers to a CSE set up or nominated by government. In addition, the Directive foresees that, for a specified period, CSEs or government may delegate tasks relating to the management of emergency stocks, with the exception of sales and acquisitions of specific stocks. Such tasks can only be delegated to 1) another EU Member State within which territory such stocks are located, or 2) the CSE set up by that Member State's government, or 3) the economic operators⁽⁹⁸⁾.
66. The Directive specifies that the establishment of a CSE is not compulsory, but if Member States decide to set one up, they should respect the following conditions: no Member State may set up more than one CSE; it shall take the form of a body or service without profit objective and acting in the general interest; and its main purpose shall be to acquire, maintain and sell oil stocks for the purpose of the Directive. Payments by the operators for the services of the CSE shall not exceed the full costs of the services rendered and may not be required until the stocks are constituted.
67. The main activity of CSEs is limited to the acquisition, maintenance and sales of oil stocks for the purpose of the Directive, which is a matter of national public policy of EU Member States. CSEs are not supposed to make any profit from their activity and may even be loss-making.
68. The activities of CSEs, the objective and the characteristics and use of the emergency stocks are strictly regulated by EU and national law. These limitations are intended so as not to jeopardise the availability, physical accessibility and use of these stocks in the event of a crisis. These limitations should be taken into account when considering other indicators of government control. Given the strategic nature of emergency oil stocks, there is always an element of government control over CSEs via excessive regulation (see ESA 2010 paragraph 20.309 (h)).
69. In practice, four basic cases of CSEs may be distinguished. The CSE is:
- part of the general government sector (e.g., a budgetary or an extra-budgetary unit),
 - a public corporation (i.e., controlled by government);
 - a non-profit association whose members are the economic operators;
 - a private corporation owned by private economic operators.
70. In the first two cases, government controls the CSE's general policy (ESA 2010 paragraph 20.18).
71. In the third case, the main issue is whether government is effectively controlling the CSE when it is an association/NPI whose members are the economic operators. Control is usually exercised by holding the majority of voting rights, having veto powers or appointing the majority of members of the board. In other cases, government controls the CSE through other means, such as limiting the activities that the CSE can pursue, controlling the use of the emergency stocks and deciding on the provisions of its statute. Sometimes it is also foreseen that the loans of the CSE are guaranteed by government (ESA 2010 paragraph 20.309). If the only, or more preponderant, activity of the unit is to comply with the obligation imposed by government, the unit should be seen as acting *de facto* as an agent of government and it should be classified within the general government sector. However, if the unit undertakes other activities than just complying with the stock-holding requirements imposed by government, it could be concluded that government does not determine the general policy of the unit. In this particular case, the unit could be classified outside the general government sector.
72. In the fourth case, the CSE may be a private corporation owned by private operators. This is currently not a common case, as the Directive foresees that the CSE shall take the form of a body or service without profit objectives and acting in the general interest. Therefore, in this case it should be thoroughly checked whether government is controlling the CSE by other means. If there is no indication of government control (see ESA 2010 paragraph 20.309), the CSE could be considered as a private unit

⁽⁹⁶⁾ See details in Eurostat's guidance note: [Classification of Central Stockholding Entities \(CSEs\) in ESA 2010](#), published in August 2014.

⁽⁹⁷⁾ [Council Directive 2009/119/EC](#).

⁽⁹⁸⁾ 'Economic operator' means any person, body or entity that is obliged to hold emergency stocks for the purposes of the Directive. This stock-holding obligation might be partly or fully delegated to a CSE or other economic operators.

and then classified in the non-financial corporations sector (S.11).

73. A government controlled CSE should be classified in the general government sector due to its specific nature (as outlined in the Directive). A government-controlled CSE's activities related to the emergency stock maintenance should in principle be considered as non-market production because the stockpiling level required by government goes beyond the stockpiling undertaken for commercial purposes⁽⁹⁹⁾.
74. All the payments made by economic operators to government-controlled CSEs should be considered as taxes on products (D.21), even if they may not be considered as such in national legislation. The fees, the operators have to pay, are either set by government or using an agreed formula, which means that the stocking unit does not react to market signals (changing prices, adjusting product capacity, etc.) as would be the case in a market activity.
75. If the CSE is privately-controlled, the nature of the payments made by the economic operators to the CSE should be analysed. If all the payments from the economic operators to the CSE are on a voluntary basis and the economic operators can choose how to store the emergency stocks (i.e., they can fully decide between storing the emergency stocks themselves, through the CSE or by delegating the obligation to another economic operator), these payments could be considered as sales of services. If the CSE is privately-controlled, it should be classified in the non-financial corporations sector. In this case, government has delegated its obligation of maintaining emergency stocks to a private entity. If a privately controlled CSE is receiving mandatory payments from the economic operators, they are to be considered as taxes and rerouted through government accounts, as it is through the delegated authority of government that the CSE is collecting these payments. Where it receives voluntary contributions/payments from the economic operators, they can be treated as sales of services.
76. A CSE classified in the general government sector may still have some marginal market activity but this should not have any influence on its sector classification.

⁽⁹⁹⁾ The imposition of a certain level of oil stocks is mainly a matter of national policy (and thus government imposes the level of payments exercising its sovereign function) and not something which the operators would need to do for commercial considerations. In addition, the Directive effectively prohibits the CSE from profit-seeking behaviour, thus a classification of any output as market output would require very careful consideration.

1.7. Government debt management offices

1.7.1. Background

1. The functions of government debt management agencies or offices, frequently observed at the central government subsector level, vary from country to country. These functions can cover a range of financial activities. The more frequent of them are issuing securities, possibly incurring other forms of borrowing, hedging risks, managing government's liquidity (notably through repurchase agreements). They are generally set up in order to benefit from special financial expertise and ensure closer relationships with market areas. In some cases, they may grant lending to other public units (for instance for emergency liquidity support or for other reasons notably to foreign governments). In some EU Member States, the national central bank might perform some of these tasks for government whereas in others they may be directly carried out by the Ministry of Finance (Treasury) or by the authorities in another subsector.

1.7.2. Treatment in national accounts

2. When public debt management offices are separate institutional units, they should be classified in the general government sector because they act on behalf of general government. They appear to be simple agencies and their activity is very similar to an auxiliary activity.
3. They should not be classified as financial corporations as they do not perform financial intermediation. The proceeds of their borrowing are transferred to government, being included in the accounting balance sheet of the government unit they are servicing rather than that of the debt management office. Similarly, the repayment of the borrowing is provided by the government unit from its resources or by rollover of the debt through new issuance carried out by the debt management office.

1.8. Joint ventures

1.8.1. Background

1. The case of joint ventures where government units are involved is covered in ESA 2010, chapter 20 Government accounts. ESA 2010 paragraph 20.49 mentions that *many public units enter into arrangements with private entities or other public units to undertake a variety of activities jointly, on market or non-market basis*. Three types of arrangements are foreseen: jointly controlled units ('joint ventures'), jointly controlled operations and jointly controlled assets. This chapter does not refer to joint ventures that would be arranged by market public corporations with private sector.⁽¹⁰⁰⁾
2. In the case of joint ventures, a unit is set up (as corporation, partnership or any other legal form) which is clearly an institutional unit, i.e., meeting the criteria as defined in ESA 2010 paragraph 2.12, i.e., entering into contracts in its own name and possibly raising finance for its own purpose. Joint ventures are not restricted to the case of only two partners as there may be arrangements that are more complex. In addition, a joint venture may be set to carry out activities in a non-resident territory and rules similar to the case of non-resident SPE might apply. A joint venture may also be set up in the context of PPP projects and, in this case, rules stated in chapter 4.6 should apply as far as the classification of the partner is concerned.⁽¹⁰¹⁾

1.8.2. Treatment in national accounts

3. If the joint venture is owned by an exact equal percentage of ownership by a government unit and a private unit, it is recommended to consider other indicators of control than ownership, as mentioned in ESA 2010 paragraph 20.307. It may happen that government holds some rights higher than for the private partner(s), such as veto power or priority rewards, or bear more risks. In these cases, the rule mentioned in paragraph 5 should apply.
4. In case the joint venture is owned by a government unit and a private unit in equal percentages, and that there is no evidence of some superiority of control by either party, ESA 2010 paragraph 20.320 states that if the joint-controlled unit does not satisfy the criteria to be classified as a market producer, it must be fully allocated to the general government sector. If it is recognised as a market producer, the unit would be included in the non-financial corporations sector S.11 but should be split, one half being considered public-controlled public corporation and the other half allocated to the private sector.
5. If the joint venture is not owned by exactly equal percentages of ownership, by each of the public or private parties, the unit must be allocated to the party that holds the majority. If it is the government unit, the unit will be classified within the government sector if the joint venture has a predominant non-market activity and as a public corporation if the unit is recognised as a market producer. It is, however, recommended to check whether some other provisions related to rights and decision power are not *de facto* giving a different view as far as the effective control of the joint unit is concerned.
6. When a joint venture involves only units classified in the public sector (for instance a joint venture between a public corporation and a government unit), the sector allocation of the unit will depend on its market/non-market nature. Non-market units are recorded in the government sector and market units within the public corporations subsector (S.11).
7. For the other arrangements which are not run by a separate institutional unit, but involve only some assets, it must be determined which unit owns the asset on the basis of which unit is exposed to the majority of risks and rewards allocated to the assets. Both expenses and revenues, recorded on gross basis, are nevertheless re-allocated according to the arrangement (ESA 2010 paragraph 20.49).

⁽¹⁰⁰⁾ Normally, according to the share in control, the joint venture could be classified in the private sector, in the public sector or in both. However, if the public corporation would no longer be a market producer, the joint venture should be classified within the government sector.

⁽¹⁰¹⁾ It is assumed that there is no issue for possible (but rather hypothetical) joint ventures for financial intermediation (or financial auxiliary services) as, by definition, such entities should be classified within the financial institutions sector (S.12).

1.8.3. Rationale of the treatment

8. In case a separate unit is jointly set up to carry out an activity, the single criterion of the percentage of ownership may not be sufficient to decide on the sector classification of the unit. Other features of control need to be analysed. In many cases, government has *de facto* more influence than the private partner(s) and taking more advantage of it. The exact purposes of the creation of the unit, notably the importance of public interest reasons, should be closely considered.
9. For other types of arrangements involving assets but without any separate unit jointly, any asset in national accounts is allocated to only one controlling unit and thus to its institutional sector.

1.9. European entities related to the euro area sovereign debt crisis

1.9.1. Background

1. The European sovereign debt crisis, which started in 2010, has led to the creation of new entities or structures with the objective of providing intergovernmental financial support to EU Member States. As a first step, the euro area Member States⁽¹⁰²⁾ agreed to grant bilateral loans to Greece in the context of a new European Financial Stabilisation Mechanism (EFSM) involving also both the European Commission and the IMF. These financial supports are recorded without difficulty in Government Finance Statistics as loans incurred by borrowing countries directly from the euro area Member States (bilateral), from the Commission (EFSM) and from the IMF. However, it quickly appeared, because of contagion, spill-over and overshooting effects on euro area debt markets, that there was a need to set up specialised institutional bodies.
2. In this regard, the European Financial Stability Facility (EFSF) was created by the euro area Member States following the decisions taken on 9 May 2010 by the ECOFIN Council with the aim of providing financial assistance to euro area Member States requesting financial support under the condition of a macro-economic adjustment programme. The EFSF, created in October 2010 as a temporary mechanism providing support until 2013 but continuing to function after this date until the time of redemption of all bonds and loans, issues bonds or other debt instruments (bills and notes) on the capital markets. Furthermore, it has been decided that the EFSF could also intervene in the primary and secondary bond markets⁽¹⁰³⁾, act on the basis of a precautionary programme⁽¹⁰⁴⁾, recourse to more original tools (see below) and provide resources to governments for financing recapitalisations of financial institutions in non-programme countries.
3. Also, in October 2010, it was decided to create a permanent rescue mechanism, the European Stability Mechanism (ESM), based on a specific Treaty signed on 11 July 2011. After the ratification procedure came to an end, the Treaty entered into force on 27 September 2012, the ESM was 'inaugurated' on 8 October 2012 and started its operations in December 2012. It is currently the mechanism used to finance any new support programmes and is enabled to provide support under various tools similarly to the EFSF.⁽¹⁰⁵⁾

1.9.2. Treatment in national accounts⁽¹⁰⁶⁾

European Financial Stability Facility

4. As explained in Eurostat's decision of 27 January 2011 on the EFSF, the EFSF is not considered an institutional unit, from a conceptual point of view, because it does not possess all the normal characteristics of an institutional unit under ESA 2010. It has no capacity for initiative and no autonomy of decision in the exercise of its primary function, providing loans to countries in difficulty and their financing. Decisions related to this primary function are in practice subject to the prior approval, usually unanimous, of the Eurogroup⁽¹⁰⁷⁾ members taking part in a support operation. Moreover, the EFSF cannot be regarded as an international financial institution on its own, as it has none of the usual characteristics. It could not be consolidated with any of the European institutions established by the

⁽¹⁰²⁾ Several other EU Member States also took part in this bilaterally based support.

⁽¹⁰³⁾ The EFSF has also granted support by delivering its own bonds or notes, without raising funds on markets. In some cases, these 'cashless' operations are only temporary while in other cases the EFSF debt instruments will be kept by holders until maturity and may be used as collateral in repo transactions.

⁽¹⁰⁴⁾ Such precautionary lines are treated as contingent assets until actual drawing down by the beneficiary country.

⁽¹⁰⁵⁾ For detailed information on these bodies, and notably all relevant documents, see <https://www.esm.europa.eu/efsf-overview> and <http://www.esm.europa.eu>.

⁽¹⁰⁶⁾ See also relevant decisions on Eurostat website: <http://ec.europa.eu/eurostat/web/government-finance-statistics/methodology/decisions-for-gfs>.

⁽¹⁰⁷⁾ The Eurogroup is the term for informal meetings of the finance ministers of the euro area.

Treaties, at time of creation. Finally, the EFSF is *de facto* an accounting and treasury tool to enable the same conditions for access to borrowing for members of the euro area, acting exclusively on behalf of them and under their total control. EFSF's very low capital base compared to the size of its balance sheet reinforced the notion that the EFSF was mostly an artificial entity created as an accounting tool.

5. As a consequence, from a theoretical point of view, the EFSF operations would have to be allocated to or consolidated with, in national accounts tables, the institutional units to which it belongs, in this case, the governments of the euro area Member States.
6. For practical reasons, the Eurostat decision nonetheless prescribed to reroute the EFSF loans through guarantors, therefore implying recognising the EFSF as a statistical unit to be classified in the government sector of the EU institutions, by analogy with the ESM. The 2012 Eurostat decision indicated that the operations of the EFSF should be allocated to the guarantors, although only partially (meaning that the consolidation is based on some assets held by the EFSF only and not on the totality of its balance sheet for technical reasons, as explained below). As a basic activity, the EFSF borrows on markets with the guarantee of Member States, according to a contribution key linked to their share in ECB's capital.⁽¹⁰⁸⁾ Initially, up to December 2011, to obtain a better credit rating, one part of the proceeds of market borrowing was not transferred to the borrowing countries under the form of loans but invested into high rated debt instruments. This was known as the Loan Specific Cash Buffer (LSCB). The EFSF debt used for the 'LSCB' is not recorded in national accounts as imputed debt of the Member State guarantors. Thus, only the asset side of the EFSF corresponding to actual support to the euro area Member States is rerouted to the guarantor Member States.
7. The loans, which nonetheless include the Cash Reserve⁽¹⁰⁹⁾ not disbursed but to be repaid by the borrowing countries, initially exactly matched the borrowing conditions (interest rates and maturities) obtained by the EFSF.
8. Whether in the form of loans or government bonds, the EFSF lending to beneficiary Member States is recorded as loans granted by the EFSF to the MS guarantors who, as a result incur a corresponding increase in their gross debt but hold an equal claim in loan assets against the beneficiary country. For the borrowing country, this is only a change in geographical allocation of its borrowing.⁽¹¹⁰⁾
9. Furthermore, in the course of 2011, following decisions in Euro Summits, the EFSF support framework was amended, with the disappearance of the LSCB (grossing-up of guarantees by 165 % on the funding instruments), a significant reduction in Cash Reserve (no longer including the margin), the diversification and pooling of resources (short term instruments), completed by intervention tools other than loans.⁽¹¹¹⁾ It must also be pointed out that the EFSF set up a liquidity buffer which is not reallocated to the MS guarantors.⁽¹¹²⁾
10. Under these conditions, a part of the debt actually raised by the EFSF is not imputed as debt of the MS guarantors.

European Stability Mechanism

11. The ESM is treated as an institutional unit, more precisely a European Union international organisation (S.212), on the basis of the converging analysis of several factors, notably: a permanent basis, an establishment by Treaty, an international legal framework, a significant amount of capital, including 80 billion of paid in capital⁽¹¹³⁾, and an autonomy of decision due to a governance structure similar to that observed in some other international institutions in the financial area. The ESM is to be classified in the government sector of the EU institutions — that is with S.1315 as defined in Chapter 19 of ESA 2010, paragraph 19.09.

⁽¹⁰⁸⁾ For rating purposes, the guarantee of each EU Member State was initially grossed up by 120 % and the key is adjusted in order to take into account the share of countries which are not in a position to provide guarantees (notably when benefiting from bilateral loans or EFSF's support).

⁽¹⁰⁹⁾ 'Cash reserve', corresponding to an up-front service fee and capitalisation of a margin added to the EFSF cost of borrowing.

⁽¹¹⁰⁾ The possible purchase of bonds by the EFSF is also rerouted for the amount paid on markets.

⁽¹¹¹⁾ In addition to purchase of bonds on primary or secondary markets, precautionary lines, bank recapitalisation, the EFSF, through a vehicle, could provide credit enhancement to bonds issued by euro area governments (certificates covering first losses) and could enlarge its sources of funding by a Co-Investment Fund opened to investors.

⁽¹¹²⁾ As far as the impact on net lending/borrowing of the MS guarantors is concerned, it related to mainly to the existence of an interest margin. However, if the guarantors agree upon a debt cancellation to the benefit of a borrowing country, a capital transfer would be recorded as expenditure for these EU Member States.

⁽¹¹³⁾ For comparison, the ESM has a subscribed capital of 700 billion (of which 80 were paid in five instalments over 2012–14), for a lending capacity of 500 billion, while the EFSF has only a capital of 30 million, for a lending capacity of 440 billion.

12. As a result, in contrast to the EFSF, all its support operations have no impact on the debt of the euro area Member States subscribers, other than those which are benefitting from them. No loan or other kind of intervention is rerouted/reallocated to the members of the euro area. The only impact on the debt of these members is linked to the indirect need to borrow the cash for any tranche of paid-in capital — which is only a part of the amounts lent — although the ESM debt should in principle be reported as government debt of the EU or euro area debt, given that in principle these aggregates should include and consolidate all the transactions and instruments of the sector S.1315 of the EU institutions.
13. For the EFSF, should the guarantors agree upon a debt cancellation to the benefit of a borrowing country, a capital transfer would be recorded as expenditure for these Member States. For the ESM, the effective payment of the initial paid-in capital is considered to be increase of equity, while the callable capital is considered a contingent liability. The impact on government accounts of an actual call would be treated as a capital transfer only if it were to cover losses of the ESM or shortfalls in payments by a debtor country to the ESM.

1.9.3. Rationale of the treatment

14. Looking at the EFSF, there is evidence that it could not be considered an actual financial intermediary as it does not transact with the public at large on both side of its balance sheet and as it does not bear any risk due to the guarantee arrangement. In addition, there is no significant risk to the shareholders, the capital having just a formal role, as mentioned above. Also, the EFSF could not be considered an international organisation, despite resulting from an inter-governmental agreement. This is due to its status of private company and, more importantly, to the ex-ante approval by the Eurogroup for its main decisions.
15. The crucial point is that the EFSF has no autonomy of decision in carrying out its principal function. The decision to enter into a financial rescue operation is in the hands of the Eurogroup which represents the euro area Member States. Unanimity is required for most of the related decisions. Similarly, the EFSF has a restricted power of initiative regarding the liabilities incurred on its name, conditional to decisions taken by the euro area Member States. It may borrow funds only with *de facto* approval of the guarantors. The room of manoeuvre in this respect is limited (choice of maturities, size and investment of the liquidity buffer, for instance). Thus, the EFSF does not show a capacity for independent action comparable to what is normally observed for a financial intermediary or other financial institutions. However, the EFSF could not be consolidated in the Eurogroup. Its financial statements could also not easily be proportionally split into the euro area Member States owning it because of practical difficulties (change in contribution key, retained borrowing proceeds and, since December 2011, pooling of resources). The rerouting of the EFSF's interventions to the guarantor Member States is the solution employed in order to reflect the nature of the entity.
16. The EFSF has the legal form of a limited corporation in Luxembourg, submitted to the normal reporting requirements. However, for statistical purposes, its operations are treated as mentioned above. The EFSF is treated similarly to the ESM, implying a classification in S.13 of S.212. This subsectorisation is based on the similarities with the ESM as a non-market lender.
17. Eurostat provides the Member States with the relevant information on a monthly basis in order to record the EFSF's activities according to the classification decision. In addition, Eurostat publishes information on intergovernmental lending in EU, which includes the rerouted lending of the EFSF.
18. The ESM is judged to meet the full attributes of an institutional unit, and more precisely that of an international organisation, as mentioned above. It is permanent (as such international units normally are), created by an EU Treaty (high rank in legal norms), it has an international organisation status and has a large amount of paid-in capital and a significant amount of callable capital securing its interventions. The size of capital, together with the veto rights of EFSF members, clearly plays a significant role in the recognition of the difference between the EFSF and the ESM, regarding its recognition as an institutional unit. Even though the Eurogroup exerts a strong influence, which is a normal feature linked to its genuine specific function, the ESM has similar governance to that observed in other international institutions: a Board of Governors, a Board of Directors and a General Manager entitled with noticeable powers. Finally, some decisions, which cannot be regarded as having a negligible impact, do not need unanimity as in the case of the EFSF. Thus, this entity meets the usual ESA 2010 criteria of an institutional unit.
19. Only the borrowing country will record an increase of its debt. However, if the ESM would participate directly in the recapitalisation of banks of one country, no debt would be recorded for the country's

government, provided that it has taken no commitment vis-à-vis the ESM as regards the assets/claims held by the ESM on the banks.

20. In summary, the ESM is an institutional unit while the EFSF, conceptually, is not. Neither can be considered either a financial intermediary or a captive. However, despite their differences, they are sectorised equally.
21. Under ESA 2010, the ESM is classified, in the accounts of all EU countries, as a non-domestic euro area resident, within the rest of the world sector (S.2), under the subsector S.21 (the European Union) and among the institutions of the EU (S.212). In the accounts of the European Institutions (seen as a separate 'Member State'), the ESM is classified as part of general government (S.13) being a public non-market operator.
22. The ESM does not meet the financial intermediation criteria because (following ESA 2010 paragraphs 2.56 and 2.61) it does not transact predominantly with the public at large on each side of its balance sheet (it lends only to Member States in difficulty). It is not a market producer of financial services (it lends at rates close to its costs and does not price its lending according to risks). Thus, the ESM cannot be considered an entity of the S.125 sector — and, accordingly, any FISIM calculation on ESM lending to Member States would not be appropriate.
23. The ESM cannot be considered a financial captive in the S.127 sector of the EU institutions either, being a non-market operator. Likewise, the EFSF cannot be considered (for practical purposes, but also on accounts of its operational restrictions) as a financial captive, given that it cannot independently decide on its own to whom it lends to and what it borrows (and for this very reason it cannot be deemed to be an institutional unit — ESA 2010 paragraph 2.23).
24. All units classified in S.12 (financial corporations) must be market producers (except for the central bank which is classified by convention in S.121), although the market producer character is not necessarily established on the basis of the 50 % test. The interest charged by the ESM (close to costs) cannot be considered meeting the economically significant price definition, as neither the supply of, nor the demand for, ESM loans is driven by it (ESA 2010 paragraph 20.19).
25. The classification of the EFSF and the ESM should be applied consistently throughout macro-economic statistics. In practice, the impact of the EFSF/ESM classification is essentially limited to counterpart sector breakdowns (such as for securities holding statistics, securities issuance statistics, and detailed breakdown of Monetary Financial Institutions balance sheets or of BOP/IIP statistics). In practice, this also implies the exclusion of both entities from the calculation of FISIM flows on the lending to guarantors (with impact on the GNI aggregate).⁽¹¹⁴⁾

⁽¹¹⁴⁾ A similar problem arises with the sectorisation of the IMF (and the possible associated FISIM).

1.10. Keywords and accounting references

Captive financial institutions	ESA 2010, 2.298-2.299
Control	ESA 2010, 2.37-2.38 and 20.309-20.310
Defined-benefit pension schemes	ESA 2010, 17.57
Defined-contribution pension schemes	ESA 2010, 17.54
Economically significant price	ESA 2010, 20.19-20.22
Employer pension schemes	ESA 2010, 17.49
Financial intermediation	ESA 2010, 2.57-2.62
General government sector and subsectors	ESA 2010, 2.111-2.117
Holding company, head office	ESA 2010, 2.14 and 20.35-20.37
Institutional unit	ESA 2010, 2.12-2.13
Market output	ESA 2010, 3.17-3.19
Market/non-market	ESA 2010, 3.32-3.37 and 20.19-20.34
Non-market output	ESA 2010, 3.23
Non-profit institution	ESA 2010, 2.129-2.130
Pension fund	ESA 2010, 2.105-2.110
Public/private producer	ESA 2010, 20.303
Quasi-corporation	ESA 2010, 2.13 (f)
Rearranged transactions	ESA 2010, 1.75-1.78
Social assistance	ESA 2010, 4.105
Social insurance schemes	ESA 2010, 4.88-4.90
Social security fund	ESA 2010, 2.117
Social security schemes	ESA 2010, 4.88
Special purpose units of government	ESA 2010, 2.27-2.29

2

Time of recording

2.1. Overview

1. According to ESA 2010 paragraph 1.101, flows are recorded on an accrual basis; that is when economic value is created, transformed or extinguished, or when claims and obligations arise, are transformed or are cancelled. Thus, output is recorded when production occurs, not when a good or service is paid for by a purchaser. The sale of an asset is recorded when economic ownership of the asset changes, not when the corresponding payment is made. Interest is recorded in the accounting period when it accrues, regardless of whether or not it is actually paid in that period. Recording on an accrual basis applies to most flows, monetary as well as non-monetary and intra-unit as well as between units.
2. The time of recording of transactions has an impact on government net lending/borrowing (B.9). However, over a long period the differences between accrual and cash recording are eliminated since the accrual recording simply shifts the cash transactions into a different period. The financial instrument category other accounts receivable/payable (AF.8) is used to bridge the time difference between transactions and their early or late corresponding cash flows. An AF.8 recording has no impact on government debt⁽¹¹⁵⁾ because accounts payable (the category that accounts for the differences between accrual and cash) are excluded from this definition.
3. However, in some cases it is necessary to show flexibility as regards time of recording. There is one deliberate adaptation from the general principle concerning the recording of taxes and social contributions. As this type of government revenue is often recorded on a cash basis in public accounts and basic source information, it needs to be converted to an accrual basis. Specific rules regarding the recording of taxes and social contributions were devised, so that the net lending/borrowing (B.9) of general government (and of counterpart sectors) does not include amounts of taxes and social contributions unlikely to be collected. Two recording options are available and described in section 2.2.2 of this Manual, with the aim to avoid recording as government revenue amounts that will never be collected.
4. In determining the correct time of recording on an accrual basis, economic events, and in some cases judicial and administrative events, have to be considered. For example, economic activity can generate a liability to pay taxes, but the amount of tax might only be determined after the economic activity took place when a specific document is sent requiring the payment at a future date. ESA 2010 paragraph 4.82 specifies that for some economic activities, transactions or events, 'the amounts to be recorded are determined by the amounts due for payment only when evidenced by tax assessment declarations or other instruments which create liabilities in the form of clear obligations to pay on the part of taxpayers'.
5. The time at which the tax liability is created may differ for different types of taxes. National accountants need to decide on which moment to record each tax and social contribution and they must fully reflect the fact in practice that some amounts will never be collected.

⁽¹¹⁵⁾ See Part 8 Measurement of general government debt.

2.2. Recording of taxes and social contributions

2.2.1. Background

1. Taxes and social contributions in the European Union represent the main source of government revenue. Their recording in national accounts is particularly crucial in the context of the Excessive Deficit Procedure. Methods for recording them must be transparent and the impact on government net lending/borrowing (B.9) comparable. In addition, unpaid taxes and social contributions must imperatively not be recorded as government revenue and, as a matter of principle; in the long run there must be full convergence between accrued and paid amounts.
2. ESA 2010⁽¹¹⁶⁾ states that taxes and social contributions accrued (or assessed as due) but unlikely to be collected, for various reasons (such as bankruptcy of companies, lack of efficiency of the tax collecting system, disappearance of individual taxpayers, etc.), shall not be included as government revenue and hence shall have no impact on general government net lending/borrowing.
3. ESA 2010 paragraphs 4.27, 4.82 and 4.95 state that taxes and social contributions recorded in the accounts may be derived from two sources: amounts evidenced by tax assessments and declarations or cash receipts.
 - a) If tax assessments and declarations are used, the amounts of revenue shall be adjusted by a coefficient reflecting assessed and declared amounts that will be never collected. As an alternative treatment, the revenue may be recorded gross and a capital transfer to the relevant sectors recorded equal to the same adjustment. The coefficients shall be specific to different types of taxes and employers' and households' actual social contributions.⁽¹¹⁷⁾
 - b) If cash receipts are used, they shall be time-adjusted so that the cash is attributed to the accrual time (when the underlying activities, transactions or other events took place to generate the tax liability, or when the amount of tax was determined, in the case of some income taxes). The time adjustment must be based on the average time difference between the activities, transactions or other events (or on the determination of the amount of tax) and the effective cash tax receipt. It can differ between taxes. This method is labelled 'time-adjusted cash'.
4. In addition to the time of recording of taxes and social contributions, this section also provides guidance on other tax issues such as the time of recording of tax refunds, tax amnesties and tax credits. Finally, Box 1 (included at the end of this chapter) furnishes the main highlights of Eurostat guidance on the treatment of deferred tax assets (DTAs) in national accounts and the recording of specific tax credits related to DTAs.

2.2.2. Treatment in national accounts

2.2.2.1. GENERAL PRINCIPLES

5. Time of recording must, as prescribed in national accounts rules, focus on economic substance over legal form, i.e., when the economic activity took place that generated the tax liability or, in the case of some income taxes, when the amount of tax due is determined with certainty by the government, creating an obligation for the taxpayer.
6. Any of the methods described above in section 2.2.1 paragraph 3 a) and b) may be chosen by the national statistical authorities, provided that it is the best way for recording revenue according to the accrual principle: either based on assessment and declarations corrected for reliable estimates of the amounts unlikely to be collected or based on a time-adjusted cash approach. Eurostat closely analyses such methods and might ask for a change in the method, if the method chosen by the statistical authorities is deemed as not appropriate or as providing unsatisfactory results. For practical reasons, the

⁽¹¹⁶⁾ ESA 2010 references on time of recording of this revenue are paragraphs 4.26–4.27, 4.82, 4.94–4.95, 4.98, 4.100–4.101, 4.150, 20.171–20.175. By analogy, ESA 2010 paragraph 4.95 applies also to the case of D.613.

⁽¹¹⁷⁾ In particular, it is crucial that the coefficients (or the amount of capital transfer) must reflect without delay the impact of business cycles or some exceptional events which may have a strong effect on the actual collection of taxes and social contributions, upwards as well as downward, notably when rather sophisticated models are used.

use of a time-adjusted cash approach may be preferable when there are some difficulties to make reliable estimations for amounts unlikely to be collected or when there are no reliable assessments available. In such cases, the time-adjusted cash is an acceptable proxy for accruals.⁽¹¹⁸⁾

7. If the recording of tax revenue is based on assessments and declarations, there are two options in order to exclude amounts that will never be collected:
 - a) assessed amounts can be adjusted by a coefficient reflecting the amounts that will never be collected. The coefficients should be estimated on the basis of past experience and current expectations in respect of assessed amounts never collected. The coefficient should be updated when relevant in order to reflect economic reality.
 - b) amounts assessed as due are recorded as government revenue and the gap between this theoretical amount and the actual cash receipts (which is estimated) is recorded as a capital transfer (government expenditure) to the defaulting taxpayers.
8. Otherwise, if cash amounts are used for the recording of tax revenue, they shall be time-adjusted so that they are attributed to the period when the activity generating the liability took place. For instance, if there is a 1–2 month lag between VAT being accrued and it being paid by corporations to the tax authorities, then the cash received in the first 1–2 months of the year will be allocated to the previous year.

2.2.2.2. RECORDING OF TAX REFUNDS

9. For some taxes, there can be regular prepayments by taxpayers (on a monthly or quarterly basis) and the final tax settlement is established in a later period, once the tax declarations are submitted and assessed by tax authorities⁽¹¹⁹⁾. This final adjustment may imply a further payment by the taxpayer or, on the contrary, it may entitle the taxpayer to obtain a tax refund. This right to obtain a tax refund, and the amount concerned, must always be assessed or approved by the tax authority and are normally linked to tax declarations and final tax settlements.
10. Tax refunds should be analysed on a case-by-case basis for each country, taking into account data availability and national deadlines for presenting tax declarations. The recording of tax refunds should be based on solid data, with minimal estimation and with a low likelihood of subsequent revisions. Unusual tax patterns or events that would result in an unusual trend in the series should be closely monitored to ensure the correct time of recording.
11. ESA 2010 paragraph 4.82 allows some flexibility for the recording of final tax settlements for current taxes on income, if the liability could only be determined in a later accounting period than that in which the income accrues. In such cases, a recording of tax refunds when the liability is determined by government is accepted. Instead of carrying out estimations for the tax refunds, if there is no reliable information at the time the estimation is made, it would be preferable to record tax refunds later on, using the time of recording when the tax refund is determined.
12. It should be underlined that practices such as a cash recording for tax refunds — where a method based on assessment and declarations is used for the recording of tax revenue — should be avoided, as not only would it be methodologically inconsistent, but it might also create a considerable time difference in the moment of recording of the two amounts.

2.2.2.3. RECORDING OF TAX AMNESTIES

13. A tax amnesty is a limited-time opportunity for a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability relating to previous tax periods and without fear of legal action by government.
14. Tax amnesties normally result from a law or a decree, which is issued by government to forgive tax debts of taxpayers for previous years. Through this measure, government provides a benefit to taxpayers and, at the same time, collects revenue on a one-off basis that, in the absence of the tax amnesty, might be collected much later or perhaps never collected.

⁽¹¹⁸⁾ In case of employers' actual social contributions (which are paid on behalf of households in line ESA 2010 paragraph 1.74), the use of D.995 is methodologically sounder as imbalances between S.11 and S.12 and S.14 are prevented. However, the availability of reliable data sources will also be a decisive practical consideration. For this reason, time-adjusted cash may still be appropriate for the recording of D.611.

⁽¹¹⁹⁾ This concerns mainly income taxes. There can be other types of tax refund. For instance, VAT is due on goods/services, but can be reclaimed by corporations through VAT refunds. Also in this case, amounts are assessed through a tax declaration.

15. The benefit provided to taxpayers can take two forms:

- the possibility to disclose information about previous tax periods (non-declared previous taxes or taxable assets not previously disclosed),
- the possibility to pay past tax arrears, for which the collection could not be previously enforced.

In both cases, the disclosure of taxes (or taxable assets) and the payment of tax arrears, which release taxpayers from any further legal action by government, may be made under various conditions, possibly without penalties and even at lower tax rates than the standard case.

16. Tax amnesties are usually established for a fixed period and may be related to outstanding tax debts over a given period. They can concern all kinds of actual taxes and social contributions.

17. Concerning the time of recording, each case should be carefully analysed. In this regard, estimations of amounts to be paid are not the best option for the recording of tax amnesties, as government is unlikely to have reliable data sources in the assessment of amounts likely to be declared and paid, since it has no knowledge of undeclared taxes. Using data on collection of taxes is preferable, regardless of the method usually used for the recording of other tax revenue. In this sense, the use of pure cash recording is more appropriate.⁽¹²⁰⁾ In general, a tax amnesty replaces previous tax liabilities, possibly across a range of different taxes, which should not have been recorded as revenue in the accounts of general government, as they were not evidenced by assessments, declarations or cash paid (the precondition for recording a transaction according to ESA 2010 paragraph 1.79 is not met, see also ESA 2010 paragraph 5.244). The payments by taxpayers under a tax amnesty constitute a new tax, which should usually be recorded as a capital tax (D.91), due to its infrequent and irregular nature.

18. If a method based on assessments and declarations is used for the recording of tax revenue, the coefficient for amounts unlikely to be collected should be re-assessed after a tax amnesty takes place.

2.2.2.4. RECORDING OF TAX CREDITS

2.2.2.4.1. Background

19. Governments routinely provide benefits by way of reducing certain tax obligations of taxpayers, instead of making outright payments. These reductions are often called tax reliefs and may take various forms. They might be subtracted from the tax base, in which case, they take the form of tax deductions, tax exemptions or tax allowances. Other tax reliefs are provided in the form of a tax credit, which can be used to settle the tax liability of the taxpayer. This subsection focuses on the latter.

20. Governments commonly use tax credits in the context of social, environmental and innovation policies, as channels for providing subsidies to corporations, social benefits to households, investments grants or other transfers to taxpayers. A risk exists that these would not be explicitly recognised as government expenditures in national accounts.

21. In this context, the explicit intention of ESA paragraph 20.168 is to avoid distorting national accounts by recording such interventions inappropriately as a reduction of government revenue, for the sole reason that they are transiting via the tax system, because they indeed have the nature of expenditure. This subsection provides elements to distinguish such tax credits. In particular, the subsection distinguishes between tax credits, for which a government expenditure and/or a government obligation should be recognized, and which are called payable tax credits (or non-wastable tax credits), and those that are recorded like other tax reliefs and which are called non-payable tax credits (wastable tax credits).

22. Accordingly, the time of recording for the case of non-payable tax credits might be different from the one of payable tax credits, taking into account the elements referred above.

23. It is important to distinguish between the time when the tax credit is earned⁽¹²¹⁾ by the beneficiary (the time when government expenditure is recorded) and the time when the tax credit is used (resulting in reduced government cash proceeds). The concept of the material verification is further developed below in this context and refers to the exceptional cases, where the time of the recording of payable tax credits might follow the time of concrete verification by tax authorities.

24. This subsection also provides guidance on the treatment of tax credits with new features that have been notably observed in government responses to the COVID-19 pandemic: tax credits that allow the

⁽¹²⁰⁾ As tax amnesties might generally show some original features, the details of the treatment should be discussed on a case-by-case basis with Eurostat.

⁽¹²¹⁾ For a subsidy (D.3) this will be when the transaction or event that gives rise to the subsidy occurs, for a social benefit (D.62) when the claims on the benefit are established and for an investment grant (D.92) when the payments is due to be made.

taxpayer to transfer full or still unused amounts of the tax credit to third parties; tax credits that allow the taxpayer to defer the use of the tax credit for very long periods or even indefinitely; and tax credits that might be used to offset/settle the total fiscal obligations.

2.2.2.4.2. Basic distinction between payable and non-payable tax credits

25. ESA 2010 paragraphs 4.81 and 20.167–20.168 describe the national accounts treatment of tax credits. A tax credit is a form of tax relief subtracted directly from the tax liability due by the beneficiary after the tax liability has been computed. This is in contrast to any mechanism (such as tax allowance, exemptions or deductions), which for instance impacts the tax base before the application of the tax rate.

26. ESA 2010 distinguishes two types of tax credits:

- a) 'non-payable' tax credits (also known as non-refundable or 'wastable'), which are those limited to the amount of the tax liability. All amounts of tax credit that exceed the taxpayer's liability in the period in force are 'lost'.
- b) 'payable' tax credits (also known as refundable or 'non-wastable'), which are those in which the full amount of the tax credit is paid out to the beneficiary in any case, implying the payment of the excess when the tax relief is greater than the tax liability. In a payable tax credits system, payments or obligations of payment are awarded independently of the size of the tax liability, even in the case where no tax liability exists. Payable tax credits are thus non-contingent government liabilities: they represent a present obligation for government.

27. ESA 2010 instructs different recording approaches for these two different types of tax credits. Non-payable tax credits are recorded as a reduction of ESA tax revenue and therefore reduce the 'tax burden' and total revenue along with a fall in cash tax receipts. For payable tax credits, the whole amount of tax credit is recorded as government expenditure and there is no reduction of the ESA tax revenue (despite the fall in cash tax proceeds). This recording, thus, has an impact on the tax burden, total revenue and total expenditure, and on their corresponding ratios to GDP.

28. ESA 2010 does not specify the expenditure category to be used for recording payable tax credits since there can be different possibilities, depending on the nature of the tax credit. This category could be recorded as current expenditure, for instance: subsidies (D.3) or social benefits other than social transfers in kind (D.62), depending on the nature of the beneficiary, or even miscellaneous current transfers (D.75). Payable tax credits could also be recorded as capital expenditure, in this case as investment grants (D.92) or other capital transfers (D.99).⁽¹²²⁾

29. Tax credits for which the cash settlements by government are delayed to later tax years by design, but which are to be nonetheless unconditionally settled by government (paid to beneficiaries for the amounts not yet used) after a certain number of years, are payable tax credits. In these particular cases, there is certainty that government will actually pay out to beneficiaries by the set deadline for any amount of the tax credit not yet used by that time. Therefore, there is certainty that the government will lose the resources corresponding to the full amount of tax credit, and the only uncertainty is the time when the loss of resources will materialise in cash flow.

2.2.2.4.3. Borderline cases between payable and non-payable tax credits

30. ESA paragraph 20.167 specifies that *Tax credits can be payable, in the sense that any amount of the credit that exceeds the tax liability will be paid to the beneficiary*. This seems to imply that, for a tax credit to be considered as payable, the tax authorities must pay the beneficiary the excess above the tax liability, such that no amount of the tax credit is lost/wasted. This feature was typically present for traditional types of payable tax credits. However, the wording in the ESA paragraph does not cover the newer designs of tax credits that allow the transfer to third parties or allow to defer, notably indefinitely, the use of the tax credits, or those tax credit that can offset the total fiscal debt rather than a specific underlying tax.

31. When considering the new features observed in these newer tax credit schemes, the ESA statement above should be interpreted in a broader sense, i.e., the tax credits can be payable if there are elements in the tax credit scheme pointing to a very high likelihood that the tax credit will eventually not be lost. The main argument is that it will be used by one or more beneficiaries in the future (i.e., the resources

⁽¹²²⁾ This list is non-exhaustive. Other categories of expenditure may be appropriate in some cases.

will eventually be lost by government), so that the expenditure and related government liability is to be recognised at inception, i.e., when the tax credit is earned.

32. The key element is therefore not whether government provides cash to the initial beneficiary (originator of the tax credit), either upfront or over some time, but whether cash will most likely be provided (or, alternatively, the revenue collected by government will be lower) at some point by the government to the initial beneficiary or to any other party. Cash will anyway be lost in relation to this tax credit at a certain point in the future. The settlement by government does not need to be immediate and the tax credit might be used to reduce the tax liability (of any of the potential final beneficiaries) in the following years (whatever the length of the period involved). A tax credit might be transferred to other beneficiaries, or it can be used to settle a broad range of tax liabilities of the taxpayer, including its total fiscal debt. In these cases, the tax credit is deemed to be payable when there is a very high likelihood (i.e., close to 100%) that the tax credit will eventually be used in its entirety (or close to its entirety) in the future, so that government will effectively lose equivalent resources.
33. Thus, the general guiding principle is to record a government expenditure (and F.89 liability) for those tax credit schemes where the likelihood that the tax credit will be used, one way or another, by the beneficiary, is very high and where the claim on government is established with sufficient certainty and for a sufficiently determined value. In such case, a payable tax credit is deemed to exist, and a government expenditure (and liability) should be recorded for the amount earned by a taxpayer.

Transferrable tax credits

34. Transferability of the tax credit involves the taxpayer being able to transfer the tax credit (for the amount not yet used) to a third party, who can use the tax credit to settle its own tax liability. In case of multiple transfers allowed by legislation, more transferees can potentially benefit from reducing or settling their tax obligations until the tax credit is fully exhausted.
35. The originator taxpayer benefiting from such a transferrable tax credit has a strong motivation to either directly use the tax credit (by settling its own tax liability with this tax credit) or otherwise to pass it on to a third party, if there is a risk of losing the tax credit or some part of it. This feature, in principle, implies that the tax credit will not be finally lost, even though it may not be used in a tax settlement between government and the initial beneficiary.
36. If the taxpayer's claim is transferrable (sellable), the tax credit is *de facto* an asset (claim of the taxpayer), and a relating counterpart liability (obligation of government) necessarily exists. The capacity of the beneficiary to 'sell' its claim generally implies that government implicitly recognizes the liability and that the value of the claim can be reliably determined, or otherwise the initial beneficiary would not be able to find an interested buyer. From government's point of view, the outflow of resource becomes in both cases nearly certain.
37. Accordingly, if the tax credit can be transferred to third parties, such tax credit is thus to be deemed as a payable tax credit and has to be recorded in national accounts as an asset of the taxpayer and a liability of government.
38. When the tax credit can be transferred to any party (with the exception of related parties), the likelihood that it will be lost is very low and it is thus to be considered as a payable tax credit, unless there is evidence that a non-negligible amounts will be wasted. When the tax credit can only be transferred to related parties (e.g., only to the supplier of the goods/services that triggered the tax credit, family members or companies in the same group), then an evaluation may be needed to examine if, in practice, these tax credits may be lost for non-negligible amounts (in which case the tax credit would remain non-payable).

Deferrable tax credits

39. The deferability of tax credits refers to the possibility of carrying forward the use of the tax credit to following (fiscal) years. In such a case, the excess over the tax liability of the year is neither paid out, as it would be normally the case for payable trade credits, nor wasted, as it would normally happen for non-payable tax credits. The period of use is usually defined by legislation and might be fairly short, one or two years, or fairly long, such as more than 10 years. Alternatively, some tax credits might be indefinitely deferrable.
40. The general rule to be followed is to assess the likelihood that the tax credit will eventually be used (implying a loss of cash proceeds by government over time) in full, or nearly in full, over the years. If the likelihood is considered very high and the amount is determined with sufficient certainty, the government

expenditure (and liability) is recognized in national accounts for the amount of the payable tax credit earned by the taxpayer. The following cases can be distinguished:

- a) Cases of tax credits that are deferrable for only a short period should be considered as non-payable, because the likelihood of their use would not be sufficiently high to ensure that most of the tax credit will eventually be used.
 - b) Cases of tax credits, for which the use can be indefinitely deferred are generally deemed payable, unless there is evidence that the tax credit is expected to be wasted for non-negligible amounts. Such evidence might be available, for example, from the own accounts of the beneficiary or from the experience.
 - c) For cases, where the tax credit is deferrable for a long time but not indefinitely, the tax credit is presumably non-payable, although a case-by-case analysis of such tax credits might be needed. In some circumstances, however, the tax credits deferrable for a significant number of years may *de facto* function like an indefinite tax credit scheme when the deferrable period is *de jure* or *de facto* repeatedly extended.
41. The legislation might introduce caps on the maximum amount of the tax credits deferrable indefinitely. Two cases might occur. First, the use of the tax credit that might be earned in a year might be capped by the amount of a tax liability in that year. In such cases, the likelihood that the tax credit will be used over the years remains high or very high. Second, the cap might limit the amount of the tax credit to be used in any given year, and then such cases would require further analysis. In general, when such caps are not too low, it is enough to conclude that the likelihood that the tax credit will not be lost over the years remains high.
42. Box 1 explains that deferred tax assets differ from tax credits, and the rules for deferrable tax credits are not applicable to the deferred tax assets even when these are indefinitely reportable – unless they are in nature payable or else are converted into payable tax credits.

Cases of merger / acquisition / liquidation / bankruptcy of corporations

43. There might be cases of tax credits that are deferrable for a very long period or indefinitely, and for which the likelihood of being settled by government, for different reasons, is not generally considered very high. This might however change when the government obligation on the tax credit is recognized to remain if the company, which was granted the tax credit, enters into merger / acquisition / liquidation / bankruptcy. The taxpayer might then be entitled by legislation to claim the tax credit in case of merger / acquisition / liquidation or bankruptcy.
44. When the deferrable tax credit is payable upon bankruptcy, such a feature reduces the likelihood that the tax credit will ever be wasted. Similarly, the fact that the tax credit can be used by the purchasing company following an acquisition, *de facto* reduces considerably the risk of waste, because some companies can be attracted to buy a company in difficulty for the sole purpose of using the tax credit for the full amount.
45. As a general rule, for tax credits that are seemingly non-payable but that are deferrable for a very long period or indefinitely and where the tax credit is not lost in a situation of merger / acquisition / liquidation / bankruptcy, the likelihood of using the tax credit remains very high. Accordingly, the treatment in national accounts should follow the payable tax credit rules (implying the recording of government expenditure for the amount of the tax credit earned).

Tax credits reducing the total fiscal debt

46. Legislation might allow the beneficiary to use a tax credit earned on a specific tax to offset/settle its total fiscal debt, i.e., to settle not only a specific tax but also its overall debt position towards the tax authority (e.g., including VAT, property taxes, or even social contributions).
47. In normal circumstances, a tax credit to offset corporate income tax may often be wasted because it is not uncommon that no tax is due, for instance in case of company's loss. In contrast, tax credit to offset both the corporate income tax and VAT liabilities will generally never be wasted because VAT is the most common tax paid by most companies and for large amounts.
48. From the taxpayer's point of view, the possibility to offset the total fiscal debt towards tax authorities by another type of asset than cash (the claim constituted by the tax credit acquired) considerably increases the opportunities of the taxpayer to use the tax credit (and the likelihood that government will suffer from an outflow of resources).

49. By extending the scope of tax debts eligible for settlement by way of use of tax credits, e.g., from the underlying tax liability up to the total fiscal debt of the taxpayer, the government is providing support to companies. Such tax credits should be considered as payable tax credits, implying the recording of government expenditure for the amount of the tax credits earned.

Treatment of amounts eventually lost

50. When some amounts of the tax credits are eventually lost, the related payable (AF.89 liability) is eliminated by way of a correction to the flow of expenditure at time of definitive/final evidence of the loss or, in case the tax scheme has been discontinued in the meanwhile, by way of revenue.

Tax or social contribution rebates granted through payable tax credits

51. It is recalled that tax or social contribution reductions/rebates are generally recorded in national accounts as reductions in the underlying tax or social contribution revenue of government, and only rarely as government expenditure. It has been agreed⁽¹²³⁾, however, that expenditure is to be recorded in the specific case of social contribution reductions/rebates that are targeted (e.g., to specific industries or regions or employees).
52. It can happen that a rebate on taxes or social contributions (say, A) can be granted through a payable tax credit on another tax (e.g., income tax, say B). In this case, instead of paying the net amounts due on A (net of the rebate), the taxpayer has to pay the full amount due on A and at the same time will be able to claim a payable tax credit on B, that is either used to settle the tax B obligation or is refunded in cash at some point. The issue is then how to record the rebate in question, as a reduction in revenue (and of which tax: A or B?) or as an expenditure.
53. As a general rule, a social contribution rebate delivered through a payable tax credit on another tax should be recorded as expenditure only in those rare cases where the said rebate has the nature of an expenditure, i.e., the said flow would have been recorded as expenditure if settled in cash. For the other cases, i.e., when the rebate has the nature of a reduction in revenue, a reduction in revenue, to which the rebate refers (tax A), should be recorded, and not a reduction in the tax, against which the tax credit can be used (tax B).
54. As an example, a general rebate (of 10) on social contributions due (of 100) provided through a payable tax credit on income tax should not be considered as an expenditure but rather as a reduction in social contributions delivered through a payable tax credit (10) on the income tax due (say 15). The recording in such case would thus not be that of the usual payable tax credit: instead of a government expenditure (D.3 or D.7 of 10 in a usual tax credit), the rebate on social contributions would be recorded as a deduction in social contributions (D.61, so 90 is recorded). At the same time, the income tax (D.5) would still be recorded for its gross value (of 15, like in any payable tax credit, with 5 being settled in cash and 10 in payable tax credit), such that the most important part of the rules on payable tax credit would still apply.
55. The rationale for this rule is to treat similarly events that are economically similar. The fact that a revenue rebate is delivered through a payable tax credit instead of by reducing the obligation, as is usually the case, is merely a paying arrangement. Otherwise, measures that have the nature of revenue reductions would appear as expenditure, distorting upward the fiscal burden as well as government expenditure ratios, as measured in national accounts, which would go counter the original intention of the ESA 2010 rule on payable tax credit (to prevent these ratios be distorted, though downwards).

2.2.2.4.4. Time of recording

56. As concerns the time of recording of tax credits, it should be noted that the right to pay less taxes or to receive a payment must always be assessed, controlled, certified or approved by government (or by a tax authority) and this is normally done following the submission of tax declarations or of some kind of formal document.
57. It should be noted that tax credits are frequently linked to income taxes, and tax authorities should normally assess them when taxpayers submit their tax declarations. As non-payable tax credits reduce tax revenue, their time of recording should normally be similar to the one of the tax on which they are granted — this applies for both assessment and time-adjusted-cash methods. When assessments and declarations methods are used, if the moment of taxable income or the moment of determination of the tax liability is taken as a proxy point of accrual, the time of recording should be logically established

⁽¹²³⁾ GFS interpretation on the Deductions from compulsory employers' actual social contributions published in 2019.

when the income is earned or when the tax liability is assessed (respectively), and not at the time of the effective settlement of this liability by the taxpayer.

58. Payable tax credits represent unconditional claims of beneficiaries on government and, therefore, government has to recognize a liability at some stage. The formal recognition of the liability by the tax authorities may be a proxy point of accrual in the case of payable tax credits. This proxy is the best option for the time of recording only if the recognition/verification by tax authorities is material, as a pure accrual time of recording for payable tax credits would lead to recording amounts before they are determined with certainty or close to certainty. Therefore, in practice, estimations with uncertain reliability would be needed as well as subsequent revisions of government revenue, expenditure and net lending/borrowing (B.9). This time of recording when the tax authorities recognise the liability should be applied regardless of the expenditure category chosen for the payable tax credit.
59. Governments have the intention to provide different forms of benefits through tax credits. Such benefits should be recorded as expenditure when accrued, similarly as if they had been paid out in cash rather than delivered through tax credits. For example, in the case of a subsidy on production provided through a tax credit, the government expenditure (D.3) should be recorded in year T (assuming the subsidy is earned in T and generally recorded in T by the national accountants if paid in cash), which is the time of the subsidized production (in accordance with ESA 2010 paragraph 4.39: *when the transaction or the event which gives rise to the subsidy occurs*). In the case of investment grants channelled through the tax credit (e.g., on energy efficiency costs), the government expenditure (D.92) is to be recorded when the investment giving the right to a tax credit occurs, such that the tax credit is earned at that time. This might concern a few years because the investment might be spread over several years.
60. As a general rule, the payable tax credit (or deemed to be payable) should be recorded as expenditure of government at the time when the tax credit is earned, unless the verification is material. The time when the tax credit is earned most commonly refers to the time when a taxpayer acquires, according to the legislation, a right to use in the future the tax credit because the economic conditions for obtaining this right were fulfilled. In practice, this means for instance when rental services, sanitation expenditure or R&D investments (on which the tax credit is granted) were incurred, or annual instalments of the student loan were repaid, or discounts on price (on which the tax credit can be claimed) were provided to clients, etc. Alternatively, if the moment when the tax credit is earned is uncertain, this might lead to a time of recording of the expenditure at the moment when government recognizes the claim for its whole amount. This time of recording is determined regardless of the exact time in which the payable tax credit will be used in order to decrease the amount of taxes to be paid and regardless of the exact time the tax credit could be paid back in its totality to the beneficiary or to a third party.
61. Given the above, the time when the tax credit is earned (i.e., when the beneficiary considers the revenue earned and registers a claim) and the time of its use (i.e., the beneficiary reduces its tax payment obligations by way of using its tax credit claim instead of cash, that is: government receives less cash than otherwise would be the case) might not necessarily be the same and in fact are usually different. Thus, the impact on government net lending/borrowing (B.9) for payable tax credits would take place in one single year (the year the credit is earned) instead of being spread over a number of years (when the payable tax credit is used). This feature thus introduces, in some specific situations, a difference in the time of recording of the payable tax credit compared to non-payable tax credits.

Material verification

62. Tax credits are often earned as a result of provisions set in general legislation, such that beneficiaries can almost precisely know how much of tax credit is earned and when. In such cases, the tax declaration on which the tax credit is notified is often cleared automatically, and tax credits are cancelled only due to errors (such as clerical errors).
63. However, in exceptional cases, where the verification is material, the time when the tax credit is earned (and the respective expenditure recorded in government accounts) might follow the time of this material verification by tax authorities. In contrast to the situation where the verification by the tax authorities is a pure formality, meaning that government entities simply stamp the claim, there might be other modalities so that the verification is material. That is, in the verification process, the claim relating to a payable tax credit might be often rejected or its value might be changed for non-negligible amounts.
64. The typical cases of a non-material verification include, among others: tax credits for which the verification in T+1 by tax authorities is a pure formality or there is none (e. g. student loan tax credit to be used in the following 10 years where the granting of the tax credit might be automatic); tax credits where the amount earned might be changed only occasionally/rarely by tax authorities (due to identified

errors, as an outcome of random ex-post controlling, etc.); cases where the granting of the tax credit to taxpayers is automatic; cases where claims towards government relating to tax credits are reported already before the verification as part of the assets in the balance sheet of taxpayers (e.g., companies) for the full amount (and without provisions); cases where a material verification might be in place, but only for a reduced number of randomly selected taxpayers.

65. It is expected that some estimates of the amounts of tax credits granted by government are available even before the tax declarations are submitted and certified by tax authorities, an issue mostly relevant and often encountered in the April EDP notifications. Estimation difficulties are mainly relevant for the cases of newly introduced tax credits, given that otherwise one could often rely on the amount of tax credit granted in the previous year, extrapolated by relevant indicators. Useful information might be part of the official documentation, e.g., Ministry of Finance reports, public accounts, etc. In the absence of final data, estimations can be used as a proxy of the amount of the tax credits expected to be paid by government (i.e., earned by taxpayers).
66. Any time lag between the time of earning of the payable tax credit (recording of the government expenditure) and the time of its use, under the form of either a reduction of the tax liability or cash from government, gives rise to an entry in other accounts receivable/payable (AF.8).
67. The treatment of payable tax-credits is generally different from the case of non-payable tax credits. Since the latter are treated as negative tax revenue and not as expenditure, they will be recorded when they are used to reduce the tax liability, impacting the accounts for the exact amount used each year, instead of recording the whole amount in one single year, as will be the case for payable tax credits. This difference in time of recording is justified because a payable tax credit is a government expenditure that follows specific time of recording rules, while a non-payable tax credit is a reduction in revenue, which follows its own specific rules under ESA 2010. No difference would arise if the ESA 2010 were on a pure accrual basis.
68. As explained, the intention of the payable tax credit treatment in ESA 2010 paragraph 20.168 is to avoid recording government interventions (subsidies, social benefits, investment grants, etc.) inappropriately as a reduction of government revenue, when tax credit schemes are used as channels for delivering government expenditure benefits to taxpayers. Similarly, it is important that the time of recording of payable tax credit is made consistent, so to avoid that delivering government expenditure through tax credit delays the recording in comparison to cash expenditure (or direct subsidy expenditure), and hence eliminate adverse incentives.

2.2.2.5. RECORDING OF CHANGES IN TAX OBLIGATIONS

Background

69. Fiscal policy measures notably enacted in the context of the COVID-19 pandemic included, among other measures, the deferral of tax deadlines, postponing the submission deadlines for tax declarations, reducing pre-payments on income taxes, early settlements of tax refunds or of payable tax credits, suspension of late payment interest on unsettled tax obligations, or suspension of tax debt enforcement. This section gives some guidance on the recording of such fiscal policy measures observed in the context of government measures to alleviate the economic impact of the COVID-19 pandemic, applicable also to other situations.

References in the ESA 2010

70. According to ESA 2010, the accrual of taxes and social contributions can be approximated either using time-adjusted cash or by using assessments and declarations adjusted by a coefficient on the tax itself or by a capital transfer (D.995) to account for non-collectible taxes (ESA 2010 paragraphs 4.27, 4.82, 4.95). Both methods aim at recording the tax revenue at the moment of the taxable event while ensuring that uncollectible taxes and social contributions are not recorded as government revenue. This is in accordance with ESA 2010 paragraph 5.244c, which states that other accounts receivable (F.89) do not include "that part of these taxes and social contributions which is unlikely to be collected, and which therefore represents a general government claim of no value".

Recording

Tax deferrals

The need to adjust:

71. The mere deferrals of tax obligations should be without effect on the government revenue and surplus/deficit that is recorded during the period of the deferrals (except for long deferrals).
72. When payment deadlines are changed (lengthened) or the submission deadlines for tax declaration are postponed, for taxes where the accrual is implemented using time-adjusted cash, the time-lag used for time-adjusted cash should be (temporarily) reviewed so as to still correctly reflect the time when the economic activity generating the tax liability took place. Such an ad-hoc review of the time lag (which can be conducted in practice through an ad-hoc modification of the cash/TAC while keeping the usual time lag unchanged) is necessary to avoid possible double-counting of taxes in one period, and no recording of them in another period.
73. This may imply the need for an estimate in the 1st transmission of a reference period/EDP notification, where no estimate was hitherto needed, for example when the time lag is extended from 2 months to, say, 5 months – such that in the April T+1 EDP notification not all cash flows applicable to revenue of year T are known.⁽¹²⁴⁾
74. For taxes where accrual can be approximated through cash receipts (which can be perhaps viewed as a time lag of zero), exceptional ad-hoc adjustments need also to be considered in order to approximate accrual.
75. For taxes where assessments and declarations are used to implement the accrual principle, changes in payment deadlines or the postponement of tax declarations do not have a priori any impact on the recording method. However, given that the changes in payment deadlines or postponements of tax declarations are generally in response to expected liquidity issues affecting taxpayers (i.e., an expected increase of uncollectible amounts), a review (of an ad-hoc nature) of the coefficient to be used is needed, in order to avoid the recording of uncollectible amounts as revenue (see below on amounts expected to be uncollectible).
76. These recording principles follow the generally established rules. However, in view of the high degree of uncertainty over the ability of taxpayers to settle their liabilities in the future or in view of the length of the postponements sometimes enacted, significant uncertainty may exist for taxes where assessments and declarations are used to implement the accrual principle but also when TAC is used.

Amounts deferred expected to be uncollectible

77. Irrespective of the recording method followed, compilers should estimate/impute the amounts of tax deferred that are expected to be collected (revenue in the non-financial accounts with a matching tax receivable in the financial accounts) and those that are not expected to be eventually collected (to be adjusted in the non-financial accounts; i.e., excluded from government revenue and from tax receivables). In general, recording the full amount that is postponed or no amount at all are not recommended recording options. Eurostat recognises that such estimations pose challenges to national compilers and have to be made in close consultation with Eurostat.

Revision in initial estimate

78. When a final estimate of time-adjusted cash flows and/or non-collectible amounts is compiled within a year, then, two options may be envisaged;
 - a) Revise earlier periods with the better estimates/actual source data.
 - b) Record lower/higher amounts in more recent periods in response to better estimates/actual source data.
79. Option a) is generally to be preferred for quarterly accounts, in order to have more consistent accounts. Neither option a) nor b) should be used for government decisions on deferrals/extending deferrals when amounts are already accrued (e.g., when using assessment method), and thus represent a debt cancellation when forgiven (see for example ESA 2010 paragraphs 4.165, 20.225) Such decisions should lead to a recording of expenditure (other capital transfer, D.99) at the time of decision.

⁽¹²⁴⁾ Some compilers already carry out time adjustments exceeding 2 months (up to 8 months, and occasionally more) and, accordingly, already routinely conduct provisional estimates.

80. When final estimates are available after a delay, such as of more than one year, and for long delays in general, which is the case for long-term deferrals, option b) is more appropriate. See next section.
81. In a number of jurisdictions, information may not be easily available so to distinguish, within certain cash flows, the settlements of deferred taxes. This lack of information cannot be a reason to avoid correcting the data for deferrals, but then an implied settlement schedule (possibly estimated) is to be used to correct the regular (time-adjusted) cash data, and any difference with actual reimbursements (possibly TAC adjusted) automatically impacts net lending/borrowing in each accounting period concerned. This implies by default following option b) (partly or fully).

Long deferrals

82. The ad-hoc tax adjustment, i.e., the amount of tax revenue to be recorded under a prudent approach should be the smaller the longer the period for which the settlement of the tax liability is deferred, given that the likelihood of non-collectability presumably increases naturally over time (average lifetime of corporations, increased likelihood of households entering personal bankruptcies over a longer period), but also given that the present value of the tax collected falls over time. While neglecting the present value can be justified when time lags are short (e.g., a few months or one year), this may not be appropriate when time lags become very long. It is worth noting that, while the SNA recommends neglecting the present value on trade credits in general because these are typically short-term, the SNA nonetheless prescribes applying the present value for long-term trade credits (which is required to avoid distorting the measurement of production). In addition, the longer the lag the more likely it is that source data will fail to reliably distinguish between the various cash flows.
83. It would not be appropriate to impute any tax revenue in the case of a very long deferral, say, for more than 20 years, and instead a cash basis should be followed (with a few months of lag used by the normal TAC), thus recording instead tax revenue far in the future. Conversely, it seems also clear that a postponement for two years or less should not lead to an absence of an ad-hoc adjustment to the TAC: recording a sizeable part of the deferrals as revenue at time of deferral based on an ad-hoc adjustment to the TAC is preferable. For deferrals falling between these two extreme examples, significant discounting (low coefficient) should be used.
84. Similarly, in case the assessments and declarations (coupled with a coefficient or with the capital transfer - D.995) are used in order to accrue taxes and social contributions, in order to ensure that no uncollectible amounts are recorded, it is appropriate to also adjust the coefficient downwards (or D.995 upwards) as a function of the length of the time lag for which the taxes/social contributions are deferred.
85. As a general principle, the tax deferral adjustment should be reduced proportionately to the length of deferrals, to the eligibility criteria, or to the severity of the crisis, among other criteria. To this effect, NSI can use estimates or forecasts made by the ministries of finance or other forecasting entities. In the absence of these, for long deferrals, a pragmatic approach could be to record as tax revenue (as a proxy of the amounts to be effectively collected) the discounted/reduced value of the tax deferred using an appropriate coefficient of collectible amounts, under normal circumstances not affected by a sizeable decline in economic activity possibly due to pandemics or other factors. This would not entail recording interest on the fiscal receivable, if/as the discount rate/coefficient used is merely designed to capture expected defaults cautiously estimated. If the deferral period would in addition be subject to unusual circumstances, which would provoke a decline in economic activity and the concrete possibility that, due to bankruptcies or other factors, a large part of the tax revenue would ultimately not be repaid, the coefficient should also be supplemented by an additional reduction.

Other aspects of tax deferrals

86. When the deferral is coupled with a conditionality (for instance with a rebate in taxes to be paid granted if turnover has fallen by more than a certain threshold), then government is *de facto* extending a so-called non-repayable lending scheme by way of fiscal claims. The fiscal expenditure (here a reduction in revenue, generally) is thus to follow the time of recording applicable for such schemes (see chapter 4.8 on income contingent loans).
87. Wherever the possibility of tax deferral is contingent on the liquidity or solvency of the taxpayer, such that only companies experiencing a significant fall in turnover would be granted a tax deferral, this should be taken into account when estimating the amounts expected to be collectible. Similarly, if the taxpayers are given incentives to pay on time (e.g., through an option to receive a discount on their tax obligation when paying according to the original payment schedule) at the same time of an opportunity

of deferral, this will then likely affect (indirectly) the average collectability rate of the group that chooses to make use of the deferral scheme, and this needs to be taken into account.

88. When the deferrals would be repeated for the same payment obligations, and perhaps transformed into very long deferrals, the event would have to be considered as a new one. Thus, any reduction in value of the fiscal claim (arising from the fact that the deferral is now a long term one) would entail a capital transfer expenditure (D.99p, rather than a reduced revenue) at the time the second deferral is decided – instead of at time of accrual of revenue or at time the amounts were due for payments under the first deferral.

Reductions in prepayments on income taxes

89. Some governments have allowed taxpayers, in the context of the COVID-19 pandemic, through ad-hoc legislation, to significantly reduce the usual advances/prepayments they do ahead of final settlement, either as a mean to provide finance relief or simply in anticipation of the steep decline in tax obligations (e.g., to be settled in year T+1).
90. ESA 2010 allows, for practical reasons, some flexibility concerning the point at which income taxes are to be recorded. Regular (pre)payments in year T applicable on the year T income to be taxed may be recorded as ESA tax revenue in T whereas the final settlements in T+1 can be recorded as ESA tax revenue in T+1 (ESA 2010 paragraph 4.82).
91. This recording flexibility (which actually splits, in government accounts, over two years, the recording of tax accruing on taxpayers' income – tax base – of a given year), is applied by many compilers in the EU, notably on the understanding that this practice should not excessively distort tax revenue for any given year. Non-distortion would typically be expected when the growth rate of nominal income is relatively smooth across years and/or the prepayments in T realistically captures the final/total tax obligation that is expected to be fully settled in T+1 or a stable fraction of this final/total tax obligation. When these conditions are not met, distortions could be expected.
92. When there are changes in prepayments, due to legislative or administrative changes, affecting year T, then an ad-hoc adjustment is to be carried out as a general rule.⁽¹²⁵⁾
93. Cases have been observed where prepayments were drastically reduced in the COVID-19 context, which raised the issue of whether an ad-hoc correction to the cash received in T should then also be applied, or not. An ad-hoc correction to the cash received in T is applicable if the measure is essentially a liquidity measure, with a significant increase in final settlement thus expected to occur in T+1. This is in application of the general need to neutralise legislative/administrative changes in prepayments. *De facto*, government is, in this scenario, actually extending credit to taxpayers, by reducing pre-payments but recovering later on all or most of these amounts through higher final settlements. This is a financial transaction that should not influence the B.9 of the reference periods.
94. In contrast, no ad-hoc correction to the cash received in T is applicable if the reduction in prepayment is mainly reflecting an anticipation of a large contraction of the total income tax due on the income in T: it is then recommended to stay on a cash/TAC basis. The main criteria to be applied to choose between the two solutions is whether the change in prepayments is expected (for instance by design) to achieve a relatively unchanged ratio (settlement payments in T+1/pre-payments in T) for the tax of year T income, or not.
95. In some jurisdictions, taxpayers (or some of them) have the flexibility to change their prepayments based on current developments being observed. If such an arrangement in principle automatically stabilises the ratio in question, no adjustment appears necessary.

Other tax related issues

96. When government settles tax refunds early, ad-hoc adjustments also need to be considered.
97. When taxpayers are given incentives to pay on time (or even earlier), this will affect the time profile of the cash collected, and a proper adjustment to the TAC method is to be studied.
98. Whenever taxes are fully waived for certain time-periods, no accrual of revenue can be considered for the period the tax is waived.

⁽¹²⁵⁾ For instance, if legal prepayments collected in T are increased from 60% to 80% (e.g. by way of moving a January T+1 prepayment of 20% to December T), then a correction is to be made. Similarly, if the prepayments in year T are, say, halved from 60% to 30%, then an adjustment is to be carried out, shifting 30% back to year T.

99. When governments temporarily suspend the enforcement of tax claims already recorded as revenue, this does not lead to entries in the accounts, unless assimilable to long-term deferrals. However, as soon as the tax claim is fully abandoned, a capital transfer expenditure (D.99) should be recorded.
100. Regarding the suspension of late payment interest on unsettled tax obligations: When interest are routinely separated from tax revenue and recorded on an accrual basis (taking into account non-collectible amounts) and there is strong certainty that the tax obligation will be settled eventually, the suspension of interest payments presumably leads to an entry in the financial accounts with interest (D.41) recorded unchanged. In case the interest is abandoned, one would preferably record a capital transfer (D.99) expenditure by the creditor, matched by an interest (D.41) revenue unchanged. In case there is no certainty that the tax obligation will be settled eventually, or when the NSI uses the tax recording method (i.e., not separating interest - D.41) in general, then TAC is applicable.
101. A change in tax compilation method should be agreed with Eurostat beforehand.

T-1 tax revenue affected by decisions taken in T

102. Decisions to forfeit some of the T-1 tax obligations to be settled in T should be recorded as an expenditure in T, with an impact on the deficit in T and not in T-1.

2.2.3. Rationale of the treatment

103. As a fundamental principle, the impact on general government net lending/borrowing (B.9) of taxes and social contributions recorded in the system shall not include amounts unlikely to be collected. The underlying reasoning is that, when there is evidence that some of the taxes and social contributions that have been assessed will never be collected, the difference between assessments and expected collections represent a claim that has no real value and should not be recorded as government revenue. The impact on general government net lending/borrowing (B.9) of taxes and social contributions recorded in the system on an accrual basis should be equivalent, over a reasonable period, to the corresponding cash amounts actually received.
104. As far as tax refunds and tax amnesties are concerned, the treatment in national accounts should not depend on estimations and be the cause of significant revisions that affect the credibility of the data on government revenue.
105. The mere deferrals of tax obligations should be, in principle, without effect on the government revenue and surplus/deficit to be recorded in the period of deferrals and should, thus, be only recorded as an entry in the financial accounts (tax receivable). However, long deferrals reduce the collectability, which needs to be taken into account as a reduction in revenue with an impact on the B.9 of the period. Tax waivers should also impact B.9 and should be recorded as debt cancellation (if the tax being waived has been already accrued in the past) or as a reduced revenue (if the tax waived was not yet accrued).
106. ESA 2010 defines different recordings for tax credits according to their payable or non-payable nature. Non-payable tax credits are limited to the size of the tax liability. Consistent with the recording of tax allowances, exemptions and deductions, non-payable tax credits are recorded as reducing the tax liability and thus they are treated as reducing tax revenue, impacting government net lending/borrowing (B.9) when they are used to reduce the amounts of taxes to be paid.
107. By contrast, under a payable tax credit system, amounts exceeding the tax liability will be paid to the beneficiary and payments can be awarded to both taxpayers and non-taxpayers. This means that payable tax credits are not exclusively part of the taxation mechanism, even if they are assessed in the context of tax declarations or other documents. As payable tax credits are unconditional claims on government, representing an obligation for government, they must be recorded for their full amount as such in national accounts (AF.8).
108. The counterpart is government expenditure for the full amount at the time the liability is recognized by the tax authority, independently of the moment in which the tax credit will be used to reduce the amount of taxes to be paid or the moment in which amounts may be paid out to the beneficiary. Although in practice the payable tax credit may be used over a number of years (including the year they are recognised by government), the full amount will affect government net lending/borrowing (B.9) in one single year. The use of the tax credit is a financial transaction, by a reduction in government other accounts payable (AF.8), with no impact on government net lending/borrowing (B.9). When the tax credit is used, data sources should be corrected, if needed, in order to avoid recording this either as a reduction in government expenditure or as part of government expenditure.

Box 1 – Treatment of deferred tax assets (DTAs) in national accounts and recording of tax credits related DTAs

The introduction of the Basel III regulatory framework for banks has induced some countries to enact specific changes in legislation allowing the conversion of deferred tax assets (DTAs) into payable tax credits that constitute direct claims on government. At the same time, ESA 2010 introduced rules for the recording of tax credits. In the absence of guidance concerning DTAs in national accounts (DTAs are not specifically mentioned in ESA 2010), Eurostat drafted a guidance note to provide specific guidance on the treatment of DTAs in national accounts and the recording of tax credits related to DTAs. This box summarizes the main highlights of Eurostat's guidance note on the issue.

Deferred tax assets are defined as amounts of income tax recoverable by corporations in future periods provided that there will be sufficient future taxable profits. DTAs are related to past transactions, which, according to IAS12 can be grouped in the following 3 categories:

- deductible temporary differences;
- carry-forward of past losses;
- carry-forward of unused tax credits.

DTAs represent a potential claim of corporations against government, as they may possibly reduce the taxes to be paid by corporations on their future profits.

The origin and use of DTAs varies across countries and is normally set in national legislations for income taxes.

The recognition and use of DTAs is conditional on a number of factors, such as the existence of likely sufficient future profit or the possible reversal of deductible temporary differences (for instance, reversal of provisions).

DTAs shown in business accounting on the balance sheet of a corporation may give the right to pay less tax in the future, but a DTA is not a tax credit until such rights exist and is applicable for a certain amount. From a practical point of view, it should be considered that a DTA becomes a claim with the features of a tax credit at the time in which an amount can be established with certainty and can be used to reduce taxes to be paid, as the right to pay less tax would become effective and not only theoretical.

In national accounts, DTAs are contingent assets for corporations (and thus contingent liabilities for government) and therefore no government liabilities are recorded in the financial accounts. DTAs would be recorded in national accounts only in cases where they give rise to claims with the features of a tax credit, in which case ESA 2010 rules for the recording of tax credits are to be applied (see paragraphs 38–56 above).

DTAs could give rise to a claim with the nature of a tax credit in the following cases:

- a) normal offsetting of taxes because the corporation is profitable and deductible temporary differences are reverted, etc.;
- b) tax credits that were carried forward;
- c) changes in legislation allowing the conversion of certain DTAs with little likelihood of recovery into fully recoverable tax credits, under specific circumstances (for instance in case a corporation reports losses, in case of liquidation, etc.).

In case a), the claim originated from a normal offsetting of taxes would be assimilated to a non-payable tax credit, with no possibility for amounts exceeding the tax liability to be paid to the corporation. Therefore, under ESA 2010, these tax credits would have to be deducted from tax revenue.

In case b) the recording of payable and non-payable tax credits, as detailed in ESA 2010, should be followed. If the tax credit carried forward is payable, it would be recorded only once, at the time of recognition by the tax authorities and no amounts would be subsequently recorded if the amounts not used in each period to pay less tax are carried forward, even if in the business accounts a

deferred tax asset is recorded in the balance sheet. On the contrary, if the tax credit carried forward is non-payable, the amount effectively used to pay less tax in each accounting period would be recorded as reducing tax revenue, the remaining amounts being carried forward and recorded as reducing tax revenue in subsequent accounting periods.

In case c), the tax credits originated will be payable by definition and the rules set in ESA 2010 for payable tax credits should apply. This would imply the recording of government expenditure every time an amount of DTAs is converted into a tax credit, at the time the tax authorities recognize the liability and for the full amount converted. The recording for such cases should be clarified on a case-by-case basis and bilaterally discussed with Eurostat based on the Eurostat's specific guidance note on the issue. Other national accounts rules (such as those for capital injections) might also be applicable in case of legislations affecting DTAs with features different from the ones examined and described in the Eurostat guidance note.

2.2.4. Accounting examples

Example 1: A payable tax credit is earned in year T and it might be used in year T+1

The government intends to subsidise the company in a form of a tax credit. The tax credit of 100 is earned in year t when the economic activity giving rise to a subsidy takes place. The tax credit having a nature of a subsidy is recorded as D.3 expenditure with a government liability in F.89L of 100 in year t, when it was earned. In year t+1, the tax credit is used by a beneficiary, i.e., the taxpayer submits a tax declaration and claims the tax credit of 100, which is afterwards deducted from a tax liability (500).

Government accounts							
Year t			Year t+1				
Opening balance sheet							
A		L		A		L	
AF.2	200			AF.2	200	AF.89	100
		B.90	200			B.90	100
Non-financial account							
U/ΔA		R/ΔL		U/ΔA		R/ΔL	
		D.3	-100			D.5	500
B.9	-100			B.9	500		
Financial account							
ΔA		ΔL		ΔA		ΔL	
		F.89	100	F.2	400	F.89	-100
		B.9F	-100			B.9F	500
Closing balance sheet							
A		L		A		L	
AF.2	200	AF.89	100	AF.2	600	AF.89	0
		B.90	100			B.90	600

Example 2: A deferrable tax credit

2a: A payable tax credit is earned in year t and might be used in proportional amounts in the following 5 years (t+1,...,t+5) until it is fully exhausted.

The government intends to subsidize the company in a form of a tax credit. The tax credit of 100 is earned in year t when the economic activity giving rise to a subsidy takes place. The use of the tax credit, having a nature of a subsidy, might be deferred to the following 5 years and used in 5 proportional amounts. In year t, when the tax credit was earned, government expenditure of 100 is recorded in D.3 with a government liability in F.89L. Each year, starting from its first use in year t+1, a deduction in the government liability of 20 is recorded at the time of the use of the tax credit (i.e., when the taxpayer submits a tax declaration and reduces its tax liability). It is assumed that the tax liability in year t+1 is 500.

Government accounts**Year t****Year t+1****Opening balance sheet**

A		L		A		L	
AF.2	200			AF.2	200	AF.89	100
		B.90	200			B.90	100

Non-financial account

U/ΔA		R/ΔL		U/ΔA		R/ΔL	
		D.3	-100			D.5	500
B.9	-100			B.9	500		

Financial account*

ΔA		ΔL		ΔA		ΔL	
		F.89	100	F.2	480	F.89	-20
		B.9F	-100			B.9F	500

Closing balance sheet

A		L		A		L	
AF.2	200	AF.89	100	AF.2	680	AF.89	80
		B.90	100			B.90	600

* The deduction of 20 in F.89L is similarly recorded in t+2, t+3, ..., t+5 until the tax credit is fully exhausted so that the AF.89L = 0 in t+5.

2b: A payable tax credit is earned in year t and might be used in proportional amounts in the following 5 years (t+1, ..., t+5). At the end of the scheme in year t+5, some unused amounts of the tax credit are lost but the tax credit scheme is extended.

Tax credit of 100 is earned in year t when the economic activity giving rise to a subsidy takes place. The use of the tax credit, having a nature of a subsidy, might be deferred to the following 5 years. In year t, when the tax credit was earned, government expenditure of 100 is recorded in D.3 with a government liability in F.89L. In following 5 years, the tax credit cannot be used in each year due to various reasons

(loss incurred in some years, not complying with criteria to use the tax credit, etc.). At the end of the tax credit scheme in year t+5, the amount of the tax credit not used of 40 is lost but the duration of the tax credit scheme is extended. In year t+5, when a new tax credit of 200 in the extended tax credit scheme is earned, government expenditure of 200 corrected for the unused amount of 40 is recorded in D.3 (thus 160) with a government liability in F.89L (160). The new stock of government liability AF.89L is 200 in year t+5.

Government accounts

Year t

Year t+5

Opening balance sheet

A			L			
AF.2	200		AF.2	100	AF.89	40
		B.90			B.90	60
		200				

Non-financial account

U/ΔA		R/ΔL	U/ΔA		R/ΔL
	D.3	-100		D.3	-160
				D.5	500
B.9	-100		B.9	340	

Financial account

ΔA		ΔL	ΔA		ΔL	
	F.89	100	F.2	500	F.89	160
	B.9F	-100			B.9F	340

Closing balance sheet

A		L		A		L	
AF.2	200	AF.89	100	AF.2	600	AF.89	200
		B.90	100			B.90	400

2c: A payable tax credit is earned in year t and might be used in proportional amounts in the following 5 years (t+1, ..., t+5). At the end of the scheme in year t+5, some unused amounts of the tax credit are lost. The tax credit scheme is not extended.

Tax credit of 100 is earned in year t when the economic activity giving rise to a subsidy takes place. The use of the tax credit, having a nature of a subsidy, might be deferred to the following 5 years. In year t, when the tax credit was earned, government expenditure of 100 is recorded in D.3 with a government liability in F.89L. In following 5 years, the tax credit cannot be used in each year due to various reasons (loss incurred in some years, not complying with criteria to use the tax credit, etc.). At the end of the tax credit scheme in year t+5, the amount of the tax credit not used of 40 is lost. The tax credit scheme is not extended. In year t+5, government revenue for the amount of unused tax credit of 40 is recorded in D.9 with a reduction of the government liability in F.89L.

Government accounts

Year t

Year t+5

Opening balance sheet

A		L	A		L	
AF.2	200		AF.2	100	AF.89	40
		B.90	200		B.90	60

Non-financial account

U/ΔA		R/ΔL	U/ΔA		R/ΔL	
		D.3	-100		D.5	500
					D.9	40
B.9	-100		B.9	540		

Financial account

ΔA		ΔL	ΔA		ΔL	
	F.89	100	F.2	500	F.89	-40
	B.9F	-100			B.9F	540

Closing balance sheet

A		L		A		L	
AF.2	200	AF.89	100	AF.2	600	AF.89	0
		B.90	100			B.90	600

Example 3: A social contribution rebate granted through a payable tax credit on income tax

In year t, the taxpayer pays the social contributions of 100 and receives a general rebate of 10 that is provided through a payable tax credit on income tax. At the time when the rebate is earned, in year t, social contributions revenue is recorded for the amount due (100) minus the amount of the rebate (10) and a government liability of 10 is recorded in F.89L for the payable tax credit granted on the income tax D.5. In year t+1, when the payable tax credit is used, the income tax is recorded in D.5 for an amount of 15. A part of the tax (10) is reduced using the payable tax credit (granted previously as a rebate on social contributions) and the remaining 5 is settled in cash.

Government accounts

Year t

Year t+1

Opening balance sheet

A		L	A		L
AF.2	200		AF.2	300	AF.89 10
		B.90 200			B.90 290

Non-financial account

U/ΔA		R/ΔL		U/ΔA		R/ΔL	
		D.61	90			D.5	15
B.9	90			B.9	15		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	100	F.89	10	F.2	5	F.89	-10
		B.9F	90			B.9F	15

Closing balance sheet

A		L		A		L	
AF.2	300	AF.89	10	AF.2	305	AF.89	0
		B.90	290			B.90	305

2.3. Changes in the due for payment dates

2.3.1. Background

1. Sometimes governments change the due for payment dates for taxes, subsidies, compensation of employees, social contributions and benefits, which are generally the last moment the liable units can pay without incurring additional charges or penalties.
2. The time of recording is defined in ESA 2010 for the different transactions. As a rule, the system records flows on an accrual basis, that is, when economic value is created, transformed or extinguished, or when claims and obligations arise, are transformed or are cancelled (ESA 2010 paragraph 1.101).
 - Wages, salaries, employers', and employees' actual social contributions are recorded in the period during which the work is done. However, ad hoc bonuses or other exceptional payments, 13th month, etc. are recorded when they are due to be paid (ESA 2010 paragraph 4.26).⁽¹²⁶⁾
 - Taxes on production and imports are recorded when the activities, transactions or other events occur which create the liability to pay taxes (ESA 2010 paragraph 4.26).
 - Subsidies are recorded when the transaction or the event (production, sale, import, etc.) which gives rise to the subsidy occurs (ESA 2010 paragraph 4.39).
 - Current taxes on income, wealth, etc. are recorded at the time when activities, transactions or other events occur which create the liabilities to pay (ESA 2010 paragraph 4.82).
 - In some cases, the liability to pay income taxes can only be determined in a later accounting period than that in which the income accrues. Some flexibility is therefore needed in the time at which such taxes are recorded. Income taxes deducted at source, such as PAYE taxes and regular prepayments of income taxes, may be recorded in the periods in which they are paid and any final tax liability on income can be recorded in the period in which the liability is determined (ESA 2010 paragraph 4.82).
 - Social benefits in cash are recorded when the claims on the benefits are established (ESA 2010 paragraph 4.107).

2.3.2. Treatment in national accounts

2.3.2.1. FOR MOST DISTRIBUTIVE TRANSACTIONS

3. The time of recording refers to an 'accrual basis': the amounts to be recorded in year (n) should then include amounts due in respect of transactions realised from 1 January (n) to 31 December (n), that is, amounts in respect of transactions realised during the 12 months of the year.
4. An example is the reduction of the time lag for VAT payment granted by the State to enterprises: this time lag is for instance reduced from 2 months to 1 month. The due for payment date for VAT is therefore brought forward by one month. The State budget on a cash basis will then record 13 months of VAT receipts during the year when this time-lag reduction takes place.
5. However, VAT recorded as revenue in national accounts should not include the additional cash receipts of the thirteenth month and remains based on a twelve-month year. In this case, only financial accounts should be affected, cash (F.2) and other accounts receivable (F.8).
6. Any change in the due for payment date, although it does affect the cash amounts in public accounts, should not have an impact on the calculation of the taxes recorded in national accounts on accrual basis.
7. As already mentioned, taxes and social contributions recorded as government revenue can be derived from two sources: cash receipts or amounts evidenced by assessments and declarations. If cash receipts are used, they should be time-adjusted so that the cash is distributed when the activity took place to generate the tax liability (except for the cash of some taxes on income). This adjustment can be

⁽¹²⁶⁾ The time of recording of stock options is normally spread over the period between the grant date and the vesting date (from which point the option may be exercised).

based on the average time difference between the activity and cash tax receipts. Therefore, in the example given above, the cash receipts would be adjusted in order to take into consideration the reduction of the time lag for VAT, and the additional receipts of the thirteenth month would be neutralised.

8. For most distributive transactions, any change in due for payment dates thus have no impact on the government net lending/borrowing (B.9) which is measured on an accrual basis according to ESA 2010 rules.

2.3.2.2. EXCEPTIONS

9. Exceptions to the general rule are allowed for some distributive transactions such as: ad hoc bonuses or other exceptional payments, 13th month, etc. paid by the employer to his employees; and certain income taxes, social contributions by self-employed and non-employed persons for which the liability to pay can only be determined in a later accounting period. Therefore, changes in the due for payment date (for instance forward payments) for these kinds of transactions could affect the government net lending/borrowing (B.9).
10. For instance, corporations pay income taxes in several instalments in year (n+1) following the year (n) of reference for the income. It is assumed that they are required to pay in advance, at the end of year (n) the first instalment. When should this forward payment be recorded? In year (n) or in year (n+1)? More precisely, under which circumstances could the due for payment date be considered to be changed.

2.3.2.3. RULE CONCERNING THE CHANGE IN THE DUE FOR PAYMENT DATE

11. Any change in the due for payment date, which affects the amounts cashed by government, resulting from a law or a simple administrative decision and expected to be permanent, i.e., not applicable only one-off, has an impact on the amounts recorded in non-financial accounts and thus on the general government net lending/borrowing (B.9).
12. On the contrary, when a change in the due for payment date resulting from a law or a simple administrative decision, is expected to be temporary (by evidence announced as a one-off measure with a unique application) and would affect the cash amounts received by government, it should not be taken into account under an accrual recording. Consequently, there should be no impact on the general government net lending/borrowing (B.9).

2.4. Recording of interest

2.4.1. Background

1. The recording of interest on an accrual basis is a general principle in national accounts, introduced in international statistical standards in the 1990s.

2.4.2. Treatment in national accounts

2. General ESA 2010 accounting rules include:
 - all financial instruments bearing interest are recorded on an accrual basis;
 - interest is accrued on the basis of the 'debtor approach';
 - accrued interest can be calculated by simple or compound interest methods;
 - accrued interest is exclusively reinvested under the instrument⁽¹²⁷⁾;
 - all instruments issued at a premium/discount are treated in a similar way;
 - arrears are kept under the instrument.
3. Rules applied to specific instruments or transactions include:
 - stripping has no effect on the amount of accrued interest;
 - adjustments may be necessary in the case of instruments with floating rates and fungible issues (including savings premiums);
 - interest in the context of lottery instruments is also recorded on an accrual basis;
 - the accrual recording of interest applies to index-linked bonds;
 - there are no specific rules in the case of short-term negotiable instruments;
 - accrued interest is recorded during grace periods;
 - accrued interest on instruments denominated in foreign currencies gives rise to an adjustment in the revaluation account;
 - early redemption of debt instruments (including exchange) may give rise to nominal holding gains.

2.4.3. Rationale of the treatment

2.4.3.1. FULL COVERAGE

4. The accrual principle covers all financial instruments bearing interest. In ESA 2010, chapter 4 Distributive transactions, all kinds of debt instruments are mentioned: deposits, loans, debt securities and other accounts payable (when applicable). ESA 2010 paragraph 4.50 states: *interest is accruing continuously over time on the amount of principal outstanding*. No exception is specified for applying this rule.
5. Recording interest on an accrual basis is a general principle which must apply to all financial instruments bearing interest, independently of any specific arrangement possibly observed at national level.

2.4.3.2. 'DEBTOR APPROACH'

6. From a general point of view, interest can be accrued according to three possible treatments that could be called:
 - **'Debtor' or 'original cost of borrowing principle'**, based on the rate or yield prevailing at the time of creation of the financial instrument, applied to the principal outstanding amount or the issue price;

⁽¹²⁷⁾ This is not applicable to the valuation of government (EDP) debt at face value.

- **'Acquisition principle'**, based on the 'historical' rate or yield prevailing at the time the creditor records for the first time the financial instrument in the balance sheet, applied to the purchasing price;
 - **'Market approach'** (also referred to as the 'creditor approach' in ESA 2010), based on the rate prevailing at each point of time applied to the current market price of the instrument observed at the same time.
7. ESA 2010 paragraph 20.180 specifies that interest is accrued from the point of view of the debtor.
 8. ESA 2010 focuses on the financial burden, the cost of borrowing, that was anticipated when the debtor raised funds through the issuance of financial instruments. Secondary market transactions have no influence on the accrued interest to be recorded.
 9. From a theoretical point of view, under these three approaches, the total flows resulting from the contractual arrangements would be similar during the whole life of a financial instrument. But there would be a difference in the split between transactions and other flows. Some changes in the price of a financial instrument can be recorded as nominal holding gains/losses. The concept of a price change must distinguish between genuine price changes due to market movements and changes in the value of an instrument due to a change in its volume. For example, ESA 2010 paragraph 6.54 specifies that accrued interest does not generate holding gains as it gives rise to a non-financial transaction and simultaneously a financial transaction under the form of 'the acquisition of an asset which is added to the existing asset'.

2.4.3.3. METHOD FOR CALCULATING ACCRUED INTEREST

10. The choice for recording accrued interest is between 'simple interest', applied only on the principal outstanding amount, and 'compound interest', which takes into account the amount of interest previously accrued. The choice depends on whether the accrued interest is actually paid to the creditor within the accounting period. Unpaid accrued interest is considered in ESA 2010 paragraph 4.50 as 'an acquisition of a financial asset by the creditor and an equal acquisition of a liability by the debtor', on which interest is theoretically charged. At least conceptually, interest should be calculated in a compound way. Actual payments of interest are financial transactions.⁽¹²⁸⁾

2.4.3.4. REINVESTMENT OF ACCRUED INTEREST UNDER THE INSTRUMENT

11. ESA 2010 paragraph 5.242 states that *interest accrued and arrears are recorded with the financial asset or liability on which they accrue, and not as other accounts receivable/payable*. However, that paragraph also mentions that the interest could be classified in other accounts receivable/payable 'if the interest accrued is not recorded as being reinvested in the financial asset'. It is not specified under which conditions this could be the case.⁽¹²⁹⁾ Therefore interest accruing from an instrument should be recorded in all cases in the related instrument category, possibly under a sub-item of that instrument. This is the only possible solution for zero-coupon bonds, or short-term securities issued at a discount because, unlike other kinds of debt securities, accrued interest linked to the discount is not identified separately from the value of principal when a transaction occurs.
12. ESA 2010 paragraph 4.46 (b) specifies that bonds issued at a discount may have two interest components. One is for the discount accrued over the life of the bond and one is for the coupon regularly paid. They must be treated in the same way as far as the reinvestment of accrued interest is concerned.
13. In the case of transactions on secondary markets, the amount of accrued interest is simultaneously exchanged with the principal. It cannot be separately negotiated. The transaction must be considered as a whole. The buyer pays to the seller the amount of accrued interest. All the value of the transaction is to be recorded in the financial accounts, with no entry in property income. This transaction has no effect on the compilation of accrued interest from the point of view of the issuer. In the accounts of the new holder, interest is accrued from the date of entry into its portfolio. Later, if the new holder has kept this asset, the actual coupon payment would be recorded only in the financial account (the non-financial account has already recorded interest accruing continuously), and can be considered a sale back to the

⁽¹²⁸⁾ Note that for instruments with regular (annual or semi-annual) coupon payments, the difference between both methods is relatively small, so that in practice the simple interest method is acceptable. This would not be the case for deep-discounted (including zero-coupon bonds) instruments issued for long maturities.

⁽¹²⁹⁾ ESA 2010 paragraph 5.243 indicates that interest under securities lending and gold loans must be recorded under other accounts receivable/payable for consistency reasons.

issuer of the accrued interest acquired when the asset was purchased plus any interest accrued since that day.

14. A similar treatment should apply in the case of issuance of debt securities under the form of tranches⁽¹³⁰⁾. In such cases the sale price will reflect interest that has accrued since the issuance of the first tranche and could include accrued interest on unpaid coupons. ESA 2010 paragraph 20.183 specifies that *these sold coupons are neither government revenue at time of sale nor treated as premium. They are instead a financial advance*. They should be recorded under the financial instrument that is issued and so are not to be netted with the interest expenditure, in accrual terms.

2.4.3.5. NON-NEGOTIABLE INSTRUMENTS

15. For deposits (AF.22 and AF.29), ESA 2010 paragraph 7.65 only mentions that they are recorded in the balance sheet at nominal value, which is defined in ESA 2010 paragraph 7.39 as follows: *nominal value reflects the sum of funds originally advanced, plus any subsequent advances, less any repayments, plus any accrued interest*. This definition covers both sight deposits and saving deposits, where the deposited amounts may vary during the course of the accrual period, as well as term deposits when theoretically the amount is locked during the accrual period.
16. For loans, ESA 2010 paragraph 7.70 states that *the values to be recorded in the balance sheet of both creditors and debtors are the nominal value irrespective whether the loans are performing or non-performing*. This implies that interest must always be added to the remaining amount of the principal of the loan.
17. Recording accrued interest under deposits and loans should not be linked to the national practice nor to the own views of the transactors. For deposits, interest is frequently added to principal only under certain arrangements (at the end of a given period). For loans, the contract between debtor and creditor mentions explicitly a value of principal (due capital) that excludes interest. In addition, payments of interest and repayments of principal are not necessarily concomitant. However, as ESA 2010 explicitly states that accrued interest is assimilated to the acquisition of new amounts of the instrument, the reinvestment of accrued interest must analytically be considered to be principal. In the case of deposits, the payment of accrued interest is thus, from a conceptual point of view, a partial liquidation whereas payment of interest on loans is integrated in the amortisation process.

2.4.3.6. INSTRUMENTS ISSUED AT A PREMIUM/DISCOUNT

18. Treasury bills and other short-term instruments (generally with a maturity not exceeding one year) are normally issued with a discount or a premium, which means that the interest recorded is equal to the difference between the issue price and the redemption value at the end of its maturity period, normally at face value. This interest has to be accrued over the lifetime of the instrument. For transactions on a secondary market, there must be a clear distinction between the effect of a change in the market price of the instrument (recorded as a holding gain or loss) and the accumulated amount of accrued interest which is exchanged by the parties.
19. Discounts are recorded as additional interest expenditure and premiums are recorded as a reduction to interest expenditure, accruing over the life of the instrument.
20. Conceptually, there is no difference in this regard between short-term instruments and longer-term instruments issued at discount, such as zero-coupon bonds, which often have a maturity of at least 5 years. This issue is covered in ESA 2010 paragraphs 4.45–4.46 and 20.184–20.186. There is no reason to make a distinction between deep-discounted bonds and other bonds issued at discount, for example the case of fungible bonds issued in tranches. The treatment should be the same for any size of discount. This is confirmed in ESA 2010 paragraph 20.184. This is consistent with the recommendations of this Manual since its first edition.⁽¹³¹⁾
21. As regards premiums/discounts passed on to Member States governments by supranational entities in the context of on-lending arrangements, and similarly for on-lending arrangements within general government, a premium/discount on the loan is treated in the same manner as a premium/discount on

⁽¹³⁰⁾ These bonds (also referred as to 'fungible' or 'linear' bonds) are a largely common practice for central government bonds. All tranches have the same nominal interest rate, coupon payment date and final maturity. Each tranche is issued at a specific price according to the prevailing market conditions. As far as accrued interest (expenditure) is concerned, each tranche should be identified separately.

⁽¹³¹⁾ As an exception, when the discount is very small (less than 0.5 %) and when the remaining maturity is short (no more than 1 year), the accrued coupon can be recorded in the issuance year rather than split over the life of the instrument.

bonds. The premium is spread over the lifetime of the loan and should be recorded as a reduction of interest expenditure (D.41). Similarly, discounts at issuance should be accrued in D.41 expenditure over the lifetime of the loans. This is elaborated on in chapter 8.5 on-lending from supranational entities.

2.4.3.7. ARREARS OF INTEREST RECORDED UNDER THE INSTRUMENT

22. Arrears of interest arise when interest is not paid on its contractual payment date. They are recorded with the instrument in the same way as the reinvestment of accrued interest as discussed above. Both are recorded under the instrument until they are effectively paid or, in some cases, cancelled⁽¹³²⁾ (which is therefore a kind of debt cancellation to be treated according to normal rules).

2.4.3.8. STRIPPED BONDS

23. There is in ESA 2010 paragraph 5.96 (d) a reference to stripping which is a way to transform a 'normal' (or conventional) bond into a set of zero-coupon bonds, at the initiative of the holders. Traditionally, it results in the creation of separately tradable certificates representing future payments of interest and a future repayment of principal or, in the case of 'fungible certificates', all flows related to a given maturity. This operation is neutral for the issuer in terms of streams of effective payments. Stripping concerns mainly bonds issued by central government.
24. As stripping is operated on a voluntary basis by investors, the conversion takes place only for a part of the total outstanding amount of a bond. In most cases, stripping is a permanent option that can be exercised at any time and is reversible, i.e., a bond may be 'reconstituted' under its original form at any time by combining a complete set of strips, generally by an investor. Where strips are fungible for a maturity date, this allows the creation of synthetic new bond from certificates issued from different original bonds. The sum of the strips' values are actuarially equal to the total streams of flows, including principal redemption and regular payments of interest of the original bond at time of stripping.
25. Strips should not be recorded as new debt instruments different from the original instrument. Where the debt is recorded (in issuers' books and for the Excessive Deficit Procedure) at face value, there is no change in recording the primary debt when a bond is stripped (see sub-section 8.2.2.2). When debt is recorded at market value, a stripping operation does not change the total market value of the debt either.
26. As a result, stripping does not change the cost of borrowing and provides no additional funding to the issuer. This has no impact on accrued interest expenditure which must still be based on the rate prevailing at the time of the issuance of the original bonds following the debtor principle.
27. When government acquires strips, compilers should carefully assess the impact of the transactions on government deficit and debt, partly due to consolidation (see also sub-section 8.2.2.2). If the acquisition is made by another unit than the one which had issued the bond, the acquisition of the strip should be recorded as an acquisition of a financial asset which would need to be consolidated when presenting consolidated accounts (but not when presenting non-consolidated accounts). When the acquisition is done by the issuer of the bond, the acquisition of the strip is recorded as a redemption of a liability.
28. There are two possible methods to do this consolidation depending on whether the unit has sufficient strips to reverse the transformation or not:
- a) the consolidation impact of D.41 expenditure of individual strips (for example when the government has separate strips which cannot be combined to replicate a bond) should be done considering the average yield per strip of a given duration to be calculated following the debtor principle and applying the general rules for consolidation of D.41: that is, using a similar logic of the rule applicable for the normal repurchase of a bond;
 - b) when a unit has sufficient strips to reverse the stripping⁽¹³³⁾, the consolidation can follow the normal rule and is done by reducing debt by the 'face value' of the synthetic bond which can be created by combining strips. As a result, government expenditure on interest (D.41) is reduced by the consolidation in a similar manner that when government acquires the bond in question.

⁽¹³²⁾ In practice, when the discount is very small (less than 0.5 %) and when the remaining maturity is rather short (no more than 1 year) the accrued coupon could not be split over the life of the instrument but recorded in the issuance year.

⁽¹³³⁾ It is common to use the term 'reconstitution' of a bond to refer to the combination of strips to replicate an existing bond. However, the term 'reconstitution' is not so widely used as the term 'strip' and compilers should assess the nature of the operation rather than the term used in the national context (for example the terms 'reconstruction' or 'unstrapping' refer to the same concept).

29. However, in the case of reconstitution of a bond, it is noted that the application of method (b) would not exactly produce the same results as the application of method (a) to all the strips of a given bond. Thus, compilers may want to perform specific adjustments to this effect.
30. In summary, compilers treat individual strips (which cannot be combined to replicate an existing bond) as a separate debt instrument which generates D.41 in terms fixed at inception following the debtor principle (that is, when the original debt instrument was issued using a unique yield for each strip originated from a given bond/tranche⁽¹³⁴⁾). As an example, if the market interest rate when the bond was issued was 5 % (considering its duration), each strip is considered to have a 5 % interest rate. This approach would allow compilers to differentiate, in the value of each strip, the portion represented by accrued interest, debt repayment and if applicable, revaluation impact.

2.4.3.9. FLOATING RATES AND ASSIMILATED ISSUES (INCLUDING SAVINGS PREMIUMS)

31. Debt instruments can be decomposed into three types of instruments:
- a) Fixed interest rate instruments
 - b) Variable interest rate instruments:
 - 1) index-linked instruments
 - 2) other variable interest rate instruments
32. Fixed interest rate instruments comprise instruments with constant coupons over the period, as well as instruments with non-constant coupons that are fixed (i.e., known) at inception, such as stepped rates. Sub-section 2.4.3.13 explains that, in the latter case, a constant yield is calculated over the life of the instrument, erasing the step-up or step-down or any other more complicated profile foreseen in the fixed coupons of the instrument.
33. Variable interest rate instruments (ESA 2010 paragraph 5.98) can either be index-linked instruments (see sub-section 2.4.3.11), or floating rate instruments.
34. Floating rate debt instruments do not raise any special conceptual issues for the recording of interest on accrual basis. The interest to record (D.41 and, where appropriate, FISIM) varies according to a predetermined formula.
35. In the case of mixed interest rate instruments, where various fixed and/or floating rates are combined, two (or more) different instruments must be considered. As an example, a bond paying Euribor plus a margin has to be decomposed, in case the margin is fixed but not constant over the life of the bond — and for the sole purpose of the compilation of interest — into a Euribor bond and a fixed rate bond.
36. ESA 2010 paragraph 5.102 refers to cases of ‘mixed interest rate’ debt securities, where the interest is made of two fixed/floating components, simultaneously or successively. Accrued interest rules are thus different for each component. When the two components are simultaneous, the compilation method used corresponds to the one described in the previous paragraph. When the two components are sequential, this requires a more complex approach than simply identifying two instruments, in so far as a common internal rate of return must be calculated over the whole life of the instrument.
37. In the case of securities, there is usually a link between the nature of the rate index and the frequency of interest payments. Quarterly indexed interest is normally paid every quarter with a delay of one quarter. Thus, the exact amount paid to the holders is known in advance. Interest is said to be as ‘pre-determined’.
38. However, interest may be ‘post-determined’. For instance, annual interest may be indexed on an average over the previous twelve months. The exact coupon is known just a very short time before the actual payment. Provisional estimates of accrued interest could differ from the actual amount and so must be corrected when the actual amount is known.
39. As regards loans and deposits, where no compilation on an individual basis is practicable, global information must be used, notably for deposits. Under these conditions, interest would be accrued on the basis of estimates of the most probable rate that would be effectively paid.

⁽¹³⁴⁾ Although in pure financial terms, at inception each strip has a different interest rate (according to the existing zero-coupon interest yield curve) which results, when combined, in the observed bond market interest rate, the debtor principle requires to use for each strip the same yield at issuance.

40. Saving premiums are not mentioned in ESA 2010. Such premiums are paid under conditions generally regarding the length of time the instrument is held as a reward for stability. It is additional property income and not a nominal holding gain. A saving premium must be treated as interest and, thus, must be recorded on an accrual basis. Under some schemes, the premium is acquired only at the end of the whole saving period and the exact total amount paid cannot be known with certainty before the end of a given period. However, in most cases, only a very small minority of holders do not get the additional remuneration, as the majority would behave rationally to maximise their return on saving. Therefore, interest should be accrued on a 'maximum basis', i.e., including the premium. When the exact proportion of 'rationale' savers is known with certainty, a revision can be made to past periods. Under other schemes, the 'reward' takes the form of an increase in the interest rate for holders who have not reduced their saving the previous year(s). In this case, if there is no information on the expected proportion of savers earning the higher rate, the interest should be accrued at the higher rate with a final adjustment when the exact information is available.

2.4.3.10. LOTTERY INSTRUMENTS

41. The payments of lottery instruments, where such payments are paid as prizes to randomly selected holders, should be treated as interest (ESA 2010 paragraph 4.49 (c)) and not considered to be a holding gain for the holder. Although individual holders do not know what they will receive, the issuer does know the total amount to be paid out in prizes and so the interest can be recorded using the usual rules applying to the debtor principle.

2.4.3.11. INDEX-LINKED INSTRUMENTS

42. Some units in general government may issue debt instruments, generally in the form of bonds, which include a clause specifying that all or part of the remuneration depends on a published economic index number. This remuneration may apply only to the coupon, similarly to variable interest financial instruments. Alternatively, it may concern only the value of principal, the coupon being affected through the rate applied to the principal. In other cases, principal and coupons follow the same index.
43. 2008 SNA has clarified — in paragraphs 11.70 and 17.274 to 17.282 — the recording prescribed for interest on index-linked instruments, which was only briefly and somewhat ambiguously referred to in SNA 1993 paragraph 11.78.
44. Accordingly, the ESA 2010 was also adapted compared to ESA 1995. ESA 2010 paragraphs 4.46 (c) and 6.56 make a distinction between 'general price index' and 'narrow index'⁽¹³⁵⁾. The first case is, for instance, a consumer price index or commodities index, whereas the second refers to a particular price of a commodity or a stock. For some governments, inflation-linked bonds are a significant proportion of their debt. The 'narrow index' category is not observed as frequently but, as witnessed in the past, there might be an indexation on gold.
45. ESA 2010 paragraph 4.46 (c) states that, in the first case, the change in value of the instrument due to the index during an accrual period is treated as interest accruing in that period, in addition to the 'normal' interest (i.e., the 'coupon') accrued over the period (which may also be index-linked).
46. For the second case, the holder might be motivated by potential holding gains. Nevertheless, the change in the value of the instrument should be recorded as interest. The amount of interest accrued should include the expectation of holding gains linked to the reference level of the index at inception — using market expectations at inception, observable through forwards or futures, etc. — to be spread over the life of the contract. Later on, any deviation from these expectations would be recorded as positive or negative revaluation effects. This procedure thus transforms the indexed debt security to the equivalent of a fixed-rate instrument, from the point of view of property income. Property income comprises the expected future coupons (themselves possibly indexed) with the expected gain in the indexed principal.
47. As a result, a narrow index instrument is generally subject to nonzero cumulated holding gains/losses over the whole life of the instrument, contrary to general price index instruments, and generally to debt instruments (see example B compared to example A in Box 1).

⁽¹³⁵⁾ The recording prescribed in ESA 2010 paragraph 4.46 c is consistent with an old Eurostat decision issued in March 1997 (under ESA 1979).

48. Although ESA 2010 chapter 20 — The government accounts — does not distinguish between narrow and general price indices, ESA 2010 paragraph 4.46 (c) is clear about the possibility of recording holding gains/losses.
49. As an application of the narrow index case, when a debt instrument (denominated in domestic currency) is linked to a foreign currency exchange rate, and there is no clear market evidence on how the rate will change over the life of the instrument, any change in the value of the instrument related to the variation of the rate of exchange is to be recorded as a holding gain or loss, and not as interest. This is consistent with the treatment of instruments denominated in foreign currency.

Box 1: Example A – Calculation of interest accrual on an index-linked bond: broad-based index

A 5-year bond is issued on 1 January, Year 1 at a price 1 000, with no coupons, indexed to a broad price index. The index value at the beginning of the period is 100.

This index and bond values, with the derived interest and revaluations are as follows:

	<u>Broad Price Index</u>			<u>Bond</u>
	End of Period	Interest	Revaluation	31-Dec
Year 1	107.0	70	-12	1,058
Year 2	113.0	60	-17	1,101
Year 3	129.0	160	58	1,319
Year 4	148.0	190	10	1,519
Year 5	140.3	-77	-39	1,403
Years 1-5		403	0	

Notes:

- The total increase in value over the five years (i.e., 403) is determined by the movement of the index (i.e., 40.3 percent increase).
- Since this is a bond, revaluations also arise from changes in market conditions, such as changes in market interest rates, credit ratings, and expectations about the future path of the index. However, they are zero over the life of the bond when it is repaid at its indexed value.
- Negative values of interest can arise in the periods when the index declines.
- The corresponding entry to the interest accrued is an increase in debt securities in the financial account.
- Fluctuations in market interest rates cause changes in the value of the bond, but the calculation of interest is unaffected.

Box 1: Example B – Calculation of interest accrual on an index-linked bond: narrow index

A 5-year bond is issued on 1 January, Year 1 at a price 1 000, with no coupons, indexed to a narrow index. The index value at the beginning of the period is 100. Market interest rate is 8 percent at the time of issue.

The index and bond values, with the derived interest and revaluations are as follows:

	<u>Narrow Price Index</u>			<u>Bond</u>
	End of Period	Interest	Revaluation	31-Dec
Year 1	107.0	80	-22	1,058
Year 2	113.0	86	-43	1,101
Year 3	129.0	93	124	1,318
Year 4	148.0	101	100	1,519
Year 5	140.3	109	-225	1,403
Years 1-5		469	-66	

Notes:

- The total increase in value over the five years (i.e., $469 - 66 = 403$) is determined by the movement of the index (i.e., 40.3 percent increase)
- According to the debtor approach, the interest in each period is fixed according to the interest rate at inception. The interest for Year 1 is 80 (8 percent of 1 000), for Year 2 is 86 (8 percent of 1 000 + 80), for Year 3 is 93 (8 percent of 1 000 + 80 + 86), and so on.
- The revaluation for the whole life of the bond is due to the difference between the increase in the index and the compound increase that would have occurred at the market rate of interest. (Revaluations also arise for individual periods during the life of the bond because of changes in market conditions, such as changes in market interest rates, credit ratings, and expectations about the future path of the index.)
- Fluctuations in market interest rates cause changes in the value of the bond, but the calculation of interest is unaffected.

2.4.3.12. SHORT-TERM NEGOTIABLE INSTRUMENTS

50. ESA 2010 annex 5.1 Classification of financial transactions, in 5.A1.14 strictly defines short-term maturity as a maximum of one year. Maturity here means the term of the instrument or the notice period where instruments can be repaid on demand at the request of the creditor. Most central governments issue treasury bills within this limit. As already mentioned, these instruments are issued at a discount (or premium) which is treated at interest accrued over the life of the instrument. Generally, the total amount issued by government under these short-term instruments may vary significantly from one year to another, because of volatility in market conditions. It is thus important to be in a position to correctly allocate accrued interest to the relevant fiscal year, or quarter in short-term government finance statistics.

2.4.3.13. INSTRUMENTS WITH STEP-UP INTEREST AND INSTRUMENTS WITH GRACE PERIOD

51. A special arrangement concerns instruments with 'step-up interest'. Government may hold or issue securities or other debt instruments where the coupon or the contractually defined profile of interest payments at regular dates shows a 'step-up' (or reversely 'step-down') profile based on series of fixed interest rates set up at inception over successive periods (e.g., $x\%$ over years 1–4, then $x+1\%$ over years 5–8, etc.). In addition, such instruments may be issued with a discount, which is considered to be interest spread over the lifetime of the instrument (see ESA 2010 paragraph 4.46 and above sub-section 2.4.3.6 Instruments issued at a discount).

52. As mentioned in ESA 2010 paragraph 20.180, as well as MGDD sub-section 2.4.3.2 Debtor approach, accrued interest is based, in ESA 2010, on the debtor approach with reference to the 'cost of borrowing'

as observed at the time the instrument is created. As a consequence, interest must be accrued using the market rate (yield-to-maturity) observable, or the implied contractual internal rate of return at the inception of the instrument. Interest not actually paid in a given period is nonetheless accrued and considered reinvested on the instrument. Thus, in that way, the instrument bears the same rate of interest (see above sub-sections 2.4.3.3 and 2.4.3.4) independently of the moment when the coupons are actually paid (see Box 2 'Step-up and grace periods' below).

53. Some financial instruments may include an interest grace period, usually over the first years, during which no interest is paid by the debtor to its creditor(s). The instruments involved are typically government financial assets such as loans but cases where such a grace period applies to a government liability have also been observed in the EU, although rather infrequently. This case is mentioned in ESA 2010 paragraph 20.241 but the recording of interest is not specified.
54. As a general rule, the debtor approach implies that interest, both for assets and liabilities, must be accrued over the full lifetime of the instrument, including the grace period, on the basis of the relevant market rate observed at inception (yield-to-maturity) or the contractual rate available at inception (see Box 2 'Step-up and grace periods' below).
55. Thus, the grace period is to be assimilated as a simple and particular case of a 'step up' debt instrument where the first coupons paid are equal to zero.
56. However, exceptionally, no interest should be accrued during the grace period if both of the following conditions are strictly and jointly met:
 - a) during the grace period, the issuer/debtor is entitled to redeem the principal amount of the instrument (possibly including pro rata payment of discounts). No additional payment should be foreseen for this early redemption, aside from the usual anticipated redemption fees or penalties that will be considered to be a form of remuneration (see sub-section 2.4.3.16);
 - b) after the grace period, there is no observable compensation by the debtor for the absence of interest payments during the grace period. Such compensation may take the form of an increase in the regular interest payments for the amounts previously not paid, or a higher coupon rate by comparison to similar instruments without grace period issued at the same time.

Box 2 – Step-up and grace periods

This example covers at the same time the issues raised in paragraphs 50 to 51. The case of loans is mentioned in a second part.

A 15-year debt security is issued by government for value 100 at the end of year 0. It has the following pattern of coupons: a grace period with no payments for the first five years, 4 % during years 6–10, and 10 % during years 11–15. Let us suppose the two conditions of paragraph 52 are not met.

At time of issuance the market interest rate is a little over 4 % (4.0165 %). For reasons of simplicity the value of 100 will also be the redemption value (no discount or premium) and remains constant over the whole 15-year period. For reasons of simplicity, we assume that the market only moves with respect to interest. As a result, the market value of the bond only moves with respect to accrued interest. According to the 'debtor approach' (see sub-section 2.4.3.2), the market rate at inception (which is different from the 'coupon rate') must be used for accruing interest over the lifetime of the security.

The market value (or net present value) to be recorded in the government ESA balance sheet, in this simplified example, equals the issue value plus interest accrued (similarly to the reinvestment of an existing coupon) but not paid at each period, in the absence of any change in the market rate for similar bonds issued by this unit.

In this case, the accrued interest recorded each period in ESA does not equal the coupon payments. The coupon payments are financial transactions in the underlying instrument because the accruing interest is recorded as being reinvested in the instrument. The method of interest used is compound interest because it is a long-term debt security.

The table below shows in column AF.32 (liabilities) the 'market value of the debt security at the end of each year, the value recorded in the ESA balance sheet of government. Interest (D.41) is the

amount that government becomes liable to pay to the holder of the debt security in an accounting period without reducing the amount of principal outstanding. This is a general principle which applies to any financial instrument.

Therefore, interest (D.41) for debt securities (F.3) has in each accounting period two components (ESA 2010 paragraph 4.46 (b)):

- the interest payable by government from coupon payments in the respective accounting period;
- the amount of interest accruing in the respective accounting period attributable to the difference between the redemption price at the end of its maturity period and the issue price, calculated in the same way as for zero-coupon bonds, i.e., on a debtor approach.

In this context, the interest accrued (D.41, payable) in each period is equal to the sum of the coupon paid plus the change in the market value of the debt security in the period.

Example of grace period/step up interest for a security

Principal: 100 (issue and redemption value)

Market interest rate at inception: 4.0165 % (constant over the whole the period)

Coupons: 0 % in the years 1–5; 4 % in the years 6–10; 10 % in the years 11–15.

D.41, payable is obtained as the sum of the coupon plus the difference between the market value of the instrument at the end of the current period and the previous period.

Year	Coupon	D.41 payable	F.32	AF.32
0				
1	0	4.02	4.02	104.02
2	0	4.18	4.18	108.19
3	0	4.35	4.35	112.54
4	0	4.52	4.52	117.06
5	0	4.70	4.70	121.76
6	4	4.89	0.89	122.65
7	4	4.93	0.93	123.58
8	4	4.96	0.96	124.54
9	4	5.00	1.00	125.55
10	4	5.05	1.05	126.59
11	10	5.09	-4.91	121.68
12	10	4.89	-5.11	116.58
13	10	4.69	-5.31	111.26
14	10	4.48	-5.52	105.74
15	10	4.26	-5.74	100
Total	70	70		

2.4.3.14. ACCRUED INTEREST ON INSTRUMENTS DENOMINATED IN FOREIGN CURRENCIES

57. For these financial assets and liabilities, the normal rules for accruing interest should be applied but specific attention must be given to the issue of the conversion into the national currency. In ESA 2010 paragraph 10.27 the nominal holding gains and losses (K.7) — realised or not — on an asset are the increases or decreases in the asset's value accruing to its economic owner as a result of increases or decreases in its price, including exchange rate movements. ESA 2010 paragraph 6.64 specifies:

- 'nominal holding gains may therefore occur from both changes in the price of the asset and the exchange rate';
- 'the value of assets and liabilities denominated in foreign currency is measured by their current market value in foreign currency converted into national currency at the current exchange rate'; and
- 'transactions in assets and liabilities denominated in foreign currency are converted into the national currency using the exchange rates at the time the transactions occur'.

As a consequence, nominal holding gains and losses may appear due to differences in exchange rates used for transactions and for balance sheets.

58. Where interest is denominated in foreign currency, it must be converted into the national currency by the exchange rates prevailing at the time it accrues. Ideally, interest should be accrued daily, and so using a daily exchange rate. In practice, the calculation is made over a period on the basis of the average exchange rate observed during the period (but not using a 'spot' exchange rate, observed at only one specific point of time). Where interest is accrued by means of a compound method, theoretically this average should be weighted by the amounts of accrued interest at each point time during this period. However, a simple arithmetic average may be an acceptable proxy.
59. The actual payment of interest is a transaction in the underlying instrument with a counterpart in currency and deposits (F.2) and uses the exchange rate at the actual date of the payment. Although the amounts of accruing interest are perfectly equal in foreign currency in each period, the amounts of accrued and paid interest may diverge in national currency, due to exchange volatility. So, an adjustment is needed in the revaluation account for the difference between the 'spot' exchange rate observed at this time (used for the conversion of outstanding amounts) and an average rate used for interest accrued during the last period or the 'spot' rate observed at the end of the previous period for interest previously accrued but not paid during the last period.
60. Conceptually, the exchange rate effect is different from the case of instruments with a variable interest rate for which a correction in the amount of interest, accrued and reinvested, is made when the exact interest rate is known. In the case of instruments denominated in foreign currencies, the adjustment is not due to a wrong estimate but comes from the fact that transactions occur at different points in time. Later, when the effective payment of this interest occurs, there is a new adjustment in the revaluation account due, on the one hand, to the gap between the exchange rate at this time and the rate used at the end of the last period, and, on the other hand, to the difference between the rate used for accruing since the beginning of the period and the rate at the time of payment.
61. On some occasions — for example when compiling annual accounts for interest paid every three or six months or for discounted instruments of shorter maturity — there is no 'overlapping' between the accruing period and the period of payment. In principle only one adjustment is necessary, as mentioned at the end of the last paragraph. In this case, interest is fully accrued and paid during the same period of compilation. The new claim/liability resulting from the reinvestment of accrued interest is created and extinguished during the same period. In this timescale, the concept of accrued interest may be seen as rather theoretical. Thus, for simplification, it could be acceptable to enter directly in the property income the amount of the effective payment converted into the national currency, avoiding any adjustment.
62. These entries are fully meaningful from an economic point of view. More generally, such adjustment is frequently observed for financial instruments denominated in foreign currency for which transactions with opposite signs (as creation/extinction of a liability) of equal amounts in original currency may not be offset after conversion into national currency.

2.4.3.15. INCOME OF MUTUAL FUNDS

63. Units classified within the general government sector may hold shares issued by mutual funds. The income received by the mutual fund is recorded on an accrual basis according to ESA 2010 rules as described in this chapter. The amount and timing of this income is also recorded as the income of the mutual fund shareholders/investors, for the same amount and timing, less any mutual fund service charge. This income for the shareholders is to be recorded as being reinvested in the mutual fund. Any actual payments by the mutual fund to shareholders/investors are to be recorded as financial transactions: a withdrawal of invested funds by the shareholders/investors. The mutual funds service charge is to be recorded as a sale of a service (shareholders' consumption) and not as a distributive transaction or a financial transaction.

2.4.3.16. EARLY REDEMPTION OF DEBT INSTRUMENTS (INCLUDING EXCHANGE)

64. A debtor may have the right to break the initial contract and offset the debt before the maturity date agreed at inception. In some cases, a specific period of notice must be given. The creditors are normally entitled to compensation.
65. For securities, an early redemption may take the form of repurchases on the market by the issuer. It may also be the result of an exchange of securities. The issuer calls for some specific bonds and provides in exchange a new security or a new tranche of a security previously issued. A difference, sometimes called a premium, is observed between the nominal value and the effective redemption

value. Where the difference is positive, it is a holding gain for the holder and a holding loss for the issuer, recorded in the respective revaluation accounts. Under ESA 2010, some types of financial instruments are valued at current prices, notably for debt securities. Thus, the gain/loss is equal to the difference between the value of the outstanding amount at the end of the previous period and the price of the exchange. The treatment of these exchanges of bonds is very similar to transactions of bonds on secondary markets between holders of securities.

66. In the exchange, the market value of the amount bought back by the issuer and the new amount issued are the same — with possibly a cash payment for any marginal difference in value. For bonds with regular interest payments, there is, in addition, a payment by the issuer for the accrued coupon. Such exchanges may happen in the context of special operations aiming to reduce the nominal debt. Whatever the procedure of the exchange, there is no effect on net lending/borrowing (B.9) at the time of the exchange.
67. An early redemption can also occur for loans. The debtor may be allowed to reimburse a loan before the final maturity and frequently the creditor is legally entitled to ask for compensation. The latter cannot be considered in national accounts as a capital transfer. The issue is whether this compensation is income for the creditor (debtor expenditure) or should enter the financial accounts (reflecting the settlement of a holding loss by the debtor).
68. ESA 2010 paragraph 20.228 suggests that fees or penalties on early redemption of a loan are income, without detailing the type: *When early redemption leads to the payment of a penalty or fee to the lender as foreseen in the contract, the amount shall be recorded as income of the lender.* This sentence is notably aiming at underlining that such penalties are not capital transfer expenditure, given that the preceding sentence is: *When debtor governments offer to repay the debt in anticipation, at a value below the principal value which includes interest in arrears, the event leads to an entry in the capital account with an impact on the government net lending/net borrowing, as a grant by the creditor is presumed.* This last sentence concerns in particular government-to-government lending. The early (or late) repayment fees or penalties are common examples of explicit charges amongst financial services.
69. The ESA 2010 paragraph 20.228 reference to *foreseen in the contract* requires some interpretation. One may wonder why the debtor would agree to pay a penalty outside and above what is foreseen in the contract. If this is nonetheless the case, one can presume that this corresponds even more to an income flow benefiting the creditor — a sort of payment for a service provided by the creditor to the debtor. In addition, in some jurisdictions, the fees may be regulated by laws or statutes, such that contractual clauses are either unnecessary or void. Overall, one may presume that this reference merely aims at recalling that contracts typically allow such early repayments against a fee.
70. The last sentence of ESA 2010 paragraph 20.228, *In the case of securities, a buyback on the market leads to an entry in the revaluation accounts, unless the early redemption is imposed on the securities holder,* contrasts voluntary settlements of debt securities, which should enter the financial accounts (these are holding losses/gains, see paragraph 65 above) from settlement of other debts or from imposed settlements. The reason for treating loans and securities acquired on the market differently is that, in the case of loans, the debtor has to negotiate with the creditor to extinguish the liability. This is not the case for securities, as the debtor can acquire in the market the securities it wishes to extinguish (the seller merely agreeing to sell the securities at a certain price, while not necessarily agreeing with the ultimate objective of the acquirer, that is: the extinction of the liability).
71. A compensatory payment that is designed to reflect changes in discount factors, such as risk-free rates, may be treated differently though. As an example, ESA 2010 paragraph 20.231 makes an exception to the recording foreseen in ESA 2010 paragraph 20.229, when the loss reflects *changes in market interest rates, and not a change in credit worthiness.*
72. Finally, loans can include a separable derivative (see sub-section 2.4.3.17) or may be indexed on a narrow index (see sub-section 2.4.3.11). In such cases, the settlement payment may merely reflect the fair value of the derivative in question, or of the impact of the index, at time of renegotiation. In this case, the part of the payments reflecting the latter value would enter normally in the financial accounts.
73. In the light of all this, the correct treatment of any amount paid in excess of the principal and accrued interest outstanding ('due amount'), whatever the payment is called (fee, penalty, compensation, or otherwise), depends on the type of loan:
 - a) when the loan is of a regular or standard type, which is by far the most frequent case — fixed rate, floating rate, or indexed on a general price index — the amount is to be recorded as income

payments (explicit service charges), unless it can be established that the compensation (or a part) reflects fluctuations in general 'market interest rates' (e.g., pure risk-free rates, or, at least, rates not reflecting individual 'changes in credit worthiness' — ESA 2010 paragraph 20.231);

- b) when the instrument contains a loan and a derivative that is separable (see sub-section 2.4.3.17), the amount is recorded as a holding loss (in derivatives), unless the penalty exceeds the fair value of the derivative outstanding, or unless the penalty is a predetermined payment expressed either as a lump sum or as a fixed percentage of the principal outstanding. In those two latter cases, the debtor records expenditure for the excess of the fee over the fair value of the derivative, or for the fixed amount;
 - c) When the loan is indexed on a narrow index (see sub-section 2.4.3.11), the amount is recorded as income when foreseen in the contract and unrelated to the index. Otherwise, consistently or by analogy with the previous case of separable derivatives, the payment reflects a holding loss of the debtor (holding gain of the creditor) in loans.
74. The compensation fee that enters the non-financial accounts cannot be considered in national accounts as a capital transfer and should be considered a service charge (P.1) or when the creditor is a financial institution a compensation transfer (D.75).
75. Penalty fees on renegotiations are similar to fees on early redemption. Indeed, it can be argued that a renegotiation/restructuring is not different from a simultaneous termination of one contract and the entry into force of a new one. In line with the previous paragraphs, renegotiation fees should be recorded when paid. Exceptionally, for example in cases where the renegotiated terms are not market terms at that time (and thus, it can be presumed that the renegotiation fee also includes a compensation for the off-market terms), a portion of the fee may need to be spread over the duration of the instrument. In this case, there would be a need to split the fee into two components, one which represents the compensation for the early redemption and another which represents the value of the difference between the market terms at the time of renegotiation and the newly agreed terms, with the former recorded when agreed and the latter spread over the new period.
76. For some time or saving deposits, a given rate of interest may be paid only under the condition of a minimum holding period. An early liquidation, if contractually allowed, is balanced by a reduction in the rate of interest paid to the holder. For recording interest on an accrual basis, the rate of interest taken into account is the maximum rate that the depositor could receive in the normal course of the contract, i.e., respecting the arrangements about maturity or notice. When it is not the case, the amount of interest accrued previously is corrected on the basis of the final rate. As this amount is in all likelihood globally very small compared to the total interest on deposits, for practical reasons, the correction for the total amount can be recorded in the latest period only.

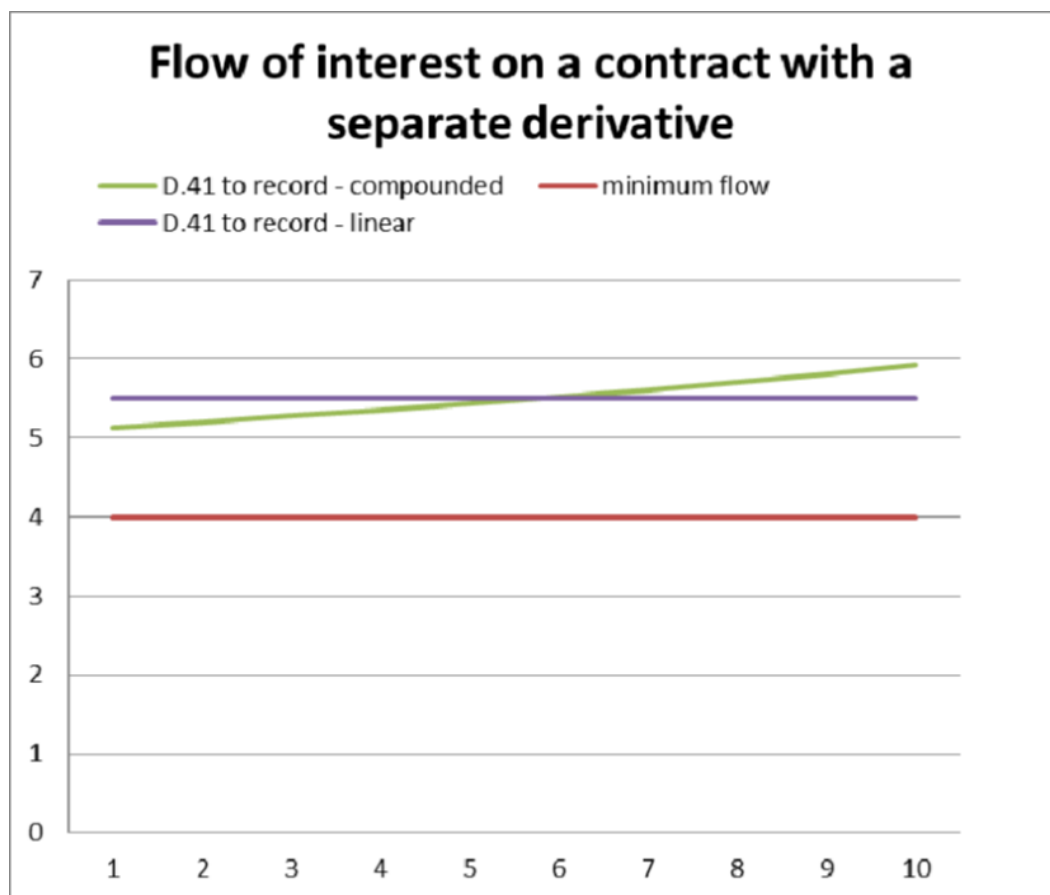
2.4.3.17. RECORDING INTEREST WHEN THERE IS A DERIVATIVE IN A DEBT INSTRUMENT

General principle

77. When a debt instrument⁽¹³⁶⁾ is deemed to contain a separable derivative, interest accrued should reflect two components: (a) a component calculated on the debt instrument excluding the derivative, according to the nature of the resulting instruments after carving out the said derivative, and (b) another component capturing the fair value at inception of the said derivatives. These two components are spread over time according to the accrual principle.
78. The derivative in question may be of a forward type or of an option type. Options-type derivatives can be simplified into an (asymmetric) forward type when volatility shrinks to zero.
79. Let us assume a 10-year borrowing contract of 100 paying a fixed 4 % a year, together with additional amounts that are conditional on some formula replicable by an option or a basket of options (the debtor has the selling position). Let us assume that the options being off-settable, have a fair value observable of 15. The overall 'interest' (D.41 plus FISIM) to record on the instrument in national accounts is then 55

⁽¹³⁶⁾ This subsection refers to the recording of interest in the case of one single debt instrument containing a separable derivative. The subsection does not apply to the recording of loans which have been signed together with a swap as in this case there are two contracts/instruments, sometimes signed with different parties. The derivative embedded in a debt instrument may take different forms, although it is often found in the interest formula in the form of a cap or floor on the interest rate. In more complex cases, the derivative would imply changes to the spread, amortization periods or other terms which are triggered by some events.

$= 4 \times 10 + 15$. This is equivalent to 5.5 a year, if linearly spread, or to a somewhat lower amount in the first year (approx. 5.13) growing over time (to 5.93 in the 10th year), if using a present value/compounded interest approach. The present value/compounded approach can be seen as arising either from the fact that the receivable earns interest or that the debt liability grows over time (see 'accounting for a derivative' below). The yield on the debt instrument is approximately 6.04 % ($6.04 \% \times (100-15) = 5.13$) – significantly different from the first approximation of 5.5 %.



Recognition of a derivative

80. ESA 2010 paragraph 5.220 (b) recognises the case of 'structured debt securities' that combine a debt security with a derivative. When the two are 'separable', each is classified accordingly. When the two are not separable, the instrument is classified according to the relative size of the 'principal initially invested' compared to the 'prospective return'. When this relative size is small, the instrument is classified as a derivative.
81. Although ESA 2010 paragraph 5.220 (b) only refers to debt securities, the principle of substance over form suggests we should separate a derivative for other instruments, such as loans, as well — if the criteria are met. However, in case the derivative is not separable, it is presumed that a loan instrument cannot be reclassified as a derivative since it is not tradable (and not off-settable).
82. ESA 2010 paragraph 20.133 prescribes the recording of off-market swaps, partitioning the instrument between a loan component (AF.4) and a normal swap (AF.7) (see sub-section 2.4.3.18 below).
83. To recognise a derivative, the latter has to meet the definition set out in ESA 2010 paragraph 5.199: *financial derivatives are financial instruments linked to a specified financial instrument or indicator or commodity, through which specific financial risks can be traded in financial markets in their own right. Financial derivatives meet the following conditions:*
 - (a) they are linked to a financial or non-financial asset, to a group of assets, or to an index;
 - (b) they are either negotiable or can be offset on the market; and
 - (c) no principal amount is advanced to be repaid.

84. For practical reasons, when no information is available to the compiler, the derivative is deemed non-separable. The ability to separate requires off-settability and accordingly a high level of information (e.g., micro data).

Link to index-linked debts

85. Index-linked debts, whose treatment is prescribed in sub-section 2.4.3.11, can be seen as similar (from the point of view of the instrument return) to a type of debt with a derivative, with the latter having the specific characteristic of containing only forwards and no leverage.
86. When the index is of a narrow type, ESA 2010 and 2008 SNA take into account the speculation motive and recognise holding gains and losses over the lifetime of the instrument (the corresponding unexpected return). This is consistent with structured instruments with separable derivatives, where holding gains and losses will arise over the whole life of the combined instrument and reported as revaluation of derivatives.
87. When the index is of a narrow type, the interest to accrue on the indexed instrument will be the same as the interest to record on an instrument with a separable derivative (forwards type), using a crystallisation method (see also paragraphs 72–73).

Accounting for a derivative

88. When the derivative identified is of a forward type, the fair value of the derivative at inception is zero, otherwise an off-market swap (or other derivative) is to be recognised (see sub-section 2.4.3.18 on off-market swaps).
89. When the derivative identified is an option type, the fair value of the option is recorded on the liability side of the borrower (AF.7) matched by an entry within other accounts receivable (AF.8) rather than by a reduction in the amount borrowed (AF.4 liability):
- a) the D.41 to record (before FISIM if any) corresponds to the interest rate on the AF.4 component of the instrument using the conventional method, plus the reduction in AF.8 spread over the life of the contract;
 - b) in concept, the AF.8 would generally be seen as accruing interest itself (revenue of government) for declining amounts over time, along with the gradual liquidation of the AF.8 position. However, a simpler recording is to neglect accruing interest on the AF.8 side, and instead net those amounts off on the expenditure side, that is: record a growing interest expenditure flow, as time passes, similarly to an instrument issued at a discount;
 - c) the Maastricht debt remains the amount of debt to be redeemed.

Ex-post recognition of a derivative

90. A consistent treatment is required when the compiler observes *a posteriori* the existence of a derivative within the contract. A change in recording is applicable when all conditions apply:
- a) the income flows are revised over the whole life of the contract;
 - b) all similar contracts are treated in the same manner;
 - c) some 'micro-information' is available, concerning specific contracts, at least for a representative sample of these.
91. When the compiler is not in a position to ensure this, no separable derivative is deemed to be recognised. The instrument is thus treated as a variable rate instrument of the floating rate type. Coupon payments would follow cash actually paid every year (adequately apportioned between consecutive years when applicable). For example, if the derivative was an option type and is not exercised, the low fixed coupon payment of the contract is recorded; but when the option is exercised the higher coupon paid for that period is recorded in that period (apportioned when applicable).

2.4.3.18. INTEREST ON OFF-MARKET SWAPS

92. Instruments that are financial derivatives do not accrue property income. As a result, streams of payments related to swaps: interest rate swaps (IRS), cross currency swaps (CCS) or FRAs, etc., enter the financial accounts (F.7) and not interest (D.41).

93. However, ESA 2010 paragraph 20.133 prescribes that lump-sums received on an off-market swap should be recorded as debt (loan, AF.4). The off-market swap is to be partitioned into a loan component and an 'at-the-money' swap component.
94. The loan component itself accrues interest, based on a fixed rate at which the borrower would be able to borrow for the same duration of the swap. In the absence of any plausible information, compilers may use a long-term market rate. It is not appropriate to use the fixed rate of the swap itself (when it exists), or the variable rate, because precisely these rates are just notional and can be totally artificial — the swap being off-market. This remark is also valid for plain vanilla swaps (when the swap is not off-market): the formula used for any leg can be reduced or increased by any amount, given that what is required is only that the same is done on the other leg (see section 8.3.3 paragraph 34).

2.4.3.19. INTEREST ACCRUED ON INTERGOVERNMENTAL LOANS IN DISPUTE

95. Interest is accrued according to the 'debtor approach', using the interest rate initially agreed between the debtor and the creditor, so this approach applies for loans provided by governments to other countries, mainly in the context of development programmes and co-operation.
96. Due to various reasons, the calculation of the accrued interest might later on be contested by the debtor, for example a dispute over the application of simple or compound interest.
97. As a matter of caution, in case of a dispute on the calculation of interest on intergovernmental loans, the accrued interest (D.41) that is recorded in national accounts is the interest recognised by the debtor, rather than the one expected by the creditor (which might be higher), pending the final agreement between the two — assuming the debtor has a solid basis for the analysis.
98. At the time of final agreement, the value of the claim is recalculated backwards if necessary, including the correction of interest accrued on the principal. This recording implies no impact on the government net lending/borrowing (B.9) at the moment of final agreement, aside from the correction of interest in that particular period, nor any other change in volume for the claim.
99. The situation when the method of interest calculation is disputed by one of the parties should not lead to an inconsistent recording of accrued interest in accounts of both the creditor and the debtor. The treatment envisaged here, applied for the time until a final agreement is reached, implies the recording of accrued interest revenue in the creditor's accounts only for amounts that are recognised by the debtor and are, therefore, likely to be received.

2.4.3.20. INTEREST ACCRUED ON INTERGOVERNMENTAL LOANS UNLIKELY TO BE REPAYED

100. Particularly in the case of intergovernmental loans, there might be loans not being repaid for an extended period, thus being severe cases of non-performing loans. Typical examples are loans provided by government to third countries (including those provided within the former Council for Mutual Economic Assistance (CMEA)), and loans negotiated in the context of the Paris Club, where the expectation of recovery is generally low.
101. Interest revenue (D.41) accrued on intergovernmental claims considered unlikely to be repaid is neutralised through recording a capital transfer payable (D.99) for those amounts, analogous to cases of debt cancellation. Thus, the following four off-setting entries would be recorded in national accounts with no overall impact on net lending/borrowing (B.9) and balance sheets. These are:
- interest accrued (D.41) by the debtor to the creditor;
 - the creditor is deemed to reinvest the interest in further lending to the debtor thus increasing the value of the loan (F.4) in the balance sheets of the creditor and debtor;
 - capital transfer (D.99) from the creditor to the debtor equal in size to the accruing interest;
 - the debtor is deemed to be using the capital transfer to repay the loan by an amount equal to the size of the capital transfer, thus reducing the value of the loan (F.4) in the balance sheets of creditor and debtor.
102. The treatment applies from when the claim is first considered unlikely to be repaid and continues until there is strong evidence that the claim is performing again as evidenced by regular loan repayments (in any form) by the debtor. The trigger to start the recording might for example be evidenced by one of the following indicators:

- absence of three consecutive (annual) repayments in a row from the debtor in any form (cash or in kind);
- low expectation of repayment signalled by the recording of provisions for losses in public accounts;
- qualified expert assessment on the low expectation of recovery;
- unsuccessful long-lasting negotiations on claim settlements.

103. Each indicator may not necessarily be sufficient, by itself, to determine that the claim is unlikely to be repaid. A combination of indicators might often be needed to provide sufficient evidence.

104. Later on, in a situation of debt forgiveness, the capital transfer (D.99) is thus deemed to cover (part of) the stock existing in the financial accounts: the principal, not settled, and the amount of accrued interest that was accumulated after recording the neutralisation of the interest revenue through expenditure.

105. The rationale for the recording of a capital transfer that offsets the interest being accrued is to prevent a practice of accruing interest increasing the stock of intergovernmental loans unlikely to be repaid without having received any cash repayments or similar settlement from the debtor. By this, the net lending/borrowing (B.9) is not impacted by the accrued interest revenue that might not finally end-up being collected from a debtor.

106. If the debtor resumes repayments after a period of non-payment, the repayments by the debtor are deemed to repay the nominal value of the claim (principal and accrued interest booked in the balance sheet) first. Any excess recoveries are then recorded as a capital transfer receivable (D.99).

2.4.4. Accounting examples

Instrument issued at par and regular coupon/interest payments

On 1 July in year 1, central government issues a bond of 1 000; an annual rate of interest of 5 % paid every year on that date; a maturity of 10 years; and a full redemption at that time. At end of year 1, the market price is 1 045 (including 25 of accrued interest not yet paid). At end of year 2, the market price is 1 075 (including 25 of accrued interest not yet paid).

Year 1				Year 2			
				Opening balance sheet			
				A		L	
						AF.32	1 045 (1 044.3)
							(EDP: 1 000)
Non-financial account				Non-financial account			
U/ΔA		R/ΔL		U/ΔA		R/ΔL	
D.41	25 (24.3)			D.41	50		
B.9	-25 (-24.3)			B.9	-50		
Financial account				Financial account			
ΔA		ΔL		ΔA		ΔL	
F.22	1 000	F.32	1 025 (1 024.3)	F.22	-50	F.32	25-50+25
		B.9F	-25 (24.3)			B.9F	-50
Revaluation account				Revaluation account			
ΔA		ΔL		ΔA		ΔL	
		AF.32	20			AF.32	30

Closing balance sheet		Closing balance sheet	
A	L	A	L
	AF.32 1 045 (1 044.3)		AF.32 1 075 (1 074.3) (EDP:1 000)

Instrument issued at a discount with regular coupon payments

On 1 October in year 1, central government issues a new tranche of a bond (principal 1 000, rate of interest 5 %, maturity 10 years, payment date on 1 July, and redemption *in fine*). The issue price is 95 % (roughly a yield of 6 %). The discount of 50 is spread for 1 in the first year, 4 in the second year and 3 in the tenth year. For simplification, the bond is always quoted 100 % at ends of period (figures are rounded).

Year 1				Year 2			
				Opening balance sheet			
				A			L
						AF.32	976
Non-financial account				Non-financial account			
U/ΔA		R/ΔL		U/ΔA		R/ΔL	
D.41	13.5 (12.5 +1)			D.41	54		
B.9	-13.5			B.9	-54		
Financial account				Financial account			
ΔA		ΔL		ΔA		ΔL	
F.22	962.5	F.32	950+12.5+13.5	F.22	-50	F.32	4+36.5-50+13.5
		B.9F	-13.5			B.9F	-54
Closing balance sheet				Closing balance sheet			
A		L		A		L	
		AF.32	976			AF.32	980
		(EDP: 1 000)				(EDP: 1 000)	

Instrument issued at a discount without regular coupon payments

Central government issues on 1 July a zero-coupon bond for 3 years for 75 (nominal value is 100). The implicit interest rate is 10 % (figures are rounded, no change in the market interest rate).

Year 1	Year 2				
	Opening balance sheet <table> <tr> <th>A</th><th>L</th></tr> <tr> <td></td><td>AF.32 78</td></tr> </table>	A	L		AF.32 78
A	L				
	AF.32 78				

Non-financial account			Non-financial account		
U/ΔA		R/ΔL	U/ΔA		R/ΔL
D.41	3		D.41	8	
B.9			B.9	-8	

YEAR 10

Financial account			Financial account		
ΔA		ΔL	ΔA		ΔL
F.22	75	F.32 75 +3		F.32	8
		B.9F -3		B.9F	-8

Closing balance sheet			Closing balance sheet		
A		L	A		L
	AF.32	78		AF.32	86
					(EDP: 100)

Year 3

Year 4

Opening balance sheet			Opening balance sheet		
A		L	A		L
	AF.32	86		AF.32	95

Non-financial account			Non-financial account		
U/ΔA		R/ΔL	U/ΔA		R/ΔL
D.41	9		D.41	5	
B.9			B.9		

Financial account			Financial account		
ΔA		ΔL	ΔA		ΔL
		F.32 9	F.22 -100	F.32	-95
		B.9F -9		B.9F	-5

Closing balance sheet			Closing balance sheet		
A		L	A		L
	AF.32	95		AF.32	0
		(f: 100)			

Opening balance sheet

A		L
	AF.32	1 022

Non-financial account

U/ΔA		R/ΔL
D.41	28	
B.9	-28	

Financial account

ΔA			ΔL
F.22	-1 050	F.32	-1 022
		B.9F	-28

Closing balance sheet

A		L
	AF.32	0

With change in market rate

At the beginning of the following year, the rate of interest increases up to 15 % for a maturity of 2 years and a half (and does not change any more). The price on the market falls to 70 (figures are rounded).

Year 2**Opening balance sheet**

A		L
	AF.32	78

Non-financial account

U/ΔA		R/ΔL
D.41	8	
B.9		

Financial account

ΔA		ΔL
	F.32	8
	B.9F	-8

Revaluation account

ΔA		ΔL
	AF.32	81-86

Year 3**Opening balance sheet**

A		L
	AF.32	81

Non-financial account

U/ΔA		R/ΔL
D.41	9	
B.9	-9	

Financial account

ΔA		ΔL
	F.32	-9
	B.9F	-9

Revaluation account

ΔA		ΔL
	AF.32	93-90

Closing balance sheet		Closing balance sheet	
A	L	A	L
	AF.32 81		AF.32 81+12

Closing balance sheet	
A	
	AF.32 0

Strips

Central government has issued the following bond: fixed rate of 15%, principal of 1 000, redemption at maturity, payment date on 1st July. At a remaining maturity of three years, it is decided to create a set of four strips.

On the basis of the original interest

As the interest rate is unchanged, the market price of the bond is equal to the nominal value. Three coupon certificates for each annual interest payment (valued respectively 99, 113, 130 on the basis of price equal to 65.8 %, 75.7 % and 87 % for a nominal of 150) and one certificate for the final repayment of principal (valued at 658 as the price is 65.8 % for a nominal of 1 000) are created. The total market value of the four certificates is always equal to the nominal value. Accrued interest may be calculated on the basis of the previous from % of the bond or, from the time of stripping, as the difference in the market price of the zero-coupon securities (no other factors intervening), i.e., the sum of 49, 10, 9 and 7. At the end of the year, 1 075 is the sum of the market values of four certificates: 707+106+122+140 or is the sum of 1 000 (principal) and 75 (accrued interest on six months). This example covers clearly the case of government (EDP) debt, recorded at nominal/face value and, thus, ignoring by definition any effect of stripping on the original debt (figures are rounded).

Year 1			
Opening balance sheet			
A			L
		AF.32	1 075
Non-financial account			
U/ΔA			R/ΔL
D.41	150		
B.9	-150		
Financial account			
ΔA			ΔL
F.22	-150	F.32	15 -150
		B.9F	-150
Closing balance sheet			
A			L
		AF.32	1 075

During the second year, again, accrued interest is unchanged compared to the previous form of the bond. It is also equal to the differences in the prices of the certificates between the beginning of the year and the time of redemption for the first coupon certificate, and the end of the year for the other three (10, 106, 16, and 18). At the end of the year, 1 075 is the sum of the market values of three certificates (813, 122, 140) and is still equal to the sum of 1 000 (nominal) and 75 (accrued interest on six months).

Year 2			
Opening balance sheet			
A		L	
		AF.32	1 075
Non-financial account			
U/ΔA		R/ΔL	
D.41	150		
B.9	-150		
Financial account			
ΔA		ΔL	
F.22	-150	F.32	150 -150
		B.9F	-150
Closing balance sheet			
A		L	
		AF.32	1 075

With a change in interest rate

Stripping is implemented in new market conditions, for instance when the market rate has fallen to 10 %. The current price of the bond is 1 125. At this time, the values of the strips are 113, 124, 136 and 752 (on the basis of prices in percentage 75.2, 82.7 and 90.8). At the end of the year, the sum of market values of the four certificates is 1 182 (790, 119 130, 143), which is also the market value of the nominal (1 107), or clean price, and accrued interest (always 75).

There would be no asymmetry in recording the asset and liability sides. But this example shows clearly that the differences in market prices cannot be used for accrued interest (the sum would be 57 for half the year, against 75 at the original rate). Thus, accrued interest must be estimated on the basis of the previous form of the bond and cannot be based on the information from the holders. The adjustment is entered in the revaluation account. The loss (the current price of the liability is higher than the 'theoretical one') is a gain in the accounts of the counterparts.

Year 1			
Opening balance sheet			
A		L	
		AF.32	1 075
Non-financial account			
U/ΔA		R/ΔL	
D.41	150		
B.9	-150		

Financial account

ΔA		ΔL	
F.22	-150	F.32	150 -150
		B.9F	-150

Revaluation account

ΔA		ΔL	
		AF.32	1 182 -1 075

Closing balance sheet

A		L	
		AF.32	1 182

There is no change from the previous year concerning estimation of accrued interest. 1 143 is the sum of the market values of the three remaining certificates (869, 131, 143) and also the market value of principal (1 068) incremented by accrued interest on six months (75). The adjustment in the revaluation account is now a gain for the issuer and is estimated only from current prices at beginning and end of the period.

Year 2**Opening balance sheet**

A		L	
		AF.32	1 182

Non-financial account

U/ ΔA		R/ ΔL	
D.41	150		
B.9	-150		

Financial account

ΔA		ΔL	
F.22	-150	F.32	150 -150
		B.9F	-150

Revaluation account

ΔA		ΔL	
		AF.32	1 143 -1 182

Closing balance sheet

A		L	
		AF.32	1 143

2.5. Military expenditure

2.5.1. Background

1. Military expenditure is a particular category of government expenditure that frequently involves specific procurement contracts, which can sometimes involve the leasing of high value equipment.
2. By its nature, military equipment usually includes sophisticated technology. This has a number of consequences. First, military equipment may be constructed from a large variety of components that are often produced by different suppliers. Second, the production process may be spread over several years. Third, contracts will frequently also cover the provision of service maintenance to keep the equipment in operational condition. Finally, governments of different countries can jointly own military equipment. This chapter covers these specific features of military expenditure.

2.5.2. Treatment in national accounts

2.5.2.1. IDENTIFICATION OF MILITARY EQUIPMENT

3. ESA 2010 makes a clear distinction between 'weapons systems' and the other goods used by military forces. ESA 2010 (see chapter 7 and annex 7.1) defines weapons systems (AN.114) among fixed assets, as *vehicles and other equipment such as warships, submarines, military aircraft, tanks, missile carriers and launchers, etc.* This list is not exhaustive, but gives an indication of the nature of such equipment. Many of the weapons that the systems deliver are classified as military inventories (AN.124) but others, such as ballistic missiles with highly destructive capability, which are judged to provide on-going deterrence against aggressors, are classified as fixed assets. The rationale is that they are expected not be used (and thus destroyed) and instead provide an on-going service of deterrence.
4. As a consequence, the acquisition of weapons systems is recorded as gross fixed capital formation and is subject to consumption of fixed capital, similarly to any other fixed asset acquired by military forces. ESA 2010 (see chapter 7 and annex 7.1) specifies that *machinery and equipment other than weapons systems* acquired for military purpose are included under machinery and equipment (AN.113), but not separately identified in the classification as such. The military gross fixed capital formation (GFCF, P.51) also includes expenditure for the improvement of military fixed assets, such as 'major repairs' that lengthen their lifetime and 'retrofits' for modernisation. The category of military inventories (AN.124) is exclusively for stocks of 'ammunition, missiles⁽¹³⁷⁾, rockets, bombs and other single-use military items delivered by weapons or weapons systems'. When military inventories are used, they are recorded as a reduction in inventories (P.52) and intermediate consumption (P.2), thus not impacting on government net lending (B.9).

2.5.2.2. THE TIME OF RECORDING OF MILITARY EQUIPMENT EXPENDITURE: GENERAL RULE

5. Using general national accounts principles, the time of recording of government expenditure for equipment is the time of their delivery, which is deemed the proxy for the time of change in economic ownership. This is not specific to military equipment.
6. The change in economic ownership takes place when the military forces take possession of the equipment from an economic point of view, i.e., bear the risks and rewards from the equipment. This applies irrespective of the military operations carried out with the equipment, such as training or actual military missions. Following delivery, military forces are usually in a position to use the military assets for any operation and without any restriction. For some equipment, there will be a period of testing, notably for equipment that uses high-level technology, which will often have deliveries spread over a long period of time during which significant improvements to the equipment will be made (frequently referred to as 'standards'). The tests generally take place on military premises, but the constructor is typically still responsible for the equipment at this time. However, it is possible that the equipment is improved at the

⁽¹³⁷⁾ Excluding those types of missiles with highly destructive capability classified as AN.114, as explained in the previous paragraph.

constructor's premises and, therefore, is returned to the manufacturer (or assembler). As a practical rule, the time of change in the economic ownership is determined as the moment when the military forces take, for the first time, responsibility for the equipment⁽¹³⁸⁾. This will usually be after a first period of testing and after possible adjustments/adaptations. This does not exclude the possibility that the constructor could be asked to introduce further modifications, after the initial official acceptance of the equipment, and for which its responsibility could again be engaged through a warranty. A relevant criterion to determine the time of recording is the time when the insurance of the manufacturer (or assembler) stops, as military equipment in effective use is commonly self-insured by government. The time of delivery may be different from the moment of the corresponding cash flows. Generally, in this respect, expensive 'heavy' equipment is not fully paid for at time of delivery. It is also frequently the case that advances are paid by government before delivery.

7. For various reasons (such as increase in unitary costs, delays in deliveries, etc.) it may happen that contracts for equipment delivered over a long period are renegotiated and amended. Renegotiation may also occur when equipment undergoes noticeable innovations. The total value of a contract may be revised after some equipment has already been delivered. In all such cases, the expenditure already recorded in national accounts for previous periods should not be revised. The difference between the initial and the new value of the contract shall be allocated proportionally to the remaining future deliveries. Sometimes the number of items to be delivered is decreased such that the average price of the items to be delivered in the future needs to be changed. Even then, there is no revision of past data in national accounts.
8. When the supply of the equipment is accompanied by the provision of services, simultaneously or later, the expenditure on services must be separately identified and is recorded as intermediate consumption, at the time the services are delivered. This does not apply to the costs of ownership transfer incurred by the new owner, which are recorded as GFCF in national accounts. According to ESA 2010 paragraph 3.133, the definition of the costs of ownership transfer is rather restrictive and it excludes, for example, the costs of testing and tuning needed for highly sophisticated military equipment.

2.5.2.3. THE TIME OF RECORDING OF THE EXPENDITURE ON MILITARY EQUIPMENT IN THE CONTEXT OF LONG-TERM CONTRACTS

9. Contracts signed by government authorities to acquire military equipment often contain the following features:
 - many items are delivered over a number of years;
 - services (such as maintenance) are provided for a number of years;
 - the delivery of final components is needed to make the complex equipment fully operational for military missions. Examples are electronic equipment and arms systems for fighters, frequently delivered by firms other than the main supplier and assembled in military premises. This case must be clearly distinguished from the assembly by a constructor/manufacturer of components from numerous sub-contractors that gives rise to a single delivery (and single invoice) to government.
10. The time of recording of government expenditure, impacting government net lending/borrowing (B.9), is as follows:
 - where long-term contracts include deliveries of identical (or 'basically' identical, as in the case of 'standards' for aircraft) items over a long period of time, government expenditure is recorded at the time of the actual delivery of each item;
 - where long-term contracts also cover the provision of services over a long period of time (such as maintenance and technical monitoring), government expenditure on those services is recorded at the time they are provided. Standard analytical accounting techniques allow the apportionment of expenditure in relation to the goods and services delivered within contracts;
 - where long-term contracts involve complex systems delivered from different suppliers, government expenditure is recorded at the time of delivery of each individual operational (in the sense that the individual piece of equipment meets all the necessary specifications to be fully functional when connected to the other elements of the complex system) piece of equipment that comprises the

⁽¹³⁸⁾ Even if the equipment is not yet fully operational for military missions this means that, in case of damage, the cost would be met by the military forces.

systems. An example is a ship where the hull and motors are provided by a shipyard and more specific military equipment by other specialised suppliers from other locations;

- where spare parts for maintenance and repairs are delivered simultaneously with the equipment, they are recorded at the same time as the main gross fixed capital formation. If spare parts are part of an identifiable maintenance contract, they are recorded when they are separately delivered to military forces. It may happen that, under a global long-term contract, there is no detailed information on the exact time of delivery of these spare parts, for which the actual amount delivered may vary with each delivery. In this case, as a proxy, the delivery of the spare parts is recorded according to the same time pattern as for the main military equipment being delivered.

2.5.2.4. MILITARY EQUIPMENT BUILT OVER MANY YEARS

11. Military assets that take many years to build, such as large ships or submarines, are classified as fixed assets. ESA 2010 covers this aspect and there is no need for specific additional rules for military expenditure. The general rule for construction of fixed assets is that unfinished goods are part of work in progress, which is recorded in the inventories of the producer. These producer inventories are reduced when the production process is completed, and economic ownership transferred to the clients (see ESA 2010 paragraph 3.148).
12. ESA 2010 paragraphs 3.55 and 3.148 foresee an exception to this general rule for 'uncompleted structures' (covering AN.112 buildings and other immovable assets, other than dwellings) acquired under a contract of sale agreed in advance. In this case they are recorded as the gross fixed capital formation of the purchaser. The rationale is that the latter has taken the commitment to take over the structure provided it complies with required specifications. In this case, the transfer of ownership is assumed to take place progressively. In practice, the gross fixed capital formation will be recorded according to stage payments or, in their absence, by other indicators such as the cost incurred by the constructor during a given year. The rationale is that it is very likely that the structure will be acquired by the ordering unit.
13. The exception above does not apply to 'uncompleted other fixed assets'. ESA 2010 paragraph 3.148 mentions ships as an example. It therefore does not foresee the exception applying to military equipment recorded as assets. In this case, work-in-progress is recorded in the inventories of the producer until the transfer to the purchaser. Under these conditions, the government expenditure on military equipment is recorded at the time of the transfer of the economic ownership, on a delivery basis, like any other fixed assets not covered by the exception.⁽¹³⁹⁾

2.5.2.5. THE TREATMENT OF LEASES RELATING TO MILITARY EQUIPMENT

14. Some manufacturers of military equipment (sometimes at government's initiative) will arrange contracts that make the equipment available under a lease. This has been observed in the case of fighter planes in several EU Member States. The national accounts question is whether such leases are financial leases or operating leases.
15. Leases of military equipment are considered as financial leases, and therefore recorded as an economic acquisition of the equipment by government (as lessee) with the incurrence of a matching government loan liability to the lessor, as stated in ESA 2010 paragraph 20.192.
16. Thus, there is a GFCF impact on government net lending/borrowing (B.9) at the time when the equipment is put at the disposal of military authorities, under the conditions specified below, and not at the time of payments relating to the lease. As the corresponding financial liability matching the GFCF is an imputed loan, government debt is also impacted at that time. Payments are considered as debt servicing and partitioned into interest and repayments of the imputed loan as is standard practice for a financial lease.
17. Some lease contracts cover civilian equipment that may also be used to support military activities, possibly through quick addition of light technical tools. Examples are air tankers and cargoes. It is often not possible to distinguish them from similar assets used by civilian units. They are recorded as

⁽¹³⁹⁾ In other words, the strong specificity of military equipment is not sufficient to result in a specific treatment as regards work in progress. In many cases, it is very unlikely that government will renounce it, as illustrated by examples where, despite substantial delays and large over-costs, governments confirmed their intention to acquire the equipment. Moreover, very often, the construction/manufacturing of the equipment takes place under a very close and permanent control of the military authorities, so that government is thoroughly involved in the production process, much more than is observed in the case of other fixed assets, although this would not be, as such, a criterion for national accounts.

operating leases only where there is evidence that the majority of their use over time is for purely civilian purposes. However, if the equipment is permanently for the sole use of military forces it should be recorded as a finance lease. For instance, if a given number of pieces in a fleet are permanently at the unique disposal of military forces (using them fully at will) and are at risk, for example when they are mainly used as support in military missions (refuelling of fighter planes, troop transportation to combat zones). This rule also applies to transport and communication (including satellites) equipment that could be used for civilian purposes.

2.5.2.6. THE TREATMENT OF COMMON PURCHASES OF MILITARY EQUIPMENT

18. Countries can pool their resources and jointly purchase military assets. The contract signed by the participating countries will usually specify their individual and associated rights. For example, it may define the exclusive right to use the asset(s) for a certain number of hours and provide practical arrangements for the joint management of the asset(s).⁽¹⁴⁰⁾
19. While it is not uncommon that certain assets are legally co-owned by different units that share legal and economic ownership, the issue here concerns assets legally owned by one unit with their economic ownership shared by contract between many institutional units.
20. ESA 2010 does not explicitly discuss such a case of an asset legally owned by one unit, but where the economic ownership is split between more than one institutional unit. However, 2008 SNA does explicitly treat the cases of sharing of the economic ownership of assets in paragraphs 17.344–17.348.
21. ESA 2010 paragraph 20.318 specifies that: *Non-resident international joint ventures between governments, where neither party has control of the entity, are apportioned to governments as notional resident units.* This specific reference for international joint ventures appears an application of ESA 2010 paragraphs related to joints assets (as a modality of joint ventures in general, which are addressed in ESA 2010 paragraphs 20.49 to 20.52): *Public units can also enter into joint operating arrangements that are not run by separate institutional units. In this case, there are no units requiring classification, but care must be taken to ensure that the ownership of assets is recorded correctly and sharing arrangements of revenues and expense are made in accordance with the provisions of the governing contract.*
22. The value of such collectively-owned military assets should be split among the owners in proportion to their ownership rights. Consequently, each participating country should record its share of gross fixed capital formation upon actual delivery of the asset to the agreed military base, in line with the time of recording rules established by ESA 2010 paragraphs 3.134 and 20.191. Consumption of fixed capital (P.51c) is similarly shared between the participants.
23. Over time, some countries might increase the value of their participation in the project and new countries might join. The entry of new participants in some cases might be accommodated by the existing spare capacity of the military equipment, in others might require the acquisition of additional assets. Changes in the share of the participating countries will lead to acquisitions and disposals of fixed assets.
24. The total current expenditure related to the operation and maintenance of the jointly owned assets should also be divided among the owners, in proportion to their ownership rights.
25. The statistical treatment of common military purchases requires cross-national cooperation between the NSIs of the participating countries, in order to have a consistent recording

2.5.2.7. RECORDING OF MILITARY RESEARCH AND DEVELOPMENT

26. ESA 2010 involved a significant change from previous versions as regards research and development (R&D). ESA 2010 paragraph 3.127 states that R&D is part of gross fixed capital formation ... including the production of freely available R&D. However, it is specified in ESA 2010 (in chapter 7 and its annex 7.1) that *Research and development that will not provide a benefit to the owner is not classified as an asset and is instead recorded as intermediate consumption.* The question is therefore whether research and development expenditure related to military purposes carried out by government is a benefit to government? This would be true for research and development of 'innovative' equipment and weapons

⁽¹⁴⁰⁾ An example of the joint acquisition of military equipment is the Multi-Role Tanker and Transport (MRTT) project, in which several countries pooled resources to purchase military aircraft. Each participating country has the right to use a certain number of flying hours, defined in proportion to its contribution to the total acquisition costs. In 2021, six countries participated to the project. Three aircraft were delivered in 2020, and two in 2021. See <https://www.nspa.nato.int/about/life-cycle-management/MMF>.

systems, notably at an earlier stage of a programme which might be stopped afterwards. This would need a case-by-case analysis.

27. If the R&D is realised independently of the final product or is not foreseen to be reimbursed in the absence of 'successful results' and, *de facto*, not exclusively related to specific military equipment to be delivered, the corresponding expenditure is recorded when the research and development work takes place⁽¹⁴¹⁾. Concerning the recording of GFCF, several cases should be distinguished.
28. Where the R&D expenditure does not imply any manufacturing of equipment⁽¹⁴²⁾, at least at this step of the research:
 - either there is evidence of 'appropriation' of the benefits by government (which has a possible exclusive benefit of them) or is, by 'altruism', made freely available for any other unit (which seems rather unlikely in highly sensitive R&D); the expenditure is considered government GFCF in intellectual property products (AN.117) and recorded at the time of the payment;
 - or, the possible benefits from government-funded R&D is fully and exclusively appropriated by the unit undertaking the R&D (with potential 'spin-offs' for their products or through patents); as there is no benefit for the paying government, the expenditure is recorded as an investment grant (D.92) in government accounts, as it results in the acquisition of intellectual property (AN.117) for the unit undertaking the R&D, at the time the payment is to be made.
29. In other cases, all or a part (clearly identified) of the R&D expenditure is strictly related to a contract for the manufacture of a given number of identical items on the basis of an outright order of military equipment. In this case, the corresponding expenditure is apportioned to the deliverable assets and recorded later when they are delivered. If government pays for the R&D at a time that is different to when the equipment is delivered, the difference should be accounted for as a loan (AF.42) in case it is long-term or as trade credits and advances (AF.81) if short-term.⁽¹⁴³⁾ At the time of delivery of each single piece of the equipment, a proportionate part of the AF.42/AF.81 is transferred to the value of the weapons systems asset (AN.114) acquired by government.⁽¹⁴⁴⁾
30. If in the initial contract it was agreed that some of the R&D expenditure would not be included in the price of the single items to be delivered in the industrial phase of the contracts, then this part should be recorded as GFCF in intellectual property products (AN.117).
31. It may happen that the R&D is linked to the provision of future military equipment but covers several different projects with no individual identification in public accounts, so that it is not possible to establish a direct link between the delivery of military items and the corresponding R&D. In this case, the expenditure in R&D could be recorded as gross fixed capital formation, on an accrual basis.

2.5.3. Rationale of the treatment

2.5.3.1. THE TIME OF RECORDING OF MILITARY EQUIPMENT EXPENDITURE: GENERAL RULE

32. As a general national accounts rule, the time of recording of the acquisition of goods is the time when economic ownership changes. In the case of long-term contracts for military equipment, there are several events that might correspond to a change of economic ownership, such as: the time a contract is signed (as it is very likely that government will eventually take delivery of the equipment or, at least, ensure the financing of the corresponding research and development costs), the specified time of

⁽¹⁴¹⁾ Or information is available, when a cash transfer is made by government to finance it.

⁽¹⁴²⁾ This may imply the production of prototypes on the basis of which government could take the decision to enter in a new contract to deliver equipment derived from this research.

⁽¹⁴³⁾ A specific case is where the payment is used for R&D purposes but does not contractually oblige a definitive purchase of military goods, and instead gives a right to future purchases at a reduced price, uncertain at the time of the expenditure, and then a transfer is recorded at the time of the payment. If an eventual acquisition of military goods occurs, this is recorded at full market value, as if acquired by a third party not subject to the reduction, and a capital transfer receipt is imputed for the difference.

⁽¹⁴⁴⁾ A very specific case should also be considered when a government decides to cancel a military equipment programme for which some R&D expenditure has already been undertaken. This expenditure was recorded as a loan or as a financial advance, 'amortised' by effective deliveries. As the later will not take place (or only partially), it should be examined if the advance should be returned by the corporation to government. If this is the case, there will be a new financial transaction. If this is not the case, it should be recorded a capital transfer or an investment grant if the corporation could take some advantage of the past R&D expenditure for itself. This should be recorded at the time of the final decision of cancellation.

delivery, the time of cash payment, or the time of contract completion (when the equipment becomes the responsibility of the military).

33. In some limited cases, ESA 2010 specifies recording expenditure in advance of the complete delivery of the goods such as for construction projects where a sale contract have been agreed in advance and own account construction. For machinery and equipment (AN.113), the time of recording is at the change of ownership, which is the economic concept of delivery (possibly different from the time of the 'physical delivery'), even when the production is spread over several accounting periods. The fact that military equipment, as specifically defined, is a *sui generis* category of assets, classified as weapons systems (AN.114), with high specificity means that the equipment in progress of construction is not considered as transferred to government before the entire completion.
34. Pre-payments on deliveries (which may partly cover R&D) of military equipment and other goods must be recorded as financial transactions (the cash matched by either loans (F.42) or financial advances (F.81), depending on whether long-term or short-term respectively), while subsequent deliveries are recorded as expenditure with a counterpart financial transaction reducing the government financial asset.
35. For post-delivery payments for military equipment, government expenditure is recorded at delivery and is matched by a financial transaction (F.42 or F.81 liability of government, depending on whether long-term or short-term respectively). When the cash settlement occurs later, this is recorded as financial transactions (one in cash and one that reduces the government liability).

2.5.3.2. TIME OF RECORDING OF GOVERNMENT EXPENDITURE ON MILITARY EQUIPMENT IN THE CONTEXT OF LONG-TERM CONTRACTS

36. Contracts often foresee staged deliveries of similar items over many years. Examples are fighter planes delivered in batches over a given period or a series of warships to be delivered over several years.
37. The application of the accrual rule for recording the acquisition of such assets implies that GFCF is recorded when the deliveries occur. Standard analytical accounting techniques should allow identification of the value of partial deliveries. Confidentiality should not be a major issue, as the precise nature of the equipment is not revealed in national accounts data. Thus, the moment of impact on government net lending/borrowing (B.9) is neither dictated by the completion of the contract or the time of payment, but according to the pattern of deliveries. The rationale is that each piece (or a given set delivered together) must be considered separately as regards the risks and rewards attached to it.
38. Delivery of sophisticated military equipment is often accompanied by the provision of training and related services. As the maintenance of specific high technology equipment requires sophisticated skills, there is a growing tendency to closely associate the suppliers with these tasks, often under a single contract covering both the supply of equipment and its subsequent maintenance. The accrual principle implies that government expenditure on services should be accounted for at the time they are actually provided. Standard analytical accounting techniques also allow the apportionment over time of the expenditure for the services delivered, with the relevant information needed likely to be available in the contract.
39. In the case of complex systems, some post-delivery tasks need to be performed for the equipment to be fully operational. Military equipment generally requires specific preparation, including further components. The equipment may not be fully operational before the completion or assembly of other kinds of equipment (for instance electronic arms systems).
40. Some military programmes involving significant amounts are based on the combination of several kinds of components that may be completed in different periods, so that the expenditure is spread over several fiscal years before the system becomes fully operational. The issue is whether post-delivery tasks are under the full responsibility of the authorities/military forces or of the suppliers.
41. Where the post-delivery tasks are the full responsibility of the supplier, it has not yet fulfilled its contractual obligations and the recording should only be at the point when those obligations are met.
42. Where all these tasks (and notably their timetable) are under the full responsibility of government authorities/military forces, the supplier of the components is assumed to have fulfilled its contractual obligations. As a result, the time of recording is determined according to delivery, or possibly progressive transfer of ownership, rather than the time of completion of the whole contract.

2.5.3.3. THE TREATMENT OF LEASES RELATING TO MILITARY GOODS

43. Military equipment can be leased as an alternative to purchasing outright. Whether the lease is labelled as an operating or a financial lease in the contract is not important. It is the appropriate classification of the lease for national accounts that matters.
44. As a reminder, the classification of leases into financial or operating leases in national accounts rests mainly on the transfer of risks and rewards (ESA 2010 paragraph 15.05) and is not determined by the legal terminology included in the contract.
45. One issue to consider is whether it is possible to record an operating lease or a financial lease on a good that is not a fixed asset in ESA 2010. The answer is that national accounts can record both, whether the good is an economic asset or not. As an example, cars are not economic assets to households, by convention, in the national accounts system, but financial leases on cars are common and recorded as such.
46. Applied to the case of military equipment, the transfer of risk implying a change in economic ownership occurs when military forces take possession of the equipment and are responsible for taking decisions regarding its use. They will bear all the risks that may be associated with its use on military missions.
47. A characteristic of military missions is that they involve placing military equipment at risk, whereas other economic activities usually avoid putting assets at risk or insure against such risks. By its nature, military equipment is used in missions where opposing parties will try to destroy it or weaken its capacity. Another characteristic of military equipment is its rapid technological obsolescence, such that replacement is required at a faster rate than most other fixed assets.
48. Due to the possibility of placing the equipment at risk of destruction, the risks associated with military equipment lie with the government authorities/military forces, the bodies that have the sole competence to decide if and when to use it during conflicts, thereby knowingly exposing it to potential damage.
49. In this context, any leasing contract on military equipment should be recorded in national accounts as a financial lease, even when the contract is labelled as an operating lease. The time of recording of the acquisition of leased military equipment will therefore be when the military forces take full responsibility for its use. The lessees' liabilities under financial leases are classified as loans (AF.4) and are hence part of government (EDP) debt when the lessee is in the general government sector.

2.5.3.4. RESEARCH AND DEVELOPMENT

50. A complication may arise when the contract foresees that expenditure is incurred for research and development purposes in the earlier years of the contract, well before actual deliveries. Here, it is important to examine the nature of such R&D expenditure.
51. As a general rule, if R&D is realised independently of any final product (but may include the realisation of prototypes) or is definitely spent (and not reimbursed in any form) and *de facto* not exclusively related to the specific military equipment to be delivered, the corresponding expenditure is recorded, as for any other type of R&D activity purchased by government, when the work takes place or when the transfer is made by government to finance it. As a general rule, it is recorded under ESA 2010 as gross fixed capital formation in intellectual property products (AN.117). However, it should be recorded as intermediate consumption if there is no expected clear benefit to be kept by government (including possibly making it generally available) or, if possible, results are exclusively appropriated by the beneficiary of the expenditure.
52. In some cases, the research and development is part of a contract which includes an order for at least a first series of pieces of equipment, notwithstanding the length of the research and development step before the launch of the industrial step. As R&D will be integrated in the price of single pieces, this should be recorded as a financial advance for future deliveries of weapons systems assets (AN.114). This treatment is implemented only if the contract foresees a global expenditure for the equipment to be delivered and not in the cases where the order of the equipment depends on the results of the R&D.

2.5.4. Accounting examples

Example 1 – Expenditure for military assets

At the beginning of year 1, the government has a stock of cash of 1 000 and the supplier of military assets

has a stock of cash of 500. Government orders a military asset for a value of 100. In year 1, it makes a payment of 45. In year 2, the asset is produced, delivered and immediately usable by military forces and government pays a further 30. In year 3, government pays the residual 25 (for simplicity, the costs of the supplier are not shown and consumption of fixed capital is ignored).

Year 1			
General government		Supplier	

Opening balance sheet

A		L	
AF.2	1 000	B.90	1 000

A		L	
AF.2	500	B.90	500

Non-financial account

U/ΔA		R/ΔL	
B.9	0		

U/ΔA		R/ΔL	
B.9	0		

Financial account

ΔA		ΔL	
F.2	-45		
F.81	45	B.9F	0

ΔA		ΔL	
F.2	45	F.81	45
		B.9F	0

Closing balance sheet year 1/Opening balance sheet year 2

A		L	
AF.2	955		
AF.81	45	B.90	1 000

A		L	
AF.2	545	AF.81	45
		B.90	500

Year 2			
General government		Supplier	

Non-financial account

U/ΔA		R/ΔL	
P.51g	100		
B.9	-100		

U/ΔA		R/ΔL	
B.9	100	P.11	100

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	-30			F.2	30		
F.81	-45	F.81	25	F.81	25	F.81	-45
		B.9F	-100			B.9F	100

Closing balance sheet year 2/Opening balance sheet year 3

A		L		A		L	
AN.114	100	AF.81	25	AF.2	575		
AF.2	925	B.90	1 000	AF.81	25	B.90	600

Year 3**General government****Supplier****Non-Financial account**

U/ ΔA		R/ ΔL		U/ ΔA		R/ ΔL	
B.9	0			B.9	0		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	-25			F.2	25		
		F.81	-25	F.81	-25		
		B.9F	0			B.9F	0

Closing balance sheet year 3

A		L		A		L	
AN.114	100			AF.2	600		
AF.2	900	B.90	1 000			B.90	600

Example 2 – Expenditure for the acquisition of a military asset under a lease

At the beginning of year 1, the government has a stock of cash of 1000 and the supplier has a stock of cash of 500 and a stock of finished goods (the submarine) of 100. Government enters into a leasing contract with a supplier for a submarine (classified as an AN.114 weapons system asset). As the risks of the asset will be with government, it is considered as a finance lease. The contract foresees that the submarine, delivered at the start of year 1, has a value of 100 and that government will make 10 annual payments of 13, to repay the principal (the imputed loan) and the interest (calculated on the remaining debt, at an annual rate of 5.1%, see the table below), starting from the year of delivery. The asset is usable as soon as delivered (for simplification, the costs of the supplier are not shown). The asset has a lifetime of 20 years, and annual consumption of fixed capital is simplified to 5 in each year, starting from year 1.

Table 1 - Government repayment schedule of the imputed loan (the figures are rounded)

Year	Annual instalment	Interest component	Redemption of the principal component	Remaining debt at the end of the year
1	13	5.1	7.9	92.1
2	13	4.7	8.3	83.8
3	13	4.3	8.7	75.1
4	13	3.8	9.2	65.9
5	13	3.4	9.6	56.3
6	13	2.9	10.1	46.1
7	13	2.4	10.6	35.5
8	13	1.8	11.2	24.3
9	13	1.2	11.8	12.5
10	13	0.6	12.4	0.0

Year 1**General government****Supplier****Opening balance sheet**

A		L		A		L	
AF.2	1 000			AN.123	100		
				AF.2	500		
		B.90	1 000			B.90	600

Non-financial account

U/ΔA		R/ΔL		U/ΔA		R/ΔL	
D.41	5.1			P.52	-100	D.41	5.1
P.51c	5	(B.101	-10.1)				
P.51g	100	P.51c	5				
B.9	- 105.1			B.9	105.1		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	-13	F.4	+100 -7.9	F.2	13		
				F.4	100 -7.9		
		B.9F	-105.1			B.9F	105.1

Closing balance sheet of year 1/Opening balance sheet of year 2

A		L		A		L	
AF.2	987	AF.4	92.1	AF.2	513		
AN.114	95	B.90	989.9	AF.4	92.1	B.90	605.1

Year 2			
General government		Supplier	

Non-financial account			
U/ΔA		R/ΔL	
D.41	4.7	(B.101	-9.7)
P.51c	5	P.51c	5
B.9	-4.7		
Financial account			
ΔA		ΔL	
F.2	-13	F.4	-8.3
		B.9F	-4.7

U/ΔA		R/ΔL	
		D.41	4.7
B.9	4.7		

Closing balance sheet year 2/Opening balance sheet year 3

A		L	
AF.2	974	AF.4	83.8
AN.114	90		
		B.90	980.2

A		L	
AF.2	526		
AF.4	83.8		
		B.90	609.8

Example 3 – Advanced payments for military assets

At the beginning of year 1, government has a stock of cash of 1000 and the supplier has a stock of cash of 500. Government orders a missile launcher (weapons system asset) for a value of 100 in year 1. The asset will be delivered in year 4. Government makes advanced payments of 10 in each of the first three years, then settles the remaining 70 at time of delivery in year 4. The advance payments made in the first two years are long-term, so classified as AF.42 loans, while the advance payment in the third year is short-term, so classified as AF.81. There is no interest recorded on the loan. The asset is assumed to be usable as soon as delivered. For the sake of simplicity, the supplier's costs are not shown.

Year 1			
General government		Supplier	

Opening balance sheet			
A		L	
AF.2	1 000		
		B.90	1 000

A		L	
AF.2	500		
		B.90	500

Non-financial account

U/ΔA		R/ΔL	U/ΔA		R/ΔL	
B.9	0		P.52	25	P.11	25
			B.9	0		

Financial account

ΔA		ΔL	ΔA		ΔL	
F.2	-10		F.2	10		
F.42	10				F.42	10
		B.9F	0		B.9F	0

Closing balance sheet year 1/Opening balance sheet year 2

A		L	
AF.2	990		
AF.42	10		
		B.90	1 000

A		L	
AN.122	25	AF.42	10
AF.2	510		
		B.90	525

Year 2**General Government****Supplier****Non-financial account**

$\Delta A/U$		$R/\Delta L$	$\Delta A/U$		$R/\Delta L$	
B.9	0		P.52	25	P.11	25
			B.9	0		

Financial account

ΔA		ΔL	ΔA		ΔL	
F.2	-10		F.2	10		
F.42	10				F.42	10
		B.9F	0		B.9F	0

Closing balance sheet year 2/Opening balance sheet year 3

A		L	A		L	
AF.2	980		AN.122	50	AF.42	20
AF.42	20		AF.2	520		
		B.90	1000		B.90	550

Year 3			
General government		Supplier	

Non-financial account			
U/ΔA		R/ΔL	
B.9	0		

U/ΔA		R/ΔL	
P.52	25	P.11	25
B.9	0		

Financial account			
ΔA		ΔL	
F.2	-10		
F.81	10		
		B.9F	0

ΔA		ΔL	
F.2	10		
		F.81	10
		B.9F	0

Closing balance sheet year 3/Opening balance sheet year 4

A		L	
AF.2	970		
AF.42	20		
AF.81	10	B.90	1000

A		L	
AN.122	75	AF.42	20
AF.2	530	AF.81	10
		B.90	575

Year 4			
General government		Supplier	

Non-financial account			
U/ΔA		R/ΔL	
P.51g	100		
B.9	-100		

U/ΔA		R/ΔL	
P.52	+25-100	P.11	25
B.9	100		

Financial account			
ΔA		ΔL	
F.2	-70		
F.42	-20		
F.81	-10		
		B.9F	-100

ΔA		ΔL	
F.2	70	F.42	-20
		F.81	-10
		B.9F	100

Closing balance sheet year 4

A		L	
AN.114	100		
AF.2	900		
AF.42	0		
AF.81	0	B.90	1 000

A		L	
AN.122	0	AF.42	0
AF.2	600	AF.81	0
		B.90	600

Example 4 – Joint acquisition of military assets

The governments of countries A and B pool their resources for the joint acquisition of air tankers (classified as AN.114 weapons system asset). The tankers are purchased through an international agency (not shown), which is the legal owner of the tankers. The economic ownership of the tanker is with the governments of the countries. The total purchase price for the tankers is 1000, of which Country A contributes 70% and Country B contributes 30%. The payments are made to the international agency in year 1, which then settles the accounts with the supplier. The payments made by Country A and Country B correspond to their share of the time use (flight hours) of the tankers to which each country is entitled.

At the beginning of year 1, the government of Country A has a stock of cash of 1000 and the Country B of 500; the supplier has also a stock of cash of 500. The average asset life of the tankers is 10 years, and we have simplified this so that we have annual consumption of fixed capital of 100. The tankers are immediately available from the supplier. Other assets are not considered, to keep the example simple.

Country C joins the agreement at the start of year 2. It receives an exclusive right to 20% of the flying hours for a payment of 180. Country C has a stock of cash of 500 at the beginning of year 2.

Year 1											
General Government A				General Government B				Supplier			
Opening balance sheet											
A		L		A		L		A		L	
AF.2	1000			AF.2	500			AF.2	500		
		B.90	1000			B.90	500			B.90	500
Non-financial account											
U/ΔA		R/ΔL		U/ΔA		R/ΔL		U/ΔA		R/ΔL	
P.51g	700	(B.101	-70)	P.51g	300	(B.101	-30)			P.11	1 000
P.51c	70	P.51c	70	P.51c	30	P.51c	30				
B.9	-700			B.9	-300			B.9	1 000		
Financial account											
ΔA		ΔL		ΔA		ΔL		ΔA		ΔL	
F.2	- 700			F.2	- 300			F.2	1 000		
		B.9F	- 700			B.9F	-300			B.9F	1 000

Closing balance sheet year 1/Opening balance sheet year 2

Supplier			
A		L	
AF.2	1 500		
		B.90	1 500

General Government A				General Government B				General Government C			
A		L		A		L		A		L	
AN.114	630			AN.114	270			AF.2	500		
AF.2	300			AF.2	200						
		B.90	930			B.90	470			B.90	500

Year 2											
General Government A				General Government B				General Government C			

Non-financial account

U/ΔA		R/ΔL		U/ΔA		R/ΔL		U/ΔA		R/ΔL	
P.51g	-126	(B.101	-56)	P.51g	-54	(B.101	-24)	P.51g	180	(B.101	-20)
P.51c	56	P.51c	56	P.51c	24	P.51c	24	P.51c	20	P.51c	20
B.9	126			B.9	54			B.9	-180		

Financial account

ΔA		ΔL		ΔA		ΔL		ΔA		ΔL	
F.2	126			F.2	54			F.2	-180		
		B.9F	126			B.9F	54			B.9F	-180

Closing balance sheet year 2/Opening balance sheet year 3

A				A				A			
		L				L				L	
AN.114	448			AN.114	192			AN.114	160		
AF.2	426			AF.2	254			AF.2	320		
		B.90	874			B.90	446			B.90	480

2.6. Grants from and contributions to the EU Budget

2.6.1. Grants from the EU budget

2.6.1.1. BACKGROUND

1. The European Institutions make significant transfers from the EU budget to the Member States for various common policies, mainly the Common Agricultural Policy and the Structural Funds. The nature of these flows can be quite diverse, while the final beneficiaries may be non-government units (as it is the case for most transfers under the Common Agricultural Policy) or government units (as it is the case for a large part of transfers under the Structural Funds).
2. In practice there are two significant cases of EU-grants, which need specific attention for recording in national accounts. First, there are the grants paid from the European Agricultural Guarantee Fund (EAGF). These represent mainly subsidies paid to non-government units as final beneficiaries. Secondly, there are the grants paid in the context of the Cohesion policy, from the Structural Funds (and the European Agricultural Fund for Rural Development (EAFRD), Financial Instrument for Fisheries Guidance (FIFG), European Social Fund (ESF), European Regional Development Fund (ERDF) and the Cohesion Fund. These are mainly current or capital transfers paid to both government and non-government units. The current budget of the European Institutions also includes other expenditures. Among them, a growing part is dedicated to supporting research and development in the EU. Usually, the beneficiaries of the EU grants are non-government units but they could also be government units.
3. Beside the above-mentioned cases, three important grant types are worth mentioning: the Schengen-facility, the Transitional facility and the Cash-flow facility, which provide temporary financial assistance to EU Member States which more recently joined the EU. In the case of the Schengen and Transitional Facilities, the activities for which they could be spent by EU Member States are defined by the EU. These activities relate to different common EU policies and initiatives (e.g., Schengen area, customs union, but also common agricultural policy national administrative structures), therefore the rules set out in this chapter relate also to these two facilities. The Cash-flow facility, however, is provided by the EU unconditionally and without any specification of areas for which they would need to be spent. The European Institutions do not monitor the way in which the beneficiary Member States uses these funds. The EU also does not have the right to stop their monthly payments or claim any amounts to be repaid to the EU budget, therefore the Cash-flow Facility has rather the nature of current transfers in the context of international cooperation as defined in ESA 2010 paragraphs 4.121–4.124.
4. Transfers are a category of distributive transactions where, often, only two parties are involved, the payer and the receiver. But, in the case of transfers paid by the European Institutions, there might be in practice three or even more parties involved. In addition, in general, payments transit through government even when the final beneficiaries are non-government units (generally in the context of a co-financing procedure, with the European Institutions supporting an investment effort by government but not substituting it).
5. In practical terms, the European Institutions make payments to final beneficiaries on the basis of information that is transmitted by national governments. Most payments are routed through accounts held by governments (some exceptions are observed only in the case of payments related to agricultural policy even if, in this case, national governments are not involved in the economic decision that determines the payment by the EU). The fact that the transfers are paid from EU-funds to specific accounts managed by government units in the countries is of course a positive factor as regards the availability of the information needed by national accountants. In some countries, only one account could be used for all payments from the EU Member State to the European Institutions, and from the European Institutions to the EU Member State. In such cases the impact of inflows from the EU (for example advance payments at the beginning of a multi-year programme) on the net lending/borrowing (B.9) should be correctly assessed.
6. Notwithstanding issues stemming from the divergence between data sources (EU budget, Balance of payments) that would need specific investigation while compiling national accounts, there are two important issues to be considered: first, the time of recording and, second, the classification in national accounts of the specific transaction.

7. Regarding the classification in national accounts of the specific transaction, this can take one or a mixture of the following transactions:
 - subsidy (D.3);
 - other current transfer (D.7);
 - capital transfer (D.9).
8. For reasons of comparability, as this classification may have consequences on some aggregates or balancing items in national accounts (but not on net lending/borrowing (B.9), which is crucial for EDP purposes), transactions of a similar nature should be classified in the same (above-mentioned) ESA 2010 categories. This chapter does not provide guidance on this classification of transactions.
9. The EU budget rules are complex. They differ considerably in the case of agricultural payments (mostly subsidies) and in the case of cohesion policy payments of structural funds (mostly current or capital transfers), including prepayments, interim and final payments, and these payments are frequently made, as mentioned above, not to the final beneficiary but to a national government agency, which then pays the final beneficiary.
10. The cohesion policy payments are granted in the framework of 7-year long programming periods. Once the compulsory national programmes are adopted, EU Member States receive advance payments for the whole period. During the programming period, the European Institutions make interim payments to reimburse actual expenditure certified by the EU Member States up to a maximum of 95 % (including the advance payment at the beginning of the programming period). The balance of 5 % is paid on the closure of the programme once all documents are submitted and approved by the Institutions.
11. There is an issue concerning the time of recording, which might have a direct impact on net lending/borrowing (B.9). Once the expenditure by the final beneficiary has occurred (and generally with a very short delay), the managing authority sends to the European Institutions all relevant documents in order to be reimbursed for the appropriate (and legitimate) amount. The European Institutions authorise and undertake payments to beneficiaries only after checking compliance with the agreed rules and conditions, on the basis of supporting documentation that has been forwarded. It generally takes a maximum of two months between receipt of the supporting documentation and the authorisation of payment.
12. Under these conditions, imbalances are observed at the end of each year (mostly due to administrative delays), and there have also been cases of a disallowance or a cancellation of an EU transfer, for example in the case of fraud. A disallowance appears when a national government has paid subsidies or other transfers on behalf of the EU, but after an auditing process the EU does not approve part or all of the expenses and refuses to reimburse at least some of them.
13. Some aspects of these payments of EU-grants might have major effects on government net lending/borrowing (B.9). It may happen that governments pay agricultural subsidies in advance (for example during September, year t) while the reimbursement from the European Agricultural Guarantee Fund (EAGF) is made only later (for example during January year $t+1$). Similarly, the Structural Funds can make prepayments to governments at the beginning of a programme period.
14. This chapter provides guidance for a homogeneous recording of EU-grants in EU Member States and neutralising the timing effect of EU related flows. As government is acting as an agent by delegation from the European Institutions while transferring the grants to the final receivers, the method in use influences not only the accounts of the rest of the world but that of government as well.
15. The appropriate recording of changes in inventories of Market Regulatory Agencies is covered by chapter 1.4 Market regulatory agencies in agriculture, therefore this topic is not analysed in this chapter.
16. Finally, this chapter deals with the contributions of EU Member States to the EU budget (see section 2.6.2).

2.6.1.2. TREATMENT IN NATIONAL ACCOUNTS

General rule

17. As a general rule, EU transfers shall have no impact on government net lending/borrowing (B.9) at the moment in which they are made. In other words, possible time lags observed between the revenue and expenditure flows, or in the financing of these transactions, should not result in national accounts in

improving — or worsening — the net lending/borrowing (B.9) of the general government.

18. The treatment in national accounts depends on the final beneficiary (the unit undertaking the activity which qualifies for an EU grant) of these EU-grants. Grants received by a government unit as a final beneficiary are treated differently from those for which the final beneficiary is a non-government unit.

2.6.1.2.1. The beneficiary of the EU grants is not a government unit

General rule

19. When the final beneficiary is not government, the transfer is recorded in the final beneficiary's accounts as appropriate according to ESA 2010 rules, and the related transactions are exclusively recorded in the financial accounts of general government, without any impact on government net lending/borrowing (B.9).
20. In national accounts, these transfers must be recorded as distributive transactions directly between the European Institutions (uses) and the non-government beneficiaries (resources). For subsidies (D.3), the amounts are recorded in the accounting period when the transaction or the event (production, sale, import, etc.) which gives rise to the subsidy occurs. This is a general rule (ESA 2010 paragraph 4.39) that should be met as far as possible. However, in some very specific and exceptional cases, it may be difficult to collect information on the precise period when the relating economic activity took place. By convention, the time of the cash payment (either from the European Institutions or from government as an advance, see below) could be considered a proxy measurement of the period for recording on an accrual basis. Statistical authorities must, however, make all possible efforts to cover with appropriate information, or adequate estimation methods, most of the transactions where the time lag between the economic activity and the payment could lead to an incorrect picture of the government balance.
21. For other current transfers (D.7), the amounts are recorded in the accounting period in which the obligation to pay arises (ESA 2010 paragraph 4.123: *the time the regulations in force stipulate the transfers are to be made in the case of obligatory transfers, or the time the transfers are made in case of voluntary transfers*).
22. For capital transfers (investment grants (D.92)), the amounts are recorded in the period when *the payment is due to be made* (ESA 2010 paragraph 4.162).
23. As an example, consider the case where the European Institutions make a payment, at the time when due, in February of year $t+1$ to a non-government unit relating to the fourth quarter of year t . If it is a subsidy, it should be recorded in the accounts of year t as a resource of the non-government unit and as a use of the rest of the world (S.2). If it is a capital transfer, whatever the period in which the capital expenditure took place, it should be recorded as revenue of the non-government unit in the year $t+1$, when the payment from the European Institutions is due.

Specific case of government advance

24. Frequently, government makes advance cash payments to a non-government unit that is entitled to receive transfers from the European Institutions (mostly as far as farmers are concerned). This is done for the purpose of reducing the financing burden of the beneficiaries; they receive cash closer to the time when they carried out the relevant economic activity.
25. Any advance cash payment in this respect, whatever its underlying transaction in national accounts (D.3, D.7 or D.9), must be recorded as a financial transaction (creation of a financial asset of government and a matching liability of the rest of the world in the category AF.8) at the time it is made by government, or if a commitment accounting system is used, at the time the payment is ordered by the competent authority.
26. With this treatment, there is no impact on government net lending/borrowing (B.9) because the transfers from the EU institutions are not considered national government expenditure but as EU expenditure. The only expenditure incurred by government consists of the financing costs of the financial advance.
27. **Example:** government makes a payment on behalf of the EU to a non-government unit in September of year t . This is recorded in the same accounting period as revenue of the non-government unit received from the rest of the world (it is not to be considered government expenditure). This payment by government gives rise to a financial claim on the European Institutions (AF.89 asset for government). Following the verification procedure, the European Institutions pay government in January $t+1$. This payment liquidates the government claim at the time it takes place. Thus, a government payment to a

non-government unit on behalf of the EU is recorded as a financial transaction without any impact on government net lending/borrowing (B.9).

2.6.1.2.2. The beneficiary of the EU grants is a government unit

28. A government unit is the final beneficiary of the EU transfer if the transfer covers an expenditure carried out by that government unit, for any purpose: social assistance, training, education, or increase in fixed assets held by government. The government unit that takes the economic decision (project manager) must be distinguished from the government unit that receives and reallocates the funds from the EU (as cash manager). This is relevant for national accounts if they are in different subsectors.

General rule

29. In general, the time of recording of government revenue from the EU matches the time of recording of the government expenditure covered by the EU grant. This is done for practical reasons to ensure that there is no impact on government net lending/borrowing (B.9) arising from these transactions.

30. **Example:** government makes expenditure in October of year t for an amount of 100 under a given project. Government then sends the appropriate documents to the European Institution in November of year t . Government records in October a transfer from the rest of the world as government revenue, coded according to the nature of the transaction (which does not influence the time of recording). Government records as a counterpart a claim on the EU in its financial account (F.89 asset). The European Institution then reimburses 100 in February $t+1$. The claim is liquidated at this time.

31. If the European Institution decides at a later date not to reimburse the government on an individual claim and if the time lag is short (within the year, as is normally the case), the past accounts may be revised to remove the government revenue and other accounts receivable or a part of it.

Specific case

32. It might happen that the time of expenditure differs considerably from the time of submission of claims to the European Institutions, since at the time of expenditure the intention of submitting the claim was not known. In this case, the time of submission of claims might substitute for the time of expenditure for the purpose of defining the time of recording, depending on the availability of information on the expenditure, the amount involved and the size of the time lag between the time of expenditure and the time of the submission of claims. Nevertheless, the time of submission of claims can be used as the time of recording only in justified cases.

33. In accordance with paragraph 32, the time of recording is the time of submission of claims, when no reliable information on the date of expenditure is available; or, when amounts involved are very small; or, when amounts involved are big, and the time lag between the moment of expenditure and the submission of claims is very small (flexibility option).

34. After sending the claims, in the expectation of the settlement by the European Institution, a counterpart financial transaction of government revenue is recorded in the form of other accounts receivable (a claim on the European Institutions), codified as AF.8. This is liquidated at the time of reimbursement by the European Institutions.

2.6.1.2.3. Initial advance payment by the European Institutions

35. All payments received by governments from the European Institutions at inception of a multi-year programme period are treated as financial advances (AF.8), government liability. Thus, there is no impact on government net lending/borrowing (B.9).

36. This liability is unchanged until total payments by the European Institutions have reached a ceiling calculated as 95 % of the total amount agreed by the European Institutions in all the multi-year periods less the amount of the initial advances. Then, until a ceiling percentage is reached (usually 95 %, since in principle the European Institutions keep 5 % of the total agreed), the reimbursement of final beneficiaries' expenditure is recorded as revenue for the same amount, with a counterpart financial transaction in the form of a reduction in the advance received by government.

37. The remaining part of the expenditure of the project (5 %) has to be pre-financed by the final beneficiary (and treated as other accounts receivable (F.89)) and the EU will repay these expenditures only later (at which time the other accounts receivable will be neutralised).

38. If at the end of the multi-year period, the total government expenditure does not reach the ceiling percentage of the total agreed amount for the period, the part of the advance not 'consumed' by government is reimbursed to the European Institutions, with no impact on government revenue, and with an impact only in the financial accounts.

2.6.1.2.4. Measures taken to deal with deficiencies in EU Member States

Disallowance

39. It might happen that the European Institution decides that part of the amount paid to final beneficiaries by government on behalf of the EU was not justified or that a penalty has to be paid by the EU Member State (e.g., for agricultural overproduction). In this case the European Institutions will place a sanction either by withholding the reimbursement in the period following the payments to final beneficiaries or deducting the amount from a future payment. There are three main issues: the time of recording, in which sectors the entries should be made, and what to record.
40. The time of recording is when the Commission takes the decision of partial reimbursement of the amounts paid by the paying agencies of EU Member States to final beneficiaries.
41. The counterpart sector depends on whether the final beneficiary is allowed to keep the payment or not, or, in the case of sanction for overproduction, whether the government is allowed to pay on behalf of the penalised sector or not (for instance in the case in which it would not be considered a distortion of competition in the EU Internal Market).
42. If the beneficiaries should have been definitively able to acquire the advanced payment by government (government would be allowed to complete the aid from the EU), then at the time of the European Institution's decision on the final reimbursement (or non-reimbursement), the original amount must be recorded as a capital transfer (D.9) from government to the final beneficiary, and, at the same time, as transfer from the final beneficiary to rest of the world sector (European Institutions).
43. If the advanced payment by government cannot be kept by the beneficiaries (government would not be allowed to pay more than what is defined by the EU rules), two cases must be distinguished.
44. If the final beneficiary is able to pay back the advanced amount to the government, a repayment must be imputed from the final beneficiary to the rest of the world (RoW) sector for the repaid amount, and the repayment amount enters the financial accounts of the government, at the time of the European Institution's decision.
45. If there is no full repayment from the final beneficiary, and the European Institution penalises the government, the government must record a current transfer from general government to the rest of the world sector (European Institutions), at the time of the European Institution's decision.

Interruption of payment deadline, suspension of payments, financial corrections

46. It might happen that the Commission interrupts the payment deadline for a maximum period of 6 months (officially called interruption of the payment deadline), in order to carry out additional verifications on the certified statement of expenditure (a claim sent to the EU). In the national accounts this should have no effect on the recording: the EU Member State would record revenue and claim (F.8) against the EU. However, it might take more time to receive the money (F.2) and extinguish the claim (F.8).
47. The Commission may also suspend all or part of interim payments at the level of priorities or programmes in case there is a serious deficiency in the management or control systems, there is serious irregularity which has not been corrected or there is a breach of its obligations by the EU Member State (suspension of payments). In case the EU Member State has taken the necessary measures (normally within 2 months), the suspension is lifted. Where the required measures are not taken by the EU Member State, the Commission may adopt the decision to cancel all or part of the community contributions to the operational programme (financial corrections).
48. The suspension of payments, similarly to the interruption of payment deadline has no immediate consequence on the recording in national accounts. However, if the suspension of payment leads to financial correction (meaning the cancellation of funding from the EU), this has to be reflected in national accounts, similarly to the case of disallowances as described in paragraph 39. It must be noted that financial corrections can come to existence even without the suspension of payments.

49. The time of recording of financial corrections linked to past expenditures is the earlier of (1) the acceptance by the EU Member State of a financial correction proposed by the EU or (2) the final Commission decision. If the financial correction also includes the cancellation of funding to future projects, then the time of recording is the time of the actual future expenditure.
50. The counterpart of the government expenditure is the Institutions and bodies of the European Union (S.212).

2.6.1.3. RATIONALE OF THE TREATMENT

2.6.1.3.1. Non-government unit as beneficiary

51. Government is not the final beneficiary because either the subsidy is linked to the economic activity of units outside the government sector, or the transfer obviously supports directly the income of a non-government unit, or the transfer covers a capital transaction that is devoted to finance all or a part of the acquisition of non-financial assets by a non-government unit. This includes the case of payments to regulatory units that have been classified as market producers, outside the general government sector (see Part 1 Delimitation of the general government sector). This is mainly the case for the Common Agricultural Policy but it could also concern some payments from other Structural Funds (notably in the case of the Social Fund and the Cohesion Fund).
52. The treatment follows the ESA 2010 rules as regards time of recording, based on an 'accrual' approach. Subsidies are recorded when the transaction or the event (production, sale, import, etc.) which gives rise to the subsidy takes place (ESA 2010 paragraph 4.39). The event might be for example agricultural production or export of goods. For other current transfers (in cash), the time of recording is the time the regulations in force (or contractual agreements) stipulate the transfers are to be made (ESA 2010 paragraph 4.123). Investment grants in cash are recorded when payment is due to be made to the unit recording the GFCF expenditure in its own accounts (ESA 2010 paragraph 4.162).
53. In practice, amounts to non-government final beneficiaries usually transit via government accounts. However, these non-financial flows must be recorded directly between the two parties involved (EU and the non-government beneficiary) and government's role is recorded only in the financial accounts. This is because the ESA 2010 paragraph 4.122 (b) establishes that current transfers made by the European Union to resident market producers are shown as subsidies paid by the rest of the world. A similar principle is established in ESA 2010 paragraph 4.152 for investment grants.
54. As far as the time of recording of the transactions is concerned, there might be a time difference between the moment when the obligation is recognised and the time at which the European Institutions pay. In practical terms, nevertheless, once the European Institutions have taken the decision to pay, there is usually only a very short delay before the funds are effectively transferred. In addition, it seems that for some countries the information is available in direct form only on a cash basis in reporting systems.
55. In the case of an advance by government on behalf of the EU to a non-government beneficiary, from an economic point of view the treatment described in paragraph 25 is justified because the cash position of the final beneficiary is affected at the time when government is paying and it is this, which is relevant for its economic behaviour. Government is here acting 'on behalf' of the European Institutions. In national accounts, one must record a financial claim of government on the European Institutions.
56. In practice, the amount paid to the beneficiaries by government will be different from the final payment from the European Institutions only in exceptional cases, mainly due to errors and fraud activities. However, it might happen more frequently that the European Institutions ask for additional documentation so that the reimbursement is delayed.

2.6.1.3.2. Government unit as final beneficiary

57. Government units being final beneficiaries can occur in various EU schemes. It is notably the case for Regional Development and Social Funds where a government unit is managing a project under an agreement with the European Institutions but with a certain autonomy as regards the completion of the project. The nature of national government expenditure may be of various types: P.2, P.5, P.7, D.1 and, possibly, other distributive transactions (D.3, D.7, and D.9). It seems that government may, in very specific cases, also acquire shares.

58. Once the expenditure by government has occurred, government sends (generally after a short delay), to the European Institutions all relevant documents in order to be reimbursed. However, the intention of government is not necessarily known at the time of expenditure.

Specific case when the intention of submitting the claim is not known at the time of expenditure

59. Only in this latter case, in order to better reflect economic reality, might it be more appropriate for practical reasons to record the revenue for government at the time government sends the documents to the European Institutions.

60. The treatment envisaged here is based on the experience clearly showing that the European Institutions almost always pay what is effectively declared. Effectively, it is extremely rare that the EU does not fully reimburse government (and usually then only for very small amounts in comparison to the total).

61. In the context of the EU agreements, government expenditure by definition must fulfil precise requirements and governments would not try to claim undue revenue. In addition, the European Institutions have imposed domestic controls so that misuse of the funds, non-completion of the programme, frauds, etc. is exceptional. Nevertheless, if the European Institutions do not reimburse government — given that the time lag is normally short — a suitable backward revision of government revenue from the European Institutions would be appropriate.

62. The treatment proposed is also in compliance with ESA 2010 paragraph 4.162 where it is said that investment grants in cash are recorded when the payment is due to be made. The 'due to be made' reflects the expectation of government of reimbursement. If, at the time of expenditure, there is no expectation of the reimbursement, the time of recording of the revenue shall not be the time of expenditure. A government revenue is recorded when a valid expectation of reimbursement arises, which is when the claim is submitted. This corresponds to the principles laid down in the chapter.

Specific case when the precise amount of the expected reimbursement is not known at the time of expenditure

63. If the expectation arose at the time of expenditure on the project but the precise amount (the percentage of the amount of expenditure) of the expected reimbursement was not known, a prudent estimate must be made for the expected Initial payment by the European Institutions.

2.6.1.3.3. Initial payment by the European Institutions

64. The initial payment by the European Institutions may only be treated as a financial advance in national accounts, with no impact on government net lending/borrowing (B.9).

65. This treatment is justified by the fact that the EU rules stipulate that it is only when government expenditure has been made that government may ask for the reimbursement by the European Institutions, under pre-determined conditions. Therefore, the advance cannot be recorded as revenue until the occurrence of the corresponding expenditure.

2.6.2. Contributions of EU Member States to the EU budget

66. ESA 2010 sets the treatment in national accounts of the different contributions made by EU Member States to the EU budget.

67. Customs and agricultural duties levied at the external frontiers of the European Union are classified as taxes and duties on imports excluding VAT (D.212). They should be recorded according to the rules described in this Manual in chapter 2.2 Recording of taxes and social contributions on a gross basis, which includes collection costs. Customs and agricultural duties are collected on behalf of the EU Institutions and must not be recorded as government revenue. Only collection costs should be recorded in the Government Finance Statistics⁽¹⁴⁵⁾ and, for practical reasons, it is recommended to record them when the amounts are deducted from the payments to the EU Institutions.

⁽¹⁴⁵⁾ As payments for non-market output (P.131).

68. Production charges levied on the sugar, isoglucose and inulin syrup quotas held by the producers are classified as 'taxes on products, except VAT and import taxes' (D.214) on a gross basis. The same time of recording principle as for custom and agricultural duties should be followed (i.e., only collection costs should be recorded in the government accounts).
69. VAT-and GNI-based EU own resources (D.76) include payments for the current year of the VAT and GNI resources as well as balances for the previous years and the correction of budgetary imbalances paid by the other Member States to the countries concerned.
70. The payments for the current year of the VAT and GNI resources are settled through monthly payments to the EU budget⁽¹⁴⁶⁾, calculated as 1/12 of the annual amounts included in the original EU budget for the year. The annual amounts in the original EU budget might be increased or decreased (for example when incorporating the surplus of the EU budget of the previous year) in the course of the year through EU Amending Budgets causing a change in the monthly payments. When the EU Amending Budget is approved too late in the year to be reflected in monthly payments, it is the amount in the Amending Budget which should be accrued in the year and not the amounts of the twelve monthly payments.
71. The balances for the previous years are communicated by the European Commission in October and the payment is to be made on the first working day of December. Therefore, the amounts are recognised in the same year they are paid. However, under exceptional circumstances⁽¹⁴⁷⁾, Member States can defer the payment until September of the following year but as the obligation exists and the amount is known, it should be accrued in the current year with a corresponding entry in payables. Given that the EU operates on a balanced cash budget basis, the deferred payments chosen by some Member States decrease the EU cash receipts for the current year and increase the EU cash receipts for the following year. This in turn leads the EU to reduce the refunds (or increase the additional payments) in the current year owed to (by) the other Member States and to refund them in the following year. As a result, the other Member States acquire a receivable on the EU which matches exactly the payables mentioned above.
72. The corrections of budgetary imbalances paid by the other Member States to certain countries should be accrued to the year the corrections are established, independently of the years to which the underlying data used to calculate the corrections refers to.

2.6.3. Accounting treatment of the so-called EU 'financial instruments'

73. The EU has been providing measures of financial support from EU structural and investment funds using what it legally describes as 'financial instruments'⁽¹⁴⁸⁾. These instruments may be 'equity or quasi-equity investments, loans or guarantees' and they are intended to support activities that will generate income, or result in saving on future expenditure. Unlike grants, they do not constitute a gift to the final recipient, which will typically be a small or medium-sized enterprise (SME) since, under normal circumstances, the funds are expected to be repaid to the creditor and produce a return on the investment (such as interest on the loan, or profit on subsequent sale of equity). EU legislation⁽¹⁴⁹⁾ allows for a choice on how the financial instruments are implemented nationally: the Implementing Authorities can choose whether to assign the implementing task to a newly created entity or contract out the management to the EIF/EIB or to existing financial institutions.
74. The unit assigned to implement the financial instrument, or to manage the fund of funds, is considered as the 'beneficiary' from the point of view of the B.9 neutrality principle for recording EU flows. The beneficiary is distinguished from the final recipient — the entity receiving financial support from a financial instrument (e.g., a SME granted a loan or receiving a guarantee). It is possible that either, both or neither the beneficiary nor final recipient could be units classified inside general government.

⁽¹⁴⁶⁾ In case of late payments of the monthly instalments, an interest on late payment is charged to the concerned EU Member State.

⁽¹⁴⁷⁾ The overall balance to be settled exceeds half of the aggregated monthly VAT and GNI payments and the balance for a Member State exceeds two monthly VAT and GNI payments for that Member States ([Council Regulation \(EU, Euratom\) No 1377/2014](#) of 18 December 2014).

⁽¹⁴⁸⁾ 'Financial instruments', as defined in Article 2 of the Regulation (EU, EURATOM) No 966/2012, are 'Union measures of financial support provided on a complementary basis from the budget in order to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants'. Thus, those are not to be confused or assimilated with ESA 2010 financial instruments.

⁽¹⁴⁹⁾ Article 38 of Regulation (EU) No 1303/2013.

75. If the beneficiary unit is classified outside general government, any funds from the EU that transit through government/Treasury are recorded as financial transactions (F.2 asset for cash flow, F.89 liability its counterpart), without impact on government revenue/expenditure: when the Treasury makes an advance payment or when these funds merely transit via the Treasury or other government accounts. If the flow of the funds does not involve government, either as final recipient, beneficiary or via transiting, no recording in government accounts is needed.
76. If the beneficiary is a unit classified in general government, the cash received to build up the fund for the financial instrument is recorded as a payable (F.89) of the 'beneficiary' towards the EU, not as government revenue. The payable decreases when funds are considered lost (e.g., when loans granted by the beneficiary to the final recipient are cancelled, or a guarantee is called) against a government revenue from the EU (which hence neutralises the capital transfer on the loan cancellation or guarantee call). The payable increases for amounts of accrued interest and fees and dividends received.
77. The AF.89 payable to the EU will remain in the system, pending a decision on the final appropriation of these funds.
78. In cases where the Treasury provides cash in advance to the beneficiary, the transfer is recorded as a receivable (F.8) of the Treasury against the EU, together with the incurrence of a payable (F.8) by the beneficiary towards the EU. At the time of the EU payment, the Treasury receivable is redeemed.
79. Following the above recording, the EU correction is implemented at the level of the beneficiary (i.e., the fund manager) only. Flows to the recipient, using the 'financial instruments', should not be seen as EU structural and investment funds expenditure but instead as financing and recorded using usual ESA rules. This means that if the final recipient is classified inside general government, a B.9 impact is recorded for any expenditure financed by a loan from the 'beneficiary' or interest paid on the loan.

2.6.4. Statistical recording of the EU Recovery and Resilience Facility (RRF) associated flows

2.6.4.1. BACKGROUND

80. The Recovery and Resilience Facility (RRF), established by the Regulation 241/2021, provides financial support in the form of non-repayable grants (up to EUR 312.5 billion in 2018 prices) and loans (up to EUR 360 billion). To finance the RRF (and other NextGenerationEU programmes), the European Commission (Commission), on behalf of the European Union (EU), borrows on the capital markets.
81. Member States design their own tailored national Recovery and Resilience Plans (RRPs), taking into account the investment and reform priorities identified in the country-specific recommendations under the European Semester framework. Member States were expected to officially submit their Recovery and Resilience Plans, as a rule, by 30 April 2021. However, in practice, later submissions were observed for some countries. The Commission assesses the RRP following a set of criteria, within two months of its submission. The Commission's assessment of the RRP is expected to be endorsed by the European Council (Council) within four weeks from the proposal through the adoption of a Council implementing decision, which defines the total financial contribution and the amount of the loan support (where requested). Loans to the Member States are granted after the conclusion of a loan agreement with the Commission, based on a duly substantiated request by the Member State concerned, whereas grants are provided based on a financing agreement concluded between the Member State and the Commission. Loans should be granted until 31 December 2023. Member States have to complete the final milestones and targets for both investment projects and reforms no later than 31 August 2026. Generally, the payments of the RRF financial contributions and, where applicable, of the loans to the Member States, will have to be made by 31 December 2026.
82. When requested by a Member State (Article 13 of the Regulation 241/2021), pre-financing up to 13% of the financial contribution, and where applicable, up to 13 % of the loan, shall be paid by the Commission to each Member State, subject to the adoption of the Council implementing decision. European Union funds disbursed under the RRF will be subject to the external audit of the European Court of Auditors.
83. Disbursements by the Commission are conditional on the fulfilment of a series of milestones and targets. Member States may submit requests for payments to the Commission twice a year. After receiving a payment request, the Commission has to assess whether the relevant milestones and targets set out in the decision have been satisfactorily achieved. Where the Commission makes a

positive preliminary assessment, it shall ask the opinion of the Economic and Financial Committee (EFC) on the satisfactory fulfilment of the relevant milestones and targets. The EFC should strive to reach consensus. However, if one or more Member States consider that there are serious deviations from the satisfactory fulfilment of the relevant milestones and targets, they may request to refer the matter to the following European Council. The Commission shall adopt a decision on the assessment of the fulfilment of the milestones and targets. In case the matter is brought to the European Council, no Commission decision will be issued until the discussion in the Council has taken place. The whole process, as a rule, should not take longer than three months after the Commission asks for the EFC opinion.

84. In case the assessment is positive, and a Commission implementing decision is adopted, the disbursement of the relevant amounts will be initiated. If the Commission decides that the milestones and targets were not satisfactorily implemented, the payment of all or part of the financial contribution and, where applicable, of the loan, shall be suspended. In case no satisfactory action from the Member State in question is observed within six months, the Commission shall take the decision to reduce the amount of the financial contribution.

2.6.4.2. TREATMENT IN NATIONAL ACCOUNTS

RRF non-repayable support (grants)

85. The main aim and focus of the RRF is to restore growth and contribute to green/digital transition by financing reforms and investments of the Member States. The RRF financial contribution in form of grants and support provided in a form of loans, where applicable, in the RRFs are fully backed by the estimated costs of reforms and investments, assessed by the Commission and approved by Council, and capped to a payment forecast decided by the application of the relevant formula on the allocation of RRF funding per Member State. Statistically, the RRF non-repayable financial support (grants) should be treated similarly to the conventional EU grants, i.e., the statistical rule on neutrality for EU flows for general government net lending (+) /net borrowing (-) (B.9) should be applied also in this case.
86. In the case of the RRF, by convention, government is to be seen as the final beneficiary of all funds. Consequently, the RRF revenue (with a counterpart in an increase of the F.8 receivable or a decrease in F.8 payable) should be recognised at the time when government expenditure is incurred. Such synchronisation of government expenditure and revenue flows should broadly allow achieving neutrality at the level of the general government net lending/net borrowing (B.9).
87. Cash disbursements under the RRF are performance-based and contingent on Member States implementing the milestones and targets outlined in their RRFs, therefore in national accounts there will be flows in F.8 receivable/payable observed representing the difference between the cash disbursements and the actual costs incurred.
88. Regarding the infra-annual (e.g., quarterly) recording of the RRF flows, the expenditure (or lower revenue) incurred in a particular year, and consecutive years, should be neutralised continuously, with revenue matching the expenditure incurred in each reporting period.
89. The RRF foresees that, when requested by the Member State, after the approval of the RRF by the Council, the Commission will make a pre-financing payment amounting to 13% of the financial contribution (grants). In government accounts a pre-financing on RRF grants has to be reflected, either as F.8 payable (financial advance) or a decrease in F.8 receivable (in those cases when RRF related expenditure incurred until that point is higher than the pre-financing amount). The RRF will finance both current and capital expenditure, and it may also finance some revenue reduction measures, the acquisition of financial assets and other non-expenditure costs of Government. The most common expenditure categories, in the context of the RRF, are expected to be concentrated in P.51g (GFCF) and D.7/D.92 (current and capital transfers, of which investment grants). The time of recording of government expenditure should follow the relevant ESA 2010 rules.
90. When it comes to the government revenue stemming from the RRF, they should broadly follow the ESA categories recorded in case of the regular EU flows in the areas of regional and cohesion policies. The RRF revenue aimed at covering current Member States expenditure should be recorded as D.74 (current international cooperation). RRF revenue to cover P.51g of general government are to be recorded in the system as D.92 (investment grants). The recording of revenue corresponding to capital transfers to other sectors or subsectors, as well as to financial instruments, described in paragraphs 18–22, should be shown as D.99 (other capital transfers).

91. The expenditure 'neutralised' only covers expenditure undertaken on behalf of the RRF and should exclude any amounts financed from the national budget or other sources.
92. In summary, only costs that were included in the RRFs estimated costs and have been assessed by the European Commission as part of the RRFs approval and approved by the European Council, should be neutralised. Statistical authorities are thus required to apply the principle of B.9 neutrality only to expenditure related to the reforms and investments supported by the RRF and the related costs that are eligible for financing by the Facility. Following this, VAT should not be neutralised, as it is not considered to be a cost for a Member State. Similarly any other costs incurred by the Member States in managing the RRF or in accomplishing the defined milestones and targets, which were not included in the estimated costs that were assessed for the adoption of the plans should not be neutralised.

EU borrowing

93. The RRF will be financed from funds raised on the capital markets. The borrowing will be contracted by the Commission and organised in a common funding pool for all NGEU programmes. The funds raised will be repaid: (i) through the future EU budgets during the period 2028 – 2058 and (ii) by Member States' repayments of RRF loans, based on the contractual agreements between the Commission and the respective Member State. The borrowing on the markets undertaken by the Commission to finance the RRF grants and loans is considered as debt of the EU and not of the individual Member States.

RRF loans

94. The individual Commission loans to Member States, being in conformity to Union law, and being approved by Commission/Council decisions, will have features similar to commercial loans. That is, they will have clearly defined terms and conditions for lending and repayments. The conditions for the RRF loans to Member States comply with ESA 2010 paragraph 5.113, and should therefore be recorded, at the moment they are provided, as Member States debt towards the EU.
95. The RRF 13 % pre-financing payment related to loans has all the features of debt financing and thus should be recorded as government debt when the cash is disbursed. A pre-financing on the loan, as foreseen in the RRF Regulation, *de facto* means that the first drawing down on a Commission loan is not conditional on the implementation of the milestones and targets (contrary to further instalments).
96. The expenditure financed by the RRF loans should accrue following ESA 2010 rules, and no expenditure neutralisation should take place (as no revenue is to be recorded).

Financial instruments financed by the RRF grants

97. Investments undertaken by Member States might take the form of Financial Instruments (FIs) and thus could include guarantees, loans, equity and venture capital instruments, and the setting up of dedicated investment vehicles. The FIs could be set up also via the national compartment of the InvestEU Programme and their implementation could be entrusted to the implementing entities (e.g., national promotional institutions). There is also a special condition for the FIs: any inflows (i.e., interests on the loan, return on equity, or principal repaid, minus associated costs) linked to these instruments that the Member States would generate, would need to be reinvested for the same policy objectives, including beyond 2026.
98. The recording of general government investment financed from the RRF and undertaken in the form of a FI needs to be clarified only for transactions financed from the RRF grants, as in the case for RRF grants the principle of EU flows neutrality is applicable. Money raised from the RRF loans will be recognised as government borrowing and thus no neutralization is applicable.
99. The recording of the FIs financed from the RRF grants should follow the same rules as for the FIs financed from the regular EU flows (see section 2.6.3 above), that is, be B.9 neutral for general government (as the beneficiary).
100. More specifically, in the case of one-off guarantees and loan programmes, a payable towards the RRF should be created at inception, this amount then being gradually decreased – with counterpart revenue from the EU – following guarantee calls and loan cancellations (recorded as expenditure).
101. In case of FIs undertaken in the form of capital injections, normal capital injection rules, as described in ESA 2010 and other chapters of the MGDD, when deciding on the statistical classification of the equity and venture capital instruments, should apply. Similarly, the existing ESA 2010 and MGDD provisions

should be applied in deciding on the type of guarantees (one-off versus standardised).

Specific case of the expenditure incurred in 2020 and the associated RRF revenue

102. The RRF Regulation foresees a retroactive application and allows the Member States to include expenditures incurred starting from February 2020 into the RRFs. Due to the fact that the RRF legal basis was established only in 2021, it is difficult to justify a recording of RRF revenue in the year preceding the Regulation. Therefore, an exceptional deviation from the neutrality rule of the EU grants recording should be applied and expenditure incurred by governments from February 2020 until the end of 2020 should not be neutralised in 2020. Instead, the revenue associated to the 2020 government expenditure is to be booked as government revenue at the time when the RRP is endorsed by the Council. That moment will be the point in time when the claim by the Member States against the EU for reimbursement of the costs occurred in 2020 and included in the RRP can be formally established.

103. For most Member States this will take place in 2021. However, in some exceptional cases, when the RRFs were submitted and approved after 2021, government revenue associated to 2020 expenditure, if any, may be booked in the year the RRP is approved by the Council⁽¹⁵⁰⁾.

Determination of the maximum RRF financial contribution per Member State

104. According to the RRF Regulation, 30% of the RRF financial contribution was based on the GDP forecast for the years 2020 and 2021. Therefore, the RRF maximum financial contribution per Member State is to be updated (in June 2022) based on GDP actual outturn data. This might result in the re-allocation of the RRF contribution per Member State. Consequently, some Member States could be entitled to less RRF grants than originally expected (and others to more). In case the Member State does not undertake an amendment of the RRP, in government accounts a decrease in the overall RRF envelope could be reflected as a lower rate of RRF financing, thus neutralising for consistency reasons only a lower share (e.g., 90%) of the expenditure actually incurred. A revision of the revenue imputed in 2021 might be also needed in this respect, to be implemented once the final decision on the allocation is taken.

Suspension of payments/reduction in financial contribution

105. The RRF Regulation foresees that, following an assessment of the Commission that the milestones and targets have not been satisfactorily fulfilled, payments of all or part of the financial contribution can be suspended. Moreover, in some cases, the suspension of a payment might lead to a reduction in the amount of the financial contribution. There could also be cases when the amounts will have to be recovered by the Commission because of serious breaches identified.

106. In such cases, parallels with the existing MGDD rules on the recording EU funds (see section 2.6.1.2.4 above) can be drawn. In case payments of all or part of the financial contribution are suspended, the recording in national accounts is not affected and the expenditure incurred on behalf of the RRF is still to be synchronised with the RRF revenue. However, if the suspension of payment leads to a reduction in the amount of the financial contribution, this has to be reflected in government accounts at the time the respective decision by the Commission is made. Similarly, in case the amounts have to be recovered by the Commission because of serious breaches identified, the rules on disallowance (see section 2.6.1.2.4 above) should apply.

2.6.5. Accounting examples

1. The final beneficiary is not a government unit (case of government advance)

A non-government producer is entitled to receive 1 000 from the European Institution as investment aid in year t . It receives this amount from the national government in year t but the European Institution makes a reimbursement payment of 1 000 later in year $t+1$.

⁽¹⁵⁰⁾ In case a Member State RRP is approved only in 2022, expenditure undertaken during the year 2021 in the context of RRF, is to be neutralised in the year to which it refers, i.e., in 2021.

Year t			
General government		Rest of the world	

Non-financial account			
$\Delta A/U$	R	$\Delta A/U$	R
		D.9	-1 000
		B.9	-1 000

Financial account			
ΔA	ΔL	ΔA	ΔL
F.2	-1 000		
F.8 (RoW)	1 000		
	B.9F		
	0	F.8 (GG)	1 000
		B.9F	-1 000

Closing balance sheet			
A	L	A	L
AF.8	1 000		
			AF.8
			1 000

Non-government producer

Capital account			
ΔA	ΔL		
		D.9	1 000
B.9	1 000		

Financial account			
ΔA	ΔL		
F.2	1 000		
	B.9F		
	1 000		

Year t+1			
General government		Rest of the world	

Opening balance sheet			
A	L	A	L
AF.8	1 000		
			AF.8
			1 000

Financial account			
ΔA		ΔL	
F.2	1 000		
F.8	-1 000		
		B.9F	0

ΔA		ΔL	
F.2	-1 000		
		F.8	-1 000
		B.9F	0

Closing balance sheet

A		L	
AF.8	0		

A		L	

2. The final beneficiary is a government unit

A government unit has spent 2 000 (here in the form of gross fixed capital formation) in year t in the framework of a project co-financed to the extent of 50 %. Appropriate documents are sent to the European Institution but the latter reimburses 1 000 only in the course of the following year t+1.

Year t	
General government	Rest of the world

Capital account			
$\Delta A/U$		R	
P.51g	2 000	D.9	1 000
B.9	-1 000		

$\Delta A/U$		R	
		D.9	-1 000
		B.9	-1 000

Financial account

ΔA		ΔL	
F.2	-2 000		
F.8	1 000		
		B.9F	-1 000

ΔA		ΔL	
		F.8	1 000
		B.9F	-1 000

Closing balance sheet

A		L	
AF.8	1 000		

A		L	

Year t+1	
General government	Rest of the world

Opening balance sheet			
A		L	
AF.8	1 000		

A		L	
		AF.8	1 000

Financial account			
ΔA		ΔL	
F.2	1 000		
F.8	-1 000		
		B.9F	0
Closing balance sheet			
A		L	

3. Agricultural disallowances when the government are allowed to complement the original payment (paragraph 42)

Government sends a claim of 1 000 to the European Institutions for reimbursement of subsidies paid in November of year t , but the European Institutions only pay 800 in January of year $t+1$, as 200 is withheld as penalty relating to inappropriate claims of earlier periods ($t-1$ or earlier). The original subsidy is kept by the final beneficiary.

Year t	
General government	Rest of the world

Non-financial account			
$\Delta A/U$		$\Delta L/R$	
B.9	0		
		D.3	-1 000
		B.9	-1 000
Financial account			
ΔA		ΔL	
F.2	-1 000		
F.8 (RoW)	1 000		
		B.9F	0
		F.8 (GG)	1 000
		B.9F	-1 000
Closing balance sheet			
A		L	
AF.8	1 000		
		AF.8	1 000

Non-government producer			
Non-financial account		Financial account	
$\Delta A/U$		$\Delta L/R$	
B.9	1 000		
		D.3	1 000
		ΔA	ΔL
		F.2	1 000
		B.9F	1 000

Year t+1					
General government			Rest of the world		
Opening balance sheet					
A		L	A		L
AF.8	1 000			AF.8	1 000
Non-financial account					
$\Delta A/U$		$\Delta L/R$	$\Delta A/U$		$\Delta L/R$
		D.9 (final benef.) -200			D.9 (final benef.) 200
B.9	-200		B.9	200	
Financial account					
ΔA		ΔL	ΔA		ΔL
F.2	800		F.2	-800	
F.8	-1 000			F.8	-1 000
		B.9F -200		B.9F	200
Non-government producer					
Non-financial account			Financial account		
$\Delta A/U$		$\Delta L/R$	ΔA		ΔL
		D.9 (gov) 200			
		D.9 (RoW) -200			
B.9	0			B.9F	0

4. Agricultural disallowances when the government are not allowed to complement the original payment and the final beneficiary is not able to pay back the full amount (paragraph 45)

Government sends a claim of 1 000 to the European Institutions for reimbursement of subsidies paid in November of year *t*, but the European Institutions only pay 800 in January of year *t*+1, as 200 is withheld as a penalty relating to inappropriate claims of earlier periods. The original penalty cannot be kept by the final beneficiary, but the final beneficiary is not able to pay it back.

Year t					
General government			Rest of the world		
Non-financial account					
ΔA/U		ΔL/R	ΔA/U		ΔL/R
					D.3
B.9	0		B.9	-1 000	-1 000

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	-1 000			F.8	1 000
F.8	1 000			B.9F	-1 000
		B.9F	0		

Closing balance sheet

A		L	A		L
AF.8	1 000			AF.8	1 000

Non-government producer**Non-financial account**

$\Delta A/U$		$\Delta L/R$	
B.9	1 000	D.3	1 000

Financial account

ΔA		ΔL	
F.2	1 000		
		B.9F	1 000

Year t+1**General government****Rest of the world****Opening balance sheet**

A		L	A		L
F.8	1 000			AF.8	1 000

Non-financial account

$\Delta A/U$		$\Delta L/R$	$\Delta A/U$		$\Delta L/R$
D.7	200			D.7	200
B.9	-200		B.9	200	

Financial account

ΔA		ΔL	ΔA		ΔL	
F.2	800		F.2	-800		
F.8	-1 000			F.8	-1 000	
		B.9F	-200		B.9F	200

2.7. Court decisions with retroactive effect

2.7.1. Background

1. When there is dispute about claims/liabilities, there might be a need for a court decision — or any other similar mechanism such as arbitration — to impose a settlement of the dispute and state an incontrovertible right of the claimants against government for a given amount. Such judgement must be definitive and thus directly applicable by the parties, with the appeal (recourse) process having been fully exhausted.
2. Sometimes, amounts could have been due by the government for several years and not paid because of a disagreement. Legal actions may take a long time, considering notably the different levels of recourse that can be activated by the parties.
3. The issue is, thus, the time of the recording of the claims and liabilities. From a theoretical point of view this could be the time:
 - they were accruing or supposed to be due, or
 - the court decision settles the dispute and irrevocably fixes the amounts.

2.7.2. Treatment in national accounts

4. ESA 2010 paragraph 20.189 states that, when a court of justice rules, as a definitive judgement, that 'compensation must be paid, or a transaction reversed' the time of recording of the expenditure or revenue is when the right of one party (and the obligations of the counterpart) is irrevocably established, if the amount to be paid (or retroceded) is precisely fixed. This may be at the time of the decision taken by the court when it is immediately enforceable. The obligation to pay for government may be set up after a time lag. In some cases, the court has explicitly mentioned in its decision the fractioning of the payments due by or to government.⁽¹⁵¹⁾
5. If the court has only set a principle of compensation without fixing a precise amount, letting it to another decision (for instance another court) or when the eligibility for compensation must give rise to further checks/validation, notably under the form of a specific application by the plaintiffs (as it may be the case in the context of 'class actions'), then the time of recording of the expenditure or revenue is only the time when the amount of the claims/obligations is definitively determined with certainty.
6. To be implemented, the decision of the court must be considered as 'final', i.e., when it is no longer possible for any party to lodge an appeal. This includes the different domestic judicial levels, international courts (such as the EU Court of Justice) and in some cases private 'Arbitration Courts'. It may also apply if the parties in the dispute renounce, openly or *de facto*, their rights to any appeal (which normally must be expressed within strict deadlines). It may also be the case that a court establishes a definitive decision on a right to compensation and then returns the case to a lower court to solve the details of the dispute. Such new recourse might be automatic, *de jure*, but it may also result from a voluntary action. In this case, the time of recording would be at the time of the decision(s) of these courts, acting as second resort.
7. In any case, the amount should be recorded in other accounts payable/receivable (F.8) until the time of actual payment in cash. Amounts should not be distributed over the past periods when they accrued, except for that part of the claims that are not the subject of dispute.
8. A simple postponement of payments by government without government disputing the obligation to pay should not prevent recording the payments at the time they are due (see chapter 2.3 Changes in the due for payment dates) with entries in other accounts payable/receivable (F.8) for the amounts accrued but not yet paid.

⁽¹⁵¹⁾ The court may have fixed an amount, which is deemed to be close to the final amount, but not necessarily identical, for technical reasons (but excluding cases covered in paragraph 5). The potential gap should be analysed and if it is very small, the full amount could be recorded immediately, with further slight revisions in the future.

9. The compensation is generally recorded as other capital transfers (D.99), which relates to amounts that would have accrued over a number of years, but a part could also be considered as fines and penalties (D.759).

2.7.3. Rationale of the treatment

10. A distributive transaction — and more generally, claims and liabilities — may be recorded in the accounts when established with sufficient certainty, when known and accepted by both parties (even in cases when imposed by law, such as for taxes and social contributions).
11. In some cases — when a new situation is created (new rights and obligations, for instance) — the subject of the controversy and the dispute can be resolved only by a court decision which creates an obligation to pay and either specifies the exact amounts to be paid or indicates the conditions in which the latter would be fixed. The date of the obligation to pay is therefore the time when the transactions are to be recorded.
12. This is true also for any penalty or interest charge awarded by the court.

2.8. Keywords and accounting references

Arrears	ESA 2010, 5.242
Current international cooperation (time of recording)	ESA 2010, 4.123
Discounted bonds	ESA 2010, 4.46, 5.96
EU subsidies	ESA 2010, 4.31
General accrual principle	ESA 2010, 1.101
Index-linked securities	ESA 2010, 4.46 and 5.100
Instruments denominated in foreign currencies	ESA 2010, 6.64
Interest (time of recording)	ESA 2010, 4.50
Interest and financial transactions	ESA 2010, 5.41-5.44
Mutual fund shares	ESA 2010, 5.160-5.166
Nominal holding gains	ESA 2010, 6.27-6.36
Other accounts payable/receivable (AF.8)	ESA 2010, 5.230-5.244
Other capital transfers (time of recording)	ESA 2010, 4.166
Social benefits (time of recording)	ESA 2010, 4.106
Social contributions	ESA 2010, 4.96
Subsidies (time of recording)	ESA 2010, 4.39
Taxes on income and wealth	ESA 2010, 4.80-4.82
Taxes on production (other)	ESA 2010, 4.26-4.27

3

General government and entities controlled by government

3.1. Overview

1. The classification of a transaction between government and a public entity can be complicated because of the different roles played by government in the economy. The transaction can arise for several different reasons due to the different objectives of government activity. These activities include government's role:
 - as the **owner of financial assets**:
 - seeking a return on investment, similarly to a long-term investor;
 - managing its treasury.
 - **acting for public policy purposes, supporting economic and social policy**:
 - paying subsidies and investment grants;
 - using public units to help deliver public interest policies – such as for public transport;
 - restructuring public units.
 - implementing its **budget**:
 - levying taxes and social contributions;
 - ensuring the optimal financing;
 - facing pensions obligations.
2. In borderline cases, when determining the classification of a transaction, it is necessary to consider which role the government is playing in the transaction and apply a recording that recognises the economic substance of the transaction if this differs from its legal form. In some cases more than one role can apply and it is necessary to consider which role is more significant for the purpose of recording most accurately the economic reality of the transaction.
3. Some activities are undertaken by government and never by market units: government does not act only as a manager of assets seeking a financial return. It may also manage the assets in a way to support economic activity and meet social objectives. Also, the government is the only agent in a position to make massive transfers to other agents of the economy.
4. This means, that flows to and from public corporations are not always recorded in a symmetrical way. For example, an unrequited payment recorded as an 'investment grant', a non-financial transaction ('something for nothing', as stated in ESA 2010, chapter 1 General features and basic principles) might contribute to a significant improvement of the enterprise's wealth in the mid-term. If the public enterprise would then make an exceptional payment out of its own funds, this payment might be recorded as a withdrawal of equity (partial liquidation of assets).
5. National accountants consider carefully the economic context of units and transactions for classifying them. However, it is important sometimes to look through the legal form of an institutional unit or of an

economic flow to report the economic reality. This applies to both the classification of units and the classification of flows. Examples are given below:

- a) A unit might undertake some activities that are typical of government units but the unit might not be included in government in public accounts. Such activities might be for example: making unrequited payments to other units; charging levies on particular industries; securitising poor quality loans; giving guarantees on lending; building public infrastructure, and so on. The very first question is whether the unit should be classified to general government (even if it is called a corporation or not normally considered to be part of government).
- b) If the classification as a market unit is correct, the next question is whether it is necessary to impute equal and opposite payments through government (also known as rerouting) to show that some of the unit's transactions are carried out on behalf of government. This could apply for example to any unrequited payments (such as subsidies) to other units: these would be recorded as payments by government with an adjustment to other transactions between the unit and government to balance the accounts.
- c) Rerouting can be appropriate in cases of indirect privatisation when the proceeds are kept by a public corporation to fund the unrequited payments to other units (see chapter 5.2 Sales of financial and non-financial assets), or to fund loss-making activities within the unit under the instructions of government as part of its economic and social policy (corporations with some non-market activity). In these cases, the payments rerouted through government are shown to be funded by payments from the public unit to government in respect of the indirect privatisation.
- d) When classifying a transaction in national accounts, one is not necessarily tied by the denomination the transaction may have either in public accounts or in the book-keeping of enterprises. For instance, in some specific cases, what is called a tax in the tax legislation or a dividend in corporation accounts might be more appropriately recorded in national accounts as a financial transaction.
- e) On the other hand, some flows having the legal denomination of equity injections may be classified, in national accounts, as capital transfers either because no economic return (such as dividends) is actually expected from the equity injection or because it is linked to the acquisition of a fixed asset (which would make it an investment grant). In this respect, an important distinction has to be made between flows channelling income from public corporations to government and other kinds of payment. The first ones undoubtedly have to be classified as non-financial transactions. The second category includes in particular large payments made out of the proceeds of sales of assets by public corporations. They have to be classified as financial transactions (see the decision tree in chapter 3.2 Capital injections into public corporations).
- f) In general, the principles concerning transactions between general government and public corporations also apply to transactions between government and private corporations and between government and other governments. Some private companies might be 'too big to fail', or perform some crucial role in the economy such as owning and operating vital infrastructure and utilities, so that government is forced to continue the existence of such companies when dealing with them. In such circumstance, payments to these companies that are presented as financial (injections of capital or equity) might in economic terms be grants.

3.2. Capital injections into public corporations

3.2.1. Background

1. Analysts in the media commonly refer to ‘capital injections’ made by the government into a public corporation, when some significant financial support is provided to the corporation in an attempt to capitalise or recapitalise the corporation.
2. The generic expression ‘capital injection’ is used in the ESA 2010 and in 2008 SNA and, like in the media, it may cover many types of payment from government to a public corporation which in national accounts are classified in different categories, as capital transfers or as financial transactions. For example, the terminology covers transactions that might be described in public accounts as investment grants, capital grants, commutation grants, loans, equity injections, acquisition of share capital. Other forms of support, like debt assumption, cancellation and rescheduling, may also be considered capital injections (see chapter 7.2 Debt assumption and debt cancellation).
3. The payment from the government commonly referred to as a ‘capital injection’ should be recorded in the national accounts as either:
 - a financial transaction: this would be in the general case an addition to equity — or, in other cases, to loans or securities other than shares — recorded in the financial account, with no impact on the government net lending/borrowing (B.9), or
 - a non-financial transaction: assuming that this is an unrequited payment, it would be a capital transfer, government expenditure with a negative impact on net lending/borrowing (B.9).
4. In some rare cases, it could be a combination of the two (see chapter 3.2 Capital injections into public corporations, section 3.2.2. Treatment in national accounts).
5. Capital injections are most often made in cash but can also be made in kind. This chapter deals with injections in cash. Injections in kind are the subject of another chapter (see chapter 3.4 Capital injections in kind). Injections in kind are very specific and do not fulfil some of the characteristics of injections in cash — those recorded as financial transactions — notably a certain degree of freedom of use by the corporation of the funds injected (see also see chapter 3.2 Capital injections into public corporations, section 3.2.3 Rationale of the treatment).
6. This chapter covers only the case of a transaction, i.e., an economic flow that results from the interaction between two institutional units by mutual agreement (or an action within an institutional unit that it is useful to treat as a transaction (see ESA 2010 paragraph 1.66). Therefore, it excludes the case of corporate restructuring, involving a restructuring of assets and liabilities or reclassification of units.
7. This chapter deals with capital injections by government into public corporations (owned, even partially, and controlled by general government), including the central bank. The case of capital injections into public quasi-corporations is covered in the following chapter 3.3. It may also apply to capital injections in corporations not controlled by government but where the latter had or gets a rather significant influence after the capital injection (bigger than any other private shareholder).
8. Government carries out also capital injections in financial institutions, public or private, notably in the context of the financial crisis, in some cases for significant amounts. The basic principles for the classification of such operations are the same. However, they need specific consideration as the banking sector (together with the insurance sector) is subject to specific regulations (such as minimum capital adequacy), which is not the case for non-financial corporations.⁽¹⁵²⁾

3.2.2. Treatment in national accounts

3.2.2.1. GENERAL PRINCIPLE

9. The principle in the general case, also referred to as ‘the capital injection test’, is the following:

⁽¹⁵²⁾ For more details, see: Eurostat Decisions from 2009 and 2013 on Eurostat's EDP/GFS dedicated web page: <https://ec.europa.eu/eurostat/web/government-finance-statistics/methodology/decisions-for-gfs>.

- When the government, acting in the same capacity as a private shareholder, provides funds while receiving contractually something (usually financial instruments, such as shares or debt instruments) of equal value in exchange and expecting to earn a sufficient rate of return on its investment, mostly in the form of dividends and interest, and a higher value of the financial instrument which represents the government's property rights on the corporation, the capital injection is to be recorded as a financial transaction in shares and other equity (see also Box 2 in section 3.2.3 Rationale of the treatment). In national accounting terms, the financial transaction has no impact on the government net lending/borrowing (B.9).
 - Often government does not manage funds to acquire profitable assets (like private shareholders do) but to pursue social or collective policy objectives for which private capital might not be available. Acting this way is a management of assets for public policy purposes. Thus, the capital injection is to be recorded as a capital transfer if the funds are provided in one of the following cases:
 - the funds are provided without receiving anything of equal value in exchange;
 - the funds are provided without expecting a sufficient rate of return on investment;
 - the funds are provided to a corporation that has shown a recent series of losses.
10. A capital injection that is recorded as a capital transfer (a non-financial transaction) has an impact on the government net lending/borrowing (B.9), i.e., increasing the deficit or reducing the surplus. A possible change of government's net worth will depend on whether the capital injection gives rise to a revaluation of the corporation's assets (the difference between the assets' valuation on a 'going concern basis' and a 'non-going concern basis'). The value of the government's equity assets will increase accordingly. Considering the specificity of government, a sufficient rate of return expected on funds invested (see also Box 2 in section 3.2.3 Rationale of the treatment) would have to be at least equal to long-term (10 years)⁽¹⁵³⁾ government bonds rates⁽¹⁵⁴⁾, or, in some specific cases (notably when government invests together with other investors, by the risk adjusted minimum rates of return (usually referred to as return on equity) normally requested by private investors on similar equity investments in the same sector of activity.⁽¹⁵⁵⁾
11. Generally, the following provisions can only be implemented on a case-by-case analysis, based on the information available. As an operational guidance, the following key questions must be examined, in order to make this analysis:
- Is government acting alone (possibly together with one or more public corporations, for a minor part) or jointly with private shareholders (as defined in ESA 2010, chapter 2 Units and groupings of units) participating in the injection?
 - Has the public corporation (and possibly, in some cases, the private corporation.⁽¹⁵⁶⁾) accumulated net losses over several years, or during the last exercise (referred to as 'one-off losses', by opposition to 'exceptional losses'), as recorded according to national accounts (e.g., net saving), according to generally accepted accounting principle, or based on other evidence, such as the negative trend of the corporation's own funds?⁽¹⁵⁷⁾
 - Is it likely that government will receive a sufficient rate of return on its investment?

⁽¹⁵³⁾ In most Member States, the average maturity of long-term debt is close to 10 years.

⁽¹⁵⁴⁾ May be estimated as an average over several months when there is high volatility on markets and/or exceptional disruptions.

⁽¹⁵⁵⁾ In any case, the calculation of the rate of return must be after deduction from the corporation's revenues of transfer payments from government (see Box 2 in section 3.2.3).

⁽¹⁵⁶⁾ However, if the private investors inject equity capital strictly under the same conditions as government, this will presume that the test on return of investment is successful (see below paragraph 22).

⁽¹⁵⁷⁾ Exceptional losses are large losses recorded in only one accounting period in the business accounts of a corporation, arising from an exceptional event not 'under the responsibility' of the corporation, i.e., independent of its own business model and/or its past investment policy. These exceptional events hit a large number of corporations, whatever their own financial and economic situation, generally simultaneously in several countries (spill-over effects).

3.2.2.2. THERE ARE NO PRIVATE SHAREHOLDERS INVESTING

3.2.2.2.1. The corporation has accumulated net losses or made exceptional one-off losses

12. When the corporation has accumulated net losses or, made 'one off' losses, as a general rule, the capital injection is treated as a non-financial transaction for its full amount.
13. Special case (partition of the transaction): when a capital injection exceeds the net amount of losses and
 - a) government can provide evidence that these funds in excess will receive a sufficient rate of return (for example, they are specifically used to make further investment in already profitable operational areas of the corporation's activity, as shown by past results, or in the context of a forthcoming privatisation of the business), or
 - b) there is an obvious fundamental restructuring of the corporation, in order to prevent the occurrence of new losses and to return to sustainable profitability after the complete implementation of the new business plan, and evidence that government should benefit from a sufficient return on its new investment. There should be a large consensus that the restructuring will be efficient. This would not be the case if the return on the new investment is still uncertain (the restructuring plan is largely considered insufficient as regards the main sources of losses and/or the restoring of profitability depends substantially on factors not under the control of the corporation), such that it would take time to offset the accumulated losses.
14. In this special case, the capital injection is treated as a non-financial transaction up to the limit of the losses and as a financial transaction beyond this amount.
15. For this special case, an operational guidance might be the rating — or change in rating — of the debt (notably long-term debt), the significance of management re-organisation, the shift to new activities, the competitiveness on the market etc.

3.2.2.2.2. The corporation has not accumulated net losses

16. Normally, this means that, on a regular basis, the corporation makes profits, either distributed or reinvested.
17. Where government is acting similarly to a private shareholder, meaning that, when it provides funds, it receives in exchange financial assets and expects a sufficient rate of return on its investment (in the form of dividends and higher value of the financial instrument representing the government's property rights in the corporation),
18. The capital injection is recorded as a financial transaction in shares and other equity for its full amount.
19. Where the capital injection is undertaken for specific purposes relating to public policy or in the context of a fundamental change in the conditions in which the activities are carried out and which are imposed by government, the consequence on future profitability of the new government investment must be carefully checked. In such cases:
 - If an expected sufficient rate of return were still very likely, the capital injection would be treated as a financial transaction for its full amount.
 - If a sufficient rate of return were unlikely, the capital injection would be treated as a non-financial transaction for its full amount.
20. Some public corporations may be subject to statutory provisions so that their revenue can equal but not exceed their total costs (this could be the case of market NPIs, classified in the non-financial corporations sector, for instance). By definition, these cannot provide a market return, and government, when investing in such units, is not acting in the same way as a private shareholder. These should be assimilated to cases of capital injections made for public policy purposes.

3.2.2.3. THERE ARE PRIVATE SHAREHOLDERS INVESTING

3.2.2.3.1. Private shareholders participating in the capital injection in unquoted shares

21. Private shareholders may already hold equity in the corporation. This case covers also the initial introduction of private shareholders in the event of the current injection, for instance under a process of restructuring.

22. Where the private investors:

- a) take a significant share in equity during the injection, in proportion to their existing shareholding (where appropriate), at the same time as the capital injection by government,
- b) exercise the usual influence of minority shareholders according to rights provided by current corporate law,
- c) bear risks and rewards similar to government, as regards their rights on the net assets, in the event of liquidation (ESA 2010 paragraph 5.148), for instance, the capital injection is treated as a financial transaction for its full amount.

23. Where the private investors do not fulfil one of the conditions mentioned above, the capital injection should be treated according to rules specified for the cases where there are no private shareholders.

3.2.2.3.2. Private shareholders participating in the capital injection in quoted shares

24. Where, in exchange for its payment to the corporation, the government acquires quoted shares, which it could immediately sell for the price paid, then the transaction is a financial transaction in shares and other equity (F.511).⁽¹⁵⁸⁾

3.2.2.3.3. Special case: It is a new corporation, or new activity/assets are considered

25. The treatment will depend on the specific examination based on the various indicators as usually used in investment analysis. The presence of private investors would also be a key indicator. In any case, it should be certain that government does not intend to use the new unit only for public policy purposes.

26. As a result:

- Either, the conditions support the conclusion that, after a 'normal' temporary period of losses (as also often observed for similar private investments), the corporation would be structurally profitable, so to earn an overall adequate rate of return, the capital injection by government is treated as a financial transaction for its full amount.
- Or, on the basis of various factors (an uncertain economic environment, the nature of the activity and of the sector, the non-compensation of some costs imposed by government, the consensus opinion of independent experts in different areas like accounting, economics and financial analysis, etc.) there are doubts on the long-term profitability of the project, the capital injection is treated as a non-financial transaction for its full amount.

27. If the return on a capital injection turns out to be very different from the return originally expected (e.g., profits or other gains are made instead of planned losses; or conversely losses are made instead of expected profits), the accounting of the capital injection is not revised due to new information or subsequent events, unless the initial plan was misleading and misrepresenting the economic reality (see Box 2 in section 3.2.3). No revenue or expenditure is recorded to account for these differences in expectations: instead these differences between realisations and expectations are reflected in the revaluation accounts.

28. In particular, returns of money to government by an entity that benefited from a capital injection in previous years that was recorded as a capital transfer expenditure of government, is not necessarily recorded as government revenue. Instead, the proceeds collected by government are subject to the super-dividend test to determine if these are government revenue or withdrawal of equity.

⁽¹⁵⁸⁾ In other words, government should not acquire the shares above their market price (possibly estimated as an average of a period no longer than 3 months). For unquoted shares, the reference should be a fair value, estimated according to usual business valuation methods.

Box 1 – Recording transactions: straightforward cases and difficult areas

In practice, compilers are confronted either with straightforward cases that lead to clear statistical treatments, or with borderline cases that require further inquiries and applying various tests.

Straightforward cases

a) Investment grant: D.92

A capital injection that would consist of a capital transfer in cash or in kind made by government (...) to another resident (...) institutional unit to finance all or part of the costs of its acquiring of fixed assets is to be recorded as an investment grant (D.92). ESA 2010 paragraph 4.152

b) Past losses: D.99

A capital injection made to cover accumulated losses is recorded as other capital transfer (D.99) (ESA 2010 paragraph 4.165 (b))

c) Acquisition of quoted shares: F.5

A capital injection that results in government acquiring quoted shares of equal value is recorded as a transaction in shares and other equity (F.5).

d) Loans and bonds: F.3 and F.4

- Loans: a provision of funds in the form of a loan evidenced by a legal document specifying the borrower's obligations (redemption date of principal and interest to be paid) is recorded as a transaction in F.4.
- Bonds: a provision of funds by the government purchasing bonds issued by the corporation (again to be evidenced by legal document) is recorded as a transaction in F.3.

e) Debt cancellation/assumption

Debt cancellation or debt assumption gives rise to a capital transfer, or a unit being privatised within the limit of the amount of privatisation proceeds (ESA 2010 paragraph 20.227).

f) Privatisation: F.5

A capital injection that is made as part of a privatisation process within a short-term perspective (less than one year), such that government expects to get its money back, are recorded in F.5 within the limit of the amount of the privatisation proceeds (consistently with the rationale of ESA 2010 paragraph 20.227 in the case of debt cancellation/assumption, see also item e) above).

Borderline cases

In the following difficult areas, two guidelines are very useful:

- A pattern of repetitive payments would be an indication and presumption of unrequited transfers, and therefore lead to record a capital transfer;
- The qualification by the European Commission of government payments as 'state aids' should be taken into consideration for the statistical treatment as an analytical indicator. The flows deemed to be state aids have to be recorded as capital transfers.

a) Expected future losses/repetitive losses: D.9

A capital injection made to cover expected future losses, perhaps so that the corporation can reduce its borrowing costs, should be recorded as a capital transfer (D.9), even if shares (or equivalent) are issued. In this context, it is likely that the corporation will not be profitable for a long time, because of the specific conditions of its activities. If shares are issued, it can be assumed that they have no value.

b) An expected profitable investment: F.5

A capital injection given to a public corporation with the objective of increasing the government's future dividends should be recorded in F.5. This would be when the corporation is free to use the funds to

maximise profits and the government expects a market return on its investment, i.e., a return similar to that, which could be obtained, from the acquisition of shares quoted on the market.

c) Partnership with private sector partner: F.5

If, acting jointly with a private partner, the government makes a capital injection into a unit such that the property rights, including rights to property income, are modified in proportion to the value of the injection, it indicates that the investment is expected to be profitable and should be recorded in F.5.

Where such proportionality does not exist (ownership rights do not change in the same proportion), it could be an indication that the government is serving public policy purposes and is making an unrequited transfer. If this is the case, the injection must be recorded as a capital transfer.

d) Body manages financial assets on behalf of government: F.5

A capital injection to a public holding company/head office or a financial corporation, managing assets in a profitable way on behalf of government, in order to acquire more financial assets, could be recorded as a transaction in F.5. The condition here would be that the assets are managed to maximise the return for government, and that higher dividends are expected.

e) Loans granted in certain contexts

In certain contexts (e.g., financial defeasance, business rescuing, export insurance), the characteristics of loans provided by government — and the contractual obligations — should be examined closely to check the relevance of the classification in loans (F.4). In the special case where the public corporation receiving the loan would be in financial distress and not in a position to repay the loan, the provision of funds should be recorded as a capital transfer (D.99). If the public corporation (and possibly, in some cases, the private corporation) would be in a position to repay most of the loan, but not all, this could be a case to partition the loan into F.4 and other capital transfers (D.99) (see ESA 2010 paragraphs 1.72 and 1.76–1.77).

3.2.3. Rationale of the treatment

3.2.3.1. THREE COMMON WAYS OF PROVIDING FUNDS TO A PUBLIC CORPORATION

29. Government may increase a public corporation's holdings of financial assets (generally cash) at a given point in time, usually in three ways: a) providing a grant, b) providing equity capital, c) providing loan capital. It matters in national accounts to clearly distinguish them as they result in different treatments, according to the classification of transactions and assets provided by ESA 2010:

- a) **Providing a grant (i.e., a gift):** in national accounts terms, this is a capital transfer. It has the effect of changing the net lending/borrowing (B.9), and of changing the net worth due to saving and capital transfers (B.10.1) and therefore the own funds of the corporation. An important feature of such capital transfers is that they are transactions which are usually undertaken only by governments. The beneficiaries of these transfers are usually enterprises that do not operate in competitive markets. Acting this way, the government expects no return on its investment in the form of dividends (most of the time the enterprise receiving such transfers does not pay dividends) or in the form of other proceeds notably realised in the context of a privatisation. Government is acting for public policy purposes, and only expects some general economic or social results from the use of the funds.
- b) **Providing equity capital:** this is a financial transaction in shares and other equity. There is no change in the net lending/borrowing (B.9) and no change in the net worth (but there is a change in own funds due to the increase in equity capital). Usually, corporations raising equity capital are competing on markets and need to strengthen their financial position, by increasing their own funds, in order to plan investments etc. In providing equity capital to the corporation, the government acts similarly to a private shareholder, with the strong expectation of a sufficient return on investment. In this regard, the actual payments of dividends to the shareholder and/or the positive trend in the value of the shares are decisive criteria for treating the injection as an increase in equity. In addition, as shown in the decision tree (see end of this chapter), the participation of private shareholders in the business is also a strong indicator for the recording as equity capital, especially if the shares are quoted on the stock exchange. However, the private investors' share of equity in the corporation should not be diluted by the government's new shares acquisition (which would reduce their

participation to a level where they could not exercise influence). They must also bear similar risks and rewards to those borne by government notably as regards their rights on the net assets of the corporation in case of liquidation (case of issuance of shares with specific features).

- c) **Providing loan capital (or possibly acquiring corporation's bonds):** this is generally a financial transaction. In this case, there is no change to the net lending/borrowing (B.9), no change to the net worth (B.90) and no change to the own funds of either government or the corporation. As a lender, government is expecting that the public corporation, as a borrower, will be in a position to repay the loans, according to a schedule agreed at inception.

Box 2 – A sufficient rate of return

In order to test whether government acts similarly to a private investor/shareholder, so that the capital injection can be treated as an increase in equity (F.5), the expected return on investment (usually also referred to as return on equity (RoE)) is a crucial indicator. Such a return, in the form of dividends or holding gains, provides evidence that the legal financial instrument (e.g., the shares) given to its owners in exchange for the funds injected is a source of future economic benefits (meeting thus the basic definition of an asset in ESA 2010) and has a market value.

Such an expected 'adequate rate of return' or 'market rate of return' may be referred to, in government finance statistics, as a 'sufficient rate of return' (see sub-section 3.2.2.1).

Government has a very specific function in the economy. It is in charge of collective concerns and of dealing with externalities so to ensure, in the long run, the prosperity and well-being of the community (public health and education, public order and safety, public infrastructure, environment, ...) and therefore acts primarily as a non-market producer. Funds invested in this context are provided for public policy purposes, without any expectation of a direct financial return: in national accounts, these invested funds are to be recorded as capital transfers (D.9).

However, government also interacts directly in the economy like other investors and shareholders, i.e., through public corporations, with the aim to make them as efficient and profitable as possible, in such a way that they can also be a source of revenue or other gains.

Capital invested by government always has an opportunity cost. Therefore, when government is investing with expectations of a return on investment, it would be appropriate to expect a similar return as for comparable investments by private actors, under ideal circumstances. This calls for using market rates of return as benchmarks. However, there could be reasons for government to target different required expected returns on investment. Capital markets may not function perfectly, and therefore market rates of return may not reflect the correct opportunity cost. Moreover, governments often invest in areas — or at an industrial stage — where no private actors operate, therefore making difficult benchmarking on private sector returns.

To define the appropriate minimum return required on an investment, there are several standard methods known in the theory of finance. These methods often use an opportunity cost approach, which takes into account the rates applicable to alternative investments or to the cost of financing (i.e., other opportunities). These methods investigate both the asset side (investment) and the liabilities side (financing) of the company in order to estimate the expected rate of return on the investment. One commonly used method is the Capital Asset Pricing Model (CAPM), which might be appropriate in some cases. This approaches the return from the asset side and implies estimating a risk-adjusted rate of return. This involves calculating a required minimum expected rate of return on an investment as a function of the risk, where the return can be calculated by an equation with the risk-free interest rate, the average market return, and an indicator expressing the risk pertaining to the asset class in question being present.

In practice, the observable return in the past — when there is no indication of a change in future — may be used for determining an expectation of sufficient rate of return, notably in the absence of business plan analysis.

Taking into account the specificities of governments as an investor, the 'sufficient rate of return' is used as a proxy for the expected market return as a fundamental benchmark for establishing the appropriate expectations of returns on government investments.

Therefore, considering the specificity of government, a 'sufficient rate of return' expected on funds invested would have to be equal at least to:

- when government is the only investor in the corporations, as a general rule, long-term (10 years) ⁽¹⁵⁹⁾ government bonds rates, which means that government is not expected to receive a return inferior to its cost of borrowing;
- when government is investing together with private investors (whatever their share), risk adjusted rates of return normally required, in average and over a sufficient period of time, by private investors on similar equity investments in the same sector of activity; in practice the return on equity currently observed in average in the sector (branch) of the corporation (of comparable size) could be used as a proxy, if available.⁽¹⁶⁰⁾

The rates being compared should be on the same basis, real or nominal.

Transfer payments by government or supranational authorities made to producers to cover losses, in the form of subsidies, other current transfers or capital transfer (rather than by outright purchases of products), should be excluded from the measure of the return on investment (i.e., these have to be taken into account, as negative discounted cash flows). These payments, together with all other payments to cover an overall deficit, should not be included in the measure of the capital invested. Some payments however, such as payments granted to any producer in this type of activity (where it is observed that there are both public and private recipients), including all payments linked to the volume or value of output, may be retained in the calculation of the rate of return.

Case where a business plan has been used: the initial classification of the injection transaction should not be revised due to later economic events changing the original outlook. However, evidence that the original business plan was incorrect or misinterpreted, observable from subsequently published annual accounts, updated business plans or audit office reports, should lead to a re-assessment of the original statistical classification and a subsequent data revision.

3.2.3.2. CHARACTERISTICS OF FINANCIAL AND NON-FINANCIAL TRANSACTIONS INVOLVED

3.2.3.2.1. Recording a financial transaction in equity

30. A capital injection should be recorded as a financial transaction only when the government receives in exchange a financial asset of equal value to the payment. This is a fundamental characteristic of financial transaction. A holding gain on shares and other equity, possibly recorded after the capital injection, is not a 'financial asset received in exchange' (but another flow).
31. In the majority of cases, the financial instrument involved is shares and other equity (AF.5). A transaction in equity in this context is the action of 'placing funds at the disposal of a corporation' (ESA 2010 paragraph 4.53), increasing the equity capital. This is to be recorded in national accounts as a financial transaction, in shares and other equity (F.5). In accordance with ESA 2010 paragraph 4.53 and ESA 2010 paragraph 5.142, this transaction increases the property rights of shareholders of the corporation. The investment is made predominantly under market conditions and not only for public policy purposes.
32. In particular, it should be emphasised that, in providing equity capital to the corporation, the government acts as a shareholder under market conditions, normally with the expectation to receive dividends in return. The actual payment of dividends to the shareholder is an important criterion for treating the injection as equity.
33. Additionally, a capital injection that is made as part of a privatisation process within a short-term perspective (less than one year), such that government expects to get its money back, is to be recorded in F.5, within the limit of the amount of privatisation proceeds (consistently with ESA 2010 paragraph 20.201). This case, as well as others described in this chapter, should be considered to be exceptions to the rule that implies that recording a flow in the national accounts increasing the shares and other equity (F.5) of a quoted corporation should normally be related to actual issuance of new shares.

⁽¹⁵⁹⁾ In cases (notably in the context of government support to banks) where a resale of equity is foreseen in a small number of years, a 4-6 government bond benchmark reference could be used.

⁽¹⁶⁰⁾ As an example, for commercial banks, RoE should at least reach 10 %. It should be lower in industrial sector.

34. Two cases must be distinguished:

- Case of quoted shares: A capital injection that results in government acquiring quoted shares of equal value is a straightforward case. It has generally to be recorded as an acquisition of equity (F.5). The fact that the shares are quoted means that the shares may be traded on the market by private investors (as defined in ESA 2010, chapter 2 Units and groupings of units) and therefore that the corporation is respecting some minimum market requirements in the long run.
- Case of unquoted equity: Where the capital injection is given to an unlisted public corporation, the capital injection should be recorded in F.5 only if government has the objective of increasing its wealth, under the form of dividends or a higher value of the financial instrument received in counterpart (or at least equal to the amount injected, under an on-going process of privatisation, to be achieved in a short-term perspective).

35. Normally, a condition is that the public corporation has not accumulated net losses as recorded according to generally accepted accounting standards in its balance sheet or with evidence, for instance, being given by a negative trend in own funds. However, even in such cases, any part of the capital injection (in excess of the accumulated losses) used for investment in profitable areas of activities on which government will earn an adequate return on its investment may be recorded as financial transaction (typically in F.5).

36. A capital injection may also be recorded as a financial transaction in two specific cases:

- New corporations or quasi-corporations ('start-ups'): If government sets up a new market unit that is not the result of a restructuring of existing corporations, the treatment depends on a close examination of the project, using various indicators similar to investment analysis and taking account of other aspects relating to the transaction. As a result, the transaction may be treated as a financial transaction or as a non-financial one, according to the analysis, for its full amount. This applies also where an existing corporation is starting a completely new activity or is acquiring new kinds of assets for large amounts.
- Bodies managing financial assets on behalf of government: a capital injection into a public holding company/head office or a financial corporation managing assets in a profitable way on behalf of government, in order to acquire more financial assets, could be recorded as a transaction in F.5. The condition here would be that the assets are managed to maximise the return for government, and that higher dividends or higher equity value are expected.

3.2.3.2.2. Special cases — transactions in other financial instruments

37. Not every provision of funds recorded as a financial transaction takes the form of acquisition of equity (F.5): other possibilities are the making of a loan (F.4) or the purchase of bonds (F.3).

38. Loans: a provision of funds in the form of a loan with evidence in a legal document specifying the borrower's obligations (redemption date of principal and interest to be paid) should generally be recorded as a transaction in F.4.

39. One exception is where government grants a loan to a loss-making public corporation, where it is very likely that the corporation would not be in a position to repay most of the loan because of recurrent losses (and, thus, not because of exceptional losses occurring in the year the loan is granted) and because there is no expectation of restoring profitability before the maturity date(s). In this case, the funds transferred to the corporation by government should be recorded as a non-financial transaction for their full amount, unless a reliable estimate of the losses would be available, allowing a partition of the loan. If it would be expected that the debtor would reimburse by itself.⁽¹⁶¹⁾ most of the loan, this would be a case for partitioning the loan, the part corresponding to the expected losses being recorded as a capital transfer at the time the loan is made. The stock of loans to be entered in the balance sheet should be increased by the value of the recorded loan transaction. Any subsequent recognition by government of loans or parts of the loans which would not be re-paid should be treated in accordance with the guidance in chapter 7.2 Debt assumption and debt cancellation.

40. Thus, in certain specific contexts (financial defeasance, business rescue, export insurance, etc.), the characteristics of loans provided by government (the contractual obligations) should be examined closely to check whether it is correct to classify them in F.4.

⁽¹⁶¹⁾ This means mainly from sales, including subsidies on products (with the exception of subsidies described in ESA 2010 paragraph 4.35 (c), other subsidies, property income.

41. Debt instruments: a provision of funds when the government purchases bonds or notes or hybrid instruments⁽¹⁶²⁾ issued by the corporation (evidence also to be given by some legal document) should be recorded as a transaction in debt securities (F.3).
42. However, where the corporation has accumulated significant losses and the bonds are purchased almost exclusively by government, the acquisition by government should be considered a non-financial transaction.
43. In addition, the case of a bond issuance by a corporation with a record of debt service default, such that the purchase of bonds by private investors could be achieved only with a full guarantee from government (with investors' opinion as evidence) should be closely examined. Recording as a transaction in debt securities (F.3) requires that, at the time of the transaction, the corporation is in all likelihood in a position to meet its obligations relating to the debt service (interest and principal) according to the contractual schedule of payments.

3.2.3.2.3. Recording a non-financial transaction

44. Excluding the cases of subsidies (D.3), see ESA 2010 paragraph 4.30 and following, and of other current transfers (D.75), see in particular ESA 2010 paragraph 4.138 (b), the non-financial transaction relevant for capital injections is a capital transfer.
45. The case of capital injections in kind (such as transfers of fixed assets) is dealt with in chapter 3.4 of this Manual, and only capital transfers in cash are considered here.
46. A capital injection should be treated as a non-financial transaction where the provision of funds is an unrequited transaction. The government does not receive in exchange a financial asset of an equal value, and any possible effect on the government's equity is indirect, sometimes not immediate, uncertain and of a different size. This sort of payment is recorded as a capital transfer (D.9), either as investment grant (D.92) or as other capital transfer (D.99).
47. An important feature of capital transfers is that, in general, they are typically government transactions, made for public policy purposes. Acting this way, the government expects nothing in return in terms of dividends (most of the time the enterprise receiving such transfers does not pay dividends), nothing else than an improvement of the corporation's wealth and the meeting of some social needs (public infrastructures, employment, etc.).
- a) Investment grants (D.92):
- A capital injection that would consist of a capital transfer in cash or in kind made by government (...) to another resident (...) institutional unit to finance all or part of the costs of its acquiring of fixed assets is to be recorded as an investment grant (D.92).
- b) Other capital transfers (D.99) for accumulated losses:
- A capital injection made to cover accumulated losses (either on a repetitive pattern during several recent fiscal years, or irregularly but with profits not compensating losses), as recorded according to generally accepted accounting principles and, for instance, with evidence given by the trend of the corporation's own funds, is normally treated as a non-financial transaction for its full amount (as a capital transfer D.99), even if some pieces of paper (called 'shares' or equivalent) are issued.
48. Similarly, capital injections made to compensate owners of capital goods destroyed by acts of war, other political events or natural disasters are also to be recorded as capital transfers (D.99).

⁽¹⁶²⁾ This refers notably to some 'preferred shares', convertible bonds (including contingent convertible, usually referred to as 'Cocos'), subordinated loans or bonds. In any case, in national accounts, a debt instrument is recognised as such (classified as AF.3 or AF.4) only if it bears an unconditional remuneration for the holder, i.e., due independently of any distributable profit (treated as interest to be recorded on accrual basis). Otherwise, this is considered an equity instrument subject to the rules developed in this chapter. There may be special clauses related to the accumulation of returns, such as carrying over non-paid interest. An instrument could be recorded as debt only if such carry over does not exceed the following exercise. Any longer period, or even total uncertainty, would result in treating the instrument as equity.

Box 3 – ESA Concepts

• Own funds and equity capital

ESA 2010 paragraph 7.07 defines the own funds in the following way: *Own funds are the sum of net worth (B.90) plus the value of equity and investment fund shares (AF.5) as liabilities in the balance sheet.*

'Corporations raise equity capital to strengthen their financial position on the market, by increasing their own funds. Expressed through the issuance of shares, the equity capital is therefore part of the own funds'.

The immediate result of providing equity capital and increasing the own funds is that the corporation is in a better position to finance investment or refund existing debt, borrow additional debt, if necessary (creditors are reassured by the financial solvency of the corporation), and finally to make and distribute profits. Shares and other equity (AF.5) in the balance sheet of a corporate enterprise are to be recorded — like most assets and liabilities in the national accounts — at market value (ESA 2010 paragraphs 7.34, 7.25 and 7.71).

• Dividends (D.421)

'Dividends (D.421) are a form of property income received by owners of shares (AF.5) to which they become entitled as a result of placing funds at the disposal of corporations. Raising equity capital through the issue of shares is an alternative way of raising funds by borrowing. In contrast to loan capital, however, equity capital does not give rise to a liability that is fixed in monetary terms, and it does not entitle the holders of shares of a corporation to a fixed or predetermined income' (ESA 2010 paragraph 4.53).

• Shares and other equity (F.5)

The category shares and other equity (F.5) consists of all transactions in shares and other equity (AF.5) that are financial assets which represent property rights on corporations or quasi-corporations. These financial assets generally entitle the holders to a share in the profits of the corporations or quasi-corporations and to a share in their net assets in the event of liquidation (ESA 2010 paragraph 5.142). The transactions in shares and other equity — for instance, a capital injection providing equity capital to a corporation have thus a strong legal basis, these financial assets representing the property rights on the corporation.

A transaction in equity has usually three characteristics:

- funds are placed at the disposal of a corporation, which has a large degree of freedom in the way it can use them;
- shareholders are entitled to receive a return on their investment;
- new shares are issued (for an amount equal or related to the funds placed) in the case of corporations having the legal status of incorporated enterprises.

As a result, in national accounts, shares and other equity must be valued at a market value that reflects the expectations of return, in both the national accounts balance sheet of the holder and the issuer, whereas in the own balance sheet of the issuer they are usually accounted for at historic value (or book value). Where shares are listed on a market, their value is the observed price. Where equity does not consist of shares or consists of shares that are not tradable on a market — as it is frequently the case for a public corporation — a proxy market value must be implemented in national accounts (see ESA 2010 paragraph 7.73 and following).

• Capital transfers (D.9)

The notion of capital transfer is defined in in ESA 2010, chapter 4 Distributive transactions. A capital transfer imparts a voluntary transfer of wealth between two units ('something for nothing'). Capital transfers have three main characteristics (see 2008 SNA paragraph 8.10):

they are transactions, made by mutual agreement between two units (unlike other changes of assets);

- there is no counterpart being received in exchange;

- they involve a commensurate change in ownership of assets (or cancellation of liabilities by a creditor) between the two parties, or acquisition or disposal of assets).

The first two characteristics are common to all transfers (current and capital transfers). In addition, all transfers may be made in cash, or in kind.

Another characteristic of capital transfers is that they tend to be large and infrequent. Two types of capital transfer are then distinguished (ESA 2010 paragraph 4.146):

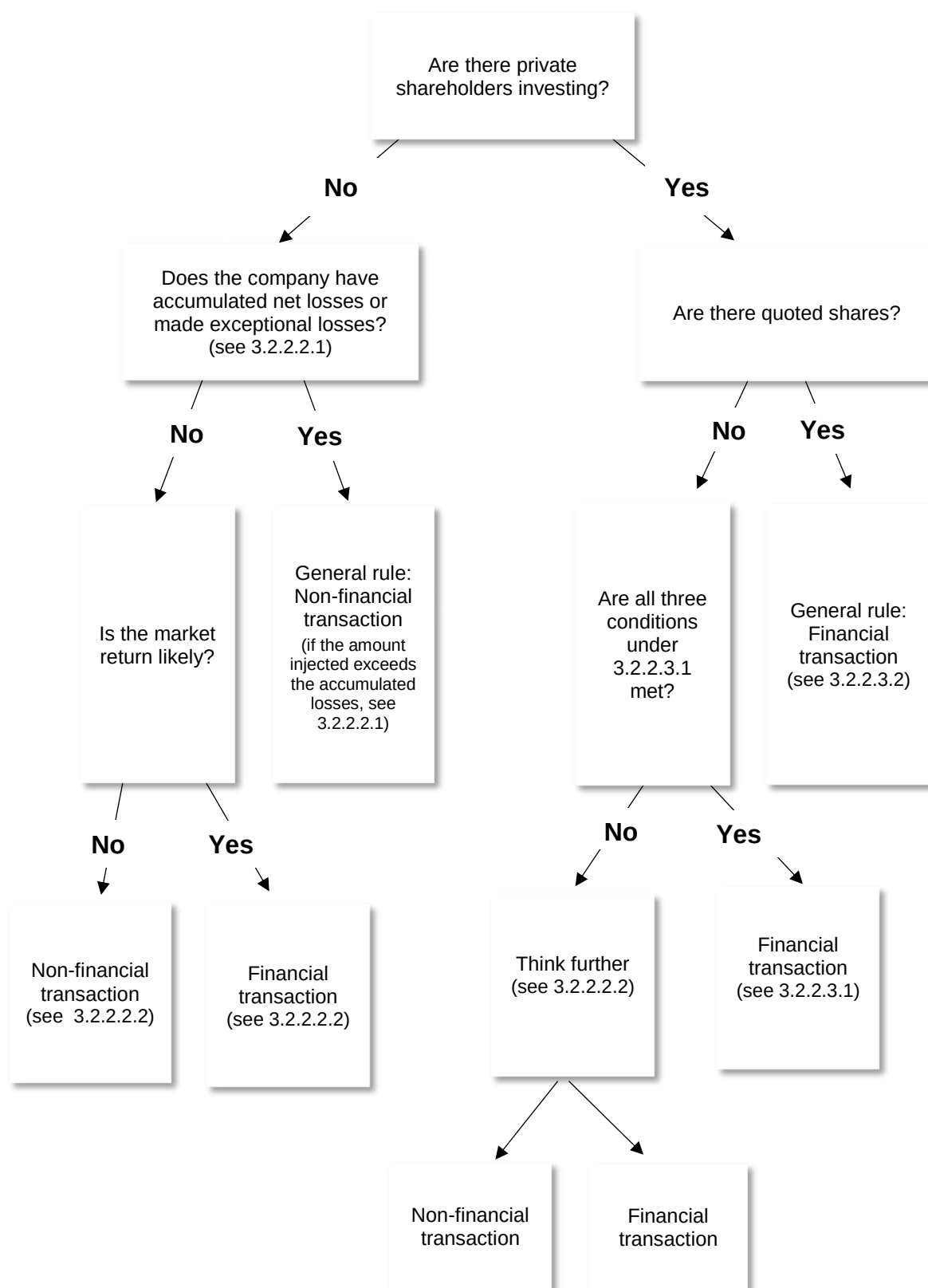
Capital transfers in cash: these consist of transfers in cash involving changes in ownership of assets. The recipient is often obliged to use the cash to acquire assets as a condition of the transfer (e.g., investment grant), see ESA 2010 paragraph 4.146.

Capital transfers in kind: cases of transfers of ownership of assets other than cash or of cancellation or assumption of debt without counterpart.

Capital transfers are generally government transactions: public policy purposes may lead government to make transfers without counterpart to corporations. A presumed effect of a capital transfer on the value of the equity (through the reaction of the market, for example) is not a sufficient reason for regarding the transaction as a financial one: again, the effect is not certain, as well as its size.

Therefore, unlike financial transactions, capital transfers are the counterpart flow of those 'one-way' changes in assets or liabilities, which means that the recipient is made wealthier, when the other party is made poorer. This is expressed by an increase in net worth in the balance sheet of the first party, and a decrease in net worth in that of the other party.

Decision tree for capital injections (other than investment grants D.92)



3.3. Capital injections into public quasi-corporations

3.3.1. Background

1. One of the cornerstones of the national accounts is the concept of institutional units, and the grouping of those into institutional sectors. Since the aim of the system is to describe how economic agents interact in order to underpin economic analyses, the main qualifier for being recognised as institutional units lays in their capacity of exercising autonomous economic decision making in their principal function, rather than other considerations such as their legal status.
2. The concept of public quasi-corporations is intended to separate public entities from their government owners because they are engaged in market activities in such a way that they fulfil the criteria of being a market producer, deemed to have autonomy of decision. Even though they have no legal status, they are sufficiently independent, and they behave differently from their owners and similarly to corporations. In particular, they can be the owner of assets, take economic decisions, and enter into contracts and incur liabilities (ESA 2010 paragraph 2.12). Public quasi-corporations must keep a complete set of accounts or it would be possible and meaningful, from both an economic and legal viewpoint, to compile a complete set of accounts if they were required; otherwise, it would not be feasible from an accounting point of view to distinguish them from their owners (ESA 2010 paragraph 2.13 (f)). In order to be said to keep a complete set of accounts, a unit must keep accounting records covering all its economic and financial transactions carried out during the accounting period, as well as a balance sheet of assets and liabilities.
3. Since public quasi-corporations are recognised in national accounts as institutional units and as market producers (i.e., charging economically significant prices), they should be treated as any other corporation as prescribed by ESA 2010 paragraph 20.193. The aim of this chapter is to give a short but comprehensive guidance on when government injections or other transfers to its quasi-corporations should be recorded as financial or non-financial transactions.

3.3.2. Treatment in national accounts

4. The recording of government transfers to public quasi-corporations in national accounts should in general follow the same rules as for other public corporations (see chapter 3.2 Capital injections into public corporations), unless there are, in ESA 2010, explicit prescriptions for the contrary. The capital injection test, as defined in section 3.2.2 of this Manual, should be applied based on whether the quasi-corporations make losses or profits.
5. The following operational guidance applies:
 - a) when a public quasi-corporation is making profits and expecting to make sufficient profits in future, government transfers of a capital nature, such as for the purpose of acquiring assets or reducing liabilities, should be recorded as financial transactions, in other equity (F.519) (ESA 2010 paragraph 5.154 (f)), otherwise a capital transfer should be recorded;
 - b) when a public quasi-corporation is running a persistent operating deficit, as a matter of deliberate government or European economic and social policy such that it would charge an insufficient price to final users, regular government transfers should be recorded as other subsidies on products (D.319), (ESA 2010 paragraph 4.35 (c) and ESA 2010 paragraph 4.61);
 - c) when a public quasi-corporation receives transfers from government to cover accumulated losses or exceptional losses beyond the control of the entity, these should be recorded as other capital transfers (D.99) (ESA 2010 paragraph 4.165 (b)). However, any part of a capital injection in excess of accumulated losses, may be recorded as a financial transaction (F.519) when appropriately documented. Payments intended to cover future losses are also treated as other capital transfers (D.99);

- d) when the government owner cancels financial claims against, or assumes liabilities from a public quasi-corporation, this should lead to the recording of financial transactions, in other equity (F.519) (ESA 2010 paragraph 4.165 (f)) unless the operation is intended to cover accumulated losses or an exceptionally large loss, not covered by the case mentioned under c) above, by recording other capital transfers (D.99) (ESA 2010 paragraph 5.37). In case of expected future losses, these are also treated as other capital transfers (D.99) (ESA 2010 paragraph 4.165 (b));
 - e) when government makes transfers to public quasi-corporations in order to finance all or part of the costs of their acquiring fixed assets, they should be recorded as investment grant (D.92) (ESA 2010 paragraphs 4.157 and 20.42). In this case, the provision of funds must be clearly dedicated to the financing of the acquisition or of major improvements of a given fixed asset and not as a 'general', undetermined, allocation of funds to the quasi-corporation.
6. Under these conditions, government inflows, in cash or in kind, into non-profitable public quasi-corporations should be recorded as non-financial transactions (ESA 2010 paragraph 4.165 (b) prevails over paragraph 4.165 (f) in such cases), as indicated by ESA 2010 paragraph 5.37. Government inflows in excess of losses, accumulated or expected, may be recorded as financial transactions.

3.3.3. Rationale of the treatment

- 7. The concept of public quasi-corporations is introduced into the system of national accounts because their behaviour is deemed different from the one of their government owners and similar to corporations; they are therefore recognised as institutional units and market producers. Thus, in national accounts one aims at reflecting the economic nature of the transactions between quasi-corporations and their government owners. Due to their similar behaviour, it is appropriate to bring the treatment of public quasi-corporations as close as possible to the treatment of other public corporations.
- 8. In order for a public quasi-corporation to be recognised in national accounts, government must allow the management of the entity considerable discretion with respect to the management of the production process and the use of own funds as defined in ESA 2010 paragraph 7.07; for the decision-making autonomy criteria to be fulfilled (ESA 2010 paragraph 2.12). Public quasi-corporations must be able to maintain their own working balances and business credit and be able to finance some or all of their capital formation out of their own savings, reserves or borrowing. The ability to distinguish flows of income and capital between quasi-corporations and government implies that their operating and financing activities, in practice, should be fully distinguished in finance statistics from government revenue, despite the fact that they are not separate legal entities. The net operating surplus of a public quasi-corporation is not a component of government revenue, and the accounts for government record only the flows of income and capital between the quasi-corporation and government. If the entities cannot be separated in these respects from their government owners, the entities cannot be treated as quasi-corporations.
- 9. The zero net worth convention for quasi-corporations (i.e., that the value of owner's equity is assumed to be equal to net assets of the quasi-corporation in ESA 2010 paragraph 7.09) has sometimes been emphasised as a conceptual rationale for determining the recording of transactions between governments and their quasi-corporations (as transactions in equity). However, the fact that quasi-corporations' net worth is zero in practice does not by itself justify treating transactions as financial rather than non-financial. This is because capital injections are generally net worth neutral for beneficiaries, as the valuation of their equity liability generally increases by the amount received (ESA 2010 paragraph 20.200). For example, the equity of unquoted public corporations may routinely be valued as the net assets, but this would not preclude applying the capital injection test. In these cases, recording capital injections as non-financial transactions entails an entry in the revaluation account. The recording of transactions between governments and their quasi-corporations should reflect the economic nature of the transaction, irrespective of the valuation method used for equity.
- 10. When government payments to public corporations and public quasi-corporations are intended to cover losses, accumulated or foreseeable, these should be treated as capital transfers in accordance to ESA 2010 paragraph 4.165 (b) as further elaborated in chapter 3.2 Capital injections in public corporations. When regular government transfers are conducted in favour of public quasi-corporations running persistent operating deficits, subsidies should be recorded as other subsidies on products (D.319) in accordance to ESA 2010 paragraphs 4.61 and 4.35 (c).

11. When governments conduct debt cancellations or debt assumptions benefiting their quasi-corporations, the transactions are by convention recorded as financial transactions, by exception to the general recording applicable to corporations (capital transfer), according to ESA 2010 paragraph 4.165 (f), unless this is to cover losses, in which case ESA 2010 paragraph 4.165 (b) prevails, as indicated in ESA 2010 paragraph 5.37. ESA 2010 paragraph 4.165 (b) is applicable to debt cancellations/assumptions as well as to cash transfers because the means to recapitalise entities, in cash or in the form of other financial assets/liabilities, should generally not change the accounting recording of the transaction in question.
12. When government provides funds to a quasi-corporation in order to acquire fixed assets, these are recorded as investment grants (D.92), according to ESA 2010 paragraph 4.157, which does not make a difference between corporations and public corporations. This is also explicitly stated in ESA 2010 paragraph 20.42, which reads: *In particular, investment grants are recorded as capital transfers*. This classification is independent of the financial situation of the quasi-corporation, profitable or loss making, but is based on the objective of the payment. An investment grant is the transfer of cash (in some rather exceptional cases in kind under the form of an existing asset), in order to acquire a fixed asset (purchase or produce own-account capital formation), or to undertake a major improvement in it. The type of asset is defined by the grantor and, generally, the beneficiary must comply with precise requirements (main features of the asset, its use, time of realisation, etc.); otherwise, it may be obliged to return the funds. It does not matter whether this transfer is undertaken by the unit owning the quasi-corporation (from which it has been separated in national accounts, although without independent legal status) or by another government unit, for instance in the context of specific investment programmes set up by this unit (as an illustrative case: local quasi-corporation and central government). Such transfer may be granted directly by a government or through development or promotional banks on behalf of government (rerouted). Moreover, it does not matter whether the investment grant takes place in the context of a general scheme, covering public or private entities, or if it is designed specifically for public entities engaged in activities government intends to support/develop.
13. In this context, an investment grant is quite different from the allocation of funds by the owner of the quasi-corporation without any precise reference to a given type of asset. The quasi-corporation may use the funds under various forms (for instance for acquiring shares) and may define itself the investment programme (for instance, in the case of quasi-corporation engaged in construction of social housing). In this case, the recording in national accounts follows the normal rule, based on the profitable or not position (under an anticipation approach) of the quasi-corporation (equity AF.519 or capital transfer D.99). It may happen that not all the information related to the provision of funds is available for statisticians. In this case, it is recommended that, if the quasi-corporation usually shows capital formation and not almost exclusively the delivery of services, to record the provisions of funds as investment grant (D.92).

3.3.4. Accounting examples

Example 1

A government carries out an injection in cash of 100 into a quasi-corporation in order to finance a fixed asset.⁽¹⁶³⁾

General government				Quasi-corporation			
Opening balance sheet							
A		L		A		L	
AF.2	200			AN.1	1 000	AF.4	100
AF.5	950	B.90	1 150	AF.2	50	AF.5	950
						B.90	0

⁽¹⁶³⁾ It does not matter whether the corporation is loss-making or profitable in order to record the capital injection as an investment grant (D.92).

Non-financial account							
U/ΔA		R/ΔL	U/ΔA		R/ΔL		
B.9	-100	D.92	-100	D.1	100		
				P.2	50		
				P.51g	100		
				B.9	50		
Financial account							
ΔA		ΔL	ΔA		ΔL		
F.2	-100		F.2	50			
F.5	0						
		B.9F	-100		B.9F	50	
Revaluation accounts (K.7)							
ΔA		ΔL	ΔA		ΔL		
AF.5	50				AF.5	50	
		B.10.3	50		B.10.3	-50	
Closing balance sheet							
A		L	A		L		
AF.2	100		AN.1	1 100	AF.4	100	
AF.5	1 000	B.90	1 100	AF.2	100	AF.5	1 000
					B.90	0	

Example 2

A government carries out an injection in cash of 100, in period 2, to a profit-making quasi-corporation, which would have freedom as far as the use of the funds is concerned (not obliged to acquire a given fixed asset defined by the fund provider).

General government				Quasi-corporation			
Opening balance sheet							
A		L		A		L	
AF.2	200			AN.1	1 000	AF.4	100
AF.5	1 000	B.90	1 200	AF.2	100	AF.5	1 000
						B.90	0
Non-financial account							
U/ΔA		R/ΔL		U/ΔA		R/ΔL	
		D.9	0	D.1	100	P.1	200
				P.2	80	D.9	0
B.9	0			B.9	20		

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	-100		F.2	120	
F.5	100				F.5 100
		B.9F 0			B.9F 20

Revaluation accounts (K.7)

ΔA		ΔL	ΔA		ΔL
AF.5	20				AF.5 20
		B.10.3 20			B.10.3 -20

Closing balance sheet

A		L	A		L
AF.2	100		AN.1	1 000	AF.4 100
AF.5	1 120	B.90 1 220	AF.2	220	AF.5 1 120
					B.90 0

3.4. Capital injections in kind

3.4.1. Background

1. Sometimes governments transfer fixed assets (such as buildings), and/or non-produced non-financial assets (such as land), to a public or private corporation that already exists or has been created for that purpose of holding such assets. The capital injection does not take the usual form of a flow of financial assets (in most cases cash, AF.2), but instead a flow of non-financial assets. This is done to allow the enterprise to use these assets in the production process, usually because the enterprise is assumed to be in a better position than the government to operate this economic activity.
2. In some cases, the government expects to receive some direct benefits from the transfer of the asset, in the form of property income streams (dividends, for instance) or an increase in the economic value of the corporation. In other cases, the government is satisfied that there are sufficient economic and social benefits for the nation as a whole to justify the government's loss of an asset. Such transfer may also take the form, in some countries, of 'public utility concessions' in which a public infrastructure, under a time-limited contract (but with a rather long maturity) is managed by a 'concessionaire' which may be in some cases a public corporation but is more frequently of a private nature (see chapter 6.4 Public-private Partnerships (PPPs)). As a result, the rules to be followed may also apply to transactions with private corporations.

3.4.2. Treatment in national accounts

3.4.2.1. NO EXPECTATIONS OF RETURN

3. A straightforward transfer of a non-financial asset, with no other rights or obligations being established, nor new units being created, is a 'gift' made by government to the corporation, and thus is to be recorded as a non-financial transaction.
4. In this context, the transfer of the non-financial assets is an investment grant in kind (D.92) made by the government, counterbalanced by a decrease in its gross fixed capital formation (P.51g), and/or NP, if any land is involved (ESA 2010 paragraph 20.203).
5. The result of recording two flows of an equal amount in non-financial account is that there is no impact on net lending/borrowing (B.9).
6. There is an increase in the corporation's net worth due to the capital transfer (investment grant), and symmetrically a decrease in the government's net worth. Depending on the method used in national accounts to value the government's equity in the corporation, it might be necessary to assume that the value of the equity of general government in the public enterprise reflects the increase in net worth of the latter. If so, the transformation in the enterprise's account of the positive net worth (B.90) into equity capital (F.5) may be described via a holding gain (K.7) in the revaluation account.

3.4.2.2. EXPECTATION OF HIGHER RETURN

7. Governments may transfer non-financial assets to a public corporation in the expectation of receiving a higher economic return from the management by the corporation than by directly exploiting the asset itself, because of expected better efficiency. In addition, the transfer may be part of a package of events that changes some aspect of the relationship between government and the corporation (for instance, through new obligations, rights and claims) or creates new units.
8. This situation can be regarded as the exchange of a non-financial asset for a financial one (government's equity in the public corporation). No transactions need to be recorded like in the case described above. Instead, the asset provided should enter the balance sheet of the corporation (and leave the government balance sheet) via the other changes in the volume assets account (K.61), see ESA 2010 paragraph 20.203 and ESA 2010 paragraph 6.19.
9. In this case, as in the previous one, there is no impact on the net lending/borrowing (B.9). There is no impact on net worth either, since two flows of an equal amount are recorded which balance in the other changes in assets accounts.

3.4.3. Rationale of the treatment

3.4.3.1. FOR TREATMENT AS INVESTMENT GRANT

10. **ESA 2010 paragraph 1.70:** *The system records all transactions in monetary terms. The values to be recorded for non-monetary transactions must therefore be measured indirectly or otherwise estimated.*
11. **ESA 2010 paragraph 4.145:** *Capital transfers require the acquisition or disposal of an asset, or assets, by at least one of the parties to the transaction. Whether made in cash or in kind, they result in a commensurate change in the financial, or non-financial, assets shown in the balance sheets of one or both parties to the transaction.*
12. **ESA 2010 paragraph 4.146:** *A capital transfer in kind consists of the transfer of ownership of an asset (other than inventories and cash), or the cancellation of a liability by a creditor, without any counterpart being received in return.*
13. **ESA 2010 paragraph 4.153:** *Investment grants in kind consist of transfers of transport equipment, machinery and other equipment by governments to other resident or non-resident units and also the direct provision of buildings or other structures for resident or non-resident units.*
14. The paragraphs above show that recording the gift of a fixed asset as a capital transfer in kind is valid within ESA 2010 (another way to view it, from a conceptual point of view and equivalent in terms of accounting impact, would consist in considering the capital transfer as an imputed flow of funds, then used by the corporation to buy the asset from government).

3.4.3.2. FOR TREATMENT IN OTHER FLOW ACCOUNTS

15. Restructuring assets and liabilities via a significant transfer of assets are different from transactions in the usual meaning of this word, and, in any case, different from a simple grant of an asset.
16. **ESA 2010 paragraph 6.20:** *When a corporation is legally split up into two or more institutional units, the appearance of financial assets and liabilities is recorded as changes in sector classification and structure.*
17. **ESA 2010 paragraph 6.19:** *Changes in structure of institutional units cover appearance and disappearance of certain financial assets and liabilities arising from corporate restructuring.*
18. Changes in sector classification and institutional structure (K.61) seem also to apply to non-financial assets. Changes in structure is assumed to include significant changes in the balance sheet of unit when they coincide with other changes such as the functions of the unit.

3.4.3.3. COMMENT ON RECORDING THE EVENT AS AN INJECTION OF OTHER EQUITY IN F.5.

19. To record an injection of other equity through the financial account is not appropriate. The use of F.519 (other equity = equity not evidenced by shares) in national accounts is restricted to a limited number of well-defined cases. Such treatment would artificially improve the net lending/borrowing (B.9) of government (through the counterpart transaction in P.51g or NP).
20. Moreover, even if it would not be incorrect from a pure accounting point of view, this would have no economic content. In fact, when a unit has a net borrowing (deficit), this means that there was a gap of resources which had to be financed possibly by a reduction in its assets. In the present situation, the appearance of other equity has a kind of automaticity that is more appropriately recorded in the other changes in the volume of assets accounts.

3.4.4. Accounting examples

In the following example, it is assumed that government gives a building worth 100 to a public corporation. In the first case it is a pure gift; there are no associated events nor does the government expect increased property income arising from the transfer of the asset. In the second case the transfer of the asset is part of a reorganisation of the delivery of some services involving the corporation.

Recording a capital transfer and capital formation

In the following example, the capital transfer is assumed to result, in the first instance, in an increase of the public enterprise net worth. Subsequently, it would be possible to assume that this increase in net worth is 'absorbed' by an equivalent increase in the equity of government in the public enterprise, via the revaluation account: this second step is not described here. Moreover, in the closing balance sheet, only the change in net worth is shown.

General government				Public enterprise			
Opening balance sheet							
A		L		A		L	
AN.11	100						
Capital account							
ΔA		ΔL		ΔA		ΔL	
P.51g	-100	D.92	-100	P.51g	100	D.92	100
B.9	0	B.101	-100	B.9	0	B.101	100
Closing balance sheet							
A		L		A		L	
AN.11	0			AN.11	100		
		B.90	-100			B.90	100

Recording a change in classification and structure

General government				Public enterprise			
Opening balance sheet							
A		L		A		L	
AN.11	100						
Other changes in the volume of assets account							
ΔA		ΔL		ΔA		ΔL	
AF.5 (K.12.1)	100			AN.11 (K.12.1)	100	AF.5 (K.12.1)	100
AN.11 (K.12.1)	-100	B.102	0			B.102	0
Closing balance sheet							
A		L		A		L	
AF.5	100			AN.11	100	AF.5	100
AN.11	0	B.90	0			B.90	0

3.5. Capital injections into a foreign direct investment

3.5.1. Background

1. Sometimes governments carry out capital injections in corporations that are resident in foreign countries. If the equity stake is sufficiently large, it will qualify with the definition of Foreign Direct Investment (FDI). FDI is the category of international investment made by an entity (a direct investor) when the investor holds at least 10% of the equity capital or voting power in a non-resident enterprise.
2. ESA 2010 paragraph 4.65 provides a definition of FDI enterprises that comprises subsidiaries, associates or branches of a resident corporation depending on the equity stake or voting powers expressed in percentage terms. This definition does not necessarily entail exercising a controlling interest although the direct investor can potentially exert some influence on the management of these corporations. Contrary to cross-border portfolio investments (where the equity stake is less than 10%), direct investments are expected to provide steady financing over a longer term with the objective of maximising the production and profits of the corporations over time.
3. The specific status of FDI enterprises presumably does not fundamentally change the objectives of government in making capital injections. Government may be acting for the sole purpose of investing and obtaining a sufficient rate of return, as a private investor (acting on a commercial basis) would, or for other reasons related to its main functions. To this end, governments may act in concert with private partners or other governments to invest in enterprises.

3.5.2. Treatment in the national accounts

4. ESA 2010 paragraph 4.66 explains that *retained earnings are treated as if they were distributed and remitted to foreign direct investors in proportion to their ownership of the equity of the enterprise and then reinvested by them by means of additions to equity in the financial account*. Therefore, the recording of reinvested earnings (D.43, which may be positive or negative) implies the recording of F.5 transactions as if government is acquiring (/disposing) equity value in proportion to the retained earnings.
5. In most cases, capital injections into FDI enterprises should be recorded as financial transactions.
6. In those situations when an FDI enterprise receives capital injections from government to cover holding losses and/or exceptional write-offs that are not captured in the reinvested earnings, a capital injection test seems to be applicable and a non-financial transaction (capital transfer D.9) may be recorded at the time of the injection for the appropriate amount.

3.5.3. Rationale of the treatment

7. In national accounts, the capital injection test is designed to avoid that losses of public corporations covered by governments fail to be properly captured in the government deficit. However, the capital injection test is generally not relevant in the case of FDI. Indeed, the ESA recording approach to FDI involves apportioning the derived/spontaneous net saving (B.8n)⁽¹⁶⁴⁾ of the entity to its FDI investors according to their percentage ownership. This is done through the category reinvested earnings (D.43) and means that the appropriate 'profit' or 'loss' value of the entity applicable to government's investment is recorded in general government net lending/net borrowing (B.9). Reinvested earnings on foreign direct investment are recorded when they are earned (ESA 2010 paragraph 4.67). As a result, the typical case of classifying capital injections that cover operating losses (past or future) into non-financial or financial transactions is not applicable to FDI enterprises, since there has already been, or there will be, an impact on general government B.9.
8. The issue that needs to be addressed is cases where the recording of a FDI capital injection should be a non-financial transaction when covering non-operating losses.

⁽¹⁶⁴⁾ That is the B.8 before recording the D.43, i.e., the B.8 that would be observed in the absence of D.43.

3.6. Dividends, super-dividends, interim dividends

3.6.1. Background

1. Payments made by public corporations to governments as shareholders are usually called 'dividends' with reference to commercial law and business accounting.⁽¹⁶⁵⁾ In most cases, these interim payments are also recorded as property income (dividends, D.42) in the ESA framework. The question addressed in this chapter is if there are payments made by public corporations to governments which, though they might qualify as dividends with reference to business accounting, require a different treatment in the ESA framework, for macro-economic statistics purposes, i.e., whether they need to be recorded differently from property income. The following rules normally do not apply to dividend payments by private corporations where government is a minority shareholder, unless there is evidence that government had a decisive influence on the allocation of profits and their distribution.⁽¹⁶⁶⁾
2. Two elements may notably challenge the nature of the transaction and therefore the ESA classification of the payment: the size of the payment, in relation with the accrued profit of the corporation, and the timing of the payment, and sometimes a combination of the two.
3. Dividends are paid and recorded in a corporation's accounts when decided by the owners of the corporation (normally proposed by the Board and subject to approval by the majority of the general assembly of shareholders), usually based on the observed profit of an accounting year. This decision is commonly made in the year after the accounting year of the realised profit, when the accounts for this year are approved. However, it is not uncommon, notably for large corporations preparing semi-annual or quarterly accounts (or publishing regular profit warnings), that interim dividends are paid during the accounting year, before the final yearly earnings are known. In commercial company accounting, this is a frequent practice. Some public corporations (including central banks) in the EU have a similar practice. ESA 2010 explicitly addresses the case of interim dividends.
4. Another issue is the size of the payment. According to the definition of income in national accounts, a large payment may not result from the profit of the year realised by the corporation, but from a withdrawal of previously accumulated reserves, included in its own funds. Payments made to the government, whether made to the government after the annual profit of the corporation is known, or before (interim payments), must be closely analysed for the relevant recording of transactions in national accounts.

3.6.2. Treatment in national accounts

3.6.2.1. DIVIDENDS AND SUPER-DIVIDENDS: DEFINITIONS

5. Dividends: ESA 2010 paragraph 4.53: *Dividends (D.421) are a form of property income to which owners of shares (AF.5) become entitled as a result of for instance placing funds at the disposal of corporations.*
6. In the ESA 2010 framework, the following principles are established:
 - The resource available for distribution by a unit (a corporation) as dividends (...) is the distributable income of the unit, which is equal to the entrepreneurial income (B.4) plus all current transfers receivable less all current transfers payable and less the adjustment for the change in pension entitlements (ESA 2010 paragraph 4.55).
 - Following this logic, the resources from which dividends have to be paid should neither include the proceeds of sales of assets nor holding gains (...) which are not part of the distributable income.

⁽¹⁶⁵⁾ Under ESA 2010 the notion of dividends covers more than what is strictly called dividends in business accounting (see ESA 2010 paragraph 4.54).

⁽¹⁶⁶⁾ Note that in some cases, government may have such control in the absence of a majority of shares (multiple voting rights, special arrangements). Here, the important issue is whether government has a predominant role over the other investors on any decision related to profits. There are cases where government holds no ordinary shares in an entity but is entitled to decide to take most of the dividends.

- A large payment out of reserves, reducing the own funds of a corporation, is not a distribution of income. Such a payment is in substance a capital withdrawal, to be recorded as a transaction in shares and other equity.
 - In practice⁽¹⁶⁷⁾, the operating profit or surplus (including the net interest charge in order to be consistent with the 'B.4' concept in ESA 2010 as defined in paragraphs 8.26–8.27) of the corporation could be used as a proxy for the entrepreneurial income⁽¹⁶⁸⁾.
7. Corporations may smooth the amounts of dividends they pay from year to year. In one year, they may put part of the profit into a dedicated reserve for distribution and use it in the following year, for the purpose of providing the shareholders with something closer to a regular return on their investments (dividend smoothing). It is conceptually acceptable within the national accounts framework to consider such smoothed payments as dividends, since they effectively come from distributable income (provided that it was clearly approved by the General Assembly of the corporation the previous year and recorded in an identified reserve set up exclusively for this purpose). However, large payments exceeding any such special reserve set up for short term adjustment, or evidently made from reserves accumulated from more than one year earlier is considered in substance to be a withdrawal of capital, to be recorded in national accounts as a financial transaction in shares and other equity.
 8. Super-dividends are different in nature from dividends, as they are paid out of accumulated reserves, accounted for in the own funds of the corporation. Any withdrawal from own funds is to be recorded as a withdrawal of equity (F.5), at least for the amount in excess of the distributable income of the accounting year.
 9. While ESA 2010 paragraph 4.55 calls for a plausibility check for dividends on oversized distributions compared to income⁽¹⁶⁹⁾, there is little point in doing this for distributions made by public corporations. This is due to the specific provisions for public corporations that are included in ESA 2010 paragraph 4.56, which define super-dividends as large and irregular payments or payments that exceed the income of the relevant accounting period. ESA 2010 paragraph 4.55 refers to the concept of 'distributable income' for private corporations, whereas ESA 2010 paragraph 4.56 refers to the concept of 'entrepreneurial income' for public corporations. It is likely that these were intended to cover the same principle, as well as practice, rather than to make a material distinction between public and private corporations in this respect. For the sake of clarity, we thus use the term distributable/entrepreneurial income hereinafter to refer to this concept. Compilers assessing dividends received by government should consider the necessary adjustments based on the income used.
 10. The 'super-dividend test', as described in ESA 2010 paragraphs 20.206–20.207, must be applied to all sizable payments that significantly differ from the usual amounts of dividends and/or represent an abnormally high dividend pay-out ratio (which means that the ratio of dividends to the average distributable income is out of proportion over recent past). Only the part of the payment equivalent to the distributable/entrepreneurial income can be recorded as property income. Any amount in excess is to be recorded as a transaction in equity (F.5). This recommendation applies to all corporations, including the central bank, although for this specific case, ESA 2010 paragraph 20.217 replaces the distributable/entrepreneurial income by the net operating income.
 11. In the case of payments made by a holding entity⁽¹⁷⁰⁾, it might be difficult to determine the distributable/entrepreneurial income of this unit as the income declared in business accounts may be largely composed by dividends received from its subsidiaries. These dividends should not be considered operating income of the parent/holding entity just because of their form (dividends) as the subsidiaries may have paid dividends in excess of their own distributable/entrepreneurial income (for example due to revaluations or disposals of assets or business). This issue is applicable to any company which has subsidiaries. This demands an extensive analysis of individual financial statements of the units included in the group which may be time consuming and difficult to quantify. A pragmatic solution for compilers is

⁽¹⁶⁷⁾ ESA 2010 paragraph 20.206 specifies that in the absence of a measure of the entrepreneurial income, the operating profit in business accounts is used as a proxy. Generally, both measures are very close.

⁽¹⁶⁸⁾ Income statements may strongly differ when established on a national or proper to a corporation basis. In all cases it must refer to the net result of current activity ('continuing' under IFRS), before distribution and income tax, excluding any exceptional transactions generating holding gains or losses.

⁽¹⁶⁹⁾ 2008 SNA paragraph 7.131 introduced the concept of the plausibility check.

⁽¹⁷⁰⁾ ESA 2010 paragraph 2.14 defines two types of units that are often referred to as holding entities in business terms: the 'head office', a unit which 'exercises managerial control over its subsidiaries', and the 'holding company', which 'holds the assets (owning controlling-levels of equity) of a group of subsidiary corporations and whose principal activity is owning the group'.

thus, to use consolidated accounts, which should facilitate the detection of (material) non-ordinary transactions by subsidiaries. Compilers following this approach should rely on audited/consolidated accounts and should apply it consistently across time to all payments made by the relevant holding companies.

12. When the holding entity is classified inside government, its distributions to shareholders are generally recognised as D.73 (current transfers within general government), unless (in exceptional circumstances) the equity stake in the holding is explicitly shown in the financial accounts (rather than eliminated). The latter can be particularly the case when the holding entity has some shareholders classified outside government.
13. A possible form of distribution is through share buy-back programmes by which the public corporation acquires its own shares to reduce the number of outstanding shares. Share buyback programmes are designed to have equal effects economically than dividends. Substance over form (ESA 2010 paragraph 20.164) prescribes that two economically similar transactions should be recorded in the same manner. However, ESA 2010 paragraph 5.151 indicates that '[a] share buyback is recorded as a financial transaction, providing cash to the existing shareholders in exchange for a part of the corporation's outstanding equity. That is, cash is exchanged for a reduction in the number of shares outstanding.', which would imply recording dividends and share buy-backs differently.

3.6.2.2. TIME OF RECORDING

14. The present guidance in the ESA 2010 is the following:

- For dividends (D.421) associated with quoted shares, ESA 2010 paragraph 4.57 specifies *The time of recording of dividends is the point in time at which the share price starts to be quoted on an ex-dividend basis and not at a price that includes the dividend*. In practice it is very close to the time they are effectively paid to the shareholders. For unquoted shares it is the time dividend are to be paid.⁽¹⁷¹⁾ Thus, it is clearly not the time at which the final decision for distribution is taken/approved⁽¹⁷²⁾ and is in line with principle of ex-dividend valuation of quoted shares.
- For withdrawal from the income of quasi-corporations (D.422), ESA 2010 paragraph 4.62 defines the time of recording as 'when they are made by the owners'. They are therefore recorded on a cash basis.

3.6.2.3. THE CASE OF INTERIM DIVIDENDS

15. As mentioned above, an 'interim dividend' refers to the case where the corporation makes a payment to the shareholder during the accounting year, before the final annual result of the corporation is known. They are described in ESA 2010 paragraph 20.207.
16. As a general rule, in line with super-dividends, interim payments made to the government by public corporations, including the central bank, need to be assessed on a case-by-case basis to determine whether they are recorded as property income or financial advances.
17. An interim dividend payment is recorded as property income (D.42) in national accounts if two conditions are fulfilled. First, the amount of dividend paid is based on short-period accounts available to the public, covering at least two quarters (thus, there must be evidence that the distributable/entrepreneurial income (or operating surplus in business accounting as a proxy) would be able to fund the dividends). Second, the interim dividend should be consistent with the level of distribution of dividends observed in previous years, taking into account the trend in profitability of the company.
18. If both conditions are not met, the interim payment is to be recorded as a financial advance (for government, another accounts payable (F.8)). The whole dividend would then be recorded as property income (D.42) in national accounts — being subject to the 'super-dividend test' — only when the final dividend is transferred to the shareholders, which takes place only after the annual results of the corporation are known with certainty (in the following year).

⁽¹⁷¹⁾ Contrarily to the case of debt securities where the yield is contractually due from the issuer, dividends are not accrued as such, as they depend on profits and distributive policy that are uncertain or not definitive until the accounts of the year are established, audited and approved.

⁽¹⁷²⁾ There is generally a delay between the payment of a dividend and the date at which its distribution was decided. For quoted shares, the market price normally includes the value of the dividend until it is paid. For unquoted shares, the only available information would be the time of the payment to government.

3.6.2.4. RULES TO RECORD AND PARTITION THE TRANSACTION

19. In order to decide how to partition an interim dividend between the dividend and financial components, the amount distributed is compared to the distributable/entrepreneurial income (in practice the operating surplus) for the period from the start of the accounting year to when it was declared. If this income is higher than the amount distributed, the entire amount is recorded as a dividend. Any excess of the distribution over the distributable/entrepreneurial income which has been already observed in the published accounts⁽¹⁷³⁾ is recorded as another accounts payable of government, awaiting the final annual result. This flow at the final assessment will be converted either as dividend, or as withdrawal of equity in case of super-dividend.
20. The general approach for partitioning a final dividend or super-dividend between dividend and financial components is to compare the distributable/entrepreneurial income (in practice the operating surplus) for the relevant period less any amounts recorded as dividends relating to interim dividends paid since the last annual dividend was paid.
21. If the distributable/entrepreneurial income is higher than the amount distributed, the entire amount is recorded as a dividend. Any excess of the distribution over the associated distributable/entrepreneurial income is recorded as withdrawal of equity. As a final dividend usually relates to income earned in the corporation's accounting year prior to when the payment is made, this is the relevant period for the distributable/entrepreneurial income.

3.6.3. Rationale of the treatment

22. The rationale of the recording of distributions as dividends is that they must derive from the distributable/entrepreneurial income of the corporation, accruing in the period to which the dividend relates. In such a case, there is a close link between the dividend payment and the accrued (current) income of the corporation.
23. The rationale for recording super-dividends as financial transactions is to consider that super-dividends are different in nature from dividends: whilst dividends correspond to a distribution of income, super-dividends correspond to a distribution of the corporation's wealth, reducing the own funds of the corporation. In the case of large payments out of accumulated reserves, there is no link with the accrued income of the corporation during the relevant accounting year. Only the distributable/entrepreneurial income can be distributed as property income (D.42) in national accounts.
24. The rationale behind the possibility to record an interim dividend as property income is that, under certain conditions, based on a few criteria (the income already observed, the usual distribution ratio and the trend in growth of profits the corporation), the interim payment may be considered a transfer of accrued income. In this case, the recording of a property income, before the annual results are known, does not contradict the basic statistical and accounting rules.
25. When the criteria and conditions to record a dividend at the time of interim payment are not met, this payment is recorded as a financial advance, with reference to ESA 2010 paragraph 5.240: other accounts receivable/payable, excluding trade credits and advances, (F.89) are 'financial claims arising from timing differences between distributive transactions... and the corresponding payments'. Dividends are an example provided in ESA 2010 paragraph 5.241. The rationale to record a financial advance is that, before knowing with certainty the annual result and the distributable/entrepreneurial income, there is a risk that the payment may turn out to be higher than the distributable/entrepreneurial income, thus including an element of super-dividend.

⁽¹⁷³⁾ There is generally a delay between the payment of a dividend and the date at which its distribution was decided. For quoted shares, the market price normally includes the value of the dividend until it is paid. For unquoted shares, the only available information would be the time of the payment to government.

3.7. Impact on government accounts of transfer of pension obligations

3.7.1. Background

1. This chapter deals with the recording of government receipts (frequently referred to as 'lump sum') from a public corporation, and possibly a private corporation, in the context of a transfer of pension obligations to government.

3.7.1.1. EMPLOYERS' PENSION SCHEMES⁽¹⁷⁴⁾

2. Institutional units, including public corporations and government, may set up specific pension schemes for their own staff. ESA 2010 paragraph 4.89 (b) describes these schemes as a second type of social insurance schemes aside from social security schemes (being the first type): "*The second type consists of other employment related schemes. These schemes derive from an employer-employee relationship in the provision of pension and possibly other entitlements that are part of the conditions of employment and where **responsibility** for the provision of benefits does not devolve to general government under social security provisions.*"(bold added) Under ESA 2010, the entity that is assigned with such responsibility is designated as 'pension manager' (also known as 'sponsor'), by opposition to the role of a 'pension administrator', acting only on behalf of the former.
3. Such schemes may be organised separately from the parent unit (referred to as 'autonomous' pension schemes in ESA 2010 paragraph 2.106) in which cases, they are seen as financial intermediates classified in the pension funds subsector (S.129) or even in the subsector insurance corporations (S.128). Alternatively, they may be organised directly by the employer(s) (institutional unit), under the form of a segregated reserve, or, through accounting conventions that may require it (/them) to recognise pension entitlements of past and present employees in their company accounts ('non-autonomous' pension funds). These non-autonomous pension funds are not considered to be separate institutional units in national accounts, and they are recorded within the employers' institutional units.
4. Other employment related pension schemes are not treated in national accounts as social security schemes. Therefore, the flows of contributions (by the employer and/or the employees) and benefits, as well as associated stocks, are allocated to the pension funds' subsector (S.12) for autonomous funds, or to the sector in which the employer organising/managing the scheme is classified for non-autonomous schemes.
5. Other employment related pension schemes can either be of a defined contribution type or of a defined benefit type. For defined contribution schemes, the size of the pension liability is solely determined by the assets held by the scheme. For this reason, a defined contribution scheme (autonomous or not) is never underfunded or overfunded. In contrast, an autonomous defined benefit scheme may be underfunded or overfunded. A non-autonomous defined benefit scheme may even be completely unfunded.
6. A non-autonomous defined benefit scheme is funded if the employer builds up a segregated reserve/assets in its own balance sheet — whether because of legal obligations, specific regulations, contractual clauses, accounting standards or only on a voluntary basis — that might or might not reflect the pension obligations (on an actuarial basis) against the beneficiaries pension entitlements. The pension entitlements accrue independently from the actual reserves/assets (in national accounts). While the risk of a non-autonomous defined benefit scheme is seen as if with the employer, which has to top up the segregated reserve/assets to keep pace with the pension entitlement, the beneficiaries are also potentially at risk if the employer is unable to do so. This reserve, with associated earmarked assets, should ensure an important protection of the pension rights of the beneficiaries, notably in the cases of merger or bankruptcy of the employer (it is considered as owned by the beneficiaries). It might be that these earmarked assets are smaller than the pension obligation. In this case, the defined benefit scheme is underfunded.

⁽¹⁷⁴⁾ For more detail, see chapter 1.3 in this Manual and ESA 2010 chapter 17 (Social insurance including pensions).

7. An other employment related defined benefit scheme is unfunded when the scheme does not hold assets/reserves to specifically meet the pension obligations. Such schemes are also often labelled in ESA 2010 as financed on a 'pay-as-you-go' basis (PAYG). In a PAYG scheme, the pension benefits due in a year are financed from the accrued contributions of the same year, with possible additional payments. In business accounting in some cases, at least for corporations that run a defined benefit scheme for their employees (notably those quoted in a stock market) a commitment must be recognised, e.g., a provision, as the occurrence of the payment is deemed to be certain although for an estimated value. This is the case for IFRS and IPSAS. In other accounting standards, it may be only additional information provided in the annual report of the corporation. ESA 2010 recognises in the core accounts the pension liabilities (AF.63) for other employment related pension schemes for the corporations sectors (S.11 and S.12).
8. ESA 2010 distinguishes between the 'pension administrator', who acts as the employer's agent in undertaking the day-to-day administration of the pension scheme, as well as holds the schemes assets (ESA 2010 paragraph 17.74) and the 'pension manager' who bears the ultimate responsibility for the pension entitlements (ESA 2010 paragraph 17.75).
9. If the autonomous⁽¹⁷⁵⁾ defined benefit scheme is underfunded, a *claim of pension funds on pension managers* (AF.64) is recorded, covering the gap between the present value of the pension entitlements (AF.63) that are liabilities of the administrator and the earmarked assets (if the scheme is non-autonomous, the manager and the administrator constitute one unique institutional unit). In the case of a defined benefit scheme (where pensions entitlements are determined by an actuarial formula, notably with a link to salaries), this AF.63 liability is valued as the present value of the outstanding pension obligations of the employer (pension entitlements of the employees).
10. In the case of a defined contribution scheme, the outstanding pension obligations are per definition equal to the market value of the investments, as the manager in this case does not take any risk on the pension obligations.
11. There is no recording of an AF.63 liability for the employer-manager towards the households in the case of a separate pension administrator, as the liability is on the balance sheet of the administrator. Moreover, the net worth of the pension administrator of a pension scheme is always zero.

3.7.1.2. TRANSFER OF EMPLOYERS' PENSION OBLIGATIONS TO GOVERNMENT

12. As regards transfers of pension obligations to government, a typical case under discussion is a transfer from a public or private corporation's other employment related pension scheme.
13. For various reasons, government may take over pension obligations from employers or pension managers. Examples include plans for (total or partial) privatisations, new stock market quotation or when a corporation is in difficulty. Government, as the owner of public corporations (or in the context of a support to a private corporation), may wish to improve the financial situation of the corporation by 'cleaning' liabilities or other obligations from its balance sheet. For instance, in the case of a planned privatisation, investors may be reluctant to purchase the equity of a corporation encumbered with pension obligations, notably in case of under-funding (where the assets of the scheme have a lower value than its obligations and the employer has a commitment to bridge the gap). In the case of a private corporation, the reason may also be to improve the situation of the corporation but possibly also to enlarge the coverage of social security.

3.7.1.3. THE KEY ISSUE IN NATIONAL ACCOUNTS

14. At the time when government takes over the pension obligations, it receives a compensatory amount from the corporation/pension manager in the form of the assets transferred from the administrator (in case of an autonomous fund) and possibly additional payments. In the case of a non-autonomous fund the compensatory amount may be the segregated reserves/assets or/and may come in another form. This amount may be paid as a single 'lump sum' or in instalments over a given period of time. The amount may be in cash or under the form of other assets, such as securities. As it is frequent that funded pension schemes invest in government securities, the transfer to government of such assets would reduce the government debt, through consolidation. This amount received compensates

⁽¹⁷⁵⁾ The autonomous or non-autonomous nature of the scheme before the transfer has no relevance for the transactions to be recorded in the accounts of general government.

government for becoming responsible for servicing of pensions (both for retirees of current and ex-employees and future beneficiaries). In most cases, the conditions of the scheme will change when government takes it over.

15. One case is where the pension manager of a funded scheme changes to government and the scheme continues to be funded.
16. Another case is where the employees of the corporation will become subject to the 'normal' social security scheme obligations, based on a 'PAYG' system instead of the other employment related scheme they were part of before the transfer. This means that beneficiaries are moved from a funded scheme to an unfunded scheme. Analytically, one may consider that, in exchange of the lump sum, government takes over pension obligations that become part of an unfunded social security scheme (therefore with no AF.63 liability under ESA 2010) whatever the nature of the scheme in which these obligations were previously recognised.

3.7.2. Treatment in national accounts

17. When the value of the assets is equal to the value of the pension obligations, this transfer of the pension obligation is to be considered as a financial transaction with no impact on government net lending/borrowing (B.9), aside from the case of the transfer of non-financial assets, such as buildings⁽¹⁷⁶⁾. The transfer of the assets is counter-balanced by a liability. This liability is recorded as an AF.63 toward households when the scheme transferred is not classified or merged into social security. When the scheme transferred is classified or merged into social security, according to ESA 2010 paragraphs 20.273–20.275, this must be viewed as a financial advance (AF.89), deemed to reflect a "prepayment of social contributions" (although the AF.89 is later reduced by miscellaneous current transfers D.75 revenue of general government from households, and not by social contributions D.61).
18. It might happen, although rather exceptionally, that there might be evidence, based on some public information following consensus between experts and/or parliamentary debate, either that the net present pension obligations of a defined benefit scheme are actually under-estimated⁽¹⁷⁷⁾, or that government has not received enough assets in exchange for taking over pensions obligations, as valued according to the generally accepted actuarial calculation methods. In such cases, the value of the AF.89 or AF.63 liability should be adjusted accordingly and any difference between this amount of liabilities and the value of all assets, should be recorded as a capital transfer (D.99/F.89L or F.63L) with an immediate impact on government net lending/borrowing (B.9) at inception. It would be considered in this case that government has deliberately accepted, clearly in order to support the corporation, to enter in an unbalanced transaction.

3.7.2.1. CASE 1 — THE PENSION OBLIGATIONS ARE RECOGNISED IN GOVERNMENT ACCOUNTS AS AF.6 LIABILITY

19. This first case involves the transfer of the pension obligations to government, which places them in a scheme where the beneficiaries' entitlements are recognised in the core national accounts as an AF.6 liability in the accounts of government (which is considered as the new pension manager) either for the full value (AF.63) or for the net asset value (AF.64).
20. It is likely that government would in this case 1 not take over the tasks of pension administrator, and thus the pension liability would still be classified in S.129 or S.128⁽¹⁷⁸⁾. If the administrator is classified in S.129 or S.128, government has replaced the corporation as 'manager' but is not the 'administrator'. Prior to the change, the fund/administrator had a claim on the corporation/manager in case of insufficient funding of the scheme recorded under the instrument 'claims of pension funds on pension managers' (AF.64) in ESA 2010. The corporation's AF.64 liability is thus assumed by government. When the manager does not fully compensate government for this liability assumption, a capital transfer from government to the corporation is recorded for the difference, with F.64 as counterpart.

⁽¹⁷⁶⁾ In case non-financial assets are transferred, there will be an impact on government net lending/borrowing (B.9) through an increase in gross fixed capital formation at the moment of transfer, while the sale of such assets later on will reduce the deficit.

⁽¹⁷⁷⁾ This under-estimation should, however, go beyond the generally accepted margin of error (or approximate) for such actuarial calculations.

⁽¹⁷⁸⁾ According to 2008 SNA 11.107, for the amount of the transfer, the transactions in the financial accounts in pension entitlements (F.63) are not matched by transactions in the use of income accounts in adjustment for the change in pension entitlements (D.8) and hence solely reflected in the financial accounts.

21. If government does additionally assume the role of pension administrator, then the administrator's assets are recorded as being acquired by government and the liabilities towards households (AF.63) are recorded as being assumed by government, by way of transactions. A capital transfer is recorded for any difference between the value of the assets and liabilities taken on. In this case where government also becomes the pension administrator, there is no AF.64 liability.
22. All in all, the basic assumption is that the market value of the assets (cash, shares, debt securities and possibly also non-financial assets) transferred to government matches the value of the pension obligations (recorded as AF.63) transferred (at the time of transfer). This case is evidenced by the fact that there is zero AF.64 recognised in the system in case the pension manager and pension administrator are separate units. The transfer of pension obligations has in this case no impact on government net lending/borrowing (B.9).
23. However, if there is a difference between the market value of the financial assets and the value of the liability (which is not applicable to defined contributions schemes as mentioned above), a capital transfer (D.99) should be recorded for the difference at the time of the transfer, with an impact on net lending/borrowing (B.9), in order to show the decrease in government net worth due to the unbalanced transaction.

3.7.2.2. CASE 2 — THE PENSION OBLIGATIONS ARE NOT RECOGNISED IN GOVERNMENT ACCOUNTS AS AF.63 LIABILITY AFTER THE TRANSFER

24. The second case, which is more common, is the transfer of an other employment related pension schemes' obligations to an unfunded scheme under the responsibility of government, in general a social security scheme. The calculation of the obligations in the case of defined benefits (in present value terms) must be based on the various actuarial parameters observed at the exact time of the transfer and, in the case of defined contributions, on the value of the assets.
25. At the moment of transfer, the calculation of the pension obligations does not depend on possible future decisions by government changing some parameters used in the calculation, such as the discount rate.⁽¹⁷⁹⁾ Even if, shortly after the transfer, government would change some parameters (such as the level of pension to be paid or the required time of contributing), for instance by aligning them on those of the government scheme, this is considered to be an event independent from the original conditions under which the transfer took place.
26. The other employment related pension schemes' obligations are transformed just before the transfer of the lump sum and recorded only in the accounts of the corporations and households through other flow/change in classification (K.62) for the extinction of the AF.63 liability and the creation of the AF.89 liability. This does not impact government accounts. At the moment of the lump sum transfer of the assets by the other employment related pension scheme to government, the AF.89 changes counterparty via transactions to form a liability of government vis-à-vis households.
27. In general, it is assumed that the 'lump sum'⁽¹⁸⁰⁾ paid to government matches or will match the pension obligations taken on by government. No AF.63 liability is recorded in government's balance sheet but only an AF.89 liability, equal to the value of the assets transferred as a counterpart, with no impact at the time of the transfer on government net lending/borrowing (B.9).
28. In case the transferred assets are less than the net present value of the pension obligations, a capital transfer of government to the corporation is recorded as explained in paragraph 18.

3.7.2.3. THE RECORDING OF TRANSACTIONS AFTER THE TRANSFER

29. After the transfer, the management of the pension scheme by government (e.g., receiving social contributions and paying pension benefits, both recorded on an accrual basis), in general, should have relatively little impact on government net lending/net borrowing (B.9).
30. In case 2 (transfer without AF.63 recognition), the planned 'schedule for payments' is recorded as a reduction in the AF.89 liability, offset by an imputed D.759 revenue. This extinction of the AF.89 liability

⁽¹⁷⁹⁾ By definition, such a calculation over a very long period of time, as for pension entitlements which cover a significant number of decades, gives only a picture at a given point of time. It is quite certain that the future reality would be different for many reasons but such a net present value calculation is the only rational method to measure time equivalence of long term commitments.

⁽¹⁸⁰⁾ In case of payment of 'lump sum' by instalments, as previously mentioned, government will record in its assets a receivable together with the transferred financial assets.

is coupled with other miscellaneous transfers (D.759) that are fixed at the moment of the transfer. These fixed transactions (D.759/F.89) will start to deviate from the cash payments of pension benefits (D.6211/F.2) due to actuarial assumptions at time of transfer that are deviating from the actual pension payments. If a good actuarial estimate was made, these pension payments should roughly match the D.75 revenue over time and hence have little implicit impact⁽¹⁸¹⁾ on government net lending/borrowing (B.9) over time.

31. It would generally not be necessary to check whether the payment of pensions to former employees of the corporation would correspond exactly to what had been foreseen at the time of the transfer. It is very likely that government would actually pay either more or less pension benefits as compared with the expectation foreseen at the time of the transfer, which would have an impact on its net lending/borrowing (B.9). This would notably occur because some parameters turned out to be different from the assumptions at time of transfer⁽¹⁸²⁾. In this case, the imputed D.759 revenue that is fixed at inception for the life of the scheme would start to deviate from the actual D.6 payments due to differences from assumptions made at time of transfer of obligations.
32. The B.9 in subsequent accounting periods will also be impacted by the difference between the property income (and other income) on the transferred lump sum assets versus the imputed interest expenditure calculated on the AF.89 liability, using an appropriate discount rate fixed at inception.
33. Indeed, for time-equivalence purposes, as the liabilities are calculated in present value terms (expenditure in the future has a lower current value), it is necessary to reverse this situation by the time of the effective payment of the benefits, corresponding to the gradual unwinding of the discount (ESA 2010 paragraphs 17.68 and 17.137). For this reason, interest expenditure is imputed in the non-financial accounts of government, accruing on the AF.89 liability. In this regard, the rate of discount used for the estimation of the pension obligations at the time of their transfer to government should be used or, as second best, a government benchmark long-term interest rate. In making this imputation, the lump sum can be viewed as being invested in specifically earmarked assets (e.g., escrow account) from which the revenue would be used to increase the value of the 'pre-paid social contributions' (AF.89 liability). Generally, government is benefiting from the lump sum to reduce its borrowing needs in the year of the transfer or by buying back its own government debt. In this case, there will be a reduction in borrowing (reducing government debt and the servicing cost of the debt) conceptually equivalent to investments in assets.⁽¹⁸³⁾
34. The recording of D.759 for the depletion of the AF.89 assets is prescribed in ESA 2010 paragraph 20.275 and hence is not open for interpretation. Nonetheless, it should be noted that there is a consequence for the household accounts, notably for disposable income (B.6) compared to the situation before the transfer, because D.759 expenditure is now recorded in household accounts while social contributions and social benefits remain unchanged. The D.759 *de facto* takes the place of the D.8 that was previously recorded to balance the non-financial and the financial accounts of the households in the presence of F.63. In other words, D.8 was previously recorded depleting household saving (B.8), while the D.6221 also impacted positively disposable income (B.6). The recording of D.759 together with the benefit D.6211 means that the payment of pension benefits no longer impacts the disposable income of households after the transfer takes place.
35. In case 1 (transfer with AF.63 recognition), for defined benefit schemes, the difference between planned and realised B.9 impact will only be due to the property income effect (see above in part 3.6.2.1), given that the difference between planned and realised pension benefits (and social contributions) is neutralised through D.8.
36. In the case of the transfer of defined contribution schemes there is no subsequent impact on B.9.

3.7.3. Rationale of the treatment

37. The main references in ESA 2010 are the following:

⁽¹⁸¹⁾ In practice, this impact would not be observed, as the assets of the scheme (leading to property income) are absorbed with other government assets or used to reduce liabilities and the pension payments resulting from the transfer of obligations are not necessarily distinguishable from other pension payments.

⁽¹⁸²⁾ Such as, deviation from the hypotheses used in the estimation of the future pension benefits: mortality tables, inflation, etc.

⁽¹⁸³⁾ However, as the liability covers long-term pensions, in practice, there would be a gap due to change in refinancing costs.

- ESA 2010 paragraph 20.273: *“On occasion, units may pay a lump sum to government in exchange for taking over some of their pension obligations. Such large one-off transactions occur between a government and another unit, usually a public corporation, often linked to the change of status of the corporation, or to its privatisation. The government usually assumes the obligations in question in exchange for a cash payment covering the expected net borrowing (deficit) resulting from the transfer.”*
- ESA 2010 paragraph 20.274: *“In concept, being an equal exchange of cash for the incurrence of an obligation that is a liability, the transaction should not affect measures of net worth and financial net worth, and should not alter the government net lending/borrowing (B.9). However, the pension obligation may not appear as a liability on the balance sheet of either of the units transferring and assuming the obligations. For example, when transferred to the government, the pension obligations may be merged with a social security scheme for which no liability is recognised.”⁽¹⁸⁴⁾*
- ESA 2010 paragraph 20.275: *“In this context, such a lump sum payment should be viewed as a prepayment of social contributions. In consideration of the various arrangements observed in practice, and in order to avoid any distortion in the calculation of some aggregates such as labour costs and compulsory levies, the lump sum is recorded as a financial advance (F.8), a prepayment of miscellaneous current transfers (D.75) which will be recorded in the future in proportion to the related payments of pensions. As a result, the lump sum payment has no impact on the net lending/borrowing (B.9) of the general government in the year of transfer of obligations.”*

38. The profile over time of the D.75 revenue that depletes the AF.89 liability is to be fixed at inception, instead of fluctuating to exactly match the actual pension payments (D.62) which would then cause the AF.89 to be insufficient or in excess towards the end of the process. This fixed D.75 profile approach is preferred because one cannot actually easily or precisely disentangle the D.62 paid by a scheme in a given period from the D.62 that is covered by the lump sum, either because pension benefits contain new rights arising from new contributions or because the lump sum did not consider the effect of promotions or similar⁽¹⁸⁵⁾. Additionally, fixing the D.75 is necessary to avoid a terminal excessive or insufficient AF.89 which would lead to a debatable D.75 correction.⁽¹⁸⁶⁾ The reasons for a deviation between actual and expected pension payments is that the pensioners live longer (or shorter) than expected or that indexations differ from anticipation or that beneficiaries changed their careers that changed their entitlements, amongst others.

39. Recording an AF.89 liability also corresponds with what is written in ESA 2010 paragraph 17.148: *“If government assumes the responsibility for pension provision for the employees of a non-government unit through an explicit transaction, any payment by the non-government unit needs to be recorded as pre-paid social contributions (F.89). There is further discussion of this type of arrangement in paragraphs 20.27[3] to 20.275.”*

40. ESA 2010 paragraph 17.149 mentions the recording of D.9 in case of transfer of obligation not equal to the assets transferred: (...) *“First, there is a transfer of pension entitlements from the original pension scheme to the new pension scheme. Second, there may be a transfer in cash or other financial assets to compensate the new pension scheme. It is possible that the value of the transfer of financial assets is not exactly equal to the value of the pension entitlements transferred. In that case a third entry is needed in transactions of capital transfers to correctly reflect the changes in net worth of the two units concerned.”*

41. In case the obligations taken on by government are not recognised in its balance sheet, generally the value of the pension entitlements will be established independently from the own accounting of the entity, this value being deemed a reliable basis to compile a lump-sum due, so that no capital transfer would be recorded. It is indeed assumed that such pension transfers would normally take place under a procedure which ensures a ‘fair’ compensation to government. There is notably a democratic control by Parliament, and it should be rather exceptional that a significantly insufficient compensation, largely evidenced by independent experts, could be effectively conducted and government enter in

⁽¹⁸⁴⁾ The case of transfer to a government employer's scheme is not explicitly foreseen in ESA 2010, as it seems unlikely because it will imply a change in the status of the employees of the corporation.

⁽¹⁸⁵⁾ See the case where the pension obligation is valued using the accrued benefit obligation method (ABO) instead of the projected benefit obligation (PBO) method, as described in ESA 2010 paragraphs 17.171–17.177.

⁽¹⁸⁶⁾ More conceptually, any resulting B.9 impact should preferably be recognised from the moment the expected payments at inception start to deviate from the actual payments, to the extent that such a deviation result from events that should otherwise also impact the B.9 of government at the moment they are realised. Delaying such a B.9 impact until the AF.89 is fully depleted, knowing that this would happen earlier (or later) than expected seems not correct from an accrual accounting perspective.

'unfavourable deals'. In addition, in most cases, the agreement of the European Commission would be required for any reduction in the pension obligations without a corresponding equal decrease in corporation's assets as compensation to government, as this could be considered a source of distortion, according to competition rules. Such unbalanced transaction will result in an immediate improvement of the financial position of the corporation (which, as mentioned above, is generally the reason for carrying out the operation). This would be considered a clear support from government to the corporation, which, for reasons of transparency and economic substance, must also be recorded in national accounts.

42. Such cases of imbalance may happen, in some specific circumstances and for various reasons (for instance, for corporations which might not fall under competition rules because of the nature of their activity or if there is an on-going privatisation plan). Thus, there is a need to complement ESA 2010 in this Manual as, in the above-mentioned case, the net worth of the government would be (negatively) affected, as well as the net worth of the corporation involved in the transaction (in a positive sense).
43. As a general principle, in national accounts, when government carries out an unequal transaction, by evidence not for 'purely commercial reasons', which would imply equivalence between the two legs of the transaction, a capital transfer has to be recorded. ESA 2010 paragraph 5.21 states that in the case of a transfer as counterpart (totally or partially) of a financial transaction, *"the transaction value is identified with the current market value of the financial assets and/or liabilities involved"*. In other words, the financial transaction for the liabilities involved is recorded for an amount higher than what was observed from asset side (e.g., a lump sum) and includes the capital transfer component, which is added to the effective amounts of assets exchanged between parties.
44. The recording of the imbalance is clearly described in 2008 SNA paragraph 17.188: *"If government assumes the responsibility for pension provision for the employees of a non-government unit through an explicit transaction, a pension liability should be recorded in the balance sheet of government. If the government does not receive matching assets in return, the difference between the increase in the government's liability and the assets received is shown as a capital transfer to the non-government employer."*
45. Contrarily to 2008 SNA, ESA 2010 does not generally recognise pension liabilities in the balance sheet of the government, notably for social security schemes or for its own unfunded defined benefit other employment related pension schemes as they are deemed to be close to the national social security pension scheme(s) (ESA 2010 paragraph 17.127). This is why, in the case of a transfer of a pension scheme to a social security scheme, an AF.89 liability is recorded (instead of AF.63) in government accounts.
46. However, in both the case of recognition of AF.63 and in the case of recognising AF.89, it may happen that the transfer of the pension obligations results in future commitments for government and it is clear that government has not undertaken the transaction with the aim of receiving full compensation for the obligations taken over. It has deliberately entered into transactions in which there is, by evidence, an unrequited element. From an economic point of view, these two cases are similar in substance.
47. Under these conditions, the national accountants, who must provide a description that is 'optimal for economic analysis and the evaluation of economic policy' (ESA 2010 paragraph 1.25 (d)), must view the codification of the liability as conventional and consider it as a rather secondary technical point. This would be particularly important in cases where the unbalanced transaction would be considerable; government could even decide to take over the pension liabilities from the corporation without taking any corresponding assets or for a token value.
48. Consequently, whatever the agreed conventions in national accounts about the recording of the pension obligations, there is no difference between 2008 SNA and ESA 2010 regarding the economic substance of the transaction: there must be an entry for these obligations in government's balance sheet for their value. Thus, if the transaction is not balanced, for any reason (i.e., the pension obligations exceed the assets received in exchange), the transaction must be adjusted ('rebalanced') and, under ESA 2010, the only way to do so is to record a transfer in government accounts, whatever its codification. This will bridge the gap between the assets received by government in the transaction and the 'final' amount of liabilities recorded in the balance sheet. In national accounts, this must be recorded as a capital transfer, with an impact on government net lending/borrowing (B.9).
49. This would be independent from any measure that government could take in the future (of which the impact and the timing are uncertain and unpredictable at the time of the transaction) in order to cover the gap (e.g., by increasing contributions, lowering the benefits or increasing the retirement age). There

are other cases of recording a capital transfer only by reference to the impact on the financial position of government as observed at the time of transaction, and not on the basis of information on possible, but fully uncertain or quite contingent, future actions by government or future events.

3.7.4. Accounting examples (simplified)⁽¹⁸⁷⁾

At the end of year t, a public corporation transfers to government AF.63 pension obligations of 1 000 related to its current or former employees.

Case 1a: The transaction is balanced, and a pension liability is recognised in government accounts after the transfer of the obligations

Government will pay future pensions from a scheme for which a pension liability AF.63 is still recognised (and here recorded within government).

Government receives in exchange a cash amount of 1 000.

It is assumed that the discount rate is 5% and that the payments of pensions take place over a 20 year period. The pension payments are higher in the beginning of the 20 years period and decline continuously.

In a future given year (t+20), pension expenditure (D.6221) is 53 and is paid from the assets (and investment income on the assets) transferred in year 0 – here shown as being held as a deposit (AF.2).⁽¹⁸⁸⁾

For simplicity we neglect the cost of running the scheme, related output (P.1) and service charge (D.61sc).

There is no impact on government net lending/net borrowing (B.9) from the pension payments as there is an adjustment in non-financial accounts recorded as D.8, calculated as the difference between net social contributions and pension payments.

The interest revenue (D.41) on government holdings (AF.2) is 3. The interest revenue⁽¹⁸⁹⁾ is directly compiled from usual data sources – no imputation is to be made. While the D.41 is expected by design to match the unwinding of the discount, a difference can nonetheless arise over time when the actual interest revenue deviates from expectations at inception.

Investment income payable on pension entitlements (D.442) and households' social contribution supplements (D.614) are equal to the D.41 revenue at 3 in case the expectations at inception are perfectly held, and therefore there is no B.9 impact.

In another future given year (t+20), we assume that there are in reality deviations from the expectations. Now the interest revenue is 1 lower than anticipated, while the pension benefit is 3 higher. Because the pension expenditure is matched by a lower D.8 and another economic flow of the stock of pension entitlement (AF.63), only the changed assumption due to the lower property income impacts B.9 by -1 (**alternative case 1a**)

Year t											
S13				S14				Employer			
Opening balance sheet											
A		L		A		L		A		L	
AF.2	0							AF.2	1 000		
				AF.63	1 000					AF.63	1 000
		B.90	0			B.90	1 000			B.90	0

⁽¹⁸⁷⁾ The examples are focusing on the impact on government net lending/borrowing (B.9) and or debt and do not aim to show all recordings in total economy.

⁽¹⁸⁸⁾ Shown as AF.2 as a simplification to avoid having to show changes in assets or liabilities due to revaluation. In practice, the lump sum received might rather be used to reduce government debt (and thus lower interest expenditure).

⁽¹⁸⁹⁾ or reduction in interest expenditure, when lump sum assets are instead used to redeem liabilities. By simplification it is assumed that accrued interest is equal to paid interest.

Financial account

ΔA	ΔL	ΔA	ΔL	ΔA	ΔL
F.2 1 000				F.2 -1 000	
	F.63 with S.14 1 000	F.63 with employer -1 000			F.63 with S.14 -1 000
	B.9F 0	F.63 with S.13 1 000			B.9F 0
		B.9F 0			

Closing balance sheet

A	L	A	L	A	L
AF.2 1 000					
	AF.63 1 000	AF.63 1 000			
	B.90 0	B.90 1 000		B.90 0	

Years t+20 no deviation from expectations at inception

S.13

S.14

Opening balance sheet

A	L	A	L
AF.2 50		AF.2 1 473	
	AF.63 50	AF.63 50	
	B.90 0	B.90 1 523	

Non-financial account

U	R	U	R
D.442 3		D.442 3	
	D.41 3		
	D.614 3	D.614 3	
D.6221 53		D.6221 53	
		B.6n 53	
D.8 -50		D.8 -50	
	B.9 0	B.9 3	

Financial account

ΔA	ΔL	ΔA	ΔL
F.2 -50		F.2 53	
	F.63 -50	F.63 -50	
	B.9F 0	B.9F 3	

Closing balance sheet

A		L	A		L
AF.2	0		AF.2	1 526	
		AF.63	0	AF.63	0
		B.90	0	B.90	1 526

Years t+20 deviation from expectations at inception**S.13****S.14****Opening balance sheet**

A		L	A		L
AF.2	50		AF.2	1 473	
		AF.63	50	AF.63	50
		B.90	0	B.90	1 523

Non-financial account

U		R	U		R
D.442	3			D.442	3
		D.41	2		
		D.614	3	D.614	3
D.6221	56			D.6221	56
				B.6n	56
D.8	-53			D.8	-53
		B.9	-1	B.9	3

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	-54		F.2	56	
		F.63	-53	F.63	-53
		B.9F	-1	B.9F	3

Other economic flows

A		L	A		L
		AF.63	3	AF.63	3

Closing balance sheet

A		L	A		L
AF.2	-4		AF.2	1 529	
		AF.63	0	AF.63	0
		B.90	-4	B.90	1 529

Case 2a: The transaction is balanced and pension liabilities are not recognised in government accounts

Government receives a cash payment of 1 000, equal to the pension obligations taken over.

The government accepts to pay future pensions, under the unfunded national social security scheme. It has been agreed that the pension obligations have a net present value (NPV) of 1 000 at the moment of transfer.

It is assumed that the discount rate is 5% and that the payments of pensions take place over a 20 years period. The pension payments are higher in the beginning of the 20 years period and decline continuously.

In a future given year (t+20), pensions benefits (D.6211) expenditure to the beneficiaries are 53, equal to what was expected at the time of the transfer (recorded as D.75 revenue).

The interest revenue (D.41) in year t+20 on government holdings (AF.2 *vis a vis* a bank that is not shown) is 3.

While interest expenditure being the discount rate (fixed at inception) needed to reverse the NPV amounts recorded at the moment of transfer into actual benefits paid is set at 33 in this case where the expectations at inception are perfectly held, and therefore there is no B.9 impact.

In another future given year (t+20), we assume that there are in reality deviations from the expectations. Now the interest revenue is 1 lower than anticipated, while the pension benefit is 3 higher. Because the pension benefit and the interest revenue are now changed while the D.75 remains fixed at 53 the B.9 impact is now -4. (**alternative case 2a**)

By simplification, it is assumed that the divergence between the D.4 revenue and D.4 expenditure only appears in year t+20 and that accrued interest is equal to paid interest.

Year t					
S13		S14		Employer	
Opening balance sheet					
A		L		A	
AF.2 0				AF.2 1 000	
		AF.63 1 000		AF.63 1 000	
B.90 0		B.90 1 000		B.90 0	
Other changes in volume of assets account (K.62)					
ΔA		ΔL		ΔA	
		AF.63 -1 000		AF.63 -1 000	
		AF.89 1 000		AF.89 1 000	
B.102 0		B.102 0		B.102 0	

Financial account

ΔA	ΔL	ΔA	ΔL	ΔA	ΔL
F.2 1 000				F.2 -1 000	
		F.89 with employer -1 000			F.89 with S.14 -1 000
	F.89 with S.14 1 000	F.89 with S.13 1 000			
	B.9F 0		B.9F 0		B.9F 0

Closing balance sheet

A	L	A	L	A	L
AF.2 1 000					
	AF.89 1 000	AF.89 1 000			
	B.90 0		B.90 1 000		B.90 0

Years t+20 no deviation from expectations at inception**S.13****S.14****Opening balance sheet**

A	L	A	L
AF.2 50		AF.2 1 473	
	AF.89 50	AF.89 50	
	B.90 0		B.90 1 523

Non-financial account

U	R	U	R
D.41 3			D.41 3
	D.41 3		
D.6211 53			D.6211 53
	D.75 53	D.75 53	
	B.9 0		B.6n 3
			B.9 3

Financial Account

ΔA	ΔL	ΔA	ΔL
F.2 -50		F.2 53	
	F.89 -50	F.89 -50	
	B.9F 0		B.9F 3

Closing balance sheet

A		L	A		L
AF.2	0		AF.2	1 526	
		AF.89	0	AF.89	0
		B.90	0	B.90	1 526

Years t+20 deviation from expectations at inception

S.13

S.14

Opening balance sheet

A		L	A		L
AF.2	50		AF.2	1 473	
		AF.89	50	AF.89	50
		B.90	0	B.90	1 523

Non-financial account

U		R	U		R
D.41	3		D.41	3	
		D.41	2		
D.6211	56		D.6211	56	
		D.75	53	D.75	53
		B.9	-4	B.6n	6
				B.9	6

Financial Account

ΔA		ΔL	ΔA		ΔL
F.2	-54		F.2	56	
		F.89	-50	F.89	-50
		B.9F	-4	B.9F	6

Closing balance sheet

A		L	A		L
AF.2	-4		AF.2	1 529	
		AF.89	0	AF.89	0
		B.90	-4	B.90	1 529

Case 1b: The transaction is not balanced, and pension liabilities are recognised in government accounts

Under the same operation as in case 1a, for 1 000 of pension liability, government receives in exchange a cash amount of 600. The exchange of the cash asset for taking on its balance sheet the higher AF.63 liability is reflected as the unbalanced part: government makes a capital transfer of 400 to the public corporation.

This sets off a chain of unwinding asset/liability positions between the corporation and households resulting in government taking on its balance sheet an additional AF.63 liabilities of 400 and a B.90 of -400 after the transfer

The difference with the balanced cases is that AF.2 is exhausted before the 20th year and the government need to issue debt (AF.3 in the example) to finance the pension benefit.

In year t+20 the accrued interest on these debt securities impacts the B.9 for 49, while interest revenue is 0 due to the government holdings being fully depleted. Property income (D.442) expenditure related to the reversal of the NPV of the pension liability (AF.63) remains fixed at 3 impacting B.9 for -52 after the transfer. In year t+20, this has accumulated to a B.90 of -1081.

S13			Year t			S14			Employer		

Years t+20			
S.13		S.14	

Opening balance sheet

A		L	A		L
AF.2	-44		AF.2	1 473	
		AF.3			
			935		
		AF.63		50	
		B.90			1 523

Non-financial account

U		R	U		R
D.442	3			D.442	3
		D.41			
			0		
D.41	49				
		D.614		3	
D.6221	53			D.6221	53
				B.6n	53
D.8	-50			D.8	-50
		B.9			3

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	-102		F.2	53	
F.2 from F.3	97	F.3			97
		F.63		-50	
		B.9F			-52

Closing balance sheet

A		L	A		L
AF.2	-49		AF.2	1 526	
		AF.3			
			1 032		
		AF.63		0	
		B.90			1 526

Case 2b: The transaction is not balanced, and pension liabilities are not recognised in government accounts

Government receives cash payment of 600 in return for taking on its balance sheet the pension obligations of 1 000. A capital transfer is recorded for the gap. Otherwise, the outset is the same as in case 2a.

The AF.89 liability is not equal to the assets received in the transaction. This has an impact on government

net lending/borrowing (B.9) in the year the transfer takes place. The difference with the balanced cases is that AF.2 is exhausted before the 20th year and the government need to issue debt (AF.3 in the example) to finance the pension benefit.

In year $t+20$ the accrued interest on these debt securities impacts the B.9 for 49, while interest revenue is 0 due to the government holdings being fully depleted. Interest expenditure related to the reversal of the NPV of AF.89 remains fixed at 3, thus impacting B.9 for -52 after the transfer and resulting in an accumulated B.90 of -1081.

Year t											
S13				S14				Employer			
Opening balance sheet											
A		L		A		L		A		L	
				AF.63		1 000		AF.2		600	
		B.90				1 000				AF.63	
		0								1 000	
						B.90				B.90	
										-400	
Non-financial account											
U		R		U		R		U		R	
D.99		400								D.99	
										400	
		B.9				0				B.9	
		-400								400	
Other changes in volume of assets account (K.62)											
A		L		A		L		A		L	
				AF.63		-1 000				AF.63	
				AF.89		1 000				-1 000	
		B.102				0				AF.89	
		0								1 000	
						B.102				B.102	
										0	
Financial account											
ΔA		ΔL		ΔA		ΔL		ΔA		ΔL	
F.2		600						F.2		-600	
				F.89 with employer		-1 000				F.89 with S.14	
				F.89 with S.14		1 000				-1 000	
		B.9F				0				B.9F	
		-400								400	
Closing balance sheet											
A		L		A		L		A		L	
AF.2		600									
		AF.89		AF.89		1000				B.90	
		1000								0	
		B.90				1000					
		-400									

Year t+20			
S.13		S.14	

Opening balance sheet

A		L	A		L
AF.2	-44		AF.2	1 473	
		AF.3			
		935			
		AF.89		50	
		50			
		B.90			1 523
		-1 030			

Non-financial account

U		R		U		R	
D.41	3				D.41		3
D.41-AF.3	49	D.41	0				
D.6211	53				D.6211		53
		D.75	53	D.75	53		
						B.6n	3
		B.9	-52			B.9	3

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	-102		F.2	53	
F.2 from F.3	97	F.3			
		97			
		F.89	F.89	-50	
		-50			
		B.9F			B.9F
		-52			3

Closing balance sheet

A		L	A		L
AF.2	-49		AF.2	1 526	
		AF.3			
		1 032			
		AF.89		0	
		0			
		B.90			1 526
		-1 081			

3.8. Impact on government accounts of transfer of decommissioning costs

3.8.1. Background

1. Decommissioning is an operation consisting of dismantling (uninstalling) a production/industrial site in order to clean it up so that it, or the land underneath or surrounding it, becomes available for future use. The aim may be to re-use the buildings and/or other installations or to totally transform the site for other purposes (for instance, into a park).
2. This chapter mainly concentrates on the recording of decommissioning in cases where an asset to be decommissioned is transferred to government, which will take over the future cost of the decommissioning. This is a different case from the one where government owns an asset, from inception, which needs to be decommissioned in the future. There are several examples of these situations, such as 'experimental' equipment (for instance in the nuclear field), military bases, laboratories, other 'critical' installations, etc. It is also different from the case of a public corporation that holds only assets to be decommissioned and would be reclassified in the general government sector as soon as it would no longer meet the criteria to be a market unit, which will occur, at the latest, when the unit is no longer engaged in a productive activity (for instance a power station disconnected from the electricity network).
3. This chapter also deals with contributions to decommissioning funds that are classified inside general government. These funds encompass any type of assets intended specifically to cover the expenditure necessary for decommissioning installations and are typically managed by a dedicated body that has independence in its decisions from the contributors to the fund, which may be public or private entities.
4. The following assets can be subject to decommissioning: nuclear power stations, oilrigs, mines, quarries, complex industrial factories (chemical, refineries, etc.), landfills sites, etc. This list is not exhaustive. For some assets, the decommissioning work may take place over a number of years. This is particularly the case for nuclear installations, where existing levels of radioactivity prevents any major intervention on the core (reactor) until a significant decline is reached. In other cases, the operations may be carried out over a relatively short period.
5. The costs may vary between being rather negligible compared to the initial value of the fixed assets to being very substantial, especially where environmental protection is necessary. In practice, a decommissioning project may also contain significant costs that are associated with long-term waste management activities: e.g., often, in the case of nuclear plants, the cost of subsequent treatment and/or storage of nuclear waste material (i.e., after it is safely removed from the site) could be added to the total cost of the project. The combined cost of decommissioning and long-term waste management activities are referred to in this document as decommissioning costs for simplicity.
6. In general, such production sites are typically owned by corporations considered as market producers, classified in the non-financial corporations sector (S.11), which are also responsible for the termination (decommissioning) costs without any direct government financial involvement. For some of them (notably when they are quoted corporations), the business framework and accounting requirements may oblige them to set up provisions — although the need for future expenditure is certain, the exact amounts are uncertain and will be based on estimates. Due to possible spill over effects, there may also be specific international arrangements in the case of some productive areas, such as the nuclear one.
7. Government may be involved in decommissioning in various ways. A government unit may own such assets from the beginning of their service life or may acquire them later through different ways. Government may also finance decommissioning costs for assets owned by corporations, through grants, when the costs are considered significant or because of other reasons, such as the responsibility of government in environmental protection.
8. Government may also require the constitution of special funds in anticipation of the future decommissioning of facilities owned by the non-financial corporations sector. These funds may be even placed under the responsibility of government to ensure their availability and sufficiency. Contributions to

the funds can be made on a regular basis (e.g., annual payments) or by means of a one-off 'lump-sum' payment. Responsibility for potential future shortages of the fund will depend upon the country's legal and regulatory framework.

3.8.1.1. OVERVIEW OF THE TREATMENT IN NATIONAL ACCOUNTS

9. Provisions for decommissioning costs were introduced in 2008 SNA and ESA 2010. Recognising practical difficulties in the general application of the 2008 SNA approach, the *Manual on the changes between ESA 95 and ESA 2010* has recommended a practical approach.
10. The practical approach implies that decommissioning costs can be reflected in consumption of fixed capital (P.51c) at the end of the operating life of the asset (at the moment when the actual expense occurs). As an alternative, the estimated decommissioning costs can be reflected in consumption of fixed capital over the operating period of the asset, which is the theoretical approach of the SNA, if reliable information is available. Both treatments are accepted.
11. ESA 2010 paragraph 3.129 (h) states that terminal costs, i.e., large costs associated with disposal, e.g., decommissioning costs of nuclear power stations or clean-up costs of landfill sites, are considered gross fixed capital formation (GFCF, P.51g) in the period in which they actually take place. It might, however, be rather arbitrary to determine a threshold for such 'large' costs. Consequently, it is not recommended to consider the value of decommissioning costs as an operational criterion for their classification as GFCF, as this could reduce the comparability of data across EU Member States. Instead, a criterion based on the expected period needed for the decommissioning, i.e., 'less or more than one year', could be an acceptable proxy by which to decide whether to record costs related to decommissioning activity as GFCF. However, as a possible exception, there might also be cases where significant decommissioning expenditure could be carried out in less than one year, but still be considered GFCF.
12. Costs, which do not qualify as decommissioning costs, should not be treated as GFCF but, in general, as intermediate consumption (P.2).

3.8.2. Treatment in national accounts

3.8.2.1. TRANSFER OF ASSETS TO GOVERNMENT

13. The transaction in GFCF must be recorded for the observed amount. If the asset is transferred for free, the increase in GFCF of government would be compensated by capital transfer (in kind), with no impact on government net lending/borrowing (B.9).
14. When an asset is transferred to government, in principle the liabilities associated to its decommissioning are also included in the transfer. The transfer may consequently be accompanied by a lump sum or sequence of lump sums to government.
15. If government is given a lump sum deemed to cover some future decommissioning costs, this amount should be recorded as a financial advance to government, not as government revenue. The original owner of the transferred asset will no longer have involvement in the future decommissioning and, thus, it compensates government by anticipation for taking this responsibility. The transfer of the financial assets in the 'lump sum' corresponding to the dedicated accumulated reserve, is a financial transaction, with a matching entry in other accounts payable (F.8).
16. Whenever available information is deemed reliable, a comparison between the estimated decommissioning costs and the lump sum received should be performed at inception.
17. It might be the case that the net present decommissioning obligations are under-estimated; hence, government receives insufficient assets in exchange for taking over decommissioning obligations, as valued according to the generally accepted calculation methods. In such cases, the above-mentioned AF.8 liability is increased to the correct value and the difference between this and the value of assets transferred is balanced through a D.99 capital transfer with an immediate impact on government net lending/borrowing (B.9). It is considered that government has deliberately, in order to support the corporation, entered into an unbalanced transaction.
18. When government carries out decommissioning expenditure, it is recorded as financing it via the dedicated reserve, which, here, means via a reduction of the other accounts payable (F.8) until the total depletion of the amount. As the lump sum takes the form of a discounted value (i.e., taking into account

the fact that the expenditure occurs over a period of time), there is a need to revalue it adequately — through property income.

19. As a consequence, and similarly to the case of transfer of pension obligations, once the expenditure associated with the decommissioning begins, the impact on government net lending/borrowing (B.9) will be neutralised by a notional entry (revenue) for government. Such revenue will be either recorded as a capital transfer (D.99) receivable (for capital expenditure related to the assets) or as a current transfer (D.75) receivable (for intermediate consumption expenditure), identical to the amount of decommissioning expenditure. The fact that the former asset owner (corporation) may have disappeared at this time does not prevent the implementation of the neutralisation rule given above. Thus, when the reserve (AF.8) has been extinguished there should be a negative impact on government net lending/borrowing (B.9).

3.8.2.2. PAYMENTS TO GOVERNMENT WITH NO OTHER TRANSFER OF ASSETS

20. It may be the case that government receives payment(s) in exchange for assuming the future decommissioning obligations, but the ownership of the facilities involved does not change.
21. It may also be the case that there is a regulatory environment under which the asset operators contribute on a regular basis to an independently managed fund, typically under strict provisions defined by government such that it is *de facto* in control of the fund. The objective of such a framework is to ensure that the funds will be available when needed, whether or not the responsibility for the decommissioning activities remains at the operators' side.
22. In both cases, the accounting treatment may be assimilated to the situation when an asset (e.g., a nuclear power plant) is also transferred to government, although in this case, the asset relates to the cash or other financial assets received and not to the facility itself.
23. As mentioned above, if the owner provides to government a lump sum (or a sequence of payments) deemed to cover some future decommissioning costs, this amount is recorded as a financial advance to government. The transfer of the financial assets is a financial transaction, with a matching entry in other accounts payable (F.8). When the transfer of funds implies a transfer of the responsibility to perform the decommissioning activities and the available information is deemed reliable, a comparison at inception between the estimated decommissioning costs and the lump sum received (in case of one-off payment) or to be received (in case of sequential payments) should be performed.
24. When the transfer of funds from a company to a dedicated fund does not imply a transfer of responsibilities (e.g., in case of cash accumulated by a top-up guarantee fund), the amounts in question are recorded as financial advances. Later withdrawals from this fund will enter the financial accounts.

3.8.3. Rationale of the treatment

25. There is a strong analogy with the case of the transfer of pension obligations, although generally the estimated future costs are more reliable in the case of pension liabilities (see chapter 3.6 of this Manual). Thus, a similar rationale (ESA 2010 paragraphs 20.273 and 20.274) may be used, i.e., that if the transaction is considered as an equal exchange of financial assets against an obligation that is a liability, then 'the transaction should not affect measures of net worth and financial net worth'. An identical situation exists concerning the rules in respect to the ESA 2010 asset/liability boundary. As the decommissioning liabilities are not recognised in national accounts as a reserve-provision item, they can only be recorded as other accounts payable (AF.8).
26. In national accounts, for global consistency ('quadruple entry' principle), the payable in the government sector must be counterbalanced by the recording of a receivable in the non-financial corporations sector. If the previous owner of the asset is no longer an institutional unit, due to liquidation, merger/acquisition, etc. (even when the successor entity does not recognise such an account receivable asset in its commercial accounting balance sheet) the receivable continues to be recorded in the accounts of the sector as a notional unit of that sector. Although it may be difficult for statistical compilers to collect data for such imputations from their usual data sources, it is a necessary part of the recording.

3.8.4. Accounting example (simplified)

27. Just before the end of year t , government implements a new energy policy that foresees a nuclear shut-down in 5 years. It estimates that the cost of decommissioning all the nuclear power plants would total EUR 25 billion. Initially, the energy companies were considered liable for the process. Government considers that this is a risk that is too high for private energy producers to manage and decides to take over their nuclear-related obligations in exchange for EUR 20 billion (which is the amount the energy companies had constituted in accounting provisions at the date of the agreement).
28. At the same time, government creates the Nuclear Waste Disposal Fund to address the future costs of safe disposal of radioactive materials generated by commercial nuclear energy production. The fund receives the EUR 20 billion in cash from the energy companies. The management board of the fund approves a strategy of investing in financial assets with very low volatility while obtaining a long-term return of 1.7 %, such that the transfer has an implied value of EUR 23 billion (instead of EUR 20 billion).
29. The decommissioning and waste management activities begin right after the shut-down of the facilities (at end of year $t+5$). For simplicity we assume it is completed in a year and that there is an inflation rate of 0 %. Cash inflows over $t+1$ to $t+5$ comprise the interest on the financial assets.

Government cash-flows € m

Year t	$t+1$	$t+2$	$t+3$	$t+4$	$t+5$	$t+6$
20 000	340	346	352	358	364	–25 000

Interest accretion and final balance (rounded) AF.89 € m

Year t	$t+1$	$t+2$	$t+3$	$t+4$	$t+5$	Final
23 000	390	394	402	408	406	25 000

Net present value of the future decommissioning costs is (in € m):

NPV: $€25\,000 / (1+1.7\%)^5 \approx €23\,000$

Year t							
General government				Corporations			
Non-financial account							
U/ΔA		R		U/ΔA		R	
D.99	3 000					D.99	3 000
B.9	-3 000			B.9	3 000		
Financial account							
ΔA		ΔL		ΔA		ΔL	
F.2	20 000	F.8	23 000	F.2	-20 000		
				F.8	23 000		
		B.9F	-3 000			B.9F	3 000

Closing balance sheet

A		L		A		L	
AF.2	20 000	AF.8	23 000	AF.2	-20 000		
		B.90	-3 000	AF.8	23 000	B.90	3 000

Year t+1

General government

Corporations

Non-financial account

U/ΔA		R		U/ΔA		R	
D.4	390	D.4	340			D.4	390
B.9	-50			B.9	390		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	340	F.8	390	F.8	390		
		B.9F	-50			B.9F	390

Closing balance sheet

A		L		A		L	
AF.2	20 340	AF.8	23 390	AF.2	-20 000		
		B.90	-3 050	AF.8	23 390	B.90	3 390

Year t+5

General government

Corporations

Non-financial account

U/ΔA		R		U/ΔA		R	
D.4	406	D.4	364			D.4	406
B.9	-42			B.9	406		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	364	F.8	406	F.8	406		
		B.9F	-42			B.9F	406

Closing balance sheet

A		L	
AF.2	21 760	AF.8	25 000
		B.90	-3 240

A		L	
AF.2	-20 000		
AF.8	25 000	B.90	5 000

Year t+6

General government

Corporations

Non-financial account

U/ΔA		R	
P.51g	25 000	D.99	25 000
B.9	0		

U/ΔA		R	
D.99	25 000		
B.9	-25 000		

Financial account

ΔA		ΔL	
F.2	-25 000	F.8	-25 000
		B.9F	0

ΔA		ΔL	
F.8	-25 000	B.9F	25 000

Closing balance sheet

A		L	
AF.2	-3 240	AF.8	0
		B.90	-3 240

A		L	
AF.2	-20 000		
AF.8	0	B.90	-20 000

3.9. Annex: selected ESA 2010 transactions

3.9.1. Payments by public corporations to government

1. Other taxes on production (D.29)

This category includes all taxes that enterprises incur as a result of engaging in production. They may be payable on land, fixed assets or labour employed in the production process or on certain activities or transactions. They account for a significant part of payments from corporations to government.

2. Current taxes on income and wealth (D.5) and capital taxes (D.91)

In general, it should be clear what is a tax, and public corporations pay taxes as other units do. However, for classification issues, the government's role levying taxes might conflict with its role as the owner of the public unit, such that it is more appropriate to treat a payment of tax as a withdrawal of equity. This is more likely to apply to taxes on transactions initiated by government.

Relevant examples are the cases of large payments related to privatisation, and large payments related to exceptional sales or revaluations of foreign asset reserves.

3. Miscellaneous current transfers (D.75)

This category includes payments for fines and penalties unless they are undistinguishable from taxes⁽¹⁹⁰⁾.

4. Dividends (D.421)

Dividends arise from ownership of a unit. They apply here to payments from the unit to government that are funded from the unit's income. In ESA 2010, dividends do not apply to payments funded by asset sales, capital gains or reserves accumulated over several years (with the exception of those which are foreseen for smoothing of dividends), even if they are called dividends in the accounts of the unit. These should be recorded as withdrawals of equity in F.5. See chapter 3.6 on the notions of income and dividends.

5. Other capital transfers (D.99)

Capital grants are unrequited payments and so it is difficult to envisage circumstances in which D.99 would be appropriate for the classification of a payment from a market unit to government as corporations are not supposed to give their money away in return for nothing. ESA 2010 lists, among others, the following possibilities:

- ESA 2010 paragraph 4.165 (h) Major payments in compensation for extensive damage or injuries not covered by insurance policies (except payments by general government or by the rest of the world to the owners of capital goods destroyed or damaged by acts of war, other political events or natural disasters (floods, etc.)). The payments are awarded by courts of law or settled out of court (see ESA 2010, paragraph 4.165 (h)). Examples are payments of compensation for damage caused by major explosions, oil spillages, the side-effects of drugs, etc.;
- ESA 2010 paragraph 4.165 (i) Extraordinary payments into social insurance funds made by employers (including government) or by government (as part of its social function), in so far as these payments are designed to increase the actuarial reserves of those funds. This option requires the existence of an actual fund of assets to finance the social benefits, with assets and liabilities recorded in AF.6. It would not apply to unfunded social insurance schemes run by government; return of funds by the original debtor to government on previously called guarantee (to be tested by the super-dividend test as stated in ESA 2010 paragraph 20.259).

6. Standardised guarantees schemes (F.66)

Provisions for calls under standardised guarantees (F.66) include the amounts of expected losses that government is expecting in the context of the guarantees given under such schemes. The counterpart is a capital transfer, see chapter 7.4 Government guarantees.

⁽¹⁹⁰⁾ Fines and penalties can also be treated as capital transfers (see section, 2.7.2).

7. Loans (F.4)

This includes actual repayment of lending and imputed repayments associated with debt cancellation. In most cases debt cancellation should be recorded as a transaction in F.4. The counterpart is usually a capital transfer from government (D.99), except when privatisation is imminent: the counterpart is a transaction in equity (F.5).

In some cases, a debt write-off is recorded in other changes in volume not elsewhere classified (K.5). It could be recorded in changes in sector classification and institutional unit structure (K.61) but only if the write-off is associated with appearance and disappearance of units.

8. Other equity (F.519)**Withdrawal of equity**

This includes significant one-off payments made to government when the payment is funded by the liquidation of assets such as drawing on accumulated reserves; sales of financial or non-financial assets; or realised capital gains. It excludes those payments that are to be classified as dividends.

Payments to government that arise from significant sales of assets at the request of government, or as part of a government policy, should be recorded as withdrawals of equity rather than as dividends or other non-financial transaction.

The classification is appropriate even when the public accounts of the unit describe the transaction as something else such as a dividend or, in some circumstances, a tax.

This treatment applies to indirect privatisation (see chapter 5.2 Sales of financial and non-financial assets). Privatisation receipts in national accounts are treated as the sale of the government's equity in exchange for another type of financial asset (in general liquid assets). Following this logic, the privatisation receipt as such does not improve the government net lending/borrowing (B.9) but modifies its financing. The government's new liquid assets could go towards reducing the government debt, either directly by repurchasing government debt securities, or indirectly by reducing the need for new debt issuance.

In order to ensure consistency and transparency, this treatment of direct privatisation is extended to indirect privatisation where government equity is sold through an intermediary — usually a head office — and the proceeds of the sale are passed on to government. This applies whatever is the legal form of this repayment to the government: dividend, tax, transfer, etc.

To be consistent with the sale of financial assets the treatment also applies to the indirect sale of significant non-financial assets (with no impact on net lending/borrowing (B.9)).

Withdrawals of equity in kind

The case of payments in kind to government is difficult because of the conflicting desire to be consistent with both the treatment of the indirect sale of non-financial assets (treated as F.5) and the desire for symmetry with payments in kind by government to a public corporation (see D.9 below).

When the transfer of assets between public corporations and government is associated with other restructuring and changes in functions and responsibilities, it is appropriate to record the transfers in kind as a change in classification and structure (K.61), in the other changes in volume of assets account.

Withdrawals of equity from central bank

The classification F.5 also applies to some transactions between government and central banks. This is because central bank assets are treated in national accounts as public property. For example, a fall in the central bank's gold and foreign exchange reserves would reduce the value of government's equity in the central bank.

9. Changes in sector classification and institutional unit structure (K.61)

This is appropriate when units are created, closed down, or merged; or when there is a significant change in the functions and responsibilities of units that cannot be recorded adequately in the transaction accounts. This category also applies when assets revert to government ownership after a period during which the public corporation has been allowed to exploit them (see chapter 6.3 on contracts related to fixed assets, such as concessions).

3.9.2. Payments by government to public units

10. In several of these cases it is important to consider whether government is making payments to increase its investment in financial assets, as any rational investor might do, or whether it is seeking to support particular types of economic activity. The phrase 'capital injection' is often used to describe large payments from government to public corporations. It is not a national accounts concept. In national accounts, it could be either a capital transfer, a transaction in equity or a partition of the two.

11. Subsidies (D.3)

These are regular payments by government to reduce prices charged by the unit and cover losses. It is inappropriate to consider such payments as injections of equity (F.5) because they fund current expenditure and they are often paid conditionally on the unit behaving in a particular way, such as charging low prices, which can reduce the value of the equity.

12. Other current transfers (D.7)

Abnormal pension charges would be in miscellaneous current transfers (D.75), see ESA 2010 paragraph 4.138 (b).

13. Investment grants (D.92)

This applies to all unrequited payments to public units conditional on the funds being used for fixed capital formation rather than current expenditure.

Capital expenditure financed by government payments results in an increase of the value of government's equity in the public corporation at inception. However, this is not a reason for classifying the payment as an injection of equity (F.5), see ESA 2010 paragraph 20.200, notably because there is no certainty that the value of the government's equity will increase by the same amount. The capital formation may be used by the corporation to implement the government's economic and social policies (for example building railway lines or hospitals) rather than to increase profitability. In other words, it is important to consider government's objectives when making 'capital injections' into a public corporation.

'Capital injections in kind' are when government transfers the ownership of fixed capital assets from itself to a public corporation (see chapter 3.3 Capital injections into public quasi-corporations and section 3.3.2 Treatment in national accounts). Straightforward gifts of fixed assets by government to a corporation should be rearranged as investment grants, with corresponding amounts recorded as acquisition of the asset under gross fixed capital formation. This has no impact on government net lending/net borrowing (B.9).

In more complicated cases, where the injection in kind is associated with other restructuring of assets and liabilities and, perhaps the creation of new units, it is better to record the outcome in the other changes in the volume of assets account (K.5) or changes in classification and structure account (K.61) according to the provisions related to these flows. This also leaves government net lending/net borrowing (B.9) unchanged.

14. Other capital transfers (D.99)

ESA 2010 paragraph 4.165 identifies that D.99 is appropriate in the following cases:

- compensations for damage;
- payments to cover losses made over several years or exceptional losses;
- counterparts to the cancellation of debts except when part of a privatisation (recorded in F.5).

Item D.99 is also relevant for the acquisition of financial assets by government in cases where the transactions are not undertaken at market prices but are undertaken primarily to support the unit. For example, government might buy bad debts or give soft loans or grant income contingent loans (see chapter 4.8). In such cases, it is necessary to estimate the difference between the market value of the financial assets acquired and the price paid by government. This difference is recorded as a capital transfer from government to the unit. In effect, the payment by government is treated partly as an acquisition of financial assets and partly as a gift. This treatment is often appropriate for financial defeasance structures set up to rescue banks.

15. Loans (F.4)

When classifying payments to public units as loans it is important to examine the likelihood of repayment and the commercial arrangements for repayment and payment of interest. In cases where repayment is uncertain, it might be more appropriate to record the loans as capital transfers or, where the interest payments are not fixed, to record them as the acquisition of other equity.

16. Equity and investment fund shares or units (F.5)

Acquisition of equity in public corporations — this category excludes any payment conditional on the acquisition of fixed capital and payments in kind: these should be recorded as investment grants. An important characteristic of an injection of equity is that the public unit should have freedom to use the funds in the way it thinks best to increase the value of the business. There are three cases:

Government is the only shareholder in the public unit

Equity (F.51) might be appropriate for the classification of some payments by government to the unit but only if strict conditions apply. The payments must be made for financial reasons with the same objectives that a private investor would have when investing in a business.

In other words, government must expect to earn a market rate of return, through either higher dividends from its investment or higher equity value. Payments to the unit for other purposes (for example, to cover losses) must be classified as capital transfers.

Government and some other units are partners in ownership

Some payments by government might entitle it to a larger share of the unit and its future profits. If the unit were run in a commercial way so that the government would earn a return on its investment, classification as F.5 would be appropriate.

If the objective of the increase in the government's shareholding would not provide financial benefits, perhaps because the unit's objectives are to support government's economic and social policies rather than profit making, classification as a capital transfer would be more appropriate.

Government owns tradable shares in the public unit

If the government acquires tradable shares for its payment, which it could immediately sell for the price paid, then classification as the acquisition of shares is correct.

3.10. Keywords and accounting references

Capital transfers	ESA 2010, 4.145-4.167
Capital transfers in kind	ESA 2010, 4.146
Changes in classification and structure	ESA 2010, 6.17-6.20
Consumption of fixed capital for terminal costs	ESA 2010 3.139
Corporate restructuring	ESA 2010, 6.19-6.20
Debt cancellation, assumption of liabilities	ESA 2010, 5.36-5.39
Dividends	ESA 2010, 4.53
Entrepreneurial income	ESA 2010, 8.26-8.28
Equity	ESA 2010, 5.141 and-5.167
Equity capital	ESA 2010, 5.148
Financial transactions	ESA 2010, 5.17, 5.19-5.22, 5.32-5.35
Institutional unit	ESA 2010, 2.12
Investment grants	ESA 2010, 4.152-4.163
Net worth	ESA 2010, 7.01
Non-monetary transactions	ESA 2010, 1.70
Other accounts receivable/payable	ESA 2010, 5.230-5.244
Other capital transfers	ESA 2010, 4.164-4.167
Own funds	ESA 2010, 7.07
Persistent losses	ESA 2010, 4.35 (c), 4.61
Property income	ESA 2010, 4.41
Quasi-corporations	ESA 2010, 2.13
Subsidies	ESA 2010, 4.30
Terminal (e.g., decommissioning) costs	ESA 2010 3.129 (h)

4 Relations between government and the financial sector

4.1. Overview

1. This part concerns the recording of relations between government and the national central bank (NCB), and between government and other financial institutions in the context of public support for them.
2. Some NCBs have been observed making significant payments to government. When they are recorded as non-financial transactions they reduce the government net lending/borrowing (B.9). It is not always easy to determine whether such transactions are non-financial or financial transactions because government is in a sense the owner of the national central bank and so can influence it to undertake transactions with the objective of reducing the government net lending/borrowing (B.9). A key issue is in determining whether government receipts from the NCB that are labelled as dividends or taxes should be recorded in national accounts as withdrawals of equity because that reflects better the economic reality (but does not improve the government net lending/borrowing (B.9)).
3. Government support for financial institutions in times of severe financial crisis is not covered by this Manual but is subject to separate recording conventions developed by Eurostat. Cases of financial support outside of such times, sometimes referred to as 'financial defeasance' are dealt with in chapter 4.5.

4.2. Payments between the central bank and government

4.2.1. Background

1. The management of asset portfolios and interventions in foreign exchange markets for monetary policy purposes may generate capital gains for central banks, which are liable to be distributed to general government, generally in the form of dividends. The amounts involved may sometimes be very large.
2. Capital gains are not income in national accounts and therefore payments to government financed out of capital gains cannot be recorded as property income. This chapter describes how the recording of capital gains made by the central bank as property income in the government accounts should be avoided. It also states that the rules on capital injections when government makes a payment to the central bank. Such payments by government may be made to cover losses made by the central bank. Capital losses may occur due to foreign exchange holding losses. Operating losses may exceptionally occur due to the fact that interest and other operating income do not cover operational costs made by the central bank.⁽¹⁹¹⁾

4.2.2. Treatment in national accounts

3. In national accounts, capital gains have to be excluded from the distributable profits of the central bank, which therefore essentially results, from the net interest revenue (on foreign exchange, on monetary operations with the banking system, and on other assets and liabilities) and from the operating costs incurred by the central banks. There may also be in various proportions, revenue from the sales of some services (including to government). For this purpose, a practical method may be applied using general available information on the central bank's profits and losses and payments between the central bank and government. It consists of comparing the two following amounts:
 - a) the amount of operating profits/losses: this amount is equal to the total profit/loss of the NCB before distribution minus the capital gains/losses included in the total profit/loss. Thus, it is equal to net interest income and other operating income minus operational costs, such as staff costs;
 - b) the amount paid to general government as part of distributed profits.
4. For the central banks that apply the Euro-system accounting rules (including many EU Member States not part of the euro area), the item 'net result of financial operations, write-downs and risk provisions' (items 2.1, 2.2 and 2.3 of the profit and loss account in Annex IX of ECB/2010/20) should be deducted from the total profit/loss for the year to arrive at the operating profit/loss. The net result of financial operations includes realised holding gains/losses arising from financial operations as well as unrealised holding losses (so-called 'write-downs') and transfers to/from provisions for foreign exchange rate and interest rate risks. To compute the operating profit/loss in a harmonised manner across EU Member States, unrealised gains on financial assets that are part of the total profit of non-Euro-system central banks should be deducted from the total profit together with any realised holding gains and (un)realised losses included in the total profit.
5. The following rules apply:
 - 1) when the payment to government (B) is equal to the operating profit (A), the whole payment to government (B) is recorded as property income (D. 421) in the government accounts;
 - 2) when the payment to government (B) is lower than the operating profit (A), the whole payment to government (B) is also recorded as property income in the government accounts. This is true for all cases where the payment to government (B) is lower than the operating profit (A), whether due to capital losses or due to an addition to the central bank's reserves;

⁽¹⁹¹⁾ The Eurogroup agreed in February 2012 that certain euro area Member States would transfer to the Greek government the profits made on Greek government bonds held by their national central banks on an annual frequency by June. The transfers between these Member States (expenditure) and Greece (revenue) are recorded as current transfers (D.75) while the transfers from the NCBs to their respective government should fully follow the rules stated in this chapter, notably as concerns the distinction between dividends and withdrawal of equity.

- 3) when there is no payment to government, no property income is recorded in the government accounts;
 - 4) when the payment to government (B) is higher than the operating profit (A), an amount equal to (A) is recorded as property income (D.421). The difference between (B) and (A) is recorded as an equity withdrawal (F.519) by government;
 - 5) when the operating profit (A) is zero or if there is an operating loss, no amount can be recorded as property income and the whole payment (B) is recorded as a withdrawal of equity (F.51) by government.
6. These rules apply to payments that government receives in its capacity as a shareholder of the central bank. Regular corporate taxes on profits (that are also levied on the profits of other corporations) paid by the central bank to government are recorded as a current tax on income and wealth.
 7. If government is not the only recipient of the central bank's profits, and they are distributed among several owners, the rules from this section 4.2.2 have to be used to determine which part of total distributable profit should be recorded as property income paid by the central bank to all owners and which part as a withdrawal of equity by all owners. When government receives a part of the distributable profits, then the same proportion of total property income can be recorded in the government accounts as property income and the same proportion of the total withdrawal of equity should be recorded in the government accounts as a withdrawal of equity by government.

4.2.3. Rationale of the treatment

8. Holding gains and losses result from changes in the price of assets. They are not the result of production or the distribution of income from production and are recorded in the other changes in assets accounts as a change in the value of the assets and liabilities (ESA 2010 paragraphs 1.80 and 1.81). Because holding gains are not distributive transactions, they cannot be recorded as property income (ESA 2010 paragraph 4.01).
9. Capital gains by central banks, as referred to in private bookkeeping, are not conceptually different from holding gains, as understood in national accounts. The only difference is the way they are calculated. The bookkeeping of the Euro-system central banks for instance includes realised holding gains and both realised and unrealised holding losses as capital gains/losses in total profit. Some non-Euro-system central banks may also include unrealised holding gains in their total profit.⁽¹⁹²⁾ Irrespective of how capital gains are computed, they are not part of income.
10. When a payment to government from the central bank (B) is lower than the operating profit (A) due to capital losses, the total payment (B) is recorded as property income (see rule 2 in paragraph 5 in the section 4.2.2). In such a case it is not allowed to record an amount (A) as property income and the difference between (B) and (A) as an acquisition of equity in the central bank by government. Thus, capital gains and losses are somehow not treated symmetrically. This is explained in more detail in Table 1.

Consider the following two cases in Table 1:

- case X presents the case where the central bank experiences a capital loss;
- case Y describes the case where the central bank has a capital gain.

⁽¹⁹²⁾ However, the basic accounting principle of conservatism normally leads accountants to anticipate or disclose losses, but it does not allow a similar action for gains. For example, potential losses from lawsuits will be reported on the financial statements or in the notes, but potential gains will not be reported.

Table 1: Annual accounts of the central bank and government

Recording in central bank's bookkeeping	Case X	Case Y
Operating profit (a)	100	100
Capital gain/loss (d)	-20	20
Total profit (e) = (a) + (d)	80	120
Payment to government (b)	80	120
Recording payment in government accounts	Case X	Case Y
D.4R Property income	80	100
B.9 Net lending/borrowing	80	100
F.2A Currency and deposits	80	120
F.5A Equity injection	0	
F.5A Equity withdrawal		-20
AF.5A Revaluation	0	20

11. In both cases the total profit is distributed to government. The upper part of the table shows the recording in the central bank's bookkeeping system.

The lower part of table 1 shows the recording of case X and Y according to the rules set out in the section 4.2.2.

12. Rule 2) from the section 4.2.2 determines that the whole payment in case X should be recorded as property income. Rule 4) determines that part of the payment in case Y should be recorded as property income and another part of the payment should be recorded as a withdrawal of equity. A symmetric recording of capital gains and losses would have led to the recording of 100 as property income and 20 as an equity injection by government in case X. Such a treatment would have been appropriate within a reinvested earnings framework, but this approach is only accepted in the international accounting standards (ESA 2010, IMF *Balance of Payments Manual*) in the case of foreign direct investment.

4.2.3.1. LEGAL AND ECONOMIC OWNERSHIP

13. The rules in section 4.2.2 only apply to payments made to government in its capacity as a shareholder of the central bank. Even if, from a legal point of view, there is no ownership relation between government and the central bank, equity is to be recorded in national accounts to reflect the fact that the central bank holds and manages reserve assets on behalf of the nation, and hence of government. Moreover, if government receives part of the profits on a regular basis or has a right over the net assets in case of liquidation this also indicates that government is the economic owner of the central bank. In such cases where government has economic ownership despite not being the legal owner, government ownership in the central bank is recorded as other equity in national accounts (ESA 2010 5.154c).

4.2.3.2. VALUATION OF GOVERNMENT EQUITY

14. The equity stake of government in the central bank is valued on the basis of net assets. This includes equity capital (issued), revaluation reserves (notably gold and foreign exchange), legal and dedicated reserves, and retained earnings.

4.2.3.3. OTHER PAYMENTS

15. The rules above do not apply to payments made by the central bank for services provided by government or to the payment of taxes. Regular corporate taxes to which other corporations are also subjected, paid by the central bank to government are recorded as a tax on income (D.51) with the exception of taxes paid on exceptional transactions (see chapter 4.3 The sale of gold and foreign exchange by the central bank). The fact that capital gains may be taxed as well is not an issue. According to ESA 2010, taxes on income are not only levied on income, but also on profits and capital gains (see ESA 2010 paragraph 4.78).

4.2.4. Accounting examples

Table 2 shows eight stylised examples of the annual profit and loss account of the central bank and payments to government. The proper recording in the government accounts can be determined by comparing the payment to government (B) with the operating profit/loss (A). The holding gains/losses in AF.5 held by general government are computed by deducting the amount of property income paid from the total profit.

Table 2: Payments from central bank to government and their recording in national accounts

	1	2	3	4	5	6	7	8
Total profit (+)/loss (-)	100	150	150	100	100	150	50	50
Operating profit (+)/loss (-)	100	100	100	150	150	100	-50	-50
Capital gain (+)/loss (-)	0	50	50	-50	-50	50	100	100
Payment from NCB to government	100	100	50	100	150	150	50	100
Change in reserves due to retained earnings*	0	50	100	0	-50	0	0	-50
Recording in government accounts								
D.4R property income received	100	100	50	100	150	100		
Impact on B.9 net lending (+)	100	100	50	100	150	100		
F.5A acquisition of equity								
F.5A withdrawal of equity						-50	-50	-100
F.5A holding gain (+)/loss (-)		50	100	0	-50	50	50	50

* Changes in reserves due to other reasons are neglected in these examples (legal and dedicated reserves).

4.2.5. Annex: Bookkeeping in central banks

4.2.5.1. INTRODUCTION

16. Following the creation of the euro area, the European System of Central Banks (ESCB) has harmonised its accounting practices on all central banking related activities for Euro-system financial reporting purposes. The harmonisation rules are described in the ECB guideline of 11 November 2010 on the legal framework and financial reporting in the European System of Central Banks (ECB/2010/20) and the amending ECB Guideline of 10 December 2012 (ECB/2012/29).

17. While the ECB Guidelines are legally binding for euro area NCBs (the Euro-system), a number of EU NCBs of non-participating Member States also aligned their practice to them as a preparatory step for possible adoption of the euro. The Guidelines are not mandatory for some items ('other assets') for which the rules are only recommendations. When a particular item is not covered by the Guideline, central banks apply International Financial Reporting Standards or national laws.

18. The implementation of the above-mentioned ECB Guidelines has harmonised the accounting treatment of gains and losses within the Euro-system. However, the distribution of NCB profits is not determined by the above-mentioned Guidelines but it is governed by national law or based on an agreement with the Ministry of Finance and is still very heterogeneous from one country to another.

Table 3 represents the published profit and loss accounts of a central bank that applies the Euro-system accounting rules.

Table 3: Profit and loss account of a central bank

1.1. Interest income
1.2. Interest expense
1. Net interest income
2.1. Realised gains/losses arising from financial operations
2.2. Write-downs on financial assets and provisions
2.3. Transfer to/from provisions for foreign exchange rate, interest rate, credit and gold rate risks
2. Net result of financial operations, write-downs and risk provisions
3.1. Fees and commissions income
3.2. Fees and commissions expense
3. Net income/expense from fees and commissions
4. Income from equity shares and participating interests
5. Net result of pooling of monetary income
6. Other income
Total net income
7. Staff costs
8. Administrative expenses
9. Depreciation of tangible and intangible fixed assets
10. Banknote production services
11. Other expenses
12. Income tax and other government charges on income
(Loss)/profit for the year

19. The operating profit/loss can usually be computed by deducting item 2 of the central bank profit and loss account (see table 3 above) - 'net result of financial operations, write downs and risk provisions' from the total profit/loss for the year, to arrive at the operating profit/loss and by deducting all other provisions and reserves not recorded in item 2, since it cannot be completely excluded that, apart from item 2, other items of the profit and loss account of a central bank also contains provisions and reserves (for instance item 5). These will then also have to be deducted from the total profit/loss to obtain the operating profit/loss.

4.2.5.2. RECORDING CAPITAL GAINS/LOSSES

20. Realised gains or losses occur when financial assets are sold; while unrealised gains or losses are generated when financial assets are kept on the books and revalued. This section presents, firstly, the treatment of both realised and unrealised gains and losses in the Euro-system bookkeeping and, secondly, the existing practices regarding the profit distribution of EU NCBs. The Euro-system accounting concepts used hereafter do not necessarily correspond to the wording used in national accounts (e.g., income).

4.2.5.2.1. Income recognition and balance sheet valuation Euro-system rules

21. The rules for income recognition and balance sheet valuation are based on a prudent accounting approach whereby unrealised capital gains are not recognised as income (and therefore are not distributed). The following main rules apply:

- realised gains and losses are taken to the profit and loss account;
- unrealised gains are not recognised as income in the profit and loss account but they are recorded on balance sheet in a revaluation account;
- unrealised losses are taken at year-end to the profit and loss account if they exceed previous revaluation gains booked in the revaluation account; the unrealised losses taken to the profit and loss account cannot be netted-out by new unrealised gains in subsequent years;

- there is no netting of unrealised losses in any security, in any currency or in gold holdings against unrealised gains in other securities or currencies or gold.
22. These rules apply to gold, assets and liabilities in foreign currency, non-Held-to-Maturity marketable securities, and marketable equity instruments that are not participating interests and are not held as permanent investments, and off-balance sheet instruments. Held-to-maturity securities and non-marketable securities are presented at amortised cost subject to impairment. Illiquid equity shares, participating interests, and other equity shares held as permanent investment are also valued at cost subject to impairment while loans are presented at nominal value (or cost).

4.2.5.2.2. Other systems

23. For those NCBs that have not implemented the ESCB Guideline, a balance sheet revaluation item that includes unrealised gains may also be available. However, in some cases all valuation gains and losses are accounted in the profit and loss account.

4.2.5.3. RECORDING DISTRIBUTION OF PROFITS

24. Governments are usually the main shareholders of national central banks and therefore are the main beneficiaries of the distributed profits. The modalities in which the profits of the NCBs are attributed and distributed to the respective governments are, though, rather heterogeneous across the different EU Member States as this is subject to national practices.
25. For most NCBs the allocation of profit is, in most cases, codified in national law but, in a few cases, the profit distribution is based on an agreement between the central bank and the Ministry of Finance. In a specific case, where the government is not the legal shareholder, yet the main part of the central bank's profit is transferred to government, government's economic ownership of the bank is recognised in national accounts, through government holding AF.519 other equity in the NCB.
26. The level of profit distributed to shareholders varies across the ESCB. In some cases, the profit is shared equally between the central bank and the shareholders, while in other cases the shareholders (mainly the government) receive the bulk of the net profit. While some NCBs distribute pre-determined percentages of the net profit, other NCBs restrict the profit distribution depending on the level of reserves and provisions.
27. To protect themselves against foreign exchange and interest rate risk, a number of NCBs may transfer part of the profits to general provisions and reserves. The profit/loss treatment asymmetrical in the sense that profits at least partially lead to payments to governments while losses do not necessarily result in (only in exceptional cases) a payment from government to the NCB. In order to cover possible losses when they arise, general risk provisions and reserves might be created as financial buffers.
28. A paragraph was inserted in ECB Guideline ECB/2012/29, whereby: *Taking into due consideration the nature of the activities of the NCBs, an NCB may establish a provision for foreign exchange rate, interest rate, credit and gold price risks on its balance sheet. The NCB shall decide on the size and use of the provision on the basis of a reasoned estimate of the NCB's risk exposure.* However, this article cannot supersede national laws and the creation of general provisions and reserves is still subject to national legislation. A common definition of these two terms is as follows (and is the case for the ESCB accounting guideline):
- **'Provisions'** are defined as amounts set aside before arriving at the profit or loss figure in order to provide for any known or expected liability or risk, the cost of which cannot be accurately determined'.
 - **'Reserves'** are considered to be amounts set aside out of distributable profits, which are not intended to meet any specific liability, contingency or expected diminution in value of assets known to exist at the balance sheet date'.

4.2.5.4. SPECIAL TRANSITIONAL RULES FOR COUNTRIES ENTERING THE EURO AREA

29. National central banks revalue all financial assets and liabilities at the date they become members of the Euro-system. Unrealised gains that arose before entry into the euro-area are separated from those unrealised valuation gains arising after the entry. The ECB Accounting Guideline recommends that NCBs do not distribute unrealised gains during the transitional period leading to entry into the Euro-system. In this case, unrealised gains that arose before entry into the euro area, can be distributed once they have actually been realised through transactions that occur after the entry in the euro area.

4.3. The sale of gold and foreign exchange by the central bank

4.3.1. Background

1. The proceeds of a sale of gold or other reserve assets by the central bank may be transferred to government. This chapter explains why such a transfer does not affect government net lending/borrowing because it is considered a withdrawal of equity. This treatment is briefly mentioned in ESA 2010 paragraph 20.217 (b).
2. It is worthwhile, first, to give a definition of reserve assets. Such a definition may be found in the IMF's *Balance of Payment Manual: Reserve assets are those external assets that are readily available to and controlled by monetary authorities for meeting balance of payments financing needs, for intervention in exchange markets to affect the currency exchange rate, and for other related purposes (such as maintaining confidence in the currency and the economy, and serving as a basis for foreign borrowing)*. Reserve assets must be foreign currency assets. The asset must actually exist, potential assets are excluded. Underlying the concept of reserve assets are the notions of 'control' and 'availability for use' by the monetary authorities.⁽¹⁹³⁾ Reserve assets comprise monetary gold, SDR holdings, reserve position in the IMF, currency and deposits, securities (including debt and equity securities), financial derivatives, and other claims (loans and other financial instruments).⁽¹⁹⁴⁾ In the following sections, only gold and foreign exchange assets are considered.

4.3.2. Treatment in national accounts

3. A central bank may sell a significant part of its reserve assets and pay part or all of the proceeds to government. In such a case, the payment of proceeds to government is recorded completely as a financial transaction in the accounts of government and the central bank. It is recorded as a withdrawal of shares or other equity (F.5) from the central bank by government, with a counterpart entry as an increase in a financial asset (most likely deposits (F.2)) held by government, or, possibly, a decrease in a financial claim of government (loans (F.4) for example) on the central bank.
4. This treatment in the national accounts has to be made irrespective of how the payment is labelled in the central bank's bookkeeping or in public accounts, such as a dividend or taxes for instance. In the case of large payments related to an exceptional sale of gold or foreign exchange reserves, the payment of taxes has to be recorded as a withdrawal of equity (see chapter 4.2 Payments between the central bank and government).
5. In national accounts, the correct recording of the sale of gold in the central bank sub-sector accounts depends on whether the gold sold is monetary gold or not. Monetary gold is a financial asset, it is gold to which the monetary authorities (or others who are subject to the effective control of the monetary authorities) have title and is held as a reserve asset. Non-monetary gold is classified as a valuable and hence a non-financial asset. The sale of monetary gold has no impact on the net lending/borrowing (B.9) of the central bank, whereas the sale of non-monetary gold does (i.e., monetary gold that has been demonetised will affect net lending/borrowing (B.9) of the central bank). In both cases the payment of proceeds by the central bank to government has no impact on government net lending/borrowing (B.9).

4.3.3. Rationale of the treatment

4.3.3.1. THE SPECIFIC NATURE OF RESERVE ASSETS

6. Reserve assets have specific features compared to other financial instruments. Although the central bank has full autonomy for managing them, the institution does not act in its self-interest like a

⁽¹⁹³⁾ IMF: Balance of Payments and International Investment Position Manual Sixth Edition (BPM6) (2009), chapter 6 — Functional categories, F.I Reserve assets, page 111.

⁽¹⁹⁴⁾ See BPM6, Box 6.5: Components of Reserve Assets and Reserve-Related Liabilities, page 112.

corporation, i.e., by maximising their shareholder's profits or wealth. The role of the central bank concerning the management of the foreign assets is fixed by specific legislation. They are managed for macro-economic purposes and for the public interest, in the framework of monetary policy. Thus, these assets are not really owned by the units that manage them. They are owned by the nation, which is represented in national accounts by general government.

4.3.3.2. THE RECORDING OF FOREIGN EXCHANGE RESERVE ASSETS IN CENTRAL BANKS' BALANCE SHEETS

7. The above-mentioned specific nature of foreign exchange reserve assets held by central banks has to be reflected in national accounts under the form of equity recorded on the asset side of general government and on the liability side of the central bank. Considerations and uniformity of statistical treatment across EU Member States are given a more prominent role than the legal status of the central bank. Even if, from a legal point of view, there is no ownership relation between government and the central bank, equity is to be recorded in national accounts to reflect the fact that the central bank holds and manages the reserve assets on behalf of the nation, and hence of government. Another reason is that government is the economic owner of the central bank, because it has right over the net assets in case of liquidation of the central bank or receives part of the profits on a regular basis (ESA 2010 paragraph 5.148).
8. The question is how to value the equity of government in the central bank in respect of the reserve asset holding. To answer this question, it is worth considering the money creation process due to foreign transactions: at the time reserve assets are acquired by the central bank, there is most likely, in its balance sheet, a counterpart entry on the liabilities side to record the issuance of (base) money. When the market price of reserve assets acquired in this way increases, there is a holding gain. In national accounts balance sheets, the holding gain leads to increase in the value of the instrument on the asset side of the central bank's balance sheet. This increase on the asset side has a counterpart on the liability side: an increase in government equity.
9. Thus, at a given point in time, the value of government equity in the central bank's balance sheet in respect of reserve assets will be captured by the difference between the prices at which these assets were acquired by the central bank and their present market prices. More precisely, it is equal to the accumulation of holding gains/losses minus any withdrawals of equity made by government. At this stage, it is useful to make a distinction between monetary gold and foreign exchange assets.
10. Gold was generally acquired by central banks a long time ago and gold prices have greatly increased since that time. As a consequence, government equity in respect of the holding of monetary gold is generally important insofar as central banks have kept reserve assets under this form.
11. It is more difficult to be so conclusive about the equity related to foreign exchange assets: the final influence of movements in exchange rates depends on too many factors, such as impact on both imports and exports, currency of settlements, etc. It might happen that the value of equity declines and even becomes negative due to holding losses.
12. Nevertheless, the existence of payments to government, related to foreign exchange assets, implies a positive difference between the present market value of foreign currencies and their acquisition price; if there were a loss, there would be no room for payments from central bank to government. So, in the cases under consideration there has been a holding gain, and as a consequence the value of government equity in the central bank in respect of foreign exchange assets has increased.
13. All payments made by the central bank to government relate to the activity of holding and managing reserve assets, which occurs because government has equity in the central bank in respect of these reserve assets. The payments are thus treated as a withdrawal of shares and other equity (F.5).

4.3.3.3. MONETARY VS. NON-MONETARY GOLD

14. The sale of monetary gold is recorded differently in the central bank's accounts than non-monetary gold. Monetary gold is a financial asset held by monetary authorities (the central bank or in some countries the central government) as part of the foreign reserves (see ESA 2010 paragraph 5.57). If gold is sold by the central bank to other (i.e., foreign) monetary authorities, it is recorded in the financial accounts of the domestic central bank as a decrease in AF.11 financial assets with a counterpart entry a decrease in the liabilities of the central bank vis-à-vis foreign monetary authorities (or an increase in the financial claims of the central bank on foreign monetary authorities). If gold is sold to non-monetary authorities, it

is preceded by a demonetisation of monetary gold in the central bank's accounts and the sale is treated as a disposal of a valuable.

15. Demonetisation, meaning the reclassification from monetary to non-monetary gold, is recorded in the changes in classification of assets and liabilities (K.62) of the central bank — see ESA 2010 paragraphs 6.22–6.24).⁽¹⁹⁵⁾ Although the sale of non-monetary gold is recorded differently in the central bank's account than the sale of monetary gold, the transfer of the proceeds is in both cases recorded as an equity withdrawal because in both cases gold is managed by the central bank on behalf of the nation and hence of government.

16. Furthermore, the sale of gold does not affect the operating profits of the central bank. The transfer of the sale proceeds to government can therefore not be recorded as property income in the government accounts irrespective of whether gold has been sold to monetary authorities or other institutional sectors. This treatment of the sale of non-monetary gold is consistent with the recording of indirect sales of non-financial assets in part 5 of this manual (see sub-section 5.2.2.4 Indirect sale of non-financial assets).

4.3.3.4. ACCOUNTING EXAMPLES

Example 1

- Assume that the central bank holds monetary gold that increases by EUR 100 million in value in year 1.
- In year 2, the central bank sells EUR 90 million worth of gold to foreign monetary authorities.
- In year 3, the proceeds are transferred to government.

Year 1						
General government			NCB			
Opening balance sheet						
A		L	A		L	
AF.2	a		AF.1	y	AF.2	b
AF.5	z				AF.5	z
Revaluation account						
ΔA		ΔL	ΔA		ΔL	
AF.5	100		AF.1	100	AF.5	100
Closing balance sheet						
A		L	A		L	
AF.2	a		AF.1	y +100	AF.2	b
AF.5	z +100				AF.5	z +100

Year 2					
General government			NCB		

⁽¹⁹⁵⁾ There may also be the reverse operation 'monetisation' (for instance sized gold by custom transferred to central bank).

Financial account			
ΔA	ΔL	ΔA	ΔL
		F.1	-90
		F.2/S.2	-90

Closing balance sheet			
A	L	A	L
AF.2	a	AF.1	y +10
AF.5	z +100	AF.2	b -90
		AF.5	z +100

Year 3			
General government		NCB	

Opening balance sheet			
A	L	A	L
AF.2	a	AF.1	y +10
AF.5	z +100	AF.2	b -90
		AF.5	z +100

Financial account			
ΔA	ΔL	ΔA	ΔL
F.2	90		F.2/S.13
F.519	-90		F.519
			90
			-90

Closing balance sheet			
A	L	A	L
AF.2	a +90	AF.1	y+10
AF.5	z+10	AF.2	b
		AF.5	z+10

Example 2

- Assume that the central bank holds monetary gold that increases by EUR 100 million in value in year 1.
- In year 2, the central bank sells EUR 90 million worth of gold to financial corporations. The gold is demonetised before the actual sale takes place.
- In year 3, the proceeds are transferred to government.

Year 1			
General government		NCB	

Opening balance sheet			
A	L	A	L
AF.2	a	AF.1	y
AF.5	z	AN.13	0
		AF.2	b
		AF.5	z

Revaluation account			
ΔA		ΔL	
AF.5	100	AF.1	100

Closing balance sheet			
A		A	
AF.2	a	AF.1	y +100
AF.5	z +100	AN.13	0

Year 2	
General government	NCB

Opening balance sheet			
A		A	
AF.2	a	AF.1	y +100
AF.5	z +100	AN.13	0

Revaluation account			
ΔA		ΔL	
		AN.13	90
		AF.1	-90

Non-financial account			
U/ ΔA		U/ ΔA	
		AN.13	-90

Financial account			
ΔA		ΔL	
		F.2/non S.13	-90

Closing balance sheet			
A		A	
AF.2	a	AF.1	y+10
AF.5	z +100	AN.13	0

Year 3	
General government	NCB

Opening balance sheet			
A		A	
AF.2	a	AF.1	y+10
AF.5	z +100	AN.13	0

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	90			F.2/S.13	90
F.5	-90			F.5	-90

Closing balance sheet

A		L	A		L	
AF.2	a +90		AF.1	y+10	AF.2	b
AF.5	z+10		AN.13	0	AF.5	z+10

4.4. Non-returned banknotes and coin after a cash changeover

4.4.1. Background

1. During a cash changeover, banknotes and coin in circulation denominated in national currency are returned to the respective issuers, which are the national central banks for banknotes and, in most cases, the national governments for coin. However, part of the national currency previously in circulation will never be returned because it has been destroyed or lost, or because holders have decided to keep it for collection or other reasons.
2. When a national central bank (NCB) no longer exchanges or expects to exchange old national banknotes, it writes off a liability. This write-off is then recorded as a profit in the profit and loss statement of the NCB. The profits from the non-return of banknotes in national currency may ultimately accrue to government, either as a separate payment or as part of the regular payment of dividends and/or income taxes by the national central banks. The issue is whether such a payment should affect government net lending/borrowing (B.9).
3. The ESA 2010 recording rules only apply to the recording of stocks and flows in national accounts and do not prescribe rules for the actual bookkeeping system of NCBs. ECB Guideline 2006/16 provides the legal framework for accounting and financial reporting in the European System of Central Banks.
4. In general, coin are a liability of government and the question arises whether their non-return should impact government net lending/borrowing (B.9) and debt (see below in sub-section 4.4.2.2 Non-returned coin, the treatment agreed by convention in ESA 2010).
5. The recording principles in this chapter do not only apply to the case of a cash changeover to the euro, but also to other cases when existing series of coin or banknotes are substituted by the new series, for instance due to a change in design of banknotes.

4.4.2. Treatment in national accounts

4.4.2.1. NON-RETURNED BANKNOTES

6. Gains from non-returned banknotes have no impact on government net lending/borrowing (B.9). Banknotes in circulation appear as a liability in the balance sheet of the NCB under the category currency and deposits (AF.2). In a cash changeover, old national banknotes that have ceased to be legal tender and have not been returned to the NCB will be classified as other accounts payable (AF.8) in the ESA balance sheet of the NCB. When banknotes that are not legal tender are exchanged against new banknotes, a reduction of other accounts payable is recorded with a counterpart entry in currency and deposits.
7. The non-returned national banknotes are written-off from the NCB balance sheet in national accounts, when the NCB no longer exchanges them against new notes. In those countries where old national banknotes can be redeemed indefinitely against new ones, the old banknotes are written-off from the NCB's balance sheet when it is certain that they will no longer be returned even though the legal obligation to redeem the old banknotes still exists. In practice it seems generally prudent that statisticians derecognise NCB liabilities for the purposes of compiling the financial accounts, when the NCB's own accountants have done so. These write-offs are recorded as other changes in the volume in the other accounts payable of the NCB.
8. Assuming that government is the only shareholder entitled to the gains from non-returned banknotes, the value of government's equity asset in the central bank will increase by the same amount as that written-off. This increase is recorded in the revaluation account of both the NCB (for AF.5 liabilities) and government (for AF.5 assets). When gains on non-returned banknotes are distributed to government, the amounts distributed have to be recorded as financial transactions (a withdrawal of equity (F.5) by government), not as government revenue (dividends, taxes on profits or capital transfers). In certain countries, government is not the legal shareholder of the NCB, but is nevertheless entitled by legislation to receive the proceeds from non-returned banknotes. In such cases, national accounts recognise the

economic ownership of government and records government holding other equity (AF.519) in the NCB equivalent to the amount of the banknotes.

9. In cases where the NCB makes payments to government in anticipation of the write-off of the non-returned banknotes, the payments are treated in national accounts as advance payments. The payments are recorded as other accounts payable (F.89) in the general government sector accounts and as other accounts receivable (F.89) in the central bank sub-sector accounts, with counterpart entries in currency and deposits (F.2). When the actual write-off takes place, the amounts previously recorded in F.89 are reversed against the withdrawal of equity by government.

4.4.2.2. NON-RETURNED COIN

10. Non-returned coin have an impact on government debt as defined for the Excessive Deficit Procedure but leave government net lending/borrowing (B.9) unchanged. The treatment in national accounts is similar to the treatment of non-returned banknotes.
11. In public accounts, coin in circulation are not a liability of the central bank, but of central government, and therefore, the central bank pays central government the face value of the issued coin. However, coin are part of the monetary aggregates and, by convention, a liability equal to the amount issued is entered under the category 'currency in circulation' on the central bank's balance sheet, with a notional claim on central government (recorded as an AF.29 asset for the NCB and AF.29 liability for central government), see ESA 2010, chapter 5, Box B.5.2 and chapter 8.2 of this manual on the calculation of general government debt.
12. In a cash changeover, old national coin that have ceased to be legal tender and have not yet been returned to government but can still be officially exchanged against legal tender, are reclassified as other accounts payable (F.89) by other changes in volume (K.5) in the other changes in assets accounts. This reduces the stock of EDP debt when old currency ceases to be legal tender, since other accounts payable are not parts of EDP government debt. If old currency is returned against new coin, government debt will increase, as the amount of coin in circulation rises.
13. The write-off of the non-returned national coin in government's balance sheet takes place at the time when the government no longer exchanges the old national coin against the new legal tender, or when it is certain that they will no longer be returned. This should be recorded in national accounts through other changes in volume (K.5), which has no impact on government net lending/borrowing (B.9).

4.4.3. Rationale of the treatment

14. The ESA 2010 asset category currency (F.21) consists of coin and banknotes that are commonly used to make payments (see ESA 2010 paragraphs 5.76–5.78). Once old national banknotes and coin cease to be legal tender, they can no longer be used to make payments and therefore have to be excluded from the ESA 2010 asset category currency. This is not an interaction between institutional units by mutual agreement and as a consequence is not recorded as a financial transaction (see ESA 2010 paragraph 1.66). Rather, an asset reclassification other than (de)monetisation of gold (K.62) is to be recorded (ESA 2010 paragraph 6.24) in the other changes in assets accounts of both debtor and creditor. When the old coin and banknotes can still be exchanged against new ones, they still represent a financial claim on the issuers and hence still have to be considered financial assets (unlike valuables) and are reclassified to the ESA 2010 category other accounts receivable/payable. They *de facto* function as a store of value to the holders, while the issuer has a liability as it must redeem these instruments on presentation.
15. When old national banknotes and coin can no longer be exchanged against new currency and, thus, discontinue to constitute a claim against the issuer, other changes in volume of financial assets and liabilities (K.5) have to be recorded in the other changes in assets accounts of both debtor and creditor, because the event is not the result of an interaction by mutual agreement and neither is it a financial transaction nor a capital transfer. In practice, accountants also write-off old currency when it is (almost) certain that the old banknotes and coin will no longer be exchanged, even though the legal obligation to exchange them still exists. Accountants know from experience that not all old banknotes and coin will be exchanged either due to exceptional losses (see ESA 2010 paragraph 6.14 (a)) or because old coin and notes are being kept as collectibles. In this case, statisticians follow the same approach as the accountants and also record a write-off in the national accounts, so as to reflect economic rather than legal reality. If old banknotes and coin that have already been written off are, against expectation,

handed in for exchange against new banknotes and coin, the write-off has to be reversed through the other changes in assets accounts of both debtor and creditor.

16. The value of the equity that government holds in the NCB will increase due to the write-off of banknotes, since the amount of outstanding liabilities of the NCB is reduced. Changes in valuation of equity are recorded in the revaluation account.
17. Payments made to government by the NCB following the gains made due to non-returned banknotes cannot be recorded as dividend income (given that equity is valued at the NCB's net assets). These gains were not the result of production or the redistribution of production but the result of write-offs and therefore cannot be part of the operating profit of the NCB. This is the reason for which the payment made to government has to be recorded as a withdrawal of equity by government, leaving the government net lending/borrowing (B.9) unchanged.
18. Reclassifications or write-offs of old coin also leave the government net lending/borrowing (B.9) unchanged. Government debt, as defined for the purpose of the Excessive Deficit Procedure, consists of currency and deposits (AF.2), debt securities (AF.3) and loans (AF.4). The reclassification of old coin from currency and deposits to other accounts payable (AF.89) once they cease to be legal tender, reduces the stock of debt, since other accounts payable are not part of the government debt. If old currency is returned against new coin, government debt will increase, as the amount of coin in circulation rises.

4.4.4. Accounting examples

Example 1

- The euro is introduced as the new currency on day 1 of year 1.
- After six months, old national banknotes are no longer accepted as legal tender but they can still be exchanged for euros with the central bank. EUR100 million worth of old banknotes have not yet been exchanged against euros at the end of year 1.
- After one and a half years, the old banknotes can no longer be exchanged against euros. EUR15 million worth of old banknotes have not been exchanged against euros by the end of year 2 and have been written-off accordingly.
- The amount of EUR 15 million is paid to government by the NCB in the second half of year 2.
- For the sake of simplicity, it is assumed that old banknotes are exchanged against new banknotes and not against coin or deposits, and that none of the old banknotes were held within the general government sector.

Year 1					
General government			NCB		
Opening balance sheet					
A		L	A		L
AF.22	a			AF.21	x
AF.51	y			AF.22	a
				AF.51	y
				AF.89	z
Other changes in assets accounts					
ΔA		ΔL	ΔA		ΔL
				AF.21	-100
				AF.8	100

Closing balance sheet

A		L	A		L
AF.22	a		AF.21	x-100	
AF.51	y		AF.22	a	
			AF.51	y	
			AF.89	z +100	

Year 2

General government

NCB

Opening balance sheet

A		L	A		L
AF.22	a		AF.21	x-100	
AF.51	y		AF.22	a	
			AF.51	y	
			AF.89	z +100	

Financial account

ΔA		ΔL	ΔA		ΔL
F.22	15		F.21	85	
F.51	-15		F.22	15	
			F.51	-15	
			F.89	-85	

Other changes in assets accounts

ΔA		ΔL	ΔA		ΔL
AF.51	15		AF.51	15	
			AF.89	-15	

Closing balance sheet

A		L	A		L
AF.22	a+15		AF.21	x-15	
AF.51	y		AF.22	a+15	
			AF.51	y	
			AF.89	z	

Example 2

- The euro is introduced as the new currency on day 1 of year 1.
- After six months, old national banknotes are no longer accepted as legal tender but they can still be exchanged for euros with the central bank. EUR 100 million worth of old banknotes have not yet been exchanged against euros at the end of year 1.

- After one and a half years the old banknotes can no longer be exchanged against euros. In year 2, EUR 15 million worth of old banknotes are written off from the NCB's balance sheet. The amount of EUR 15 million is paid in advance to government by the NCB during year 1. The payment is made via deposit accounts (AF.22).
- For the sake of simplicity, it is assumed that old banknotes are exchanged against new banknotes and not against coin or deposits, and that none of the old banknotes were held within the general government sector.

Year 1							
General government				NCB			

Opening balance sheet

A		L		A		L	
AF.22	a	F.89	b	F.89	c	AF.21	x
AF.51	y					AF.22	a
						AF.51	y
						AF.89	z

Financial account

ΔA		ΔL		ΔA		ΔL	
F.22	15	F.89	15	F.89	15	F.22	15

Other changes in assets accounts

ΔA		ΔL		ΔA		ΔL	
						AF.21	-100
						AF.89	100

Closing balance sheet

A		L		A		L	
AF.22	a+15	F.89	b+15	F.89	c +15	AF.21	x-100
AF.51	y					AF.22	a+15
						AF.51	y
						AF.89	z+100

Year 2							
General government				NCB			

Opening balance sheet

A		L		A		L	
AF.22	a+15	F.89	b+15	F.89	c +15	AF.21	x-100
AF.51	y					AF.22	a +15
						AF.51	y
						AF.89	z+100

Financial account							
ΔA				ΔL			
F.51	-15	F.89	-15	F.89	-15	F.21	85
						F.51	-15
						F.89	-85

Other changes in assets accounts							
ΔA				ΔL			
AF.51	15					AF.51	15
						AF.89	-15

Closing balance sheet							
A				L			
AF.22	a+15	F.8	b	F.89	c	AF.21	x-15
AF.51	y					AF.22	a+15
						AF.51	y
						AF.89	z

Example 3

- The euro is introduced as the new currency on day 1 of year 1. Coin are a government liability.
- After six months, old national coin are no longer accepted as legal tender. EUR 100 million worth of old coin have not yet been exchanged against euros by the end of year 1.
- After one and half years the old coin can no longer be exchanged against euros. EUR 15 million worth of old coin have not been exchanged against euros by that date. Of the 85 million old coin that were exchanged at the central bank, 40 million were exchanged against new euro coin and EUR 45 million worth were deposited in bank accounts.
- For the sake of simplicity, it is assumed that none of the old coin were held within the general government sector.

Year 1							
Government sector							
Opening balance sheet							
A				L			
AF.22	a	AF.21	x				
		AF.89	y				

Other changes in assets accounts							
ΔA				ΔL			
		AF.21	-100				
		AF.89	100				

Closing balance sheet

A		L	
AF.22	a	AF.21	x-100
		AF.89	y+100

Note that government debt is reduced by 100 at the end of year 1 due to the reclassification of old national coin from AF.21 to AF.89.

Year 2
Government sector

Opening balance sheet

A		L	
AF.22	a	AF.21	x-100
		AF.89	y +100

Financial account

ΔA		ΔL	
F.22	-45	F.21	40
		F.89	-85

Other changes in assets accounts

ΔA		ΔL	
		AF.89	-15

Closing balance sheet

A		L	
F.22	a-45	AF.21	x-60
		AF.89	y

The final impact on government debt by the end of year 2 due to the cash changeover is smaller than the impact after year 1 due to the fact that a large amount of old coin have been exchanged against the new legal tender, which enters circulation.

4.5. Government interventions to support financial institutions: financial bailouts and defeasance

4.5.1. Introduction

1. Since its first edition in 2000, the Manual on Government Deficit and Debt (MGDD) has always included a chapter on Financial Defeasance, to aid statisticians on the application of the conceptual framework of ESA 1995 for cases of financial rescues that occurred in a number of countries in the early 90s. This chapter of the MGDD has then been revised throughout its subsequent editions, though only slightly.
2. In 2009, Eurostat took a Decision on the statistical recording of public interventions to support financial institutions and financial markets during the financial crisis⁽¹⁹⁶⁾. In taking that decision, it emphasized the particular circumstances of the financial turmoil, notably the high level of uncertainty over asset values and the risks that government is taking on. The Eurostat Decision was intended to provide a general framework of statistical rules, fully consistent with the European System of Accounts 1995 (ESA 95), and covering the main forms of public intervention observed to date.
3. The ESA 2010 was the occasion to insert in the ESA a number of references on defeasance structures and bailouts, flowing from work carried in the course of the review that produced the 2008 SNA also in the light of the financial crisis.
4. This 2022 new version of the chapter aims at considering and introducing a number of changes notably reflecting the developments in the support of financial institutions context. Namely, the revised chapter aims at broadening the scope from Financial Defeasance to all government interventions in support of financial institutions⁽¹⁹⁷⁾, at making the necessary updates to align the chapter with ESA 2010, to reflect and adapt the 2009 Eurostat Decision, and to take into account the broadened European experience in this context and the discussions held at several methodological fora since 2016.

4.5.2. Background

5. This issue is broadly covered in ESA 2010 paragraphs 20.32–20.34 (financial intermediation and the government boundary), 20.46 (classification of defeasance units) and 20.243–20.248 (impact on government accounts of bailout interventions).
6. The following applicable other important ESA 2010 paragraphs are also quoted in this chapter whenever relevant:
 - 1.66 (transactions);
 - 1.72–1.78 (re-arranging of transactions);
 - 2.27 (special purpose units of general government);
 - 2.55–2.58, 2.67–2.68, and 2.75 (financial corporations);
 - 3.134 (time of recording of gross fixed capital formation);
 - 4.164 and 4.165 (definition and scope of other capital transfers);
 - 5.19 and 5.21 (valuation);
 - 5.35 (accounting rules for financial transactions);
 - 5.36 and 20.127 (financial transaction with transfers as counterpart);

⁽¹⁹⁶⁾ See [Eurostat website](#), Guidance Notes issued under ESA 1995.

⁽¹⁹⁷⁾ For the sake of simplicity, the term 'bailout' is used in this chapter as an interchangeable concept of any government intervention in support of financial institutions.

- 5.122 (secondary markets for loans);
 - 6.14 and 6.15 (other changes in volume not elsewhere classified);
 - 6.58 and 20.141 (loans, other flows);
 - 7.70 (loans, balance sheet);
 - 20.02 (economic functions of government);
 - 20.44 (restructuring agencies);
 - 20.121 (transactions in loans);
 - 20.198, 20.199 and 20.201 (capital injections);
 - 20.221, 20.225–20.236, 20.256, 20.257 (debt operations).
7. According to the experience in Europe in the 1990's and especially since 2008 onwards, financial bailout has been identified as the interventions to support financial institutions (and thus financial markets), notably because of the problematic (non-performing/'bad') assets they hold, which have a significant negative impact on their profitability and also frequently on their solvency (ESA 2010 paragraphs 20.243 to 20.248).
 8. To rescue an entity from financial distress, government may buy problematic assets, or take the ownership of the original entity, or set-up a new entity taking over the problematic assets, or intervene through capital injections for covering losses, through granting loans, or through granting guarantees, among other forms of intervention (ESA 2010 paragraph 20.244).
 9. In practice, there may be complex arrangements where government intervenes in a more indirect way through units which are largely under its control or influence, for instance through some public financial corporations. The role of government will have to be fully ascertained in such situations, taking especially into consideration the guarantees which are usually granted by some government units to the entities involved in the rescue process. Generally, such guarantees are explicit but in some cases the unit benefits from an implicit government guarantee due to its public legal status.
 10. National Accounts principles imply that the accounting treatment of operations should reflect economic reality and not the legal or administrative arrangements in which those rescues/operations are carried out. This may lead to the need to record operations in national accounts in a different way from how they are recorded in other accounting frameworks, by reference to ESA 2010 paragraphs 1.72 to 1.78, which refer to the rearranging of transactions: re-routing, partitioning and recognising the principal party to transactions.
 11. For public policy reasons, governments usually undertake interventions in the context of financial bailouts at values above the market value of the concerned assets, putting themselves in a position to bear either a part or the majority of risks attached to the assets and/or institutions, and/or to ensure their long-term management.
 12. Therefore, when government is involved, bailout interventions frequently lead to an impoverishment of general government, observable by a decrease in its (financial) net worth, either at inception or over time, to the benefit of other sectors of the economy. There are several ways in which this may occur:
 - When government buys outright or takes over problematic assets, at a price higher than their market value;
 - When government directly covers the losses linked to problematic assets, by setting-up or taking over a defeasance structure, in exchange of providing consideration (e.g., cash and/or incurring or taking over liabilities) in excess of the value of those assets;
 - When the assets bought or taken over by the government unit are later on cancelled, written-down or written-off, or redeemed or sold at a loss;
 - When government provides guarantees, which are later on called, or;
 - When government provides direct financing via grants, equity acquisitions, or granting loans which are not fully expected to be reimbursed in capital and/or property income.
 13. The main issue concerning financial bailouts is thus how to appropriately record the impoverishment of general government, both at inception as well as later on, that results from its interventions in support of

financial institutions, paying close attention to distinguish what results or not from regular market developments.

14. In this context, a main difficulty is the myriad of forms in which governments may undertake such interventions, and their evolving and innovative character, which can make challenging the task of the statistician in assuring substance over form, i.e., regardless of the form and tools used in the resolution process, an equal amount of government (financial) net worth dilapidation that cannot be explained by regular market developments should ideally be accounted in the same way.
15. Another main difficulty is how to ensure that ESA 2010 general rules are adapted for instance during the liquidation of assets – so to be consistent with the fact that ESA 2010 rules may have been adapted for the recording of the rescue at inception – and eventually minimise overall deviations from ESA rules. It seems clear that applying rigidly general ESA rules during the liquidation phases could lead to erroneous overall results if at inception general ESA rules were adapted to the circumstances in question.
16. A crucial point is the existence of problematic assets. As a general definition, problematic assets are those non-performing assets (financial and, to a lesser extent, non-financial) that have negative consequences on the profitability of the financial institution that holds them and are of sufficient size that they endanger the solvency of the unit. An asset is non-performing if it is in arrears (with late or missed principal or interest payments) or in default (when the lender considers the debtor to be unable to partly or fully meet its obligations). Thus, when in large quantities, these are assets that a 'normal' financial intermediary would normally need to be relieved of. Such assets could be transferred through market transactions, at a substantial discount; however, in this case, the unit would incur immediate and significant losses, which could not be covered through its usual absorption mechanism. Hence the need for transferring those assets, or at least significantly reduce the risks and rewards exposure to these, at a better price, involving government. Problematic assets cover impaired and illiquid assets.
17. Impaired assets are valued in the business balance sheet in excess of their long-term market or fair value and are therefore expected to incur losses in the future. The value of such impaired assets may have been already downgraded (or written down), but insufficiently so. Further potential losses are usually still expected, and the financial institution will not be in a position to meet such losses through its own loss-absorption mechanism and/or the financial institution would not be able to meet the regulatory requirements. In the specific case of marketable assets, the unit could not dispose of them in a short term without incurring losses, such that the unit is *de facto* obliged to keep them and is subject to an involuntary exposure to market risk.
18. In some cases, problematic assets take also the form of illiquid assets. In the context of this Manual, they are defined as those marketable assets which cannot be priced and disposed in the short term because of an absence of market functioning under normal conditions, which often manifests itself by exceptionally large 'bid-ask' spreads. There is thus high uncertainty on their future market value and the holder of the assets is not in a position to modify its risk exposure by another way than through government intervention. For this reason, to ensure a consistent treatment across countries, the definition of problematic assets used in this chapter includes these types of assets, although they are not necessarily impaired.

4.5.3. Treatment in national accounts

4.5.3.1. TREATMENTS TO BE FOLLOWED, AT INCEPTION, WHEN GOVERNMENT ACQUIRES THE PROBLEMATIC ASSETS

19. In the context of a financial bailout, government may buy outright (or take over) the problematic assets. It does this directly or through specific units created on purpose which are considered part of the government sector. In this section, both will be referred to as purchases by government. The main point is that government purchases the problematic assets from the financial institution at a price that differs from/is higher than the market value or even the fair value estimated or observed at that moment.
20. As a general principle, the purchase of assets is a financial transaction. However, ESA 2010 paragraphs 5.35, 5.36 and 20.127 foresee the case where the counterpart transaction of a financial transaction might be a transfer, in part or in full. This is considered the appropriate recording when government purchases a portfolio of assets for a consideration (well) above its market, fair or written-down value. The amount of the capital transfer in favour of the financial institution should in this specific case be

equal to the difference between the amount paid (in cash or other assets and/or liabilities incurred) for buying them and a reliable estimate of the amounts to be recovered (ESA 2010 paragraphs 20.246 and 20.247). Moreover, the impact on B.9 will take into account the acquisition of any non-financial assets taken over. The counterpart of these transactions is the previous owner of the portfolio of assets (and liabilities), i.e., the financial institution(s) in difficulty (see accounting example 3, Case 1).

21. Assets traded on markets on a regular basis have an observable market value. This applies to debt securities, quoted shares and, to a lesser extent (depending on some specific conditions), to non-financial assets, notably real estate. For other assets, such as loans, other receivables and unquoted equity (and some unquoted debt securities), there is no observable market value, but a fair value might be estimated. If the purchase value of these assets deviates from their market/fair value, the amount of the capital transfer is equal to the difference between the sale price of the assets and the estimated fair value, or alternatively the market value.
 - For real estate assets, the financial institutions may be in distress because of the falling prices on the real estate market or the collapse in demand (leading to an accumulation of unsold or unfinished assets). Price indexes for real estate may be applied, in order to calculate their market value.
 - For securities and shares, except in the case of persistent absence of market functioning, market prices can be derived from stock exchange information for quoted instruments. The price for unquoted shares can be derived from the trend of quoted shares in a similar sector.
 - For problematic loans, the fair value will be less than the principal amount due by the debtors. Loans are transferred by the financial institutions to government often at the original contractual redemption value (increased with accrued interest and decreased by debt repayments to date, as compared to the initial nominal value at inception). By definition, as loans are not negotiable instruments on existing markets, there is no market value and thus their fair value must result from estimates, based on 'realistic hypothesis' which should be carried out by an independent body in case of significant transfer to government (in line with Article 36 of the BRRD⁽¹⁹⁸⁾). As the transaction is by evidence not made for purely commercial considerations (i.e., with an expectation of profit, see ESA 2010 paragraph 5.21) a capital transfer should be imputed for the difference between the purchase price and the independently estimated price (or other, see section 4.5.4.5 below). Nevertheless, if there is reliable information that some loans are irrecoverable (for instance because of the disappearance of the debtor), fully or for nearly all their total amount, the fair value of these loans should be accounted for at zero and a capital transfer is recorded for their full amount (ESA 2010 paragraph 20.121). In most cases, they would be write-offs by the defeasance structure after the transaction.
22. The statistician may also alternatively elect using market values, available from quotes on similar assets (including prices observed on the actual disposal of similar loan portfolios, carried out by other banks possibly in other countries or in previous periods), instead of using an estimated fair value. In this case, a larger capital transfer is recorded at inception.

4.5.3.2. TREATMENT TO BE FOLLOWED, AT INCEPTION, WHEN GOVERNMENT SETS-UP OR TAKES OVER A DEFEASANCE STRUCTURE

23. Besides the legal/structural approach of buying the problematic assets outright, governments are also frequently observed to set-up a new or take over an existing defeasance structure, or to take over entities split from the rescued unit. The accounting treatment to be followed in such cases is as the one explained in the previous section 4.5.3.1, i.e., when government acquires a portfolio of assets. The fundamental reason is that there is no substantial difference between the situations: as concerns the underlying policy objectives of government and as concerns the effects on government's wealth.

4.5.3.2.1. Sector classification — general rules

24. Any financial institution may be observed to hold some problematic assets, in many cases with no threat to the continued operation of the institution. It is important to distinguish those cases of financial institutions that are financial intermediaries as defined by ESA 2010 paragraphs 2.55–2.58, from those having the feature of financial defeasance structures, whatever their legal status.
25. Commonly, financial institutions in difficulties hold a portfolio of impaired assets whose market value may or may not be easily determinable. An operation may be conducted to move these assets into a

⁽¹⁹⁸⁾ 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 and investment firms.

separate body in exchange for a payment (perhaps in the form of a swap arrangement), thereby 'cleaning' the bank's balance sheet.

26. A financial defeasance structure is thus an institutional unit which has substantial problematic assets, whose principal activity is the resolution of these assets, generally over an extended period of time.
27. Some or all of the features in the following indicative list would provide evidence of the defeasance structure nature of a unit, and they would call into doubt that the institution could be classified as a financial intermediary:
- holding significant amounts of problematic assets (impaired or illiquid);
 - being closed to lending to new clients, or partly open under restrictive conditions. The extension of loans which relates to the management of existing assets would not be sufficient to conclude that the institution is engaging in financial intermediation;
 - strong externally imposed restrictions from competing on banking and financial markets;
 - being closed to deposits-taking for new clients, or partly open under restrictive conditions. This includes the ceasing of deposit taking from the general public or specified and relatively large sub-groups thereof. In particular, exclusive deposit-taking from the government and/or specific public corporations would not be considered sufficient to conclude that the institution is engaging in financial intermediation;
 - receives support from a sponsor, that goes beyond ownership links, which *de facto* allows the unit to acquire assets above market price; or
 - a foreseen limited lifetime linked to the progressive liquidation of the assets through recoveries or sales on the market.
28. For those institutions which do not meet the requirements to be classified as financial intermediaries, several cases can be distinguished:
- 1) a public body may be specifically created by government with the clear task of holding mostly problematic assets, frequently until their complete liquidation, and to directly assume losses that cannot be borne by 'normal' commercial entities;
 - 2) in other cases, the assets are allocated to an entity, public-owned, which is created in the context of the restructuring of an existing financial institution holding problematic assets. This may take various forms, according to the allocation of the problematic assets:
 - a) an existing financial institution is split between one new entity or more that are owned and controlled by government with the task to manage the problematic assets ('bad banks'), and one or more remaining entities that may continue financial intermediation activities in competition on the banking/financial market ('good banks'), such that *de facto* more than one defeasance structure may be created following that restructuring process;
 - b) the financial institution transfers to other units, under various procedures, its 'commercial profitable activity' (such as deposit taking, quality assets, low risk lending). As a consequence, the initial unit is left with the management of most or all problematic assets, which therefore become its main activity, and this is achieved with a strong support of the government or under its control (government being the main shareholder, directly or indirectly through other public bodies);
 - 3) entities that, although legally private, are in fact controlled by government through contracts and meet the characteristics above in 1) or 2). A useful indicator to conclude on public control despite predominant legal private ownership is when the entity is a subsidiary of a government entity and the IFRS/IPSAS account of the latter consolidates its subsidiary in its consolidated financial statements, thereby considering the subsidiary as controlled;
 - 4) other forms where the same substance is observed, i.e., the entity in question can be characterised by some or all the features in paragraph 27 above.
29. A defeasance structure can be economically privately or publicly owned (or controlled), and in the latter case can be either classified inside general government ('government defeasance structure') or outside ('other public defeasance structures'). Other public defeasance structures are defeasance structures created by public banks without the help/involvement of government, similarly to private defeasance structures.

30. When there is evidence that government is assuming all or the majority of the risks and rewards associated with the activities of a defeasance structure, as described above, this structure is a 'government defeasance structure', i.e., is classified in the general government sector, whatever its legal status – i.e., even in cases where government is not legally a majority shareholder. For instance, government is committed to cover the majority of the expected losses from the assets, through providing guarantees either on the assets or on the financing of the entity holding the problematic assets and the guarantee fee is not in line with the risks involved, or through being the main source of financing directly or indirectly. Another example is when government is capturing all/most of the rewards flowing from the liquidation of the assets irrespective of the legal shareholding distribution. These entities should be classified in the general government sector either from its creation or at the point of reorganisation.
31. In all cases, the sector classification of the publicly controlled defeasance structure has to be decided by analysing the degree of government sponsorship and exposure in the rescue process.

4.5.3.2.2. Sector classification — specific implementation issues

32. Defeasance structures typically hold problematic assets as a major share of its assets. 'Major share' may mean that the book value of the assets, on which exceptional losses have been recorded and on which further losses may still be expected, is a predominant part (and in some cases 100 %) of the assets held by the entity. Thus, defeasance structures may contain some mix of good and bad assets.
33. There may be borderline cases where entities meeting most of the fundamental features of a defeasance structure mentioned above are on the list of monetary financial institutions (MFIs) of the ECB, which are subject to the Eurosystem's minimum reserves as well as counterparties eligible for Eurosystem operations. These cases will be analysed by Eurostat and the national statistical institute (which is responsible for the sector classification of units in national accounts), in cooperation with the ECB and the national central bank, taking into account ESA 2010 paragraphs 2.67, 2.68 and 2.75 (defining monetary financial institutions, other monetary financial institutions and deposit-taking corporations except the central bank) on the one hand, and ESA 2010 paragraphs 20.44, 20.46 and 20.248 (defining defeasance structures/'bad banks' classified in general government) on the other hand.
34. It may happen that a financial corporation in distress is put in liquidation according to a 'normal' procedure, applicable to any units in the economy, notably with the support of government. Such a unit may have most of the features of a financial defeasance structure: notably bearing problematic assets, being closed to new business, having a limited lifetime. The unit in liquidation may also be a residual part of the financial institution in distress, which has been restructured. The fact that the unit⁽¹⁹⁹⁾ is undergoing liquidation does not prevent its classification within the general government sector if government is, *de jure* or *de facto*, controlling the liquidation process (for instance through its dominant influence on a creditors' committee) and/or is expecting to bear a majority of the expected losses or gains from the liquidation (i.e., due to its significant claims on the unit, taking into account its ranking among creditors) and/or due to support granted in the context of the management of the bailout.
35. When the entity is a special purpose vehicle, it should be treated as an integral part of the general government sector, or appropriately reflected in the accounts of government if non-resident (ESA 2010 paragraph 2.27).

4.5.3.2.3. Impact on government net lending/borrowing (B.9) and debt

36. As regards the impact on net lending/borrowing (B.9), whatever the case envisaged, when the reclassification involves the creation, the transfer or the takeover of an entity and/or of its portfolio of assets (including non-financial assets) in exchange for consideration for an amount higher than the value that can be independently estimated (or other, see section 4.5.4.5 below), the difference should be considered a capital transfer at inception.
37. Moreover, and consistently with ESA 2010 paragraph 3.134, the government non-financial accounts need to be impacted by any transfer of fixed assets (treated acquisitions less disposals of non-produced assets) at inception of the defeasance structure.

⁽¹⁹⁹⁾ One could argue that the unit is no longer an institutional unit because the owners have lost their ability of controlling it, with a decision-making power to the liquidator and/or creditors. However, the liquidation process implies that economic decisions are taken on its assets and liabilities. The fact that the control has been withdrawn from the previous owners is not as such sufficient to be automatically classified in the sector of the liquidator or the creditors (possibly belonging to different sectors). Thus, the unit must remain in the financial sector or, as mentioned above, be reclassified in the general government sector.

38. In the government accounts, two options are valid to account for this impact (see accounting example 3)⁽²⁰⁰⁾:

- Option 1): To record all changes in balance sheets as transactions of assets and liabilities, with the B.9 impact in the financial accounts reflecting the difference between the acquisition of financial assets and the consideration provided in exchange (that is: incurrence of others liabilities and disposals of cash or other assets).
- Option 2): To record changes in balance sheets as other changes in volumes instead of transactions of assets and liabilities. This approach starts with imputing an F.89 payable transaction (asset of the defeasance structure prior reclassification, and liability of government) equal to the B.9 impact in the non-financial accounts. The B.9 impact results from a capital transfer expenditure (equal to the negative net assets, then set to zero) and from the transferred non-financial assets (deemed sold to government prior reclassification). The portfolio of the defeasance structure, which then has balanced net assets, is then reclassified within the government sector as an other change in volume of assets account (changes in sector classification and institutional unit structure (K.61)).

The imputed AF.89 disappears from the consolidated government accounts due to consolidation, once the defeasance structure is classified inside government. It is also desirable to extinguish the AF.89 in the nonconsolidated government accounts just after reclassification, which can effectively be done either by way of transaction (through a return of the capital transfer, which is consolidated) or by way of an other change in volume.

The B.9 impact in the two approaches is the same. It is composed in the non-financial accounts by a capital transfer expenditure (D.9) for the negative net assets of the acquired portfolio (here including the non-financial assets), plus the expenditure related to the transfer of the non-financial assets (which then ensures an equal financial and non-financial B.9F/B.9 impact);

39. Option 1) has clear advantages: a) it recognises the fact that government is *de facto* acquiring a portfolio of assets and incurring liabilities, in an unbalanced way, which is reflected by a deficit impact, b) it limits the amounts of accounting entries for a same event and, by doing so, c) it limits the accounting errors made and d) enhances transparency and increases readability of the accounts for users. On the other hand, Option 2) has the advantage of keeping a parallel to the 'regular' sector reclassification of units, which can be more easily justified for units split from the rescued bank or for older units and has historically been used in a number of cases.
40. As regards the impact on government debt, in all cases, the classification of these entities/portfolios to government will mean that both their assets and liabilities are seen as acquired/incurred by government and consequently included in the government balance sheet, and therefore gross government debt will include the relevant debt instruments of the defeasance structures.
41. In the financial accounts, debt incurred is valued at market/fair value, which differs according to whether this debt benefits from an explicit or implicit guarantee. In the latter case, the value reflects an asset value.
42. The stock of debt in the ESA balance sheet follows the ESA valuation rules or may use a reset value for loans (and deposits) liabilities. In contrast, for the Maastricht Debt, the face value is to be used.
43. As a general rule, the assets are to be added to the government balance sheet at their transaction value, with the possible exception of loans/other receivables. For loan/other receivables, this chapter nevertheless encourages compilers to report them at their transaction value (called reset nominal value) rather than at their initial nominal value, in order to avoid distorting the net assets of general government for large amounts (see section 4.5.4.4 below for a justification of this deviation from a more formal reading of the ESA 2010).

4.5.3.3. RECORDINGS DURING THE DEFEASANCE PROCESS

44. Under normal commercial circumstances, subsequent changes in the market (fair) price of financial assets would give rise to the recording of holding gains/losses, which have no impact on net lending/borrowing. The difference in valuation between the purchase price and the redemption value or resale price would also be without B.9 impact (for financial assets).

⁽²⁰⁰⁾ See also accounting example 10 for other cases: Case 1 (outright acquisition of a portfolio of loan assets) and Case 2 (capital injection into a rescued bank and undertaking a balanced defeasance portfolio).

45. However, those fundamental ESA 2010 rules on the way to record subsequent changes in values assume that the initial purchase was carried out at market value, which is the fundamental ESA 2010 valuation rule for transactions.⁽²⁰¹⁾ But, in the case of defeasance structure, neither the purchase price nor the transaction price generally reflect the market value: an economic value is used instead. In turn, this alone justifies deviating from usual rules during the liquidation process⁽²⁰²⁾.
46. This deviation is also justified in substance because the defeasance, with the impairment of the assets taken over and the impoverishment of government (net worth) that follows, presumes an original intention to convey a benefit. In that sense, both the original loss and the further losses should be seen, in principle, as the manifestation that government interventions in support of financial institutions are not made for purely commercial reasons, but as a mean to redistribute income and wealth (ESA 2010 paragraph 20.46) which is one principal economic function of government (ESA 2010 paragraph 20.02 b)).
47. Unlike 'normal' commercially-oriented financial institutions, defeasance structures often do not have to fulfil capital, liquidity or funding regulatory requirements, as well as do not adopt a normal lending behaviour: government defeasance structures are created for public policy reasons.
48. Furthermore, in this context, further losses on non-marketable assets during the wind-down of a bad bank are sometimes neither due to market phenomena – by definition – nor the mere reflection of misestimations at inception. Rather, they are the result of discretionary decisions by the defeasance manager and/or the government itself.
49. Finally, from a practical point of view, defeasance often occurs in the context of dysfunctional markets (or perhaps in functional markets but with severe price decreases), presuming an unusual level of uncertainty, such that material errors can be made on the portfolio valuation at inception.
50. In this context, after inception and during the lifetime of a defeasance structure (or of the assets portfolio more directly acquired by government), the statistician will find three typical instances where recordings need to be decided and undertaken⁽²⁰³⁾: early re-estimates, following re-estimates (unrealised gains/losses), and resales/redemption of assets (realised sales/losses).
51. As mentioned above, the set-up of a defeasance structure or scheme frequently occurs in a situation of markets dysfunctionality, sometimes under considerable uncertainty, and usually as well in a short and unprepared – due to the circumstances – timeframe, leading to errors and misestimations. It is thus often observed that, over a short period, a re-estimation of the initial value of the defeasance assets is undertaken, even several times, with a material impact. Such a re-estimation is clearly undertaken to correct the initial estimation.
52. In this context, whenever such a re-estimation occurs within one year or so after the first EDP notification period in which the defeasance set-up was first reported, the initial impact in the non-financial and financial accounts of general government can be revised⁽²⁰⁴⁾.
53. Later on, during the management of the defeasance scheme, further re-estimation of the value of assets can also occur. Moreover, and as the goal of a defeasance is to wind-down a portfolio of assets, sales/resales will also occur. The main question is thus how, and when, to record the realised and/or unrealised gains and losses on the assets, taking into account, on the one hand, the need to transparently reflect in the general government net lending/net borrowing the true impoverishment of government from the bailout process that cannot be explained by market factors – undertaken for public policy reasons, with an original intention to convey a benefit – and, on the other hand, the ESA 2010 general principles rules on the accounting of those assets.

⁽²⁰¹⁾ ESA 2010 paragraph 5.19 directs that financial transactions are to be recorded at transaction values, what is somewhat circular. ESA 2010 paragraph 5.21 indeed explains that transactions, notably large transactions in equity, can deviate from the "price quoted on the market" (that can be assimilated to market price), because such transactions can contain a premium or a discount due to its size or other considerations. However, ESA 2010 paragraph 5.21 also explains that, when there is no commercial motivation to the transaction, the transaction value is identified with the current market value and the difference to the consideration provided is a transfer. Separately, for securities dealers, ESA 2010 paragraph 3.73 foresees that the transaction value is also the market price (mid-point between 'bid' and 'ask'), with the difference with the consideration provided being a service provided. In summary, the transaction value is generally a market price or equivalent, and in some instances may or may not include a transfer or a service

⁽²⁰²⁾ When compilers use the market value at inception, the further change in value can be reflected in the revaluation accounts only.

⁽²⁰³⁾ Besides the typical operating costs of the defeasance, which need to be accounted for in a regular and usual basis, for example: interest payable and receivable on the assets and liabilities in the portfolio, other property income payable and receivable, staff costs, intermediate consumption, *inter alia*.

⁽²⁰⁴⁾ Even if the revision of the initial estimate could be accepted during the first year, the data sources should be justified.

a) Loans

Principle of recording

54. During the resolution context, the loans assets of the defeasance structure may be written-down, written-off, redeemed or sold, or converted (into equity, real estate or other assets).
55. The general principle of loans that are not eventually repaid, and thus are written-off, follows two possible procedures in the ESA 2010: a cancellation implying a capital transfer if the debtor still exists (ESA 2010 paragraphs 6.15 (b), 4.165 (f), 20.221, 20.225 and 20.236); or the write-off is to be recorded in the other changes in volume of assets account if the debtor does not exist anymore and therefore the debt claim cannot be reimbursed by the debtor (ESA 2010 paragraphs 6.14 (b), 20.141 and 20.233 to 20.235). Yet, these general principles need interpretation in the context of loans extended by government and more specifically to help the recording by the statistician facing the specific bailout context. More precise guidelines are thus required.
56. Write-offs and write-downs are defined as internal accounting actions by the creditor without mutual agreement, thus to be recorded as revaluations, with no impact on the net lending/net borrowing of the creditor (ESA paragraphs 20.234 and 20.235).
57. On the other side, when the creditor is government, mutual agreement is usually presumed, even when not formally established. In such contexts, the write-off is considered a debt cancellation transaction, with impact on the net lending/net borrowing of government (ESA 2010 paragraph 20.225)⁽²⁰⁵⁾. This is reinforced by the fact that the nature of the claim – government taking over claims of a financial entity in distress – implies an original intention to convey a benefit (ESA 2010 paragraph 20.229).
58. Thus, the write-off of claims by government in the defeasance context is to be recorded as a capital transfer, even in the absence of formal cancellation by explicit mutual agreement, or the absence of the counterpart, because the agreement can be presumed and because government intended to provide a benefit at inception when taking over such loans (generally cheaper, and even much cheaper, than commercial loans). The counterpart of government expenditure is the debtor of the claim, which is the genuine beneficiary of the debt forgiveness at that point (ESA 2010 paragraph 20.230).
59. A defeasance structure is initially set-up with the objective of assuring a controlled and contained wind-down of a portfolio of assets, thus avoiding, in interconnected financial markets, the systemic spreading of the problem from one financial institution to others. At the same time, financial bailouts often occur in the aftermath of financial crisis, with widespread economic consequences, such that the management of a defeasance structure is also a mean for government to indirectly provide financial aid to other units, not exclusively to financial institutions, in light of ESA 2010 paragraph 20.221.
60. This does not mean that the government-controlled defeasance structure does not aim at maximising the recovery on assets, to the extent that this is viable, purposeful and economic. However, when faced with further, persistent or material losses, statisticians should not be deterred in recognising the origin and substance of the winding-down of a distressed financial entity by the fact that the business model of the defeasance (and its genuine behaviour) might have the intention of avoiding further losses,
61. The whole arrangement is different from the profit-maximisation behaviour of commercial entities. This is also one reason why a successful government-oriented resolution needs to be well reflected in the accounts, i.e., the general government accounts should also reflect the case when the final actual impoverishment due to non-market reasons of government from the bailout is lesser than initially expected. The non-commercial character and purpose of financial bailout and defeasance should thus work both ways in general government accounts, in a symmetric and balanced way.
62. In this setting, the non-financial accounts of government should recognise the fact that a loan asset of the government-controlled defeasance structure is redeemed to an amount below or above the initially expected (as reflected in the reset nominal value), via a capital transfer. A main question in this instance is when to record this transfer and who is the counterpart of such a transaction.

⁽²⁰⁵⁾ ESA 2010 paragraph 20.225 indicates that *Debt cancellation (or debt forgiveness) is the extinction or reduction of a claim by agreement between the creditor and the debtor. The creditor records a capital transfer payable for the amount cancelled and the other unit records a capital transfer receivable. Mutual agreement is often presumed though not formally established in case of government forfeiting claims (...).*

Further losses

63. When the debtor redeems the government-controlled defeasance structure for an amount lower than the reset nominal value and government writes-down, writes-off or cancels the remaining, ESA 2010 paragraph 20.225 is to be followed. Government is seen forfeiting a claim against the debtor, by mutual agreement, and a capital transfer expenditure is to be recorded at that time benefitting the debtor (see accounting example 6, Case 1).
64. One case, apart the one of final redemption or conversions (see below), is that of a cancellation of the loan asset, during the management of the defeasance structure: once more, mutual agreement is presumed, explicitly or implicitly, when cancellation is undertaken by government, in line with ESA 2010 paragraph 20.225. Moreover, ESA 2010 paragraph 1.66 allows for certain actions within an institutional unit to be treated as a transaction. Such cancellations of government claims are thus to be considered as transactions and recorded as capital transfers. In some cases, recording capital transfers on write-downs, as if it was a partial write-off, can also be justified.

Further gains

65. When the debtor repays in excess of the reset nominal value, there is a question on how to record this excess: as revenue or as revaluation, and at what time. It is a priori not possible to see the debtor of the loan as conveying a benefit to government when it redeems the loan at an amount higher than the reset nominal value; in fact, the debtor legally owes a given face/contractual value, and is repaying to the defeasance structure some amount smaller or equal to that contractual value but higher than the reset nominal value, i.e., the debtor is not redeeming above what it is contractually obliged to pay and is thus not actually conveying a benefit to the defeasance structure. The genuine counterpart of this transaction is the original creditor, who sold/transferred the assets to government. While at inception it was estimated that the benefit conveyed by government to this creditor was of a certain amount, given the write-off on the (impaired) loan and the purchase price, it is now proven that the extent of non-recoverability was over-estimated. Moreover, allowing unrestrained recording of gains as revenue could provide wrong incentives to governments in liquidating selected assets of the defeasance in carefully chosen moments, so to artificially improve the net lending/net borrowing of general government.
66. To obviate these problems, in principle, the capital transfer at inception between government and the original financial institution(s) would need to be revised, when gains are later on realised. However, this would potentially require recurrent large revisions to the capital transfer recorded at inception, which would be difficult to justify to users.
67. In this context, a pragmatic and balanced approach (the 'delayed revenue approach'), that offers full symmetry between gains and losses, is (1) to allow netting realised gains with (and to the limit of) capital transfer expenditures to be recorded in the defeasance context as a result of realised losses during the same accounting period (the calendar year), and (2) to report eventual remaining gains forward (recording a notional F.89 payable for the proceeds collected), and (3) continuing netting the gain reported in subsequent periods till extinction. In the case where insufficient losses exist to cover such gains (i.e., the defeasance is turning a net gain on loans assets, compared to initial expectations), a final and unique capital transfer revenue is to be recorded when the defeasance structure is finally wound-down (see accounting example 6, Case 2).
68. The netting element followed in the 'delayed revenue approach' is well adapted to defeasance structures, where a large portfolio of numerous claims is generally held. Thus, in a given accounting period, some loans turn a gain while others turn a loss, such that it is relevant to consider the net effect of the numerous events occurring in the accounting period (one could thus also call it a portfolio approach). Delaying net revenue to the subsequent period is prudent and avoids creating adverse incentives.
69. The 'delayed revenue approach' is nonetheless also applied if very few but large loans exist, for consistency reasons.

Conversions

70. Furthermore, a defeasance structure can seek to convert the collateralised loans into other assets (such as real estate or equity). When the loan is converted into another financial asset, the rules on the paragraphs above apply: a loss is recorded at time of conversion, and a gain is reported forward ('delayed revenue approach').

71. When the loan is converted into a non-financial asset (previously collateralized), such that the loan is fully written-off and the defeasance takes possession of the underlying non-financial asset, the non-financial asset is evaluated and a transaction recorded (e.g., P.51g) reflecting the transfer of ownership, at time of conversion. Again, the value of this non-financial asset may, at time of conversion, be lower or higher than the reset nominal value of the underlying loan. The difference between the value of the non-financial asset and the reset nominal value of the underlying loan, thus needs also to be recorded as a capital transfer expenditure (lower value) or as a capital transfer revenue (higher value). As in this case, the full B.9 impact of the conversion is always negative (due to the acquisition of a non-financial asset), a capital transfer revenue (in case of gain) is appropriately to be recorded at time of conversion, that is: without delay (see accounting example 5)⁽²⁰⁶⁾. Whatever the value of the non-financial asset compared to the value of the financial asset, the impact on B.9 at time of conversion is always the same: equal to the reset nominal value of the loan and also equal to the acquisition of the nonfinancial asset plus or minus the capital transfer expenditure or revenue.
72. When a given claim is subject to a sequence of events, such as subsequent conversions, the amount considered for each event should generally concern only a certain part of the claim concerned. In case the statistician cannot distinguish the said parts, it may consider the claim is fully removed, at the first conversion, therefore with a significant capital transfer expenditure. When then subsequent conversions occur, a revenue is recorded following the 'delayed revenue approach'.

Sales

73. The defeasance structure can also sell loans (usually in a portfolio or batch) to an entity more specialized in recovering debts (or other), in a way to conduct debt restructuring. As the original intention of the claim was to convey a benefit, ESA 2010 paragraphs 5.21, 20.229, 20.230 and 20.236 should be followed. Any positive or negative difference between the transaction value received by government and the reset nominal value of these loans booked at inception is to be recorded as a capital transfer in the accounts of government, according to the 'delayed revenue approach'. The new buyer of the loan is deemed to buy the loan at market value. At the same time, the original debtor of the loan is seen as receiving a benefit, thus being the counterpart of the capital transfer (there are thus three parties in this type of transactions; see accounting example 7).

Other

74. The reset nominal value fluctuates over time during the liquidation period, as a result of accrued interest (increases) and redemptions, sales, conversions or write-off/cancellations (decreases). The interest accrued to record on these assets reflect the accrued interest of the contract apportioned to the reset nominal value, to avoid distorting defeasance structures' revenue and is to be consistent with the reset nominal value approach.

b) Non-financial assets

75. In the case of non-financial assets that a defeasance structure might hold, the market value may change during the time they are held. The change in value has to be recorded in the revaluation account, with no impact on government net lending/borrowing (B.9).
76. Non-financial assets often enter the defeasance structure balance sheet during the liquidation, following loan conversions or other purchases. In a number of cases, though, significant amounts of such assets were acquired at inception.
77. When non-financial assets are sold to units classified outside the general government sector, ESA 2010 rules are clear in that they are to be recorded when ownership is transferred. Given that this implies recording a non-financial transaction, then the impact from the defeasance management of non-financial assets is clear: a negative expenditure is to be recorded in the moment when ownership of such assets, which entered the defeasance structure at inception or at time of conversion, are transferred to a third party, thus positively impacting the B.9 of general government at time of resale. In this way, the acquisition/take-over and subsequent sale of non-financial assets by a defeasance structure thus automatically and effectively reflects, in the cumulated B.9, the true net impoverishment of government (see accounting example 4).

⁽²⁰⁶⁾ A similar interesting case is reflected in ESA 2010 paragraph 20.232.

c) Securities and equity (see accounting example 8)

78. As concerns securities, ESA 2010 does not foresee that in general the re-estimation of securities' value and their redemption or sale impact government net lending/borrowing, as these events are deemed either revaluations or pure financial transactions, respectively. On the other side, as discussed above, the impoverishment and non-commercial character of government losses from bailout interventions must be well reflected in its net lending/net borrowing over the lifetime of the scheme.
79. As a general principle, the sale of quoted securities at a gain or a loss is to be deemed as a pure financial transaction, and thus any gain or loss is to be recorded as a revaluation. This follows from the fact that in principle both the acquisition/transfer at inception and sale are undertaken under observable market prices.
80. On the other side, where unquoted security assets are later on sold (or redeemed) by the defeasance structure at a gain or loss, it is deemed as if the capital transfer at inception was incorrectly estimated for these assets, and it thus needs to be corrected in conformity with the 'delayed revenue approach'. This follows from the fact that the acquisition/transfer at inception of such securities was not under market prices. Re-estimations of unquoted securities (besides the first re-estimations referred to above) automatically lead to revaluations in the general government accounts, pending the final sale or redemption. Nonetheless, the assessment of the capital transfer at time of resale/redemption of such assets shall be made against the original value at inception (transaction value), rather than their revalued value (at the end of previous period/before sale).
81. However, where it can be proven that part or the whole of the variation in value of the unquoted security, in comparison with its initial (fair) value, is due to market movements, in line with ESA 2010 paragraph 20.231, a partial or full revaluation is to be recorded in the accounts of government. In practice, this proof might be burdensome for statisticians, and might also be challenging in principle, as the defeasance might have been created in the context of dysfunctional markets, such that the 'original' and accurate market price may be difficult to grasp. In the first place, it is not expected that the statistician would be able to make such proof; in principle, the operating manager, accountant and/or financial officer of the defeasance structure is the most appropriate person for such calculations, and shall thus be responsible for providing such evidence to the statistician⁽²⁰⁷⁾. In the second place, the effective market evolution of the security might be assessed in comparison with global comparable indexes, or else resorting to tools that the defeasance experts might deem fit (pending further confirmation by the auditor of the defeasance structure).
82. As concerns (quoted and unquoted) equity assets, the same rules as for debt securities should be followed.

d) Other assets

83. Defeasance structures can also own other types of financial assets, although to a lesser extent. In general, the analysis and recording related to the reduction, cancellation, conversion and sale of those assets needs to reflect the same principles as defined above: as the original intention is to convey a benefit, government impoverishment must be well reflected overtime in its net lending/net borrowing (unless proven market movements), and the counterpart of the transaction needs to be accurately defined.
84. A typical example is the ownership of other receivables claims. In principle, the above rules on loan claims can be well applied in the case of other receivables.

4.5.3.4. TREATMENT TO BE FOLLOWED WHEN GOVERNMENT IS INVOLVED BY ITS GUARANTEE

85. Financial institutions or specific units controlled by those institutions (classified outside the general government sector) may receive government guarantees on all or part of the problematic/impaired assets that have been identified in their portfolio.

⁽²⁰⁷⁾ In general, it is expected that the statistical authorities remain in close contact with the managers of the defeasance throughout the whole resolution process, and from them receive appropriate and transparent information, in order to assess this as well as other relevant statistical issues.

86. Though ESA 2010 specifies that one-off guarantees are to be generally treated as contingencies, ESA 2010 paragraph 20.245 (and 20.256) explicitly foresees cases (including during bailouts) where the one-off guarantee to entities in financial distress are considered as implicitly called at inception: An example is where the entity is not able or has substantial difficulties to meet its obligations since its cash generating abilities are limited or the tradability of its assets is severely limited due to exceptional events. In this context, ESA 2010 paragraph 20.245 directs that, as a general principle, for a guarantee provided in a bailout context, a capital transfer at inception is to be recorded for the entirety of the claim or, alternatively, for the amount reliably expected to be lost.
87. In practice, there might be cases where government takes on all or most of the risks and rewards (see chapter 5.5.2.6) directly attached to the problematic assets. In such cases, government is considered the economic owner of the assets and the government accounts should record the acquisition of a financial asset against a loan from the financial institution to the government. If government is seen as taking over the assets above their market price or even fair value, a capital transfer by government should be recorded for the part exceeding the market price or fair value, in line with ESA 2010 paragraphs 20.246, 20.247 and 20.257 and consistently with section 4.5.3.1.
88. If the government guarantee covers only capped losses on problematic assets, the treatment in national accounts should comply with ESA 2010 paragraph 20.245 (and 20.256), and a capital transfer is to be recorded for the expected loss.
89. When no net loss is expected, the general rules on guarantees as provided in chapter 7.4 of this Manual apply. In particular, the following cases should be taken into account:
- a guarantee call on a problematic asset when the call is partial and the asset is considered at least partly recoverable (i.e., remains in the balance sheet of the guaranteed), a capital transfer (government expenditure) should be recorded for the amount of the guarantee call, at the time it takes place;
 - a guarantee call on a problematic asset when no future recoveries are expected should be recorded as capital transfer (government expenditure) at the time it takes place for the full amount of the call;
 - when the problematic asset was sold by the financial institution with a loss and the guarantee is called, a capital transfer (government expenditure) should be recorded for the amount of the guarantee call, at the time it takes place;
 - in some arrangements, a default of payment on problematic assets guaranteed by government could trigger the transfer of the asset concerned to government. This should be recorded in government accounts as a capital transfer (government expenditure), unless some amounts can be reliably estimated as recoverable (by an independent body), in which case a financial transaction could be recorded for the recoverable part.
90. When, after booking a capital transfer at inception for a given amount, the guarantee is later on called to an extent lower than initially estimated, a capital transfer revenue is to be recorded, along the 'delayed revenue approach', and at the latest at time the guarantee expires (see accounting example 2).

4.5.3.5. TREATMENT TO BE FOLLOWED WHEN GOVERNMENT PROVIDES DIRECT FINANCING (ONE-OFF)

91. In a financial bailout context, government or another government-controlled entity can undertake direct funding interventions of financial entities under several different forms. For example, government can provide outright grants, acquire equity of or provide loans to an entity in distress, or government can finance an entity that itself carries out specific transactions that a normal private investor would not undertake.

a) Grants/subsidies

92. In a financial bailout context, government may provide an outright grant or subsidy to a financial institution in distress, in order to boost banks' capitalisation ratios or to reverse from a situation of negative own funds, ensuring its liquidity and/or solvency. Grants provided by government to financial institutions in distress reflect a redistribution of wealth, which is to be recorded as a capital transfer expenditure (D.99).

b) Capital injections

93. The support of government into a financial institution in distress might also take the form of a capital injection, implying the legal form of an equity acquisition. In the context of bailout interventions of

government under the conditions described above, and so to assure substance over form, such injections are also to be recorded as capital transfer expenditure in part or in full.

94. When the bank rescued is public, the capital transfer is often for the full value. This is in line with ESA 2010 paragraph 20.198 a), according to which *A payment to cover accumulated, exceptional or future losses, or provided for public policy purposes, is recorded as a capital transfer. Exceptional losses are large losses recorded in one accounting period in the business accounts of a corporation, which usually arise from downward revaluations of balance sheet assets, in such a way that the corporation is under threat of financial distress (negative own funds, breach of solvency, etc.).* The ESA 2010 thus explicitly refers to (negative) own funds being a criterium for expensing capital injections.
95. When the rescued is private, a capital transfer is applicable for the difference between the injection and the market value of the equity stake thus acquired, or for the full amount if the prospects remain uncertain. In this context, ESA 2020 paragraph 20.199 adds *Government payments are treated as an acquisition of equity only if there is sufficient evidence of the corporation's future profitability and its ability to pay dividends.*
96. An exception to the rules above is a capital injection that is made as part of a privatisation process within a short-term perspective (less than one year), such that government expects to get its money back (ESA 2010 paragraph 20.201). Such capital injections are recorded in F.5 within the limit of the amount of the privatisation proceeds (consistently with the rationale of ESA 2010 paragraph 20.227 in the case of debt cancellation/assumption).

c) Lending

97. ESA 2010 paragraph 20.121 indicates that *loans granted by government not likely to be repaid are recorded in the ESA as capital transfers.* This important sentence enforces substance over form, which is crucial to national accounts/government finance statistics, so to avoid situations where governments' gifts could be dissimulated in the legal form of loans – either with no intention by the borrower to repay them (and/or by the creditor to seek repayment) or having no capacity to do so.
98. In practice, the issue is how to determine that the loan is unlikely to be repaid. Following on former decisions reflected in this Manual (see chapters 2.4.3.20, 3.2.3 and 4.8.3) evidence can come from the following indicators:
- Negative net assets of the borrower, or low expectation of repayment signalled by low expectation of restoring profitability before the maturity date(s);
 - Certain specific and unusual characteristics of the loan agreement, as excessively long (>5 years) grace periods, or the loan being subordinated, or having the possibility to be converted into equity;
 - Low expectation of full repayment signalled by the recording of significant provisions for losses in public accounts;
 - Qualified expert assessment on the low expectation of recovery;
 - Unsuccessful long-lasting negotiations, by the beneficiary of the loan from government, on the settlements of its claims.
99. In practice, however, it may be estimated that only a part – even if the major part –, and not the full loan, is irrecoverable. In such a circumstance, and in line with the treatment on grants and equity injections above, as well as with the treatment of defeasance structures, the statistician should record as a capital transfer the part of the loan that is irrecoverable, assessed as the difference between the nominal value of the loan and the part that is estimated to be recovered, in line with ESA 2010 paragraph 20.246. In this way, the substance (government support of an entity in financial distress) takes precedence over the form (capital injections, lending, guarantee, etc.). All further actual losses as compared to the initial estimated loss (and capital transfer) are to be recorded as capital transfer expenditure, in cases of write-downs, write-offs or loan cancellations, and at the latest at maturity.
100. When, after booking a capital transfer at inception for a given amount, the loans are redeemed at an amount higher than initially estimated, a capital transfer receivable is to be recorded at the time of the final redemption, following the 'delayed revenue approach', thus ensuring a symmetric treatment with the cases where loans are redeemed at an amount lower than initially estimated (see accounting example 1).

101. In some circumstances, it might appear clear already at inception that the loan is not a real loan, but it has more the characteristics of a capital injection in substance. In such cases, the rules above on capital injections apply and the loan is to be considered as a capital transfer in part or in full.

d) Indirect rescues

102. A unit, classified outside the government sector and holding problematic assets or taking part in a support operation related to problematic assets, may enjoy government financial support (explicitly through direct financing or implicitly) in order to carry out specific transactions, at the initiative of government, that a normal private investor would not undertake and that go beyond its usual activity. In such cases, the government should be considered the principal party to the respective transaction and the transaction should be rerouted in the accounts of the government (ESA 2010 paragraphs 1.73–1.75). If the rerouted transactions involve the injection of funds by the financial intermediary into a financial or non-financial corporation on behalf of the government, the recording of this capital injection should be recorded as outlined in points a), b) and c) above.

4.5.4. Rationale of the treatment and practical implementation issues

4.5.4.1. CLASSIFICATION ISSUES

103. Defeasance structures seem to be involved in financial activity: they have borrowed resources (transferred or newly issued) in order to finance the assets. However, they should not be considered to be real financial intermediaries, because they do not really place themselves at risk by acquiring financial assets and incurring liabilities on their own account, which is a typical feature of a financial intermediary according to ESA 2010 paragraph 2.57. On the contrary, they act on behalf of government, and/or government bears the majority of risks and rewards. They redistribute wealth on behalf of government. This is the rationale for classifying defeasance structures, even when on the MFI list, in the general government sector. Under these conditions, the exceptional (MFI) cases mentioned should be closely considered by the competent authorities.

4.5.4.2. THE GENERAL PRINCIPLE FOR RECORDING CAPITAL TRANSFERS

104. The recording of a capital transfer from government, with an impact on government net lending/borrowing (B.9), can take place at several points in time:

- at the time of setting up the defeasance process, when government buys (or takes over) the involved assets for the amount paid in excess to the market or even fair value, as observed at the time of the transfer;
- at inception or during the management of the bailout, when government, normally through guarantee calls (on assets or on some liabilities), assumes losses from the financial institutions or other units classified outside general government;
- during the bailout process, when government makes capital injections in units under rescue, either for covering losses or/and for providing the needed financing resources;
- during the liquidation process at time of write off or cancelation for the part not repaid or converted;
- during the management of the defeasance, when government cancels loans it may have granted to the unit under rescue;
- in other moments.

105. In these and other situations, a capital transfer is recorded because there is a redistribution of wealth among the different units involved, arising from an original intention of government to convey a benefit. This is also justified because it is appropriate that, in this case, the impoverishment of (the financial net worth of) government is accounted in its cumulated net lending/net borrowing, when this is not explained by regular market developments. This is in line with the definition of other capital transfers (D.99) given in ESA 2010 paragraph 4.164.

106. The capital transfer is recorded at the time the transfer of wealth is deemed to occur. This can be, in the case where assets are taken over by government, at the time when the operation is (explicitly or implicitly) agreed between the parties and/or when the defeasance structure is created. For other cases,

it is at the time government transfers or forfeits the amounts corresponding to the assumption or cancellation of debt or capital injections.

107. In the statistical recording related to government interventions in the context of financial bailouts, statisticians need, however, to be careful in assuring a 'cap on B.9'. This means that the accumulated B.9 of government (notably its accumulated deficits in the context of financial defeasance) should not be larger than the overall decrease in the net (financial) worth of government from its interventions, aside from the holding gains/losses stemming from market movements.

4.5.4.3. VALUATION ISSUES FOR ASSETS OTHER THAN LOANS

108. The general rule for valuing this kind of assets in national accounts is to record them at their market price (fair value), for both stocks and flows. In general, financial institutions, such as banks, may follow some specific rules, according to the supervisory regulations.
109. ESA 2010 paragraph 5.19 provides for financial transactions to be recorded at the values they are transacted. At the same time, ESA 2010 paragraph 5.21 acknowledges that *in cases where the counterpart transaction of a financial transaction is, for example, a transfer and therefore the financial transaction may be 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.*
110. In the internal bookkeeping of the financial institutions, some impaired assets may be valued at the price paid for their acquisition. In other words, the book value of these assets does not correspond to the market or fair value. Although, in a prudent approach, banks should anticipate possible losses on some assets by recording provisions, they have often the tendency to minimise such impact or wait as much as possible, in absence of explicit orders by the Supervisory Authorities.
111. The fact that such assets are placed in a defeasance structure, or being wound-down, means that the expected realisation value is far below the book value. If they are transferred for their book value, a capital transfer needs to be recorded in national accounts to reflect this difference between the transaction value and the market (fair) value.
112. In the case where such value is not available but where an estimation of the expected losses may be carried out by an independent body on the basis of usual pricing methods, this estimate could be used as a proxy for the difference between transaction and fair value.

4.5.4.4. THE CASE OF LOANS

113. ESA 2010 deviates for loans (and a few other assets) from the general principle of recording assets and liabilities at market value in both stocks positions and transactions. Loans are recorded (in the balance sheet) at the nominal value, which is the discounted cash flow due on the contract using the discount rate at inception.
114. This approach is taken largely on practical grounds because the market value of loans is not directly, reliably or easily observable.
115. The ESA 2010 deviation for loans is not problematic at inception, because the nominal value can be deemed to equal the market value of the loan (except for concessional loans). The ESA 2010 deviation becomes less appropriate as time passes, as the discounted cash flows can significantly change from one period to the other, either because the expected cash flow changes (impairment) or because the market rates change.
116. In the financial defeasance case, when loans are sold/transferred by the financial institutions to the specific government unit, the purchase price may be equal to their redemption value, i.e., their original nominal value. Nevertheless, it is expected that the loans placed in the defeasance structure will not be redeemed at the latter value. As the transaction is by evidence undertaken by government for other than purely commercial considerations (see ESA 2010 paragraph 5.21), the transaction values would have to be identified with the 'current market (fair) values' of the loans, which might not be observed in practice. In many cases, estimates on expected losses might become available and be used as a proxy for the difference between the amount paid and the fair value (or even the market value). In addition, loan portfolios are likely to have been subject to provisions (impairments) in the accounting bookkeeping of financial institutions (which are frequently imposed by supervisory authorities). This may provide supplementary information on the potential size of the capital transfer to be recorded.

117. Moreover, if, among the transferred assets, there is reliable information leading to think that some loans will in fact never be repaid, the capital transfer to the financial institution disposing of them must be accounted for the full value of these loans (ESA 2010 paragraph 20.247).
118. After accounting for the loans acquired, transferred or taken over at their transaction price (i.e., purchase price/transfer price minus the capital transfer), the question that arises is then how to value their stock in the balance sheet of the defeasance structure and government: the transaction value (i.e., the reset nominal value) or the initial nominal value?
119. The valuation of loans (including those that were traded) is dealt with in ESA 2010 paragraph 7.70. The general rule is to record, in the balance sheets of both creditors and debtors, *the amounts of principal that the debtors are contractually obliged to repay the creditors, even in cases where the loan was traded at a discount or premium*. This is the principal outstanding amount (original contractual redemption value). It is also the amount on which the interest is accrued.
120. ESA 2010 paragraph 5.122 and ESA 2010 paragraph 6.58 give further guidance when loans are traded (as exceptional transaction) at a price which is different from the ESA nominal value. The seller and the purchaser have to record the transaction at the effective price in their financial accounts, but they must use the revaluation account for the difference between the transaction value (recorded in the financial accounts) and the nominal value (recorded in the balance sheet) before (for the seller) and after (for the purchaser) the transaction.
121. However, in the case of financial defeasance, reporting the initial nominal value of the acquired loan asset leads to a gross distortion of government net assets, which manifests itself by a large gap at inception between the B.9 impact and the change in (financial) net worth. This gap can be very visible in those countries using the initial nominal value, given the typical size of those specific operations⁽²⁰⁸⁾.
122. By the same token, the subsequent liquidation of those claims below their nominal value implies an artificial reduction in net assets, leading to a false impression (at least for uninformed users) of government impoverishment/mismanagement during the liquidation.
123. Following the practice of a number of Member States, Eurostat allows, and encourages, recording – in the specific case of financial rescue – the loans in the balance sheet of S.13 at their new (or reset) nominal value, which is equal to the transaction value. This recording is applied for the loans assets held by the defeasance structure, and thus for the counterpart loan liabilities of the debtors.
124. The rationale for this is to suppose that a 'partial write-off' of the claims occurred prior to the transfer. Such a partial write-off approach *de facto* imposes unilaterally the view of the creditor (the original bank that transfers the claims to the defeasance structure) over the information collected from the debtor. Indeed, ESA 2010 paragraph 6.14b implements the 'creditor view' for recording loans (notably for the associated write-offs). In that case, a claim is simultaneously removed from the balance sheets of the creditor and of the debtor, despite the fact that write-offs do not imply a legal abandonment of the claim but is the mere accounting action of the creditor's accountants. As a result, it is common for accountants to book write-off reversals ('write on') revenue (in their own books), originating from recoveries on loans that have been previously written off (ESA 2010 paragraphs 20.233–235).
125. The recommendation, nonetheless, introduces the notion of partial write-off. This is why the proposal restricts this to the specific case of defeasance structures. This notion of partial write-off may find some support in the motivation in ESA 2010 paragraph 20.233 regarding debt write-offs that occur because the accountant considered that the claim *cannot be realistically pursued for recoveries that would justify the various costs incurred*, if one considers that the asset purchaser recognizes that part of the claim is irrecoverable and only a part (for instance, the Real Economic Value (REV); see paragraph 132) can be recovered within cost-justification.
126. Differently to write-downs, which usually reflect a price change, partial write-offs are a volume event, which implies the reduction in the size of the claim, as implied by ESA 2010 paragraphs 20.233 and 20.235. This reduction reflects a reduction in economic size, not in legal size (as already discussed, leading to occasional write-off reversals).
127. The partial write-off approach can also be justified from a portfolio point of view. This reasoning is most appropriate for defeasance structures (that often hold large portfolio of loans).

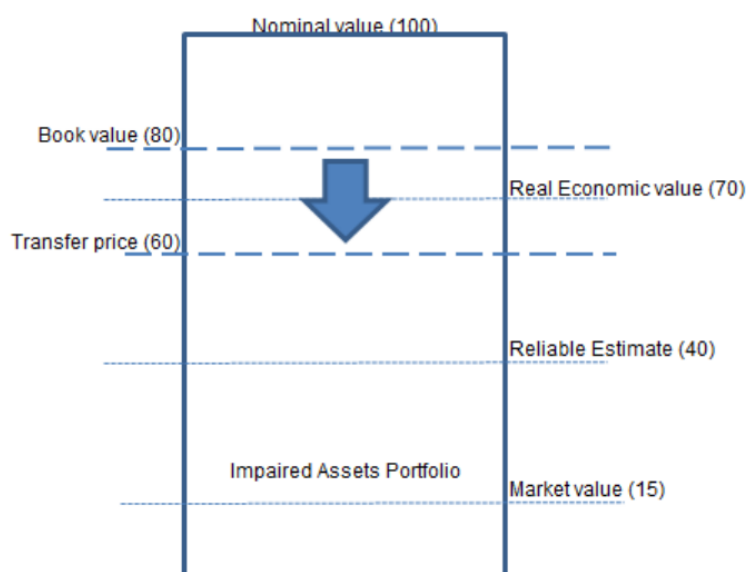
⁽²⁰⁸⁾ See the [Background note on government interventions to support financial institutions](#).

128. The introduction of such a concept of partial write-off, and its associated recording, provides a better reflection of economic substance, because, at inception, a gift/B.9 impact has a corresponding impact within the change in (financial) net worth in ESA terms. This would not be the case if loan assets are recorded at their original nominal value.
129. It should be noted that, following ESA 2010, the claims would then remain valued at their new/reset nominal value in subsequent periods, after moving into the defeasance structure. The reset nominal value increases with accrued interest and decreases with repayments, conversions and write-offs.
130. Member States should thus be allowed to undertake this reset value recording, which more clearly portrays the (financial) net worth of general government, as moreover this does not influence the B.9 impact.
131. Besides more correctly depicting the true (financial) net worth of general government, this recording may also later on facilitate the work of the statistician in accounting for further non-financial impacts, as these need to be assessed against the reset/new nominal value, rather than against the original nominal/face/redemption value. Notably, recording the assets in the balance sheet at their reset nominal value helps assure the cap on the B.9, that is, that the accumulated B.9 impact of the intervention of government in the form of a defeasance structure is no larger than the overall decrease in its net (financial) worth over time.

4.5.4.5. VALUATION OF THE NET LENDING/NET BORROWING IMPACT AT INCEPTION

132. A defeasance structure involves acquiring a portfolio of assets, such as loans. Various valuations can be envisaged (see also example below):

- Original gross book value of 100, called **nominal value** (which would also include accrued interest not yet paid);
- The **book value** of 80, which includes some write-downs (20) by the bank's accountants. The latter are sometimes insufficient, in the case of bank failure, from the accountant or auditor's point of view, but they are often constrained by the lack of equity of the bank holding the assets;
- The **real economic value** (REV) of 70, by DG COMP, which reflects a discounted realisation value, assuming enough time to optimize recoveries, as well as a moderate discount rate. This REV thus depends crucially from (a) the hypothesized recoveries, and (b) the discount rate selected. Legally, the consideration provided in exchange must be smaller than the REV, so as to be considered State Aid compliant with EU competition policy principles;
- The **transfer price** of 60, which is the consideration provided in exchange. The concept of the 'consideration provided in exchange' of the assets acquired/transferred includes the cash or other assets provided and the liabilities incurred by government. Furthermore, in line with ESA 2010 paragraphs 20.245 and 20.256, it also takes into account the amounts of guarantee expected to be called net of expected recoveries;
- The **reliable estimate** of 40, in line with Article 36 of the BRRD, which is the **reset nominal value** in the case of loans.
- The **market value** of 15. A critical question is the basis for this market valuation. One would expect it would be the value observed in actual sales' transactions of similar assets.



133. When analysing, at inception, the rescue of a financial entity (through a defeasance structure or equivalent), the first question the statistician needs to ask is whether a reliable estimate on future losses of the assets at stake is available or not, and whether this is a prudent, independent, fairly detailed and objective analysis. Estimates made by national officials or authorities, or equivalent, are usually not deemed as independent. This is supported by Article 36 of the Bank Recovery and Resolution Directive (BRRD), according to which (...) *a fair, prudent and realistic valuation of the assets and liabilities (...) is carried out by a person independent from any public authority, including the resolution authority (...)*.
134. Thus, as a first option, statisticians should follow, when accessing the extent of the capital transfer at inception – as well as the valuation of the assets in the balance sheet of government – a reliable estimate undertaken in the context of Article 36 of the BRRD. The capital transfer (20) is equal to the consideration provided in exchange (transfer price, 60) minus the reliable estimate (40).
135. Whereas ESA 2010 generally directs that the capital transfer is to be assessed against market values, the difficulty is that usually there are no market values for loans (which are typically a considerable share of the asset portfolio of financial entities under intervention), and frequently also not for unquoted equity and securities. In the context of a unit in distress being supported by government – and even more so if also in the context of a financial crisis – such non-marketable assets would be ‘quoted’ at a very reduced value. In this sense, using only ‘market values’ in the evaluation at inception of such intervention could latter on prove to have been excessively prudent. Using the fair, prudent and independent valuation as subscribed by the BRRD can thus prove to be a more realistic, and thus superior, approach.
136. However, failing this option, statisticians should record the benefit conveyed by government in relation to the observable market prices and, if need be, of the market prices of comparable assets.
137. If there is no reliable estimate and market prices (or market prices of comparable assets) are not observable – which is frequent for non-marketable assets, and even so for marketable assets when under a more generalised market disruption – , then, following ESA 2010 paragraph 20.247, the assets are recorded at zero value leading to a capital transfer (D.9 impacting B.9) equal to the consideration provided in exchange of the assets acquired /transferred, i.e., the capital transfer should equal the sum of the cash or other assets provided and liabilities incurred by government.
138. In practice, the price of some assets (or comparable) might be observable, while others might not be (possibly, securities and equity being in the first group, and loans in the second group). In such instances, the statistician is required to take a pragmatic approach involving the two previous paragraphs.

4.5.5. Accounting examples

Example 1 – A loan is provided to an entity in distress

At t, a 2-year bullet loan of 100 is granted to a financial entity in distress. However, only 30 are expected to be recovered (interest is disregarded, for simplicity).

Year t								
General Government			Financial Sector					
Opening balance sheet								
A		L		A		L		
AF.2	1000					BF.90	0	
		BF.90		1000		BF.90		
						0		
Non-financial account								
U		R		U		R		
D.9	70					D.9	70	
B.9	-70			B.9		70		
Financial Account								
ΔA		ΔL		ΔA		ΔL		
F.2	-100			F.2		100	F.4	30
F.4	30						B.9F	70
		B.9F						70
Closing balance sheet								
A		L		A		L		
AF.2	900			AF.2		100	AF.4	30
AF.4	30						BF.90	70
		BF.90						70

Case 1 - At t+2, principal of 20 is repaid, and the remaining 10 are cancelled or written-off (or have been written-down previously).

Year t+2						
General Government			Financial Sector			
Opening balance sheet (closing balance sheet of t)						
A		L	A		L	
AF.2	900		AF.2	100	AF.4	30
AF.4	30				BF.90	70
		BF.90				
		930				

Non-financial account			
U		R	
D.9	10		
B.9	-10		
		U	
		B.9	10
			R
		D.9	10

Financial Account			
ΔA		ΔL	
F.2	20		
F.4	-30		
		B.9F	-10
			ΔL
		F.2	-20
		F.4	-30
		B.9F	10

Closing balance sheet			
A		L	
AF.2	920		
AF.4	0		
		BF.90	920
			L
		AF.2	80
		AF.4	0
		BF.90	80

In summary, the accumulated B.9 of general government since t equals -80 (= -70-10), which is equal to the change in its (financial) net worth (920-1000).

Case 2 – In this case, instead, 40 is repaid at t+2. Government obtains a gain as compared with what was initially expected. The recording in the financial accounts flows naturally; in the non-financial accounts, a capital transfer receivable is recorded in the accounts of government.

Year t+2			
General Government		Financial Sector	

Opening balance sheet (closing balance sheet of t)			
A		L	
AF.2	900		
AF.4	30		
		BF.90	930
			L
		AF.2	100
		AF.4	30
		BF.90	70

Non-financial account			
U		R	
		D.9	10
B.9	10		
		B.9	-10
			R

Financial Account			
ΔA		ΔL	
F.2	40		
F.4	-30		
		B.9F	10
			ΔL
		F.2	-40
		F.4	-30
		B.9F	-10

Closing balance sheet

A			L			
AF.2	940		AF.2	60	AF.4	0
AF.4	0				BF.90	60
		BF.90				
		940				

In summary, the accumulated B.9 of general government since t equals -60 (= -70+10), which is equal to the change in its (financial) net worth (940-1000).

Example 2 – One-off guarantees

The following three cases depict a situation where a government guarantee extinguishing by end-t+2 is provided, to the amount of 200. In all cases, guarantee calls sum up to 180 (90 in both t+1 and t+2). In cases 1 and 2 alone, the guarantee is provided on the non-performing assets of an entity in distress.

- In Case 1 there is an expectation at t that the entity is not able to fulfil its obligations, and that a majority of the guarantee will eventually be called. Yet, no reliable amount of calls can be independently estimated, and so the guarantee is treated as called at inception, for the whole amount of 200, following ESA 2010 paragraph 20.245.
- In Case 2, it is independently estimated that the impairment on the assets is of 80%, such that the guarantee is expected to be called to an amount of 160.
- In Case 3, there are no reliable expectations that the guarantee is ever going to be called, and so the general rules on one-off guarantees apply.

For simplicity, government has cash of 500 in its opening balance sheet, such that no government borrowing needs to be depicted to finance the guarantee calls.

Case 1 - There is an expectation at t that the entity is not able to recover its loans assets, and as such that a majority of the guarantee will eventually be called. Yet, no reliable amount of calls can be independently estimated, and so the guarantee is treated as called at inception for the whole amount of 200, following ESA 2010 paragraph 20.245.

General Government		Year t		Financial Sector	
Opening balance sheet					
A		L		A	L
AF.2	500				
		BF.90	500		BF.90
					0
Non-financial account					
U		R		U	R
D.9	200				D.9
					200
B.9	-200			B.9	200
Financial Account					
ΔA		ΔL		ΔA	ΔL
		F.8	200	F.8	200
		B.9F	-200		B.9F
					200

Closing balance sheet

A		L		A		L	
AF.2	500	AF.8	200	AF.2	0		
		BF.90	300	AF.8	200	BF.90	200

General Government**Year t+1****Financial Sector****Opening balance sheet**

A		L		A		L	
AF.2	500	AF.8	200	AF.2	0		
		BF.90	300	AF.8	200	BF.90	200

No-financial account

U		R		U		R	
B.9	0			B.9	0		

Financial Account

ΔA		ΔL		ΔA		ΔL	
F.2	-90	F.8	-90	F.2	90		
		B.9F	0	F.8	-90	B.9F	0

Closing balance sheet

A		L		A		L	
AF.2	410	AF.8	110	AF.2	90		
		BF.90	300	AF.8	110	BF.90	200

By the end of year t+2, when the guarantee is extinguished, calls sum up to 180. As the capital transfer/other account payable at inception amounted to 200, a capital transfer receivable of government needs to be recorded. In this way, after year t+2, the accumulated B.9 of government, and the change in its (financial) net worth is of -180.

General Government				Year T+2				Financial Sector			
Opening balance sheet											
A		L		A		L					
AF.2	410	AF.8	110	AF.2	90						
				AF.8	110						
		BF.90	300			BF.90	200				
Non-financial account											
U		R		U		R					
		D.9	20	D.9	20						
B.9	20			B.9	-20						
Financial Account											
ΔA		ΔL		ΔA		ΔL					
F.2	-90	F.8	-110	F.2	90						
				F.8	-110						
		B.9F	20			B.9F	-20				
Closing balance sheet											
A		L		A		L					
AF.2	320	AF.8	0	AF.2	180						
				AF.8	0						
		BF.90	320			BF.90	180				

Case 2 – It is independently estimated that the impairment on the assets of the entity in financial distress is of 80%, such that the guarantee is expected to be called to an amount of 160. Thus, in year t, a capital transfer payable of 160 is recorded in the accounts of government.

General Government		Year t		Financial Sector	
Opening balance sheet					
A		L		A	L
AF.2	500				
		BF.90	500		BF.90
					0

Non-financial account

U		R	U		R
D.9	160		D.9	160	
B.9	-160		B.9	160	

Financial Account

ΔA		ΔL	ΔA		ΔL
	F.8	160	F.8	160	
	B.9F	-160	B.9F	160	

Closing balance sheet

A		L	A		L
AF.2	500	AF.8	160	AF.2	0
		BF.90	340	AF.8	160
				BF.90	160

General Government**Year t+1****Financial Sector****Opening balance sheet**

A		L	A		L
AF.2	500	AF.8	160	AF.2	0
		BF.90	340	AF.8	160
				BF.90	160

Non-financial account

U		R	U		R
B.9	0		B.9	0	

Financial Account

ΔA		ΔL	ΔA		ΔL
F.2	-90	F.8	-90	F.2	90
		B.9F	0	F.8	-90
				B.9F	0

Closing balance sheet

A		L	A		L
AF.2	410	AF.8	70	AF.2	90
		BF.90	340	AF.8	70
				BF.90	160

By the end of year t+2, when the guarantee is extinguished, calls sum up to 180. As the capital transfer/other account payable at inception amounted to 160, a further capital transfer payable of government needs to be recorded. In this way, after year t+2, the accumulated B.9 of government, and the change in its (financial) net worth is of -180.

Year t+2							
General Government			Financial Sector				
Opening balance sheet							
A		L		A		L	
AF.2	410	AF.8	70	AF.2	90		
				AF.8	70		
		BF.90	340			BF.90	160
Non-financial account							
U		R		U		R	
D.9	20					D.9	20
B.9	-20			B.9	20		
Financial Account							
ΔA		ΔL		ΔA		ΔL	
F.2	-90	F.8	-70	F.2	90		
				F.8	-70		
		B.9F	-20			B.9F	20
Closing balance sheet							
A		L		A		L	
AF.2	320	AF.8	0	AF.2	180		
				AF.8	0		
		BF.90	320			BF.90	180

Case 3 – The recipient of the guarantee is not in financial distress. Capital transfers are thus recognised in the system at time calls occur. This is the general case of one-off guarantees provided outside the context of financial bailout.

General Government		Year t		Financial Sector	
Opening balance sheet					
A		L		A	L
AF.2	500				
		BF.90	500		0

Non-financial account

U		R	U		R
B.9	0		B.9	0	

Financial Account

ΔA		ΔL	ΔA		ΔL
	B.9F	0		B.9F	0

Closing balance sheet

		L	A		L
AF.2	500		AF.2	0	
	BF.90	500		BF.90	0

Year t+1	
General Government	Financial Sector

Opening balance sheet

A		L		A		L	
AF.2	500	AF.8	0	AF.2	0	BF.90	0
		BF.90	500				

Non-financial account

U		R	U		R
D.9	90		D.9	90	
B.9	-90		B.9	90	

Financial Account

ΔA		ΔL	ΔA		ΔL
F.2	-90		F.2	90	
	B.9F	-90		B.9F	90

Closing balance sheet

A		L	A		L
AF.2	410		AF.2	90	
	BF.90	410		BF.90	90

General Government				Year t+2		Financial Sector			
Opening balance sheet									
A		L		A		L			
AF.2	410	AF.8	0	AF.2	90	BF.90	90		
		BF.90	410						
Non-financial account									
U		R		U		R			
D.9	90					D.9	90		
B.9	-90			B.9	90				
Financial Account									
ΔA		ΔL		ΔA		ΔL			
F.2	-90			F.2	90	B.9F	90		
		B.9F	-90						
Closing balance sheet									
A		L		A		L			
AF.2	320	BF.90	320	AF.2	180	BF.90	180		

Summary: In all three cases, guarantees were called to an amount of 180, which is the cash that government had to pay to the financial sector, visible by the deterioration of its (financial) net worth (from 500 to 320). The rules established provide for the cumulated net lending/net borrowing of government to be equal, in the three cases, to its impoverishment.

Example 3 – Government sets-up or takes over a defeasance structure, or buys the problematic assets

A government-controlled defeasance structure is either created or taken-over by, or transferred to, government, along with its portfolio of assets and liabilities. In Case 1 below, the treatment is equal to (and thus that of) when government buys the problematic assets.

The consideration provided in exchange consists of 100, of which 90 consisting of the market value of transferred securities liabilities and 10 of cash provided to the financial institution that originally held the portfolio.

The assets transferred from financial institutions to the public unit in charge of the defeasance are the following ones:

- Securities/shares, with a bookkeeping value of 40, and a market value of 25 (value in the opening balance sheet);
- Buildings, with a bookkeeping value of 10, and a market value of 5 (in the opening balance sheet);
- Loans, with an original nominal value of 50, of which, at the time the defeasance is set up, an amount of 10 are considered irrecoverable.

As the consideration provided in exchange is 100 and as the market/fair value of the assets is 70 (5+25+40), a capital transfer of 30 is recorded. The acquisition/transfer of non-financial assets is also to be recorded as a transaction.

The following two cases depict the situations where the operation is seen as government acquiring a portfolio of assets and liabilities (Case 1) and the situation where the operation is seen as a change in sector classification of the defeasance structure (Case 2).

In both cases, only the stocks that are relevant for the analysis of the operation in question are shown. Moreover, in both cases, accountants/statisticians record loans in the balance sheet at their reset nominal value.

Case 1 – The operation is seen as government acquiring a portfolio of assets and liabilities

General Government				Year 1				Financial Sector			
Opening balance sheet											
A		L		A		L					
AF.2	500			AF.2	0	AF.3	90				
				AF.4	40						
		BF.90	500	AF.3/AF.5	25	BF.90	-25				
		B.90	500	AN.11	5	B.90	-20				
Non-financial account											
U		R		U		R					
D.9	30					D.9	30				
P.51g	5			P.51g	-5						
B.9	-35			B.9	35						
Financial Account											
ΔA		ΔL		ΔA		ΔL					
F.2	-10	F.3	90	F.2	10	F.3	-90				
F.4	40			F.4	-40						
F.3/F.5	25			F.3/F.5	-25						
		B.9F	-35			B.9F	35				
Closing balance sheet											
A		L		A		L					
AF.2	490	AF.3	90	AF.2	10	AF.3	0				
AF.4	40			AF.4	0						
AF.3/AF.5	25			AF.3/AF.5	0						
AN.11	5			AN.11	0						
		BF.90	465			BF.90	10				
		B.90	470			B.90	10				

Case 2 – The operation is seen as a change in sector classification of the defeasance structure

General Government				Year 1		Financial Sector			
Opening balance sheet									
A		L		A		L			
AF.2	500			AF.2	0	AF.3/AF.5	90		
				AF.4	40				
				AF.3/AF.5	25				
				AN.11	5				
		BF.90	500			BF.90	-25		
		B.90	500			B.90	-20		
Non-financial account									
U		R		U		R			
D.9	30					D.9	30		
P.51g	5			P.51g	-5				
B.9	-35			B.9	35				
Financial Account									
ΔA		ΔL		ΔA		ΔL			
F.2	-10	F.89	25	F.2	10				
				F.89	25				
		B.9F	-35			B.9F	35		
Other changes in volume of assets									
ΔA		ΔL		ΔA		ΔL			
K.6 on AF.4	40	K.6 on AF.3	90	K.6 on AF.4	-40	K.6 on AF.3	-90		
K.6 on AF.3/AF.5	25			K.6 on AF.3/AF.5	-25				
		B.102	-25			B.102	25		
Revaluation Account									
ΔA		ΔL		ΔA		ΔL			
		F.89	-25	F.89	-25				
		B.103	25			B.103	-25		

Closing balance sheet

A		L		A		L	
AF.2	490	AF.3	90	AF.2	10	AF.3	0
AF.4	40	AF.89	0	AF.4	0		
AF.3/AF.5	25			AF.3/AF.5	0		
				AF.89	0		
AN.11	5			AN.11	0		
		BF.90	465			BF.90	10
		B.90	470			B.90	10

Example 4 – Recordings related to non-financial assets during the management of a defeasance structure

In Year 3, after inception, the defeasance structure of Accounting example 3 sells, to the household sector, all its real-estate assets.

In Case 1, the real-estate assets are sold at 9, i.e., at an amount higher than the original value at inception (5). In Case 2, the real-estate assets are sold at 4, i.e., at an amount lower than the original value at inception (5).

In both cases, a negative P.51g expenditure is recorded (at the exact amount of the sale), with a counterpart cash transaction for the same amount.

Without the need for any further imputation, the non-financial and the financial net lending/net borrowing, as well as the financial net worth, will accurately depict in that year and overtime the effective impoverishment of general government.

A revaluation of AN.11 needs to be recorded to correctly account for the change in the net worth, of the non-financial asset being sold at an amount higher/lower than its bookkeeping value.

Case 1

General Government		Year 3		Household sector	
A		L		L	
AF.2	490	AF.3	90	AF.2	20
AF.4	40				
AF.3/AF.5	25				
AN.11	5			AN.11	0
		BF.90	465		
		B.90	470		
				BF.90	20
				B.90	20

U		R		U		R	
P.51g	-9			P.51g	9		
B.9	9			B.9	-9		

Financial Account

ΔA		ΔL	ΔA		ΔL
F.2	9		F.2	-9	
		B.9F			B.9F
		9			-9

Revaluation Account

ΔA		ΔL	ΔA		ΔL
AN.11	4				
		B.103			B.103
		4			0

Closing balance sheet

A		L	A		L
AF.2	499	AF.3	90	AF.2	11
AF.4	40				
AF.3/AF.5	25				
AN.11	0		AN.11	9	
		BF.90			BF.90
		474			11
		B.90			B.90
		474			20

Case 2

Year 3		
General Government		Household sector

Opening balance sheet

A		L	A		L
AF.2	490	AF.3	90	AF.2	20
AF.4	40				
AF.3/AF.5	25				
AN.11	5		AN.11	0	
		BF.90			BF.90
		465			20
		B.90			B.90
		470			20

Non-financial account

U		R	U		R
P.51g	-4		P.51g	4	
B.9	4		B.9	-4	

Financial Account

ΔA		ΔL	ΔA		ΔL
F.2	4		F.2	-4	
		B.9F			B.9F
		4			-4

Revaluation Account

ΔA		ΔL	ΔA		ΔL
AN.11	-1				
		B.103			B.103
		-1			0

Closing balance sheet

A		L	A		L
AF.2	494	AF.3	90	AF.2	16
AF.4	40				
AF.3/AF.5	25				
AN.11	0		AN.11	4	
		BF.90			BF.90
		469			16
		B.90			B.90
		469			20

Example 5 – Conversion of loans during the management of the defeasance

In Year 4, part of the loans of the defeasance structure, with a reset nominal value of 12, whose counterpart is the household sector, are converted into their collateral (real estate assets).

In Case 1, the value of the non-financial assets is 8, i.e., below the value of the converted loans; in Case 2, the value of the non-financial assets is 14, i.e., above the value of the converted loans.

The recording in the financial accounts flows naturally: an F.4 transaction is recorded by the value of the converted loans, i.e., 12.

In the non-financial accounts, P.51g is recorded for the value of the converted collateral and a capital transfer is recorded for the differential: payable in Case 1; receivable in Case 2.

The opening balance sheet, in both cases, is the closing balance sheet of accounting example 4, case 2.

Case 1 – The value of the non-financial assets is 8, i.e., below the value of the converted loans

Year 4							
General Government			Household Sector				
Opening balance sheet							
A		L		A		L	
AF.2	494	AF.3	90		AF.4		12
AF.4	40						
AF.3/AF.5	25						
AN.11	0			AN.11	8		
		BF.90	469		BF.90		-12
		B.90	469		B.90		-4

Non-financial account					
U		R	U		R
P.51g	8		P.51g	-8	
D.9	4			D.9	4
B.9	-12		B.9	12	

Financial Account					
ΔA		ΔL	ΔA		ΔL
F.4	-12			F.4	-12
	B.9F	-12		B.9F	12

Closing balance sheet						
A		L	A		L	
AF.2	494	AF.3	90		AF.4	0
AF.4	28					
AF.3/AF.5	25					
AN.11	8		AN.11	0		
		BF.90	457		BF.90	0
		B.90	465		B.90	0

Case 2 – The value of the non-financial assets is 14, i.e., above the value of the converted loans

General Government				Year 4		Household sector			
Opening balance sheet									
A		L		A		L			
AF.2	494	AF.3	90		AF.4	12			
AF.4	40								
AF.3/AF.5	25								
AN.11	0			AN.11	14				
		BF.90	469		BF.90	-12			
		B.90	469		B.90	2			
Non-financial account									
U		R		U		R			
P.51g	14			P.51g	-14				
		D.9	2	D.9	2				
B.9	-12			B.9	12				

Financial Account

ΔA		ΔL	ΔA		ΔL
F.4	-12			F.4	-12
		B.9F		B.9F	12

Closing balance sheet

A		L	A		L
AF.2	494	AF.3	90	AF.4	0
AF.4	28				
AF.3/AF.5	25				
AN.11	14		AN.11	0	
		BF.90		BF.90	0
		B.90		B.90	0

Note: In both cases, the financial net worth of government decreases by the same amount (12), although this is not the case for its net worth, which decreases by 4 in the first case and increases by 2 in the second case, reflecting the higher or lower value of the non-financial assets.

This could seem a priori paradoxical. However, government still owns the non-financial assets, and can sell them at a later stage. For example, assuming the defeasance structure sells the non-financial assets for the value at their conversion, it could be easily seen that the financial net worth of government would increase to 465 in Case 1, and to 471 in Case 2, in both cases matching government's net worth (which would not change).

Example 6 – Redemption of loan claims of the defeasance structure

In Year 5, debtors of the defeasance (in this case, for example, in the corporations sector), redeem their loan claims, which are recorded in the balance sheet of government at their reset nominal value of 15 (and, presuming the 20% impairment considered in accounting example 3, have an original nominal value of 18.75).

In Case 1, debtors redeem the loan principal by an amount of 13, which in the bailout context presumes explicit or implicit bilateral agreement for a debt cancellation, and thus a capital transfer payable is to be recorded in the accounts of government.

In Case 2, debtors redeem the loan principal by an amount of 16. As in this year there is no capital transfer expenditure to be recorded, a notional F.89 payable is imputed in the accounts of government. Although not shown in this example, once there is a capital transfer expenditure in which to neutralise this gain or, to the limit, at final wind-down of the defeasance, the F.89 payable is reversed with a counterpart in the non-financial accounts.

In both cases, when government accounts followed the recording in the balance sheet for the reset nominal value, the net lending/net borrowing in the financial accounts flows naturally.

The opening balance sheet, in both cases, is the closing balance sheet of accounting example 5, case 1.

Case 1 – The loan is redeemed at an amount below the reset nominal value recorded at inception

General Government				Year 5		Corporations Sector			
Opening balance sheet									
A		L		A		L			
AF.2	494	AF.3	90	AF.2	13	AF.4	15		
AF.4	28								
AF.3/AF.5	25								
AN.11	8								
		BF.90	457			BF.90	-2		
		B.90	465			B.90	-2		
Non-financial account									
U		R		U		R			
D.9	2					D.9	2		
B.9	-2			B.9	2				
Financial Account									
ΔA		ΔL		ΔA		ΔL			
F.4	-15			F.2	-13				
F.2	13					F.4	-15		
		B.9F	-2			B.9F	2		
Closing balance sheet									
A		L		A		L			
AF.2	507	AF.3	90	AF.2	0	AF.4	0		
AF.4	13								
AF.3/AF.5	25								
AN.11	8								
		BF.90	455			BF.90	0		
		B.90	463			B.90	0		

Case 2 – The loan is redeemed at an amount above the reset nominal value recorded at inception

General Government				Year 5		Corporations Sector			
Opening balance sheet									
A		L		A		L			
AF.2	494	AF.3	90	AF.2	16	AF.4	15		
AF.4	28								
AF.3/AF.5	25								
AN.11	8								
		BF.90	457			BF.90	1		
		B.90	465			B.90	1		
Non-financial account									
U		R		U		R			
B.9	0			B.9	0				
Financial Account									
ΔA		ΔL		ΔA		ΔL			
F.4	-15	F.89	1	F.2	-16				
F.2	16			F.89	1	F.4	-15		
		B.9F	0			B.9F	0		
Closing balance sheet									
A		L		A		L			
AF.2	510	AF.3/AF.5	90	AF.2	0	AF.4	0		
AF.4	13	AF.89	1	AF.89	1				
AF.3/AF.5	25								
AN.11	8								
		BF.90	457			BF.90	1		
		B.90	465			B.90	1		

Example 7 – Sale of loan claims to a third party

In Year 6, a financial entity, e.g., specialized in the recovery of credits, buys from the defeasance the remaining of its loan claims, with a reset nominal value of 13 (which, presuming the 20% impairment considered in accounting example 3, have an original nominal value of 16.25).

In Case 1, the buyer pays the defeasance 10 for those loans, i.e., below their reset nominal value at inception. According to the rules, a capital transfer payable, to the amount of 3, is to be recorded in the accounts of government at time of resale, with the debtor as a counterpart. The transaction between the defeasance unit and the financial entity is purely financial.

In Case 2, the buyer pays the defeasance 15 for those loans, i.e., above their reset nominal value at

inception (though still below their contractual value). According to the rules, a capital transfer receivable, to the amount of 2, is to be recorded in the accounts of government at time of resale, with the debtor as a counterpart. The transaction between the defeasance unit and the financial entity is purely financial.

In both cases, when government accounts followed the recording in the balance sheet for the reset nominal value, the net lending/net borrowing in the financial accounts flows naturally.

The opening balance sheet, in both cases, is the closing balance sheet of accounting example 6, case 1.

Case 1 – the loans are resold at below their reset nominal value

Year 6											
General Government				Debtor				Financial Sector			
Opening balance sheet											
A		L		A		L		A		L	
AF.2	507	AF.3	90	AF.2	0	AF.4	13	AF.2	100		
AF.4	13							AF.4	0		
AF.3/AF.5	25										
AN.11	8										
		BF.90	455			BF.90	-13			BF.90	100
		B.90	463			B.90	-13			B.90	100
Non-financial account											
U		R		U		R		U		R	
D.9	3					D.9	3				
B.9	-3			B.9	3			B.9	0		
Financial Account											
ΔA		ΔL		ΔA		ΔL		ΔA		ΔL	
F.4	-13			F.2	0	F.4	-3	F.2	-10		
F.2	10							F.4	10		
		B.9F	-3			B.9F	3			B.9F	0
Closing balance sheet											
A		L		A		L		A		L	
AF.2	517	AF.3/AF.5	90	AF.2	0	AF.4	10	AF.2	90		
AF.4	0							AF.4	10		
AF.3/AF.5	25										
AN.11	8										
		BF.90	452			BF.90	-10			BF.90	100
		B.90	460			B.90	-10			B.90	100

Case 2 – the loans are resold at above their reset nominal value

Year 6					
General Government		Debtor		Financial Sector	

Opening balance sheet

A		L		A		L		A		L	
AF.2	507	AF.3	90	AF.2	0	AF.4	13	AF.2	100		
AF.4	13							AF.4	0		
AF.3/AF.5	25										
AN.11	8										
		BF.90	455			BF.90	-13			BF.90	100
		B.90	463			B.90	-13			B.90	100

Non-financial account

U		R		U		R		U		R	
		D.9	2	D.9	2						
B.9	2			B.9	-2			B.9	0		

Financial Account

ΔA		ΔL		ΔA		ΔL		ΔA		ΔL	
F.4	-13			F.2	0	F.4	2	F.2	-15		
F.2	15							F.4	15		
		B.9F	2			B.9F	-2			B.9F	0

Closing balance sheet

A		L		A		L		A		L	
AF.2	522	AF.3/AF.5	90	AF.2	0	AF.4	15	AF.2	85		
AF.4	0							AF.4	15		
AF.3/AF.5	25										
AN.11	8										
		BF.90	457			BF.90	-15			BF.90	100
		B.90	465			B.90	-15			B.90	100

Example 8 – Concluding wind-down of the defeasance structure

In Years 7 and 8, the government-controlled defeasance structure proceeds to complete its full wind-down. The following events, and corresponding recording, take place during those two years:

- The real estate assets that government had acquired through the conversion of loans in Year 4, by 8 (Case 1), are sold for an amount of 8;
- Concerning the securities/equity assets of the defeasance, to a balance sheet amount of 25, an amount of 10 concerns unquoted bonds, which are redeemed within years 7 and 8 at 7, closing the position. The loss is not explained by market movements. In the financial accounts, a negative F.3/F.5 is recorded, by

10, with a counterpart of 7 in cash. In the non-financial accounts, a capital transfer payable of government is thus recorded to the amount of 3;

- The defeasance structure closes its position on the remaining quoted securities/equity assets, initially valued at 15, in exchange of 14 of cash. A negative F.3/F.5 is recorded, by 14 (as well as cash), and an negative entry (-1) is recorded in the revaluation account;
- The securities liabilities transferred to the government-controlled defeasance structure, at inception, at the market value of 90 are redeemed at maturity at 90. There is no recording in the non-financial accounts, and in the financial accounts the recording is balanced.

The opening balance sheet, in both cases, is the closing balance sheet of accounting example 7, case 1.

Years 7 and 8							
General Government				Other Sectors			
Opening balance sheet							
A		L		A		L	
AF.2	517	AF.3	90	AF.2	200	AF.3/AF.5	25
AF.4	0			AF.3	90		
AF.3/AF.5	25						
AN.11	8						
		BF.90	452			BF.90	265
		B.90	460			B.90	265
Non-financial account							
U		R		U		R	
P.51g	-8			P.51g	8		
D.9	3					D.9	3
B.9	5			B.9	-5		
Financial Account							
ΔA		ΔL		ΔA		ΔL	
		F.3	-90	F.2	61	F.3/F.5	-24
F.2	-61						
F.3/F.5	-24			F.3	-90		
		B.9F	5			B.9F	-5
Revaluation Account							
ΔA		ΔL		ΔA		ΔL	
AN.11	0						
F.3/F.5	-1					F.3/F.5	-1
		B.103	-1			B.103	1

Closing balance sheet

A		L		A		L	
AF.2	456	AF.3	0	AF.2	263	AF.3/AF.5	0
AF.4	0			AF.3	0		
AF.3/AF.5	0						
AN.11	0						
		BF.90	456			BF.90	261
		B.90	456			B.90	261

In these two years of final wind-down of the defeasance portfolio, government accumulates a positive B.9 impact of 5. On the other hand, its financial net worth improves by only 4. The difference (1) between the two concerns the quoted securities sold below their original valuation, but for which market movements are presumed.

Example 9 – Summary of accounting examples 3 to 8

The following presents the accumulated transactions, revaluations and change in the net worth of government in the context of its interventions in the defeasance structure that was set-up in accounting example 3, case 1. The summary reflects accounting example 4 (case 2), accounting examples 5 to 7 (case 1) and accounting example 8. The closing balance sheet is thus equal to the closing balance sheet in accounting example 8.

Years 1 to 8**General Government****Opening balance sheet**

A		L	
AF.2	500	AF.3	0
AF.4	0		
AF.3/AF.5	0		
AN.11	0	BF.90	500
		B.90	500

Non-financial account

U	R
P.51g	1
D.9	42
B.9	-43

Financial Account

ΔA			ΔL
F.4	0	F.3	0
F.2	-44		
F.3/F.5	1		
		B.9F	-43

Revaluation Account

ΔA		ΔL	
AN.11	-1	F.3	0
F.3/F.5	-1	B.103	-2

Closing balance sheet

A		L	
AF.2	456	AF.3	0
AF.4	0		
AF.3/AF.5	0		
AN.11	0		
		BF.90	456
		B.90	456
		B.101	-44
		B.10	-44

In these eight years of wind-down of the defeasance portfolio, government accumulates a negative B.9 impact of 43. On the other hand, its financial net worth deteriorates by 44, which is also its overall decrease in currency and deposits. The difference (1) between the two concerns the quoted securities sold in years 7 and 8 below their original valuation, but for which market movements are presumed.

Furthermore, it can be observed that the final government net worth and net financial worth are equal, reflecting the fact that all non-financial assets taken over and converted were eventually sold.

Example 10 – Other cases at inception**Case 1 – outright acquisition of a portfolio of problematic assets**

In a more straightforward case than the one depicted in Accounting Example 3, government acquires a portfolio of problematic loans from the rescued bank.

The consideration provided in exchange is of 100, consisting of cash provided to the financial institution that originally held the portfolio of problematic assets. The assets acquired are reliably estimated at 70. As the consideration provided in exchange is 100 and as the fair value of the assets is 70, a capital transfer of 30 is recorded.

Only the stocks that are relevant for the analysis of the operation in question are shown. Moreover, accountants/statisticians record loans in the balance sheet at their reset nominal value.

General Government		Year 1		Financial Sector	
Opening balance sheet					
A		L	A		L
AF.2	500		AF.2	0	
			AF.4	70	
		BF.90	500		BF.90
		B.90	500		B.90

Non-financial account			
U		R	
D.9	30		
B.9	-30		

U		R	
B.9	30		
D.9			30

Financial Account			
ΔA		ΔL	
F.2	-100		
F.4	70		
		B.9F	-30

ΔA		ΔL	
F.2	100		
F.4	-70		
		B.9F	30

Closing balance sheet			
A		L	
AF.2	400		
AF.4	70		
		BF.90	470
		B.90	470

A		L	
AF.2	100		
AF.4	0		
		BF.90	100
		B.90	100

Later on, the rules on managing a defeasance structure would apply to the wind-down of the acquired assets.

Case 2 – capital injection into a rescued bank and undertaking a balanced defeasance portfolio

In another case, government injects 30 of capital into a financial entity in distress, with negative net assets, and takes over from that entity its problematic assets as well as liabilities to the same estimated value (thus, in a balanced way). The rescued entity is thus liberated from its problematic assets, balancing its net asset position, and resumes normal financial activity (and remains classified as a financial intermediary).

The transferred portfolio consists of loan assets reliably estimated at 70, and quoted debt securities at a market value of 70.

As the consideration provided in exchange is *de facto* 100 (30 in cash and 70 in transferred liabilities) and as the fair value of the assets is 70, a capital transfer of 30 is recorded.

Accountants/statisticians record loans in the balance sheet at their reset nominal value.

Year 1			
General Government		Financial Sector	

Opening balance sheet			
A		L	
AF.2	500		
		BF.90	500
		B.90	500

A		L	
AF.2	0		
AF.4	120		
		BF.90	-30
		B.90	-30

Non-financial account			
U		R	
D.9	30		
B.9	-30		

U		R	
B.9	30		
D.9			30

Financial Account							
ΔA		ΔL		ΔA		ΔL	
F.2	-30	F.3	70	F.2	30	F.3	-70
F.4	70			F.4	-70		
		B.9F	-30			B.9F	30
Closing balance sheet							
A		L		A		L	
AF.2	470	AF.3	70	AF.2	30	AF.3	80
AF.4	70			AF.4	50		
		BF.90	470			BF.90	0
		B.90	470			B.90	0

Later on, the rules on managing a defeasance structure would apply to the wind-down of the acquired assets.

4.6. Securitisation of NPLs with government guarantees

4.6.1. Introduction

1. Government interventions to support financial institutions usually take the form of equity financing, guarantees, purchase of impaired assets, or the creation of Asset Management Companies (AMCs). In particular, governments have often helped banks to dispose of their non-performing loan (NPL) portfolios by guaranteeing the NPLs, by purchasing the NPLs directly, or by transferring the NPLs to entities created specifically to acquire the NPLs and liquidate them. Such entities are known as AMCs or defeasance structures and usually benefit from a government guarantee on the debt raised to acquire the NPLs. The government interventions mentioned in this paragraph are covered in chapter 4.5 on government interventions to support financial institutions.
2. Nevertheless, government interventions can also take the form of more complex arrangements. For example, as an alternative measure to the creation of AMCs, government can help financial institutions to dispose of their impaired assets via securitisation. In such cases, government support takes the form of a guarantee on the senior debt issued by an entity (a special purpose vehicle (SPV)) specifically created to purchase the NPLs.
3. While there are many similarities between the transfer of NPLs to an AMC⁽²⁰⁹⁾ with a government guarantee and the transfer of NPLs to an SPV via a guaranteed securitisation, the latter is a borderline case (because of the securitisation structure used and, at first sight, the less direct involvement of government via a state aid compliant guarantee) which is not explicitly addressed in chapter 4.5.
4. This chapter thus focuses specifically on government interventions to support financial institutions in the form of securitisation of NPLs with government guarantees. It describes the guarantee schemes put in place in some Member States and provides specific guidance for the statistical treatment and the implications for government accounts. In particular, it clarifies in what cases the senior debt guaranteed by government should be recorded as private debt and in what (rather exceptional) cases it should be recorded as government debt.

4.6.2. Background

Approaches to deal with NPLs

5. There are multiple ways for banks to deal with their NPLs. Banks can run off their NPLs on balance sheet, for example, by restructuring the loans or enforcing the collateral attached to them. Alternatively, banks can run off their NPLs off balance sheet, removing NPLs from their books through bilateral sales, through securitisation or by transferring the NPLs to an AMC.
6. Following the global financial crisis, many banks experienced an increase of NPLs on their balance sheets while it became difficult to dispose of them via securitisation operations, due to the fact that the securitisation market shut down almost completely. NPLs became therefore a major concern and several EU Member States considered that public intervention was necessary.
7. To reduce the high amount of NPLs, some governments established AMCs and, in many cases, guaranteed the debt raised by the AMC. Such AMCs allowed banks to exchange bad assets for government guaranteed bonds and therefore to decrease the amount of their NPLs. Following the provisions in ESA 2010 and in the MGDD, such national AMCs established and guaranteed by government are to be classified, under normal circumstances, in the general government sector.
8. At EU level, there have been various actions to address the issue of NPLs. In 2017, the EU agreed on a comprehensive set of measures outlined in the "Action Plan to Tackle NPLs in Europe". Following this action plan, a "Securitisation Regulation"⁽²¹⁰⁾ was introduced in December 2017 and the "Capital Requirements Regulation"⁽²¹¹⁾ was further amended in 2019⁽²¹²⁾. In addition, the EC developed a

⁽²⁰⁹⁾ An AMC is a special type of Special Purpose Vehicle.

⁽²¹⁰⁾ Regulation 2017/2402.

⁽²¹¹⁾ Regulation 575/2013.

Blueprint for Asset Management Companies, establishing how an AMC can be set up. The Blueprint deals, amongst other, with impaired asset measures which constitute alternatives to the creation of centralised AMCs. In particular, it refers to the securitisation of NPLs enabled by a “market-conform⁽²¹³⁾ State guarantee”.

9. The issue is thus whether (and when) the securitisation SPV should be seen as a sort of AMC or should instead be treated differently.

Securitisation of NPLs

10. Under a NPL securitisation, a bank transfers portfolios of NPLs to a special purpose vehicle (SPV) that finances the acquisition through the issuance of Asset Backed Securities (ABS) – or notes – that are arranged in different seniority tranches (typically senior, mezzanine and junior). The NPLs thus constitute the underlying collateral backing the ABS. The bank transferring the portfolio of NPLs is referred to as the originator.
11. Securitisation operations can take place with or without government guarantees. In a government guaranteed securitisation, the ABS senior notes are doubly backed by the NPLs and by the government guarantee. NPL securitisations with government guarantees can be seen, under certain circumstances, as an alternative to establishing an asset management company⁽²¹⁴⁾.
12. In a typical NPL securitisation with a government guarantee, the bank retains the senior tranche and sells on the market a material part of the junior/mezzanine tranches to private investors (see next section).
13. In the securitisation operations dealt with in this chapter, the senior tranche is retained by the originator and is guaranteed by government. In some operations it has been observed that the amounts paid by the private investors to acquire a material part of the junior/mezzanine tranches are extremely small or even negligible as compared to the senior tranche guaranteed by government. The question then arises, in such cases, of which party bears the majority of the risks from a national accounts perspective: the private investors by disbursing (insignificant or very limited) funds to purchase junior/mezzanine notes or government by guarantying the (sizeable or very sizeable) senior tranche. In other words, in which cases the relatively small amount disbursed by the private investors (compared to the sizeable amount guaranteed by government) would be so exceptionally small that it could be considered that the private investors would not be, in substance, at risk compared to government⁽²¹⁵⁾. This chapter presents different methods to calculate the distribution of risks in this context.

State guarantee schemes for NPLs securitisation

14. In a few Member States, government has established a guarantee scheme for the securitisation of NPLs. This section describes the general features of such existing schemes observed. In each Member State concerned, the scheme is implemented by a national law that sets the general framework for banks to apply for government guarantees. Each guarantee is related to the securitisation of a particular NPL portfolio of a specific bank and is granted individually in a separate piece of legislation. Accordingly, the features of securitisation operations undertaken under the same scheme can vary significantly.
15. In each operation, a bank transfers a portfolio of NPLs to an SPV⁽²¹⁶⁾ that finances the acquisition through the issuance of senior, mezzanine⁽²¹⁷⁾ and junior notes. The senior notes rank above the mezzanine and the junior notes, in the access to the NPLs cash flow, and benefit from a state guarantee (see next paragraph). The junior notes rank the lowest and do not give right to any cash flow until the other tranches have been repaid in full.

⁽²¹²⁾ The EU securitisation regulatory framework consists of both regulations, which were further amended in 2021 to reflect the impact in the economy of the COVID-19 crisis and introduce the notion of non-refundable purchase price discount (NRPPD).

⁽²¹³⁾ Free of state aid. The risk taken by the State must be assessed and comparable to market transactions.

⁽²¹⁴⁾ See Commission Asset Management Company Blueprint:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018SC0072&from=EN>

⁽²¹⁵⁾ If, for instance, admittedly in a rather theoretical case, the amount disbursed by the private investor(s) for the mezzanine and junior notes would be equal to only 1 euro, it would be obvious that government, via its guarantee on the senior notes, would be the entity bearing more risk, and not the private investor(s). This shows the clear necessity to find a methodology which could determine, in some extreme or specific cases, whether government would be more at risk than the private investor(s).

⁽²¹⁶⁾ In practice, for each operation there may be more than one SPV. This chapter refers to “the SPV” regardless of the number of SPVs comprised in the securitisation operation.

⁽²¹⁷⁾ Usually, the issuance of mezzanine notes is optional.

16. Government provides support in the form of a guarantee on the senior debt issued by the SPV. Neither the mezzanine nor the junior notes benefit from a state guarantee. The state guarantee covers capital and interest of the debt issued for the entire duration of the senior tranche. In exchange, government receives a guarantee fee. The guarantee is said to be priced on market terms to ensure the state aid free nature of the scheme. It should reflect the risks taken by the State. In the cases observed, the guarantee fee increases with the maturity of the notes. The market-based guarantee fee implies that at least the expected average guarantee calls should be covered by the guarantee fee.
17. The senior tranche is rated and calibrated by an External Credit Assessment Institution (ECAI). To be eligible for the government guarantee, the senior tranche should receive a rating equal to or higher than a predetermined level (for instance BBB- or BB-) before taking into account the protection of the State guarantee.
18. Due to the market-based guarantee fee and the rating achieved, the probability for government of incurring significant net losses following adverse scenarios should be limited, with no average expected loss. This would imply that there is no subsidy/gift component at inception. However, the issue at stake in national accounts is the economic ownership of the assets involved in the securitisation operation (and of the liabilities resulting from it).
19. When the originator transfers the NPLs to the SPV, it receives in return all the notes issued by the SPV. There is no cash involved in this transaction, it is just an exchange of NPLs for the notes issued. The originator typically keeps all the senior notes and at least 5% of the mezzanine and junior tranches. Private investors acquire (part of) the junior/mezzanine notes from the originator in exchange of cash. The junior and the mezzanine notes cannot be bought by the State or by public units.
20. The NPL portfolio is generally managed by an independent⁽²¹⁸⁾ servicer appointed by the originator. A subsidiary of the originating bank can also work-out the NPLs, until the disposal of such unit to private investors. Indeed, in some of the operations observed, the subsidiary to work-out the NPLs was purchased by a private investor that acquired the junior/mezzanine notes, sometimes as sole investor. In such cases the sole investor is, at the same time, the service provider⁽²¹⁹⁾.
21. Collections from NPLs are distributed following a waterfall of payments which is outlined in the legislation setting the scheme. Payments take place only if the payment of the previous step has been completed. Payments normally take place in the following waterfall order:
 - Fees to the NPLs servicer
 - Interest on the liquidity line⁽²²⁰⁾
 - Guarantee fee on the senior notes
 - Payments to the swap counterparties⁽²²¹⁾
 - Interest on the senior notes
 - Replenishment of the liquidity line (if previously used)
 - Interest on the mezzanine notes⁽²²²⁾
 - Repayment in full of the senior notes
 - Repayment in full of the mezzanine notes
 - Interest and principal on the junior notes
22. Some elements of the waterfall structure are subject to performance triggers for the NPLs servicer. In particular, a percentage of the service fee can be postponed if the amounts collected by the servicer are below a certain threshold as compared to the business plan. The same applies to the interest on the

⁽²¹⁸⁾ Independent means not controlled by the originator bank according to IFRS 10.

⁽²¹⁹⁾ Or is affiliated with the service provider. In one observed case, the servicer was originally a subsidiary of the originator and the only investor purchases 80% of this servicing company when it purchases the junior/mezzanine notes, as part of the same deal.

⁽²²⁰⁾ The SPV will normally seek a liquidity line to manage potential liquidity mismatches between cash flows from the underlying NPL portfolio and contractually obligatory coupon payments on the senior and the mezzanine notes.

⁽²²¹⁾ Possible interest rate mismatches between assets and liabilities of the SPV will be covered with hedging arrangements.

⁽²²²⁾ In some operations observed, interest on the mezzanine notes is paid only after the full repayment of the senior notes.

mezzanine tranche, which can also be postponed. Nevertheless, it is quite frequent that the performance triggers do not apply during the first year(s).

23. The legal maturity of the senior notes issued by the SPV can be very long (40 years in some of the operations observed), but the notes have a flexible redemption structure, and they can and are expected to be redeemed much earlier for the largest part (i.e., within 7 or 10 years). Unlike corporate bonds, most securitisations are amortized, meaning that the principal amount borrowed is paid back gradually over the specified term of the notes, rather than in one lump sum at maturity of the notes. After a predetermined "revolving period", during which only interest payments are made, these securitisations attempt to return principal in a series of defined periodic payments, starting usually only after the first year. To assess the repayment profile of these ABS type transactions, rating agencies consider the weighted average life of the transaction rather than the legal maturity of the bonds. However, the government guarantee will be active as long as the bonds are outstanding.
24. The transfer value of the NPLs cannot be higher than their current net book value (NBV), which is the gross book value minus the current provisioning level. The originator transfers the NPLs to the SPV at a discount to the outstanding nominal value of the loans, and this discount is referred to as the "non-refundable purchase price discount" ("NRPPD"). Such discount is absorbed by the originator at the time of the sale, such that the NRPPD corresponds to already 'realised losses' from the point of view of the bank, and the originating bank cannot benefit from any collection upside.
25. In practice, there are two ways in which banks can operationalise the NRPPD. One way is to operationalise the discount when the NPLs are transferred to the SPV, by transferring them at the NBV. The second way is to transfer the NPLs at the GBV and record the NRPPD as a discount on the notional value of the notes. In the operations that follow the first approach, the nominal value of the notes issued by the SPV reflects the net book value of the NPLs⁽²²³⁾, which is close (or equal) to their market value or economic/fair value. On the contrary, in the operations that follow the second approach, the nominal value of the notes is equal to the gross book value of the NPLs, and it is therefore much higher than the market value of the notes.
26. Because the underlying pool of NPL securitisations is composed of defaulted exposures, the risk taken by investors is the possibility that the workout process (collections) will not cover the NPLs' purchase price. The NRPPD aims to mitigate this risk.

4.6.3. Treatment in National Accounts

4.6.3.1. GENERAL PRINCIPLES FOR THE STATISTICAL ANALYSIS

27. The NPL securitisation operations described in this chapter should be analysed on a case-by-case basis, with possible different accounting implications among operations under the same guarantee scheme.
28. In the analysis of each NPL securitisation operation guaranteed by government, it is important to assess who bears more risks after the NPLs are transferred, whether it is government or the private investors. The analysis can neither be limited exclusively to the accounting rules on guarantees, nor to those on government interventions to support financial institutions. The statistical analysis starts after the NPLs are transferred (and deemed a "true sale" for the bank) and consists in assessing which of the two parties bears more risk if the collections from the NPL portfolio would not be enough to repay the notes.
29. To do so, it is necessary to quantify the overall risk borne by each party, rather than the risk per euro. The riskiness of each individual euro of senior, mezzanine and junior tranches is well established in the securitisation structure and the EU Regulation. Hence, if the government guarantee would have the same size than the amount paid by private investors, there would be no need to calculate risks. Quite the contrary, in some operations observed, the amount guaranteed by government is very large as compared to the amount paid by private investors (though much less risky). For this reason, to assess the overall risk when the size of the exposures is very different, risk weights should be taken into account. This will be done by calculating the risk-weighted (or equivalent) exposure amount for government on the senior tranche and for private investors on the junior/mezzanine tranches (at market/economic/fair value) by reference to the methods described below in this chapter.

⁽²²³⁾ In all the operations, the nominal value of the senior tranche reflects the net book value. But this is not necessarily the case for the junior and mezzanine tranches.

30. The risk-weighted (or equivalent) exposure amount for private investors will be deemed higher than for government if any of the methods listed below in section 4.6.3.2.1 shows higher exposure of the private investor than of government. In such case, the senior debt guaranteed by government should be private debt and therefore not part of government debt and the SPV would be assimilated to a private defeasance structure.
31. Otherwise, the risk-weighted (or equivalent) exposure amount for government will be deemed higher than for private investors and the senior debt guaranteed by government should be government debt. In this very specific case, the effect for government would be akin to considering that the SPV is a government defeasance structure (classification of the SPV inside government) or alternatively to applying a simpler rerouting approach of the senior notes (see paragraph 64).
32. In both cases, there should be no B.9 impact at inception due to the fact that no loss is expected (there is allegedly no gift component). Any liability incurred by government would be matched by financial assets with the same estimated market/fair value.
33. Similarly to the case of standardised guarantees, the guarantee fees paid to government at inception or over time should be recorded as AF.6 provisions/reserves to cover possible calls rather than as government revenue. This is particularly relevant if the senior debt is considered as private debt. In contrast, the guarantee fee recording is consolidated when the SPV is considered a government unit.

4.6.3.2. IMPLEMENTATION

4.6.3.2.1. Calculation of risk-weighted exposure amount

34. For each securitisation position, the risk-weighted exposure amount⁽²²⁴⁾ is calculated by multiplying the exposure value by the relevant risk weight of each tranche.
35. The exposure value for the investor is the amount invested in the junior/mezzanine notes (the market or economic/fair value of the notes, which can considerably differ from their nominal value in certain securitisation operations, as stated in paragraph 25). The exposure value for government is the market or economic/fair value of the senior tranche (in this case, this value would be equal or close to the nominal value)⁽²²⁵⁾.
36. For statistical purposes, the following methods should be considered in order to assign risk weights to the tranches in the securitisation:
- External Rating-Based Approach (SEC-ERBA) as defined in article 263 of the Capital Requirements Regulation (CRR) as amended,⁽²²⁶⁾
 - Internal Rating-Based Approach (IRBA) and Standardised Approach (SA) as defined in article 269a of the CRR as amended,⁽²²⁷⁾
 - Aggregate default method,
 - Guarantee fee method.
37. The methods proposed are described below. Each method will provide different risk weights and hence different risk-weighted exposure amounts. In order to undertake the statistical analysis, the risk-weighted exposure amount for each party may be calculated applying these methods (based on data availability) and analysing the results (see paragraphs 55 and 56).

⁽²²⁴⁾ Under the Basel framework, credit institutions calculate their risk-weighted assets (RWA) by applying a specific risk weight to each asset (exposure). This applies also to securitisation positions. In turn, RWA are used to calculate the Tier 1 capital ratio (CET1). The CET 1 measures a bank's financial health and is calculated by dividing the core capital of an institution by its RWA. Although governments (and probably also the investors that purchase the junior/mezzanine tranches) fall out of the scope of the Basel framework, the risk-weighted exposure is a reasonable approach to quantify the risk attached to the securitisation positions held by each party.

⁽²²⁵⁾ The market value can differ from the economic or fair value, sometimes for significant amounts, due to liquidity issues that result from the fact that the instrument under consideration (here the senior notes guaranteed) is not a perfect substitute of other instruments (here government bonds) even if the risk is exactly identical. This may be due to the fact that the timing of the cash flows is uncertain (rather than fixed) or simply to segmentation of markets (e.g., investor preferences or regulatory elements or assimilated that limit the pool of investor for the specific product). The sole fact that such notes are less liquid or judged so than equivalent government debts can justify a discount.

⁽²²⁶⁾ Consolidated TEXT: 32013R0575 — EN — 08.07.2022 (europa.eu)

⁽²²⁷⁾ Consolidated TEXT: 32013R0575 — EN — 08.07.2022 (europa.eu)

External rating-based approach (SEC-ERBA)

38. The SEC-ERBA approach assigns risk weights according to the external rating of the exposure, the maturity and the seniority of the tranche. The table below provides the risk weights that should apply following the SEC-ERBA approach for long-term rated positions according to 17 different credit quality levels/steps.

Table 1. Risk weights according to 17 credit quality steps following the SEC-ERBA approach

Credit Quality step	Senior tranche		Non-senior (thin) tranche	
	Tranche maturity (M_T)		Tranche maturity (M_T)	
	1 year	5 years	1 year	5 years
1	15%	20%	15%	70%
2	15%	30%	15%	90%
3	25%	40%	30%	120%
4	30%	45%	40%	140%
5	40%	50%	60%	160%
6	50%	65%	80%	180%
7	60%	70%	120%	210%
8	75%	90%	170%	260%
9	90%	105%	220%	310%
10	120%	140%	330%	420%
11	140%	160%	470%	580%
12	160%	180%	620%	760%
13	200%	225%	750%	860%
14	250%	280%	900%	950%
15	310%	340%	1050%	1050%
16	380%	420%	1130%	1130%
17	460%	505%	1250%	1250%
All other	1250%	1250%	1250%	1250%

39. According to the above table, the risk weight for the senior tranche will always be equal to or below 505% given the typical minimum rating requirement imposed on the senior tranche⁽²²⁸⁾. As the junior/mezzanine tranches are not rated in the securitisation cases under review, they will be subject to risk weights close or equal to 1250%⁽²²⁹⁾. Therefore, in practice, only the columns of the table corresponding to the senior tranche will be used in the analysis.

40. The following link by the EBA provides the mapping standards matching the 17 credit quality steps of the table with the ratings from the various ECAs: https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2018_4274

41. The following table, which has been compiled using the link above, shows the correspondence of the ratings for some of the main ECAs with the 17 credit quality steps (CQS) outlined in the SEC-ERBA approach.

⁽²²⁸⁾ 505% maps to a credit quality step of 17 (broadly CCC+/CCC/CCC-). Current mapping standards are available at this link by the EBA https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2018_4274

⁽²²⁹⁾ This is the cap set in the CRR for junior positions.

Table 2: Correspondence between ratings and credit quality steps

Mapping of ratings with credit quality steps (CQS)				
<u>CQS</u>	<u>DBRS</u>	<u>Fitch</u>	<u>Moody's</u>	<u>S&P</u>
1	AAA	AAA	Aaa	AAA
2	AA (high)	AA+	Aa1	AA+
3	AA	AA	Aa2	AA
4	AA (low)	AA-	Aa3	AA-
5	A (high)	A+	A1	A+
6	A	A	A2	A
7	A (low)	A-	A3	A-
8	BBB (high)	BBB+	Baa1	BBB+
9	BBB	BBB	Baa2	BBB
10	BBB (low)	BBB-	Baa3	BBB-
11	BB (high)	BB+	Ba1	BB+
12	BB	BB	Ba2	BB
13	BB (low)	BB-	Ba3	BB-
14	B (high)	B+	B1	B+
15	B	B	B2	B
16	B (low)	B-	B3	B-
17	CCC (high) CCC CCC (low)	CCC+ CCC CCC-	Caa1 Caa2 Caa3	CCC+ CCC CCC-
All other	Below CCC (low)	Below CCC-	Below Caa3	Below CCC-

42. For instance, a senior tranche rated BBB- would correspond to credit quality step 10. According to the risk weights outlined in the first table, this would in turn correspond to a risk weight of 140% for a senior tranche with a maturity of 5 years. In this case, the implied risk ratio (mezzanine/senior tranche) is 1250/140. Similarly, a senior tranche rated BB- would correspond to credit quality step 13. This would in turn correspond to a risk weight of 225% for a senior tranche with a maturity of 5 years. In this case, the implied risk ratio (mezzanine/senior tranche) is 1250/225.

43. Table 1 does not consider maturities beyond 5 years, while the legal maturity of the senior notes is often much longer (e.g., 40 years), although the expected average duration is much shorter (but possibly more than 5 years). Therefore, the column for the longest maturity (in this case 5 years) should be the one used when selecting the risk weights displayed in this table, and not the one for shorter maturities. A simplified version of the table with one single column (corresponding to a senior tranche with a maturity of 5 years) is provided at the end of the chapter in the section with numerical examples.

Internal Rating-Based Approach (SEC-IRBA) and Standardised Approach (SEC-SA)

44. The second approach to assign risk weights is to apply a flat risk weight of 100% to the senior tranche in all cases and a risk weight of 1250% to the junior and mezzanine securitisation positions (which are unrated).

45. An amendment⁽²³⁰⁾ to the CRR introduced in March 2021 following the COVID-19 crisis (article 269a), establishes that institutions shall assign a flat risk weight of 100% to all senior securitisation positions when applying the SEC-IRBA and the SEC-SA approaches, when they are 'qualifying traditional securitisations' (which is typically the case in the operations under review).
46. The flat risk weight of 100% is applied regardless of the rating and of the maturity of the notes.
47. As compared to the SEC-ERBA approach, this approach is stricter for high ratings and less strict for lower ones. For ratings equal to or above credit quality step 8, the SEC-ERBA would assign risk weights below 100%, with 20% being the minimum⁽²³¹⁾. For ratings equal to or below credit quality step 9 (BBB), the SEC-ERBA would assign risk weights above 100%, with 505% being the maximum⁽²³²⁾. For example, the implied risk ratio (mezzanine/senior tranche) for a BBB- rating would be of 1250/100 with this approach and 1250/140 with the SEC-ERBA. For a BB- rating, the implied risk ratios would be 1250/100 with this approach and 1250/225 with the SEC-ERBA⁽²³³⁾. Hence, for ratings of BBB- and BB- and lower (i.e., non-investment grade), this approach would be less strict than the SEC-ERBA when calculating the risk-weighted exposure of government.

Aggregate default method

48. Following this approach, the risk-weighted exposure for government will be obtained based on the expected aggregated loss, which is the amount that will likely not be recovered in the event of default.
49. This approach for calculating risk weights is not mentioned in EU Regulations and should not be understood as an alternative to the methods established therein. Neither should it be understood as an option to calculate risk-weighted assets in the Basel framework. The aggregate default method has been included in this chapter merely as a practical tool to be used in the statistical analysis of the specific operations dealt with in this chapter.
50. This method consists in using the 'loss given default' for the senior tranche, when available. This can be done by using the aggregate default rate corresponding to such rating at a certain horizon, that could be, for instance, 10 years⁽²³⁴⁾. If the 'loss given default' is not available from a public data source, the 'probability of default' can be used as a proxy. For the mezzanine and junior tranches, an expected loss of 100% would be considered, by convention.
51. This method (with its proxy: probability of default) would assign the same rate to all the operations with the same rating. For example, according to DBRS Morningstar Structured Finance Rating Transition and Default Study, the BBB- probability of default rate in 10 years amounts to 1.64% and the BB- probability of default rate amounts to 4.72% in the same period. With this method, the implied risk ratio (mezzanine/senior tranche) would be 100/1.64 and 100/4.72, respectively for ratings of BBB- and BB- as described in paragraph 50 above.

Guarantee fee method

52. An alternative method is to compare the guarantee fees expected to be paid over the life of the transaction with the market/fair/economic value of the mezzanine/junior notes sold to investors, and simply take as more risky whichever is the biggest.
53. This method is simple and particularly useful when the loss given default is not available or when compilers do not judge the probability of default a sufficient reliable proxy. Also this approach for calculating risk weights, like the previous one, is not mentioned in EU Regulations and should not be understood as an alternative to the methods established therein. Neither should it be understood as an option to calculate risk-weighted assets in the Basel framework. The guarantee fee method, like the aggregate default one, has been included in this chapter merely as a practical tool to be used in the statistical analysis of the specific operations dealt with in this chapter.

⁽²³⁰⁾ Before the amendment, the SEC-IRBA and the SEC-SA approaches described in the CRR would have normally entailed more complex calculations, as they relied on non-public information and estimations of a number of parameters. For instance, the following inputs supplied by the bank would have been necessary to calculate risk weights: the capital charge of the pool of underlying exposures (K), the tranche attachment point (A), the tranche detachment point (D) and the supervisory parameter (p). Nevertheless, the amendment introduced in 2021 significantly simplified the calculation and enabled the SEC-IRBA and SEC-SA approaches to be considered for the statistical analysis.

⁽²³¹⁾ Considering a maturity of 5 years.

⁽²³²⁾ Considering a maturity of 5 years.

⁽²³³⁾ BBB- corresponds to credit quality step 10 and BB- to credit quality step 13.

⁽²³⁴⁾ As the legal maturity of the notes issued is sometimes very long, it is proposed to use the horizon of 10 years. The SEC-ERBA approach considers shorter maturities, but on the other hand provides higher risk weights. Moreover, in the SEC-ERBA approach, the increase in the risk weight between maturities of 1 and 5 years is very limited (for instance, for credit quality step 13, the risk weight is 200% for a maturity of 1 year and 225% for a maturity of 5 years). In the SEC-IRBA/SEC-SA approach, risk weights do not depend on the maturity.

54. The 'guarantee fee method' relies on the relative size of the guarantee fee compared to the mezzanine/junior tranches. For example, if we consider a transaction where investors paid 18 m and the expected cash flows related to the guarantee fee would be 150 m, we would consider that the exposure of the senior tranche is 150 m, which (for a senior tranche of 3 bn) implies a probability of default of 5%.

Analysis and interpretation of the results obtained applying the methods proposed

55. In the operations described in this chapter, the senior tranche is normally rated BBB- or BB-. In such cases, the use of the aggregate default method and the guarantee fee method will lead to the highest risk ratios mezzanine/senior, followed by the 100% flat rate of the SEC-IRBA/SEC-SA and, finally by the SEC-ERBA.
56. This raises the issue of how to proceed with the analysis if the various methods would point to different conclusions as regards who bears more risk. In a number of operations the results will be clear, as all the methods would point to the same result (the risk-weighted exposure amount calculated with all the approaches will be higher for the same entity). Nevertheless, it could be that, in some cases, the methods would point to different conclusions (some approach(es) would lead to a higher risk-weighted exposure for one entity and some approach(es) would lead to the opposite result). In such cases, by convention, the majority of the risk is considered to be held by the private investors if this result is obtained with at least one of the different methods proposed in the chapter. Some examples are available at the end of the chapter in section 4.6.5.

Other considerations

57. In the operations at stake, the value of the junior tranche is sometimes insignificant. Given that the risk analysis is determined by the relative size of the mezzanine tranche, in general, if the price paid by the investor/s for the junior/mezzanine notes would be almost insignificant compared to the senior debt guaranteed by government, this could indicate that the risk-weighted exposure amount for government would be higher than for the private investors. This will be then confirmed after due consideration of the risk weights as described above.
58. In addition, if the only investor is the NPL servicer (or is affiliated with the NPL servicer), the service agreement could reduce the genuine exposure of the private investor by making the investment on the mezzanine/junior notes a mere substitute to the investment on the service contract, which in turn would prevent the investment in those notes to be seen as undertaken only from a private investor perspective. This issue is independent from the fact that having the contract servicer also investing in the notes is considered as being very good practice from an incentives point of view.

4.6.3.2.2. Recording of the senior debt as government debt

59. In case the risk-weighted exposure amount for government calculated with all the methods would be higher than for the private investor, there are two possibilities to record the senior debt guaranteed by government as government debt: via the sectorisation of the SPV or via rearrangement of transactions.

SPV sectorisation approach

60. These operations are deemed to take place in the context of financial defeasance. If (based on the above risk-weighted analysis) it is considered that government is the economic owner of the NPLs backing the ABS, the SPV will be classified in the government sector, in line with the general rules for government defeasance structures (see chapter 4.5). In this case, the senior debt issued by the SPV will be automatically part of government debt.
61. However, it may be the case that the SPV is non-resident. ESA 2010 20.48 states that non-resident SPVs are recognised as separate institutional units by convention (i.e., even when not meeting the 'autonomy of decision' criterion) but then foresees that non-resident SPVs engaging in fiscal activities are to be reflected in the accounts of general government by way of imputations also by convention. The paragraphs 9–19 of chapter 1.6 on specific public entities deal with non-resident SPVs. According to these paragraphs, to reflect the economic substance of the operation, compilers can either impute government borrowing or follow a simpler consolidation approach for the government non-resident SPV (but, in both cases, record the NPLs on government balance sheet).

Rearrangement approach

62. This approach reflects the fact that, notwithstanding the classification of the SPV, under normal circumstances an asset is recorded in the balance sheet of the entity that assumes the risks and

rewards related to the asset. Rearrangement should be undertaken when, *de jure* or *de facto*, a party assumes the risks and rewards of an asset that, for some reasons, does not already feature in its own balance sheet. In this particular case, an asset and a matching liability (the senior tranche) should be imputed in government accounts to properly reflect the involvement of government and the sharing of risks and rewards. This is in line with the provisions for rearrangement of transactions carried out by non-government units based on risks and rewards (see section 1.2.4.5.3).

63. Moreover, according to paragraph 113 of section 1.2.4.5.3, “*rearrangement may also be undertaken when a unit acts under substantial government involvement, taking no (or minor) risks but benefiting from the rewards...*”. In the operations under discussion, government is significantly involved as it designs and puts in place a guarantee scheme for the securitisation of NPLs of banks. Government provides a dedicated guarantee and imposes substantial conditions on the transaction, such as the structure of the securitisation in at least two tranches, the calibration to obtain a certain rating, the cap on the transfer price of the NPLs, the waterfall structure for the cash flows stemming from NPL returns and the minimum amount of junior/mezzanine notes that must be sold to private investors. Government does not benefit here from all rewards, however, but is exposed to risks that cannot be considered as being negligible (nor minor) in some securitisations.
64. In this rearrangement approach, it is proposed to rearrange only the senior debt rather than conduct a full rearrangement (which would be similar or identical to a reclassification of SPV).
65. In summary, the recording of the senior debt in government accounts can be implemented in the following ways:
- The senior notes (F.3)⁽²³⁵⁾ are recorded as government debt matched with the underlying NPLs (F.4) on the asset side. This will be the case if the SPV is classified in S.13.
 - The senior debt (F.3) is recorded as government debt and matched with an F.4 loan asset towards the SPV in case of rearrangement. This will be the case if the rearrangement concerns solely the senior debt, as mentioned in paragraph 64 (otherwise the result is the same as if the SPV is classified in S.13).
 - The senior notes (F.3)⁽²³⁶⁾ are recorded as debt of the SPV and an imputed loan (F.4) from the SPV to government is recorded, matched with an acquisition of NPLs (and some residual increase in the equity of the SPV). This will be the case if the SPV is non-resident and if the (simpler) consolidation approach is not followed (otherwise the result is the same as if the SPV is classified in S.13).
66. In any of the three cases above, the treatment to be followed after inception is as prescribed in chapter 4.5 ‘Government interventions to support financial institutions: financial bailouts and defeasance’ and/or in application of rules on rearrangement.

4.6.3.2.3. Treatment of the junior and mezzanine tranches

67. In the case that the SPV would be classified in S.13, it would be important to clarify not only the recording of the senior tranche, but also the treatment of the junior/mezzanine tranches. In particular, whether the junior/mezzanine notes issued by the SPV are debt instruments or not.
68. If the issuer is not obliged to make payments (interest and principal) for the junior/mezzanine tranches, such notes should not be treated as debt securities. In such cases, a treatment as equity (F.5) or financial derivatives (F.7) would be more appropriate.

4.6.3.2.4. Treatment of the government guarantee

69. The government guarantees provided under these schemes have some features of non-life insurance and standardised guarantees. For instance, such operations concern a portfolio of assets and it is possible to estimate the average loss (each transaction is designed so that the guarantee fees will cover the possible calls). Yet, the long-term exposure (possibly above 10 years) and the cash flow profile do not fully match with the features of non-life insurance.
70. These guarantees also have some features of one-off guarantees, in the sense that they are provided for significant amounts. However, they do not comply with a main feature of one-off guarantees: that

⁽²³⁵⁾ The junior and mezzanine notes would also be recorded as government liabilities, although not as F.3 (see below) and therefore not as Maastricht debt instruments.

⁽²³⁶⁾ The junior and mezzanine notes would be recorded as liabilities of the SPV, matched by an equity link against government.

guarantors are not able to make a reliable estimate of the risk of calls (ESA 20.255).

71. Nevertheless, the key feature for the statistical analysis of the cases concerned by this chapter is that the guarantee should be priced on market terms, so that the guarantee fee should at least cover potential guarantee calls. Because of this feature, it is appropriate to treat the guarantee fees as reserves to cover possible calls (F.6) rather than as government revenue. Similarly to the case of non-life insurance or standardised guarantees, these reserves/provisions are to be recorded in the same amount and timing when the fees are earned.
72. Therefore, guarantee fees are to be recorded as AF.6 liabilities of government and calls are then first recorded as a reduction in AF.6.
73. The treatment of the guarantee fee as a financial transaction is particularly relevant when the senior debt is considered as being private debt. Otherwise, if the SPV is classified in S.13, the guarantee fee consolidates in government accounts.

4.6.4 Rationale of the treatment

Delimitation of the analysis: by scheme or by operation?

74. The starting point of the analysis is to determine whether it should be undertaken at the level of the scheme or at the level of each operation. From a methodological point of view, it would not be sound that all the operations under a scheme have the same statistical treatment, while having very different features. A case-by-case analysis implies assessing each single operation under the same scheme rather than assuming the same treatment, by default, for all the operations under a given scheme. Every single operation needs to be examined individually based on its features and, depending on such features and circumstances, the impact on government deficit and debt may be different. A case-by-case analysis implies that: (i) similar operations in different countries would have the same statistical treatment and (ii) operations with different features under the same national scheme could have different statistical treatment.

Applicable accounting rules to consider for the analysis

75. Another key element for the statistical analysis is to establish whether it should be limited exclusively to the examination of the rules on guarantees or, whether, in addition to the rules on guarantees, it should take into account also other elements, such as the allocation of risks and rewards between government and the investors, as well as the rules on financial bailouts and defeasance. The NPLs securitisations described enable banks to offload impaired assets (NPLs) from their balance sheets, with government involvement in the form of a guarantee. As such, these government guaranteed NPLs securitisations take place in a specific context of financial defeasance, i.e., without expected redistribution of income and wealth at inception, as an alternative measure to the creation of an asset management company. Moreover, the general rules on economic ownership of assets based on risk and rewards are applicable.
76. It is sometimes argued that guaranteed securitisations are not 'defeasance structures' in the ESA 2010 meaning because the latter would only deal with impaired assets in the context of crisis and involved in redistribution of income and wealth.⁽²³⁷⁾ However, according to ESA 20.46, while defeasance structures are often arranged during a crisis, this is not always the case ("*and **may be set up in a bankruptcy or other financial crisis***", which means that some defeasance may be organised outside those specific situations – bold added) and, while they are often designed to convey a benefit (through a purchase above market or economic price), again this is not always the case ("*In the **most common case....its activities result in redistribution of national income and wealth***" – bold added). ESA 2010 paragraph 20.46 in contrast indicates clearly that the classification is decided "*according to the degree of risks it assumes, considering the degree of financial support of the government*". One can thus conclude that the ESA 2010 *de facto* recognises that entities managing impaired assets created outside a crisis and with no average expected loss can still be considered as public defeasance structure classified inside government when government is exposed to risk, once control is established. Public control in the meaning of ESA 2010 can be established through various means and not only by way of legal instruments.

⁽²³⁷⁾ Note that the term 'debt defeasance' initially appeared in SNA 1993 paragraph 11.24 to mean the hiving off of assets paired with their liabilities, off the balance sheet of an originating entity, such as a bank. The term defeasance was then assimilated to government sponsored bad banks in the early versions of the MGDD. The current version of the MGDD, chapter 4.5 explicitly explains that defeasance structures can also be private.

77. Thus, cases of units dealing with impaired assets with no expected loss that are either created by government, or created for a rescue, and that are not using a securitization approach, are in principle covered by the chapter 4.5 Government interventions to support financial institutions: financial bailouts and defeasance. Hence, it is the specific circumstances under which the securitisation of NPLs occur – no redistribution of income and wealth expected at inception and eventually not in the context of a financial crisis or financial distress – that justify the specific guidance provided in this chapter 4.6.
78. It may well be the case that the classification of the SPV inside government is difficult, notably when the SPV is non-resident, and a simplified approach based on rearrangement/rerouting rules can be applied.
79. Indeed, the accounting treatment of operations should reflect economic reality, which may lead to recording operations in national accounts in a different way from how they are recorded in other accounting frameworks, by reference to ESA 2010 paragraphs 1.72 to 1.78 on rearranging of transactions. The complexity and novelty of these operations can make rather challenging the task of the statistician in ensuring substance over form. However, regardless of the form and the tools used, measures that are very similar in substance should be accounted for in a consistent way.
80. Accordingly, the analysis cannot be limited exclusively to the rules on guarantees, and it is instead important to assess who bears more risks, whether it is government or the investor, even in cases where the probability for government of incurring significant net losses is limited.
81. It should be noted that, even if the guarantee rules were to be considered or applied in isolation, one would have to decide whether the guarantee provided to the senior notes is a traditional one-off guarantee regulated by ESA 20.255, or an exceptional one-off guarantee regulated by ESA 20.256, or a standardised guarantee regulated by ESA 20.254, with different accounting impacts at inception and over time. The guarantee of government seems not really to align to ESA 20.255 as one cannot say that *“the conditions of the loan or the security [guaranteed] are so particular that it is not possible for the degree of risk associated with the loan to be calculated with any degree of accuracy.”* Under ESA 2010 paragraph 20.256, guarantees with *“very high likelihood to be called are treated as if such guarantees were called at inception”*, which in turn would imply a similar recording to what is recommended in this chapter (with a transfer recorded at inception only in case of average expected net loss).

Risk of various parties

82. In a securitisation operation of NPLs with government guarantee, the risks for the different parties involved are as follows:
- Risk for the investors: Investors are at risk for the amount invested in the junior and mezzanine bonds. Any amount received from the notes in excess of the amount invested should be seen as a reward. The issue however becomes more complex when the investor is at the same time the NPLs servicer. This is because it makes money from the service fees involved (which can easily be much higher than the amount paid for the notes), so it would not be too concerned from the possibility of losing the amount invested in the notes. The return on the junior/mezzanine notes can then in this case be assimilated to performance fees additional to its service fees.
 - Risk for the bank: The bank has recognized the loss through the NRPPD, which thus cannot be assimilated to a risk exposure or a ‘virtual tranche’, as no cash flow from the NPLs will reach the bank (all residual amounts are captured by the junior tranche). The originator is not at risk from the senior bonds, as government guarantees them in full. It could be seen being at risk for the 5% retained of the junior and mezzanine notes, although it already had the NPLs on its balance sheet in the first place, so it was already exposed to the risk. The bank may, however, benefit from some rewards on the 5% retained if the operation goes well.
 - Risk for the shareholders: In some cases where investors would purchase a share below 95% of the junior/mezzanine notes, the remaining notes are distributed for free to shareholders. Shareholders would be at risk for these junior and mezzanine bonds. However, they are given to them for free, i.e., no money is invested for purchasing the notes. Shareholders could therefore get a reward on the mezzanine/junior notes received if things go well but cannot be considered to be really at risk.
 - Risk for government: If the NPLs wind-down occurs at conditions worse than expected, government would be at risk for its exposure on the senior bonds. If the NPLs are wound down as expected at inception (or better) and the guarantee is not called, government could make a profit out of the guarantee fee: it would get a reward.

83. In a NPL securitisation, the main risk is that the servicer does not generate sufficient cash flows to repay the senior notes when working out the NPLs. The main parties to be considered for the purpose of assessing the risk transfer in these operations (from the perspective of national accounts), are government (through its exposure on the senior notes) and the investors (through their investment in the junior/mezzanine notes), and neither the originator (who only retains a limited exposure in the mezzanine/junior tranches) nor the shareholders (as they did not pay for the notes).

Risk weighting

84. Another important element in the analysis is to determine how to assess the overall risk borne by the different parties. Under EU securitisation rules, there is a clear and strict hierarchy of riskiness between the senior (with low risk), mezzanine (average/high risk) and junior (very high risk) tranches, for 1 euro of investment. But this does not summarise the overall risk for each party, as the exposure size must also be taken into account. The investor has an exposure (sometimes significant, sometimes not) in a very risky tranche and government has also an exposure (generally for much bigger amounts), but in a tranche that is considerably less risky. It is thus appropriate to apply a coefficient to the amounts invested/guaranteed to appropriately reflect these different risk profiles. By taking risk weights into account, the analysis is thus neither limited to simply comparing the amount guaranteed by government with that of the contribution of private investors, nor is it limited to simply comparing the unweighted risk levels of government and private investors. The two measures – risk level and overall exposure – thus need to be appropriately combined and computed.

85. These unweighted amounts can be assimilated to a “maximum” risk, which will never fully materialise for government, as there will always be some collection on NPLs liquidation, but may well occur however for investors if the NPLs liquidation is disappointing, particularly when the junior/mezzanine tranches are small. The basis of the analysis would be to compare the risk-weighted exposure amounts for government (the senior tranche) and for the private investor (its investment in the junior/mezzanine tranches).

86. The risk-weighted exposure amount for a securitisation position is calculated by multiplying the exposure value by the relevant risk weight. While determining the exposure value is straightforward, there can be various methods to calculate risk weights. On the one hand, EU legislation establishes a cascade of three methods to calculate risk-weighted exposure amounts: the Internal Rating-Based Approach (IRBA), the Standardised Approach (SA) and the External Rating-Based Approach (ERBA). In these three methods, risk weights are subject to a floor of 15%⁽²³⁸⁾ and a cap of 1250%. In addition, it is common to assign this maximum risk weight of 1250 % to securitisation positions that are unrated. It is worth noting that the providers of credit protection to securitisation positions shall be considered as holding positions in the securitisation⁽²³⁹⁾. Therefore, in guaranteed securitisations like the ones under discussion, government would be considered as exposed, bearing the risk of the senior tranche.

87. The External Rating-Based Approach (ERBA) specific method is proposed because it offers statisticians the possibility of calculating risk-weighted exposures in a straightforward and clear way, relying exclusively on the following publicly available information: the rating and the risk weights as outlined in the table in section 4.6.3.2.1. The other two methods foreseen in EU legislation originally entailed more complex calculations and relied on non-public information and estimations of a number of parameters which might not be straightforward to obtain for statisticians. Nevertheless, a simplified proposal to apply a flat risk weight of 100% to all senior tranches has been introduced in the amendment of 2021 and therefore both methods are also proposed in this chapter.

88. Section 4.6.3.2.1 establishes the methods that may be used to assign risk weights from a national accounts perspective, depending on data availability. It can be concluded that private investors bear higher risk than government if at least one of the methods show higher risk-weighted exposure amounts for private investors than for government.

Role of capital requirement rules

89. The fact that some methods developed by regulators for capital ratio supervision (CRR) are proposed for use here by statisticians by no means implies that the statistician should follow the same protocols as

⁽²³⁸⁾ 10% if the securitisation qualifies as simple, transparent and standardised (STS).

⁽²³⁹⁾ See article 247 (3) of the CRR: “Where there is an exposure to positions in different tranches in a securitisation, the exposure to each tranche shall be considered a separate securitisation position. **The providers of credit protection to securitisation positions shall be considered as holding positions in the securitisation.** Securitisation positions shall include exposures to a securitisation arising from interest rate or currency derivative contracts that the institution has entered into with the transaction” (bold added).

followed for this capital ratio supervision. It also does not imply taking an alternative view to that of supervisory authorities, which is essentially focused at the capital ratio calculation (thus at a capital compilation and at the risk exposure compilation).

90. In particular, the capital ratio supervision establishes strict rules for deciding on the hierarchy of the CRR methods applicable for a given case, but this does not preclude the statistical system to use a variety of methods for that given case. ERBA, IRBA or SA are all methods applied, in certain circumstances, to weigh various securities (here senior tranche and mezzanine) for the purpose of the compilation of the capital ratio of banks holding them and as such are all legitimate methods to consider.
91. The fact that the IRBA/SA methods entail a simplification because weighing identically different instruments does not make this method illegitimate, to the extent that this method is recognised as appropriate by regulators themselves in a number of circumstances.
92. In the same vein, concluding that investors bear higher risk than government only because the bank is actually achieving derecognition of the asset from a capital regulation point of view (either through Significant Risk Transfer⁽²⁴⁰⁾ (SRT) or through the guarantee) would be misleading, as this issue is solely related to the bank being seen as performing a “true sale”⁽²⁴¹⁾ (or equivalent) of its NPLs through an off-balance sheet securitisation and is not effectively borrowing funds (through an on-balance sheet securitisation). Nevertheless, this fundamental assessment of the capital ratio supervision of the originator does not indicate to whom the NPLs are “sold”, i.e., whether they are effectively “sold” to the guarantor (and the NPLs are then on government balance sheet) or to the investors (and the NPLs are then on the balance sheet of the SPV classified in S.12). The SRT assessment is not explicit in terms of who buys/secures the securitisation position.
93. In a securitisation without government guarantee, risks are distributed between investors and the bank, and the removal of credit risks from a regulatory capital point of view necessarily implies that the majority of risks is transferred to investors. When there is also a government guarantee, typically, investors assume the risk of the majority of junior/mezzanine notes and government assumes the risk of the senior notes. The bank keeps only the risk of the usually small percentage of the junior/mezzanine notes retained. In this case, the capital advantage is achieved, and risks are mainly distributed between investors and government. This issue at stake is how to assess/characterize this risk distribution.

Appropriate cushion and role of the NRPPD

94. The capital ratio supervision explicitly considers the NRPPD (the non-refundable purchase price discount, which is the difference between the nominal value of the NPLs and the written down/transfer value) as an important element to take into account, notably for the SRT assessment.
95. In this context, it is also sometimes argued that the steep discount resulting from the NRPPD provides benefiting ‘overcollateralization’ or/and can be assimilated to the creation of a ‘super-junior’ or ‘virtual’ tranche that would need to be considered in general.
96. However, the NRPPD is not particularly relevant for the analyses carried out according to ESA 2010, because market values must be considered in general in national accounts. The fact that the NPLs have a high or low nominal value can be thus seen as largely irrelevant to the analysis at hand in national accounts, as what is important is their fair valuation. This is notably because the difference may be due to differences in impairment, including differences in the proportion of claims that are hardly enforceable in practice. ESA 20.233 explicitly recognises that an economic asset is removed “*when a creditor concludes that a debt obligation has little or no value, because the debt is not going to be paid; the debtor is bankrupt, has disappeared or cannot be realistically pursued for recoveries that would justify the various costs incurred*”. Also the chapter on defeasance (see section 4.5.4.4), recognises that the nominal value rule for NPLs purchased by AMC can usefully be relaxed so to avoid distorting the net assets of government.
97. Also, one would not speak of ‘overcollateralisation’ of the notes with NPLs as a result of the existence of the NRPPD, just like one would not consider that a loan of 100 would be overcollateralised with two bonds each with a face value of 100 but trading at a 80% discount (that could be either because the bond is a zero coupon, or is a claim on a debtor in serious difficulty) – implying a 40% collateralisation at market value.

⁽²⁴⁰⁾ The significant risk transfer (SRT) regime is described under articles 243 and 244 of the Capital Requirements Regulation.

⁽²⁴¹⁾ See chapter 5.1 paragraph 2 or chapter 5.5 paragraph 56.

98. Similarly, one should not talk about ‘super junior tranche’ or ‘virtual tranche’ held by the originator either, while the latter has not only written down (or written off) the NRPPD but abandoned any claim on NPLs sold: thus any cash flow in excess of expectations will go to the mezzanine/junior tranches, such that no other (‘super’ or ‘virtual’) tranche actually exists. It is worth noting, in this respect, that the EU legislation was amended in 2021, notably so to explicitly refer to NRPPD, but with the aim to adapt the retention rules for NPL securitisation, so that those be based on the net value (that is: after NRPPD), and not the gross value. This indeed underlines the fact that the net value (and not the gross value) reflects the economics of the case.
99. *De facto*, under the ESA 2010, the NRPPD actually corresponds to the ‘realised loss’ from the point of view of the bank, and not to a hypothetical tranche held by the bank (as no cash flow will flow to it, and its market value is zero), even though the losses are not yet realised from the SPV point of view.
100. The size of the NRPPD is nonetheless relevant to consider, but for another reason: to appreciate the exceptional uncertainty facing the valuation of these NPLs assets in question (at their written down value) compared to normal/performing loans. In the case of performing loans, the amount due is known and both the likelihood of future impairment and the ensuring loss is limited and reasonably precisely measurable. In contrast, there is wide uncertainty with regard to NPLs true value, precisely due to the NRPPD⁽²⁴²⁾.
101. Indeed, some NPLs may become performing after the start of the securitisation, which may eventually contribute to over-performance, but such occurrence should be foreseen during the assessment of the portfolio at inception and is therefore already integrated in the NRPPD.

Analysis of the guarantee fee, its pricing and the link with the price of mezzanine/junior tranches

102. It would also be erroneous to consider that the commercial pricing of the guarantee fee implies that government is not at risk or could not be the economic owner of the NPLs. This would be tantamount to confusing the average risk (the weighted mean across scenarios) with the distribution of risk (such as measured, for instance, by the standard deviation across scenarios). The average risk is in fact the return on the assets. The fact that the fee is commercially priced simply means that (it is expected that) government is not originally granting a subsidy/gift, so that no B.9 impact is recognised at inception. The fact that the guarantee fee is market has however no particular relevance for assessing the risk distribution, i.e., it would not necessarily mean that government is not exposed to risks and rewards. An asset is recorded on the balance sheet of an entity also to the extent that the entity is exposed to higher or lower returns (at market value) compared to the expected average return, depending on the scenario that will materialize.
103. It should be analysed separately (i) whether an asset contains a subsidy/gift element and (ii) who bears the (majority of) risks and rewards, with any of the two criteria potentially leading to putting the asset on the balance sheet of government. If there is a gift element, the asset can be on government balance sheet. But it can also be on government balance sheet even if there is no gift element, but government bears most risks and rewards.
104. The guarantee is said to be priced so that it is neutral for government, meaning that the expected inflow of guarantee fees should be matching the expected average outflow of guarantee calls. As such, no gift/subsidy is assumed here, consistently with the assessment of State aid. No capital transfer is thus *a priori* required at inception in those cases.
105. However, it is noted that the guarantee fee is paid only later on and based on the returns of the NPLs portfolio and not by a third party that would be willing to pay to be insured against the performance of that portfolio (as is the case in a normal guarantee): thus the fee “inflows” are flagged as “expected” because these are by no means certain to be received (though generally very likely). Because of this, a high pricing of the guarantee fee should not be seen as a decisive element in asserting that government bears a lesser risk.
106. In fact, the value of a fee commercially priced increases at first proportionally to the amount guaranteed, but then starts increasing very substantially and asymptotically when the guaranteed amount reaches a certain limit that cannot be crossed (which is the fair value of the asset). Thus, a high guarantee fee mostly implies in these cases that the guaranteed amount is rather high (compared to

⁽²⁴²⁾ On a portfolio of 5 billion of performing loans, with likely impairment of 5% and subsequent loss of 50%, a mezzanine of 200 million may appear relatively safe. But if the portfolio of 5 billion corresponds to an initial portfolio of 15 billion with a NRPPD of 10 billion, a 1 billion deviation seems plausible under many scenarios, and a mezzanine of 200 million would appear insufficient.

what is economically possible) and, at the same time, increases by itself the probability of calls. This is because, under the waterfall structure, the guarantee fees are paid from the NPLs inflows in the first place and thus these amounts cannot be used to redeem the senior notes. Thus, a high guarantee pricing and the waterfall structure divert the resources needed to repay the notes, hence increasing the probability of debt default and guarantee calls. This important feature does not occur when the guarantee is paid by a third party (instead of by the returns of the NPLs portfolio).

107. It can also be observed that, in this setting, for a given portfolio, the market price of the mezzanine/junior tranche is determined by the size of the guarantee: it changes inversely to the size of the guarantee (and thus to the value of the fees commercially priced). The higher the guarantee, the lower the price of the mezzanine. And the higher the guarantee fee is (which is paid before the senior tranche in the waterfall structure), the higher the average calls would be.⁽²⁴³⁾ This provides a conceptual basis for making the size of the mezzanine/junior tranche a key criterion to consider, to the extent that its size is directly linked to the relative size of the guaranteed tranche, compared to what is economically justified, and at the same time is an indicator of future calls. This is thus consistent with the weighted risk analysis taken by this chapter. This also justifies the direct comparison between the expected guarantee fees and the mezzanine and junior tranche value at inception, as an indicator of risk sharing.
108. It is also important to note that, whereas normal securitisations face strong market constraints that force the design of the operation to respect certain canons (such as having a senior tranche that is not too big compared to mezzanine/junior tranche), this is not the case when a government guarantee is provided. Indeed, a guarantee on the senior tranche might distort the structure of the securitisation, by allowing to increase the relative size of the senior tranche, which then captures more risks than would otherwise be the case. To the limit, one could design a set of parameters where the mezzanine/junior tranche would be priced for a total of 1 euro⁽²⁴⁴⁾, relocating all of the risks to government (and also the rewards, via the guarantee fee). Such a limit case or similar cases should obviously not be seen as off-government balance sheet and it would clearly be improper to argue that the private investor(s) would still be at risk.
109. When the risk on the senior tranche before guarantee is estimated as very limited, the question might be asked on why a government guarantee would then be sought, as the guarantee would not alter the risk and therefore the pricing of the mezzanine/junior notes (except indirectly through the guarantee fee) and would only benefit the senior note holder.

Senior tranche rating

110. Similarly, the rating achieved at the time the notes are issued is often not enough to conclude that government is bearing a lower risk than the investor during all the life of the operation for additional reasons. When managing the NPL portfolio, the NPLs of better quality are normally the first to be amortised, sold, restructured, or their collateral enforced, leaving those of worse quality for the end. In addition, there is a liquidity line granted to manage potential mismatches between collections' shortfalls from the NPL portfolio and interest payments on the notes. Finally, it is quite frequent that the performance triggers do not apply during the first year/s. Therefore, the likelihood of default on the senior notes in the first years is generally very low. As the notes have very long legal maturities (in some cases more than 40 years)⁽²⁴⁵⁾ and the guarantee will be active as long as the bonds are outstanding, it is important to analyse the potential implications for government during the whole life of the transaction. For ABS type transactions, what rating agencies take into account for the repayment profile is the weighted average life of the transaction rather than the legal maturity of the bonds.
111. By considering risk-weighted exposure amounts, there is no need to take into account some additional elements in the analysis, which are sometimes considered important. This is because risk weights already consider the rating, which in turn takes into account the waterfall structure for payments. In particular, this applies to the following elements that provide protection to the senior tranche, which should be taken into account by ECAs when providing the rating:
- The deferral of interest on the mezzanine tranche and part of the service fee in case of

⁽²⁴³⁾ This mechanics is at play irrespective of how the guarantee fee is in practice calculated (e.g. using some recognised method) because the fee depends on the guaranteed amount, which is in turn decided by government.

⁽²⁴⁴⁾ This would be the case for instance when the guarantee fee is very high, exceeding, per absurdum, the market value of the NPLs. In the example at the end of the chapter, this would be the case if the guarantee fee would for instance be 4bn.

⁽²⁴⁵⁾ The business plan may foresee a much shorter life of the transaction (for instance, 10-15 years), as cash flows may allow to redeem the bonds earlier.

underperformance by the servicer;

- The possibility to replace the servicer in case of underperformance;
- The fact that payment of interest on the mezzanine tranche may take place only after full repayment of the senior notes.

112. Finally, the absence of State aid is also not a decisive element to take into account in the risk analysis. This would be fully in line with its actual relevance in the cases of the statistical rules concerning capital injections undertaken by government.

113. As regards the possible recording of the senior tranche as government debt, whenever the risk-weighted exposure amount for government would be higher than for the private investor, the senior debt guaranteed by government should be government debt. In such circumstances, recording the senior tranche as private debt would not be in line with the rules on government defeasance structures, nor with those on rearrangement of transactions nor with the general rules on economic ownership of assets.

Other issues: role of control of cash flows and link to chapter 5.5 on government securitisation

114. It is sometimes argued that economic ownership is not transferred because the cash flows are not received or controlled by government. Although this element may be of importance in IFRS, this is not particularly relevant under ESA 2010, which (for instance) recognises rerouting of assets/liabilities. In general, the statistical classification should not be sensitive to administrative arrangements, including relating to cash flows. Furthermore, there is to some extent a circularity in the reasoning, in the sense that the cash flows transit via the SPV, which possible classification in government is indeed in question. Finally, whereas the NPLs servicer is actually administering the cash flows and other procedures, with an eye to maximise its fees net of costs incurred, it is mostly acting as an agent under a strict predefined framework, such that it is somewhat uncertain who is in control of those cash flows: government or the private sector (as well as who, *de facto*, benefits from them, given the waterfall structure).

115. It is to be underlined that the rules proposed in this chapter are less strict than those for government securitisation when government is the originator, as both ESA 2010 and the MGDD chapter 5.5 consider that no true sale occurs if government retains 'any' exposure or risks and rewards. As a result, if one was to consider the NPLs securitisation with a guarantee as economically a sale to government immediately followed by a further resale by government through securitisation, then all these operations would end up in government balance sheets, regardless of the risk-weight assessment, which nevertheless could be seen as excessively strict rules.

Treatment of mezzanine/junior tranches

116. Concerning the treatment of the junior/mezzanine tranches, in these schemes, the redemption of such notes is always contingent on a series of payments that come earlier in the waterfall structure: fees to the NPL servicer, interest on the liquidity line, guarantee fee on the senior notes, payments to swap counterparties, interest on the senior notes and repayment in full of the senior notes.

117. In addition, in some operations carried out, the market value of the junior/mezzanine notes issued by the SPVs is much lower than their nominal or notional value, the latter reflecting the original nominal/face value of the NPLs rather than the written down value. As there is no unconditional remuneration for the holder, it is questionable whether the mezzanine/junior tranches issued by the SPV would have the nature of debt instruments (F.2, F.3 or F.4) or whether they should rather be assimilated to other liabilities (such as equity (F.5) or derivatives (F.7)).

118. In this context, the IMF Monetary and Financial Statistics Manual and Compilation Guide (Annex 4.1) and the IMF Handbook on Securities Statistics (chapter 6) include provisions for debt securities issued through securitisation. According to these manuals⁽²⁴⁶⁾, "ABSs⁽²⁴⁷⁾ and CDOs⁽²⁴⁸⁾ are classified as debt securities because the security issuers **have an obligation to make payments**, while the holders do not have a claim on the residual value of the underlying assets. If they did, the instrument would be classified as either equity securities or investment fund shares or units (BPM6, paragraph 5.47)". (bold added).

⁽²⁴⁶⁾ See for instance paragraph 6.11 of the IMF Handbook on Securities Statistics.

⁽²⁴⁷⁾ Asset-backed securities.

⁽²⁴⁸⁾ Collateralized debt obligations.

119. Following the IMF Guides, a classification of the junior/mezzanine notes as debt instruments is not justified if the issuer has no obligation to make payments (interest and principal). Moreover, investors in the most junior tranche (i.e., residual-class) receive whatever principal and reinvestment income remains after all other classes have been retired⁽²⁴⁹⁾. Therefore, it could be considered that the holders of the junior tranches have a claim on the residual value of the underlying assets, which could point to a classification as equity (F.5). The same could be said of the mezzanine. Finally, the fact that the mezzanine price changes inversely to the guarantee fee in these arrangements as seen above is an illustration that the mezzanine is an option type of product just like the guarantee fee is. Therefore, the recording of junior/mezzanine tranches as financial derivatives (F.7) is also a possibility. In this case, the value of the instrument would derive from the evolution of the cash flows foreseen in the business plan (net collections from servicing the NPLs).

4.6.5 Numerical examples

The following numerical examples illustrate how to calculate risk-weighted exposure amounts with the methods proposed in this chapter and how to interpret the results obtained.

In all the cases, NPLs with a gross book value of 7.5 bn are sold for 3 bn (transfer price). The rating achieved is BB- and the senior notes have a legal maturity of 10 years. The cases differ in the amounts purchased by private investors, the size of the senior tranche guaranteed by government and the guarantee fees.

Following the SEC-ERBA approach, the risk weight applied to the junior/mezzanine tranches is 1250%. For the senior tranche, the risk weight of 225% is derived from the BB- rating, which corresponds to credit quality step 13. As stated in section 4.6.3.2.1, the column for a senior tranche of the maximum maturity (5 years) should be the one to be considered. The following simplified table can be used to calculate the risk weight of the senior tranche following the SEC-ERBA approach. In this case, risk weights are determined by the rating:

CQS	Rating				Risk weight of the senior tranche
	<u>DBRS</u>	<u>Fitch</u>	<u>Moody's</u>	<u>S&P</u>	<u>Maturity of 5Y</u>
1	AAA	AAA	Aaa	AAA	20%
2	AA (high)	AA+	Aa1	AA+	30%
3	AA	AA	Aa2	AA	40%
4	AA (low)	AA-	Aa3	AA-	45%
5	A (high)	A+	A1	A+	50%
6	A	A	A2	A	65%
7	A (low)	A-	A3	A-	70%
8	BBB (high)	BBB+	Baa1	BBB+	90%
9	BBB	BBB	Baa2	BBB	105%
10	BBB (low)	BBB-	Baa3	BBB-	140%
11	BB (high)	BB+	Ba1	BB+	160%
12	BB	BB	Ba2	BB	180%
13	BB (low)	BB-	Ba3	BB-	225%
14	B (high)	B+	B1	B+	280%
15	B	B	B2	B	340%
16	B (low)	B-	B3	B-	420%
17	CCC (high) CCC CCC (low)	CCC+ CCC CCC-	Caa1 Caa2 Caa3	CCC+ CCC CCC-	505%
All other	Below CCC (low)	Below CCC-	Below Caa3	Below CCC-	1250%

⁽²⁴⁹⁾ See footnote 66 of the IMF Monetary and Financial Statistics Manual and Compilation Guide.

Following the SEC-IRBA/SEC-SA approach, the risk weight applied to the junior/mezzanine tranches is 1250% (this does not change as compared to the previous approach). For the senior tranche, a flat risk weight of 100% is applied in all cases, regardless of the rating achieved.

The risk weight applied to the junior/mezzanine tranches is 100% with both the aggregate default and the guarantee fee methods. As regards the senior tranche, following the aggregate default method, the risk weight of 4.7% is derived from the BB- rating according to DBRS⁽²⁵⁰⁾. Following the guarantee fee approach method, the risk weight of the senior tranche is obtained by dividing the guarantee fee by the senior tranche.

Case 1

Private investors purchase mezzanine/junior bonds for 950 m and the senior tranche guaranteed by government is 2,000 m. The guarantee fees are expected to be 80 m. The risk-weighted exposures calculated for both parties with the different methods are provided below.

	Investors	Government
	Junior/mezzanine	Senior
Exposure value of each securitisation position (€ mn)	950	2,000
Risk weights of each securitisation position (%)	Junior/mezzanine	Senior
SEC-ERBA (credit quality step 13 for BB- rating)	1,250	225
SEC-IRBA/SA	1,250	100
Aggregate default method (probability of default for BB-)	100	4.7
Guarantee fee method (risk weight obtained from the fee)	100	4.0

	Junior/mezzanine	Senior	% of total exposure	
Risk weighted exposure of each securitisation position	Junior/mezzanine	Senior	Investors	Government
SEC-ERBA (credit quality step 13 for BB- rating)	11,875	4,500	73%	27%
SEC-IRBA/SA	11,875	2,000	86%	14%
Aggregate default method (probability of default for BB-)	950	94	91%	9%
Guarantee fee method (risk weight obtained from the fee)	950	80	92%	8%

In this case, all the methods would indicate that the risk-weighted exposure for private investors would be much higher than for government. Therefore, the senior debt guaranteed by government would be treated as private debt.

Case 2

Private investors purchase mezzanine/junior bonds for 18 m and the senior tranche guaranteed by government is 2,981 m. The guarantee fees are expected to be 120 m. The risk-weighted exposures calculated for both parties with the different methods are provided below.

	Investors	Government
	Junior/mezzanine	Senior
Exposure value of each securitisation position (€ mn)	18	2,981
Risk weights of each securitisation position (%)	Junior/mezzanine	Senior
SEC-ERBA (credit quality step 13 for BB- rating)	1,250	225
SEC-IRBA/SA	1,250	100
Aggregate default method (probability of default for BB-)	100	4.7
Guarantee fee method (risk weight obtained from the fee)	100	4.0

	Junior/mezzanine	Senior	% of total exposure	
Risk weighted exposure of each securitisation position	Junior/mezzanine	Senior	Investors	Government
SEC-ERBA (credit quality step 13 for BB- rating)	225	6,707	3%	97%
SEC-IRBA/SA	225	2,981	7%	93%
Aggregate default method (probability of default for BB-)	18	140	11%	89%
Guarantee fee method (risk weight obtained from the fee)	18	120	13%	87%

In this case, all the methods would indicate that the risk-weighted exposure for government would be much higher than for private investors. Therefore, the senior debt guaranteed by government would be government debt.

⁽²⁵⁰⁾ The risk weight used in this example is derived from the 2020 DBRS Morningstar Structured Finance Rating Transition and Default Study.

Case 3

Private investors purchase mezzanine/junior bonds for 120 m and the senior tranche guaranteed by government is 2,700 m. The guarantee fees are expected to be 100 m. The risk-weighted exposures calculated for both parties with the different methods are provided below.

	Investors	Government
	Junior/mezzanine	Senior
Exposure value of each securitisation position (€ mn)	120	2,700

Risk weights of each securitisation position (%)	Junior/mezzanine	Senior
SEC-ERBA (credit quality step 13 for BB- rating)	1,250	225
SEC-IRBA/SA	1,250	100
Aggregate default method (probability of default for BB-)	100	4.7
Guarantee fee method (risk weight obtained from the fee)	100	3.7

Risk weighted exposure of each securitisation position	Junior/mezzanine	Senior	% of total exposure	
			Investors	Government
SEC-ERBA (credit quality step 13 for BB- rating)	1,500	6,075	20%	80%
SEC-IRBA/SA	1,500	2,700	36%	64%
Aggregate default method (probability of default for BB-)	120	127	49%	51%
Guarantee fee method (risk weight obtained from the fee)	120	100	55%	45%

In this case, the guarantee fee method would indicate that the risk-weighted exposure for private investors would be higher than for government, while the other methods would point to the opposite. In this borderline case, by convention, the senior debt would be considered as private debt and not government debt.

4.7. Capital increases in multilateral development banks

4.7.1. Background

1. Multilateral development banks are institutions that provide financial support and technical assistance for economic and social development activities in developing countries. The term Multilateral Development Banks (MDBs) typically refers to the World Bank Group (notably the IBRD — International Bank for Reconstruction and Development and IDA — International Development Association) and four Regional Development Banks:
 - The African Development Bank (AfDB),
 - The Asian Development Bank (AsDB),
 - The European Bank for Reconstruction and Development (EBRD),
 - The Inter-American Development Bank Group (IDB).
2. MDBs are characterised by a broad membership, from both borrowing developing countries and from developed donor countries, which is not limited to member countries from the region of a regional development bank. Each bank has its own independent legal and operational status, although, with a similar mandate and a considerable number of members, the MDBs maintain a high level of cooperation between themselves.
3. Most of the MDBs have two types of funds, often called lending windows (or lending facilities). One type of lending window is used to make loans at market-based interest rates. Such non-concessional loans are, depending on the MDB, extended to governments and private sector firms in middle income, and some creditworthy low-income countries. The other type of lending window is used to make loans at interest rates that are well below-market interest rates (concessional loans) granted to the governments of low-income countries, as well as regular grants.
4. To offer non-concessional loans, MDBs borrow money from international capital markets and then re-lend the money to developing countries. MDBs are able to borrow from international capital markets because they are backed by the guarantees of their member governments. These are provided through the ownership shares that member countries subscribe in each bank. Only a small portion (typically less than 5–10 %) of the value of these capital shares is actually paid to the MDB ('paid-in capital'). The bulk of these shares is a form of guarantee that the donor stands ready to provide to the bank if needed. This is called 'callable capital,' because the money is not actually transferred from the donor to the MDB unless the bank needs to draw on its members' callable subscriptions because their resources are exhausted and they still need funds to repay bondholders.
5. Periodically, when donors agree that the future demand for loans for MDB lending is likely to expand, they increase their capital subscriptions to a MDB's non-concessional lending window in order to allow the MDB to increase its level of lending.
6. When the MDB extends concessional loans and grants to low-income countries, the window's resources for such activities become systematically depleted. The donor countries meet periodically to replenish those resources. Thus, these increases in resources are called 'replenishments', and most occur on a planned schedule ranging from three to five years, by way of depositing of so-called 'instruments of commitment', while the effective encashment may span for a longer period. If these facilities are not replenished in good time, MDBs will run out of resources and will have to substantially reduce their levels of activity.
7. Some MDBs offer solely or mainly concessional loans (IDA, Fund for Special Operations (FSO) at IDB, AfDF and AsDF, are examples of these) and therefore they are largely funded by contributions from the donor governments or from the income of other MDBs (for instance IDA receives additional funds from IBRD's and IFC's income).
8. MDB concessional loans are typically characterised by a very low interest rate, long maturities and grace periods. As an example, IDA loans usually have maturities of 35 or 40 years with a 10-year grace period on repayment of principal. Typically, there is no interest charge, but credits do carry a small

service charge of 0.75 % on disbursed balances. The degree of concessionality is such that the returns usually do not even cover the funding and administrative costs.

4.7.2. Treatment in national accounts

9. The treatment in national accounts of government capital injections in MDBs depends on the type of loans provided by multilateral development banks. Injections into MDB facilities whose main or sole purpose is to provide concessional loans at marginal or zero interest rate should be treated as capital transfers, while investments into MDB facilities providing mostly non-concessional loans should be recorded as acquisition of other equity (F.519), as set out in ESA 2010 paragraph 5.154 : *'Other equity includes [...] (d) government investments in the capital of international and supranational organisations, with the sole exception of the IMF, even if these are legally constituted as companies with share capital (e.g., the European Investment Bank)'*.

Table 1: Treatment of capital increase in MDBs providing mostly concessional loans

General Case	Advance Payment	Callable capital	Hybrid capital increase or contribution	Temporary increase	Encashment period
D.99 when instrument of commitment is deposited	D.99 when cash is transferred	Nothing recorded until called, D.99 when called and committed	Examine on a case-by-case basis	Loans (F.4), if cancelled D.99	D.99 when instrument of commitment is deposited

Table 2: Treatment of capital increase in MDBs providing mostly non-concessional loans

General Case	Paid-in capital	Callable capital	Conversion of reserves into paid-in capital	Hybrid capital increase or contribution	Temporary increase	Encashment period
Shares and other equity F.5/F.519	Shares and other equity F.5/F.519	Nothing recorded until called, F.5 when called	No implications	Examine on a case-by-case basis	Loans (F.4), if cancelled D.99	F.5 at inception

4.7.3. Rationale of the treatment

10. MDBs may have two types of lending facilities or lending windows. Concessional loans are either interest free loans or loans with an interest rate intentionally set below the market rate. Usually the concessionality is enhanced by loans being long-term and including grace periods. Despite a small service charge, MDBs lending facilities providing mainly concessional loans are generally unable to cover their funding and/or administrative costs and thus their funding resources become depleted over time. In order to maintain their activities at least at the same level, MDBs lending facilities providing mainly concessional loans have to receive replenishments from their donors. It is therefore clear from the beginning that MDB facilities providing concessional loans are not going to be profitable such that, in substance, their replenishments are similar to capital injections aimed at covering losses. Therefore, following the capital injections rules, government injections into MDB facilities providing mainly concessional loans should be treated as capital transfers, to be recorded when a promissory note/instrument of commitment is deposited by the donor country with the MDB⁽²⁵¹⁾. This reflects the fact that when such an instrument of commitment is (signed and) deposited by the donor country, an irrevocable and legally binding obligation to pay arises, regardless of the actual timing chosen for payment. This is the methodological interpretation of ESA 2010 paragraph 4.166 of 'due to be made' in this specific context.

⁽²⁵¹⁾ In agreement with Eurostat, cash could be used as a proxy in such exceptional cases (expected to be temporary) where the national statistical authorities would have no access from government to information on when the instruments of commitment are deposited.

11. There might be cases where a part of the foreseen participation of the donor country is dependent on national contingencies (e.g., Parliamentary approval). In such a case, the Member State initially signs and deposits a so-called 'qualified' instrument of commitment. Later on, when the national formalities have been accomplished, and the contingency has been removed, the Member State signs and deposits an 'unqualified' instrument of commitment. In this specific circumstance, a capital transfer payable should be recorded when the donor country signs an 'unqualified' instrument of commitment, i.e., when its commitment becomes irrevocable and demandable, and no longer dependent on the national formalities.
12. Non-concessional loans are made at market interest rates, which implies that a return is expected or at least the borrowing costs and/or also the administrative costs of the MDB's facility are covered. Once the MDB lending facilities providing mainly non-concessional loans accumulate reserves, these can later be converted into funds that can be used for further operations. Therefore, in practice, it is not very common that a MDB draws on its callable capital to cover losses. At the same time, capital increases by donor governments are usually needed for the purpose of new or expanding activities. Thus, government injections into MDBs providing mostly non-concessional loans should be treated according to ESA 2010 paragraph 5.154 (c), as other equity F.519, because they intend to expand the size of the MDB activities.
13. Capital increases into MDBs by governments can at times take the following forms: advance payments, paid-in capital, callable capital, conversion of reserves into paid-in capital, hybrid capital increases, temporary increases and encashment periods. Each is explained in the following sub-sections.

4.7.3.1. ADVANCE PAYMENTS

14. Cases exist where a donor country provides cash to a MDB offering mostly concessional loans even before the instrument of commitment is signed and deposited. This occurs because donor countries are aware of the amount of their participation in MDB replenishments meetings, i.e., before the due dates for the signing of instruments of commitment, and may sometimes obtain discounts when paying in advance. The participations paid in advance of the commitment are to be recorded as expenditure at time of payment, recognising the fact that the MDB definitely acquires the amounts paid in advance.

4.7.3.2. PAID-IN CAPITAL

15. In most MDB facilities providing non-concessional loans, new paid-in capital represents only a fraction of their total capital. In this case, the paid-in part will be considered a financial transaction (purchase of other equity) not affecting the government net lending/borrowing (B.9).

4.7.3.3. CALLABLE CAPITAL

16. A large part of an MDB capital increase is usually structured as callable capital, i.e., not actually paid-in. The statistical treatment in the case of MDBs providing mainly non-concessional loans is as follows: the callable part is to be considered a contingent transaction, which is not to be recorded in the national accounts system.
17. In the case of MDBs providing mainly grants or concessional loans, a capital transfer is to be recorded when the amount is called, under the signature and depositing of an instrument of commitment. .

4.7.3.4. CONVERSION OF RESERVES INTO PAID-IN CAPITAL

18. MDBs providing mainly concessional loans and grants normally have no accumulated reserves, as they deplete all of their funds. Therefore, this case generally does not apply to them.
19. For MDBs providing mainly non-concessional loans, the capital increase (or a part of it) may be implemented through a conversion of accumulated reserves into permanent paid-in capital without any cash being transferred from shareholders. The statistical treatment is as follows: in ESA 2010, it is not the number of shares which needs to be examined, but their value. If some of the reserves were to be converted into shares, the value of the shareholding would still be the same (see ESA 2010 paragraph 6.59 for a description of equivalent situations). There would be therefore no direct implications for the ESA accounts and no impact on government net lending/borrowing (B.9) and debt.

4.7.3.5. HYBRID CAPITAL INCREASE OR CONTRIBUTION

20. The capital increase (or a part of it) could be implemented through issuing a form of hybrid capital instrument (e.g., in combination with callable capital) with both debt and equity/transfer features. The statistical treatment cannot be judged a priori; the precise conditions will have to be assessed on a case-by-case basis.

4.7.3.6. TEMPORARY INCREASE

21. Contrary to a permanent increase, a capital increase may be required as only for a temporary period and it (or a part of it) is re-paid to members after an agreed period of time (e.g., when a crisis is over and the lending activities have returned to normal levels). The statistical treatment is as follows: a temporary increase with a scheduled repayment would be seen as a loan (being an instrument expected to be repaid, in line with ESA 2010 paragraphs 5.112 and 5.113), even if at zero interest rate. Scheduled repayment will progressively decrease the outstanding amount of the loan.

22. The initial treatment as a loan applies to both cases of MDB facilities. If there is a subsequent loan cancellation, this would have to be recorded as capital transfer.

4.7.3.7. ENCASHMENT PERIOD

23. It may be decided to stretch the actual cash payment by members of the paid-in part of the capital increase over a longer period of time, in several instalments (this could be up to 10 years). Here the two types of MDB lending facilities have to be distinguished.

24. In the case of a MDB lending facility providing mainly non-concessional loans, the statistical treatment is as follows, assuming that the capital increase is decided at inception (i.e., one decision concerning one capital increase, although with deferred payments, and not concerning many decisions for separate capital increases over the years). An acquisition of other equity is recorded at inception for the full amount of the paid-in capital. The financial counterpart of amounts not paid initially in cash is recorded under other accounts payable (AF.89), with no impact on the government (EDP) debt, in line with ESA 2010 paragraph 5.240.

25. For the MDB facilities providing mainly or solely concessional loans and grants, the bilateral agreement on the payment schedule does not change the irrevocable nature of the commitment. Thus, a capital transfer is still to be recorded at the time an instrument of commitment is signed and deposited by the Member State. The time of recording would thus comply with ESA 2010 paragraph 4.166, which is when the payment is due to be made, interpreted in this specific context as when an instrument of commitment is signed and deposited.

4.8. Recording of income contingent loans

4.8.1. Background

1. This chapter addresses the case where government provides funds (directly or through a dedicated public sector entity), in the legal form of loans, whereby repayments are contingent to elements defined in the funding agreement or by law. These contingent elements, which allow the debtor not to repay the funding (partially or totally), can take various forms such as the future income of the beneficiary of the funding, the limitation of the period of repayment or other elements not fully under the control of the parties. Cases of government lending with a total cancellation option due to events depending on the sole decision or under the sole control of the borrower may require different rules than those covered by this chapter.
2. This chapter on income contingent loans should also apply in situations that could be assimilated to such loans, i.e., to loans with non-negligible contingency elements other than related to income contingencies for example contingency elements related to programme performance or the death of the debtor.
3. Such funding is mainly provided by government to households, but can also be provided to other institutional units. The aim of it is to support public policy, so the terms for the beneficiaries will be more favourable than in case of taking a loan from a financial institution.
4. In general, such funding is called income contingent loans. It may not fully meet the criteria to be considered a loan as referred to in national accounts, as it does not establish an unconditional debt as requested by ESA 2010 paragraph 5.113.
5. Income contingent loans are often granted by governments for relatively small amounts to a large number of debtors under standard conditions. Therefore, the analysis in national accounts can apply to the whole loan portfolio and not to each individual loan granted.
6. Public schemes of income contingent loans provided by private financial institutions with the backing by government of the contingent elements are not covered by this chapter, as they would have typically the nature of standardised guarantees (see section 7.4.3).
7. Such borrowing is generally granted with long term maturity (up to 30 years or even longer) and bear interest. The interest may be capitalised or not and may be at market or concessional rates. Income contingent loans typically include provisions that allow the debtor not to comply with the reimbursement of the debt at maturity or when instalments are due. Several conditions (such as age, income, physical ability, limit in time etc.), might activate the cancellation of the borrowing or part of it by the creditor (government).
8. As a consequence, the conditionality of income contingent loans has a potential impact on government revenue and expenditure:
 - this Manual states in sub-section 8.2.2.2. that in national accounts interest is recorded when accrued, whether paid or not. Therefore accrued interest affects the net lending/borrowing (B.9), although such interest may never actually be paid, due to the contingent threshold for repayment to be made not being reached, having the potential to distort government expenditure/revenue reporting,
 - due to the long term nature, write-offs and/or debt cancellation will only occur after a long period, when the contingency element crystallises, which would transfer any recognition of potential losses far into the future.

4.8.2. Treatment in national accounts

9. Following, amongst others, ESA 2010 paragraph 20.121, loans granted by government should undergo an assessment of whether they are likely to be repaid or not. Taking into account the contingency element of income contingent loans, this assessment should thus determine the expected losses at inception.

10. The probability of expected losses can be assessed in different ways such as:
 - a) observed losses on similar loans,
 - b) evaluation of expected losses based on the probability of a contingency event by the debtor.
11. Taking into account the large number of such loans (irrespective of possible changes in the overall features of their contingency elements following a decision by government), the analysis of coherent sub-portfolios (i.e., loans granted within a given year, or through a specific loan scheme) seems to be the appropriate approach.
12. If it appears that sufficient information is available to determine in a satisfactory way the potential losses of the income contingent loan portfolio, three categories of income contingent loans can be identified, for a different statistical treatment of income contingent loans:
 - a) the expected loss at inception due to contingency elements is low e.g., a small fraction of the provided funds,
 - b) the expected loss at inception due to contingency elements is extremely high e.g., almost all of the provided funds,
 - c) the expected loss at inception due to contingency elements is significant e.g., a large fraction of the provided funds.
13. For category (a) the income contingent loan can be recorded at inception as loan for its full value.
14. For category (b), the income contingent loan can be recorded for its full value at inception as government expenditure with subsequent repayments (if any) recorded as government revenue.
15. For category (c), the funding should be partitioned. Part of the funding granted by government should be recorded as a loan, i.e., a financial transaction without any impact on government net borrowing/net lending (B.9) and part as a government expenditure. The amount to be recorded as government expenditure should be estimated on the basis of expected losses arising from the contingency, using an appropriate discount factor, for example the borrowing cost for government.
16. The approach described in paragraph 15 above can also be applied for all income contingent loans, i.e., even when expected losses are very low or very high, if the statistical authorities consider it as most suitable.
17. If it appears that no sufficient information is available to determine in a satisfactory way the potential losses of the income contingent loan portfolio, it should generally be recorded as government expenditure (with the recording of government revenue for any future repayment by the debtor), applying the treatment described in paragraph 12 b). When the overall impact of the contingency is likely to be rather small, a loan can be recorded, but only if there are well founded reasons to do so, applying the treatment described in paragraph 12 a).
18. The value of income contingent loans granted by government is influenced by changes of the revenue expectations of the borrower as well as by government policies changing the characteristics of the income contingent loan scheme. Where a change in expectations leads to a substantial re-assessment of the expected losses of the loan portfolio (or the relevant sub-portfolio) it should lead to the recording of government expenditure (or negative expenditure)⁽²⁵²⁾. It might not be necessary to record government expenditure when the re-assessed expected losses due to changes from regular forecast updates that are not substantial.
19. Some governments proceed to an active management of their loan portfolios by selling all or a portion of such loans to private investors under current market conditions. The market valuation of the income contingent loan portfolio might differ from the value recorded in the ESA government balance sheet:
 - a) in category (a), the difference has to be recorded as government expenditure,
 - b) in category (b), the sale has to be recorded as government borrowing,
 - c) in category (c), if the value (loan asset plus accrued interest) recorded in the government balance sheet differs substantially from the current market price of the transaction, an additional capital transfer should be recorded in favour of the debtor or government in order to ensure that the

⁽²⁵²⁾ The same statistical treatment has to be applied, if discrepancies between the expected redemption amount and the amount effectively received by government over the lifetime are observed.

expenditure/revenue element of the income contingent loan is fully captured, consistently with the previous paragraph.

20. In category (c) interest accrues (using the discount factor) and is added to the principal, following ESA rules, but only on the part that is recorded as a loan. Repayment of principal and interest is recorded as a reduction of the instrument.

4.8.3. Rationale of the treatment

21. ESA 2010 rules for valuation, sales and write-offs of loans apply to loans complying with the features described in ESA 2010 paragraph 5.113. They can also apply to income contingent loans, where the contingency element has only a small impact on the repayment of the funds provided by government, e.g., where expected rates and levels of non-repayment are typically low such as in a range of 5 % to 10 %. On the contrary, in cases where the impact of contingency elements is expected to be extremely high such as in a range of above 90 % to 95 %, it would be more appropriate to consider the funding not as a loan but as government expenditure (and revenue in the case of any refund).
22. If the expected loss due to the contingency is significant, partitioning of the instrument would be the most appropriate way to reflect properly the real nature of the funding in national accounts.
23. However, if at inception the information available is judged to be insufficient to assess in a satisfactory way the potential rate of repayment, the income contingent loan should not be recognised as a loan but should generally be recorded as government expenditure and any future repayment by the debtor as government revenue. The recording of a loan can be applied whenever there are well founded reasons to do so.
24. ESA 2010 paragraph 20.121 clarifies that *loans granted by government not likely to be repaid are recorded in the ESA as capital transfers*. This should generally apply to the situation where the contingency element, in the presence of sufficient information, would lead to an expected significant loss between e.g., 5 % to 10 % and 90 % to 95 % of the funds provided by government. In other cases, statisticians can decide to record the total amount of the funds provided as a loan (when expected losses due to the contingency have only a limited impact on the repayment, e.g., below a range of 5% to 10 %) or as capital transfer (when expected losses due to the contingency are higher than a range of 90 % to 95 %).

4.9. Recording of loans not expected to be fully repaid

4.9.1. Background

1. This chapter addresses the accounting problems raised by so-called 'loans' (e.g., as reported in the public accounts) granted by government, often under an emergency situation⁽²⁵³⁾, that are not expected at inception to be fully repaid (for significant amounts), being extended to units on a non-commercial basis.
2. This is the case either because the borrower is already in such a difficult situation that prospects for repayments are dim (type 1), or, in the case of broader loan schemes, because the lender is presuming at inception that a significant number of debtors will not be able to reimburse the loans contracted while the interest charged (i.e., the risk premium charged by a commercial lender) does not reflect this (type 2).
3. In many jurisdictions such cases will not exist, at least for type 2. The recording problem raised in this chapter might be therefore seen as highly unusual or would only apply to punctual cases. Income contingent loans are another type of loans not expected to be fully repaid at inception. They are more common, and their recording is covered in Chapter 4.8. Accordingly, they are not addressed in this chapter.

4.9.2. Treatment in national accounts

4. When a 'loan' is at inception not expected to be fully repaid, a capital transfer is to be recorded at inception for the part expected to be lost. This is the interpretation of ESA rules in those exceptional cases where the loans are such that significant net losses are expected at inception, i.e., for amounts far in excess of the usual losses on loans and with no compensatory interest.
5. Such 'loans' are thus to be partitioned between a capital transfer component (D.9) and a loan component (F.4). While no ESA 2010 paragraph explicitly foresees such a partitioning for loans, partitioning the loan at inception is *de facto* operationalising ESA 2010 paragraph 20.121 *Loans granted by government not likely to be repaid are recorded in the ESA as capital transfers, and are not reported here*.
6. The loans concerned by this specific partitioning treatment are:
 - unusual loan portfolios extended, as part of a lending scheme, automatically, without collateral and without the typical screening carried out by commercial banks, and without charging sufficiently high interest; or
 - individual loans (very rarely) extended to units not able to fully repay them, e.g., with negative net assets such that it is most unlikely that the loans can be fully repaid by the debtor (without a grant, a capital injection, or another loan contracted by the debtor, including conversions into equity or hybrid debt instruments), unless the loan would be collateralised or would have seniority over the other borrowings of the debtor.
7. In either case, it seems likely that the public accountant (or any other accountant of the lender) will record a significant provision at inception in the accounts of the lender, following their own accounting rules, or following IFRS/IPSAS accounting (more or less closely). Such a provision at inception would be both a useful indicator of such loans not being expected to be fully repaid and something usable for the valuation of the capital transfer to be made at inception. For the not very common case of lenders not keeping a balance sheet provision, estimates made by the services of the lender presumably exist and can be used.
8. Although negative equity is often a good indicator of distress, in some circumstances shareholder's equity at book value may not reflect the true economic position of the firm, mostly when it holds

⁽²⁵³⁾ This has been notably the case, sometimes for significant amounts, as a response to the COVID induced economic crisis.

valuable franchises or goodwill that are not reported in its balance sheet neither under IFRS nor in national accounts. One can indeed occasionally observe quoted companies exhibiting negative net assets at book value while having a significant market value (compared to its size, in terms of balance sheet, revenue or employment). In such cases, loans granted to these entities cannot be deemed to be at risk, and it is likely that the accountant of the lender will not record a provision at inception for these loans either. The fact that a quoted company (the borrower) has always a positive market value is however not a sufficient criterium, by itself, to consider that the indicator of negative net assets would not be applicable to quoted companies. The valuation of the quoted company should also be meaningful compared to its economic size.

9. The partitioning is applicable when the loans are not collateralised, do not have seniority (that would make them more likely to be repaid), and there is little expectation that large future profits or future capital injections by private (or non-resident) units will allow to reverse the net assets position in the future.
10. In summary, the indicators to consider when deciding whether to partition the loan and record a capital transfer are:
 - The loans are automatically granted (or with light criteria), to all or most types of borrowers (in terms of risk profile), irrespective of their risk profiles, without collateral and without compensatory higher interest, such that an expected loss is both expected and compiled. The schemes could however be highly restricted, by types of industries or size of companies, etc.;
 - The loan is extended to an entity with negative net assets, with little scope to be repaid, and the loan is neither collateralised nor given seniority;
 - A significant provision is recorded in public accounts at inception – in contrast to usual IFRS/IPSAS accounting practice on loan accounting – reflecting the clear expectation of the lender of significant/large losses under most scenario;
 - The loans are granted in a context of emergency, relaxing normal lending rules and procedures, such as the significant reduction in activity experienced in the COVID-19 pandemic.
11. While each indicator is often not sufficient in itself to prescribe some partitioning, a combination of such indicators, possibly together with other elements, may be enough to indicate the need to partition the loan /loan portfolio.
12. One-off/Individual loans not expected to be repaid or fully repaid are probably more common or relevant for public corporations, while the MGDD already foresees cases where capital injections may take the legal form of loans. But they may also benefit, notably during economic turmoil, private corporations (fully private or partially owned by the public sector).
13. The interest to be accrued on these loans is apportioned in line with the partitioning and adds to the AF.4 assets initially recognised, while recoveries (encompassing both interest payments and principal payments) reduce the AF.4.
14. The first estimate of the amounts not expected to be repaid can be based on a number of sources such as provisions in the public accounts or expert estimates. As time passes, the expected loss will be subject to revisions, which should lead to a revision of the initial transfer, if within a year of the granting of a loan.
15. Recoveries for a given loan are first recorded in the financial accounts (reductions in AF.4A) and, if the first revised estimate is maintained throughout, amounts recovered in excess of the AF.4 recorded in the ESA balance sheet will be recorded as revenue (thus towards the end of the lending period), which should be super-dividend tested in case of public corporations. When these revenues are significant (e.g., half of the initial transfer), compilers would also have the option to revise the initial estimate, in agreement with Eurostat. In contrast, when recoveries fall significantly short of the expected F.4A, an expenditure is to be booked at the moment of recognition of the fact that recoveries have fallen short. Special care should be taken when initial maturities of loans are extended.
16. When loans not expected to be fully repaid involve portfolio schemes, amounts not expected to be repaid are typically estimated globally. In such a case, a simplified approach involves recording revenue or further expenditure (D.99) only towards the end of contract when net recoveries exceed the AF.4A (including accrued interest), or net losses exceed the capital transfer expenditure (D.99)

recorded so far, respectively. Another approach (perhaps less simple but possibly more conceptually based) may consist in following the method already applied by the national compiler to tackle the problem of reestimates for standardised guarantees or/and for government supports to financial institutions (including the so-called 'delayed revenue approach').

17. In case these loans are sold-off, the same rules as for the resale of income contingent loans should be applied.
18. Governments engage in such loans not expected to be fully repaid either through (1) direct lending (loan assets in government), (2) loan programmes via public banks, (3) guarantees to financial institutions (the latter granting the loans). A partial capital transfer rule in the first case would also be applicable to the two other cases: by applying rerouting for these loans (with a capital transfer) in case (2); and by applying ESA 2010 rules on non-commercial standardised guarantees or the ESA 2010 paragraph 20.256 on guarantees for cases of distress in case (3). Whatever the actual modality chosen, the treatment (impact on B.9 at inception) should be the same.

4.9.3. Rationale of the treatment

19. Loans are instruments that are expected to be repaid (ESA 2010 paragraph 5.113) fully, with interest charges designed to cover the rare cases of losses.
20. Though loans are generally extended to low-risk debtors, or otherwise collateral is demanded, certain specialised lenders or banks lend to high-risk debtors without collateral, but then charge very high interest rates (i.e., including an appropriate risk premium) and have very detailed screening processes in place.
21. A banker operating on a commercial basis would not enter in such lending operations on loans not expected to be repaid as described in paragraph 6. A banker may extend a lending scheme with significant risks, but then will heavily scrutinise the borrowers (i.e., no automaticity) and/or will charge high interest rates to cover the risk of default of the borrower. A bank may extend an individual loan to an entity in difficulty (e.g., negative net assets) either because it takes safe collateral or because it lends with seniority against any other claims (e.g., 'debtor in possession' financing) or because it lends to a company with large identified (off-balance sheet) goodwill.
22. Recording loans not expected to be fully repaid in the financial accounts for their full amount risks misrepresenting the benefits extended by government at time of providing the loans and delays the expenditure to the future. It also risks distorting the net assets of general government. It seems difficult to justify recording no expenditure at all on the basis that estimates of losses (provisions, MoF estimate, negative net assets of borrowers) necessarily present some degree of uncertainty. At the same time, recording the full amount as expenditure (as some sort of reimbursable grant) would be excessive and potentially generate considerable revenue later on, which would not be an optimal solution.
23. As mentioned in paragraph 5, recording a partial capital transfer operationalises ESA 2010 paragraph 20.121 at least for loan portfolios. Whenever government holds a portfolio of such loans, an expected loss approach could simply be interpreted as classifying the riskier part of the portfolio as a capital transfer in full, directly applying ESA 2010 paragraph 20.121, and the rest fully in the financial accounts, as normal loans.
24. Partitioning is recognised in ESA 2010 paragraphs 1.76 and ESA 2010 paragraphs 1.77. Partitioning is notably applicable to financial instruments created not in a purely commercial context, as explained by ESA 2010 paragraphs 5.19 and 5.21. ESA 2010 paragraph 5.21 states: *The transaction value refers to a specific financial transaction and its counterpart transaction. In concept, the transaction value is to be distinguished from a value based on a price quoted on the market, a fair market price, or any price that is intended to express the generality of prices for a class of similar financial assets and/or liabilities. However, in cases where the counterpart transaction of a financial transaction is, for example, a transfer and therefore **the financial transaction may be 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** (bold added).*
25. Recording a capital transfer on loans not expected to be fully repaid takes the same approach to that followed on income contingent loans (see MGDD chapter 4.8), where the contingency is recorded at

inception, reflecting the fact that government here extends cash knowing that significant losses will occur.

26. Recording a capital transfer on loans not expected to be fully repaid also takes the same approach to that followed on fiscal deferrals (see MGDD Chapter 2.2.2.5), where the amount expected to be lost due to the deferral is to be expensed at the moment of deferral (as a deduction to fiscal revenue). *De facto*, a fiscal deferral is similar to requesting the fiscal payment on time and immediately lending back this money to the taxpayer. Having a consistent approach for loans not expected to be fully repaid and for fiscal deferrals thus appears logic and important. In some jurisdictions, the coefficient used for the amounts expected to be repaid could be similar (notably when the conditions and beneficiaries of the fiscal deferral are close) to those used for the lending schemes.
27. Recording a (partial) capital transfer at inception for a portfolio of loans not expected to be fully repaid is consistent with the treatment for standardised guarantees extended by government not on a commercial basis, as explained in Chapter 7.4.3 of this MGDD – at least when this portfolio is diverse enough such that an insurance approach can be taken. Indeed, an alternative to building such a portfolio would be to simply enrol a financial institution to extend these loans, while providing a standardised guarantee on the losses.
28. Recording a (partial) capital transfer at inception for individual loans when the debtor has negative net assets can also be seen as applying this criteria explicitly foreseen in ESA 2010 paragraph 20.256 in relation to one-off guarantees: *In exceptional cases, one-off guarantees granted by governments to corporations in certain well defined financially distressed situations (for example where the corporation has negative own funds), implying a very high likelihood to be called, are treated as if such guarantees were called at inception (see also paragraph 20.245).* Treating a guarantee as if called at inception involves recording a debt assumption at inception together with a capital transfer for the amount expected to be lost and a claim for the difference (ESA 2010 paragraph 20.223). This is consistent with the partitioning approach of this chapter.
29. Consistency in rules for the recording of one off or standardised government guarantees on loans (granted by others, banks) not on a fully commercial basis and for the recording of loan not expected to be fully repaid granted by government would be desirable, notably given that one may hold the view that a loan is a claim that the lender self-guarantees or self-insures.
30. In addition, the MGDD already recognises (chapter 3.2) that capital injections in public corporations can take the legal form of loans and that, in the case of individual loans, a capital transfer is recorded either for the full value or for a part. Partitioning the 'loan' into a capital transfer component (D.9) and a loan (F.4) is explicitly referred to in Box 1 of Chapter 3.2 as well as in paragraph 39 in section 3.2.3.2.2.⁽²⁵⁴⁾
31. Partitioning the loans not expected to be fully repaid (recording a capital transfer at inception) also solves a potentially severe problem in case of resale of these loans, as otherwise the benefit extended to the non-government sector would then permanently escape the B.9 of general government (which would not be optimal), if the general ESA 2010 paragraph 6.58 rule would be strictly applied. ESA 2010 paragraph 6.58 indeed prescribes recording a revaluation (K.7) for the difference between the nominal value and the transaction/market price. An alternative would then be to apply ESA 2010 paragraphs 20.229–20.231 instead (if the loan has been recorded for its full value in the financial accounts at inception), thus recording a capital transfer expenditure at time of sale; however, this is far from ideal from the point of view of the time of recording of the expenditure (and is conceptually difficult to justify in pure national accounts terms).
32. The same problem arises, but on the reverse side, if the loan to be sold was initially recorded as a subsidy for its full amount at inception. It would not be recommended to then record the sale as a revenue (as the sale could be done at any chosen moment depending on circumstances). One approach would be to record all the sales in the financial accounts, which would be however unnecessarily penalising the B.9 of government. Another approach would be to record by convention an on-balance sheet securitisation, as if no sale had occurred as in case b of the Chapter 4.8 (a revenue – which is then partially compensating the full expenditure at inception – is recorded then at time of loan repayments and is redeeming the imputed debt deemed incurred upon the sale). The

⁽²⁵⁴⁾ Paragraph 39 certainly restricts this capital transfer recording to cases of public corporations in repeated losses situations and not to cases of exceptional losses. This is a restriction to normal capital injection rules described in ESA 2010 paragraph 20.198(a), which can be well justified by the specific legal instrument used. However, here the loan not expected to be fully repaid concern cases where the net assets are negative, thus the situation is particularly severe.

partitioning approach thus avoids those recording complications that arise from the resale of such loans.

33. Loans not expected to be fully repaid share some conceptual proximity with concessional loans, to the extent that the market value of the instrument at inception is both at a significant discount to the cash provided. However, the ESA 2010 or the 2008 SNA are rather explicit in the fact that, despite the fact that concessional loans do contain a transfer component, no transfer is nonetheless recorded (at inception or otherwise) in the core account. As a result, no separate clarification is issued on this. In addition, loans not expected to be fully repaid and concessional loans can be seen as two distinct products. In the latter case, all the borrowers benefit from a concession (which, as explained, is nonetheless not recorded in the core accounts) while, in the former case, part of the borrowers repay their loans in full and perceive the loans as normal loans, whereas part do not repay the loans and *de facto* receive a grant.

4.10. Keywords and accounting references

Rearranged transactions	ESA 2010, 1.73-1.78
Rerouting	ESA 2010, 1.73-1.75
Financial intermediation/intermediary	ESA 2010, 2.87-2.88, 2.61
Other capital transfer	ESA 2010, 4.164-4.167
Valuation of transactions	ESA 2010, 5.19-5.22
Valuation of assets	ESA 2010, 7.33-7.41, 7.61

5

Sale of assets

5.1. Overview

1. Governments sell financial and non-financial assets to raise cash or to optimise the stock or value of assets. Governments might also transfer flows of receipts, or incur a future obligation to make payments, in return for cash today. In most cases, a sale of an asset is recorded as a sale, for the value of the transaction, in national accounts.
2. However, some cases are more complicated, particularly when:
 - sales take place through public corporations;
 - the economic risks and rewards are not fully transferred (no 'true sale' occurs);
 - the government's proceeds for the sale are not in cash or differ from the market/fair value of the asset sold;
 - the asset that appears to be sold was not recorded in the government's balance sheet in national accounts.
3. In this guidance, the key principles applied are the recording of economic substance over legal form, the concept of economic ownership, the basic distinction between financial and non-financial flows and the coverage of the notion of income in national accounts.

5.2. Sales of financial and non-financial assets

5.2.1. Background

1. Privatisation normally means general government giving up control over a public enterprise by the disposal of the shares and other equity in the enterprise. The scope of this chapter is larger than just that operation: it also addresses the more general cases of general government selling shares and other equity in enterprises it does not necessarily control plus sales that do not result in the transfer of control. It also covers direct and indirect sales plus the sales of non-financial assets.
2. Four cases may be distinguished:
 - a) when government sells its shares or other equity in an enterprise. This sale is said to be 'direct';
 - b) when government owns enterprise A, which sells shares or other equity in an enterprise B and gives the proceeds of the sale back to government. This sale is said to be an 'indirect' sale by government of financial assets;
 - c) when government sells its non-financial assets. This is said to be a 'direct' sale of non-financial assets;
 - d) when government owns enterprise A, which sells non-financial assets and gives the proceeds of the sale to government. This sale is said to be an 'indirect' sale by government of non-financial assets.
3. The funds provided by the enterprise to government through an indirect sale may take various forms other than cash. For example, they could consist of redemption of amounts owed by the enterprise to government. In the following, only the provision of liquid assets is considered but this assumption does not change the proposed treatments.

5.2.2. Treatment in national accounts

5.2.2.1. DIRECT SALE OF FINANCIAL ASSETS

4. The direct sale of financial assets has to be recorded in the financial accounts of general government and of the involved enterprise: it is a withdrawal of shares or other equity (F.5) from the enterprise which was, partially or totally, owned by government, with a counterpart entry as an increasing of a financial asset (most of the time, liquid assets (F.2)). As a financial transaction it has no impact on the net lending/borrowing (B.9) of general government.

5.2.2.2. INDIRECT SALE OF FINANCIAL ASSETS

5. The indirect sale of financial assets also has to be recorded in the financial accounts of general government and of the above-mentioned enterprise A: it is a withdrawal of shares or other equity from enterprise A, with a counterpart entry as an increasing of a financial asset (probably cash or deposits (F.2)). This is true whether or not enterprise A gives to its owner, the government, all or part of the proceeds of the sale. An indirect sale of financial assets has no impact on general government net lending/borrowing (B.9).

5.2.2.3. DIRECT SALE OF NON-FINANCIAL ASSETS

6. The direct sale of a non-financial asset has to be recorded in the capital account of general government: it is a disposal of a non-financial asset, with a positive impact on general government net lending/borrowing (B.9). Non-financial assets include fixed assets, inventories, valuables, land or other non-produced non-financial assets.

5.2.2.4. INDIRECT SALE OF NON-FINANCIAL ASSETS

7. The general government accounts would record the indirect sale of non-financial assets as a financial transaction: it is a withdrawal of shares or other equity from the enterprise A which was, partially or totally, owned by government, with a counterpart entry as an increase in a financial asset (probably cash or deposits (F.2)) in respect of the funds received.

5.2.2.5. TIME OF RECORDING AND AMOUNTS TO BE RECORDED

8. In the general government accounts:

- in cases of direct sales, transactions are recorded when the change of economic ownership of the assets takes place;
- in cases of indirect sales, the time of recording is when the proceeds of the sale is paid back to general government.

9. The amounts to be recorded are the full amounts of the proceeds of the sale (less any amount kept by the owning company in the case of an indirect sale), as they are paid by purchasers: they correspond to the transaction value, as defined in ESA 2010 paragraph 5.19, for the sale of the assets.

10. In particular, in the case of indirect sales, it may happen that the proceeds, or part of them, are recorded as dividends, taxes or any other kind of flow in the internal bookkeeping of the parties to the transaction. They have nevertheless to be recorded as financial transactions in national accounts.

11. In the case of a partial transfer to government of the proceeds of an indirect sale, the full payment to government is treated as a financial transaction. In practice, such sales may require government to employ the services of financial intermediaries or other non-financial services. This is especially true in case of privatisation. The cost of these services has to be recorded as intermediate consumption. If they are actually paid out of the proceeds of the sales (through a reduction in the amount passed to government), an imputation should normally be made so that the total proceeds of the sale are recorded before netting off the service charge. If payments are made to general government, e.g., as dividends or taxes, in addition to the proceeds of the sales of assets, they have to be recorded, if relevant, in the specific non-financial transactions.

12. The case where a part of the proceeds of the sale is kept by enterprise A is dealt with in the following chapter 5.3 Privatisation proceeds from public corporations.

13. The cases of indirect sales addressed here deal with sales of assets of a substantial amount that is paid back to general government. Frequently these sales are part of a privatisation plan decided by government. However, it may happen that, as part of their normal operations, enterprises sell a few assets and thus realise some capital gains. These capital gain might then be distributed to general government through dividends or specific taxation, in such a way that the proceeds of the sale of assets would be part of government revenue. In this case, this revenue should be reclassified as a financial transaction in equity. The possible difficulties in obtaining the information should not prevent from recording the flows as financial in all cases where the proceeds are significant.

5.2.3. Rationale of the treatment

14. The rationale of the rules dealing with direct sales is straightforward. For the sales of financial assets, they stem from the definition of financial transactions (ESA 2010 paragraphs 5.01 and 5.02) and of the financial account (ESA 2010 paragraph 8.50). Basically, in this direct exchange of one financial asset for another in the balance sheet of the government, there is no change in wealth, nor any flow of income. For the sales of non-financial assets, they stem from the definition of the disposal of the concerned assets and of the capital account (ESA 2010 paragraph 8.46).

15. The rationale for the treatment of indirect sales is first based on the fact that the payment of the proceeds of the sale is not a transfer of income, but a transfer of wealth/assets. However, it cannot be considered a capital transfer: the definition of other capital transfer (ESA 2010 paragraph 4.165) does not make room for such a treatment. Moreover, in these cases, payments are provided only because of the rights of ownership that government has on the involved enterprises.

16. This is the rationale for the exclusion from capital transfers of the payment of privatisation proceeds, as indicated in ESA 2010 paragraph 4.165 (g): *However, the counterpart transactions of transfers to general government of the proceeds of privatisation made indirectly (through a head office for example) are recorded as financial transactions in equity and investment funds shares (F.5) and have no impact on the level of net lending/borrowing (B.9) of the general government.*

17. Paying back the proceeds of the sale to government reduces the assets of the enterprise A. This corresponds to a partial liquidation of the corporation as it reduces its net worth, which should be reflected by a decrease in the value of equity owned by government in the corporation. This treatment of

indirect privatisation must be applied to the case of sale by the corporation of any financial or non-financial assets.

18. The notion of dividend in national accounts is clear: this is a property income. Dividends must result from income streams and not from sale of assets or from revaluation of assets. Distributing income should not diminish the net wealth/net assets of the enterprise. What may be distributed to the owners is the entrepreneurial income (ESA 2010 paragraphs 8.26–8.28).

5.2.4. Accounting examples

In all the following examples, the counterpart flow of sales is a transaction in currency and deposits (AF.2).

In the first example general government directly sells x of equity in the public enterprise and receives the proceeds of the sale from the purchaser (not shown).

Direct sales of financial assets

General government				Public enterprise			
Opening balance sheet							
A		L		A		L	
AF.51	z				AF.51	z	
Financial account							
ΔA		ΔL		ΔA		ΔL	
F.51	-x						
F.2	+x	B.9F	0				
Closing balance sheet							
A		L		A		L	
AF.51	z-x				AF.51	z	
AF.2	+x	Δ B.90	0		Δ B.90		0

Indirect sale of financial assets

In the second example the public enterprise sells x of equity asset in a first transaction, denoted (1) and in a second transaction, denoted (2), passes x in proceeds to general government.

General government				Public enterprise A			
Opening balance sheet							
A		L		A		L	
AF.5	z			AF.51	y	AF.51	z

Financial account			
ΔA		ΔL	
F.51 (2)	-x		
F.2 (2)	+x	B.9F	0

ΔA		ΔL	
F.51 (1)	-x	F.51 (2)	-x
F.2 (1)	x	B.9F	0
F.2 (2)	-x		

Closing balance sheet			
A		L	
AF.51	z-x		
AF.2	+x	$\Delta B.90$	0

A		L	
AF.51	y-x	AF.51	z-x
		$\Delta B.90$	0

Direct sale of non-financial assets

In the third example on direct sales of non-financial assets, general government disposes x of a produced asset.

General government			
Opening balance sheet			
A		L	
AN.1	z		
AF.2	y		

Capital account			
ΔA		ΔL	
P.5	-x		
B.9	x		

Financial account			
ΔA		ΔL	
F.2	x		
		B.9F	x

Closing balance sheet			
A		L	
AN.1	z-x		
AF.2	y+x	$\Delta B.90$	0

Indirect sale of non-financial assets

In the final example, a public corporation sells x of a produced asset in a first transaction, denoted (1) and in a second transaction, denoted (2), passes x in proceeds to general government.

General government				Public enterprise A			
Opening balance sheet							
A		L		A		L	
AF.2	w			AN.1	y	AF.51	z
AF.51	z						
Capital account							
ΔA		ΔL		ΔA		ΔL	
				P.5	-x		
				B.9	x		
Financial account							
ΔA		ΔL		ΔA		ΔL	
F.51 (2)	-x			F.2 (1)	x	F.51 (2)	-x
F.2 (2)	x	B.9F	0	F.2 (2)	-x	B.9F	x
Closing balance sheet							
A		L		A		L	
AF.2	w+x			AN.1	y-x	AF.51	z-x
AF.51	z-x	ΔB.90	0			ΔB.90	0

5.3. Privatisation proceeds from public corporations

5.3.1. Background

1. In some EU Member States, head offices⁽²⁵⁵⁾ as defined in ESA 2010 have been set-up by government in order to direct and manage a group of market enterprises, with profitable and competitive objectives. Within this context they may restructure the group. Thus, they may organise privatisation and transfer the proceeds from the sale of shares to government or to other public corporations (whether owned by the head office or not), through grants, loans or capital injections.
2. Alternatively, units that have existed for a long time could be given this same function. These could also be public entities like regional development agencies managing funds (including shares and other equity) belonging to government or possibly from European institutions (structural or cohesion funds).
3. The main issues are the relevant sector classification of units managing privatisation and possibly making grants to other enterprises, and if this activity should be considered to take place on behalf of government.

5.3.2. Treatment in national accounts

4. There are three possibilities:
 - 1) The public head office is a market unit and moves funds around within the group as part of a business strategy for the group, in the same manner that a private corporation would behave.
No transactions are recorded in government accounts.
 - 2) The public head office is a market unit and moves funds around within the group to support loss-making activities, which are clearly identified as resulting from government's economic and social policy, the relevant entities acting on behalf of government and under evidenced instructions.
Transactions are rearranged through government.
 - 3) The public head office is a market unit but provides grants and subsidies on behalf of government to units outside the group.
All payments are rearranged through government.

5.3.3. Rationale of the treatment

5. In ESA 2010 paragraph 2.14 a *head office* is defined as a *unit that exercises managerial control on its subsidiaries*. Head offices are usually considered market producers, either non-financial or financial, according to the main activity of the group.
6. A problem arises when a head office implements a development strategy for its subsidiaries (in the framework of a long-term plan for the group), while also carrying out restructuring and changing the ownership status of some corporations in the group, as well as channelling the funds from one to the other, redistributing income and wealth.
7. This public sector reorganisation aspect, involving management of assets and redistribution of income and wealth, is a direct implementation of a central government macro-economic strategy. In many EU Member States, this is (or was) often implemented by the Treasury itself. In the case examined here, the Treasury uses an existing intermediary entity, which is supposed to manage public assets and redistribute funds in a short-term or medium-term context.
8. This specific type of activity should be regarded as a management of assets for public policy purposes, taking place on behalf of government.

⁽²⁵⁵⁾ See chapter 1.6 Specific public entities.

9. There can be a contradiction between the economic nature of relationships and of transactions between units, and the legal presentation of these units and of their relationships. Some provisions in the ESA 2010 (notably in chapter 1) allow for a statistical treatment that might diverge from the legal arrangements:

- **ESA 2010 paragraph 1.72: Rearranged transactions**

(...) however, some transactions are rearranged in order to bring out the underlying economic relationships more clearly. Transactions can be rearranged in three ways: rerouting, partitioning and recognising the principal party to a transaction.

- **ESA 2010 paragraph 1.75: Rerouting**

(...) another type of rerouting is that of transactions recorded as taking place between two or more institutional units, even though according to the parties involved no transaction takes place at all.

- **ESA 2010 paragraph 1.78: Recognising the principal party to a transaction**

When a unit carries out a transaction on behalf of another unit (the principal) and is funded by that unit, the transaction is recorded exclusively in the accounts of the principal (...).

10. These statements derive from the basic principle of national accounts, according to which: *it is required that all transactions occurring in different legal settings, but having the same economic effects, are to be recorded in the same way.*

11. The rerouting of flows (proceeds of the sales of the assets and payments to public corporations) is only relevant when only a minor part of the unit's activity consists of acting for public policy purposes (privatising, supporting public corporations, etc.) on behalf of the government. Otherwise, this would mean that the unit cannot be (or no longer can be) considered a market producer and should be (re)classified within the general government sector. Recording the public policy activity via the government accounts is relevant in this context.

12. In the case of a transaction with a public subsidiary being a financial one (a loan for instance), it is rearranged to record it first between the public head office and government, and then between the government and the subsidiary. In the case of an investment grant provided by government to the head office as an intermediary that passes it on to its subsidiary, this is recorded directly from government to the subsidiary reflecting the principal party of the transaction.

13. When the public head office provides grants or any other type of transfers to enterprises (whether private or public) outside of its group, there is an even stronger presumption that it is acting on behalf of the government.

5.3.4. Accounting examples

Government owns a head office that is classified in the non-financial corporations sector. This head office disposes — for an amount of 100 — of shares it has in a subsidiary A (1), as part of a privatisation programme decided by government. The head office keeps the proceeds of this disposal, and it pays from it 20 to its subsidiary B. This payment is analysed as economically being of a subsidy on production, with the cash and accrual both being 20 in the period (3). At the beginning of the period, equity asset of government in the head office amounts to x, equity asset of the head office amounts to z, of which y refers to subsidiary B. The accounts of the purchaser of subsidiary A's shares are not shown. Government is using the financing capabilities of the head office to subsidise B. The principal party recording implies the head office (agent) is carrying out the transaction on behalf of government (principal party). The government funding of the agent is realised by imputing a withdrawal of equity of 20 from the head office to provide the funds for the subsidy payment (2).

General government			Head office			Subsidiary B			
Opening balance sheet									
A		L	A		L	A		L	
AF.51	x		AF.51	z	AF.51	x		AF.51	y

Non-financial account

U/ΔA	R/ΔL	U/ΔA	R/ΔL	U/ΔA	R/ΔL
	D.39 (3) -20			D.39 (3) -20	
B.9 -20				B.9 20	

Financial account

ΔA	ΔL	ΔA	ΔL	ΔA	ΔL
F.51 (2) -20		F.2 (1) 100	F.51 (2) -20	F.2 (3) 20	
	B.9F -20	F.2 (3) -20	B.9F 0		B.9F 20
		F.51 (1) -100			

Closing balance sheet

A	L	A	L	A	L
AF.51 x-20		AF.51 z-100	AF.51 x-20	AF.2 20	AF.51 y
	ΔB.90 -20	AF.2 80	ΔB.90 0		ΔB.90 20

5.4. Restitution and use of vouchers for privatisation

5.4.1. Background

1. In transition economies, the concept of privatisation can be extended to also include any transfer (disposal) to the public or former (private) owners of government assets that were previously nationalised or confiscated. Three cases have been identified.

5.4.1.1. RESTITUTION IN KIND

2. Restitution in kind refers to the return to the original owner (or their descendants) of non-financial assets (typically land and buildings but also production plants in some cases) formerly nationalised or confiscated by government, and generally owned at the time of restitution by government but in some cases by public corporations. The non-financial assets may, therefore, be fixed assets, inventories, valuables, land or other non-produced assets.

5.4.1.2. RESTITUTION THROUGH FINANCIAL COMPENSATION

3. In cases where the property to be returned to former owners does no longer exists or cannot be returned, financial compensation can be made in the form of money or other financial instruments such as bonds or shares.

5.4.1.3. PRIVATISATION THROUGH THE ISSUE OF VOUCHERS

4. In carrying out the privatisation of publicly-owned assets in some transition economies, governments distributed vouchers to the population, either free of charge or sold at nominal prices. The voucher holders can acquire shares and other equity (directly or indirectly) or non-financial assets.

5.4.2. Treatment in national accounts

5.4.2.1. RESTITUTION IN KIND

5. Restitution in kind represents a transfer of non-financial assets from government to the sectors benefiting from the restitution. Two sub-cases can be distinguished:

- a) **The non-financial asset to be returned is roughly the same as the one nationalised or confiscated in the past. This may be the case for land and other non-produced assets.**

This type of restitution could be considered a reverse of an uncompensated seizure to be recorded in the other changes in volume of assets account. However, under ESA 2010, this return should rather be recorded as capital account transaction, a negative capital formation in the government account, counterbalanced by a 'payment of a capital transfer in kind' (with reversed sign in the accounts of the receiving sector). This has an impact on the stock of assets recorded in the balance sheets, and therefore increases the net worth of the sectors benefiting from the restitution and simultaneously decreases general government net worth.

- b) **The non-financial asset to be returned is different (in terms of appearance and value) from the one nationalised or confiscated in the past. This may be the case for dwellings and other tangible fixed assets.**

In this case, the return should be recorded as a transaction, a negative capital formation in government account, counterbalanced by a 'payment of a capital transfer in kind' (with reversed sign in the accounts of the receiving sector). As both flows are balanced in the capital account, there is no impact on general government net lending/borrowing (B.9). However, the capital transfer leads to an increase of the net worth of the sectors benefiting from the restitution and simultaneously to a decrease of the government's one.

In both cases the time of recording is the time of the change in economic ownership of the asset.

5.4.2.2. RESTITUTION THROUGH FINANCIAL COMPENSATION

6. Restitution through financial compensation involves a transfer of financial assets from government to the sectors benefiting from the compensation. It should, therefore, be recorded in government accounts as a decrease in financial assets, counterbalanced by a capital transfer in kind or in cash (payable), and in the accounts of the receiving sectors as an increase in financial assets, offset by a capital transfer in kind or in cash (receivable). The capital transfer has a negative impact on the net lending/borrowing (B.9) of general government, as well as on the net worth. The time of recording of the transaction is when government recognises a liability for a certain and irrevocable amount; if this is an earlier period to when the compensation is paid the capital transfer is balanced by an other account payable (AF.89).

5.4.2.3. PRIVATISATION THROUGH THE ISSUE OF VOUCHERS

7. The vouchers are used (mostly by households) to acquire non-financial or financial assets and can be seen as a commitment by government to redeem them against those assets. In general, vouchers are only conditional upon the acquisition of assets and therefore considered, as contingent assets, not recorded in the system.
8. In the system, such contingent assets are considered as financial assets rather than contingent assets under certain conditions (ESA 2010 paragraph 5.08):
 - 1) if tradable, a market develops where they can be traded or offset on a market;
 - 2) if information exists on vouchers: on the transactions carried out and on market prices;
 - 3) if the market has a sufficient volume of transactions so that the total value of the market can be derived;
 - 4) if considered financial assets, vouchers may be considered special kind of financial derivative (AF.71).
9. A distinction can be made between the following two sub-cases, depending on whether vouchers are considered financial assets or not.

5.4.2.3.1. Vouchers are considered to be financial assets when issued

10. In this case, the vouchers are recorded in the national accounts system at the time of their issuance.

a) Acquisition of financial assets

The transfer of vouchers should be recorded as a financial transaction (in financial derivatives F.71), counterbalanced by a capital transfer in kind from general government. This has a negative impact on general government net lending/borrowing (B.9), as well as its net worth.

To the extent that vouchers can be traded or offset on the market, the market will develop and their value will be determined on that market. Transactions in the vouchers are to be recorded as financial transactions between the respective sectors. Variations in the value of the vouchers during the same period should be recorded as holding gains /losses in revaluation account of the various sectors involved.

The exchange of vouchers for shares in public corporations is to be entirely recorded in the financial account of general government. This has no impact on general government net lending/borrowing (B.9).

b) Acquisition of non-financial assets

Vouchers are exchanged for commodities sold by non-financial corporations. The non-financial corporations acquire a claim against general government and use it for bidding for shares owned and offered for sale by the general government.

The exchange of vouchers for commodities should be recorded as final consumption expenditure (P.3) of households, counterbalanced by a decrease in financial derivatives (F.71) in the financial accounts of households. In the government financial accounts, a decrease in financial derivatives on the liability side is recorded and a decrease of equity (F.5) in the public corporations on the asset side. As a result, there is no impact on general government net lending/borrowing (B.9) and its net worth.

5.4.2.3.2. Vouchers are only contingent assets

11. If vouchers are considered as contingent assets nothing is recorded in the system at the time of their issuance. They can only be used to acquire financial or non-financial assets.
12. In this case, no recording of the vouchers is done at the time of their issuance but only when the exchange for financial or non-financial assets takes place. Two sub-cases are established depending upon whether the exchange is for non-financial or financial assets.

a) Acquisition of financial assets

The exchange of vouchers for shares in public corporations should be recorded as a financial transaction in equity and investment funds shares (F.5), counterbalanced by a capital transfer in kind (D.92) from general government. This leads to an increase in shares and other equity of households on the asset side and to a decrease of shares and other equity of government on the asset side. The exchange has a negative impact on general government net lending/borrowing (B.9) and its net worth.

b) Acquisition of non-financial assets

The exchange of vouchers for non-financial assets should be recorded as a negative capital formation (P.51g), counterbalanced by a capital transfer in kind (D.92) from general government. This has no impact on general government net lending/borrowing (B.9). However, the exchange does result in decrease in the net worth of general government.

5.4.2.4. IMPACT OF VOUCHERS ON GOVERNMENT DEBT

13. In the ESA 2010 framework, the recording of vouchers in the balance sheet of the government (as soon as considered financial liabilities) increases the stock of government liabilities.
14. In the Excessive Deficit Procedure framework, to the extent that we assume that the appropriate assets/liabilities for recording them are financial derivatives (F.71), vouchers would not influence the calculation of government debt (see Part 8).

5.4.3. Rationale of the treatment

5.4.3.1. RESTITUTION IN KIND

15. The two following cases can be analysed differently:

- 1) The returned asset is the same as the one seized by government: this is a unilateral restitution of wealth giving back a non-financial asset, that the government took possession of in the past without compensation. The uncompensated part of such unilateral seizures is not a capital transfer (ESA 2010 paragraph 6.10), but is recorded in the other changes in the volume of assets account (K.4). The restitution is recorded as the disposal of an asset and, because no cash is paid for it, must be balanced in government accounts by imputing a capital transfer expenditure (D.99), ESA 2010 paragraphs 4.164 and 4.165(e).
- 2) The returned asset has changed: the restitution is analysed as a voluntary transfer of wealth, made by mutual agreement (unlike other changes in volume of assets). The counterpart transaction is considered a capital transfer (other capital transfers (D.99) ESA 2010 paragraph 4.164). This is concluded from the definition of capital transfers (ESA 2010 paragraph 4.146: A capital transfer in kind consists of the transfer of ownership of an asset (other than inventories and cash), or the cancellation of a liability by a creditor, without any counterpart being received in return). One may also consider that the transfer will require some government financing (see also ESA 2010 paragraph 6.11).

5.4.3.2. RESTITUTION THROUGH FINANCIAL COMPENSATION

16. The compensation is normally made many years after the asset's confiscation, often 40 to 50 years. In distinction to restitution in kind (when the asset has not changed) restitution through financial compensation needs to be financed by the government. Like in all cases of transfer of wealth made by mutual agreement, the counterpart transaction is a capital transfer (other capital transfers (D.99), ESA 2010 paragraph 4.164).

5.4.3.3. EXCHANGE OF VOUCHERS:

17. When considered financial assets, the exchange of vouchers for equity (AF.5) stems from the definition of financial transactions (ESA 2010 paragraph 5.02) and of the financial account (ESA 2010 paragraph 8.50): there is a direct exchange of one financial asset for another in the balance sheet of government, there is no change in wealth, nor flow of income. For the exchange of vouchers for non-financial assets, the rules stem from the definition of the disposal of the concerned assets and their recording in the capital account (ESA 2010 paragraph 8.46).

5.4.4. Accounting examples

1. Restitution in kind

Some land is given to households similar to land nationalised or confiscated in the past. Its value at the time of return is 100.

General government				Households			
Opening balance sheet							
A		L		A		L	
AN.211	100						
Capital account							
ΔA		ΔL		ΔA		ΔL	
NP.1	-100	D.99	-100	NP.1	100	D.99	100
B.9	0			B.9	0		
Closing balance sheet							
A		L		A		L	
AN.211	0			AN.211	100		
		Δ B.90	-100			Δ B.90	100

2. Restitution through financial compensation

In the following example, the government is assumed to compensate former owners of non-financial assets (e.g., land or dwellings) with shares worth 100 in a public corporation.

General government				Households			
Opening balance sheet							
A		L		A		L	
AF.5	100						
Capital account							
ΔA		ΔL		ΔA		ΔL	
		D.99	-100			D.99	100
B.9	-100			B.9	100		

Year t+1 - Acquisition of financial assets by households

Year t+1							
General Government				Households			
Opening balance sheet							
A		L		A		L	
AF.51	100	AF.71	100	AF.71	100		
Financial account							
ΔA		ΔL		ΔA		ΔL	
F.51	-100	F.71	-100	F.71	-100		
		B.9F	0	F.51	100	B.9F	0
Closing balance sheet							
A		L		A		L	
AF.51	0	AF.71	0	AF.51	100		
		Δ B.90	0	AF.71	0	Δ B.90	0

Sub-case 2 – Vouchers are considered as contingent assets.

- ii) The vouchers do **not** meet the definition of a financial asset. **They can only be used to acquire financial or non-financial assets** and are therefore not recognized in the system when issued. In the following two examples, a distinction is made between whether the voucher is used to acquire a financial asset or a non-financial asset.

Acquisition of financial assets by households

In year t, the privatisation agency (part of the general government sector) issues 100 of vouchers to the households sector free of charge. In year t+1, the households exchanges the vouchers for equity of the same value (for simplicity the equity does not revalue throughout the example).

General government				Households			
Opening balance sheet							
A		L		A		L	
AF.51	100						
Capital account							
ΔA		ΔL		ΔA		ΔL	
		D.99	-100			D.99	100
B.9	-100			B.9	+100		

Financial account

ΔA		ΔL	ΔA		ΔL
F.51	-100		F.51	100	
		B.9F			B.9F
		-100			100

Closing balance sheet

A		L	A		L	
AF.51	0		AF.51	100		
		Δ B.90	-100		Δ B.90	100

Acquisition of produced non-financial assets by households

In year t, the privatisation agency (part of the general government sector) issues 100 of vouchers to the households sector free of charge. In year t+1, households exchange the vouchers for dwellings of the same value (for simplicity, the dwellings do not revalue throughout the example).

General government**Households****Opening balance sheet**

A		L		A		L
AN.11	100					

Capital account

ΔA		ΔL	
P.51g	-100	D.99	-100
B.9	0		

ΔA		ΔL	
P.51g	100	D.99	100
B.9	0		

Closing balance sheet

A		L	A		L
AN.11	0		AN.11	100	
		Δ B.90	-100		Δ B.90
					100

5.5. Securitisation operations undertaken by general government

5.5.1. Background

1. Governments may be involved in securitisation arrangements, operations commonly undertaken by banks.
2. The government finance statistics issue is whether a securitisation operation by government entails government borrowing, thus entering government debt, or a government sale of an asset.

5.5.1.1. SECURITISATION ARRANGEMENTS AND DEFINITION

3. Securitisation is a financial technique that is described in ESA 2010 paragraph 5.104 as follows: *"Securitisation is the issuance of debt securities for which coupon or principal payments are backed by specified assets or by future income streams. A variety of assets or future income streams may be securitised including, among others, residential and commercial mortgage loans; consumer loans; corporate loans, government loans; insurance contracts; credit derivatives; and future revenue."*⁽²⁵⁶⁾
4. ESA 2010 paragraph 5.105 also specifies that: *"Securitisation of assets or of future income streams has been an important financial innovation that has led to the creation and extensive use of new financial corporations to facilitate the creation, marketing, and issuance of debt securities. Securitisation has been driven by different considerations. For corporations, these include: cheaper funding than available through banking facilities; the reduction in regulatory capital requirements; the transfer of various types of risk like credit risk or insurance risk; and the diversification of funding sources."*
5. The originator conveys the legal ownership rights over the assets and/or over specific future flows, to a securitisation entity, which in return pays an amount to the originator. The securitisation entity finances this payment by issuing securities using the assets and/or the rights to the future flows transferred by the originator as collateral. Such a securitisation entity is often, though not always, a special purpose entity (SPE) specially established for the purpose of the securitisation and legally separated from the originator (see below the classification of the unit engaged in securitisation). The issuance of securities is generally organised by a third party, for example a private bank, however, this third party usually takes on no risk or reward within the operation.
6. Investors buy the securities issued by the securitisation entity only on the basis of the flows that are generated by the assets/rights, and not on the basis of the credit position of the originator. The investors usually have a direct and legal claim on the receipts generated by the assets or other rights in the event that the securitisation entity does not pay the interest and capital due.⁽²⁵⁷⁾

5.5.1.2. ISSUES FOR NATIONAL ACCOUNTS

7. The key question is how to record in national accounts the proceeds received by government from a securitisation and whether there should be an impact on government debt and/or government net lending/borrowing (B.9).
8. So, the first issue is determining whether the securitisation entails a sale of an existing ESA 2010 asset to the securitisation entity, or entails borrowing using future cash receipts as collateral. A secondary issue deals with the impact on government net lending/borrowing (B.9), which may be affected when non-financial assets are the object of the securitisation operation.

⁽²⁵⁶⁾ This definition of securitisation — linked to most cases involving government units which has been effectively observed in the EU — may be considered a 'narrow' (or financial-market oriented) definition. On one hand, there may be issuance of securities on which are attached direct rights on segregated assets by the holders of the securities ('on-balance sheet securitisation'). Such operations would not need specific guidance, as the main point is the incurrence of new liability, not the specific rights and obligations attached to the debt instruments. On the other hand, government may 'monetise' (transform into liquidity, which is the same result as in the case of securitisation operations considered here) any asset (financial or non-financial) by a transaction on organised markets or over the counter. This is matter of time (anything is finally monetised) and of the degree of discount compared to the fundamental value which government would accept to endure (see the 'extreme' case of 'fire sales'). In the latter case, the same basic principles related to the recognition of a 'true sale' should fully apply.

⁽²⁵⁷⁾ As securitisation operations typically differ from a collateralised borrowing operation (such as for covered bonds, which are normally not issued by government units), in the latter case the investor has both a claim on the assets or other rights and a claim on the initial owner. Most securitisation operations do not provide for recourse for investors against the originator.

9. A disposal of assets by a general government originator is recorded in national accounts at the time the securitisation operation takes place if:
- the items subject to the securitisation operation are assets recognised as transferrable assets in national accounts, and
 - the operation is designed in such a way that all the risks⁽²⁵⁸⁾ and rewards attached to these assets are fully transferred to the securitisation entity, and
 - the securitisation entity that acquires the assets from the originator is an institutional unit that is not part of the general government sector.
10. The aim of this chapter is to provide rules on what can be recorded as a sale in national accounts in the context of a securitisation arrangement involving government. The chapter not only discusses the securitisation by government of its assets, but also considers the case where a non-government unit securitises a flow of future payments from government to it, such as grants.

5.5.2. Treatment in national accounts

11. There are two possible recording options in national accounts (see ESA 2010 paragraphs 20.262–20.271) for securitisation proceeds collected by a government originator:
- sale of an asset, i.e., the disposal of economic ownership of assets by government, in exchange for cash (or other assets); or
 - government borrowing (incurring a liability).
12. The consecutive criteria used to decide the appropriate recording are shown in the decision tree below.

5.5.2.1. RECOGNITION OF ASSETS IN NATIONAL ACCOUNTS

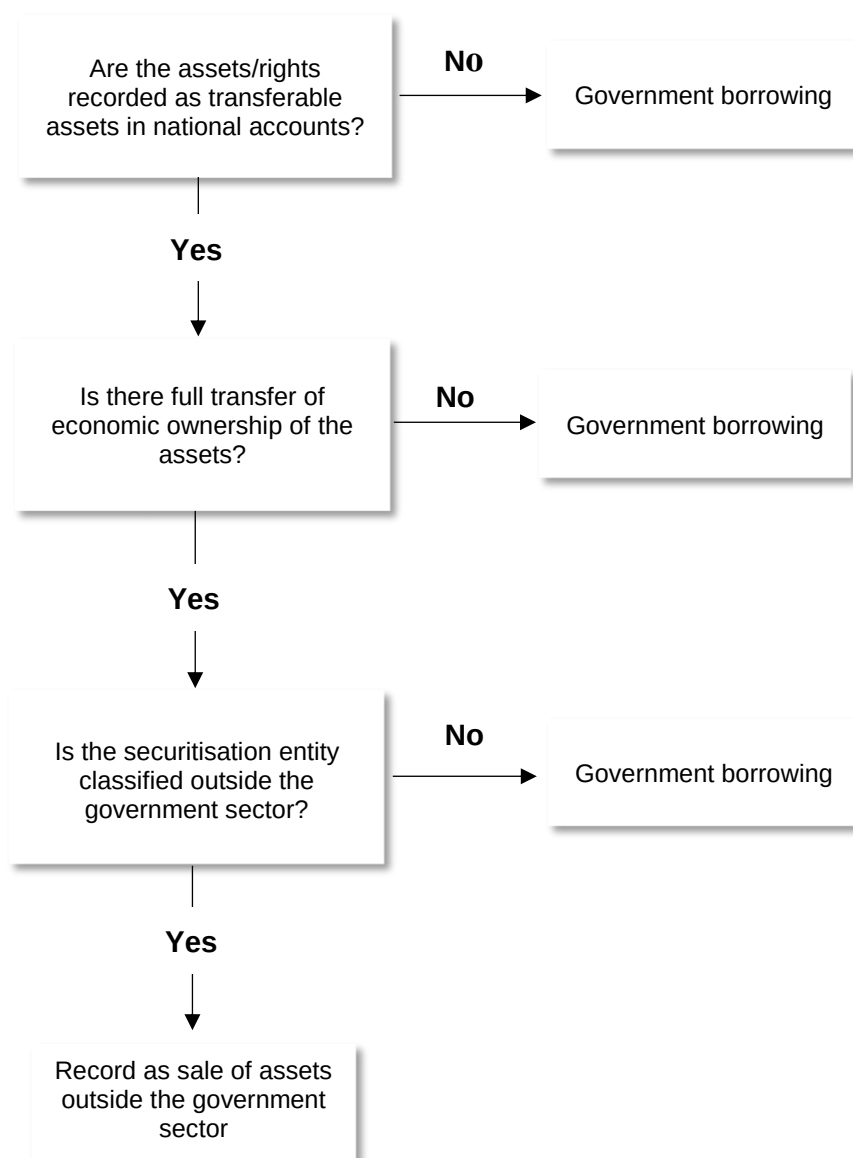
13. A necessary, but not sufficient, condition for a securitisation operation to be recorded as the sale of an asset by government is that the asset is recognised as an asset in national accounts, and therefore is recorded as such in the national accounts balance sheet of government at the time the securitisation takes place. In this context it is useful to distinguish between financial assets and non-financial assets, when discussing the notion of risks and rewards. The following paragraphs deal with cases where the securitised items are not recognised as assets or are not considered transferable in national accounts. In all such cases, the securitisation is recorded as government borrowing.

5.5.2.2. SECURITISATION OF FLOWS ATTACHED TO UNRECOGNISED ASSETS

14. Government may securitise future revenue that are unrequited transfers, such as future tax revenue. However, since the entitlement to receive such transfers is not recognised as an asset in national accounts, it is not possible to record the sale of an asset in such cases. The revenue has not yet accrued, presumably because the event that leads to the tax liability has not yet taken place, and consequently no asset exists in the national accounts balance sheet. Thus, the securitisation by government of future tax revenue before the taxpayer's liability accrues is always recorded as government borrowing in national accounts.
15. The same recording (as government borrowing) applies to the securitisation of transfers that government units may expect to receive from EU institutions or other international bodies, or from lottery receipts, licence fees or fines. More generally, all unrequited distributive transactions should be treated as government borrowing, as long as no entry has been reported in the national accounts balance sheet.
16. Loan assets that were not recognised as such, instead being recorded as capital transfers in national accounts at inception, due to their low likelihood of recovery, are recorded as government borrowing when securitised.

⁽²⁵⁸⁾ However, under market standards for such transactions, a part of the operational risk is usually kept by the originator, here government, together with the arranger. Such risks are frequently referred to as losses resulting from execution, delivery, process management, internal and external fraud, business continuity, system failure, damage to physical assets, inadequate or inefficient documentation, and legal risks. They do not result from the risks associated to holding the assets (market/credit risks). However, in securitisation undertaken by government, it should be checked whether the operational risk borne by government is strictly restricted to the usual market practice.

Decision tree on sale of an asset or government borrowing



5.5.2.3. SECURITISATION OF FISCAL FLOWS

17. The ownership of certain assets that are recorded in the government's balance sheet in national accounts may be deemed economically non-transferable. In these cases, their securitisation is necessarily treated as government borrowing.
18. An example is financial claims in respect of taxes already accrued and recorded as financial assets in the national accounts balance sheet, sometimes referred to as 'fiscal claims'. These fiscal claims (receivables) differ from the rights over future tax revenue (discussed in the previous sub-section 5.5.2.2 Securitisation of flows attached to unrecognised assets). The revenue has been recorded in national accounts, together with a financial asset in the national accounts balance sheet (fiscal claims).
19. The national accounts balance sheet entry for fiscal claims should not be confused with the government's bookkeeping accounts, as the former excludes amounts deemed to be uncollectible. The securitisation of amounts deemed uncollectible is also recorded as government borrowing in national accounts.

20. Even if government outsources their collection, taxes (and compulsory social contributions) are still considered as government revenue.

5.5.2.4. SECURITISATION OF FLOWS FROM NON-TRANSFERRED ASSETS

21. Government may securitise the 'income stream' flows generated by assets that are recorded in the national accounts balance sheet. These flows include rentals, rents, interest, dividends and other property incomes (P.1 and D.4). For example, non-residential buildings generate rentals paid by the buildings' occupiers.
22. When government securitises only several rental periods rather than all the future rentals that it expects to receive, it does not dispose of the full risks and rewards of the asset, and therefore the economic ownership of the buildings themselves. In such cases, the securitisation arrangement should be recorded as government borrowing in national accounts.
23. Similarly, the securitisation of (partial) future streams of property income generated by financial assets is also recorded as government borrowing when the economic ownership of the financial assets is not fully transferred. For criteria to determine economic ownership, see 2008 SNA paragraph 3.26.

5.5.2.5. TRANSFER OF OWNERSHIP: RISKS AND REWARDS

24. Assuming that the securitised items are recognised as transferable assets in national accounts, their sale can only be recorded in national accounts if there is a transfer of economic ownership from government to the securitisation entity. There is transfer of economic ownership of assets when the risks and rewards that are attached to these are completely transferred. If the risks and rewards are not completely transferred from government to the securitisation entity, the securitisation is recorded as government borrowing.

5.5.2.6. NOTION OF RISKS AND REWARDS

Financial assets

25. The rewards associated with financial assets are the remuneration (which may be unconditional as interest or contingent such as dividends) and the holding gains which can result from their fluctuating market value, whereas the risks are usually mainly designed as:
- market risk: decrease in the value of a portfolio, either an investment portfolio or a trading portfolio, due to changes in value of the market risk factors: equity risk (change in prices), interest rate risk (change with an impact on the value of fixed rate securities and on refinancing), currency risk (floating exchange rates and realignment), commodity risk (change in commodity prices); it also includes the risk that a corporation will not provide a 'normal' and sufficient rate of return on equity;
 - credit risk: incapacity of a borrower to face its contractual liability obligations on time with delay or definitively, or risk that a corporation will go bankrupt;
 - counterpart risk: incapacity of a party in a transaction to fully execute it;
 - operational risk (see footnote 258).
26. In some cases, government, in return for a fee, acts as an agent collecting the property income from financial assets sold, which it then passes to the purchaser. This might be because it would be costly to transfer such operations to the new owner or because of agreements with borrowers when the assets were first created. The originator's retention of the collection function is frequently observed in private financial sector. In such circumstances, the sale can still be recorded as a disposal of financial assets, provided that the collection arrangement does not affect the transfer of risks and rewards to the securitisation entity and is covering the actual management costs of the transferred assets. The sole fact that government is collecting the property income would not affect the economic ownership being with the purchaser.

Loans

27. Loans are also frequently sold together — as a 'loan book' or 'loans pooling' — rather than sold individually. In this context, a partial sale of a loan book often takes place, which can be arranged in different ways, such as by randomly selecting (at time of securitisation) borrowers whose repayments are sold to the purchaser, or by selling a fixed proportion of the portfolio repayments received every day from the loan book. The partial sale of a loan book through the sale of specifically selected claims can

be recorded as a sale of loans in national accounts. The sale by government of a fixed proportion of the total repayments, without any straightforward allocation to some identified assets, cannot be recorded as a sale of loans in national accounts, and is to be recorded as government borrowing.

Non-financial assets

28. Securitisation entities frequently do not take possession of non-financial assets with the intention of holding them until the end of their economic lives; instead, they intend to resell them. Therefore, in addition to the risks of defaults on the income (rentals and rents) that may be associated with these assets, there is a risk of holding losses. Conversely there are possible rewards if holding gains arise (as for financial assets) which may lead to different than expected revenue from the eventual sale of the assets.
29. The transfer of risks and rewards, such as the variability of maintenance and insurance costs, must also be considered when judging risk transfer in cases of securitisation involving non-financial assets.

5.5.2.7. JUDGING RISKS AND REWARDS TRANSFER

30. The risks and rewards associated with the asset are judged as not fully transferred, leading to a recording as government borrowing, if any of the following applies:

- restrictions are imposed by government on the securitisation entity's right to subsequently sell the assets;
- securitised flows concern only a fraction of the flows associated with the asset;
- there exists a 'Deferred purchase price (DPP)' clause or equivalent, which demonstrates some residual ownership by government;
- government provides guarantees or other forms of risk alleviation to securitisation entities, including by way of a 'substitution clause' or other arrangements;
- other on-going involvement of government in the asset, which prevents a full transfer of risks and rewards.

Equity tranche and deferred purchase price (DPP)

31. In some securitisations, different tranches of securities issued are backed by different parts of the flows from the securitised assets. This means that there is a differentiation in the risks and rewards that are borne by investors. By this process, it is possible to include some mechanisms by which the originator, government, keeps a residual risk/reward (sometimes called an 'equity tranche' or 'last tranche'), to protect investors against an excessive under-performance of the securitised assets. This makes the securities more attractive to investors. This mechanism prevents a full transfer of risks to the securitisation entity and leads to the recording of the securitisation arrangement as government borrowing.
32. In a securitisation contract, a 'Deferred purchase price (DPP)' is another device of credit enhancement whereby the securitisation entity is obliged to pay the originator additional (performance related) proceeds from a sale at a later date. When such clauses exist, the assets are disposed of at a value (a sale price) set below their market/fair value. A DPP should not be confused with delayed settlement of a fixed price, which must appear as the originator's receivable and as the securitisation entity's liability at inception, in accordance with the accrual principle.
33. Securitisation arrangements, including equity tranches, DPPs or similar clauses giving rights to further payments for the seller of the assets, are recorded as government borrowing, because such clauses provide evidence that not all the risks and rewards of the operation have been transferred to the securitisation entity.

Guaranteed payments after the sale

34. Government guarantees may be granted in the context of a securitisation. In a securitisation contract, government may commit itself to repay the debt incurred by the securitisation entity in the event of the latter being unable to do so from its own resources, because of insufficiently performing assets.⁽²⁵⁹⁾ Government securitisation arrangements that include ex ante guarantees are recorded as government

⁽²⁵⁹⁾ It does not necessarily take the form of an explicit guarantee on the debt issued by the securitisation unit (thus not enforceable by third parties) but it may be a specific clause in the contract.

borrowing. This rule does not apply to guarantees that have a general purpose and that are offered to other units for similar events, such as coverage against the consequences of limited external events such as natural disaster, terrorism and war.

35. Substitution clauses are a specific kind of guarantee. They typically involve an option to substitute the original assets transferred to the securitisation entity with new ones, for example if the transferred 'asset' is later found not to exist or impossible to collect. The existence of a substitution clause is important when judging the transfer of risks and rewards between government and the securitisation vehicle.
36. Except for marginal cases, limited in scope and deriving purely from technical reasons or material errors, and where the substituted assets have the same value as the new ones, the existence of a substitution clause leads to a recording as government borrowing.
37. Government may later compensate a securitisation entity, although this was not a requirement of the contract. Such compensation may take the form of cash, debt assumption, or a direct or indirect guarantee granted as response to unfavourable trends. A further situation is where government introduces or modifies legislation, which leads to a *de facto* compensation of the securitisation entity.
38. At the time the compensation is decided, the event is recorded as a simultaneous purchase by government of the securitised assets, against an incurrence of a government loan liability towards the securitisation entity. This should be equal to the amount of the securitisation entity's outstanding debt securities issued to finance the acquisition of the securitised assets.
39. If the market value of the purchased asset is lower than the liability incurred, a capital transfer is recorded from government to the securitisation entity for the difference.
40. A purchase of a financial asset will not affect government net lending/borrowing (B.9), unless the market value of the asset acquired is lower than the debt incurred.
41. A purchase of a non-financial asset increases government deficit (or reduces a surplus) because the acquisition of non-financial assets (negative GFCF) impacts net lending/borrowing (B.9).
42. The same rule applies when there is no contractual clause for the substitution of assets, but it is observed in practice that a significant amount of the securitised assets is replaced by others of higher market value. The incurrence of a government liability should be imputed against a repurchase of the asset at the time the substitution is decided.
43. These rules do not apply if the compensation is paid by government to the securitisation entity as a result of an actual or potential court decision arising from government breaking the terms and conditions of the sale contract.

Restriction to subsequent sales

44. Any restriction to on selling the acquired assets, or other rights to future cash flows, would provide evidence that economic ownership has not been transferred.

5.5.2.8. CLASSIFICATION OF THE SECURITISATION ENTITY

45. ESA 2010 paragraph 5.108 states that *"It is essential to establish, in particular, whether the financial corporation engaged in the securitisation of assets actively manages its portfolio by issuing debt securities, rather than simply acting as a trust that passively manages assets or holds debt securities. When the financial corporation is the legal owner of a portfolio of assets, issues debt securities that present an interest in the portfolio, has a full set of accounts, it is acting as a financial intermediary classified in other financial intermediaries. Financial corporations engaged in the securitisation of assets are distinguished from entities that are created solely to hold specific portfolios of financial assets and liabilities. The latter entities are combined with their parent corporation, if resident in the same country as the parent. However, as non-resident entities they are treated as separate institutional units and are classified as captive financial institutions."* If the securitisation entity has no autonomy of decision concerning the management or disposal of the transferred assets or concerning its liabilities, it is not a separate institutional unit according to national accounts criteria (as stated in ESA 2010 paragraph 2.12).
46. Where the securitisation entity has been established to serve a government unit, a lack of autonomy of decision could be indicated, amongst other factors, by:

- actual management of the securitisation entity's debt by government;
 - absence of the right or capacity to actively manage its assets in response to market conditions, such as government having the right to approve any significant disposal.
47. In most cases, a securitisation entity will be formally set up by a private (financial) institution to purchase and securitise government assets. In these cases, if the securitisation entity does not have autonomy of decision (see above), it is classified within general government sector to the extent that government initiates the transaction is entitled to take make significant decisions during the life of the securitisation.
48. If the securitisation entity meets the conditions to be considered a separate unit, i.e., it places itself at risk from the securitisation and fully controls assets and liabilities during their life time, it is classified as a financial corporation (S.12). Notably, ESA 2010 paragraph 2.90: *Financial vehicle corporations (FVC) engaged in securitisation transactions are undertakings carrying out securitisation transactions. FVC that satisfy the criteria of an institutional unit are classified in S.125.* Conversely, it is not because a securitisation unit has been considered by supervisory authorities as an FVC, submitted to the reporting and regulatory obligations of this category of financial units, that it should be automatically excluded from the general government sector. The analysis for national accounts purpose must be totally independent from such considerations.

5.5.3. Recording rules

5.5.3.1. RECORDING AS A SALE OF AN ASSET

49. The transaction with the securitisation entity is recorded as a sale of a general government asset outside the general government sector if the three conditions set out in paragraph 9 above are met.
50. When the transaction is recorded as the sale of an asset, there is no direct impact on government debt. There would be an indirect (downward) effect if the proceeds from the securitisation were used directly to reduce government debt or as a substitute to required borrowing for financing an excess of expenditure.

Financial assets

51. The sale of a financial asset to the securitisation entity will not affect government net lending/borrowing (B.9). In some cases, the government unit, in return for a fixed fee, acts as an 'arms-length' agent for the collection of debt repayments and property income from the sold financial assets, which it passes to the purchaser. This would be recorded as government output.

Non-financial assets

52. The sale of a non-financial asset to the securitisation entity will improve the government net lending/borrowing (B.9). However, some non-financial assets may continue to be used by government. As an example, in the case of the sale of residential buildings, the securitisation entity will typically acquire such buildings for the purpose of their resale. However, during the time between their acquisition and their resale, the buildings frequently continue generating income in the form of rentals. Assuming that all the conditions relating to the transfer of ownership are fulfilled, the fact that the securitisation entity has the economic ownership of the securitised buildings implies that, in national accounts, the operating surplus that they generate is recorded with the securitisation entity (see chapter 6.2 Sale and leaseback).
53. The production process consisting of operating the buildings for residential purposes may be allocated directly to the securitisation entity. This treatment should be adopted when the entity takes on board all the daily management of the buildings and has full access to the rentals generated by them. If the former owner, i.e., the government unit, keeps the daily management of the securitised buildings, and retains as management fees a part of the rentals generated by the buildings, most of the income should still be allocated to the securitisation entity.

The price fixed in the securitisation arrangement

54. In national accounts, the disposal of assets should be recorded at the market price that prevails at the time the transaction takes place. It is generally the observed sale price, the price agreed in the contract. However, if there is evidence that the observed sale price is lower than the market value:

- it may indicate that the operation is not carried out on a purely commercial basis and that there is an implicit support of the securitisation entity. In such a case, it is necessary to record a capital transfer from government to make up the difference between the observed price and the market value as the sale is recorded at market price in national accounts (see ESA 2010 paragraph 5.21);
- it may be associated with the existence of DPP clauses (see above) and the transaction should not be recorded as a sale but as government borrowing.

55. If there is no obvious market price for the specific assets, then, to be recorded as a sale, there should be a process by independent bodies to determine an equivalent market price, on the basis of the usual valuation methods used in business areas.⁽²⁶⁰⁾ The absence of such a process could be interpreted as a lack of autonomy of the securitisation entity, leading to the securitisation entity being classified in the general government sector.

5.5.3.2. RECORDING AS GOVERNMENT BORROWING

56. If the securitisation operation does not fulfil the criteria necessary for it to be recorded as a sale of assets in national accounts, the securitisation proceeds collected by government should be recorded as the incurrence of a government liability, with an impact on government debt. If the securitisation entity is classified in the general government sector, the securities (AF.33) it issues are part of government debt. If the securitisation entity is not classified in the general government sector: either no sale is recognised, and the securities (AF.33) the securitisation entity issues are not directly part of government debt, and instead a loan is imputed from the securitisation entity to government, which is part of government debt, or a true sale is recognised, and there is no entry in government debt. This is particularly the case when the securitisation entity has been set up in another country where markets for such transactions are more developed and/or efficient.

57. The cash flows generated by the securitised items (such as the rental income generated by buildings), first received by government and then passed over to the securitisation entity, continue to be recorded in the government accounts, as if no securitisation operation had occurred: as revenue, or as the disposal of a nonfinancial or financial asset, as appropriate. Payments made by government to the securitisation entity, when government continues to manage the assets, are recorded as government servicing its loan liability; these are imputed flows of interest and loan repayments. Any fee retained by the securitisation entity to cover its operating costs is recorded as intermediate consumption of government. This holds even if the fee is paid up-front, reducing the funds provided to government unit, in which case an imputation is to be made.

5.5.3.3. RECORDING AT THE END OF THE ARRANGEMENT

58. If at the end of the operation the payments made by government to the securitisation entity, when government continues to manage the assets, exceed the government liability, no further redemption of government debt can be recorded, and payments to the securitisation entity are recorded as a current transfer expenditure of government.

59. If payments made to the securitisation entity terminate before extinction of the government liability, for example because of the depletion of the assets, the remaining liability is removed from the government balance sheet in national accounts by way of other changes in volume.

60. When the securitisation arrangement is treated as government borrowing and the securitisation entity subsequently sells the (recognised) underlying assets to a non-government unit with a full transfer of ownership rights, the sale is recorded as a disposal of assets by general government and the securitisation entity is simply deemed to act as an agent of government. The effect of such an arrangement is to postpone the disposal/sale of assets by the government from the time of securitisation to the time of actual sale by the securitisation entity. The correct time of recording is particularly important when non-financial assets are involved due to the impact on government net lending/borrowing (B.9).

⁽²⁶⁰⁾ 'Adjusted book value', 'capitalised adjusted earnings', 'discounted future earnings', 'cash flow method', 'gross revenue multiplier', 'capital asset pricing model', 'weighted average cost of capital', 'market comparisons techniques', 'option pricing approaches', etc.

5.5.3.4. SECURITISATION BY NON-GOVERNMENT UNITS OF RECEIPTS FROM GOVERNMENT

61. In some cases, a non-government unit will, for its own purposes, securitise regular receipts from government.
62. When this occurs, the contractual obligations of government must be examined to check whether the substance of the transaction is such that the government has incurred a new outright obligation to provide sufficient funds to finance the borrowing of the non-government unit.
63. If the securitisation by the non-government unit has no impact on government's contractual obligations to make future payments, there should be no impact on the government sector accounts as a result of the securitisation.
64. If there is in effect a new government liability, a capital transfer should be recorded from government to the non-government unit equivalent to the net present value of all the promised future payments; and a loan of the same size recorded from the non-government unit to government. The future government payments are recorded as interest and loan repayments.

5.5.4. Rationale of the treatment

5.5.4.1. RECOGNISING A TRANSFERABLE ASSET IN NATIONAL ACCOUNTS

65. Transfers, i.e., unrequited distributive transactions, are not generated by assets. For example, the capacity of government to raise taxes does not constitute an asset recognised in national accounts. Expected future receipts from international transfers, lottery tickets, licence fees or fines are not classified as assets. The future flow of these transfers does not meet the definition of assets in ESA 2010 paragraph 7.15. It is not possible to record a transaction in assets if the asset does not exist in the national accounts balance sheet to start with. So, as the assets are not recognised in national accounts, only a government borrowing can be recorded for securitisation of these items.
66. Future streams of income on assets — which will be recorded in P.1 and D.4 when they accrue — also do not constitute assets by themselves according to ESA 2010. Unless the ownership of the underlying assets is deemed to have been transferred, the securitisation of such flows can therefore not be recorded as a sale of assets in national accounts.
67. Similarly, a sale cannot concern a limited set of several future periods of use of an asset, for instance several future streams of property income to be earned on financial assets, or several future streams of rentals/rents to be derived from the use of non-financial assets, unless the corresponding assets are wholly sold themselves.

5.5.4.2. THE CASE OF FISCAL CLAIMS

68. Taxes are uniquely established by the taxation powers of governments and can only be raised by governments or international organisations. Specific rules for the recording of taxes are defined in ESA 2010 paragraphs 4.26–4.29, 4.82 and 20.174 and also in chapter 2.2 of this manual on the recording of taxes and social contributions. One must distinguish securitisation of future taxes from securitisation of tax receivables (fiscal claims).
69. Securitisation of taxes that will accrue in the future, on future income or on future events, cannot give rise to a disposal of an asset because no asset exists in national accounts. Therefore, they must be considered a borrowing. Securitised taxes that accrue in the future must be attributed to general government in the national accounts system, whatever the specific collection arrangements under a securitisation.
70. Fiscal claims, which reflect taxes accrued in the past but not yet settled because they are either not yet due or in arrears, are financial assets and are recorded as AF.8 in national accounts. However, they cannot be transferred to non-tax-raising units given that — by convention — in ESA 2010 only general government, the institutions of the European Union or the rest of the world can levy taxes (ESA 2010 paragraphs 4.14 and 4.77). In ESA 2010, social contributions may be considered the resource of any sector. Nonetheless, given the proximity between taxes and social contributions, securitisations of all fiscal claims follow the same rule (recording as borrowing), be they tax receivables or social

contributions receivables to be collected by government, private units or by other non-government units (at least for compulsory social contributions).

5.5.4.3. TRANSFER OF RISKS AND REWARDS

71. One condition for a securitisation to be recorded as a sale in national accounts is that the risks and rewards associated with the asset are transferred to the securitisation entity. According to ESA 2010 paragraph 7.10, *an economic asset is a store of value representing the benefits accruing to the economic owner by holding them or using them over a period of time*. Furthermore, ESA 2010 rules on financial leasing that corresponds to a situation in which 'all risks and rewards of ownership are, *de facto* though not *de jure*, transferred from lessor to lessee' (see ESA 2010, chapter 15 Contracts, leases and licences), indicate that economic ownership is determined by the allocation of risks and rewards of ownership.
72. The economic reality rather than legal formalities determines ownership in national accounts. Most guarantees, substitution clauses, last tranches or DPPs indicate that the risks and rewards associated with the asset have not been transferred. In those cases government borrowing is recorded. Furthermore, any restriction imposed by government on the securitisation entity's right to subsequently sell the assets on to a third party is regarded as strong indication that there is not a sale since it could give government exposure to potential rewards from the asset.

5.5.4.4. RISKS AND REWARDS ASSOCIATED WITH FINANCIAL ASSETS

73. Economic benefits that may be derived from financial assets consist of the property incomes that are earned through holding them and of the holding gains that accrue on them, which may be realised when assets are sold. Symmetrically, holding losses are also possible and are thus part of the risk associated with ownership.
74. Usually, the most important risk associated with financial assets in the context of securitisation is the credit risk. Credit risk refers to possible defaults on payments due, which may be distinguished between payment of interest and repayment of principal. The economic owner of a financial asset is the unit that, ultimately, bears the credit risk associated with these assets. The economic owner may subsequently acquire insurance or derivatives to offset that risk, but that does not change the ownership.

5.5.4.5. RISKS AND REWARDS ASSOCIATED WITH NON-FINANCIAL ASSETS

75. The rewards that are associated with non-financial assets consist of the operating surpluses that accrue from the operation of fixed assets, and net rents derived from non-produced assets. In addition, non-financial assets may generate holding gains and losses, which is an important feature when they are acquired for resale. The owner bears costs in order to avoid the non-performance of the assets in terms of generating income, by undertaking their maintenance, or buying insurance for compensation in case they accidentally degrade, deplete or destruct. Attributes of ownership include deciding:
- the level of the rentals/rents;
 - the time at which the assets are sold.

5.5.4.6. CLASSIFICATION OF THE SECURITISATION ENTITY

76. Concerning the sector classification of the securitisation entity when it is an SPE, ESA 2010 paragraph 2.90 (f) states that it should be classified within other financial intermediaries subsector (S.125). This is based on the assumption that such 'vehicles' are institutional units, and they conduct financial intermediation (or other auxiliary services).
77. To be a separate institutional unit, the criteria stated in ESA 2010 paragraph 2.12 must be met. In order to be classified to S.125, the SPE should have autonomy of decision in respect of the management of the debt securities that it issues: indicators of this are issuance rhythm, debt management, repayment strategy, etc. It should be clear that the SPE does not act on behalf of government. It should also have complete autonomy concerning the management and disposal of its assets. Otherwise, the SPE should not be recorded as a separate institutional unit.
78. Concerning the recognition of when an institutional unit is a financial intermediary, ESA 2010 paragraph 2.57 states that *a financial intermediary does not only act as an agent for these other institutional units but places itself at risk by acquiring financial assets and incurring liabilities on its own account*.

79. Concerning the classification of new financial assets resulting from a securitisation, ESA 2010 paragraph 5.104 states that securities issued in the context of securitisation are classified under debt securities (AF.3).

5.5.4.7. SECURITISATION BY NON-GOVERNMENT UNIT OF RECEIPTS FROM GOVERNMENT

80. In some cases, a non-government unit will, for its own purposes, securitise receipts from government. Though these unilateral actions might have at first sight no consequence for government sector accounts, the arrangement must be examined to correctly identify the contractual obligations of government. It is necessary to check whether a contract promising the future payments commits the government to pay a sufficient amount to service the debt of the non-government unit receiving these payments.

81. If government takes an obvious commitment to pay a sufficient amount to cover the debt servicing or makes other commitments to the non-government unit, the operation should be classified as government borrowing. Government borrowing is not recorded when government's obligations are conditional on the performance of the non-government unit in delivering government's policy objectives.

5.5.5. Accounting examples

The examples only show those transactions with an impact on the government accounts.

Example 1: Building sold with DPP

Government sells buildings to a private sector bank that intends to resell them in the following year as market conditions improve. The buildings are estimated to be worth 100.

Government:

- receives 90 immediately for the sale of the buildings
- also has a DPP agreement such that, if the bank receives more than 90 for the resale of the buildings, the receipts above 90 shall be given to government up to a maximum of 25

The bank, via an SPE it owns and sets up, issues bonds to the value of 90

In the second year the buildings are resold for 120:

- the government receives an additional payment of 25 in DPP
- the bank makes a profit of 5 after the SPE has repaid its borrowing

Analysis and national accounts treatment

The transaction is judged not to be a genuine sale because of the existence of the DPP.

- it has to be recorded as government borrowing in year 1 of 90
- the building is shown as a negative GFCF by government in year 2, when sold at a market price
- the bank's profit is recorded as bonus interest earned on the imputed loan which is shown as being redeemed when the arrangement is completed. For simplicity of recording this is shown as being retained in the SPE at the end of year 2.

Year 1			
General government		SPE	

Opening balance sheet

A		L	A		L
AN.11	100		AF.2	0	

Non-financial account

U/ΔA		R/ΔL	U/ΔA		R/ΔL
B.9	0		B.9	0	

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	90	F.4 90	F.2	0	F.3 90
		B.9F 0			B.9F 0

Closing balance sheet

A		L	A		L
AN.11	100	AF.4 90	AF.2	0	AF.3 90
AF.2	90		AF.4	90	

Year 2			
General government		SPE	

Opening balance sheet

A		L	A		L
AN.11	100	AF.4 90	AF.2	0	AF.3 90
AF.2	90		AF.4	90	

Current account

U		R	U		R
D.41	5		B.8	5	D.41 5
B.8	-5				

Capital account

ΔA		ΔL	ΔA		ΔL
P.51g	-120	B.8 -5			B.8 5
B.9	115		B.9	5	

Financial account			
ΔA		ΔL	
F.2	25		
		F.4	-90
		B.9F	115

ΔA		ΔL	
F.2	5	F.3	-90
		F.4	-90
		B.9F	5

From the sale to the market, government receives 25 and the SPE receives 95; the SPE then uses 90 of AF.2 to repay its bonds (AF.3).

Revaluation account			
ΔA		ΔL	
AN.11	+20		

Closing balance sheet			
A		L	
AN.11	0	F.4	0
AF.2	115		

A		L	
F.4	0	AF.3	0
F.2	5		

Example 2: Building sold without a DPP

Government sells buildings to a private sector bank that intends to resell them on the market in the following year. The buildings are estimated to be worth 100 and are sold for that price.

The bank transfers the buildings to an SPE that it sets up and owns:

- the SPE issues 5-year bonds for 100
- there is no DPP, nor are there any guarantees
- the SPE services the debt interest from rental income and sells the buildings for 110
- the bank extracts profit of 10 from the SPE

Analysis and national accounts treatment

This is recorded as a sale — negative GFCF — by government since government is no longer exposed to the risks and rewards of ownership.

Year 1			
General government		SPE	

Opening balance sheet			
A		L	
AN.1	100		

A		L	
AF.2	0		

Capital account			
ΔA		ΔL	
P.51g	-100		
B.9	100		

ΔA		ΔL	
P.51g	100		
B.9	-100		

Financial account			
ΔA		ΔL	
F.2	100		
		B.9F	100

ΔA		ΔL	
F.2	0		
		F.3	100
		B.9F	-100

Closing balance sheet			
A		L	
AF.2	100		

A		L	
AF.2	0		
AN.11	100	AF.3	100

Example 3: a company securitises subsidies from government

A government unit promises to pay future subsidies of up to 20 per year to a private company over 5 years so that it can provide public transport services.

With government approval the unit establishes an SPE to receive the future subsidies:

- the SPE issues bonds to the value of 60 which it passes to the company to finance the purchase of a fleet of buses
- the SPE uses the subsidy receipts firstly to finance its debt and passes the remainder to the company which it uses as a contribution to operating the buses.

Part of the government subsidy payments are unconditional in that a minimum of 15 must be paid each year to the SPE even in the event of the company failing to supply public transport services and/or becoming insolvent. The remaining payments, up to 5 per year, depend on the performance of the bus service. In the example, the full amount is paid each year.

Analysis and national accounts treatment

The transaction would be classified as a capital transfer to the bus company and borrowing of the same amount, in respect of the minimum guaranteed payments of 15, and annual subsidies for the remaining amounts paid. The 15 is split into 12 repayments of capital, and 3 of interest. For simplicity, the transactions between the SPE and bus company are not shown in the tables below.

Year 1			
General government		SPE	

Opening balance sheet			
A		L	
AF.2	100		

A		L	
AF.2	0		

Current account			
U		R	
D.41	3	D.3	-5
B.8	-8		

U		R	
D.3	-5	D.41	3
B.8	8		

Regular payment of 20: 5 is a subsidy; 12 is repayment of capital and 3 is interest in respect of the imputed loan.

Capital account

ΔA		ΔL	ΔA		ΔL
	B.8	-8		B.8	8
	D.99	-60		D.99	60
B.9	-68		B.9	68	

Financial account

ΔA			ΔL				
F.2	-20	F.4 new	60	F.4	48	F.3	48
		F.4 repay	-12	F.2	68		
		B.9F	-68		B.9F	68	

Closing balance sheet

A		L	
AF.2	80	AF.4	48

A		L	
AF.2	68	AF.3	48
AF.4	48		

Year 2**General government****SPE****Opening balance sheet**

A		L	
AF.2	80	AF.4	48

A		L	
AF.2	20		
AF.4	48		

Current account

U		R	U		R
D.41	3	D.3	-5	D.41	3
B.8	-8		B.8	8	

Capital account

ΔA		ΔL	ΔA		ΔL
	B.8	-8		B.8	8
B.9	-8		B.9	8	

Financial account							
ΔA		ΔL		ΔA		ΔL	
F.2	-20	F.4	-12	F.2	20		
				F.4	-12		
		B.9F	-8			B.9F	8
Closing balance sheet							
A		L		A		L	
AF.2	60	AF.4	48	AF.2	40		
				AF.4	36		

Example 4: Building sold, guarantees payments after the sale

In year 1 government sells an office building with a market value of 100 to an SPE for 100. The SPE issues bonds to the value of 100.

In year 2 the demand for office accommodation falls sharply and the rentals are insufficient to service the bonds. The market value of the building falls to 80. Government fears a collapse of the financial institutions that finance property deals and so pays the interest of 5 due on the SPE's bonds, even though it had no contractual obligation to do so.

The receipts of building rentals and interest on the bonds are ignored for the sake of simplicity.

Analysis and national accounts treatment

By activating an ex-post guarantee, it is demonstrated that the debt of the SPE should have been attributed to government, and that the building should not have been treated as sold by the government to the SPE.

Therefore, the entire outstanding debt of the SPE, and the associated building, are transferred to the government balance sheet in year 2, along with capital transfers of 5 and 20, to reflect respectively the interest paid by government and the difference in value between the SPE debt and the building.

Year 1							
General government				SPE			
Opening balance sheet							
A		L		A		L	
AN.11	100			AF.2	0		
Non-financial account							
U/ΔA		R/ΔL		U/ΔA		R/ΔL	
P.51g	-100			P.51g	100		
B.9	100			B.9	-100		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	100	B.9F	100	F.2	0	F.3	100
						B.9F	-100

Closing balance sheet

A		L	A				L
AN.11	0		AN.11	100	AF.3	100	
AF.2	100		AF.2	0			

Year 2

General government

SPE

Opening balance sheet

A		L	A		L
AN.11	0		AN.11	100	AF.3 100
AF.2	100		AF.2	0	

Capital account

ΔA			ΔL	ΔA			ΔL
P.51g	80			P.51g	-80	B.9	105
D.9	20			D.9	-20		
D.9	5	B.9	-105	D.9	-5		

D.9: 5 cash compensation; 20 imputed for the difference between the value of building and outstanding bond debt.

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	-5	F.4	100	F.2	5		
		B.9F	-105	F.4	100	B.9F	105

Revaluation account

ΔA		ΔL		ΔA		ΔL	
				AN.11		-20	

Closing balance sheet

A		L		A		L	
AN.11	80	AF.4	100	AN.11	0	AF.3	100
AF.2	95			AF.2	5		
				AF.4	100		

The SPE's cash would be used to pay the interest on the bonds.

5.6. Low interest rate loans and sale of government low interest loans to third parties

5.6.1. Background

1. As a part of public policy activities, governments provide loans at a lower interest rate than the market rate observed at the time of loan issuance (sometimes called 'concessional loans').

5.6.2. Recording of low interest rate loans at inception

2. A granting of low interest rate loans is a specific public policy activity carried out by government, which frequently results in transactions not undertaken at market conditions. Such loans directly provided by government to students at low interest rate, real estate loans provided to households in specific circumstance, loans to newly created companies, etc.
3. When government provides a loan to households or companies at a lower interest rate than the market rate in order to support their activities, the operation implies a benefit for the debtor. The benefit reflects the difference between the contractually agreed interest rate and the market interest rate that would have been paid by the debtor if the loan were granted at the market interest rate.
4. The ESA 2010 rules do not require to record in national accounts the implicit benefit element, i.e., the difference between the market interest rate and the interest rate contractually agreed, in order to reflect all transactions undertaken by government by reference to market conditions. As set out in ESA 2010, the amount of interest recorded on an accrual basis follows the contractual interest rate agreed at inception between the creditor and the debtor.
5. It must be stressed that the impact on net lending/borrowing (B.9) is already reflected implicitly in national accounts as a difference between the cost of government financing and the low interest revenue received from the loans granted by government in the context of its public policy.
6. In this context, the interest has to be recorded on the basis of the contractually agreed interest rate. Consequently, no implicit benefit for the debtor is recorded in national accounts.

5.6.3. Recording of sales of low interest loans

7. The issue refers to the cases when well-performing loans, provided by government under public policy activities, are sold to a third party at discount (i.e., below their nominal value). Such operation is related to liquidity management (refinancing purpose) and is not part of public policy as the original beneficiary is not at all involved. At the time of the sale of the loan, the discount reflects the difference between the current market interest rate (that the purchaser of the credit could have charged on its own lending operations) and the lower interest rate contractually agreed between the debtor and the original creditor at time the loans had been granted. From this point of view, as far as recording revaluation effect is concerned, sales of loans not granted by government at market conditions for public policy purpose are treated similarly to loans granted by financial intermediaries for commercial purpose at prevailing market rates and further resold on the basis of different market rates.
8. ESA 2010 paragraph 6.58 indicates that *...when an existing loan is sold to another institutional unit, the write-down of the loan, which is the difference between the redemption price and the transaction price, is recorded under the revaluation account of the seller and the purchaser at the time of transaction.*
9. In the case of sale of low interest rate loans to a third party below the nominal value, the discount as a difference between the nominal value and sales price, has to be recorded as revaluation. This concerns only the sales of loans that are not a subject to any rescheduling or other change in the contractual obligations of the debtor.

5.7. Keywords and accounting references

Capital account	ESA 2010, 8.46
Contingent assets	ESA 2010, 5.08-5.11
Entrepreneurial income	ESA 2010, 8.26-8.28
Equity	ESA 2010, 5.151 and following
Financial account	ESA 2010, 8.50
Financial transaction	ESA 2010, 5.16 and following
Head office	ESA 2010, 2.14 and 20.35-20.37
Market/non-market units	ESA 2010, 2.19-2.34
Non-financial non-produced assets	ESA 2010, 7.24
Non-financial produced assets	ESA 2010, 7.22
Other changes in volume of assets account	ESA 2010, 8.53
Privatisation	ESA 2010, 20.210-20.213
Rearranged transactions	ESA 2010, 1.72-1.78

6

Leases, concessions and PPPs

6.1. Overview

6.1.1. Background on general principles

1. Among government receipts, there are rents, rentals, licence fees, royalties, leases, franchises, tolls, administrative charges, concessions and public-private partnerships (PPPs) fees. They cover different types of transactions in national accounts, explained in various chapters in ESA 2010, principally in chapters 15 (Contracts, leases and licences) and 20 (The government accounts).
2. Chapter 6.1 of this Manual highlights the problem of distinguishing between output of government (revenue from sales of goods and services), taxes, rent, and sales of assets. The analysis is categorised as follows:
 - a) receipts from sale of goods and services produced by government (that could be supplied by other units in the economy);
 - b) receipts for the use of a produced asset owned by government;
 - c) receipts for the use of natural resources owned by government;
 - d) receipts in return for permission from government to undertake an activity.
3. In chapter 6.2, the recording of sale and leaseback of government's non-financial assets is explained. Chapter 6.3 covers contracts with non-government units related to fixed assets, including concessions, and chapter 6.4 details PPPs. Chapter 6.5 covers the trading of emission allowances.

Terminology

4. The development of various forms of long-term contracts between government units and corporations, notably under the heading of 'public-private partnerships' or 'concessions', requires a clarification of the terminology used in the context of national accounts. This terminology may be used differently here than it is elsewhere.
5. Concessions are commonly contracts for infrastructure equipment that can be subject to commercial exploitation. In this type of long-term contract, the corporation (or group of corporations) is responsible for the construction, operation and maintenance of the assets and is predominantly remunerated by the final users (households, corporations, etc.) of the assets via tolls or other fees.
6. PPPs are long-term contracts between government and corporations involving the construction, operation and maintenance of assets that deliver public services (such as: public hospitals, schools and universities, prisons, etc.) but in this case the partner is predominantly remunerated by government.

6.1.2. General treatment in national accounts

6.1.2.1. GOVERNMENT RECEIPTS FOR GOODS AND SERVICES (THAT COULD BE SUPPLIED BY OTHER UNITS)

7. The receipts could be less than, the same as, or more than the costs of production: it does not affect the classification.

Treatment: record as a sale — output (P.1), notably market output (P.11) if the prices charged are economically significant and as payments for non-market output (P.131) otherwise. Examples are receipts for provision of training, fees charged for advice to businesses, fees for research contracts. Another example is testing the competence of somebody to carry out an activity (e.g., drive a vehicle). Only when the charges for such regulatory activities are not out of proportion to the costs, is the revenue classified as P.131, otherwise tax revenue is recorded (see also sub-section 6.1.2.5 Government receipts in return for granting permission to undertake an activity).

6.1.2.2. GOVERNMENT RECEIPTS FOR THE USE OF A PRODUCED ASSET

8. The receipts could be less than, the same as, or more than the costs of production: it does not affect the classification.

9. Three sub-categories of receipts may be distinguished depending on the time period of use:

- i) receipts are made each time the asset is used, or there is a single receipt allowing use of the asset for a period of time less than one year (and this is not part of a contract requiring receipts for use over a longer period).

Treatment: record as a sale — output (P.1): market output (P.11) if the prices charged are economically significant and as payments for non-market output (P.131) otherwise.

Examples: rental of a government-owned building; road and bridge tolls; vignette for use of specific government-owned roads for a certain length of time; charges for use of a sports centre or swimming pool; entry fee to a public building.

- ii) the receipt is part of a contract that allows the use of the asset for a period of more than one year, but for less than its economic life, e.g., in concession or PPPs-type contracts. The number of individual payments required under the contract is not important. It is the time period of the contract that matters.

Treatment: apply the operating lease/financial lease test (ESA 2010 paragraphs 15.11 and 15.16–15.18) and in the case of PPPs, the assessment of the distribution of risks (see chapter 6.4 Public-Private Partnerships). Although it is unlikely that government would see itself as being in the business of providing financial leasing, it could be appropriate to record the sale of the existing asset by government when the purchasing unit assumes most of the risks and rewards of ownership for the period of the contract and if the contract has the clear features of a financial lease.

Operating leases and PPPs where government is deemed as being the economic owner of the assets: record as rental (P.1), in the case of one initial receipt it would be necessary to accrue it over the period of the contract and record the prepayment as trade credits and advances (F.81).

Examples are a single up-front receipt from a company to occupy a government-owned building for five years: record as rentals (P.1), accrue it over the five years, and record a financial liability in other accounts payable (F.81).

- iii) the receipt is for a period of more than the economic life of the asset.

Treatment: economic sale of the produced asset (P.51).

6.1.2.3. GOVERNMENT RECEIPTS FOR THE USE OF NATURAL RESOURCES

10. Government natural resources (AN.21) include land, sub-soil assets, and other tangible natural assets over which ownership rights of government have been enforced, either through legal ownership or international agreement or convention. Such assets may or may not be owned and traded by units in other sectors of the economy. This category excludes the following:

- government receipts for the use of natural resources if such revenue arises from special legislation giving government the right to demand such payments when it is not the legal or economic owner of the assets;
 - government receipts when it is not the economic owner, or when economic ownership is not established and it is not credible to regard government as the economic owner of the assets;
 - 'environmental assets' which are not regarded as economic assets (see ESA 2010 chapter 7, Balance sheets, Annex 7.1);
 - indirect revenue from natural resources, for example dividends from public corporations exploiting natural resources and corporate tax from corporations exploiting natural resources (ESA 2010 paragraph 15.30).
11. Revenue for the use of natural resources includes the following two types of receipts:
- those made each time the asset is used, or there is a single receipt allowing use of the asset for a finite period of time;
 - the natural resource is made available by government through a lease, licence or permit, for a limited period of time.
12. Treatment: record as rent (D.45). In the case of one initial receipt, it is necessary to accrue it over the period of the contract and to record the prepayment as a financial advance liability (F.89) of government. An example is when government receives royalties paid for the extraction of oil.
13. If, for example, there is a single receipt from a company to exploit offshore oil reserves for five years: record as rent (D.45) accrued over the five years and record a prepayment in F.89. Note that a non-produced asset (AN.22: 'contracts, leases and licences') will appear on the balance sheet of the lessee company if subsequently the market rent rises above the rent agreed in the contract, and the company has the right to transfer the rights to a third party (a transferable lease).
14. If the government receipt for the use of its natural resources covers a period equal to or longer than the rest of its economic life, then it is recorded as the economic sale of a non-produced asset (natural resources: NP.1). For example, government economically acts in the same manner as if selling land when it grants an infinite lease for its use. This situation may be rare for finite leases, since natural resources do not 'depreciate' in the same manner as produced assets and hence often have infinite economic life lengths, but it is possible in cases such as the depletion of oil reserves and technological obsolescence.

6.1.2.4. NOTE ON NON-PRODUCED ASSETS (AN.22)

15. Acquisitions or disposals of non-produced assets (NP.1–NP.3) are to be recorded only in certain defined circumstances. In general, payments for using assets made under leases, franchises, or concessions are recorded as sales of services ('rental' P.1) or rent (D.45) or as a sale of the asset being exploited (P.51g in a financial lease, NP.1 in a resource lease) if the contract covers at least the economic life of the asset.
16. It is important to acknowledge that the recording of service concession contracts (as defined in ESA 2010 paragraph 15.42) should follow the rules set in this Manual for concessions. Such contracts cannot be assimilated with a sale of the underlying asset (fixed asset, land, etc.) but with a sale of a permit to conduct an activity. Any amounts due are recorded as a financial advance (with a receivable for the difference with the cash received at inception). When the concession is transferrable, an additional non-produced asset is created at a zero value at inception.
17. ESA 2010 paragraph 6.06 (g) describes the case where a non-produced asset should be recorded for contracts, leases, licenses or permits: when a unit (the second party) has a right to buy services or rent at a particular price from a first party, and that price is lower than the current market price, and it can transfer that right to another unit (the third party). Such assets arise, for example, when the price to be paid for the consumption of services is agreed, or paid, in advance under a contract for a number of years, and subsequently the actual market price becomes higher than the contract price. A transaction in non-produced asset (NP.2) occurs at the time the second party resells or retransfers the lease or permit to a third party for an amount equal to 'the benefits to the holder in excess of the value accruing to the issuer' (ESA 2010 paragraphs 15.27 and 15.34).

18. Example: a unit (Unit B) buys five years' worth of services from another unit (Unit A) at the market value at the time the contract is agreed. Unit B pays in advance. The accounts of unit B record regular payments for the services and a financial asset in F.81, in respect of the pre-payment, which is gradually reduced over the contract period. Suppose that after two years unit B transfers the rights to the services to a third unit (Unit C) for an amount greater than it would have had to pay itself (the value of its remaining prepayment financial asset). The accounts of Unit B show the receipt split between an amount to purchase the AF.81 pre-payment financial asset and the sale of a non-produced asset (AN.22), which arose in the accounts of Unit B under K.7 holding gains and losses. If a transferable value was present at the inception of the contract, then the AN.22 asset initially appears via economic appearance of assets (K.1) in the other changes in volume of assets accounts and is recorded in the balance sheet of Unit B as an AN.22 asset (contracts, leases and licences). The sale of the AN.22 non-produced non-financial asset is recorded under NP.2. The purchaser (Unit C) now has both the financial asset and the non-produced asset on its balance sheet, and will record payments for services, at the original contract price (corresponding to the financial asset), while, assuming the market value remains constant, the amortisation of the non-produced asset is recorded over time in the accounts of Unit C under the item economic disappearance of non-produced assets (K.2), see ESA 2010 paragraph 6.07.
19. It is thus possible to record the sale of non-produced assets of an NP.2 type in government accounts in cases when government, as second party of a lease (i.e., as tenant), sells or transfers the lease to a third party.

6.1.2.5. GOVERNMENT RECEIPTS IN RETURN FOR GRANTING PERMISSION TO UNDERTAKE AN ACTIVITY

20. This category excludes receipts for the use of an asset owned by government — these have already been described above. The receipts under consideration might involve those associated with an asset owned by the payer, an asset owned by neither the payer nor government, or no assets at all. The key point is that legally the activity requires permission from government, and so it is not a payment that could be demanded by other units in the economy. In addition to the administrative procedures required to give the permission and enforce the rules, the government may (or may not) provide a service to the payer, or to society (assessment of conformity, quality checks, etc.). This is recorded as a sale of a service (case a) or a tax (case b), depending on the circumstances as described below and in ESA 2010 paragraphs 4.23 (e) and 4.79 (d), or in specified circumstances as the sale of a non-financial non-produced asset (case c).

Treatment:

a) Sale of service

21. Record as sale of a service (P.1) if government undertakes regulatory work specifically related to the payer (typically to assess whether the payer should be granted the permission requested) and the receipt is deemed to only cover an amount up to the cost of the work undertaken.
22. The calculation of costs, to assess whether they are in proportion, should include all costs that a private company would need to cover when setting a price and so includes compensation of employees, intermediate consumption, capital consumption and other taxes on production (see ESA 2010 paragraph 3.33) directly associated with the service performed. A government unit might provide a range of similar services but price them differently to reflect the different costs required, for example, in order to influence demand in a way that allows the service to be delivered more efficiently (the price might be higher at certain times of the day when demand is normally highest, or the price of a service delivered over the internet might be lower than a more personal delivery of the service). If there is, by design, a surplus compared to the cost of the service, then, the whole payment should be considered as a tax. Although ESA 2010 allows for partitioning of some transactions (ESA 2010 paragraphs 1.76–1.77), this does not apply here as taxes are recorded gross of any service element. The term, used in ESA 2010 paragraph 4.79, '...out of all proportion', is not specified but in this instance covers situations whereby the unit deliberately charges prices to generate a surplus over costs to provide funds for government to be used for other purposes. The receipt is for a service, and not for a permission, so it should be recorded at the time when the work undertaken irrespective of the length of time the permission is granted for. ESA 2010 paragraph 4.79 (d) describes this in more detail.

b) Tax

23. Record as a tax if the conditions for a service above do not apply. This is when the fees charged to grant permission exceed the cost of any service received in return and associated with the granting of the permission.
24. The tax is recorded as D.29 if paid by corporations and D.59 if paid by households. A capital tax D.91 would be recorded if it were an infrequent levy on a permission to own an asset, or a levy on the increase in value of an asset as a result of government permission — perhaps to construct a building on a particular parcel of land (see ESA 2010 paragraph 4.149 (b) on betterment levies).
25. Examples are: annual permission to use a motor vehicle irrespective of where and when it is used; a licence to fish or hunt that is required wherever the hunting and fishing takes place; a charge for the use of buildings or other assets when government does not own them; charges for permission to own particular types of assets; fees levied on industries to fund consumer protection or research where the work is undertaken to benefit consumers and/or the industry in general rather than funding services delivered directly to the individual business paying the levy (ESA 2010 paragraph 15.32).

c) Sale of non-produced non-financial asset

26. When a government receipt arises from granting permission to undertake an activity (unconnected to an asset owned by government) and permission is given exclusively to one unit, or to a restricted number of units, a monopoly or near-monopoly can be created for the holders of the permission. Other units cannot obtain government permission to undertake the activity, and government ensures that the restriction is enforced. This exclusion of other units may give rise to a non-financial non-produced asset on the balance sheets of the units that have the permission. ESA 2010 paragraph 15.37 states four conditions to recognise such an asset: no use of a government asset; no qualifying criterion for the permission; limited number of permits leading to monopoly (oligopoly) profits; and the possibility to sell the permit to a third party.
27. When no government asset is used and if the other three conditions mentioned above are not met, the receipts are recorded as taxes (ESA 2010 paragraph 15.32).
28. The appearance of an AN.223 asset in the purchaser's balance sheet needs to be accounted for through other flows (K.1). Before the sale of the asset to a third party takes place, the amount equal to the benefit to the holder in excess of the value accruing to the issuer should be recorded under K.7 (see ESA 2010 paragraphs 6.06 (g) and 7.57). If the permission granted is time limited, the balance sheet of the asset holder would show a decrease in the value of the non-produced asset using other flows (K.2) (amortisation of the asset for the amount that appeared through K1), see ESA 2010 paragraph 6.07 (b).
29. One example of receipts involving granting permission to undertake an activity unconnected to a government-owned asset is constituted by (carbon) emission permits. Such receipts are recorded as prepayments of taxes while at the same time a non-produced asset is recognised (ESA 2010 paragraph 15.40) for an amount equal to the benefit to the holder in excess of the value accruing to the issuer (that is, in this case: the market value of the permit less the payment originally made to government to acquire that permit). See Chapter 6.5 Emission trading allowances.

6.1.2.6. TIME OF RECORDING: SPECIFIC CASE OF PERMITS SOLD IN ADVANCE OF AVAILABILITY

30. Sometimes, a time-lag exists between the time permit/licence is sold off, issued, transferred or otherwise officially allocated, and the time when the permitted/licenced activity may take place, i.e., licensed asset is actually available. This has been observed for mobile phone licences, which are sometimes allocated, and thus the related asset is potentially transferrable, significantly ahead of when the frequencies actually become available for use. During that time, the frequencies may be used by another permit/licence holder, or by the same one but under a separate licence.
31. This selling of a permit/licence ahead of the use date can occur for any type of licences or permits, whether it be for using a fixed asset, for using a non-produced asset, for obtaining the right to engage in an activity (including pollution), or for obtaining the right to undertake a transaction at a pre-determined price.
32. According to the accrual principle, the recording of the associated revenue (rent, production or tax, according to the classification of the underlying asset the permit allows use of — rent in case of mobile phone licences) or as a disposal of asset (of the underlying asset, NP.1 or P.51g) can be recorded only

at the point in time when the asset is available for use (for example when the frequencies become available for commercial use in the case of mobile phone licences) for a production activity.

33. Receipts collected by government before the asset is available for use (at time of auction, or of allocation of the licence) are financial advances: a prepayment to be recorded as other accounts payable (AF.8).
34. When a permit or licence is transferrable, the purchaser records in its balance sheet, in addition to the financial advance, a non-produced asset of the 'contract, leases and licences' type (AN.22), for a value initially of zero and more generally for an amount equal to *the benefits to the holder in excess of the value accruing to the issuer* according to ESA paragraphs 15.27 and 15.34 (see also ESA paragraph 7.57: *the value of the asset is equal to the net present value of the excess of the prevailing price over that fixed in the agreement*). When the permit/licence holder resells or retransfers the permit or licence, it records a disposal of its receivable asset (F.8) for the amount accrued in its balance sheet (AF.8) together with a transaction in a non-financial asset (NP.2) for the difference with the fair value of the consideration received in exchange (purchase price).
35. If the granting of the permit or licence involves the *de facto* economic disposal of the underlying asset, the permit is transferrable before the effective availability of the asset for use, the purchaser records in its balance sheet, in addition to the financial advance, a financial derivative (forward), if it meets the definition of a derivative, pending the effective availability of the asset. This derivative captures the changes in market price that may occur between the sale of the permit and the effective availability of the underlying asset. If the permit buyer resells the permit prior to availability, a transaction in derivatives takes place for the difference between the pre-payment component (F.8) and the value agreed in the resale. When the underlying asset becomes available, the permit holder records an acquisition of the underlying asset for its then market value (and government a disposal of asset for this value) matched by a liquidation of the receivable (payable of government) and a transaction in derivatives for the difference.
36. When the permit or licence makes the underlying asset available only progressively (for instance the licence might initially allow coverage of a small geographic area but later be extended to a larger area), the proceeds to record (e.g., rent) should be apportioned accordingly⁽²⁶¹⁾, using relevant indicators. For the mobile phone case, the population covered or the expected/observed turnover might be a suitable indicator.

6.1.3. Rationale of the general treatment

6.1.3.1. GOVERNMENT RECEIPTS FROM SALE OF GOODS AND SERVICES (THAT COULD BE SUPPLIED BY OTHER UNITS)

37. Once it has been determined that the treatment is to record government output (P.1), the difficulty is to distinguish between market output (P.11) and payments for non-market output (P.131). The distinction refers to the notion of economically significant price (see ESA 2010 paragraphs 20.19–20.34 and Part 1 Delimitation of the general government sector of this Manual).

6.1.3.2. GOVERNMENT RECEIPTS FOR THE USE OF A PRODUCED ASSET

38. The main distinction is to be made between operating lease (output, P.1) and financial lease (sale of an asset, P.51). According to ESA 2010 chapter 15 (Contracts, leases and licences):
 - a) An operating lease of an asset or a durable good:
 - covers a certain period of time which may be long or short and not necessarily settled in advance,
 - implies no transfer of economic ownership, the legal owners retain the risks and rewards, one indicator being that they provide repairs and maintenance.

⁽²⁶¹⁾ In consultation with Eurostat.

b) A financial lease:

- covers a predetermined and protracted period of time, usually all, or most of, the economic lifetime of the asset⁽²⁶²⁾,
- risks and rewards from using the asset are transferred from lessor to lessee, one indicator being that the lessee provides repair and maintenance.

39. In a financial lease, economic ownership of the good has been transferred. The lessor's role is purely financial. National accounts recognise the economic reality behind financial leasing as the equivalent to the lessor providing the lessee with a loan enabling it to purchase an asset, of which the lessee becomes the *de facto* owner.

40. In the specific case of concessions under public law for financing and exploiting public infrastructure and PPPs, see further in chapters 6.3 and 6.4, respectively.

6.1.3.3. GOVERNMENT RECEIPTS FOR THE USE OF A NON-PRODUCED ASSET

41. A distinction is made between the usual case of using (or exploiting) a non-produced asset (natural resources like land, sub-soil assets or other natural resources — ESA 2010 paragraphs 4.72 to 4.76) for a limited time (D.45 rent) and the availability to use until depletion of the economic value of the asset (sale of the asset).

6.1.3.4. GOVERNMENT RECEIPTS FOR PERMISSION GRANTED TO UNDERTAKE AN ACTIVITY

42. A distinction is made between the recording of a tax and of sale of services (output, P.1).

Distinction between taxes and sales of services

43. ESA 2010 paragraph 4.79 (d) mentions the criteria to distinguish taxes and sales of services: *The distinction between taxes and purchases of services from government is defined according to the same criteria as those used in the case of payments made by enterprises namely, if the issue of licenses involves little or no work on the part of government, the licences being granted automatically on payment of the amounts due, it is likely that they are simply a device to raise revenue, even though the government may provide some kind of certificate, or authorisation, in return; in such cases their payment is treated as taxes. If, however, the government uses the issue of licences to organise some proper regulatory function (such as checking the competence, or qualifications, of the person concerned), the payments made are treated as purchases of services from government rather than payments of taxes, unless the payments are clearly out of all proportion to the cost of providing the services.*

44. Government acts in an economy in two relevant ways:

Civil commercial law

- Under civil commercial law government undertakes economic transactions that can also be undertaken by other units. For example, it employs staff, consumes goods and services, rents land, owns fixed capital assets, and sells the output of services using assets, and so on. For government transactions under civil law, ESA 2010 chapter 3 is applied to classify the productive activity of government; chapter 4 is relevant for classifying the compensation of employees and property income.
- ESA 2010 paragraph 3.39 explains that it is possible for government revenue from selling goods and services to be classified as either market output or as payments for non-market output. Under ESA 2010 paragraph 3.26, a non-market institutional unit can have market output, but a major part of the output is provided for free or at not economically significant prices. ESA 2010 paragraph 4.73 explains that charges for the use of produced fixed assets situated on land are treated as sales of services, not rent, and also what to do when the charges cover both land and buildings and cannot be distinguished. ESA 2010 chapters 6 and 15 describe when to record transactions in contracts, leases and licences.

⁽²⁶²⁾ However, ESA 2010 paragraph 15.18 stresses that the length of the lease should not be the predominant criterion for the classification of the contract.

Public law

- Under public law, government undertakes economic transactions that are unique to it. For example, in the context of government receipts, government can raise taxes, enforce social security schemes, grant permissions/licences, and impose fines.
- The paragraphs in ESA 2010, chapter 4 Distributive transactions, in part on taxes and social security contributions are relevant here. ESA 2010 paragraphs 4.23 (e) and 4.79 (d) explain the differences between sales of services and taxes.
- ESA 2010 paragraph 4.79 (d) concerns payments by households for the use of assets (vehicles, boats, and aircraft) owned by the payer or hired to the payer. It does not apply to charges for the use of assets owned by government: this is either output (for sale of a service) or rent, not tax.

Box 1 — Allocation of mobile phone licences

1. In most EU Member States, mobile phone licences (in most cases UMTS — Universal Mobile Telecommunications System, '3G', then more recently '4G') have been allocated to operators from 1999 onwards, through diverse methods according to country, including for free.
2. Initially, according to the ESA 1995 interpretation, payments to government had to be recorded as rent (D.45) if the contract applied to a period by convention of five years or less, or if the contract did not name the total price of the disposal, depending, on the economic performance of the corporation, at least for a large part of total receipts over the lifetime of the contract. The electromagnetic spectrum (the radio waves) was deemed to satisfy the definition of an asset in national accounts.
3. Under ESA 2010, the radio spectrum is explicitly identified as a natural resource (AN.2151). There is no specific mention for UMTS or mobile phone licences, but chapter 15 (ESA 2010 paragraphs 15.23 to 15.30) covers leases on natural resources, including reference to leases of radio spectrum. It is specified that if government issues a permit which gives the control on the natural resource asset to its holder during an extended period, bearing the associated risks and rewards, a new asset may be recorded in the accounts of the licence/permit holder (AN.222 'permits to use natural resources') provided that 'the transfer of risks and rewards results in a separate and transferable permit with a realisable value' (ESA 2010 paragraph 15.28)
4. Thus, to recognise a non-produced asset, the permit/licence holder must be able, over the lifetime of the licence, to realise value from the permit if it wishes to exit from the activity. To achieve this, the licence must be transferable to a third party. Generally, these transactions have to follow a specific procedure. Similarly to other cases of licences or concessions/PPPs, this may require a government authorisation for the licence's resale or transfer, notably in order to assess the technical capacity of the acquirer to undertake the related activity, together with its financial strength.
5. The contract may also foresee that the transaction must only take place through government and not directly between the agents involved in the transaction. Under the above conditions, the licence could be considered transferable, and an AN.22 asset is, thus, recognised in the accounts of the licence buyer/holder.
6. On the contrary, if government has the right to oppose the transfer for any reason, or if the contract requires the permit holder to keep the licence until its extinction, no AN.22 asset is recognised in the accounts of the licence buyer/holder.
7. Government receipts are in any case to be recorded as rents (see ESA 2010 Table 15.3 — The recording of three different types of permits for the use of natural resources).

Table 15.3 — The recording of three different types of permits for the use of natural resources

Type of use	Method of recording
Permission for temporary use, possibly for a long time	Resource lease: rent (property income)
Control by user during an extended period, risks and rewards borne by the user, transferability of permit at a realisable value	Rent and creation of new asset for the right to use the natural resource
Use to extinction; permanent use (all risks and rewards borne by the user)	Sale of natural resource

8. A recording of NP.2 in the government accounts on licence transactions can nonetheless arise, for instances in the rare case where a unit classified inside government resells or retransfers, for a gain or a loss, a permit previously acquired at auction, or purchases such a licence on the secondary market (for a value different than the receivable accrued in the books of the seller).

6.1.4. Accounting example

A mobile phone license is sold during year 1 to a 1st purchaser (Telecom A) for 100. It allows access to the radio spectrum for 10 years, but only starting from the beginning of year 2 onwards. Owing to market changes, the market price of this access gains 20 towards the end of year 2, which leads to an entry in K.7. In year 3, the licence holder sells the licence to a 2nd purchaser (Telecom B) at the end of the 1st quarter. The selling price is 107 (= 100–12.5+20–0.5=90–2.5+20–0.5). The non-produced asset is amortising at approximately 2 per year (0.5 per quarter), which may be recorded in K.2 or alternatively in K.7. In this example, the licence value of 100 is spread linearly (instead of considering the present value of the transactions) for simplification purposes.

Year 1

Opening balance sheet

A		L
Government		
AF.2	0	
		B.90 0

A		L
Telecom A		
AF.2	100	
		B.90 100

A		L
Telecom B		
AF.2	200	
		B.90 200

Non-financial accounts

U/ΔA		R/ΔL
Government		
B.9	0	

U/ΔA		R/ΔL
Telecom A		
B.9	0	

U/ΔA		R/ΔL
Telecom B		
B.9	0	

Financial accounts

ΔA		ΔL
Government		
F.2	100	F.8 100
		B.9F 0

ΔA		ΔL
Telecom A		
F.2	-100	
F.8	100	
		B.9F 0

ΔA		ΔL
Telecom B		
		B.9F 0

Closing balance sheet

A		L
Government		
AF.2	100	AF.8 100
		B.90 0

A		L
Telecom A		
AF.2	0	
AF.8	100	
		B.90 100

A		L
Telecom B		
AF.2	200	
		B.90 200

Year 2

Non-financial accounts

U/ΔA		R/ΔL
Government		
	D.45	10
B.9	10	

U/ΔA		R/ΔL
Telecom A		
	D.45	10
B.9	-10	

U/ΔA		R/ΔL
Telecom B		
B.9	0	

Financial accounts

ΔA		ΔL
Government		
	F.8	-10
	B.9F	10

ΔA		ΔL
Telecom A		
	F.8	-10
	B.9F	-10

ΔA		ΔL
Telecom B		
	B.9F	0

Other economic flows

ΔA		ΔL
Government		

ΔA		ΔL
Telecom A		
	K.7	20
	B.103	20

ΔA		ΔL
Telecom B		

Closing balance sheet

A		L	
Government			
AF.2	100	AF.8	90
		B.90	10

A		L
Telecom A		
AF.2	0	
AF.8	90	
AN.222	20	
	B.90	110

A		L
Telecom B		
AF.2	200	
		B.90

Year 3

Non-financial accounts

U/ΔA		R/ΔL
Government		
	D.45	10
B.9	10	(B.101 10)

U/ΔA		R/ΔL
Telecom A		
	D.45	2.5
	NP	-19.5
B.9	17	(B.101 -2.5)

U/ΔA		R/ΔL
Telecom B		
	D.45	7.5
	NP	19.5
B.9	-27	(B.101 -7.5)

Financial accounts

ΔA		ΔL	ΔA		ΔL	ΔA		ΔL
Government			Telecom A			Telecom B		
			F.2	107		F.2	-107	
	F.8	-10	F.8	-90		F.8	80	
	B.9F	10			B.9F			B.9F -27

Other economic flows

ΔA		ΔL	ΔA		ΔL	ΔA		ΔL
Government			Telecom A			Telecom B		
			K.2/K.7	-0.5		K.2/K.7	-1.5	
					B.102/103			B.102/103 -1.5

Closing balance sheet

A				L				A				L			
Government				Telecom A				Telecom B				L			
AF.2	100	AF.8	80	AF.2	107			AF.2	93						
								AF.8	80						
								AN.222	18						
		B.90	20			B.90	107					B.90		191	

6.2. Sale and leaseback

6.2.1. Background

1. A sale and leaseback transaction involves the sale of an asset and the leasing back of the same asset. The lease payment and the sale price are usually interdependent because they are negotiated as a package. The asset subject to the sale and leaseback transaction is usually a building but could be another non-financial asset. Government (at any level: local, state or central) may, for various reasons, be involved in such arrangements.
2. The accounting treatment of a sale and leaseback transaction generally depends upon the type of lease involved (financial or operating). However, from a government accounts point of view, the treatment of sale and leaseback transactions could raise two additional, linked questions:
 - a) the sector classification of the entity transacting with government; and
 - b) what the intention behind the arrangement is: to privatise the management of the asset(s) or to achieve a reorganisation within the public sector?
3. Depending on the answers, the economic substance of the 'sale' may be questioned and lead to different recording options (as sale of assets, government borrowing or even as other flows).
4. To thoroughly analyse the entire arrangement, in order to properly reflect its substance in national accounts, one has to examine separately each of the two legs of the contract: the sale 'leg' and the leaseback (or lease) 'leg'. This chapter discusses the leaseback 'leg' of the sale and leaseback transaction.
5. Concerning the sector classification of the purchasing unit (the buyer-lessor), the principles to be applied are similar to those for special purpose entities (see ESA 2010 paragraph 20.47) set up to acquire securitised assets.

6.2.2. Treatment in national accounts

6.2.2.1. DIFFERENTIATING BETWEEN FINANCIAL AND OPERATING LEASES IN THE LEASEBACK LEG

6. The classification of leases, in line with ESA 2010 paragraphs 15.04–15.22, is based on the extent to which risks and rewards related to ownership of a leased asset lie with the lessor or the lessee. Risks include mainly the possibilities of losses from idle capacity or technological obsolescence and of variations in return because of changing economic conditions. Rewards may be represented by the expectation of profitable operations over the asset's economic life and of gain from appreciation in value or realisation of a residual value.
7. A lease is classified as a financial lease if it transfers the risks and rewards related to ownership from lessor to lessee. Otherwise, a lease is classified as an operating lease.
8. In line with ESA 2010 paragraphs 15.08, 15.13 and 20.164, whether a lease is financial or operating depends on the economic substance of the transaction rather than the legal form of the contract. Examples of situations that, individually or in combination, would normally lead to a lease being classified as a financial lease are:
 - a) the lease transfers legal ownership of the asset to the lessee by the end of the lease term;
 - b) the lessee has the option to purchase the asset at a price that is sufficiently lower than or even close to (e.g., taking into account that removal costs will be avoided) the market value of the asset at the date the option becomes exercisable for the lessee, so that it is reasonably certain, at the inception of the lease, that the option will be exercised;
 - c) the lease term is for the major part of the economic life of the asset, even if legal ownership is not transferred⁽²⁶³⁾;

⁽²⁶³⁾ Although ESA 2010, compared to ESA 95, has somehow relativized the importance of the length of the lease in order to determine whether it is a financial or operational lease (and therefore financial leases are possible also for short-term leases), it states that, in practice, it is difficult

- d) at the inception of the lease the present value of the minimum lease payments is very close to the market value of the leased asset;
 - e) the leased assets are of such a specialised nature that only the lessee can use them without major modifications;
 - f) when the leased asset is of such a nature that it would normally not be used by the lessor in its productive activity;
 - g) if the lessee can cancel the lease, the lessor's losses associated with the cancellation are borne by the lessee;
 - h) gains or losses from the fluctuation in the market value of the leased asset's residual value accrue to the lessee (for example, in the form of a rental rebate equalling most of the sales proceeds at the end of the lease);
 - i) the lessee has the ability to continue the lease for an additional period at a rental that is substantially lower than market rate.
9. The examples and indicators in the paragraph above are not always conclusive. If it is clear from other features that the lease does not transfer the risks and rewards related to ownership from lessor to lessee, the lease is classified as an operating lease. For example, this may be the case if legal ownership of the asset is transferred at the end of the lease for an amount equal to its market value at that time. It may also be the case if there are contingent rentals, as a result of which the risks and rewards are not transferred to the lessee.
10. Lease classification decisions are made at the inception of the lease. If at any time, the lessee and the lessor agree to change the provisions of the lease, other than by renewing it, in a manner that would have resulted in a different classification, had the changed terms been in effect at the inception of the lease, the revised lease is regarded as the cancellation of the original and the creation of a new lease going forwards. However, changes in estimates of the economic life length or of the residual value of the leased property, or changes in circumstances (for example, default by the lessee), do not give rise to a new lease classification.

6.2.2.2. GENERAL ACCOUNTING TREATMENT OF SALE AND LEASEBACK TRANSACTIONS

Leaseback is a financial lease

- 11. If the leaseback is a financial lease, the economic substance of the transaction is that no disposal of the asset has taken place and the transaction is only a means whereby the buyer-lessor provides financing to the seller-lessee, with the asset as security.
- 12. In this case the asset remains on the seller-lessee's balance sheet and the amount received by it should be recorded as a loan liability (F.4L). The lease payments made by the seller-lessee throughout the lease term are apportioned into loan repayments, interest and service payments, as appropriate.

Leaseback is an operating lease

- 13. If the leaseback is an operating lease, the sale and leaseback transaction should be recorded as a sale of asset(s) followed by an operating lease, in line with ESA 2010 paragraphs 15.08–15.12 and table 15.2.

6.2.2.3. NATURE OF THE UNIT (BUYER-LESSOR)

- 14. As regards the nature of the purchasing unit (buyer-lessor), if it is considered to be part of the general government sector, there will be no impact on the net lending/net borrowing (B.9) of general government. Only if the unit is classified outside the government sector could there be the possibility of recording a sale of assets impacting government B.9.
- 15. In general, three cases may be distinguished, depending on the nature of the unit involved in a sale and leaseback arrangement with government:

to deviate from the recording in the business accounts, where financial leases are limited to leases covering the major part of the economic life time of the asset (see ESA 2010 paragraph 15.18).

- a) the unit is created on purpose by government,
- b) the unit is an existing public corporation,
- c) the unit is a private operator.

6.2.2.3.1. The unit is created on purpose by government

16. The main issue in this case is the sector classification of the unit. If the unit created on purpose by government is classified in the government sector, the 'sale' will not impact government net lending/net borrowing, the asset transfer should be recorded in the other changes in the volume of assets account.
17. In general, if its only activity is to provide services to government, the unit is considered to be engaged in an ancillary activity (see ESA 2010 paragraphs 2.26 and 20.24) or to be an artificial subsidiary (see ESA 2010 paragraph 2.24) or to be a special purpose entity (see ESA 2010 paragraphs 2.17–2.20). It is thus not considered a separate institutional unit and should be consolidated with its parent (government). No transaction in national accounts has to be considered: neither a transaction on assets, nor later any transactions in goods and services — output and intermediate consumption.
18. If the creation of the unit results from the split of another unit its creation is recorded in the other changes in volume of assets accounts, under changes in classification and structure (K.61). Nevertheless, if the unit actually purchases the asset from its own financial resources — by borrowing in its own right, for instance — the acquisition could be treated as a sale of assets, usually gross fixed capital formation (P.51g) from one part of general government to another. There would thus be no impact on net lending/borrowing (B.9) of general government on a consolidated basis. Any payments made afterwards by government to the unit are recorded as current transfers within general government (D.73).
19. The unit will remain classified in the general government sector as long as most of its activity is devoted to providing services (e.g., ancillary rental facilities) to government. For a possible reclassification outside the general government sector, one has to follow the rules regarding the market/non-market distinction and definitions of control.
20. Even if such a unit fulfils the criteria for being an institutional unit, the payments made by government for the rental services provided by this unit during the lease would not be considered as market output because:
- a) in order for revenue to be classified as the sale of a service, a payment must have a significant influence on supply and/or demand;
 - b) in this case, in which government creates a unit which manages public buildings and provides accommodation for government departments, payments made by these departments cannot, in general, be considered revenue from sales, since they are unlikely to have a significant influence on the demand made by government, even if rentals are fixed by reference to market prices.
21. This transaction classification should not be seen as a comment on the efficiency or otherwise of the management of the public buildings. It could lead to a reallocation of public buildings among government departments such that, some public become available for private use. In this latter case, receipts from private users will be recorded as sales. Rearrangement of assets within the government sector does not, however, correspond to a market activity.
22. Being non-market, the unit has to be classified in the general government sector, at least as long as payments made by government departments constitute its main resources.

6.2.2.3.2. The unit is an existing public corporation

23. In the case where an existing public corporation⁽²⁶⁴⁾ acquires non-financial assets from government at a market price, with no other associated transactions between government and the corporation, this is recorded as a government sale of non-financial assets in the capital account (P.51g), improving government net lending/borrowing (B.9).
24. However, in some cases, there could be other events taking place that may change the nature of the transaction. For example, the transfer of assets can be associated with a major change in the function of the corporation such that it takes on new activities and responsibilities which were previously the function of government. The transfer of assets might not be at the market price; or there might be no

⁽²⁶⁴⁾ Classified outside the government sector.

payment at all; or the purchase might be financed by a loan or an equity injection from government.

25. In order to record a transfer of fixed assets from government to an existing public corporation⁽²⁶⁵⁾ as a sale of assets, the following conditions must be met⁽²⁶⁶⁾:

- a) the corporation must be a pre-existing one, not set up specifically for this transaction; it must usually be involved in this type of activity (leasing), showing evident competence in the management of such assets; and its size must be adequate for the transaction in the sense that the value of the assets which are transferred should not significantly exceed the current value of the existing assets already owned by the corporation;
- b) the corporation finances the acquisition of the assets from its own resources (for example by borrowing on the market) and not from government.

26. If one of these conditions is not fulfilled, the whole process is considered a restructuring of assets within the public sector, aiming at a more efficient management of the assets (without a B.9 impact). The transfer of assets, like in the context of corporate restructuring, is recorded as other flows in the other changes in the volume of assets accounts (see chapter 3.4 Capital injections in kind and section 3.4.2 Treatment in national accounts).

27. If there is an actual payment to government (for the 'sale' of assets) that was financed by a government loan to the public corporation, the overall operation should be broken down into two parts:

- a) the transfer of assets (the buildings for instance): this increases the equity capital of the unit, to be recorded in the other changes in the volume of assets account,
- b) financial transactions: borrowing (F.4) by the unit from government, and the payment to government would be recorded as an equity withdrawal (F.5).

28. As a result, for these alternative cases, there is no impact on net lending/borrowing (B.9) of general government.

6.2.2.3.3. The unit is a private operator

29. Government might enter into a sale and leaseback operation with a private corporation for a number of reasons, including:

- a) to reduce the risks associated with ownership of the asset;
- b) to obtain the benefits of private sector management;
- c) a one-off cash injection to reduce its debt.

30. The unit would remain classified as a private corporation if there is no change in how it is controlled resulting from the operation.

31. If it is a new unit, it could be classified in the private sector, if it is set up and controlled by other private units who have invested equity in it. Classification as a private corporation should be questioned in cases where, for example:

- a) government has the right to appoint, remove, approve or veto key personnel;
- b) there is no private equity at risk;
- c) government guarantees the debts of the unit;
- d) government exerts control through other means, such as through the sale and leaseback contract.

32. It is not possible to give specific rules here to cover all eventualities. The structure of the unit and its operations must be considered as a whole to determine whether classification as a public or private corporation is appropriate. Chapter 1.2 deals extensively with these issues.

33. A sale and leaseback transaction with a private unit is recorded through transactions and not as a restructuring of assets in other flows. A transaction in sales of fixed assets (P.51g) will usually be recorded, thereby improving the general government net lending/borrowing (B.9), provided that the leaseback is an operating lease. Otherwise, government borrowing should be recorded instead.

⁽²⁶⁵⁾ Classified outside the government sector.

⁽²⁶⁶⁾ Both 'legs' (sale and leaseback) have to be analysed.

6.2.2.3.4. Sale and leaseback transactions with embedded repurchase components

34. Repurchase agreements are contracts in which an entity will sell an asset to a buyer, but it either promises or has the option to repurchase the asset. The repurchased asset does not necessarily need to be the asset originally sold to the buyer; it may be substantially the same or even a component of the original. Repurchase agreements generally take one of three forms of a financial derivative: a forward (obligation of seller to repurchase), a call option (right of seller to repurchase) or a put option (obligation of seller to repurchase at the buyer's request).
35. Sale and leaseback transactions can include repurchase components affecting the leased asset. In such cases, the accounting treatment depends on the type of repurchase component, as follows:
- a) if the seller-lessee has agreed to a forward transaction to repurchase the asset, or has a call option (with a fixed exercise price or satisfying the conditions foreseen under paragraph 8.b) above), or
 - b) if the buyer-lessor has a put option and a significant economic incentive⁽²⁶⁷⁾ to exercise its right (the put option),
- the entire sale and leaseback transaction is deemed to be a borrowing and accounted for as a loan, in line with ESA 2010 paragraphs 5.134–5.135.
36. Otherwise, the entire sale and leaseback transaction qualifies as a sale and operating lease (provided no other aspects of the risks and rewards analysis lead to a judgement of a financial lease). In such a case, the leaseback leg should be recorded as rent or rental, in line with ESA 2010 paragraphs 15.10–15.12 and table 15.2 and the sale of the asset should be recorded as a separate transaction.

6.2.3. Rationale of the treatment

6.2.3.1. THE UNIT IS CREATED ON PURPOSE

37. The same line of reasoning should be applied to the case of providers of ancillary services created by the government for identical purposes (solely providing services to government). Then, all transactions between government and such units should be consolidated when compiling national accounts.
38. If, however, such a unit is considered to be a full institutional unit, payments made by government for rental services provided by this unit would not be considered a market output because:
- in order to be a sale, a payment must have a significant influence on supply and/or demand;
 - in this case, in which government creates a unit which manages public buildings and provides housing services to government departments, payments made by these departments cannot, in general, be considered sales since they are unlikely to have a significant influence on the demand made by government services, even if rentals are fixed by reference to market prices. Moreover, such payments are likely to imply only entries in Treasury bookkeeping records, without any actual flow of funds. The financial counterpart of such a payment is quite a 'notional' financial transaction.
39. Of course, this does not mean that such an arrangement is not efficient for the management of the public buildings. However, it will lead, at best, to a reallocation of public buildings among government departments, and probably to a situation where some public buildings will be left by government departments, being thus available for private use. In this latter case, payments made by private users will of course be treated as sales or rentals. This rearrangement of assets within the government sector does not, however, correspond to a market activity.
40. Being non-market, the unit has thus to be classified in the general government sector, at least as long as payments made by government departments constitute its main resources.

6.2.3.2. THE UNIT IS AN EXISTING PUBLIC CORPORATION

41. In the simple case of an existing public corporation buying non-financial assets from government at market price, with no other associated transactions between government and the corporation, it is appropriate to record the sale of non-financial assets in the capital account (P.51g), improving

⁽²⁶⁷⁾ To determine whether the buyer-lessor has a significant economic incentive to exercise its right, one should consider various factors, including the relationship of the repurchase price to the expected market value of the asset at the date of repurchase and the amount of time until the right expires (e.g. if the repurchase price is expected to exceed the market value of the asset, this may indicate that the customer has a significant economic incentive to exercise the put option). Such a determination has to be performed at the inception of the contract.

government net lending/borrowing (B.9).

42. However, in some cases of this type, there are other events taking place. For example, the transfer of assets can be associated with a major change in the function of the corporation such that it takes on new activities and responsibilities previously the function of government. The transfer of assets might not be at the market price; or there might be no payment at all; or the purchase might be financed by a loan or equity injection from government.
43. In these cases, the whole process could be considered a restructuring of assets within the public sector, aiming to a more efficient management of these assets. By difference with a straightforward sale transaction on the market, this type of transfer of assets, like in the context of corporate restructuring, is to be recorded as other flows in the other changes in the volume of assets account (for more details, see chapter 3.4. Capital injections in kind and section 3.4.2 Treatment in national accounts).

6.2.3.3. THE UNIT IS AN EXISTING PRIVATE OPERATOR

44. The unit would be classified as a private corporation (in S.11002) if it is an existing private sector unit (or backed on existing corporations) and if there is no change in how it is controlled or in its purpose. If it is a new unit, it would be private if set up and controlled by other private units who have invested equity in it. Classification as a private corporation should be questioned in cases where:
- government appoints some of the directors of the unit;
 - there is no private equity at risk;
 - government guarantees the debts of the unit.
45. It is not possible to give specific rules here to cover all eventualities since such cases vary greatly. The structure of the unit and its operations must be considered as a whole to determine whether classification as a public or as a private corporation is most credible.
46. Government might enter into a sale and leaseback operation with a private unit for a number of reasons including:
- to reduce the risks associated with ownership of the asset;
 - to obtain the benefits of private sector management;
 - to one-off reduce its debt.
47. An operation with a private unit must be recorded through transactions and not as a restructuring of assets in other flows. The main question to address is whether the leaseback is a financial lease — in which case the sale of the asset would not be recorded since it would remain on the government balance sheet — or as an operating lease, according to ESA 2010 chapter 15 provisions.

6.3. Contracts with non-government units related to fixed assets

6.3.1. Background

1. This chapter deals with the recording of contracts with non-government units related to fixed assets in government accounts (excluding private-public partnerships, which are discussed in detail in the following chapter 6.4).
2. Governments' contracts with corporations to finance, design, construct and operate public fixed assets, such as gas, water, electricity and telecommunication networks, roads, railway tracks, waterways, airports and buildings such as hospitals, schools, prisons, etc., may take various forms. The most common types of long-term contracts are described in the following sub-sections.

6.3.1.1. PROCUREMENT CONTRACTS FOR CAPITAL ASSETS

3. In this case, the non-government party is only committed to build an asset and deliver it to government, according to the requirements demanded by government (normally checked by a third party). The asset will be used fully by government under its own responsibility. The impact on the government capital expenditure may be 'one-off' only for assets that are built and completed during the same fiscal year. Otherwise, ESA 2010 paragraph 3.55 states that uncompleted structures and buildings under a contract of sale/purchase (which means that government is committed to take over the assets, provided they meet the agreed requirements) are acquired, even in an incomplete state, on a continuous basis, according to the accrual principle. In practice, the value of the gross fixed capital formation may be approximated by stages (milestones) payments and, in their absence, be based on the costs to date. This does not exclude that some services, not directly linked to the assets, could be separately identified and treated adequately in national accounts.

6.3.1.2. PROCUREMENT CONTRACTS FOR GOODS AND SERVICES

4. Government only purchases services over a given long-term period but without fixing specific requirements (i.e., different from general regulatory standards) as regards the assets. This contractual link may be important to ensure continuity in services supplies, both in quantitative and qualitative terms. The treatment in national accounts is based only on flows occurring in one fiscal year.

6.3.1.3. EQUITY STAKES

5. Such arrangements involve the creation of a new unit (frequently referred as to 'joint-venture') in which both government and non-government partners have equity stakes in a company managing for example a given infrastructure, or a situation where the non-government partner is taking control of an existing public undertaking. ESA 2010 rules supplemented by this Manual, give explicit provisions, notably as regards the treatment of flows between government and this unit. A 'pure' joint-venture market entity with a strict equality in equity stakes is classified as a public corporation when government is judged to exercise a control over the general policy of the unit (see chapter 1.8 Joint ventures).

6.3.1.4. LEASES

6. Government is the user, during a given period, of an asset that is legally owned by a non-government unit. According to analysis of the 'risks and rewards' borne by each party (that is the basis of the concept of 'economic ownership'), the lease is considered either an 'operating lease' or a 'financial lease', which result into different treatments in national accounts (see ESA 2010 chapter 15). This concerns also cases of 'cross border leases' (which take the form of a set of interlinked lease agreements commonly referred to as 'head' and 'sub' leases). If government enters into a financial lease agreement, its net lending/borrowing (B.9) and debt would be impacted for the market value of the assets at the time government takes the economic ownership of the assets.
7. Chapter 15 in ESA 2010 explains the distinction between financial leases and operating leases. This is based on whether the lessor (owner of the asset) or the lessee (user of the asset) is exposed to most of the risks and rewards, inherent in the asset, and stresses the economic reality of these arrangements,

rather than their legal features. Different criteria are proposed in national accounts in order to decide on whether the lease must be considered an operating lease or a financial lease. Their relevance must be judged for each particular case.

8. In this context, a close correlation between the duration of the contract and the expected economic life of the asset is a strong indication of a financial lease, as the lessor would not be in a position to lend the asset to another lessee or to use it at the end of the contract, with a similar efficiency (without refurbishment expenditure).
9. Similarly, where government pays directly for most of the maintenance of the asset — and insurance in case of some types of durable goods — and is bearing the risk of variations in such costs, this also suggests a financial lease. It would be also the case if government was committed to repay the corporation's debt in the event of early termination of the contract.
10. On the contrary, an operating lease is considered where the leasing corporation has significant and on-going power on how to implement the contract, makes the key decisions on the design and construction of the asset, and decides how it is to be operated and maintained in order to provide the services required.⁽²⁶⁸⁾
11. In addition, the nature of the partner could give an indication on the appropriate classification whenever government enters into a lease contract with units that are clearly specialised either in operating leases or in financial leases. Examples are units providing only operating leases for equipment such as transport equipment, computers or, on the contrary, institutions specialised in financial leasing either in the form of property leasing (offices occupied by government units) or of equipment leasing. In all cases, it is also important to check whether government is entering into a contract according to normal commercial/market conditions (such as the length of the lease, price indexation, contract breaking notice, renewal, dispute settlement, etc.).
12. If the non-government party is the legal owner of the assets (the lessor) and the government user (the lessee) is judged to be the economic owner, then a financial lease is recorded. The asset provided through a financial lease is recorded in the balance sheet of government, and the economic transfer of the asset is recorded as gross fixed capital formation of government (P.51g) and as a non-financial asset in its balance sheet. This also creates a liability in the balance sheet of government, in the form of an imputed loan (AF.4). The regular payments to the lessor are to be treated as the amortisation of the imputed loan and are split into two transactions: a financial one for the reimbursement of the principal (F.4) and a non-financial one for the payment of interest (D.41). There may be a service component (FISIM) when the lessor is classified in the financial sector (see for more detail ESA 2010 chapter 15). After transferring the legal ownership of the asset, the balance sheet of government includes the produced non-financial asset, valued at market price, which is equal to the residual market price of the asset.⁽²⁶⁹⁾

6.3.1.5. CONCESSIONS

6.3.1.5.1. Overview

13. The term concession or concession contract/arrangement is generally used to describe various arrangements that may differ significantly in form and substance, as for example the right to use/exploit public spaces, the right to manage and extract oil and natural gas, the right to undertake construction and exploit infrastructure and the right to provide and manage services.
14. In the context of the MGDD, the term concession primarily refers to arrangements for 'development' of infrastructure (e.g., buildings, roads, bridges, tunnels airports, ports), with payments made by end-users. More precisely, the term concession is used in national accounts for a long-term arrangement between a government unit and a concessionaire (which may be a public or a private unit) in which the government grants the concessionaire the legal right to exploit a specific asset (or even several assets) which is/are constructed, substantially renovated or expanded under the concession arrangement. At the end of the concession arrangement, all assets are returned to the government for no consideration. If the assets

⁽²⁶⁸⁾ There might be also cases where government acts as the lessor in a lease contract. The rules should be applied symmetrically.

⁽²⁶⁹⁾ Example: a single payment by government to use a building for 20 years, after which it reverts to government, with government assuming most of the benefits, costs, risks and rewards of ownership during the 20 years: record as a purchase of the building (P.51) at market value. See also chapters 6.2 Sale and leaseback, 6.3 Contracts with non-government units related to fixed assets and 6.4 Public-Private Partnerships (PPPs).

are not returned to the government at the end of concession, the arrangement is not a concession.⁽²⁷⁰⁾

15. The right to exploit an asset means that the concessionaire has the right to use the asset to provide (a) service(s) to the public in return for a payment. The majority of payments must come from the end-users, which is an essential feature that distinguishes a concession, as defined in the national accounts, from a PPP or a public procurement contract for infrastructure. If in such an arrangement the payments from end-users constitute the minority of the revenues, it should be treated in accordance with the PPP rules (see chapter 6.4).
16. The key issue for the statistical assessment of concession arrangements is the classification of the underlying asset(s), i.e., whether the asset(s) should be recorded on the government's balance sheet or on the concessionaire's balance sheet. In national accounts, an asset is to be recorded on the balance sheet of its economic owner, the entity that is exposed to the risk and has the right to claim the rewards associated with the asset.
17. The EU Directive 2014/23 on the award of concession contracts⁽²⁷¹⁾ (later the Directive) accounted for the growing importance of concession arrangements and established a common legal framework to ensure that concessions are subject to principles such as fair market access or fair competition. It distinguishes between service concessions and works concessions. While works concessions involve construction activities, service concessions do not involve any construction, installation, refurbishment or other similar activities. Service concessions foresee the right to use an existing asset to provide the services specified in the concession arrangement. Service concessions concern the provision and management of services other than construction work and are not of the main concern of this chapter.
18. The works concessions mentioned in the Directive have some notable similarities with national accounts concepts. For example, the existence of construction activities (wholly or partly at the cost of the concessionaire) and the right to recoup the funds invested by charging the users for the use of the asset or service. However, works concession, as defined in the Directive, differs in important aspects from the national accounts approach. Firstly, concessions between entities within the public sector (both in-house procurement and public-public co-operation are not the subject of the Directive. Secondly, the Directive is also not applicable in a number of areas (e.g., production, transport/distribution of drinking water). Moreover, the Directive is primarily aimed at regulating the award of concessions, rather than the classification of the concession asset(s) or the classification of the concessionaire and is therefore of limited use for analysing concessions in national accounts.
19. The duration of the arrangement plays an important role in deciding on whether it is a concession or not. An arrangement involving the construction (or substantial renovation or expansion) and the exploitation of an asset for the provision of a service to the public, but having a short duration, does not fall within the scope of this chapter. A short duration indicates that the focus of the concessionaire is not on the construction and the use of the asset(s) in the production of services (and their subsequent provision to the public) under its responsibility and management. An arrangement with a short duration rather indicates that the focus of the concessionaire is more on the building and financing of the asset in order to subsequently dispose it. Arrangements of a short duration might be considered as a bundle of different contracts, as for example a public procurement contract for the building of infrastructure or a contract to provide and manage public services.
20. The decision as to whether an arrangement is to be considered of short duration does not simply relate to a specific number of years for which the agreement was entered into, but is based on the duration of an arrangement in relation to the economic life of the underlying asset, i.e., how long an asset will remain in a usable condition for rendering services. As a general principle, the duration of concession arrangement should at least cover the majority of the economic life of the asset(s) in order not to be considered short.⁽²⁷²⁾

⁽²⁷⁰⁾ In the event of an extension of a concession agreement, either on the basis of a contractually granted extension option or upon expiration of the existing arrangement, the asset is generally not returned to government, but this does not affect whether or not the present arrangement is statistically considered a concession. However, if the extension of the concession arrangement results in modifications to the concession arrangement, the significance of those modifications to the statistical treatment of the arrangement must be analysed in accordance with the principles set in this chapter.

⁽²⁷¹⁾ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

⁽²⁷²⁾ There is no agreed definition of 'long term' for concessions but, in practice, most concession contracts cover at least 20 years and frequently 30 to 35 years. Moreover, due to the fact that different assets have economic lives of different duration, and the fact that similar assets might have a different economic life in different countries, in practical terms a minimum duration for a concession will have to be agreed upon as in the case of PPPs. ('see "Guide on the treatment of PPPs").

21. Similarly, arrangements for which the duration is not limited in time (i.e., arrangements with an infinite duration) or where the duration of the arrangement is much longer than the economic life of the asset(s) do not constitute a concession within the meaning of this chapter. When such arrangements are concluded with a public unit, it would be similar in nature to the creation of a public corporation. If such a situation occurs, it must be carefully examined whether the public entity has autonomy with respect to its principal function, which may be the operation of the assets or the management/holding of the assets, or both. The managing/holding of assets includes the ability to take independent investment decisions, i.e., to acquire/dispose existing or new (fixed) assets whether specified in the arrangement or not. The conclusion of an open-ended contract with a private unit is unlikely to have any practical relevance, as the Directive *de facto* excludes such arrangements between government and private units.
22. If an arrangement involves only the exploitation of an existing asset in exchange for a payment but does not require construction (or associated works such as renovation, extension or refurbishment with a non-negligible capital expenditure), it would also not be a concession in the context of the MGDD, as in this case, the essential feature of a substantial capital expenditure to be made by the concessionaire is missing. Such an arrangement could be viewed as an operating lease rather than a concession. For concession arrangements involving the renovation, extension or refurbishment of an existing asset, the same threshold for defining a substantial capital expenditure is applied as for PPPs, i.e., the capital expenditure must represent at least 50% of the value of the asset after completion of the works.

6.3.1.5.2. Payments in concession arrangements

Tariff mechanism

23. In a concession, the majority of the concessionaire's revenue comes from a direct sale of services to users, under commercial conditions. The concessionaire must bear most of the commercial risk, which depends both on external factors (demand from end-users, their 'willingness-to-pay', etc.), and on its own performance in managing and maintaining the assets.
24. In some cases, a concessionaire could decide freely on the level of the user fees to be charged. Such situations are usually possible when the users have a choice, and the concessionaire is able to compete by providing a better service (e.g., a faster connection via a less congested motorway in contrast to the local roads). In other cases, when a concessionaire operates in a sort of monopoly situation and there is no other economically viable solution for the users (e.g., providing access through a tunnel), some level of government regulation is likely to be observed. In this context, it is important that the regulated prices/tariffs do not hamper the concessionaire's possibility to benefit fully from the rewards stemming from the exploitation of the concession asset(s).
25. Whether prices are set by the concessionaire, by contract, or by a regulator, is not by itself decisive for the statistical treatment of the concession. In particular, government-regulated prices are common in an economy and may apply to either one industry or multiple industries and as long as regulated prices can be considered economically significant, they do not pose a major statistical issue with respect to concession arrangements.
26. However, if government uses such price regulation consciously and selectively for *ex-post* tariff adjustments to increase/decrease the concessionaire's profits/revenues because *ex-ante* estimates did not materialise, this would have implications for the statistical assessment of the concession arrangements.
27. In some concession arrangements, the concessionaire receives government payments in cash or in kind in addition to user payments. These payments could be either in the form of debt or equity finance, investment grants, in-kind grants or subsidies. Such payments, in general, may transfer the construction and/or demand risk to the government by directly or indirectly substituting user payments.
28. If the sum of government co-funding of a concession asset and other payments exceeds the payments made by the end users over the duration of the contract, the arrangement is not considered a concession from a statistical point of view. In addition, if the government covers the majority of the construction (or refurbishment) costs via co-financing and co-funding, the asset will be on balance sheet for government. In both cases, EU grants are not taken into account for the calculation of the thresholds.

Concessionaire's payment to government

29. It is quite common that concession arrangements require the concessionaire to make payments to government at the beginning or at the end of the arrangement, regularly during the operating phase, or

upon fulfilment of certain conditions. Such payments can be fixed or variable (possibly depending on the level of revenue or profit generated by the concessionaire) and might have different names like concession fee, lease payments, transfer fee, etc.

30. An annual payment/fee to government often represents a right to use a government asset (e.g., land) and therefore does not influence the distribution of risks and rewards. However, the existence of a variable fee *de facto* implies a profit-sharing mechanism; therefore, an open question remains on its size. In case only a minor share of the profits is transferred to government, it could be judged that the majority of rewards are with the concessionaire. There could be some additional clauses in the concession contract allowing for further concession fee adjustments depending on the specific circumstances as provided or stipulated in the contract. It should be analysed in detail whether they would alter the distribution of rewards. In general, variable concession fees should not be used as an instrument by government to influence the level of profit or revenue of a concessionaire.
31. In some concession arrangements, the required payment could also take the form of a lump sum to be paid as an upfront payment when the contract is signed. Such lump sum payments should be neutralized at inception, and instead accrued during the duration of the arrangement.

6.3.1.5.3. The statistical assessment of concession arrangements

The risks and rewards assessment of the concession arrangement

32. In national accounts, the asset(s) involved in a concession can be considered as (a) non-government asset(s) only if the concessionaire bears most of the risks attached to the asset during the whole duration of the concession and is entitled to receive most of the rewards from the assets.
33. As a starting point, the duration of the concession arrangement is a relevant factor when it comes to determining the economic owner of the asset, in particular when it covers the majority of the economic life of the asset built/renovated. Economic ownership would, in principle, be with government, if the duration of the concession arrangement is less than half of the economic life of the asset. In this case, the majority of the risks and rewards is deemed to remain with the government throughout the economic life of the asset.
34. In concession arrangements, the duration of the concession period is considered an effective way of balancing the risks and rewards between government and the concessionaire as concessions are generally long-term arrangements involving a significant capital expenditure by the concessionaire, who then needs a sufficient period to recoup the expenditures incurred and earn an adequate rate of return on his investment.
35. There are two main categories of risks that need to be assessed, in order to classify a concession asset: the construction risk and the demand risk which are direct consequence of the main features of concessions, i.e., the requirement of a substantial capital expenditure and the fact that the concessionaire obtains most of its revenue directly from the end-users. Both risks should be borne by the concessionaire.

Construction risk

36. The construction risk covers events related to possible difficulties faced during the construction phase, such as late delivery, significant additional costs⁽²⁷³⁾, legal and environmental issues, technical deficiency and external negative effects (including environmental risk) triggering compensation payments to third parties. An important element in the assessment of the construction risk is the existence of direct government financing and/or indirect financial support in the form of government guarantees. When analysing the risk distribution between government and the concessionaire, both elements should be jointly taken into account. For example, it might be the case that government provides a minority of the total capital expenditure, but then directly or indirectly guarantees a major part of the remaining project financing in connection with the concessionaire's loan liabilities. In such a case,

⁽²⁷³⁾ The risk of cost increases, e.g., for construction materials, shall be borne by the concessionaire, provided that the cost increases can be regarded as the result of normal market developments and, thus, could in principle have been taken into account by the concessionaire when calculating the construction costs. However, a concession arrangement could foresee that unforeseeable increases in the cost of the purchased construction materials (e.g., due to unexpected resource shortages causing market prices to increase considerably) are to be shared between the concessionaire and government or, in specific cases, are to be fully borne by government. Such cost sharing is usually achieved by including price escalation clauses in the concession arrangement. The existence of such 'clauses' does usually not impact the statistical treatment of a concession arrangement. However, if such price escalation clauses exist, it must be ensured that only price increases that were actually unforeseeable (incalculable) for the concessionaire (e.g., price increases that occurred after a specific event) are subject to price escalation clauses.

if the combined effect of government support covers the major part of the capital expenditure, the majority of the risks is considered to be borne by the government and the concession asset is to be recorded on the government balance sheet. In those cases where a concession arrangement is mainly financed by equity, a special analysis needs to be carried out to assess the impact of the contractual provisions regarding the distribution of the rights and obligations between government and the concessionaire in relation to the equity participation.

37. If government provides the majority of the financing of the capital expenditure (in various forms to be jointly considered, e.g., investment grants, loans, guarantees, equity in the partner, etc.), government is deemed to bear the majority of the construction risk and the asset must be classified on its balance sheet. The financing by government may also take place at different points of time. It may be at the beginning of the construction phase, but also at the end of the construction phase, when the debt incurred during the construction phase (financed by concessionaire's own funds and/or short time banking facilities) needs to be 'consolidated' over the long term. It may happen that government would pay a significant amount at the end of the construction phase which should be considered as an investment grant (and not as pre-payments of the future unitary availability or demand payments) and, as mentioned above, it should be taken into account in the assessment of the share of government in the total financing. Moreover, if the financing provided by government constitutes at first a minor part of the total financing needs but then becomes predominant in the course of the construction phase for various reasons, the assets are to be reclassified into the government's balance sheet at the time when this occurs.
38. The above treatment applies only to cases of financing from national government units, therefore excluding any financing from international entities resulting from inter-governmental agreements, such as from EU funds (ESIFs) that are granted to non-government units. In this context, it is to be underlined that, for instance, if the EU finances 30 % of the capital expenditure by way of grants, the concessionaire 36 % and government 34 % (of the total), the concession arrangement is deemed to be financed in majority by the private sector as its funding is $36/70=51.4$ % of the total. The assessment of the contribution of government and of the concessionaire in the financing of the capital cost must exclude the EU grants, which reduce the need to finance the capital expenditure on a domestic basis, possibly with government participation. The assets could be recorded as government assets even if government would not cover more than 50 % of the capital expenditure, depending on the share of the EU grants. It would simply depend on whether the share of government financing would be above or below the share of the financing provided by the private sector. The EU financing in the form of grants is excluded from the analysis and from the assessment of the share of risks between government and the concessionaire. An assessment will still need to be undertaken on whether government incurs more risk than the partner or whether it would be the other way around.
39. When government takes part in the financing of the concession assets for less than 50 % of the total capital expenditure, it is important to examine the nature of the debt incurred by the partner vis-à-vis the government. This is because financial instruments may involve different degrees of risks, in the sense that a debtor default would be imputed to creditors according to a given order of priority. In this context, a simple method should be used under the form of a multiplier equal to 2.5 when government holds a riskier instrument (junior or subordinated debt) than the other creditors.

Demand risk

40. The second type of risk, the demand risk, covers the variability of demand (higher or lower than expected at the moment in which the contract was signed) irrespective of the performance of the concessionaire. This means that a shift of demand cannot be directly and totally linked to an insufficient quality of the services provided by the concessionaire, although quantitative and qualitative shortfalls in this matter may also have an impact on the effective use of the service. Instead, the demand risk may also result from other factors, such as the business cycle, new market trends or a change in end-users' preferences. This must be seen as part of the usual 'economic risk' borne by private entities in a market economy.
41. In some concession arrangements, the expected demand is not high enough to cover the necessary capital expenditure – even if the user charges are set at a level that theoretically would maximise the revenue flow. This may also happen in cases where only some of the end users are obliged to pay for the use of the asset, for example just trucks in the case of motorways. In such cases, the government often supplements user payments with so-called availability payments or availability-based payments. The treatment of such payments in concession contracts is conceptually different from that in PPP

projects, as the availability of the concession asset is a basic prerequisite for generating revenue for the concessionaire from user payments and therefore the availability of the asset cannot be considered and treated separately from the demand risk, contrary to the case of PPPs. In fact, availability-based payments in concession arrangements are nothing more than government subsidies structured in a certain way and should be taken into account in an analysis of revenue to decide whether the arrangement qualifies as a concession.⁽²⁷⁴⁾

42. It is important to assess the extent to which availability-based payments mitigate the risks to concessionaire's income/profit as such payments can easily act like a minimum revenue guarantee for the concessionaire, in particular, when there are no provisions for the reduction/suspension of the availability-based payments in the concession arrangement. However, if such provisions exist and the so-called availability-based payments, together with other forms of government funding and financing, exceed the payments made by the end users, the arrangement is not to be considered as a concession arrangement from the statistical point of view.
43. There are other ways to influence the profitability of the concession arrangement for the concessionaire in addition to using the length of the concession period. The minimum revenue guarantee (e.g., on a minimum volume of traffic) or, in some cases, a minimum level of profitability of the concessionaire (for instance in terms of return on equity), are common support measures provided in concession arrangements. In such cases, government should be considered to bear the majority of the economic risks and the assets should be recorded on government balance sheet, without exception. The arrangement would then be treated similarly to a procurement contract for the construction of the assets coupled with a purchase of services for the management/maintenance of the assets.

Rewards

44. Concerning rewards, possible revenue-sharing mechanisms should be also carefully analysed. In principle, revenue-sharing mechanisms enhance the efficiency and profitability of the concession arrangement for the concessionaire and the government. However, they are also a key aspect to be considered in the statistical classification of the concession asset, as, depending on the degree of the revenue sharing, the concessionaire may not reap the majority of the rewards and therefore the concessionaire may not be considered as being the economic owner of the asset.
45. Some concessions arrangements foresee that refinancing gains earned by the concessionaire, if any, are to be shared with the government in order, for example, to keep the concessionaire's internal rate of return (IRR) within a certain threshold. In other cases, the government might receive a fixed percentage of the refinancing gains as a lump sum payment or a fixed percentage is paid to the government over a period, possibly in decreasing amounts.
46. If government is entitled to certain share of potential refinancing gains, it is important to analyse the extent to which government was involved in generating them. In general, the government is entitled to a maximum of one-third of the refinancing gains, with no effect on the classification of the concession asset. If government receives more than one-third of the refinancing gains, it must be clearly demonstrated that the increased share is due to explicit government action; otherwise, the asset(s) should be recorded on government's balance sheet at inception. This cap also applies to cases where the refinancing gains are paid to the government to repay the government for capital invested in the project.
47. Occasionally, concession arrangements provide a right for the government to terminate the concession arrangement, without compensation payment, when the partner reaches a certain profit or revenue threshold, or the government claims a part of the profits through a tax specific to the concession. In both cases, the asset(s) should be considered as government assets at inception.

Other risks

48. Apart from construction and demand risks, it should be underlined that concession arrangements usually provide specific provisions for force majeure events as non-political events (e.g., pandemic or extremely adverse weather conditions), indirect political events (e.g., war) or political events such as the nationalisation of the concession asset or the unauthorized refusal of permissions. If a concessionaire is unable to perform its obligations due to such a force majeure event, it is usually relieved from

⁽²⁷⁴⁾ If so-called availability payments, together with other forms of government financial support, exceed the total payments made by the end users, the arrangement is not statistically to be considered as a concession arrangement.

performing those obligations for the scope and duration reasonably required, provided that it takes reasonable steps to mitigate the loss suffered by the other party. Force majeure events might have a significant impact on the demand risks and a government could retain those without necessarily requiring the classification of the asset on its balance sheet, as long as those events are identified in an exhaustive and precise list of events (for which no guarantee can normally be given) and excluding any 'macroeconomic' risks. Force majeure events could result, for example, in changes in the cost distribution between the government and the concessionaire or in the termination of the concession with or without termination payments, meaning a total change of the balance of risk and rewards.

49. As far as termination clauses are concerned, when the concession arrangement is terminated due to the concessionaire's fault during or at the end of the construction phase, the arrangement should only require a reimbursement by government based on the capital expenditure incurred. The same applies if the termination takes place due to the fault of the concessionaire during the operating phase. If government is obliged to repay the concessionaire's outstanding debt in the event of the concessionaire fault, the assets must be recorded in the balance sheet of the government.

Changes to the contract

50. In concession arrangements, both parties usually have the right to propose changes. Changes proposed by the government might be funded directly by the government or by an adjustment in user payments and/or concession fees. Amendments changing the nature of the concession arrangement that result in increased government financing and/or a significant reduction in risks and rewards borne by the concessionaire, as compared to the original arrangement, result in the government being the economic owner of the assets from the date of renegotiation and the assets must be reclassified on-balance sheet accordingly (i.e., from the date the amendments take effect).

Changes to the ownership of the concession assets

51. It may also happen that government acquires shares of the concessionaire, and the latter could then become government-controlled. This would require a reassessment of the sector classification of the concessionaire and of the risk distribution.
52. When a concessionaire goes bankrupt, the related assets are usually returned to the government against compensation. The amount corresponding to the market value of the assets is recorded as government gross fixed capital formation, affecting the government net lending/net borrowing and debt. Any payments by government in excess of the market value are recorded as government expenditure.
53. Provisions in the concession arrangement that regulate the condition of the asset on expiry are also important in the risk and rewards analyses. The concessionaire must take the risk that the physical condition of the asset on expiry will be on a standard consistent with the agreed maintenance under the arrangement.

Sector classification of the concessionaire

54. The sector classification of the concessionaire may also be an issue in concession arrangements. The close contractual relationship between the concessionaire and the government, where the former exclusively builds, finances, operates, maintains and carries out the development of an asset that is returned to the government at the end of the concession arrangements represents a peculiarity in comparison with other producers operating in the economy. This raises, in particular, concerns when the concessionaire is a public producer (especially, but not only, with high government ownership) where, in addition to the control framework already in place, bilateral contractual influence might be added by the concession arrangement and thus might limit the decision-making autonomy of the public producer.
55. In general, the concessionaire concluding a concession arrangement with the government can be either a private or a public producer. ESA 2010 paragraph 20.309 provides a list of indicators that must be taken into account in order to decide whether a unit is private or public.
56. If the concessionaire is a public unit and is deemed to have decision-making autonomy, it is classified in the non-financial corporations sector if it meets the market-non-market criteria (i.e., both the quantitative market-non-market criterion as well as the qualitative criteria specified in ESA 2010 paragraph 3.33 and ESA 2010 paragraph 20.24 and following respectively). If the partner is a private unit and a market producer, it is classified in the non-financial corporations sector.
57. In this context, it is important to distinguish between the parties involved in a concession arrangement. A concession structure usually consists of at least three parties, i.e., the government which grants the

specific rights to an entity to build and operate the asset, the concessionaire that concludes the concession arrangement with the government and a dedicated legal entity (assimilated to a special purpose entity) usually established by the concessionaire, which constructs or renovates, owns and operates the concession asset. The concessionaire might be a private or public unit.

58. For the classification of the special purpose vehicle (SPV) it is important to determine who exercises control over the SPV. If government directly controls the SPV, the SPV is classified in the government sector. If a private unit or a public unit directly controls the SPV (used for their own activities), it is classified outside the government sector for statistical purposes.
59. For the classification of the concessionaire (i.e., the parent of the SPV), it is important whether the concessionaire is just involved in a single concession arrangement (without otherwise engaging in economic activities). In such a situation, no meaningful distinction could be made between the concessionaire and the special purpose entity. A public concessionaire would then be classified in the government sector for statistical purposes and considered as an artificial subsidiary.⁽²⁷⁵⁾
60. A public concessionaire whose main activity is to be involved in concession contracts (more than one concession contract) with government, could be classified as a public producer in the non-financial corporations sector if it is deemed to have autonomy of decision in relation to these contract(s). In this regard, the following set of criteria must be considered:
- a) there is an absence of specific constraints in the contract⁽²⁷⁶⁾ for the public concessionaire as far as wage and staff policy, suppliers' selection, purchase policy and quality of services provided are concerned;
 - b) there is an absence of obligation for the concessionaire to implement a differentiating pricing to final users for social purposes under instructions of government with no specific compensation by government (costs must be borne by the concessionaire);⁽²⁷⁷⁾
 - c) the concessionaire has the freedom to sign the contract without the approval of the controlling government unit(s);
 - d) the concessionaire could enter into other concession contracts without the approval of government units;⁽²⁷⁸⁾
 - e) the concessionaire could enter in sub-contracts with other units without the approval of its controlling unit or of the contractual government unit;
 - f) the concessionaire could decide on the extension/modernisation of the capacity/quality of the concession assets without the approval of its controlling unit or of the contractual government unit;
 - g) the concessionaire has total freedom of decision as far as the amount and timing of 'significant repairs' expenditure are concerned;
 - h) the concessionaire could exit from the concession contract (for instance by selling the concession to another unit) without government approval.
61. If criterion (a) is not met, it would be sufficient to indicate that the public concessionaire does not have autonomy of decision. For the others, a number of criteria may collectively indicate the absence of autonomy of decision. If the above-mentioned criteria would result in different conclusions depending on different contracts, the global assessment should be based on the majority of the value of concession assets.
62. The existence of a tendering procedure is also an essential aspect to be considered in the context of the sector classification of a public concessionaire that has entered into more than one concession with

⁽²⁷⁵⁾ The situation is different if the public unit is an existing entity that already has significant activities and the rules to be applied for the sector classification have shown that it is a market unit. In such a situation, a meaningful economic distinction can be made between the public unit and the SPV.

⁽²⁷⁶⁾ If such constraints arise, on the contrary, from government regulations of a general nature to which the public concessionaire is subject (as are other companies or at least other companies operating in the same industry and entering into a contractual relationship with the government), they would not be relevant to the question of whether autonomy of decision exists.

⁽²⁷⁷⁾ Concerning the 'pricing', i.e., the fees/fares charged to the final users, in many concession contracts this is defined (notably with an indexation mechanism) in the contract, rather restrictively.

⁽²⁷⁸⁾ It is assumed here that, as the strategy of the unit is defined by government units (which is a fundamental aspect of the notion of control in national accounts); an extension/diversification of the activity would need a decision of the controlling unit(s).

government. To the extent that a concession was awarded through an open and transparent tendering procedure, this could sufficiently indicate that the behaviour of the concessionaire is similar to that of a market producer, and the public concessionaire would be classified in the non-financial corporations sector.

6.3.1.5.4. Treatment in national accounts

Case 1: a new asset is built by the concessionaire

63. Generally, when the asset is a new one built by the concessionaire, for which the economic ownership is also with the concessionaire, it is recorded as gross fixed capital formation (GFCF) of the concessionaire with no impact on the government accounts.
64. The concession arrangement may provide for the asset(s) to be transferred to the government in return for a payment (comparable to a sale) or free of charge at the end of the concession period.
65. If at the end of the concession period the asset is sold to government, it enters the government's balance sheet through GFCF (P.51g) at its market value (the value used should normally be assessed by an independent body). If the amount paid by government differs from the market value, the difference shall be recorded as a capital transfer (D.99).
66. In cases when the asset(s) is returned to government for free, there should be no impact on government net lending/borrowing (B.9). Analogous to the case of sale, the asset(s) enter the government's balance sheet through GFCF and its impact on the net lending/net borrowing is neutralised by a capital transfer payable (D.99) with the same value.

Case 2: an existing produced asset is transferred by government to the concessionaire

67. When government transfers one or more existing assets to the concessionaire at the start of the concession period in order to refurbish or expand them, the government may or may not acquire something in exchange from the concessionaire for the transferred assets, depending on what is agreed in the concession arrangement.
68. If government does not acquire anything in return, the transfer of the asset(s) is recorded as disposal of fixed assets (GFCF with a negative value), which is offset by an investment grant payable (D.92). However, if, in exchange, government acquires, for example, equity in the concessionaire of equal value, this is recorded as a capital injection in kind in the other changes in volume of assets account, with no impact on government net lending/borrowing (B.9). It is an exchange of a non-financial asset for a financial one (government's equity (AF.5) in the concessionaire), to be recorded according to the rules defined in chapter 3.4. Profit distributions (after tax) to government during the concession period are then to be recorded as dividend income (D.421) in the primary income account.
69. If the asset(s) is returned to the government at the end of the concession period for free, it is recorded as an acquisition of the asset (P.51g) by government, matched by a capital transfer receivable (D.99), with no impact on government net lending/net borrowing (B.9).
70. When payments are made by the concessionaire to the government during the concession period, and the concessionaire is considered to be the economic owner of the concession asset, they can arise because:
 - government provides something in exchange, often the land upon which the asset is built. In this case, the revenue from the concessionaire should be recorded as rent (D.45) in the government accounts;
 - government receives a payment for permitting the concessionaire the operation of the concession asset in order to produce the agreed services. In many cases, the permission is not transferable or there are strong restrictions (such as government approval). In this case, the payment should be considered as a prepayment recorded as other taxes on production (D.29) on an accrual basis over the whole concession period, independently of practical cash payment arrangements (e.g., lump sum payments, grace periods etc.), as mentioned in ESA 2010 paragraph 4.23. If there is no restriction on transferring the permission license by the concessionaire, and other conditions in ESA 2010 paragraph 15.37 are met, this is recorded as a disposal of a permit to undertake specific activities (AN.223) and, in addition, a new asset (AN.22) is created at inception in the accounts of the permit holder with zero value.

Case 3: the asset is built/operated by the concessionaire, but the economic owner is government

71. When the concessionaire has built and operates an asset that is economically owned by government, the asset needs either to be rearranged to the government accounts or, if the unit is government-controlled, and concessions with government are its main activity, then it should be reclassified in the general government sector, except if there is evidence that the unit has always taken part in free open tendering competitions with private units for the selection of concessionaires (see above).⁽²⁷⁹⁾
72. The rearrangement of the asset(s) requires usually that any revenue obtained by the concessionaire during the operating phase (net of management fees) should be rearranged to government, as the concessionaire acts in this case 'on behalf' of government, i.e., the concession contract should be seen as a management/service contract.
73. A variant of the rearrangement is to consider an operating lease arrangement between the government and the concessionaire, i.e., government allows the concessionaire to operate the concession by using the government asset in return for rental payments generating a revenue (P.11) in the government accounts. In this variant, contrarily to the previous case, any user payments in excess of the imputed rental payments are recorded in the concessionaire's accounts.
74. In both variants, the concessionaire is seen as granting a financial lease to government. The imputed loan liability (F.4L), however, does not equal the actual debt incurred by the concessionaire for the asset. In addition, the imputed loan liability might be lower than the value of the concession asset recorded in the government accounts if, for example, the concessionaire has received an EU grant or a government grant (both are deducted from the capital expenditure incurred for the asset). Accordingly, the change in the imputed lease liability for a given period is calculated from the gross fixed capital formation (P.51g) minus EU grants and/or government grants minus the repayment of the imputed lease liability. For more details (see accounting example 3).

6.3.1.5.5. Accounting examples

Accounting treatments related to the three cases are presented below.

For the first two accounting examples, the full sequence of government and concessionaire's accounts is not provided: only those accounts, which are relevant for the two cases involved, are shown.

Case 1: A new asset is built by the corporation

- The asset is built by the corporation for 250.
- Rents/taxes are paid by the corporation to government (payments are 100 the first year).
- The asset reverts to government at the end of the period of exploitation for no cash (it has a market value of 200).

Construction and first year of exploitation

General government			Concessionaire		
Non-financial account					
U/ΔA		R/ΔL	U/ΔA		R/ΔL
	D.45/D.29	100	D.45/D.29	100	
			P.51g	250	
B.9	100		B.9	−350	

⁽²⁷⁹⁾ The reclassification of the concessionaire has theoretical limits, for example, when the concessionaire is a private producer, which is according to ESA 2010 paragraph 3.31 to be classified in the non-financial corporations sector.

Reversion of the infrastructure at the end of exploitation

General government				Concessionaire			
Capital account							
ΔA		ΔL		ΔA		ΔL	
P.51g	200	B.8n	100	P.51g	-200	B.8n	-100
		D.99	200			D.99	-200
B.9	100			B.9	-100		
Financial account							
ΔA		ΔL		ΔA		ΔL	
F.2	100			F.2	-100		
		B.9F	100			B.9F	-100
Closing balance sheet							
A		L		A		L	
AN.11	200			AN.11	0		

Case 2: An existing produced asset is transferred to the corporation

- The asset is transferred by government to the corporation at the beginning of the exploitation (for an amount of 1 000).
- An equity held by government is recognized.
- The asset reverts to government at the end of the period of exploitation (at this time it has a market value of 200).

Initial transfer of the asset

General government				Concessionaire			
Opening balance sheet							
A		L		A		L	
AN.11	1 000						
Other changes in volume of assets account							
ΔA		ΔL		ΔA		ΔL	
AN.11 (K.61)	-1 000			AN.11 (K.61)	1 000	AF.5 (K.61)	1 000
AF.5 (K.61)	1 000						
Closing balance sheet							
A		L		A		L	
AN.11	0			AN.11	1 000	AF.5	1 000
AF.5	1 000						

First year of exploitation of the asset

P.51c = 40

General government				Concessionaire			
Capital account							
ΔA		ΔL		ΔA		ΔL	
				P.51c	-40	B.101	-40
Revaluation account							
ΔA		ΔL		ΔA		ΔL	
AF.5 (K.7)	-40					AF.5 (K.7)	-40
		B.103	-40			B.103	40
Closing balance sheet							
A		L		A		L	
AF.5	960			AN.11	960	AF.5	960
		ΔB.10	-40			ΔB.10	0

Reversion of the asset to government at the end of exploitation

General government				Concessionaire			
Other changes in volume of assets account							
ΔA		ΔL		ΔA		ΔL	
AN.11 (K.61)	200			AN.11 (K.61)	-200	AF.5 (K.61)	-200
AF.5 (K.61)	-200						
Closing balance sheet							
A		L		A		L	
AN.11	200						

Case 3: An asset is built/operated by the concessionaire but the economic owner is government

The concessionaire is classified in the non-financial corporations sector (S.11). The concession asset is considered to be economically owned by the government, which implies the rearrangement of the concession asset to the government's balance sheet. The concession asset is built by the concessionaire for 300 in year t and is completed at the end of year t . The concession period is 11 years, covering the construction (year t) and the operation (year $t+1$ to year $t+10$) of the concession asset.

The construction cost of 300 is recorded as government GFCF (P.51g) and matched by an imputed loan liability (F.4L). The imputed loan is repaid during the concession period (year $t+1$ to year $t+10$). On the imputed loan also an interest payable (D.41) is imputed. The annual instalments payable by the government on the loan (i.e., the repayment and the interest component) are considered to be constant, which means that the respective interest and repayment share changes during the concession period: the interest share

decreases, and the repayment share increases. The constant annual instalment (AI) is calculated according to the following formula: $AI = F.4L * q^{t*} (q-1) * (q^t - 1)^{-1}$, where $q = 1+r$, t = operating period of the concession ($t+1$ to $t+10$), $F.4L$ = imputed loan liability. The interest 'r' is based on government bonds with a maturity similar to the concession period. In the example, it is a 10-year government bond rate with an interest rate of 4.28%. The EU and the government participate in the financing of the capital expenditure through investment grants. The EU provides an investment grant of 75 and the government an investment grant of 25 and both are paid to the concessionaire in year t . Both investment grants are taken into account in determining the liability to be imputed in year t , i.e., $F.4Lt = GFCF_t - EU \text{ investment grant}_t - \text{government investment grant}_t$ ($200 = 300 - 75 - 25$). It is assumed that the concessionaire rents the asset from the government to provide the concession services and the rental payment (P.2) is assumed to be equal to annual instalment (AI) for year $t+1$ to year $t+10$. The debt (financing) and other operating costs of the concessionaire are not shown for simplicity. The concessionaire's revenues due to user payments for the year $t+1$ to year $t+10$ are assumed for simplicity as in table 1.

The concessionaire also pays a lump-sum concession fee to the government of 110 in year t for the right to use government land to operate the concession asset during the agreed concession period. The lump-sum is considered as rent (D.45) and accrued over the concession period (construction and operating period).

The asset has a service life of 15 years, and annual consumption of fixed capital is simplified to 20 in each year, starting from year t and is shown as government non-market output (P.13) and final consumption expenditure (P.3). At the beginning of year t , both the government and the concessionaire has a stock of cash of 500.

Table 1 - Government repayment schedule for imputed F.4L and revenues of the concessionaire

(Figures are rounded)

Year	Annual installment	Interest component	Redemption component	Remaining debt	Revenues of the concessionaire
t+1	25	8.6	16.4	183.6	100.0
t+2	25	7.9	17.1	166.4	125.0
t+3	25	7.1	17.9	148.5	100.0
t+4	25	6.4	18.6	129.9	120.0
t+5	25	5.6	19.4	110.5	130.0
t+6	25	4.7	20.3	90.2	120.0
t+7	25	3.9	21.1	69.0	105.0
t+8	25	3.0	22.0	47.0	95.0
t+9	25	2.0	23.0	24.0	110.0
t+10	25	1.0	24.0	0.0	115.0

Year t							
General government			Concessionaire				
Opening balance sheet							
A		L		A		L	
AF.2	500			AF.2	500		
		B.90	500			B.90	500
Non-financial account							
U/ΔA		R/ΔL		U/ΔA		R/ΔL	
P51.g	300	D.45	10	D.45	10		
		D.92	75				
B.9	-215			B.9	-10		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	110-25	F.4	300-75-25	F.2	-110-300+75+25		
		F.89	100	F.4	300-75-25		
		B.9F	-215	F.89	100	B.9F	-10

Closing balance sheet year t /Opening balance sheet year t+1

A		L		A		L	
AN.112	300	AF.4	200	AF.2	190		
AF.2	585	AF.89	100	AF.4	200		
		B.90	585	AF.89	100	B.90	490

General government		Year t+1	Concessionaire

Non-financial account

U/ ΔA		R/ ΔL		U/ ΔA		R/ ΔL	
P.3	20	P.11	25	P.2	25	P.11	100
D.41	8.6	P.13	20	D.45	10	D.41	8.6
		D.45	10				
B.9	26.4			B.9	73.6		

Financial account

ΔA		ΔL		ΔA		ΔL	
		F.4	-16.4	F.2	100		
		F.89	-10	F.4	-16.4		
		B.9F	26.4	F.89	-10	B.9F	73.6

Closing balance sheet year t+1/Opening balance sheet year t+2

A		L		A		L	
AN.112	280	AF.4	183.6	AF.2	290		
AF.2	585	AF.89	90	AF.4	183.6		
		B.90	591.4	AF.89	90	B.90	563.6

Year t+2			
General government		Concessionaire	

Non-financial account

U/ΔA		R/ΔL		U/ΔA		R/ΔL	
P.3	20	P.11	25	P.2	25	P.11	125
D.41	7.9	P.13	20	D.45	10	D.41	7.9
		D.45	10				
B.9	27.1			B.9	97.9		

Financial account

ΔA		ΔL		ΔA		ΔL	
		F.4	-17.1	F.2	125		
		F.89	-10	F.4	-17.1		
				F.89	-10		
		B.9F	27.1			B.9F	97.9

Closing balance sheet year t+2/Opening balance sheet year t+3

A		L		A		L	
AN.112	260	AF.4	166.4	AF.2	415		
AF.2	585	AF.89	80	AF.4	166.4		
				AF.89	80		
		B.90	598.6			B.90	661.5

Year t+10			
General government		Concessionaire	

Closing balance sheet year t+9/Opening balance sheet year t+10

A		L		A		L	
AN.112	120	AF.4	24	AF.2	1 195		
AF.2	585	AF.89	10	AF.4	24		
				AF.89	10		
		B.90	671			B.90	1 229

Non-financial account

U/ΔA		R/ΔL		U/ΔA		R/ΔL	
P.3	20	P.11	25	P.2	25	P.11	115
D.41	1	P.13	20	D.45	10	D.41	1
		D.45	10				
B.9	34			B.9	81		

Financial account

ΔA		ΔL	ΔA		ΔL
	F.4	-24	F.2	115	
	F.89	-10	F.4	-24	
	B.9F	34	F.89	-10	
					B.9F 81

Closing balance sheet year t+10

A		L	A		L
AN.112	100		AF.2	1 310	
AF.2	585				
		B.90 685			B.90 1 310

6.3.1.6. ENERGY PERFORMANCE CONTRACTS

75. In an Energy Performance Contract (EPC), the owner of a facility engages a third party, the contractor, to design and deliver energy efficiency measures. Such works may involve planning, investment (capital formation) in construction works and/or equipment, financing and the delivery of the necessary services to achieve the energy savings.⁽²⁸⁰⁾ The contractor usually takes over the operational management of the energy equipment as well as the relevant maintenance of those energy efficiency works.
76. This chapter specifically addresses those EPCs where the contractor takes over both the investment and the operation/maintenance of those measures. EPCs that have the sole purpose of providing management measures such as planning, optimization or maintenance of facilities - without any investment in the addition or renewal of facilities - are to be treated as service contracts in the national accounts. The contractor might be a private or public producer. EPCs between private producers or between private producers and non-government public producers are outside the scope of this chapter.
77. EPCs are mostly longer-term contracts as they involve capital expenditure by the contractor, who then needs sufficient time to recoup income for the expenditure incurred and earn an appropriate rate of return through the energy cost savings achieved. In any case, however, the duration of the contract must cover a significant part of the economic life of the construction works or equipment installed by the contractor.
78. As an integral part of an EPC, the contractor guarantees that the agreed energy-saving measures will result in operational cost savings (such as less energy consumption or reduced maintenance costs) for the owner of the facility (government), that can be used to remunerate the contractor for the entire measures (e.g., construction works, technical equipment, energy delivery, services), it has carried out, including an appropriate rate of return. If the saving guarantee is not met, the contractor is obliged to cover the financial consequences, i.e., they must either pay government or their receipts from government are reduced accordingly. After the contract ends, all benefits related to saving measures carried out remain with the government.
79. EPCs have some similarities with PPPs. Like PPPs, they are long-term arrangements in which a private or public producer spends on capital formation and provides services for which it receives payments from the government. In particular, if a PPP contract relates to a refurbishment/extension of an existing asset, there is *de facto* no difference between the two types of contracts. Some EPCs can therefore be also considered as PPPs, provided that the amount of capital expenditure incurred on energy saving measures is more than 50% of the value of the existing asset after completion of the measures.⁽²⁸¹⁾ For

⁽²⁸⁰⁾ Cf. *The statistical treatment of Energy Performance Contracts*. Decision of Eurostat on government deficit and debt, 2019.

⁽²⁸¹⁾ The value of the existing asset is calculated in the same way as for PPPs. Details can be found in *A Guide to the Statistical Treatment of PPPs* on page 24.

such EPCs, the PPP rules shall apply unless the contractor is remunerated based on energy consumption and/or cost savings associated with the existing infrastructure. In this particular case, the entire arrangement shall be treated as an EPC for statistical purposes.

80. The key question for the statistical assessment of EPCs – similar to concessions and PPPs - is whose balance sheet (i.e., the contractor's or government's) the asset (equipment and/or construction work supplied by the contractor) is recorded in, with a corresponding impact on its net lending/net borrowing and debt. EPCs consist of removable and non-removable assets.
81. ESA 2010 paragraphs 7.14–7.17 explain that assets should be recorded in the balance sheet of their economic owner and explains that the economic owner is the *institutional unit entitled to claim the benefits associated with the use of the asset by virtue of accepting the associated risks* (ESA 2010 paragraph 7.17). This means, *de facto*, that the allocation of the risks and rewards (related to the holding or use of the asset over a period) is an essential feature in deciding in which unit's balance sheet to record the assets. At the same time, ESA 2010 paragraph 3.131 and, in particular, 2008 SNA paragraph 10.43 indicates that improvements to existing fixed assets should be recorded as acquisition of new fixed assets of the same kind (i.e., an increase in the value of the existing asset). In particular, non-removable assets are considered as improvements to existing fixed assets, which means that they generally cannot be recorded separately from the existing asset.
82. As a practical rule, the construction works/equipment provided by a contractor are to be treated collectively as 'EPC assets' without distinguishing between removable and non-removable assets, and are recorded in the balance sheet of the contractual party that bears the majority of the risks and rewards associated with the use of the assets. This accounting treatment takes account of the fact that EPCs are complex contracts with a variety of possible forms, features and assets involved, which would otherwise require extensive analyses, while the amounts involved are usually small. Detailed information on the analysis of the distribution of risks and rewards under an EPC is provided in *A Guide to Statistical Treatment of Energy Performance Contracts*, developed by Eurostat in co-operation with the European Investment Bank.
83. Government might contribute to a certain extent in the financing of the energy saving measures, for example, through investment grants. If so, two basic conditions must be observed. First, the government share of the financing may not exceed 50 % of the capital cost (net of any EU grants) of the EPC. Second, the savings guaranteed by the contractor must also be sufficient to cover the grants provided by government. If at least one of these conditions is by evidence not met, the EPC assets are recorded on the government balance sheet. In this case it is assumed by default that the risks and rewards have not been transferred to the contractor.

6.4. Public-Private Partnerships (PPPs)

6.4.1. Overview

1. The term '**Public-Private Partnerships**' (PPPs) is widely used for many different types of long-term contracts between government and corporations for the provision of public assets. In public-private partnerships, government agrees to buy services from a non-government unit (a partner) over a long period of time, resulting from the use of specific 'dedicated assets', which the non-government unit builds to supply the service. The asset is usually used for the provision of public services, such as in the domain of health (hospitals), education (schools and universities), and public security (prisons) or in the context of transport and communication structures. The services might be purchased by government also in order to meet its own needs, e.g., in the case of an office building used to host government officials carrying out general administration or other specialised services.
2. In the context of this chapter, the term 'PPPs' will be exclusively used to describe those long-term contracts in which government pays to a non-government partner all or a majority of the fees under a specific contractual arrangement, thus covering most of the total cost of the service provided (including the amortisation of the assets). In national accounts, this feature distinguishes PPPs from concessions. In a concession contract, government makes no regular payments to the partner, or such payments, if they exist, do not constitute a majority of fees received by the partner (see chapter 6.3 of this Manual). In a PPP contract, as covered by this chapter, the final users do not pay directly (i.e., in a way proportional to the use of the asset and clearly identified only for this use), or only for a minor part (and generally for some specific uses of the asset⁽²⁸²⁾), for the use of the assets for which a service will be provided.
3. The key statistical issue is the classification of the assets involved in the PPP contract — either as government assets (thereby immediately influencing government net lending/borrowing and debt) or as assets of the partner (spreading the impact on government net lending/borrowing — and on imputed debt — over the duration of the contract). This is an issue which has some similarities with the one of distinguishing between operating leases and financial leases, as explained in ESA 2010 chapter 15⁽²⁸³⁾.
4. As a result of the methodological framework, the assets involved in a PPP can be considered non-government assets, in national accounts, only if there is strong evidence that the partner bears simultaneously most of the risks and rewards attached to the assets (directly and linked to its use) involved in the specific partnership. Therefore, the analysis of the allocation of risk and rewards between government and the non-government partner must be considered as the core issue⁽²⁸⁴⁾. Here, the notion of risk refers to the impact (on revenue or on profit) of explicit actions by one party (related to construction, maintenance operations and provision of services for which it has been given responsibility) and/or the consequences of the behaviour of other economic agents for which the activity is carried out (such as a change in the demand for the service, by a government unit or by an end-user). Bearing the risks implies to be entitled to take actions in order to prevent them or mitigate their impact.
5. In this context, guidance on how to assess the risks is, as a first step, based on three main categories of risk:
 - **construction risk:** covering events like late delivery, respect of specifications and increased costs;
 - **availability risk:** covering the volume and the quality of output (linked to the performance of the partner);

⁽²⁸²⁾ An example is payments for using sporting facilities in an educational establishment for persons that are not learning in that establishment.

⁽²⁸³⁾ See notably Table 15.1 'The recording of three different types of lease'.

⁽²⁸⁴⁾ It must be underlined that if IPSAS rules were applied, almost all existing PPPs in the Member States would end up in the balance sheet of government because the main criteria to be taken into account for their classification would be the control of the assets and the allocations of the assets at the end of the period of the contract. However, ESA 2010 stresses the concept of economic ownership and not the one of legal ownership. As a consequence, it is imperative for ESA 2010 that the partner incurs risks and rewards from the use of the assets, as made clear by ESA 2010 paragraph 1.90, in order for the assets to be classified in the balance sheet of the partner. Obviously, if all risks and rewards from the use of the asset would be incurred by the partner, there would be no issue in the classification of PPPs. However, in most contracts, it is seen that government, through various mechanisms (cap on rewards of the partner, partial ownership of the partner, income for government deriving from the use of the assets, debt refinancing clauses, etc.) often takes back some of the rewards of the use of the asset. The situation is analogous when it comes to risk, with government accepting to take back from the partner some of the risks of the project to government. This creates issues on the classification of PPPs as well as non-respect of one of the basic principles of ESA 2010 (namely that risks and rewards must be borne by the economic owner of the asset), in addition of greatly increasing the likelihood that the PPP will be classified on the balance sheet of government.

- **demand risk:** covering the variability of demand (the effective use of the asset by end-users).
6. As far as risks are concerned, as a basic rule, the PPP assets are to be classified in the partner's balance sheet and not in the government balance sheet, if the following conditions are met:
- the partner bears the construction⁽²⁸⁵⁾ risks;
 - the partner bears at least one of either availability or demand risk, as designed in the contract and in some cases (see below in sub-section 6.4.3.2), at the same time both availability and demand risks. It must be stressed that, in most contracts, only one kind of risk triggers the whole (or almost whole) payment from government to the partner; the payment is based either on availability indicators of the asset, or on use/attendance of the asset. The latter case is only observed when this depends on the final users and not on the government-paying unit;
 - the risks are not incurred by government through other means, such as through (e.g.) government financing, government guarantees and early redemption clauses.
7. If the above conditions are met, it is also important to consider all other mechanisms in place specified in the contract, in order to check whether there could be an allocation of the risks to government via other means. If this would not be the case⁽²⁸⁶⁾, the accounting treatment of the PPP would be similar to the treatment of an operating lease in national accounts; it would be classified as a purchase of services by government.
8. If the conditions in paragraph 6 are not met, if government assumes the risks through another mechanism, or if government benefits from most of the rewards, then the assets are to be recorded in the government's balance sheet. The treatment would be in this case similar to the treatment of a financial lease in national accounts, requiring the recording of government capital expenditure and of a financial liability.

6.4.2. Background

6.4.2.1. THE DEVELOPMENT OF PPPS

9. PPPs **imply a long-term relationship** in the framework of specific contracts, where the obligations and rights of each partner are clearly specified. In practice, most PPPs contracts cover at least 20 years. The duration of a PPP contract normally depends on the nature of the assets (on the length of their expected depreciation) but there might be cases with a duration below 15 years or, even, 10 years. In such cases, a specific analysis should be undertaken in order to assess whether such contracts could actually be considered as PPPs in the sense used in this chapter. A contract would not fit the definition of a PPP if the duration of the contract would be longer than the economic life of the asset to be maintained, which would be replaced once or more times during the duration of the contract.
10. In addition to the goal of using the partner skills and competence to improve the quality of public services and reduce their cost, PPPs may also be motivated by budget constraints, which push governments to look for alternative means and external resources for building or developing collectively used equipment. Usually, such contracts allow spreading the cost of new assets over the time in which they are used, thus avoiding a large initial government capital expenditure and a corresponding cash disbursement that would have occurred if government had used a direct procurement procedure for the building of infrastructure.
11. It **results** from this feature, that the schedule of government payments must be considered. For instance, if the expenditure incurred by the partner for the construction of the asset (a substantial part or all of it), was repaid by government at the start of the exploitation phase, through a single or a small number of sizeable payments (lump sums), the contract could be considered as the provision of procurement services for an asset, to be included in government balance sheet, followed by a service contract for the remaining life time of the contract. In any case, such payments from government should always be considered as government expenditure (if the asset is recorded off government balance sheet) and not as the pre-payments of future availability fee.

⁽²⁸⁵⁾ Obviously, the construction risk cannot be undertaken if there is no asset to be effectively built or renewed.

⁽²⁸⁶⁾ All the criteria defined in this chapter must be jointly met.

12. It is not the role of statisticians to examine the reasons, rationale and efficiency (good value for money) of these partnerships, or to express an opinion about the economic and financial viability of the underlying projects, notably by comparing them with other kinds of investment approaches. The role of statisticians is just to provide clear guidance on the treatment of PPP projects in national accounts and, in the context of the Excessive Deficit Procedure, on their impact on general government net lending/borrowing (B.9) and debt. It is important, therefore, to properly implement the general national accounts principles in this domain in order to ensure the respect of rules and the homogeneity of government statistics in all EU Member States, such that net lending/borrowing (B.9) and debt figures would be fully comparable among countries.⁽²⁸⁷⁾
13. In a similar way, it is not up to statisticians to provide a very detailed definition of PPPs, as the expression can be widely used to describe different various arrangements, whereas a definition, which would be too restrictive could also not be appropriate in a context of complexity and innovation. Instead, a set of basic criteria should be properly specified in order to easily allow national accountants to analyse the contracts, making a distinction among different arrangements that may be observed in practice and applying the rules specified in ESA 2010.

6.4.2.2. CHARACTERISTICS OF PPPS

14. PPPs refer more specifically to the forms of partnerships designed to provide public services, when government payments constitute a majority of the fees received by the partner under the contract.
15. In practice, PPPs occur in areas of activity where government usually has a strong involvement (e.g., transport, education, health, security, etc.). Government would normally enter into a contract with one or several experienced commercial partners, directly or through a special purpose entity set up for the specific purpose of the PPP, for the delivery of services derived from a specific asset. These services must include by definition the maintenance of buildings and structures (including which major repairs) but cover also other activities, which allow a certain degree of actual functioning for the services (heating, security services, etc.) On one side, some services can be implemented by other agents than the staff of the partner (such as medical or educational staff in hospitals or schools), thus, not under the direct responsibility of the partner. On the other side, the partner may provide itself or sub-contract some services which are undertaken in a building or structure but which do not constitute the core use of the asset.
16. This type of contracts mentions specifically designed assets, which either needs a significant initial capital expenditure or a major renovation or refurbishment, and the delivery of agreed services, requiring the use of these assets, although the contract may also cover services not directly linked to them⁽²⁸⁸⁾, according to determined quality and volume standards, which are specifically defined in the contract. The service component makes PPP contracts differ from leases.
17. The contract may refer either to a new asset or to a significant refurbishment, modernisation or upgrading of existing assets, previously owned and operated by government. If the contract does not involve the construction of a new asset but the renovation/refurbishment of an asset, which already existed, the work undertaken in this context must represent the major part of the value of the asset after completion. If it does not, (in cases where it would represent less than 50 % of the value of the asset), the contract is not to be considered as a PPP, as defined in this chapter, and, instead, it must be split into an asset procurement contract and a services contract, with the remaining asset recorded in the balance sheet of the government unit.
18. For some assets, there is no observed market price, as transactions do not exist or the assets are too specific to allow a method of valuation based on comparison. In this case, the value must be based on the 're-valued acquisition costs less accumulated write-downs'. In addition, this value must take into account the exact condition of the assets, which can result in a relatively low value if the asset must be substantially renovated. Another problem is that it may happen that the refurbishment/renovation expenditure will increase the value of the whole asset, even for the parts not renovated, above the expenditure incurred. This effect could be difficult to measure. A practical rule would be to check whether the foreseen capital expenditure exceeds at least the current value of the assets before renovation.

⁽²⁸⁷⁾ The guidance below, related to the treatment in national accounts, is based on a risk and rewards approach, which may result in a different classification of the assets under other accounting frameworks (such as IFRS or IPSAS).

⁽²⁸⁸⁾ For instance, cleaning as part of the maintenance or catering as part of building management.

19. As a consequence of the above, if an existing and running PPP contract would be stopped, for various reasons, and a new contract would be later established with a new partner (through a new tendering procedure), the new contract would not be considered anymore as a PPP if signed during the operating phase of the old contract, as the new partner will not incur any construction risk. As a matter of principle, a contract can be considered as a PPP only if there is an asset to be built or renewed and a construction risk is clearly identifiable⁽²⁸⁹⁾.
20. If the contract is stopped in the construction phase, it must be analysed whether most of the construction has already taken place or not. If a new partner (chosen by tendering procedure) will not have to incur any construction, the contract must simply be considered as a contract for the provision of services linked to an already existing asset, and the asset would be automatically reclassified in the government balance sheet at the moment in which the previous contract will be stopped and the old partner will not be anymore the economic owner of the assets⁽²⁹⁰⁾. In some cases, although this could take some time after the formal termination of the previous contract, government may organise a new auction and a new partner may agree to take over the maintenance tasks for the remaining duration of the contract, i.e., the management of the assets with the associated services for an asset already built. In such cases, the payments to government should be recorded as a financial advance to government, which would be progressively amortised by the payment of future regular (unitary) payments to the partner (taking into account its effective performance). However, it may also happen that the initial partner would simply transfer the PPP contract to another partner⁽²⁹¹⁾, in general with government's approval, or that there would be some restructuring in the equity holding of the partner, so that a new contract will have to be signed. In this case, it should be closely examined whether the allocation of risks and rewards has changed in the new contract.
21. A key feature of PPPs is that government is the main purchaser of the services from the partner. In this respect, PPPs differ from 'concessions', as defined for national accounts purposes (see chapter 6.3 of this Manual), where the main risk depends on the 'willingness to pay' of final users. In PPPs, government purchases the service by way of making regular payments once the assets are supplied by the partner, irrespective of whether the demand originates directly from government itself or from third party users (as for health and education services, and for some types of transport infrastructures). There is no need to specify a given threshold between government and third party payments on this point. Although it only needs to be just above 50 %, in reality it is usually much higher, generally above 90 %, because most contracts refer to 'typed' economic models. The expression 'shadow tolls' is frequently used, notably in the case of transport infrastructure assets, and refers to remuneration by government for a given volume usage of the asset by third parties⁽²⁹²⁾.
22. The use of the assets would normally be specifically defined in the contract, possibly through a 'dialogue process', and there would be limitations in the way in which the assets could be used by the partner. For example, the partner could not dispose of them at will, and, where applicable, would have to give priority to government users over other possible users. It is to be underlined that many contracts do not rule out payments by 'third parties', when applicable, but these are likely to represent a minor (sometimes even negligible) part of the partner's revenue and frequently result from a secondary activity associated with the dedicated assets (for instance, an ad-hoc 'private' use of some sportive, educational or cultural infrastructure in some circumstances or fees collected for laying telephone cables along or under a motorway).
23. In addition, it must be stressed that in this context, 'government' refers to the whole general government sector (S.13) as defined in ESA 2010. Different government units, even classified in different subsectors of government, may take part in the contract according to various degrees.

⁽²⁸⁹⁾ This conclusion is also reinforced by the fact that ESA 2010 paragraph 20.282 explicitly indicates that *...the assets typically have service lives much longer than the contract period, so that government may control the assets, bear the risks and receive the rewards, for a major portion of the asset service lives...*

⁽²⁹⁰⁾ Obviously, an asset has always to be allocated to an entity. If not economically owned by the old partner anymore (at the moment in which maintenance will not be assured anymore and no availability or demand payments will be received), it will have to be owned by government, at least during the new tendering procedure.

⁽²⁹¹⁾ The new partner would pay for the acquisition of the assets, at their remaining value.

⁽²⁹²⁾ It may be the case that third party payments result from a partial use of some assets (for instance sport facilities in a school opened to the public outside school time, concerts in stadiums, etc.) or do not relate to the core use of the assets (for instance a cafeteria in a hospital). It may happen that such third payments are shared by government and the partner. In this case, if purely residual, they have no implications in the analysis of a PPP, but, if non-negligible, these rewards must enter the analysis as far as the sharing of rewards is concerned.

6.4.2.3. THE KEY ISSUE IN NATIONAL ACCOUNTS

24. In national accounts, long-term contracts such as PPPs raise the issue in which sector's balance sheet the related assets are to be included in. This refers to the initial recording of the assets involved, either in the government's balance sheet or in the partner's balance sheet. A recording in the government's balance sheet may have important consequences for government statistics, both for government net lending/borrowing (B.9) (the capital expenditure is to be recorded as government gross fixed capital formation (GFCF) in the non-financial account (P.51g)), and government debt (the financial account would match the capital expenditure by an imputed government liability, which would increase government gross debt when recorded as an imputed loan (AF.4)).
25. Moreover, according to national accounts rules (see ESA 2010 paragraph 3.148 (b) (3)), when the assets (in the form of buildings or other structures) are considered as government assets, the capital expenditure is recorded on an accrual basis as the works proceed, and not at the end of the construction/refurbishment period. For practical reasons, the existence of phased payments (instalments) received by the constructor or manufacturer, may sometimes be used as a proxy for indicating the appropriate time of recording. This is by definition applicable for GFCF under PPP contracts, (see ESA 2010 paragraph 3.55 related to the case of construction of other structure).
26. There are also consequences as regards the recording of the flows that are observed between government and the partner during the lifetime of the contract. If an imputed loan has been recorded in the government's balance sheet, the redemption of the corresponding principal must be spread over the entire period with no impact on government net lending/borrowing (B.9), while imputed interest must also be calculated and included in government expenditure together with the costs of the services charged to government in the context of the contract, with both expenditure impacting government net lending/borrowing (B.9).
27. It is to be underlined that the criteria developed in the following section, leading to the decision to classify the asset in the balance sheet of government or of the partner, should not be considered in isolation, criteria by criteria, but according to a principle of additivity. For instance, the fact that government would hold a minority share in the equity of the partner⁽²⁹³⁾ would not be enough, by itself, to reclassify the assets in the government balance sheet, but, if at the same time, the rewards for government would go beyond its rights as a shareholder, the assets should be considered as belonging to government. Similarly, if government would hold specific rights (such as a veto right for major decisions), the partner could be reclassified in government (and thus the assets).
28. Moreover, concerning the issue of the amount of risks and rewards taken back by government through different ways, in some cases one single criterion would be enough to reclassify the asset in the balance sheet of government (construction risk, availability/demand risk, financing (including refinancing), early termination, '*force majeure*'). However, in some complex cases, a specific analysis, through an additive global approach, should be used when more features or specific clauses in the contract, as such not individually sufficient, on the basis of the current methodological provisions, to classify the asset in the balance sheet of government, would result in an insufficient transfer of economic ownership to the partner.

6.4.3. Treatment in national accounts⁽²⁹⁴⁾

6.4.3.1. SECTOR CLASSIFICATION OF THE PARTNER

29. The partners involved in long-term contracts with government can belong either to the public or to the private sector. If it is a public unit, it means that, according to national accounts rules, government or another public unit determines the general corporate policy of this unit.
30. The public partner should be classified as a non-financial corporation as long as it acts as a market unit (meeting the 50 % criterion), fulfils the qualitative criteria specified in ESA 2010 and if payments by government may be considered as sales (as a counterpart for the provision of services).
31. However, specific attention should be given to cases of a public corporation (which would meet the qualitative/quantitative criteria for market production and would be classified under normal

⁽²⁹³⁾ Or would finance a substantial part of the capital expenditure, but not above 50 % of the total.

⁽²⁹⁴⁾ PPP issues are treated in ESA 2010 paragraphs 20.276–20.290.

circumstances outside the government sector), or when government would be a minority shareholder but in a position to exert a significant influence in the contract negotiation and on important decisions to be taken in the course of its implementation⁽²⁹⁵⁾. In cases where payments by government under this contract would be a predominant part of the partner's revenue, these payments should be analysed to determine if they can be classified as sales, particularly if this contract alone results in a significant change in the size or nature of the partner activities. Following the application of the rules described in Part 1 Delimitation of general government sector, this corporation could be reclassified as a government unit if payments from government would not be considered as sales.

32. As regards PPP contracts where the partner is a special unit, created on purpose (frequently referred to as 'project company' or a special purpose entity — SPE) for a single PPP contract, it must be considered to what extent it is controlled by government. Even when government holds a minority stake, it can exert a predominant influence in the contract negotiation and on important decisions. Government could, for instance, hold veto rights on final approval for important decisions in the context of the drafting the contract and/or in the course of its execution (for instance, choice of sub-contractors, annexed activities, significant repairs, extension of capacity, etc.). If this is the case, the assets should be reclassified in the balance sheet of government. Moreover, the presence of government in an SPE or the fact that the partner could be a public unit, are factors that have to be taken into account in the context of the final sharing of the rewards between government and the partner.
33. Finally, whenever government deliberately provides support to a partner classified outside the government sector as compensation for events that were not mentioned as clear commitments when the contract was signed, this support must be recorded as a transfer affecting government net lending/borrowing (B.9) at the time the decision to provide the support is taken or implemented, unless it would fall under the restrictive list of events which can be considered '*force majeure*'. Support from government to the partner can also affect the allocation of risks. For instance, government could provide refinancing so that the liability to government would cover a major part of the value of the fixed asset. Another example could be the provision of some subsidies, which would result in a market/non-market test value below 50 %.
34. A reclassification of the assets in the government's balance sheet will result from the reclassification of the public partner in general government. This may occur, for example, if a recurrent support would result in a shift (of a public unit) from a market entity to a non-market entity (i.e., no longer satisfying the criteria as to be considered engaged in market activity) or for other reasons.

6.4.3.2. ASSESSMENT OF THE RISKS AND REWARDS BORNE BY EACH CONTRACTING PARTY

35. In national accounts, the assets involved in a long-term contract between a government unit and a non-government partner can be considered as non-government assets only if the non-government partner bears most of the risks attached to the asset during the whole duration of the contract and is also entitled to receive most of the current benefits from the assets.
36. ESA 2010 paragraph 20.283 states that a majority of the risks and rewards must be transferred and not 'all' of them. As a matter of fact, some sharing of risks between government and the partner is usually observed in partnerships. As mentioned further, it may be seen as acceptable that some risks might be taken by government, for instance in the case of exceptional events (*force majeure*), in the context of a government action which would change the conditions of activity that were contractually agreed, or for specific risks, notably in relation with archaeology, land register, environment, public security, enforcement of legal decisions, etc., for which government behaviour may have a decisive influence. However, normal risks associated to the economic ownership of the asset should be taken by the partner if the asset is going to be classified in its balance sheet, and the risks incurred by the partner must have a significant impact on its profitability (and possibly, in some cases, also on its solvency), under normal circumstances, where there would be a clear link between the realisation of these risks and the actions (or absence of actions) taken by the partner. Therefore, the analysis of risks borne by the contractual parties is to be considered as a very important element as regards the classification of the assets involved in the contract, to ensure the correct accounting of the impact on the government net lending/borrowing (B.9) and debt of this type of partnerships.

⁽²⁹⁵⁾ It would not matter whether it would be the contracting government unit the one owning the shares or another government unit, which could even be in another government subsector.

37. It has also to be noted that these arrangements deal with a single asset or with a set of assets that are not contractually divisible. Because of the features of the contracts, PPP assets should not be split in national accounts. The assets should be recorded in the balance sheet of just one of the parties involved (the economic owner), for their total value.
38. For the purpose of classifying PPPs in national accounts, in order to simplify the analysis, three main categories of risks have been selected.
39. The **Construction risk** covers events related to possible difficulties faced during the construction phase and to the state of the involved asset(s) at the moment in which the services start to be provided. In practice, it is related to events such as late delivery, non-respect of specified standards, significant additional costs, legal and environmental issues, technical deficiency and external negative effects (including environmental risk) triggering compensation payments to third parties.
40. The **Availability risk** covers cases where, during the operation of the asset, the responsibility of the partner is called upon, because of faulty management ('bad performance'), resulting in a volume of services lower than the one which was contractually agreed, or in services not meeting the quality standards specified in the contract.
41. The **Demand risk** covers the variability of demand (higher or lower than expected at the moment in which the contract was signed) irrespective of the performance of the partner. In other words, a shift of demand cannot be directly and totally linked to an insufficient quality of the services provided by the partner, although quantitative and qualitative shortfalls in this matter are likely to have an impact on the effective use of the service and, in some cases, exert an eviction effect. Instead, the demand risk may also result from other factors, such as the business cycle, new market trends, a change in final users' preferences or technological obsolescence. This must be seen as part of the usual 'economic risk' borne by private entities in a market economy.
42. Normally, the demand risk would not be applicable for contracts where the final user has no free choice as regards the asset-dependent service provided to them by the partner (thus, excluding 'secondary' services falling under the 'third parties' revenue category). For example, a demand risk should not apply to assets such as prisons. It may also be the case for hospitals or schools under certain conditions and, in some cases, sporting and cultural infrastructure assets. The non-applicability of the demand risk would reinforce the fact that the construction and availability risks should be unquestionably transferred in such cases.
43. In addition, some contracts may be designed in a way so that government payments would be mainly linked to the effective use of the assets (volume indicators), whatever the extent of final user's own initiative and in spite of the fact that the volume would be frequently closely correlated with the performance of the partner related to the availability and the quality of the asset.
44. Some contracts may combine regular (unitary) payments related to the availability of the assets with other regular (unitary) payments linked to the actual use of the assets (demand), both being identifiable. The partner may be seen here as bearing several risks. Where neither of the separate types of payments would exceed two thirds of the total government unitary payments, both availability and demand risks must be assessed separately; they would have to be jointly transferred (in addition to the transfer of the construction risk which is, as such, an imperative condition) in order to classify the asset off government's balance sheet. If it appears that one type of payment is the predominant part, higher than two thirds of the total, the analysis should rather focus in priority on the corresponding risk. However, the other component paid by government should also not be neglected and it should be checked to what extent it could mitigate the impact of the occurrence of the predominant risk on the income/profits of the partner.⁽²⁹⁶⁾
45. In all cases, the analysis of the risks borne by each party must assess which party is bearing the majority of the risk in each of the different categories, under the conditions mentioned above, and taking into account the other contractual features mentioned below.
46. However, this assessment does not consider risks that are not closely related to the asset(s) and that can be separated from the main contract, as it is the case when part of the contract might be periodically renegotiated, and where there are performance or penalty payments that do not significantly depend on

⁽²⁹⁶⁾ For instance, if the 'minor component' foresees some mechanisms that could guarantee in any case a minimum revenue or profit to the partner, even in case of penalties for the 'major component', this should be taken into account in the global assessment of the contract.

the actual condition of the main assets or on the quality of the service.⁽²⁹⁷⁾

47. The assets involved in such PPPs would be recorded in the partner's balance sheet, and therefore recorded 'off-balance sheet' of government, only if both of the following conditions are met:

- the partner bears the construction risk, and
- the partner bears at least one of either availability or demand risk, as designed in the contract.

48. Therefore, if the construction risk is borne by government, or if the partner bears only the construction risk and no other risks, the assets are to be recorded in the government's balance sheet.

49. A key criterion, which must be taken into account, is the possibility for government to apply penalties in cases when the partner is defaulting on its service obligations. Application of the penalties should be automatic (i.e., clearly stated in the contract and not subject to bargaining or to a decision by government on whether to apply them or not) and should also have a significant effect on the partner's revenue/profit and, therefore, must not be purely symbolic. Should the asset not be available for a non-negligible period of time, the government payments, as determined by the contractual formula, would be expected to fall to zero for that period, according to a fundamental principle 'zero availability — zero payment'.

50. However, it must be stressed that there might also be some lump sum payments due by the partner (for instance as specific penalties related to some events, insufficient quality of the asset, lack of information or insufficient provision of documentation, bad performance, etc.), which should be paid by the partner in any case as a result of other occurrences, independently from the application of the penalties system due to the non-availability of the asset mentioned above. This could result in net payments from the partner to government, which, as a matter of principle, should not be brought back to zero. Conversely, if the partner is in a position to perform its obligations, according to the contractual provisions, better than expected (through higher productivity, lower costs of input, better financial conditions, etc.), it should be entitled to keep the resulting entire and higher than expected profit.

51. Furthermore, any other mechanisms by which government would re-assume the majority of risks of the project (e.g., via termination clauses, government majority financing or the provision of guarantees by government (see below sub-sections 6.4.3.3 to 6.4.3.5)) would determine the recording of the asset on government's balance sheet, independently from the analysis of the risks mentioned above. In other words, the assets will be classified as government assets if one of the provisions below related to guarantees, financing or early termination would not be met.⁽²⁹⁸⁾

52. As far as the rewards derived from the project are concerned, if the PPP contract foresees that, at a given level of profitability for the partner, whatever the way in which it would be expressed (monetary terms, ratio of return on equity, etc.), the government unit would be entitled to take any part of the profit, the PPP assets should be considered as government assets, independently from the precise definition and amount of the profits captured by government. All things being equal, the fact that a unit receives the rewards from an asset is an indication that the asset should be classified on its balance sheet. However, in case government would hold a minority stake in the PPP partner, government could still indirectly be entitled to its normal share of profit which could be distributed to the partner, i.e., under the same conditions as the other shareholders, by way of payment of dividend. It is to be underlined, nevertheless, that government can be entitled to receive all or part of the additional previously unforeseen profits realised by the partner if they, by evidence, result from a deliberate action or decision of government with an impact on the use of the specific asset and/or the costs of their availability, such as an increase in demand fees resulting from an explicit government decision/policy, etc. This should not include, however, general measures taken by government with a large impact in the economy.

6.4.3.3. GOVERNMENT FINANCING

53. It is possible that an important aim of government's long-term partnerships with non-government units would be to spread the recording of capital expenditure and related financing over a long period of time.

⁽²⁹⁷⁾ This could be the case for some 'accessory' risks for which a defaulting performance should not necessarily lead to a reclassification of the assets.

⁽²⁹⁸⁾ As mentioned in ESA 2010 paragraph 20.285, in case of very complex arrangements (type of assets, design of the contractual obligations), if the analysis on the basis of the criteria listed above and below would not be unquestionably conclusive, the degree of involvement of government in the determination of the assets and the services to be produced should be considered as an additional criterion.

54. In this framework, it may be the case that government itself takes part in the financing of the partner. Frequently, a partner is not able to borrow at the same rate of interest as government, thus increasing the cost of the project. Therefore, government may offer a certain level of financing to the partner in the context of a PPP project, to attract greater interest by private sector entities in the project, to reduce the total cost of financing, and/or simply to ensure the viability of the project⁽²⁹⁹⁾.
55. If the majority of the financing of the capital expenditure would be provided by government (in various forms to be jointly considered, e.g., investment grants, loans, guarantees, equity in the partner, etc.), government would be deemed to bear the majority of risks and the asset must be classified on its balance sheet. If this situation is foreseen in the initial contract, any capital expenditure will be recorded as government GFCF. The financing by government may also take place at different points of time. It may be from inception, covering the construction phase, but also at the end of the latter when the debt incurred during the construction phase (financed by partner's own funds and/or short time banking facilities) could need to be 'consolidated' at long term. It may happen that government would pay a significant amount at the end of the construction phase which should be considered as an investment grant (and not as pre-payments of the future unitary availability or demand payments) and, as mentioned above, it should be taken into account in the assessment of the share of government in the total financing. Moreover, if the financing provided by government would be at first a minor part of the total financing needs (with the assets therefore, *ceteris paribus*, being classified in the balance sheet of the partner) but then would become predominant in the course of the construction phase for various reasons, this would trigger a reclassification of the assets into the government's balance sheet at the time when this would occur.
56. This would apply only to cases of financing from national government units, therefore excluding any financing from international entities resulting from inter-governmental agreements, such as from EU funds (ESIFs, Cohesion Fund) that are granted to non-government units. In this context, it is to be underlined that, for instance, if the EU finances 30 % by way of grants, the private partner 36 % and government 34 % (of the total), the PPP project would be deemed to be financed in majority by the private sector as its funding would be $36/70=51.4$ % of the total. The assessment of the contribution of government and of the partner in the financing of the capital cost must exclude the EU grants, which reduce the need to finance the capital expenditure on a domestic basis, possibly with government participation. The assets could be recorded as government assets even if government would not cover more than 50 % of the capital expenditure, depending on the share of EU grants. It would simply depend, in fact, on whether the share of government financing would be above or below the share of the financing provided by the private sector.⁽³⁰⁰⁾ The external EU financing⁽³⁰¹⁾ in the form of grants would be excluded from the analysis and from the assessment of the balance of risks between government and the partner.⁽³⁰²⁾ An assessment will still need to be undertaken on whether government incurs more risk than the partner or whether it would be the other way around.
57. When government would be taking part in the financing of the PPP project for less than 50 % of the total, as mentioned above, it would be important to examine the nature of the debt incurred by the partner vis-à-vis government (which would not necessarily be the same unit involved in the contract). This is because financial instruments may involve different degrees of risks, in the sense that a debtor default would be imputed to creditors according to a given order of priority. In this context, in order to implement this rule, it is necessary to make the debt homogeneous in nature. It is however not possible in this respect to use some of the usual tools from financial analysis, such as the 'Probability of Default' or the 'Loss Given Default', etc., which normally would require significant samples. In this context, a simple method should be used under the form of a multiplier equal to 2.5⁽³⁰³⁾ when government holds a

⁽²⁹⁹⁾ It may happen, in this respect, that the financing arrangement is not agreed at the time of the signature of the contract between government and the partner. In this case, the compliance of the PPP with the specific rules related to financing and guarantees in this chapter can be assessed only at the time when the financing arrangements will be agreed upon and properly examined.

⁽³⁰⁰⁾ When it would be agreed that the EU funds would be allocated directly to government in view of covering part of the future payments by government to be made in the context of a PPP contract, the funds should be recorded as a financial advance when transferred from the EU, with no impact on government net lending/borrowing (B.9). When the funds would be used, under regular unitary payments by government, they shall be recorded as government revenue, neutralising the impact of the expenditure on government net lending/borrowing (B.9), until the complete depletion of the EU funds earmarked for the PPP contract.

⁽³⁰¹⁾ The financing from the EIB through loans, must not be considered as government financing, but simply as any financing from the private sector for the purpose of the application of these national accounts rules (unless the EIB would benefit from a guarantee of government).

⁽³⁰²⁾ Obviously such grants will simply decrease the capital cost of the project and would not be reflected in the availability or demand unitary payment which government will make to the partner.

⁽³⁰³⁾ This level has been derived from default probability matrices set up by rating agencies.

higher risky instrument (junior or subordinated debt) than the other creditors.⁽³⁰⁴⁾ More complex cases (for instance, when there are a set of different classes of instruments and various levels of losses coverage) would nevertheless require a specific analysis.

58. In some contracts, government may take a firm commitment to ensure all or part of the financing of the partner in case this could not be in a position to get the financial resources when needed.
59. For instance, in some cases, which should be rather exceptional, the financial agreement signed at inception would not cover the whole duration of the contract (such as in the case of a long-term syndicated bank lending) or problems could be incurred at the end of the construction phase. The latter is generally financed by short term facilities (drawn according to the progress in the works) 'consolidated', when the construction is completed (and accepted by the counterpart), by long term financing means (including the issuance of long-term securities). This could happen, for instance, when some banks or underwriters have no firm obligation to ensure this consolidation and, for various reasons, could decide not to participate. In this case, if government has taken the commitment to finance more than 50 % of the capital expenditure, the assets should be classified as government assets at the start of the implementation of the PPP contract (with the GFCF being progressively recorded following the completion of the works), as the PPP assessment needs to be undertaken over the global financing risk of the partner on both the construction and the exploitation phases, i.e., all along the lifetime of the contract and not only at the moment of its signature. Such a contingent commitment of government would strongly mitigate the risk of the partner.
60. Another case could be when the long term financing would not cover the PPP contract until its final maturity for various reasons (market conditions at the time of the financial agreement, risk aversion, uncertainties on the arrangement viability, etc.) and there would be uncertainty on the capacity of the partner to get all the needed financial resources as well as on their cost. The assets should be reclassified as government assets at the time government would actually refinance the debt, if its commitment covers more than 50 % of the expected value of the asset at the time of this refinancing, on the basis of the contractual provisions related to the capital expenditure (in some cases the realised expenditure could be however higher). However, in both cases mentioned above, if the government (re)financing would take place in a context of market disruptions (this could be the case, for instance, at the time the financial agreement is signed), such as a credit crunch or inactive financial markets, which could be considered as a case of '*force majeure*', the intervention of government might not result in a reclassification of the asset, provided that the government financing would cover only a small part of the remaining duration of the contract and that the stepping out of government should be envisaged as soon as the market conditions would come back to relatively 'normal' conditions.
61. Finally, a refinancing may be implemented, either because the financial instruments reach their maturity before the end of the PPP contract, or in order to benefit from favourable market trends (such as a general decline in the interest rate) or due to a better appreciation of the partner's risk)⁽³⁰⁵⁾ on the market). The assets should be at inception considered as government assets if government is entitled in the contract to a specific share of the possible refinancing gain. However, there would be an exception, when it may be evidenced that a better appreciation of the partner's risk is due to a specific action of government (for instance due to a lower use of the assets, or a creation due to government of better conditions for their use, etc.) which has increased the partner's profitability. In this case, the refinancing gain could be allocated to government. In some cases, it may be difficult to isolate the predominant cause of the refinancing gain, which, in practice, may result from the conjunction of various factors, not easily and precisely weighted. Under these conditions, if government was entitled to capture no more than one third of the gain, the assets should not be reclassified in government at inception of the PPP contract. This proportion would be justified by the fact that, apart from the rewards directly linked to specific actions of the partner or of government, it must be considered that the risks and rewards deriving from the macro-economic setting must be incurred by the economic owner of the asset, exactly as in the case of *force majeure* events or in other similar cases. Government could also receive part of

⁽³⁰⁴⁾ For instance, if a subordinated debt equal to 30 % of the total is held by government, and the 70 % senior debt is held by other investors. The subordinated debt would be weighted 75 and the share of government in total financing would be $75/145 = 51.7\%$. The subordinated debt could also be held by other investors: for instance, government subordinated debt 20 %, other subordinated debt 10 %, senior debt 70 %; the share of government in total financing would be in this case $50/145 = 34.5\%$.

⁽³⁰⁵⁾ This may also be linked to the appreciation of the risks of the 'sponsors' of the partner (for instance in the case of building companies which have set up a specific PPP unit) which could have to support it in case of difficulties (such support would be compulsory if their stake take the form of an unlimited liability).

the profits through taxation, but this should fall under normal taxation rules and not through a specific tax levied for the specific case of the PPP.

6.4.3.4. GOVERNMENT GUARANTEES

62. Government may also provide directly an explicit guarantee⁽³⁰⁶⁾, partially or fully covering the project-related borrowing of the partner, whatever the nature of the creditors (including possibly international financial organisations). Generally, this helps the partner to raise funds at a lower cost on markets and to improve its credit rating.
63. In this context, the existence of legal provisions transferring to government all or part of the debt service would trigger a classification of the partner's debt as government debt.
64. Moreover, because guarantees have an impact on the distribution of risks between the parties, guarantees should be used in the analyses of risks in PPPs, especially where the majority of the value of the PPP assets (including any refurbishment cost) would result from a transfer of the assets from government.
65. The scope of a guarantee, (including cases where it covers not only a specific project-related debt instrument⁽³⁰⁷⁾), may influence the recording of the PPP assets. It may result in the re-assumption by government of some of the risks analysed above in this chapter.
66. In PPPs, government guarantees can be granted to the partner to cover the repayment of the debt, but they may also ensure a given return on equity, whatever the performance of the partner. This would indicate an insufficient transfer of risks to the partner. Similarly, in some cases where 'shadow-tolls' would be set up depending of the use by end users, government could ensure minimum revenue under the form of a guaranteed level of demand, independently of the actual use of the asset. This would also be considered as an insufficient transfer of risks.
67. If, at inception or during the construction phase, government guarantees cover a majority of the capital expenditure of the PPP project, the asset is normally to be recorded in the government's balance sheet, except in the case of a guarantee very limited in time and applicable only to strict circumstances of market disruption. The same should apply if a given or a minimal rate of return is assured for the partner under all circumstances
68. In addition to the straightforward case of an explicit debt guarantee, the guarantees to consider when analysing the risk distribution between government and the partner would also include those provided to the creditors or to the partner, under various forms (such as through insurance or derivatives), or under any other arrangements with similar effects.
69. For the evaluation of the risk distribution between government and the partner, both tests for majority financing and guarantees in relation to the capital expenditure of the PPP project must be undertaken jointly. It might well be the case, in PPP contracts, that government would provide a minority of the total capital expenditure, but would then guarantee a major part of the remaining project finance (related to the partner loan liabilities directly or indirectly, e.g., through guaranteed availability payments). In this case, if the combined effect of government support would represent more than a majority of capital expenditure, this would lead to the conclusion that a majority of risks would be incurred with government. Additionally, in the cases where a PPP is in majority financed by equity, a special analysis needs to be undertaken assessing the impact on the risk distribution between government and the partner from the contract provisions on the equity stake.
70. Finally, when a guarantee is effectively called, this might result in a change in the economic ownership of the assets and in their reclassification (at their remaining value), whenever this would change the share of risks borne by the parties. This could be the case, for instance, if government would take control of the partner, and/or would pay no longer on the basis of the asset availability and demand, but mainly on the basis of operating costs.

⁽³⁰⁶⁾ It means that it would be directly enforceable, in most cases unconditionally and at first demand, by the debt holders, as soon as a default is observed or, in some cases, following the assessment of some bodies (such as International Swaps and Derivatives Association (ISDA)).

⁽³⁰⁷⁾ For instance, government might provide a guarantee to a corporation engaged in various activities, and not only in a PPP project, for all the debt issued by the unit. The rule would also be fully applicable in this case.

6.4.3.5. TERMINATION CLAUSES AND CHANGE IN THE NATURE OF THE CONTRACT

71. PPP contracts include termination clauses in the event that government or the partner cannot fulfil the contract or if they persistently fail to meet their contractual obligations. In addition, government may use its exceptional sovereign rights. There may be different causes for the termination before the maturity of the contract. Special attention must be given to the case where the termination is triggered by a default of the partner (or by an independent decision of the partner to withdraw from the contract), for instance because of recurrent bad performance or because no longer being in a position to provide services at the agreed contractual conditions. This is generally submitted to some conditions and procedures in the contract. When the partner defaults, the assets are generally transferred to government (see the conditions below) at the time of the termination, except in the case where there would be an immediate transfer to a new partner. Any new contract, in this respect, would require a new analysis.
72. Termination clauses will often require the government to acquire the asset and take on board part or all of the partner's PPP-related debt and pay the partner a compensation. This is because the PPP asset is often a 'dedicated asset' with limited resale value on the market for the partner and because government usually wants to retain a major influence on the conditions in which services are provided from the asset. As a matter of principle, any compensation in the context of an early termination due to a default by the partner must take into account the insufficient performance of the partner and, therefore, must be different to a compensation payment resulting from an early termination at the initiative of government.
- If the termination is due to the partner's default during or at the end of the construction phase, generally the contract should require just a refund by government based on the capital expenditure incurred. In addition, in the absence of penalties charged to the partner for any possible negative consequences of the default (delays, cost overruns), the construction risk is deemed to be borne by government.
 - If the default takes place during the operating phase, the contract should explicitly mention that the compensation owed to the partner, if any, at the time government takes over the asset from the partner, should not exceed the current market value (as indicated in ESA 2010, chapter 7 Balance sheets) of the asset (taking into account the likely cost required to bring the asset to an adequate condition), as determined by a retendering process or reliably estimated by independent experts⁽³⁰⁸⁾. If the conditions are not met (first and foremost whenever the compensation is only based on the present value of future flows for the partner as foreseen in the contract, without taking into account the exact state of the asset), or on some other amount not reflecting the current value of the asset), the transfer of (availability or demand) risks to the partner is deemed to be insufficient⁽³⁰⁹⁾.
73. When assets are reclassified in the government's balance sheet at the time of the termination of the contract, the GFCF of government is recorded at that time, at the exact market value of the assets. Government should usually take over an equivalent amount of debt, but it may also happen that government would assume a higher amount of debt than the value of the assets. Any excess is to be recorded as a capital transfer, with an impact on government net lending/borrowing (B.9).
74. Significant amendments to contracts or renegotiations have been observed in the course of the life of many PPP contracts. In most cases, they should be considered as the cancellation of a previous contract and the creation of a new one, when changes introduced in the contract are not negligible and whenever they alter the distribution of risks and rewards between government and the partner. Notably, a compensation clause may be added in order to maintain the economic equilibrium of the contract (the profitability of the partner) when it appears that the outcome is diverging from the initial expectations. Thus, the reasons for the revision to the contract must be closely considered by statisticians. Only if such revision results from a change in the environment of the contract clearly beyond the responsibility of the partner, (and only in the case when government takes specific actions or decisions affecting the contract implementation) the revision might be considered as being neutral on the analysis of the transfer of risks. As a matter of principle, however, in such cases, the compensation to the partner should be strictly in proportion to the impact of the action of government on the partner's revenue.
75. As a specific case of contract amendments, it may be foreseen that the final users will start paying directly or indirectly government for the use of the asset (such as in the case of road tolls), whereas

⁽³⁰⁸⁾ For instance, if the retendering process would be inconclusive with no participant or a single participant.

⁽³⁰⁹⁾ The market value of the asset as determined by independent experts should be assessed based on its construction cost, properly amortized throughout the duration of the contract, taking also into account the previous partner's defaults in maintenance and repair which would, as a result, need new GFCF expenditure.

government will continue to pay regular fees to the partner. Even if these contracts are still in current terminology referred to as PPPs contracts, they should no longer be considered as PPPs in national accounts if the final users would pay for the use of the assets and this would become the major source of revenue. In this context, the assets should be reclassified as government assets if these payments (recorded on a gross basis, i.e., including any collection fees kept by the partner) by final users are higher than 50 % of the total cost for the use of the assets (consumption of fixed capital, expenditure for maintenance and repair, etc.) which are mainly covered by the unitary payments made by government to the partner.

76. If the amended contract foresees that the 50 % ratio of payments by final users on the cost of use of the assets should be reached in a relatively short period (defined as less than two years), the transfer of the assets must take place at the time the new contract enters into force.
77. If the amended contract foresees a progressive change in the relative amount of payments between government and final users (for instance, involving successive stretches of transportation infrastructure), the transfer should take place as soon as the 50 % threshold will be reached. Similar clauses related to payments by final users could also be envisaged in contracts at inception for new projects but, in this case, the assets should be classified as government assets at the start of the construction phase in any case, independently of the progressing towards the 50 % threshold.

6.4.3.6. FORCE MAJEURE

78. In the course of the implementation of the contract, after the partner has started carrying out the capital expenditure or during the exploitation phase, it is important to make a clear distinction between different types of events or trends having an impact on the PPP arrangement. Some are unquestionably under the responsibility of the partner as they depend on the 'quality' of its performance, related to the asset or linked to the services performed by using the asset. This must be reflected by a downward adjustment of the unitary payments, notably when they involve 'availability fees' (see above) but also when these payments are linked to the effective use which would likely be affected. On the contrary, there are some government decisions which have a direct impact on the implementation of the contract and for which the partner should be entitled to receive compensation if they deviate from the original contractual clauses and government obligations. However, this should exclude any general policy decision (in various areas, such as economy, social, environment, public order, etc.) which does not specifically refer to the individual PPP contract.
79. There is, however, a third category of events for which there is no clear responsibility from one side or the other. These exceptional 'external' events are generally referred to as '*force majeure*' events in the contract. They may have a significant impact on the availability of the services and/or on the level of the demand. Such risks could be retained by government without necessarily requiring the classification of the asset on its balance sheet. They may also be referred in contracts to as 'relief events' or using another terminology, which exempt the partner to bear the financial consequences. However, they must be considered under restrictive conditions, with an exhaustive and precise list.⁽³¹⁰⁾ Notably, the absence of responsibility of the partner in the event must be absolutely unquestionable, meaning that the partner could not reasonably have foreseen the occurrence or consequences of the event and could not reasonably have avoided its occurrence.⁽³¹¹⁾ In addition, any 'macro-economic' risk, borne by any economic agents in their activity (for instance, the impact of business cycle on costs and demands, contagion and spill over effects) cannot be taken over by government. Normally, the partner should take measures to protect itself against the negative effect on such events, notably through insurance policies when available on the market at a reasonable price (although the protection would be generally limited to a fixed amount or a maximum claim which could be out of proportion with the potential real costs of the damages). On the contrary, in the case of events which would normally be impossible to ensure (such as riots, wars, natural disasters, etc.) government could take over their risk, in totality or partially, without that this would necessarily result in an *ex-ante* classification of the assets in the balance sheet of the government. However, in case of occurrence of such events, a new analysis of the allocation of risks and rewards should be carried out.

⁽³¹⁰⁾ If not exhaustive, it must specify the type of events, such as 'natural disasters', wars and riots, etc.

⁽³¹¹⁾ For instance, a strike may be 'general' or specific to the staff employed by the partner. A school may be closed for epidemiological reasons but the hygienic conditions in the school may have a part in the contamination.

6.4.3.7. ALLOCATION OF THE ASSETS AT THE END OF THE CONTRACT

80. An analysis of the clauses relating to the disposal of the PPP assets described at the end of the contract should be used as a supplementary criterion for determining the overall risk transfer, notably where the risk analysis mentioned above, should not give unequivocal conclusions (for instance if the risk distribution would be estimated as balanced or would be based on fragile hypotheses). The conditions in which the final allocation of the assets would be carried out might give, additional important insight into risks among the contract partners as such clauses might help to assess whether a significant risk remains with the partner. In the context of very long-term contracts, the economic value of assets at the end of the contract may be quite uncertain (due notably to unpredictable obsolescence), while any payment from government at this stage would be a minor part of the total payments made by government over the lifetime of the contract. As a result, this issue cannot by itself be considered as the unique and decisive criterion in deciding on the classification of the assets.
81. If the assets remain the property of the partner at the end of the project, whatever their economic value at that time (although frequently their future economic life remains quite significant, notably in cases of infrastructure that only slightly depreciates over time), then recording the assets in the partner's balance sheet would have an additional strong justification.
82. In some contracts, government holds an option to buy the asset at one or several points of time. If this option is to be exercised at the market value of the asset, properly assessed at the time of the purchase, the partner would bear the risks associated with the continued demand for the asset and its physical condition during the contract period. This would also reinforce the recording of the assets in the partner's balance sheet during the contract period.
83. In some contracts, government has the firm obligation to acquire the assets at the end of the contract at a pre-determined price, usually set where the contract is signed.
84. The following cases would strongly reinforce the analysis of other characteristics of the contract and would point to a recording of the assets as government assets:
- the pre-determined price is fixed as a remaining part of the initial cost of capital, without any reference to the asset's expected market value at the end of the contract;
 - the pre-determined price is obviously higher than the expected market value of the assets at the end of the contract;
 - the pre-determined price is lower than an expected market value at time of the transfer or the assets revert back to government at no cost, but government effectively prepays for the acquisition of the assets throughout the contract by making regular payments that reached a total amount very close to the full market value of the assets;
 - if it is not specified in the contract that there should be a thorough check by an independent body of the exact condition of the assets ('rendezvous' clauses) a few years before final termination, such that government is entitled to ask for supplementary expenditure and/or reducing the pre-determined price where necessary.
85. In some cases, at the end of the contract, the partner is wound up or absorbed by government. In such cases, the assets would enter the government's balance sheet at the end of the contract through other changes in volume (changes in sector classification and institutional unit structure (K.61)).

6.4.3.8. CLASSIFICATION OF SOME TRANSACTIONS BETWEEN A CORPORATION AND GOVERNMENT

86. When government makes regular payments to the partner, the treatment of these transactions would depend on whether the asset is recorded in the balance sheet of government or of the partner.
87. If the asset is included in the partner's balance sheet, the corporation provides a service to government that constitutes government intermediate consumption expenditure, valued by the payments done to the corporation.
88. If the asset is included in the government balance sheet, the service to the community is provided using government asset. The acquisition of the asset by government is recorded as in a 'standard' financial leasing contract. Government payments to the partner over the whole life of the contract are split between redemption of principal (F.4), payment of interest (D.41) and, possibly, purchase of services for

the tasks performed by the corporation and purchased by government (P.2).

6.4.4. Rationale of the treatment

6.4.4.1. SECTOR CLASSIFICATION OF THE PARTNER

89. The special case of a PPP between government and a public corporation should fulfil certain conditions.
90. The public corporation should show the usual required competence in the area of activity covered by the PPP (directly or, in the case of creation, by the unit(s) controlling it), and the PPP contract with government should be one among several commercial activities of the public corporation.
91. In the case of a public entity in which the contracts with government are almost exclusively the source of its revenue, a reclassification as government unit is not necessarily required if there is evidence that market-oriented payments (meaning of a similar kind to those observed between other market units) are made to the corporation, and if government bears only risks that a commercial entity would not normally be expected to bear (very high political or security risks, for instance). Otherwise, this will indicate an ancillary activity of the public entity to government.
92. In some contracts, the execution of the contract takes place under the legal umbrella of a special purpose entity (SPE). Normally, such a legal entity has a pre-defined life limited to the length of the PPP contract, or just to the construction period. It can be expected to have been created solely for legal purposes.
93. If one or several partners that are the operational contracting parties collectively control this unit, it should be classified as a non-government unit. This may be observed in the case of the construction of innovative and complex assets that need the close cooperation of firms specialised in different technical areas. The SPE would be the organisation created to represent them as a consortium. The SPE may also take the form of a pooling of banks where the financing requirements are quite significant. Therefore, an SPE generally does not play an operational part in the execution of the contract, neither as a project manager, nor as the builder or operator of the PPP asset.
94. Complications arise when such a special unit partner is created by government or by a public corporation. In this case, it must be closely checked whether the unit can be considered an independent institutional unit according to national accounts, and whether the unit is a true market producer. The unit must, amongst other things, have the capacity to acquire assets and incur liabilities in its own right and to enter into contracts with non-government units. In some cases, the unit should be reclassified within the government sector (possibly as an unit undertaking ancillary activities (ESA 2010 paragraph 2.26) or according to rules for special purpose entities of general government (ESA 2010 paragraphs 2.27–2.28)), so that the fees paid by government would not be considered as the revenue of a 'real partner', but, instead, as transfers within the general government sector.

6.4.4.2. ASSESSMENT OF THE RISK

95. The core issue is the share of the risks which are inherent in the contract, and which are directly related to the state of the assets involved or depend on some management tasks that must be carried out by the partner in the framework of its contractual obligations. This refers to the concept of 'economic ownership', which is clearly distinguished in national accounts from the one of 'legal ownership' and which is used in most accounting standards (both in national accounts and for business accounting purposes). The analysis of risk sharing must rely both on the potential effect on profits of the partner (lower income and/or higher costs) and on the probability (even roughly estimated) of occurrence of the risk, by analogy to the 'mathematical expectancy' concept (or the notions of 'probability of default' and 'loss given default' in financial risk models). Thus, it would not be acceptable that the partner would bear only risks with potentially high damageable effects but with a very low reasonable likelihood to occur.
96. As regards the **construction risk**, an obligation for government to start making regular payments to a partner without taking into account the effective condition of the assets that are delivered would be evidence that government bears the majority of the construction risk and is acting as the *de facto* owner of the assets since inception. This is also true where payments are made by government to cover systematically any additional cost, whatever their justification.
97. The magnitude of the different components of this risk can be estimated by the amount that each partner would be obliged to pay if a specific deficiency was to occur. This risk might be quite significant where

the assets involve major research and development or technical innovation, whereas it could be more limited for conventional structures. An important point is that government should not be obliged to pay for any event resulting from a default in the performance of the construction phase by the partner, either as a direct supplier or only as a coordinator/supervisor.

98. The partner would not need to take the risks for unexpected exogenous events not normally covered by insurance companies, or that it was not reasonably possible to estimate before the beginning of the works.⁽³¹²⁾ This risk must not be confused with the appropriateness of the 'design' of the assets, where the degree of initiative of the partner may be very limited. The main point here is that a partner would not normally agree to bear risks related to the construction, if government's requirements would be unusual, and would alter the commercial viability of the asset. In addition, the partner should not be held responsible in case of an explicit government action, such as modifying the specifications in the course of the construction or modifying some standards requirements. A specific case to be considered is when the partner receives an existing government asset as a necessary part of the project (either as an element of the whole or in the context of a significant refurbishment). The construction risk applies only to the new capital expenditure under the responsibility of the partner, whatever the conditions in which the asset has been transferred. The partner may also not be held responsible for over-costs and delays that could result from legal risks or assimilated risk (such as the expropriation risk), resulting explicitly from an inadequate regulation/legislation decided by government.
99. As regards the **availability risk**, government is assumed not to bear such a risk if it is entitled to reduce significantly its periodic payments, like any 'normal customer' would be entitled to, if certain performance criteria were not met. Under these conditions, government payments must depend on the effective degree of availability ensured by the partner during a given period of time. This would mainly apply when the partner does not meet the required quality standards, resulting from an insufficient performance and reflected in the non-availability of the service, in a low level of effective demand by final users, or a low level of user satisfaction. This would be reflected in the performance indicators mentioned in the contract, for instance, concerning the available number of beds in a hospital, of classrooms, of cells in a prison, of lanes of a highway opened to traffic, etc. Normally, the partner is assumed to be in a position to avoid the occurrence of the availability risk. In some cases, the partner could invoke an 'external cause', such as a major policy change of government, additional specifications requested by government, or '*force majeure*' events. However, such exceptions should be accepted only under very restrictive conditions, be explicitly stated in the contract and cover a large number of factors having an impact on the costs incurred by the partner and/or on its ability to meet the contractual requirements.
100. The application of the penalties when the partner is defaulting on its service obligations must be automatic and must also have a significant effect on the revenue/profit of the partner. They must affect significantly the operating margin of the partner and could even exceed it in some cases, so that the partner would be financially strongly penalised for its inadequate performance. It may also take the form of an automatic renegotiation of the contract and even in the cancellation of the contract.
101. It is important to make sure that penalties for inadequate performance are not purely 'cosmetic' or symbolic. The existence of inadequate penalties would be evidenced by a reduction in government payment far less than proportional to the amount of services not provided, and this event would be contrary to the basic concept that risk must be significantly transferred to the partner. Furthermore, the existence of a maximum ceiling or percentage of penalties that could be applicable in the event of defaulting performance, would also suggest that this risk has not been significantly transferred to the partner. In the case of no availability of the asset during a certain period, it would be expected that the government's payments would fall to zero.
102. As regards the **demand risk**, government is assumed to bear this risk where it would be contractually obliged to ensure a given level of payment to the partner independently of the effective level of demand expressed by the final users, making irrelevant the fluctuations in the level of demand on the partner's profitability. The variability of demand however would not be due to the performance of the partner, which is already covered by the provisions above (in other words, the availability standards stated in the contract would be fulfilled). Therefore, the demand risk would cover a direct change in final users' behaviour due to factors such as the business cycle, new market trends, direct competition or technological obsolescence. In other words, the bearing of such economic risks would be a normal feature of the partner's activity.

⁽³¹²⁾ Such as for environmental and archaeological risks.

103. For the asset to be recorded in the partner's balance sheet, when there is an unexpected decrease in the partner's revenue, the partner must be able to manage the situation through various actions under its own responsibility, such as increasing promotion, diversification, redesign, etc. In this respect, the partner would be carrying out its activity according to a commercial manner. Thus, the existence of contractual clauses allowing the partner to use the assets for purposes other than those that have been agreed with government would frequently be an indication that the partner would effectively be bearing the demand risk, as defined here.
104. Where the shift in demand results from an obvious government action, such as decisions by government (and thus not necessarily only by the government unit(s) directly involved in the contract) which would represent a significant policy change, or such as the development of directly competing infrastructure built under government mandate, an adjustment in the regular payments or even a compensation payment to the partner would not imply the recording (or the reclassification) of the assets in the government's balance sheet if it would be recognised that a decrease in the profitability of the partner was the direct result of a deliberate government action.
105. As regards other mechanisms by which government may assume the risk of the project, the presence of government financing and guarantees in the private sector financing should be analysed. It could be argued that this 'financing risk' would be an integral part of 'construction risk', since the absence of suitable financing could mean that the asset either cannot be built, or cannot be built according to required standards. In addition, as the financing risk would depend on the performance of the partner, which could result in some circumstances in less revenue from government, such guarantees would finally decrease the risks borne by the partner.
106. In those cases where government would finance a part of the PPP and would also guarantee all or part of the partner's equity and/or debts, these actions should be seen as cumulative from the point of view of risk analysis. This analysis should be made in relation to the capital expenditure of the project, to see if government would be covering a majority of the capital expenditure through such mechanisms.

6.4.5. Accounting examples

The PPP asset is recorded in the partner's balance sheet

- The asset, of value 1 000, is constructed by the partner in year 1.
- Government makes regular payments to the corporation during the period of exploitation according to availability (payment is 100 in year 1)
- The infrastructure is purchased by government at the end of the period of exploitation (for an amount of 200).

Year 1							
General government				Partner			
Current account							
U		R		U		R	
P.2	100					P.11	100
B.8	-100			B.8	100		
Capital account							
ΔA		ΔL		ΔA		ΔL	
		B.8	-100	P.51g	1 000	B.8	100
B.9	-100			B.9	-900		

Year t: Purchase by government at the end of exploitation			
General government		Partner	

Capital account			
ΔA		ΔL	
P.51g	200	P.51g	-200
B.9	-200	B.9	200

Closing balance sheet			
A		L	
N.11	200		

The PPP asset is recorded in the government's balance sheet

- The asset, of value 1 000, is fully constructed in year 1 by the partner.
- Government makes regular payments to the corporation during the period of exploitation (payment is 100: 50 interest D.41, 30 service fees P.2, 20 amortisation of imputed loan F.4).
- The asset is worth 950 at the end of the year.

Year 1 Capital expenditure (recorded as financial lease)			
General government		Partner	

Capital account			
ΔA		ΔL	
P.51	1 000		
B.9	-1 000		

Financial account			
ΔA		ΔL	
	F.4	1 000	
	B.9F	-1 000	
	F.2	-1 000	
	F.4	1 000	B.9F
			0

Closing balance sheet			
A		L	
AN.11	1 000	AF.4	1 000

Year 2			
General government		Partner	

Non-financial account

U		R	U		R
D.41	50			P.11	30
P.2	30			D.41	50
B.9	-80		B.9	80	

Financial account

ΔA		ΔL	ΔA		ΔL
F.2	-100	F.4 -20	F.2	100	
		B.9F -80	F.4	-20	B.9F 80

Closing balance sheet

ΔA		ΔL	ΔA		ΔL
AN.11	960	AF.4 980	AF.4	980	

6.5. Recording of EU Emission Trading System (ETS) allowances/permits

6.5.1. Background

1. Governments issue emission allowances (also referred to as 'permits' in this chapter) as a means of controlling total emissions of polluting materials into the environment, as an alternative to direct taxation of pollution.
2. Such emission permit schemes may operate in different ways and may be either domestic or multi-country schemes. In the case of greenhouse gas emissions, the worldwide framework for control of such emissions was established in the United Nations Framework Convention on Climate Change, and notably in the setting of emission targets for participating countries in the Kyoto Protocol, adopted in 1997. This established binding national emission targets for participating countries (including the European Union) for the period 2008–2012 (coinciding with ETS Phase II). The cap system was renewed, with some significant changes, for the period 2013–2020 (Phase III), and for the period 2021–2030 (Phase IV).
3. The Kyoto Protocol established three market-based mechanisms through which countries may reach their targets. The main mechanism allowed trading between countries of 'Assigned Amount Units' (AAUs)⁽³¹³⁾, which were originally allocated based on 2008–2012 commitments. The other mechanisms (Clean Development Mechanism and Joint Implementation) allowed the creation of new types of instruments — interchangeable with AAUs — that reflected emission-reducing projects in developing and eligible countries respectively.
4. In the European Union, the principal scheme for emission allowances is the Emission Trading System (ETS). Launched in 2005, the ETS works on the 'cap and trade' principle. This means that there is an overall 'cap', or limit, on the total amount of certain types of greenhouse gases that can be emitted by power plants, factories and other installations included in the scheme (a significant number of polluting activities were not covered by the scheme). Within this cap, companies received emission allowances (for free or purchased), which they could sell to (or buy from) one another as needed. Over each above-mentioned period, there is a limited number of permits (in terms of carbon tons) to be issued by the countries, either provided for free to selected companies or sold, currently mostly under the form of auctions. The limit on the total number of allowances available ensured that they had a value, and the number of allowances was reduced over time so that total emissions would decline. This system is a substitute to a direct taxation mechanism, deemed to have the same effect, i.e., to encourage the producers to shift to less carbon issuing equipment. In a tax-based system, the amount of carbon issuance is not set up in advance, whereas, by setting a global cap over a given time period, the permits cap system is more in line with the EU commitments to reduce the volume of pollution.
5. At the beginning of each year (April in the EU), each company must surrender enough allowances to cover all its past emissions, otherwise heavy fines are imposed. When a company reduces its emissions, it can either keep the spare allowances to cover its future needs or otherwise sell them to another company that is short of allowances. ETS can be purchased by any investor or interested party, either for speculation purposes or for withholding purposes (e.g., environmentalist groups), and not solely by the units/polluters covered by the scheme.
6. Whereas the vast majority of ETS allowances were initially handed for free to polluters, a significant part (around half) is currently sold, mostly through auctions. In practice, nearly all these auctions are conducted in the EEX Commodity Exchange (in Germany), creating a situation where nationally auctioned ETS (that is: ETS issued by a certain government), are not necessarily bought by resident polluters and are therefore not necessarily surrendered by these polluters to their governments.
7. The huge volume of emission allowances issued and traded in the European Union, and the increasing number of auctions of allowances by EU governments, together with increasingly higher ETS prices,

⁽³¹³⁾ An Assigned Amount Unit (AAU) represents an allowance to emit greenhouse gases comprising one metric ton of carbon dioxide equivalents, however it is not the same as an ETS permit.

have led to the need for clarity on the statistical recording of such allowances.⁽³¹⁴⁾

8. The 3rd ETS phase (2013-2020) started with a particular 'legacy' from the previous phase (2007-2012), under the form of a considerable amount of permits (essentially granted for free) which had not been used for different reasons, notably the unexpected decrease in production from economic recession, and which were transferred to the 3rd phase. The 4th ETS phase (2021-2030) started without the phenomenon of a large amount of unused permits being carried over from the 3rd phase. The amount of allowances auctioned has increased in each phase and the 4th phase represents the point when member countries auction more permits than those given for free, while the overall country caps will continue to gradually decrease.
9. In 2013 and 2014 a new EU investment fund was established, called NER300, whereby EU Member States agreed that 300 million of their unused ETS allowances would be auctioned by the EU and the proceeds would be used to finance projects for innovative low-carbon technology, focusing on the demonstration of environmentally safe carbon capture and storage, as well as innovative renewable energy technologies. Similar investment funds were launched in 2020 (the Innovation Fund) and in 2021 (the Modernisation Fund).

6.5.2. Treatment in national accounts

10. The payments related to emission allowances, issued by governments under cap-and-trade schemes, should be recorded as other taxes on production (D.29) in the year of surrender of the allowances, and not when the allowances are sold to domestic economic agents. While in theory, the tax should be recorded at the time the actual emissions take place, it has been agreed, for convenience purposes that, instead, the tax is to be recorded when permits are surrendered. In practice, the emissions are cumulated on a yearly basis, declared and checked at the beginning of the following year, and permits are surrendered in April of that following year.
11. In general, allowances issued for free do not give rise to entries in government accounts.
12. The timing difference between the cash received by government for the allowances, through auctions (or bilateral sales), and the time of recording of the tax revenue in national accounts gives rise to a financial liability — other accounts payable (AF.89) for government and to a corresponding financial asset — other accounts receivable (AF.89) for the holder.
13. The value of tax revenue to record corresponds, for each permit, to its issuance/auction value (the cash collected by government for that permit) and not to the market value of the permit at time of surrendering.
14. In the absence of precise information on individual allowances (including their original sale price which may vary from an auction to another), the level of tax revenue to be recorded in any particular year shall be determined via any of the methods listed below (that have been defined gradually over time), the second time-adjusted cash method (as described in paragraph 19 below) being preferred.
15. In application of the internationally agreed method, the tax revenue to be recorded in year T is compiled by a model as follows (Method 1, introduced with the 2014 revision of the MGDD):

$$\text{Tax revenue in T} = [\text{Number of allowances surrendered in T}] \times [\text{Associated average price of the stock of allowances}]$$

16. The average price of the stock of allowances, calculated using data (on total relevant stock of payables (AF.89) and number of 'live' nationally issued allowances) as close as possible to (but before) the surrender date for allowances, is determined as follows:

$$\text{Average auction price} = \frac{[\text{Total stock of payables (AF.89) relating to sales of allowances}]}{[\text{Total number of nationally issued allowances, which have not yet been surrendered}]}$$

⁽³¹⁴⁾ It must, however, be recalled that the period referred to as the '3rd phase' started in 2013 with a particular 'legacy' from the previous period in the form of a considerable amount of permits overhang (essentially granted for free), which for different reasons could not be used (notably due to an unexpected decrease in the production of heavy polluting enterprises). These permits were transferred to the 3rd phase. For this reason, the 2015 carbon ton price was low, far from the level that most experts considered as able to have a sizeable impact on production processes, before recovering.

17. Two alternatives to Method 1 were introduced with the 2016 revision of the MGDD, but those alternatives are dropped in the current edition of the MGDD.
18. Following the ESA 2010, the sum of the ETS tax revenues recorded over time in the accounts must be equal to the sum of ETS auction/sale proceeds received by government, at least over the long run. If it becomes obvious that the number of allowances surrendered is significantly and structurally below the number of allowances issued through auctions (leading to a rapidly growing stock of payables (AF.89) for government, with little scope for an ulterior reversal), which can be possible with Method 1, adjustments should be made to the recorded revenue to reduce the stock of payables (AF.89) to bring the model back into balance. This re-assessment should take place at the end of each phase of the ETS at the latest. Conversely, it might also be observed that the remaining stock of payables (AF.89) falls below zero, due to surrendered permits being significantly and structurally above the number of allowances issued nationally through auctions. In this case, the formula cannot be applied and the government revenue will be recorded using the proceeds collected in the previous years.
19. Taking into account the significant difficulties raised by Method 1, both conceptually and practically, a simpler and recommended method (Method 2) consists in applying a time-adjusted cash of at least 1 year, i.e., recording in year T+1 the proceeds collected in year T, although in this case, the ETS tax revenue is delayed by one year compared to the cash, rather than recorded in advance to the cash as per traditional TAC methods. As a modality of Method 2, some Member States have used averages from several previous years' cash. For harmonisation purposes, the first modality is designated Method 2.a, i.e., D.29 revenue equals the ETS cash proceeds from period T minus 1 year. Likewise, the second modality is designated Method 2.b, i.e., D.29 revenue equals one third of the ETS cash proceeds from the preceding three years.
20. It should be noted however that using such a simplified method is not a licence to record significant revenue in a given year following a year of ETS overselling. As is common in traditional TAC methods for tax recording, if certain developments lead to such overselling in permits in a given year, an ad-hoc adjustment is required to prevent recording in a given year, for example, two years or half a year of ETS proceeds. Such adjustment for overselling is less likely to occur if applying Method 2.b described in the previous paragraph.
21. The difference between the pre-paid tax value of the permit and the market value of the permit represents a marketable contract (non-produced non-financial asset of the AN.222 type) for the holder and has no implications for government accounts. The trading of allowances between non-government parties has no implication for the government accounts beyond helping establishing market values for government auctions.
22. At time of auction, the purchaser acquires a financial asset (F.8 receivable) while an AN.222 of zero value appears at the same time, in the balance sheet of the permit holder, by an other change in volume. When government gives a permit for free, no F.8 is recorded and an AN.222 appears, in the balance of the beneficiary (permit holder), for the market value of the permit at that time via an other change in volume. Conversely, when the permit is surrendered, a financial transaction (disposal of AF.8 receivable) is recorded against a tax D.2 expenditure in the accounts of the polluter, and the AN.222 position existing at that time is removed by other changes in volumes.
23. Transactions between economic agents with permits should be recorded as transaction in the financial accounts (acquisition or sale of an AF.8 receivable against the issuing government) together with a purchase or sale of non-produced non-financial assets (AN.22, transaction code NP) for the difference existing between the market value of the permit and the issuing value at the time at which the permit resales take place.

6.5.3. Rationale of the treatment

24. The 2008 SNA paragraph 17.363 mentions the issue as follows: *Governments are increasingly turning to the issuing of emission allowances as a means of controlling total emissions. These allowances do not involve the use of a natural asset (there is no value placed on the atmosphere so it cannot be considered an economic asset) and are therefore classified as taxes even though the permitted 'activity' is one of creating an externality. It is inherent in the concept that the allowances will be tradable and that there will be an active market in them. The allowances therefore constitute assets and should be valued at the market price for which they can be sold.*

25. Following a Eurostat/OECD Task Force in 2009–2010, the ISWGNA made recommendations which were subsequently endorsed — after a consultation of the Advisory Expert Group on national accounts — by the United Nations Statistical Commission and published in SNA News numbers 30/31⁽³¹⁵⁾ and 32/33⁽³¹⁶⁾. This section is based on the agreed worldwide recording for emission allowances under cap-and-trade schemes.
26. The starting principle for the worldwide agreement was that payments for emission allowances issued under cap-and-trade schemes should be recorded as other taxes on production – despite these permits being transferrable – and recorded at the time that the emission took place, which is the time the tax obligation arises.
27. The resulting gap between the cash collected and the emission gives rise to a payable of government and therefore to an asset/receivable of the taxpayer, similar to an advance on a tax. However, in the accounts of the holder, the permit is valued at its market value, using the daily ETS market quotes, and the difference between the receivable is an AN.222 asset (that can be either positive or negative) which appears in the balance sheet of the permit holder by an other change in volume (for zero value if the permit is auctioned, or for the permit market value, if the permit was granted for free).
28. The detailed treatment, as described in the SNA News and Notes, is as follows: *The payments for emission allowances, issued by governments under cap-and-trade schemes, should be recorded at the time the emissions occur as taxes, specifically other taxes on production (D.29), on an accrual basis. The timing difference between the payments received by government for the allowances and the time the emission occurs gives rise to a financial liability (accounts payable) for government and a financial asset (accounts receivable) for the holder. The difference between the pre-paid tax value of the permit and the market value of the permit represents a marketable contract (non-produced non-financial asset) for the holder. The creation and disappearance of the non-produced non-financial asset are recorded as an other change in volume of assets.*
29. The ETS could easily be seen as a type of money collectively issued by participating Member States – either against cash or for free – which then can be used to settle the tax obligation of the polluters inside the scheme. The SNA News and Notes explains that the proposed alternative approach which suggested that ETS are financial liabilities of the issuer for the full amount, was not selected. This alternative approach also proposed to record the tax revenue for the market value of the permit surrendered (which had the unwelcome feature of making cumulated tax revenue deviate from cumulated cash proceeds collected by government over the long run) and to record a subsidy for permit given for free (which had the feature of reporting a genuine subsidy event: providing a liquid asset to an entity to facilitate production).
30. The SNA News and Notes also allusively referred to the possibility to consider pollution or ETS surrendering as an EU tax then routed back to issuing governments through D.74, a recording that has the useful feature to allow disconnecting the tax on production borne by resident company from the government revenue to be recorded. This approach could have eliminated many difficulties stemming from the retained recording, by *de facto* making the ETS work like a national scheme, for instance rendering the BOP problems obsolete. This approach would have required however a centralised compilation that would need to be agreed.
31. Whilst the time of recording to be applied to the tax revenue — respecting the accrual principle — should be when the economic activity generating the pollution takes place, the worldwide agreement nonetheless allowed for a simplification, which prevents the potential complications associated of revenue flows when there is a delay between time of pollution and time of surrender: *In practice, however, it can be assumed, for simplicity, that the time the permit is surrendered is the same as the time that emissions occur, as long as there is no significant lag between the two events and the lag is constant.*
32. Within the EU Emission Trading System, allowances are surrendered within around four months of the end of the year to which they relate, and therefore the time lag is relatively short. At the same time — in the absence of a ground-breaking pollution reduction technology — the difference between emissions in one year and the next may not be so significant, and therefore surrendered allowances in any year could under normal circumstances (i.e., no considerable impact of business cycle) be taken as a reasonable

⁽³¹⁵⁾ Available at: <http://unstats.un.org/unsd/nationalaccount/sna/nn30-31-En.pdf>.

⁽³¹⁶⁾ Available at: <http://unstats.un.org/unsd/nationalaccount/sna/nn32-33-En.pdf>.

proxy for emissions in that year. For the purposes of harmonised recording across countries, this Manual therefore proposes to use the surrender date time of recording, which has the further advantage to ensure that the amount to record in a given year is known by the 1st EDP notification (rather than by the 3rd notification), limiting the need for early estimates.

33. In theory, the recording should be applied at the level of each individual permit. Nevertheless, it is clear that the required information for such a treatment is rarely, if ever, available, because permits are generally fungible. The problem is compounded in a multinational scheme, where allowances may be freely traded across national borders, and surrendered in another country than the country of issuance⁽³¹⁷⁾, creating significant complications for measuring cross-border flows. The international agreement, as described in SNA News and Notes, therefore introduced two practical simplifications:

In the simple case of a pure national scheme, the taxes should be accrued in the following way. The tax recorded for any single permit surrendered in relation to emissions that occurred in period t is equivalent to the total stock of relevant other accounts payable divided by the total number of active allowances issued (and remaining in circulation) at time t . The relevant other accounts payable should in theory exclude any allowances that were surrendered after time t in respect of emissions that occurred before time t . Equally, the total number of active allowances (and remaining in circulation) at time t , should also exclude these allowances.

The approach to accruing payments for emission allowances should be based on the underlying assumption that allowances issued by a particular country are more likely than not to be surrendered in that country.

34. The approach in this chapter, as described above, is therefore based on these simplifications. There are in principle no cross-border flows to be recorded for taxes on production in relation to emission allowances. There is at this stage no envisaged mechanism to reallocate the proceeds. It is also consistent with the principle described in chapter 2.2 Recording of taxes and social contributions that the impact on general government net lending/borrowing of taxes shall be equivalent over a reasonable time period to the corresponding amounts actually received in cash.
35. As SNA News and Notes acknowledges, in a multinational scheme, the number of allowances issued and surrendered in any country may deviate over time. Two approaches are suggested to deal with this:
- in countries that issue more allowances than are surrendered substantially and structurally, the payments received exceed the taxes recorded over the long run. Setting aside the issue of recording flows of taxes on production from the rest of the world, the scope for payments received to exceed taxes recorded remains, as not all allowances will necessarily be surrendered, especially those purchased by environmental groups. Moreover, for countries that issue significantly more allowances than are expected to be surrendered in that country, a strong case can be made for considering the difference between the payments received and the taxes recorded as a windfall of sorts, akin to other changes in volume of assets. In practice it is easier to ignore these flows and instead write-off the allowances (at the end of the permit's lifetime) in the issuing country's accounts as other changes in volume of assets, (K.5), as if they were unused;
 - for those countries where more allowances are surrendered than issued, a problem arises given the insufficient payable to support a national tax recording, and even theoretically they should be recorded as a tax on production from the rest of the world. In this case, the stock should be readjusted at the level of the effectively observed number of surrendered permits in order to record tax revenue for government corresponding to the level of actual carbon issuances in the country. The effect on government net lending/borrowing (B.9) of this imputed tax should be neutralised by recording a transfer expenditure from government.
36. Given that the ESA 2010 requires that tax revenues recorded over time in the accounts must be equal to the proceeds received by government, at least in the long run, such suggestions made by the SNA News and Notes are not applicable and other solutions are required – through adjusting upward the tax revenue with a coefficient or other means (see paragraph 18).

⁽³¹⁷⁾ Globally, the cross-border transactions cannot be seen as covering a minor part of the total existing permits, notably because (1) permits are fungible and (2) nearly all ETS sales are conducted on a unique market (in the EEX Commodity Exchange). As a result, purchasers are neutral with respect to the issuing government (contrary to government bond issuance and a bit similar to bank notes issued by various central banks of the Eurosystem), such that generally the majority of buyers will be non-residents (this is particularly true the smaller the country).

37. In order that this re-assessment/adjustment is made in an orderly manner, it is appropriate to undertake it at least before the end of the last year of each 'phase' of the EU Emissions Trading Scheme, which is the point at which new allocations are established for emission allowances and new rules may also enter into force. If the stock of other accounts payable (AF.89) falls below zero in any year, it will also be necessary to address the model to ensure that tax revenues would be close over time with auction proceeds.
38. With regard to the quarterly recording of the revenues arising from emission allowances, it is recommended that an investigation be made on the availability of data on quarterly emission, which can then provide a quarterly path for the annual calculation described above. Where these data are not available, it is possible to use a suitable proxy for the quarterly path, such as quarterly gross value added for the economy, where it can be considered to have some relationship to emissions.
39. The statistical recording of Assigned Amount Units (a type of permits different from ETS) was complicated by the fact that they were initially assigned for free to countries, are not subject to surrendering when emissions are made, and cover a multi-year period. Nevertheless, some governments (and some non-government units) were prepared to purchase AAUs from other governments, and therefore there are transactions to be recorded. By considering AAUs as non-produced non-financial assets, such transactions are to be recorded as purchases and sales of non-produced non-financial assets (as presented in accounting example 2 below). At the end of the life of such AAUs, when a Treaty target date is reached, they are to be removed from national accounts balance sheets through other changes in volume of assets.

6.5.4. Accounting examples

1. The impact of auctioned emission allowances

- **Government auctions emission allowances (ETS) which are then surrendered over the following two years**
 - The prevailing market price of allowances in the whole of year t is one unit per permit.
 - By simplification, there are no 'granted for free' or imported permits held by the enterprises.
 - Government also auctions 1 000 allowances in year t for 1 000 currency units.
 - Enterprises surrender 500 allowances in year t+1.

Year t					
General government			Enterprises		
Opening Balance sheet					
A		L	A		L
AF.2	0		AF.2	0	
		AF.8 0	AF.8	0	
Current account					
U		R	U		R
		D.29 0	D.29	0	
B.9	0		B.9	0	
Financial account					
ΔA		ΔL	ΔA		ΔL
F.2	1 000		F.2	-1 000	
		F.8 1 000	F.8	1 000	
		B.9F 0			B.9F 0

Closing Balance sheet

A		L		A		L	
AF.2	1 000			AF.2	0		
		AF.8	1 000	AF.8	1 000		

Explanatory text: The auction of allowances for 1 000 in cash is recorded as a financial transaction (with counterpart F.8) as the relevant revenues will only be recorded in future years when the allowances are surrendered.

Year t+1

General government

Enterprises

Opening Balance sheet

A		L		A		L	
AF.2	1 000	AF.8	1 000	AF.2	0		
				AF.8	1 000		

Current account

U		R		U		R	
		D.29	500	D.29	500		
B.9	500			B.9	-500		

Financial account

ΔA		ΔL		ΔA		ΔL	
F.2	0			F.2	0		
		F.8	-500	F.8	-500		
		B.9F	500			B.9F	-500

Closing Balance sheet

A		L		A		L	
AF.2	1 000			AF.2	0		
		AF.8	500	AF.8	500		

Explanatory text: The average auction price of a permit at the start of year t+1 is the total auction proceeds from allowances (1 000) divided by the number of allowances resulting from domestic auctions (1 000), which is 1 unit. Since 500 allowances are surrendered in year t+1 the value of other taxes on production to be recorded in $500 \times 1 = 500$ units. The counterpart of these revenues for government is a reduction in other accounts payable and of receivable for the units. If the units had held 'free' or imported permits, the latter would have been recorded as AN.2 (by other change in volume in the first case, by a transaction in the second one). These permits must be valued at market price (possibly with revaluation). However, in the example, the 'auctioned' permits are considered used in priority and the other permits would be surrendered only when the stock on 'auctioned' permits is depleted.

2. The impact of the sale of Assigned Amount Units

- Government A sells Assigned Amount Units to government B for 200 in year *t*

Year t						
General government A			General government B			
Opening Balance sheet						
A			L	A		
AN.22	X			AN.22	Y	
Capital account						
ΔA			ΔL	ΔA		
NP.2	-200			NP.2	200	
Financial account						
ΔA			ΔL	ΔA		
F.2	200			F.2	-200	
Closing balance sheet						
A			L	A		
AN.22	X-200			AN.22	Y+200	
AF.2	Z+200			AF.2	Z-200	

Explanatory text: Assigned amount units are considered non-financial non-produced assets (see explanation above). They are therefore to be included in the stock of such assets (AN.22) and their sale (purchase) for government A represents a disposal of (acquisition of) non-financial non-produced assets (NP.2). Government B should record a symmetric purchase (acquisition) of non-produced non-financial assets.

6.6. Keywords and accounting references

Economic asset	ESA 2010, 7.15-7.18
Economic disappearance of non-produced assets (K.2)	ESA 2010, 6.07
Financial leases/operating leases	ESA 2010, 15.04 and following
Non-financial non-produced assets	ESA 2010, 7.24 and annex 7.1
Other current taxes	ESA 2010, 4.79-4.80
Other taxes on production	ESA 2010, 4.23
Output	ESA 2010, 3.14 and following
Property income	ESA 2010, 4.41
Rent	ESA 2010, 4.72-4.76
Time of recording of flows	ESA 2010, 1.101
Transactions in non-produced assets	ESA 2010, 3.184 and following

7

Debt related transactions and guarantees

7.1. Overview

1. This part deals with the treatment of debts owed to government (government assets) rather than debt as a liability of government (see Part 8 Measurement of general government debt). Sometimes governments, because of policies to do with social and economic development or international relations, relieve some economic agents from all or part of their debt obligations. This has an impact on government net lending/borrowing since it is a voluntary transfer of wealth (thus to be recorded as a capital transfer).
2. Government might cancel the debts of a corporation it owns in order to secure a higher price when selling the corporation immediately after. In this case, the debt cancellation may be recorded as a financial transaction. The debts might also be cancelled because the debtor no longer exists, not only on paper but also in practice. In this case, under some conditions, the debt cancellation may be recorded as another flow. In principle, neither recording affects net lending/borrowing directly.
3. In some cases, for example sovereign debt rescheduling through the Paris Club rather than debts being cancelled, the profile of required repayments is changed. Guidance is given here on the treatment of these cases.
4. Chapter 7.4 Government guarantees looks at how to record guarantees given by government. This is notably where government pledges to repay certain debts of a non-government unit in the event of that unit not being able to pay (so called 'one-off guarantees').
5. Even though the debt operations examined here concern mainly corporations or foreign governments, the basic principles apply to the relationship of general government with all institutional sectors (including households and non-profit institutions serving households).

7.2. Debt assumption and debt cancellation

7.2.1. Background

1. Debt assumptions and redemptions by general government of liabilities of public and possibly private corporations, are important issues. It is worthwhile to first clarify the terminology.
- Debt assumption (see ESA 2010 paragraph 20.222) is a trilateral agreement between a creditor, a former debtor and a new debtor, under which the new debtor assumes the former debtor's outstanding liability to the creditor. The new debtor — here the government — becomes liable for repayment of the assumed liability. The old debtor no longer has a liability to the creditor. This happens notably when the debt of the former debtor was guaranteed by the new debtor and the guarantee is called (see chapter 7.4 Government guarantees).⁽³¹⁸⁾
- In some cases (see ESA 2010 paragraph 20.232), a debt assumption includes a transfer of non-financial assets from the unit benefitting from the debt assumption — for instance a public corporation managing public infrastructure, public transportation, etc. — to the government entity taking over the debt.
- Debt cancellation or forgiveness (see ESA 2010 paragraph 20.225) is a bilateral agreement between a creditor and a debtor to cancel (or to 'forgive') part or all of a liability owed by the debtor to the creditor. As a consequence of the debt cancellation, the liability of the debtor and the related asset of the creditor no longer exist.
- Write-downs and write-offs do not require a bilateral agreement and are observed when a creditor recognises, unilaterally and normally without any notification to the debtor, that a claim can no longer be collected, mainly because of bankruptcy of the debtor. In such a scenario, the creditor removes the claim from the asset side of its balance sheet.

7.2.2. Treatment in national accounts

7.2.2.1. MUTUAL AGREEMENT

2. The counterpart transaction of a debt assumption or a debt cancellation is a capital transfer.
3. Thus, when government assumes a debt of a corporation or cancels a claim it has against a corporation, the counterpart transaction to the financial flows recorded in the financial accounts is a capital transfer (D.99), an expenditure which has a negative impact on government net lending/net borrowing (B.9).
4. In many cases, general government takes the initiative to cancel or assume debt. The acceptance of this action by the corporation, which is unlikely to refuse the 'gift' and continues operating, is deemed to result from mutual agreement.

7.2.2.2. OTHER CASES

5. There are three exceptions to the mutual agreement treatment. In these cases, the debt assumption/cancellation has no impact on government net lending/borrowing (B.9) and there is no non-financial transaction.

7.2.2.2.1. Debt of a quasi-corporation

6. ESA 2010 paragraph 5.39 mentions that if the owner of a profitable quasi-corporation (by definition public in the case of government), assumes or cancels its debt, a capital transfer is not recorded. The counterpart transaction has to be recorded as a financial transaction in equity (F.51).
7. However, this is relevant to the extent that the quasi-corporation is profitable in the sense that it has not accumulated losses or does not show an exceptionally large loss, which would be covered by the above-mentioned transactions, a capital transfer should be recorded up to the limit of the losses.

⁽³¹⁸⁾ ESA 2010 paragraph 20.223 makes mentions also the case of 'debt payments on behalf of others' where not all the debt is assumed. This must be treated similarly to assumptions.

7.2.2.2.2. Operations in the context of a privatisation process

8. ESA 2010 paragraph 5.39 points out that when government cancels or assumes debts from a public corporation 'as part of a process of privatisation to be achieved in a short-term perspective', the counterpart transaction is not a capital transfer but a transaction in equity (F.51).
9. Privatisation means giving up control over the corporation through the disposal of equity that reduces government's voting rights.
10. This rule should only be applied when there is evidence that the privatisation process has been effectively launched (for instance the appointment of an advisory bank and/or the opinion of a special committee/commissions), so that there is strong expectation that the privatisation will be completed in no more than one year. The existence of a privatisation plan or the expression of such an intention by government, is not in itself sufficient to consider the debt assumption/cancellation 'as part of an on-going process of privatisation to be achieved in a short-term perspective'.
11. Moreover, the flow of debt assumed or cancelled is to be recorded as a financial transaction only up to the limit of the privatisation proceeds. Amounts assumed or cancelled by the government in excess of this limit are to be recorded as a capital transfer expenditure of government

7.2.2.2.3. Write-offs

12. There may be write-offs of claims held by government against a corporation being liquidated. The liquidation should be assessed from an economic point of view rather than from a legal point of view, as the corporation will continue to exist legally until the very end of the liquidation process even though it has lost its financial substance and its main economic function.⁽³¹⁹⁾
13. The write-off of such a claim is normally recorded under ESA 2010 as other changes in the volume of assets (K.5), with no impact on net lending/borrowing (B.9), but a capital transfer might be recorded in some specific cases.

7.2.2.2.4. Debt assumption including a transfer of non-financial assets

14. There may be two ways to describe and to record the economic event, both having the same impact on the net lending/borrowing (B.9) of general government.

'Gross recording' of the debt assumption:

15. The gross recording consists of two simultaneous but separate transactions:
 - The debt assumption, whereby government assumes the debt, which requires the recording of a capital transfer (D.99) expenditure of government for the same amount of the liability assumed (F.3 and/or F.4), similar to the typical case of a debt assumption.
 - The transfer of assets, whereby government receives a non-financial asset, which is recorded as an acquisition of that asset in the appropriate category — e.g., as gross fixed capital formation (GFCF, P.51g) for fixed assets or NP.1 for land. As this transfer is a grant/a gift, it is counterbalanced by a capital transfer in kind (D.9) revenue, making the impact of the two transactions neutral on the net lending/borrowing (B.9).
16. The 'gross capital transfer', equal to the whole liability assumed, has a negative impact on the net lending/borrowing (B.9) of general government.

'Net recording' of the debt assumption:

17. One can also consider that what impacts the net lending/borrowing (B.9) of government is the difference between the liability assumed and the value of the assets transferred: this is the 'net capital transfer'. However, since there is a simultaneous increase of the gross fixed capital formation (GFCF, P.51g) or acquisition less disposals of natural resources (NP.1), the final impact on the net lending/borrowing (B.9) of general government — net capital transfer plus GFCF or NP.1 — is exactly the same as in the 'gross' recording.

⁽³¹⁹⁾ It is important to check whether part of the business is not taken over by third parties, which, in this case, could benefit from the cancellation of the debt, which would be recorded as a capital transfer.

7.2.2.2.5. Time of recording, amounts to be recorded

18. Debt assumption and debt cancellation are recorded when the liability is actually removed from the debtor's balance sheet, and the corresponding entries made in government's balance sheet. This timing applies to both financial transactions and any counterpart capital transfers. The assumption/cancellation of accrued interest should in addition be consistent with this time of recording.
19. This means that debt assumption/cancellation is not recorded according to the original schedule of debt repayments funded by future imputed capital transfers.
20. The amount to be recorded — for both the financial transaction and any counterpart capital transfer expenditure — is the full amount of the outstanding debt that is assumed or cancelled.

7.2.3. Rationale of the treatment

7.2.3.1. MUTUAL AGREEMENT

21. Such transactions, made by mutual agreement, are recorded as capital transfers. This stems from the definition of other capital transfers in ESA 2010 paragraph 4.164): *other capital transfers (D.99) cover transfers [...] which do not themselves redistribute income but redistribute saving or wealth among the different sectors or subsectors of the economy or the rest of the world.*
22. By assuming or cancelling a debt of a public corporation, the general government is transferring to the corporation, not income, but a part of its own wealth. As the change in government liabilities (debt assumption) or the change of government financial assets (debt cancellation) is a one-way transaction — representing a deliberate and voluntary transfer of wealth — the counterpart transaction is a capital transfer.

7.2.3.2. OTHER CASES

23. **Quasi-corporation:** a quasi-corporation is a market producer which may not be legally independent from its owner, especially from the point of view of assets and liabilities but is regarded as fulfilling sufficient criteria to be considered an institutional unit in the system of accounts. There is a kind of unity of wealth between a quasi-corporation and its owner, so that a transfer of wealth between a quasi-corporation and its owner may be considered as something questionable and in any case should not change their combined wealth. This results in the convention that the net worth of a quasi-corporation is equal to zero. As a consequence, a transfer of assets between a quasi-corporation and its owner may be directly reflected in the value of the owner's equity. However, in the case where a public quasi-corporation is regularly making losses, in coherence with the ESA 2010 paragraphs 4.35 (c) and 4.38 (f) payments to cover persistent losses are to be recorded as subsidies; and MGDD chapter 3.3 on capital injections into public quasi-corporations requires the recording of debt assumption or cancellation as a capital transfer.
24. **Privatisation:** the exception that is made for transactions occurring as part of a privatisation process to be achieved in a short-term perspective is an ESA 2010 convention based on the assumption that the cost of the debt forgiveness will be fully recovered in the sale price achieved in the privatisation. It is therefore recorded as an injection of equity (F.5) — the same instrument as the receipts from the privatisation. However, this treatment would not apply if the value of the debt cancellation exceeds the expected privatisation receipts.
25. **Write-off:** The general definition of transactions (ESA 2010 paragraph 1.66) gives the rule for determining whether a capital transfer or other changes in the volume of assets is recorded. This rule is based on the assumption of mutual agreement between the parties involved (see above sub-section 7.2.2.1). When a write-off cannot be considered a transaction, in particular in the case of an actual disappearance of the public corporation, the write-off of debt may be recorded as other changes in the volume of assets.

7.2.3.3. DEBT ASSUMPTION WITH TRANSFER OF NON-FINANCIAL ASSETS

7.2.3.3.1. The acquisition of non-financial assets as expenditure

26. Acquisition of non-financial assets has a negative impact on the net lending/borrowing (B.9) of the government entity since it has to be recorded as gross fixed capital formation (GFCF, P.51g) on the

expenditure side of government accounts. In the case of a transfer/acquisition made on a free basis, as a gift, there is no impact on B.9 (see below).

27. Whilst the immediate impact of GFCF expenditure on the net lending/borrowing (B.9) is negative, it may have a positive impact in the future, to the extent that the acquired assets have a real market value, have 'service potential' and can be regarded as a source of future revenue. If the acquisition of assets is funded by a grant without future financial obligations for the beneficiary, the GFCF may be counterparted by a capital transfer in kind making it neutral on the net lending/borrowing (B.9) (gross recording). Alternatively, where the acquisition takes place in the context of a debt assumption/cancellation, its value may be deducted from the capital transfer representing the 'cost' of the debt assumption (choice of the net recording, see below). But in all cases, the GFCF (assessed on the basis of usual business methods), as such is recorded for its full value as expenditure for the acquirer of the assets.

7.2.3.3.2. The final impact on government net lending/borrowing (B.9)

28. Gross recording: a way to analyse the economic event as if two distinct transactions occur in the same accounting period:

- the transfer for free of fixed assets, which is neutral on government net lending/borrowing (B.9), as described above;
- the debt assumption which negatively affects government net lending/borrowing (B.9) for the amount of the capital transfer, exactly like in the general case.

29. Net recording: the debt assumption can alternatively be viewed as a means of payment by government to acquire the fixed assets. In this case, the 'gift' component — recorded as capital transfer — would be the difference between the liability assumed and the value of the assets. However, the final impact on government net lending/borrowing (B.9) is the same as in the gross recording pattern, due to the full recording of GFCF (P.51g) or NP.1.

30. **NB:** A debt assumption organised by the government in favour of public corporations is not recorded through other changes in the volume of assets (either K.5 or K.62). The direct involvement of government, having as a major objective to ease public corporations' debt burden, implies that the debt assumption is recognised as a transaction, made by mutual agreement. This treatment applies even though there might have been a restructuring or reorganisation of the public corporations at the same time.

7.2.4. Accounting examples

Recording a capital transfer

In the following examples, capital transfers are assumed to result, in a first step, in an increase of the public corporation net worth. In a second step, it would be possible to assume that this increase of net worth is 'absorbed' by an equivalent increase of the equity of government in the public corporation, via the revaluation account: this second step is not described here. Moreover, in the closing balance sheets, only the changes in net worth are shown.

Debt assumption

Assume that a financial corporation has made a long-term loan (F.42) to a public non-financial corporation. Before maturity, general government assumes the long-term loan outstanding from the public non-financial corporation.

General government		Public corporation	
Opening balance sheet			
A	L	A	L
AF.5	100		AF.42/S.12 30
			AF.5 100

		Financial account	
ΔA		ΔL	ΔA
	F.42	30	F.42
	B.9F	-30	B.9F

Debt cancellation

General government	Public corporation

Capital account					
ΔA		ΔL	ΔA		ΔL
	D.99	-30		D.99	30
B.9	-30	B.101	-30	B.9	30
				B.101	30

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Closing balance sheet

A		L	A		L	
AF.42/S.11	0			AF.42/S.13	0	
AF.5	100			AF.5	100	
		ΔB.90	-30		ΔB.90	30

Recording a financial transaction

This recording applies for the case of quasi-corporations not making losses and of a debt assumption/cancellation occurring in an on-going process of privatisation to be achieved in a short-term perspective. Recordings are the same in both cases: they imply transactions in shares and other equity (F.5).

Debt assumption

General government				Public corporation			
Opening balance sheet							
A		L		A		L	
AF.5	100					AF.42/S.12	30
						AF.5	100
Financial account							
ΔA		ΔL		ΔA		ΔL	
		F.42	30			F.42	-30
F.5	30					F.5	30
		B.9F	0			B.9F	0
Closing balance sheet							
A		L		A		L	
AF.5	100+30	AF.42/S.12	30			AF.42/S.12	0
						AF.5	100+30
		ΔB.90	0			ΔB.90	0

Debt cancellation

General government			Public corporation		
Opening balance sheet					
A		L	A		L
AF.42/S.11	30			AF.42/S.13	30
AF.5	100			AF.5	100

Financial account			
ΔA		ΔL	
F.42	-30		
F.5	30		
		B.9F	0
Closing balance sheet			
A		L	
AF.42/S.11	0		
AF.5	100+30		
		$\Delta B.90$	0

Recording other changes in the volume of assets

This recording applies for debts of public corporations towards government, which are written-off by the latter (the debtor is bankrupt or liquidated).

General government	Public corporation

Opening balance sheet			
A		L	
AF.42/S.11	30		
AF.5	100		

Other changes in volume of assets account

ΔA		ΔL	
K.5 on AF.42	-30		
		B.102	-30

Closing balance sheet			
A		L	
AF.42/S.11	0		
AF.5	100		
		$\Delta B.90$	-30

Special case: debt assumption including a transfer of non-financial assets**Gross recording of the debt assumption with assets**

General government				Public corporation			
Opening balance sheet							
A		L		A		L	
				AN.11	20		
						AF.42/S.12	30
AF.5	100					AF.5	100
Capital account							
ΔA		ΔL		ΔA		ΔL	
P.51	20	D.92	20	P.51	-20	D.92	-20
		D.99	-30			D.99	30
B.9	-30	B.101	-10	B.9	30	B.101	10
Financial account							
ΔA		ΔL		ΔA		ΔL	
		F.42	30			F.42	-30
		B.9F	-30			B.9F	30
Closing balance sheet							
A		L		A		L	
AN.11	20			AN.11	0		
		AF.42/S.12	30			AF.42/S.12	0
AF.5	100					AF.5	100
		ΔB.90	-10			ΔB.90	10

Net recording of the debt assumption with assets

General government				Public corporation			
Opening balance sheet							
A		L		A		L	
				AN.11	20		
						AF.42/S.12	30
AF.5	100					AF.5	100

Capital account

ΔA		ΔL		ΔA		ΔL	
P.51	20	D.99	-30+20	P.51	-20	D.99	30-20
B.9	-30	B.101	-10	B.9	30	B.101	10

Financial account

ΔA		ΔL		ΔA		ΔL	
		F.42	-30			F.42	-30
		B.9F	-30			B.9F	30

Closing balance sheet

A		L		A		L	
AN.11	20			AN.11	0		
		AF.42/S.12	30			AF.42/S.12	0
AF.5	100					AF.5	100
		$\Delta B.90$	-10			$\Delta B.90$	10

7.3. Debt rescheduling

7.3.1. Background

1. Debt rescheduling may be an alternative arrangement to debt cancellation or a step in a process leading to debt cancellation.
2. This transaction is often set up by government with foreign transactors, in particular from developing countries, but may also concern domestic public corporations, notably in the financial area. Foreign debtors may be government units themselves or non-government units, such as public corporations. The Paris Club is dedicated to public debt negotiations. The London Club is dedicated to private (banking) debt negotiations but is practically no longer active. In the following, 'government' is only used to describe the creditor government (Treasury or special agencies, excluding specialised financial institutions classified in sector S.12).
3. The issue is how to record the rescheduling of claims and liabilities. What amount has to be recorded on the asset side of the government balance sheet when the terms of the debt contract have changed following a rescheduling arrangement, and at what time?
4. The case under review here is when government has directly extended a loan to the government of a foreign country, and the debtor is defaulting and suspending all or part of its committed payments. As a first step, there is a negotiation to reschedule the debt. As a second step, the debt may be cancelled, or even sold. Only loans are considered. The case of credit insurance is not dealt with.

7.3.2. Treatment in national accounts

5. A capital transfer is recorded in favour of the defaulting debtor if the outstanding principal amount of the claim (generally loans), recorded at its nominal value, is diminished. The capital transfer is for the amount of the claim which is cancelled. This sort of debt cancellation is described in chapter 7.2 Debt assumption and debt cancellation.
6. Recording a capital transfer is not necessary in some other cases, in particular:
 - 1) if the payment of the claim is only delayed or rescheduled;
 - 2) if only the amount of interest is renegotiated.

7.3.2.1. RECORDING OF A LOAN

7. The amount of the debtor's liability to the creditor at any point in time is the principal outstanding: it is the amount that the debtor must repay to discharge the liability and thereby extinguish the creditor's claim over the debtor. It is the principal outstanding that has to be recorded in balance sheets of both creditor and debtor.
8. Loans may take various types (see Box 1 in sub-section 7.3.2.4). Nevertheless, whatever their type the total annual payments, principal and interest, is contractually agreed and can only be changed by contract. In national accounts the future series of interest flows is not recorded as a financial asset of the creditor nor as a liability of the debtor.
9. The interest rate may be fixed, or it may be revised in the cases of floating rates, revised rates, and step-up rates. The loan contract gives provisions for the application of the reference.
10. If, at some point in time, some previous interest payments have been in default, the corresponding amounts are added to the present principal outstanding. These amounts also include interest that has been accrued and added to the principal in the national accounts balance sheet but has not been paid when due for payment (usually referred as to interest arrears).
11. In any case, possible provisions (estimates of expected losses) made by the creditor in its own accounts are not recorded in national accounts.

7.3.2.2. RESCHEDULING OF THE LOAN: ORDINARY CASES

12. In 'ordinary cases' the outstanding claim is not changed in the rescheduling arrangement: the payment of the claim is only delayed, rescheduled, and/or the amount of interest is renegotiated.

13. There are three main ways for rescheduling a loan:

- 1) One way is to change the date of the maturity of the principal. In general, the aim is to lighten the annual burden of repayments, the duration is likely to be lengthened. However, even though the interest rate is unchanged, the total interest charge will be increased because interest is paid over a longer time (see example).

This does not change the nominal value of the outstanding principal but has an impact on the 'market value' of the debt instrument observed when there are transactions on a secondary market. The consequence of the rescheduling is a new schedule of annual repayments different from the original one.

- 2) Another way is to change the interest rate of the contract. This will have an impact only on the series of interest payments. The initial principal outstanding does not change. If the accruing interest rate does change, it is likely that the required regular payments will also change.

A particular arrangement of this type may include the cancellation, by the creditor, of the future stream of interest payments, with various alternatives for the repayment of the principal. There is no change to the amount of principal outstanding in balance sheets: it is similar to a revision of the interest rate of the loan, with the new interest rate being nil.

- 3) A third way is to delay payments of a principal during a grace period. There is generally a corresponding increase to the loan's redemption date. The original outstanding amount is unchanged. Interest accruing during the grace period may be paid every year, or capitalised and added to the principal that will be amortised after the grace period (see chapter 2.4 Recording of Interest).

7.3.2.3. DETERMINING THE NEW AMOUNT OUTSTANDING

14. In order to determine whether it is necessary to record a capital transfer, and calculate its value, the difference between the outstanding amount of the claim before and after the rescheduling must be known. Normally, the new amount outstanding would be mentioned in the rescheduling agreement. But in some rare cases it might not be. In these cases, it should be calculated from the stream of future annuities and interest rate quoted in the new agreement (see formula in Box 1 in sub-section 7.3.2.4). If the rate of interest is not given, the value of the outstanding amount should be calculated as the net present value of the future annuities using a discount rate equal to the interest rate that applied to the initial agreement.

15. In other words:

- if, at any point in time, the principal outstanding of a loan has a given value V ,
- and if a rescheduling arrangement, implemented at this point in time, leads to a situation in which the present value of the annuities — calculated with the interest rate after arrangement — after rescheduling, is different from the above principal outstanding V ,
- this means that, in fact, there is a change in the principal outstanding value to be recorded under AF.4 in the balance sheets of both creditor and debtor,

16. As, in this case, it is likely that the new principal outstanding is lower than the previous one, a capital transfer in kind (D.99) has to be recorded from the creditor to the debtor, since there is a *de facto* partial debt cancellation.

7.3.2.4. CANCELLATION OF A DEBT FOLLOWING A RESCHEDULING ARRANGEMENT

17. It may happen that, despite a rescheduling arrangement having been implemented, the creditor government cancels the remaining claim. A capital transfer has thus to be recorded from government to the debtor, at the time of the cancellation agreement. The amount of the capital transfer (normal treatment of debt cancellation in ESA 2010) is equal to the principal outstanding of the loan after rescheduling.

Sale of a loan

18. It may happen that after a rescheduling arrangement government sells the loan, to a financial institution for instance. It may also happen that, because of the difference between the contractual rate of interest prevailing on the loan and the corresponding market rate for the same kind of loan, the sale takes place for an amount of principal far below the principal outstanding as contained in the rescheduling arrangement.
19. In this case, the difference between the principal outstanding after rescheduling and the principal outstanding as traded in the sale has to be recorded as a holding loss in government revaluation account (ESA 2010 paragraph 6.58).
20. **NB:** If the debtor continued to make loan repayments to the first creditor, which it would do if its obligations had not changed as a result of the loan 'sale', the transaction between the two creditors would not be regarded as the sale of a claim (the loan) by the first creditor to the second but as a new loan granted by the new creditor to the former one.

Box 1 – Recording of loans (principal and interest): technical note

- At inception, the principal outstanding is equal to the amount lent. It is also equal to the present value of all the annuities, using the interest rate of the loan contract as the discounting rate: see formula (1) in the box below.
- At any point in time, the outstanding amount of principal is equal to the present value of the remaining annuities using the interest rate of the loan contract as the discounting rate: see formula (2) in the box below for the case when all previous annuities have been paid.
- The amortisation table of a loan may be shown as follows:
 - V_0 being the amount of the loan at inception
 - r the interest rate of the contract
 - n the length of the loan

Time period	Principal at the beginning of the period	Interest of the period	Amortisation period	Annuity (total annual payment)
1	V_0	F_1	D_1	A_1
...	...	...	...	...
p	V_{p-1}	F_p	D_p	A_p
...	...	...	...	...
n	V_{n-1}	F_n	D_n	A_n

The following numerical relations may be observed for a given period p :

$$A_p = D_p + F_p$$

$$F_p = r V_{p-1}$$

$$D_p = V_{p-1} - V_p$$

$$V_n = 0$$

- Three main kinds of conventional loans — excluding index-linked ones, for instance — exist in practice:

a) Loans with a final repayment:

$$D_p = 0, \forall p \neq n$$

$$D_n = V_0$$

$$F_p = F = r V_0, \forall p$$

b) Loans with constant amortisation:

$$D_p = D = \frac{1}{n} V_0, \forall p$$

c) Loans with constant annuities:

$$A_p = A, \forall p, A \text{ being calculated using the formula given below.}$$

Basic formulae:

5. Whatever the type of loan could be, the various components may be calculated using the following basic formula – V_0 , n , and r being given:

$$V_0 = \sum_{p=1}^{p=n} A_p \frac{1}{(1+r)^p} \quad (1)$$

This means that the present value — using the interest rate of the loan contract as discounting rate — of all the annuities is equal to the amount which is lent, whatever these annuities could be.

6. Moreover, at any point of time, the outstanding amount of principal is equal to the present value of the remaining annuities. Thus, after the $p-1$ annuities have been paid, the following formula holds:

$$V_p = \sum_{m=1}^{m=n-p} A_{p+m} \frac{1}{(1+r)^m} \quad (2)$$

7. If no payment occurs from the beginning until p (p being included), V_0 is recorded under AF.4 at the end of period p . Moreover, there is a liability corresponding to the unpaid amounts of interest, equal to:

$$\sum_{m=1}^{m=p} F_m \quad (3)$$

7.3.3. Rationale of the treatment

7.3.3.1. RECORDING OF A LOAN

21. The values to be recorded under AF.4 in the balance sheets of both creditors and debtors are the amounts of principal that the debtors are contractually obliged to repay the creditors, even in cases where the loan was traded at a discount or premium (ESA 2010 paragraph 7.70).

7.3.3.2. RESCHEDULING OF A LOAN

22. There is no detailed guideline for treating such a case in ESA 2010. Mention is only made of debt restructuring in ESA 2010 paragraph 20.236 which states the same principle (as for debt cancellation) related to the difference in value (without specifying that it is in nominal terms). It is mentioned in the 2008 SNA, but in a rather descriptive way, indicating only in ESA 2010 paragraph 20.107 (b) that, it 'may or may not result in a reduction in present value terms', whereas there is no mention of a possible capital transfer. Therefore, this Manual brings a necessary clarification and a useful practical guidance for national accountants.

23. A loan is a contractual arrangement. The split between repayment of the principal and repayment of interest is determined in the loan contract, even for loans with floating rates, and can only be changed by amending the contract.

24. A loan has no market price: see ESA 2010 paragraph 6.58. The interest rate changes, which may occur on financial markets for similar loans have thus no impact on the outstanding principal of existing loans with fixed interest rates. Such changes have no influence on the future amounts of interest, and thus no influence on the split between principal and interest.

7.3.3.3. DEBT CANCELLATION

25. See in chapter 2.4 Recording of interest, section 2.4.1 Background to the issue.

7.3.3.4. SALE OF A LOAN

26. ESA 2010 discusses the case of a loan that is traded (ESA 2010 paragraph 5.122). The difference between the redemption price and the transaction price is recorded in the revaluation account (ESA 2010 paragraph 6.58).

7.3.4. Accounting examples

Common features

Case a: recording a loan

A loan of 10 000 has a remaining duration of 5 years when rescheduled at the start of year 1. The original interest rate is 6 %.

1. Loan with a final repayment

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	0	600
2	10 000	600	0	600
3	10 000	600	0	600
4	10 000	600	0	600
5	10 000	600	10 000	10 600
Total		3 000	10 000	13 000

2. Loan with constant amortisation

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	2 000	2 600
2	8 000	480	2 000	2 480
3	6 000	360	2 000	2 360
4	4 000	240	2 000	2 240
5	2 000	120	2 000	2 120
Total		1 800	10 000	11 800

3. Loan with constant annuities

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	1 774	2 374
2	8 226	494	1 880	2 374
3	6 346	381	1 993	2 374
4	4 353	261	2 113	2 374
5	2 240	134	2 240	2 374
Total		1 870	10 000	11 870

Numerical example of rescheduling**Case b1: maturity is lengthened**

The loan is extended so that time to redemption is now 8 years; the rate of interest is unchanged.

1. Loan with a final repayment

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	0	600
2	10 000	600	0	600
3	10 000	600	0	600
4	10 000	600	0	600
5	10 000	600	0	600
6	10 000	600	0	600
7	10 000	600	0	600
8	10 000	600	10 000	10 600
Total		4 800	10 000	14 800

2. Loan with constant amortisation

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	1 250	1 850
2	8 750	525	1 250	1 775
3	7 500	450	1 250	1 700
4	6 250	375	1 250	1 625
5	5 000	300	1 250	1 550
6	3 750	225	1 250	1 475
7	2 500	150	1 250	1 400
8	1 250	75	1 250	1 325
Total		2 700	10 000	12 700

3. Loan with constant annuities

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	1 010	1610
2	8 990	539	1 071	1610
3	7 919	475	1 135	1610
4	6 783	407	1 203	1610
5	5 580	335	1 276	1610
6	4 305	258	1352	1610
7	2 952	177	1433	1610
8	1 519	91	1 519	1 610
Total		2 883	10 000	12 883

Case b2: change in rate of interest

The interest rate on the loan is reduced from 6 % to 4 %.

1. Loan with a final repayment

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	400	0	400
2	10 000	400	0	400
3	10 000	400	0	400
4	10 000	400	0	400
5	10 000	400	10 000	10 400
Total		2 000	10 000	12 000

2. Loan with constant amortisation

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	400	2 000	2 400
2	8 000	320	2 000	2 320
3	6 000	240	2 000	2 240
4	4 000	160	2 000	2 160
5	2 000	80	2 000	2 080
Total		1 200	10 000	11 200

3. Loan with constant annuities

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	400	1 846	2 246
2	8 154	326	1 920	2 246
3	6 234	249	1 997	2 246
4	4 237	169	2 077	2 246
5	2 160	86	2 160	2 246
Total		1 231	10 000	11 231

Case b3: Grace period

Three years of grace period are agreed for the principal (with interest capitalised).

1. Loan with a final repayment

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	(600)	0	0
2	10 600	(636)	0	0
3	11 236	(674)	0	0
4	11 910	714	0	714
5	11 910	714	0	714
6	11 910	714	0	714
7	11 910	714	0	714
8	11 910	714	11 910	12 624
Total		3 570	11 910	15 480

2. Loan with constant amortisation

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	0	0
2	10 600	636	0	0
3	11 236	674	0	0
4	11 910	715	2 382	3 097
5	9 528	572	2 382	2 954
6	7 146	429	2 382	2 811
7	4 764	286	2 382	2 668
8	2 382	143	2 382	2 525
Total		2 144	11 910	14 054

3. Loan with constant annuities

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	10 000	600	0	0
2	10 636	636	0	0
3	11 236	674	0	0
4	11 910	715	2 113	2 827
5	9 797	588	2 240	2 827
6	7 558	453	2 374	2 827
7	5 184	311	2 516	2 827
8	2 667	160	2 667	2 827
Total		2 227	11 910	14 137

Case c1

The new interest rate is reduced from 6 % to 4 %. A new schedule of annuities is agreed. We derive the new principal that is unknown.

1. Loan with a final repayment (four first annuities of 300)

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	7 500	300	0	300
2	7 500	300	0	300
3	7 500	300	0	300
4	7 500	300	0	300
5	7 500	300	7 500	7 800
Total		1 500	7 500	9 000

Capital transfer for debt cancellation recorded at the time of new agreement: $10\,000 - 7\,500 = 2\,500$

2. Loan with constant amortisation (total annuities = 9 000)

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	8 036	321	1 607	1 929
2	6 429	257	1 607	1 864
3	4 822	193	1 607	1 800
4	3 214	129	1 607	1 736
5	1 607	64	1 607	1 671
Total		964	8036	9000

Capital transfer recorded at the time of the new agreement: $10\,000 - 8\,036 = 1\,964$

3. Loan with constant annuities (total annuities = 9 000)

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	8 013	321	1 479	1 800
2	6 534	261	1 539	1 800
3	4 995	200	1 600	1 800
4	3 395	136	1 664	1 800
5	1 731	69	1 731	1 800
Total		987	8 013	9 000

Capital transfer recorded at the time of the new agreement: $10\,000 - 8\,013 = 1\,987$

Case c2: new interest rate unknown

The new interest rate is unknown but the new schedule of annuities is available. We derive the new principal, which was unknown by using the original rate of 6 %.

1. Loan with a final repayment (four first annuities of 415)

Time period	Principal at the beginning of the period	Interest of the period 6 %	Amortisation of the period	Annuity (total annual payment)
1	6 923	415	0	415
2	6 923	415	0	415
3	6 923	415	0	415
4	6 923	415	0	415
5	6 923	415	6 923	7 338
Total		2077	6 923	9 000

Capital transfer recorded at the time of the new agreement: $10\,000 - 6\,923 = 3\,067$

2. Loan with constant amortisation (total annuities = 9 000)

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	7 627	458	1 525	1 983
2	6 102	366	1 525	1 891
3	4 576	275	1 525	1 800
4	3 051	183	1 525	1 708
5	1 525	92	1 525	1 617
Total		1 373	7 627	9 000

Capital transfer recorded at the time of the new agreement: $10\,000 - 7\,627 = 2\,363$

3. Loan with constant annuities (total annuities = 9 000)

Time period	Principal at the beginning of the period	Interest of the period	Amortisation of the period	Annuity (total annual payment)
1	7 582	455	1 345	1 800
2	6 237	374	1 426	1 800
3	4 811	28	1 511	1 800
4	3 300	198	1 602	1 800
5	1 698	102	1 698	1 800
Total		1 418	7 582	9 000

Capital transfer recorded at the time of the new agreement: $10\,000 - 7\,582 = 2\,418$

7.4. Government guarantees

7.4.1. Background

1. In many EU Member States, government, usually at central government level but also at state or local level, provides guarantees on the borrowing of certain corporations or other entities both in the public and in the private sector. The guarantee can be unconditional or conditional and government can act alone or jointly with other units. Generally this allows the beneficiary entity to borrow at a lower interest rate⁽³²⁰⁾, and in some cases this support is even needed in order to have access to the borrowing markets. There are different ways in which a guarantee may be exercised (realisation of guarantor's obligations). The most frequent case is when the guarantee call is activated by the creditor, for example a bank, often at first demand. Usually, three parties are involved in such guarantee calls: the debtor, for example a public corporation, the creditor and the guarantor (in this chapter a government unit).
2. Government may also provide guarantees on assets held by some entities as part of their normal business or in the context of government policies. In this case, government takes the commitment to cover losses related to a decrease in the value of the assets or to shortfalls in the recovery, with various ways of activating the guarantor's obligations. For guarantees on significant problematic assets, see chapter 4.5 Government interventions to support financial institutions: financial bailouts and defeasance.
3. This chapter does not consider the following types of guarantees:
 - implicit government guarantees, as opposed to formal guarantees that are generally laid down in legal contracts (for instance in the case of guaranteed issuance of securities). Implicit guarantees may come from government's role as shareholder, or controller of the units, where it is considered that government will intervene in any case if problems are observed. Implicit guarantees may also relate to economic activity considered to be integral to the economy, where it is assumed that government will intervene to prevent a failure;
 - formal guarantee commitments, which are rather close to insurance schemes. For instance, government may 'guarantee' some payments by households (e.g., housing rentals) or grant guarantees for some specific events (e.g., art exhibitions).
4. Government may provide three kinds of guarantees:
 - in the form of derivatives (such as Credit Derivative Swaps), which fall under the normal treatment of derivatives and do not require specific provisions for such government transactions;
 - in the form of standardised guarantees (introduced in 2008 SNA and ESA 2010), see section 7.4.3 of this Manual;
 - in the form of 'one-off' guarantees, see section 7.4.2.
5. The importance of guarantees granted by governments increased substantially in recent years, as the extension of the existing schemes or the introduction of new schemes were often among government policy measures introduced in order to mitigate the economic and social impact of the COVID-19 pandemic. An increase in the use of standardised guarantee schemes was also observed. Therefore, a harmonized treatment/implementation of the rules on standardised guarantees among countries is more than ever necessary.
6. ESA 2010 refers to standardised guarantees in several parts in the text, sometimes with a slightly different wording. ESA 2010 paragraph 5.190 provides a definition of standardised guarantees which *...are issued in large number, usually for fairly small amounts⁽³²¹⁾, along identical lines....* ESA 2010 paragraph 5.192 mentions that standardised guarantees *are usually provided by a financial corporation, including but not confined to insurance corporations, but also by general government.* ESA 2010 paragraph 5.195 adds that *The nature of a standardised guarantee scheme is that there are many guarantees of the same type, though not all for exactly the same time period nor all starting and finishing*

⁽³²⁰⁾ This guarantee may result in a credit enhancement as rating agencies generally attribute to the debt of the borrowing unit the rating of the guarantor, if higher.

⁽³²¹⁾ ESA Box 5.1.2. (b) mentions that standardised guarantees are issued in large numbers, usually for fairly small amounts. However, the issuance of guarantees in the context of COVID-19 showed that the interpretation of 'small' amounts is not straightforward. Firstly, different countries have different interpretations of what small amounts means, secondly, the ESA 2010 uses the term 'usually' and not 'always', which could mean that the interpretation of the sentence 'usually for small amounts' could change depending on circumstances.

on the same dates. Moreover, ESA 2010 paragraph 5.197a specifies that *standardised guarantees are characterised by often repeated transactions with similar features and pooling of risks*, while ESA 2010 paragraph 5.197b adds that *guarantors are able to estimate the average loss based on available statistics*. In the same vein, ESA 2010 paragraph 20.254 specifies that *Standardised guarantees cover similar types of credit risk for a large number of cases. It is not possible to estimate precisely the risk of any one loan being in default, but it is possible to estimate how many, out of a large number of such loans, will default*.

7. Summarizing the above, it can be concluded that the main features of standardised guarantees are:
 - many guarantees of the same type, issued in large numbers along identical lines; while the guarantees are usually for fairly small amounts, there may be standardised guarantee schemes that involve significant individual amounts, as long as the number of guarantees is high enough and homogenous enough to allow an insurance approach to these;
 - characterized by often repeated transactions with similar features and pooling of risks;
 - covering similar types of credit risk for a large number of cases;
 - issued for the benefit of unit(s) granting credits under a precise framework;
 - related to the assets of the benefitting lender (the trigger of the guarantee due to the call does not come from a default of the lending unit on its own debt);
 - granted in the context of public interest policy for a large number of potential beneficiary borrowers.
8. A provision observed in public accounts for an existing guarantee scheme involving numerous claims could be an indication that such scheme would have the features of standardised guarantee scheme, as defined in ESA 2010. Such cases have to be carefully analysed by statisticians.
9. Examples of standardised guarantees include those on student loans (notably where university tuition fees are high), real estate loans to households (generally for low-income borrowers), export credit guarantees⁽³²²⁾, as well as guarantee schemes on loans to small and medium-sized enterprises (SMEs) or to self-employed persons.
10. In contrast to standardised guarantees, one-off guarantees are provided on a case-by-case approach, generally for rather significant amounts and under individual contractual arrangements. They are not offered under a general framework and imply a close follow-up by government on an individual basis and not globally. Frequently, they are also subject to an individual examination of their impact by competition authorities.
11. ESA 2010 paragraph 5.197 and ESA 2010 paragraph 20.255 highlight another difference between standardised guarantees and one-off guarantees. In the case of standardised guarantees, guarantors should be in a position, when they offer a standardised guarantee, to estimate the average loss, for instance based on available statistics and by using a probability-weighted risk of call. In the case of one-off guarantees, guarantors generally would not be able to make, notably at inception, a reliable estimate of the risk of calls (with *any degree of accuracy*) as it is generally not predictable due to the uniqueness of the case. ESA 2010 paragraph 20.255 states that *One-off guarantees exist where the conditions of the loan or the security are so particular that it is not possible for the degree of risk associated with the loan to be calculated with any degree of accuracy*, which makes the inability to calculate the expected loss a defining feature of one-off guarantees.
12. In general, fees for one-off guarantees, received by government in its role of guarantor, are classified as service fees, i.e., payments for non-market output (P.131). According to the accrual principle, this revenue should be spread over the life of the guarantee. Fees received by government in relation to standardised guarantees are equivalent to insurance premiums, notably under export credit schemes, and must therefore be treated similarly to the rules stated in ESA 2010 for non-life insurance (see ESA 2010, chapter 16). The actual payment of the fee is recorded in the financial accounts (F.66L in the guarantor's accounts).
13. However, in the case of very specific one-off guarantees, the amount of fees received by government might be considered well out of proportion compared to the cost for government of providing the

⁽³²²⁾ The term 'export credit' is used here in a narrow sense: guarantees on loans/credits to foreign purchasers, or on loans to domestic suppliers, but excluding any form of insurance (such as prospection insurance, political risk, etc.). In other words, only a credit risk incurred by lending institutions is covered by the guarantee. Although listed in ESA 2010 and 2008 SNA as an example of standardised guarantees, within the EU, most export credit guarantees are instead considered as insurance. These latter operations referred to are covered by the OECD 'Arrangement on Officially Supported Export Credits' (last update from July 2015).

guarantee. In this case, the fee has the nature of a compulsory payment (being out of proportion) and must be considered as unrequited. This means that, in such cases, a tax (D.29) must be recorded in accordance with ESA 2010 paragraph 4.23.

7.4.2. One-off guarantees

7.4.2.1. TREATMENT IN NATIONAL ACCOUNTS

7.4.2.1.1. General case

14. Generally, a government-guaranteed debt is recorded solely as the borrowing of the borrower and an asset for the lender, whether or not the guarantee concerns specific borrowing (e.g., one particular loan) or the whole corporate debt. For government, it is a contingent liability which is not recorded in ESA balance-sheets (but may be shown as memorandum item or a footnote).
15. If the guarantee is called, whether for the full amount or for part of it, government takes over that part of the borrower's debt which was called, through a 'debt assumption' (see chapter 7.2), which is recorded as a capital transfer (D.99) from government to the borrower for the amount called. This has an impact on government net lending/borrowing (B.9). The capital transfer is matched by a financial transaction: the financial liability transferred from borrower to government. Government may, either immediately or subsequently, enter into a separate financial transaction when it repays the outstanding debt to the lender. This financial transaction has no impact on net lending/borrowing (B.9). This may also cover the interest accrued but not paid at the time of the assumption and which should have normally been added to the instrument.
16. In the public accounts balance sheet, the guaranteed debt may not be recorded until the guarantee is called (activated). However, it is expected that information on government guarantees is made publicly available. It is usually the case that Parliament approves a cap on the amount of guarantees government can grant over a fiscal year.

Partial calls

17. A 'partial call' of the guarantee (sometimes referred to as a 'cash call') occurs when government pays one instalment. The actual payment by government is recorded as a debt assumption: capital transfer (D.99) expenditure, balanced by a decrease in currency and deposit (F.2) (see sub-section 7.4.2.2.1 of the Manual and the decision tree at the end of this chapter). Conceptually, this is analysed as a debt assumption with government taking over part of the liability and as if there was a transfer of the financial liability to government that is followed by an immediate settlement of this amount in order to extinguish the liability. However, it may be the case that government is legally obliged to automatically assume all the remaining debt (guarantees at first demand) as the result of an initial case. For cases of 'repeated calls', see the sub-section 7.4.2.1.3 of this Manual.

7.4.2.1.2. Case where government will repay the debt with certainty

18. In some cases, it is known with certainty that, despite the borrowing being legally carried out by the corporation, it will be government that repays the borrowing. This may occur for newly issued debt or for existing debt which government had started to guarantee.
19. In straightforward cases evidence is provided in legal documents or a government liability is recognised in the public accounts or in similar documents, e.g., the budgetary documentation. In such cases the debt is considered to be first issued by the corporation and then assumed by government. This assumption may happen immediately where it is obvious at inception that the debt will be assumed by government (i.e., it is imputed to government, in national accounts, from inception).

7.4.2.1.3. Case where it is judged that government repays or will repay the debt

20. In other cases, documented evidence may not be available to show that government has legally assumed the debt, but other indicators might point to the fact that government has *de facto* assumed it. Evidence of such cases may include:

- repeated calls: it is observed that government is repaying the debt each year⁽³²³⁾, either directly (by calls, see below) or indirectly, through recurrent payments to the borrower, which allows the corporation

⁽³²³⁾ In some cases, several calls could be observed during the same year under the same guarantee arrangement. They are accounted for a single call in the implementation of the rule.

to repay all or part of its debt obligations. Such payments⁽³²⁴⁾ result in the provision to the unit of the means necessary to repay its creditors without formally activating the guarantee or avoiding a rollover of the debt (including by way of a financial advance from government). If such support becomes a common occurrence, it is considered a 'disguised' or indirect call,⁽³²⁵⁾ which would trigger government assumption of the debt.

- a provision has been recorded in public accounts or similar documents that show that the probability that government will repay the debt is very high and that it has already been recognised by government, beyond the usual prudential practice.
21. In these cases, the outstanding amount of debt, or a relevant part of it, is treated in national accounts as assumed by government in the time period it is judged to have *de facto* assumed it.
22. Specific examples include e.g., situations when there are repeated calls on the guarantee (or where equivalent payments — like repeated capital injections — are made to the borrower to prevent a call being necessary). In the latter case, government effectively repays the debt even though it has no legal requirement to do so and does not formally record it as such in public accounts. In such specific cases, a case-by-case analysis is required.
23. As practical guidance, if government repayments of the debt occur over three consecutive calls what is referred to as the 'three calls rule' (see indirect calls above), then the debt is to be considered as having been automatically assumed by government. The debt would normally be assumed in its entirety; although this could be reduced to only the proportion government is expected to repay, if there is evidence of that. The debt assumption should be recorded at the time of the event triggering statistical decision to recognize the debt assumption, for example, the time of the third annual payment. The debt assumption is to be recorded as described in sub-section 7.4.2.1.1. When government has provided guarantees on several debt instruments issued by a single entity, the rule should apply on the basis of calls on any of the guaranteed liabilities during a given year (and is equivalent of a single call for that year). Therefore, in the event that a judgement is made that a debt will be assumed in its entirety, all government-guaranteed debt of that entity is assumed at the same time.
24. An exception is made when there are strong indications that the situation (i.e., defaulting) will not continue. This would mean that a fundamental restructuring of the borrowing unit benefiting from the guarantee (hereby referred to as the borrower) has been decided and it can be assessed, from the business plan to be provided, that the entity would in the future be in a position to face its debt obligations.

7.4.2.1.4. Case where a claim on a third-party asset⁽³²⁶⁾ is transferred to government

25. A guarantee on liability may be called, possibly at the initiative of the creditors, where the borrower cannot meet its debt obligations on time and not because of its problems with the underlying solvency. An example of this could be temporary liquidity difficulties. In some cases, such as export credit guarantees, a debt assumption may imply an automatic transfer of a claim on a third-party asset⁽³²⁷⁾. This may be also the case when the guaranteed borrowing is secured by specific assets (e.g., covered bonds⁽³²⁸⁾). In this case the market value of the asset transferred to government as foreseen in the guarantee arrangements⁽³²⁹⁾ should be deducted from the capital transfer, provided that it is very likely that government will realise the value of the asset in the short term. If a market value is not available, a

⁽³²⁴⁾ Any transfer from government would be counted in this regard, except subsidies on products (D.31), but including other subsidies on product (D.319).

⁽³²⁵⁾ In practice, it may be difficult to assess such indirect call because of the multiple sources of profits of the corporation and the possible variety of government support. Therefore, this provision would apply only if such situation would be observed continuously over several exercises and not exceptionally. The cases where government would systematically provide funds to the corporation for the payment of a large part of the interest burden should also be closely examined, as it might be an indication that the corporation would not be able to redeem the principal of its debt. Anyway, on an individual approach, this should give rise to specific examination by national statisticians, in cooperation with Eurostat.

⁽³²⁶⁾ The case of guarantees on assets held by financial institutions in distress is covered in chapter 4.5 Government interventions to support financial institutions: financial bailouts and defeasance.

⁽³²⁷⁾ Third party means that the asset is not a claim of the guaranteed unit but on another unit, which is not part of the guarantee arrangement. In the cases of financial claims held by the guaranteed unit, such asset could be transferred (possibly due to contractual obligations) by the debtor to this unit (its default may have triggered the activation of the guarantee) and then retransferred to government. It would be *de facto* a claim on a 'fourth party'.

⁽³²⁸⁾ Normally, the creditors have a direct right on these kinds of collaterals, which must be clearly identified (segregated) in the balance sheet of the borrower. However, this would not exclude that the creditors activate their guarantee right if the borrowing is also sublet to an explicit government guarantee.

⁽³²⁹⁾ If such value is not observed, a fair value may be estimated by independent bodies, on the basis of usual business estimation methods/models.

fair value may be estimated on the basis of usual business estimation methods/models carried out by an independent body. The part which is recognised as claim should follow the same treatment as in the next paragraph.

26. In the case of guarantees on financial assets, any call must be recorded as capital transfer expenditure of government. It may happen that the arrangement between the unit benefiting from the guarantee and government foresees that, under some conditions, the guaranteed assets could be transferred to government. This should be recorded in government accounts as reduction to a capital transfer expenditure for the full amount of the assets transferred, at the time of the transfer. When no recoveries are expected, the claim is not entered into government's balance sheet. Any unexpected recoveries are recorded as a capital transfer revenue of government. When there is a reliable estimate of the recoverable value, following normal business valuation methods by an independent body, the recoverable value should be deducted from the capital transfer and treated as the acquisition of a financial asset. The asset should enter government balance sheet and repayments by the debtors to government should be treated as financial transactions.⁽³³⁰⁾
27. Another possibility is that the asset acquired by government could be a non-financial asset rather than a financial claim, such as a real estate property. Here, in case of default, government assumes the guaranteed debt of the borrower and also takes the ownership of a given non-financial asset. The recording would be similar to the case mentioned in the paragraph 25 and the value of the transferred asset should be deducted from the capital transfer, and entirely off-set it, if the value of the asset is equal to the value of the debt assumption. There would be an impact on government net lending/borrowing (B.9) due to the capital formation recorded, but this would just substitute the impact on B.9 that the capital transfer would have had. When government immediately disposes of the asset, the final impact on government net lending/borrowing (B.9) will be neutral if government resells the asset for the value recorded at the time of the debt assumption.

7.4.2.1.5. Case where the assumption of a liability includes a claim on the guaranteed unit

28. When government assumes debt through a guarantee call it may also at the same time acquire a financial asset that is a claim on the guaranteed corporation, such as a claim — recognised in the public accounts — on any recoveries that it can subsequently make.
29. In most cases where government is judged to assume debt from a public corporation facing a difficult situation, it is considered that any new claim of government on the corporation, possibly recorded in public accounts, would be of uncertain value. In this case, the claim would not be recorded in government's balance sheet. In case of later repayments from the public corporation, these would be recorded as capital transfer revenue of government to be super-dividend tested (see also below in sub-section 7.4.2.1.6). In the case the borrower would be fully private, it could be considered that government is holding a claim. However, in case the borrower shows accumulated or regular losses, and more particularly, a negative net equity, no claim on the unit should be recorded in national accounts.

7.4.2.1.6. Change of circumstances after a debt assumption

30. After government has been economically judged to assume the debt it guaranteed (see sub-section 7.4.2.1.3), it may happen that the financial performance of the defaulting borrower improves to the extent that it resumes making regular debt repayments and can resume its legal obligations for the liability. Here, the previous economic assessment is no longer appropriate, and the corporation is deemed to assume the debt back from government. This is recorded as a capital transfer from the corporation to government, offset by a financial transaction where the liability is transferred from government to the corporation⁽³³¹⁾.
31. When the recovering entity is a public corporation, the transaction recorded in favour of the government should be subject to the super-dividend test, part of the payment being partitioned as an equity withdrawal (F.5) for the amount in the excess of the distributable income, net of any dividend paid.

⁽³³⁰⁾ Under some conditions, part of the claim would not be recovered and should be treated as either capital transfer or other changes in the volume.

⁽³³¹⁾ In the case of guarantees on assets, except if there is a transfer of the assets to government, when the original beneficiary of the guaranteed unit can repay to government the amounts which have been already called and paid by government to the unit holding the assets, these payments are recorded in government accounts as a capital transfer receivable.

32. To avoid instability in government debt statistics, any debt imputed to government should remain as a liability of government until payments from the defaulting entity to government or to the creditor actually occur, and there is strong evidence that they will continue in the future. In other words, the improvement in the financial situation of the defaulting borrower must be viewed as permanent and not due to temporary factors.

7.4.2.1.7. On-lending

33. If government borrows on the market in its own name, but with the explicit purpose to specifically allocate the funds to corporations that are contractually obliged to repay government for both principal and interest, the debt is recorded as government debt at issuance and a corresponding loan is recorded to the corporation. The loan is analysed according to rules on capital injections in public corporations (see chapter 3.2. Capital injections into public corporations). Therefore, it may or may not have an impact on the government net lending/borrowing (B.9) according to the capital injection test.
34. Government may guarantee the borrowing of an entity, which then, under instructions from government, would finance corporations engaged in public sector infrastructure or other projects. If the entity is recognised as a separate institutional unit (see ESA 2010 paragraph 2.12), the borrowing should be rerouted, so that government is recording borrowing from and lending to this unit. However, more frequently, the entity would not be recognised as an institutional unit (e.g., when it appears to be just undertaking the role of a 'passing-through' entity), so the borrowing would be recorded in national accounts as direct government borrowing and lending to the infrastructure or other public projects.

7.4.2.2. RATIONALE OF THE TREATMENT

7.4.2.2.1. General case

35. The general principle is that guarantees are considered contingent assets/liabilities.
36. ESA 2010 paragraph 5.08 states *...as they do not give rise to unconditional obligations, contingent assets and liabilities are not financial assets and liabilities.*
37. As a result, contingent liabilities are not recorded in the ESA balance sheet and are excluded from government debt. Similarly, the granting of guarantees is not normally considered a transaction in national accounts. In the general case, the action of granting a guarantee would only lead to the recording of transactions for the fees and when the guarantee is activated, i.e., when the guarantor replaces an original borrower (or in some cases compensates the holder of some identified assets) due to a default that triggers the exercise of the guarantee. In some cases, a judgment must be made that the guarantee has effectively been activated despite not legally being fully activated. The exercise of the guarantee can lead to debt assumption and, in most cases, to capital transfers. In a debt assumption the amount of capital transfer recorded is the payment obligation taken on the guarantor on behalf of the original borrower.
38. Any call of a guarantee, whether full or partial, is thus equivalent to a debt assumption by government.

7.4.2.2.2. Case where government will repay the debt with certainty

39. Government guaranteeing new debt where it is certain that government, as guarantor, will repay it, is economically equivalent to government borrowing directly from the creditor, as it has taken on the obligation to service the debt. In this case, the proceeds of government borrowing would then be used to fund the corporation but, as government would not expect to receive anything in return from the borrowing unit, this transaction would not be a loan and should be recorded as a distributive transaction, a capital transfer with an impact on government net lending/borrowing (B.9).
40. When government guarantees an existing debt and it is known with certainty that government will repay it, the treatment is similar to a debt assumption that benefits the guaranteed unit.

7.4.2.2.3. Case where it is judged that government repays or will repay the debt

41. This case is equivalent to an informal call of the guarantee. The recording reflects the concept of economic substance being recorded rather than legal features or administrative form (see ESA 2010 paragraph 1.25). In such cases, government is viewed as having assumed the debt from the corporation.
42. Cases where government makes debt repayments every year instead of the corporation, without any formal call of a guarantee, have been observed and must be carefully analysed to judge whether they are in effect a call on the guarantee. These payments are indications that, in practice, government is

expected to assume the debt. Recording the liability as government debt is the result of judging the economic reality to be that government will continue to assume the liability on a regular basis, in which case the liability is economically considered to belong to government (and thus rerouted).

43. For the purpose of national accounts, economic reality must always prevail over legal form. An ambiguous situation where a further reclassification of the debt could occur in the future should be avoided.

7.4.2.2.4. Case where a claim on a third-party asset is transferred to government

44. When a guarantee is called, government may receive from the guaranteed unit an asset, e.g., in the form of equity or a loan. An assessment is needed whether this claim could be recognised in national accounts.
45. For example, if government receives a claim on a loss-making public corporation, what government receives would be considered as worthless as the corporation will not be able to pay it and hence no claim is recorded in national accounts.
46. If the claim (received by government) has been recorded in the public accounts as a loan to a private corporation)⁽³³²⁾, then the case needs to be analysed. Whenever the private corporation faces financial difficulties (accumulated losses, negative equity, no access to market), so that its real value should be zero or close to zero, such a claim would not be recognized in national accounts. Here, the option to record an equity injection (F.5) from government would generally be inappropriate⁽³³³⁾. The claim is not recognized, and the transaction related to the activation of the guarantee would be recorded as a capital transfer.

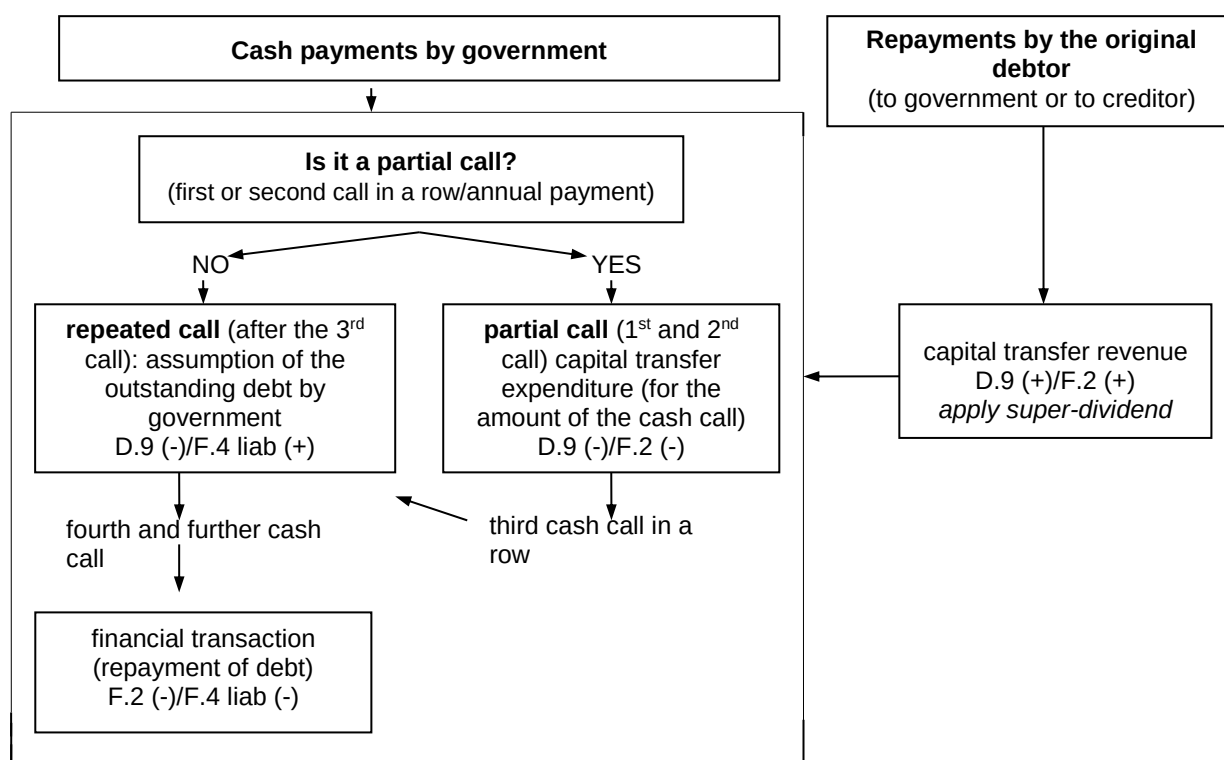
7.4.2.2.5. Case where an assumption of a liability includes a claim on the guaranteed unit

47. An issue also arises when a government guarantee is called and, in return, government records a claim towards the guaranteed unit. This claim is to be recorded in national accounts, off-setting the amount of capital transfer, only if it has a positive and certain value, i.e., when it may really be recognised as a claim in national accounts. The notion of 'recognized claim' is referred to in several commercial accounting texts (notably in IPSAS 19). If the value of the claim is uncertain and held towards a corporation that is in financial difficulties or loss-making, a capital transfer for the full amount called must be recorded. Any amount later reimbursed by the guaranteed unit to government is recorded as a capital transfer revenue of government at the moment of reimbursement.

⁽³³²⁾ For public corporations, the paragraph 26 above states that in any case no claim is recognised.

⁽³³³⁾ It could be possible only if there would be a strong expectation to receive some amounts, the guarantor having access to the liquidation value of the company.

Decision tree for guarantee cash calls



7.4.3. Standardised guarantees

7.4.3.1. Treatment in national accounts

7.4.3.1.1. General principle

48. In national accounts, the treatment of standardised guarantees is based on the analogy with non-life insurance. The treatment is described in ESA 2010, chapter 16 Insurance (and in 2008 SNA chapter 17 Cross-cutting and other special issues).

49. The treatment of non-life insurance in national accounts is based on the assumption that the unit providing such standardised guarantees will be acting commercially, i.e., with the aim to make a profit. However, it might happen that the size of the premiums and/or the investment income would be small or inexistent or would not cover an exceptionally high level of claims. In the EU, the insurance activity is regulated and closely monitored by supervision authorities in order to prevent such situations⁽³³⁴⁾. However, granting only standardised guarantees is not considered a core insurance activity subject to the EU regulation and supervision.

50. Therefore, it would not be totally unlikely that an EU government would grant standardised guarantees for commercial purposes, even if it is nonetheless doubtful that it would compete with non-government units in this activity. As a matter of principle, if such guarantee activity may be profitable, it would rather be carried out by non-government units. However, from a theoretical point of view, if government charges fees that are deemed to be 'economically significant', i.e., covering the expected calls plus most of the administrative costs,⁽³³⁵⁾ in national accounts a treatment similar to non-life insurance as mentioned above is to be applied.

⁽³³⁴⁾ See Directive 2009/138/EC (Solvency II).

⁽³³⁵⁾ Note that, in this case, the government unit engaged in this activity could be considered as a financial quasi-corporation (under the conditions set up in ESA 2010 chapter 2 (Units and grouping of units) and in Part 1 of this Manual (Delimitation of the general government sector), if meeting the autonomy of decision and the market test, and thus classified outside the government sector, so that only flows between this unit and government would appear in government accounts.

51. When government grants standardised guarantees, an AF.66 liability is recorded in its balance sheet. It is equal to the present value of the expected calls under the guarantees, net of any recoveries that the guarantor could expect to receive from the defaulting borrowers⁽³³⁶⁾. In setting up such a liability there is some analogy with recording a provision in a business accounting framework (including IPSAS), which requires making reliable but prudent estimates on the basis of evidence such as past experience, or forecasts in the case of a new activity.⁽³³⁷⁾ As such, these expectations are not necessarily linked to the market (profitable) or non-market nature of the specific guarantee activity. If government charges fees under the conditions mentioned in the previous paragraph (to cover government costs for providing the guarantees), there will only be at inception an entry in the financial accounts (F.66L of the guarantor) equal to the fees received (+) or receivable. F.66L also includes, later on, the settlement of calls (-) on existing guarantees net of recoveries (+), if any. Therefore, the counterpart of the liability is a cash payment (part of the fees retained to build up reserves and part of the revenue of investments not used to pay claims).
52. If government charges no fees (or at a level far from fully covering the total costs of the scheme for government⁽³³⁸⁾), the counterpart of the incurrence of the liability by the guarantor (F.66) is not an inflow of cash (or partly an inflow of cash in case of fees far from covering all the costs). It is a non-financial transaction, i.e., a transfer (expenditure) of government/guarantor to the benefitting lender.

7.4.3.1.2. Recording a special liability in the case of non-commercial activity

53. From a practical point of view, each time when a principal amount of loans (covering multiple debtors) is granted by financial institutions and covered by a government standardised guarantee scheme during a given period, a certain percentage would be recorded as an AF.66 liability in government's balance sheet. A capital transfer as counterpart for the F.66 liability amount net of any fees collected or collectable is recorded.⁽³³⁹⁾ In national accounts, this capital transfer benefits the policy holders (thus holders of the AF.66 asset), i.e., the financial institutions which grant the loans and have a contractual recourse towards the guarantor government, rather than the borrowers. Borrowers also indirectly benefit from the existence of the guarantee scheme organised by government although they are not necessarily the main economic beneficiaries. The capital transfer may be analysed as an anticipation of the net cost of the expected calls. Although, usually, a capital transfer is recorded when the amount is known with certainty, in this specific context, recording a capital transfer at inception is necessary, on an estimated basis, as also done in other circumstances. Because of the assumed likelihood of net calls, there is conceptually an impact at inception in government accounts as, by definition, government is expected to lose money in the scheme.
54. When a call on a guarantee is made and paid, it is recorded in the financial accounts as an F.66 transaction and there is no impact on government net lending/net borrowing (B.9) (unless the actual calls exceed the expected calls, see below).
55. The provision AF.66 could potentially be equal to the full amount of the loan (such a 100 % risked loan would however never be granted) and may be re-adjusted over time.
56. It is also necessary to keep the information on the total amount of loans (or other assets) that are covered by a government standardised guarantee, similarly to the case of one-off guarantees, for the purpose of following the overall potential exposure of government. Publication of such information is foreseen by EU legislation.
57. According to 2008 SNA paragraph 17.223, a liability AF.66 is to be recorded in case of the recognition of a provision in the own accounts of the government units (based on their accounting framework, usually different from national accounts). National accountants could record the AF.66 liability taking into account the estimates made by government. As a principle, national accountants should generally not diverge from this estimate, as it is doubtful that they could themselves be in a better position to make

⁽³³⁶⁾ This refers to the possible late repayments that a debtor could make after the guarantee has been called. The debtor may be still legally committed but, in many cases, for various reasons, its debt may be irretrievably considered fully unrecoverable upon the activation of the guarantee.

⁽³³⁷⁾ Note that in 2008 SNA and ESA 2010 it is called 'provisions for calls under standardised guarantees' but it must be stressed that it is not similar to provisions in Business accounting which are recorded only in the accounts of the unit setting up the provisions, whereas, in national accounts, it is considered a financial instrument and thus recorded both as a liability (in guarantor accounts) and reciprocally as an asset (in the accounts of policy holders).

⁽³³⁸⁾ This situation is considered in 2008 SNA paragraph 17.223 rather than in ESA 2010.

⁽³³⁹⁾ It is recorded as a capital transfer, and not as a current transfer, because the AF.66 provision is built up for the future defaults (and not for defaults observed during the current year) and represents the anticipation of call of guarantees following debtors' defaults, which, under ESA 2010, are recorded in the other case of one-off guarantees as capital transfer (see ESA 2010 paragraph 4.165 (f)).

more reliable estimates of the expected losses. However, if the estimate in public accounts is deemed not reliable (that is, it is not based on the expected future costs net of recoveries, e.g., is overcautious), it should not be used. In case public accounts do not recognise a provision, or the existing provision cannot be seen as a sufficiently good proxy for F.66, other considerations or other existing data sources (e.g., experience with similar schemes, either provisions or estimations from benefitting banks, national central banks or Court of Auditors) should be used with a view to reach the best possible estimate.

58. It must also be pointed out that, under public accounting rules such as IPSAS or equivalent, which are increasingly being adopted by government units, the setting up of adequate provisions for any risky activity is a strong requirement, provided that it is possible to make reliable estimates of the impact of the risk.⁽³⁴⁰⁾ However, not all governments have adopted in their public accounts (and this is specifically relevant if one considers all sub-levels of general government) accounting framework which impose to record provision for future risks. One could nevertheless expect that EU Member States where government would directly grant standardised guarantees would have such framework in place. Where this would not be the case, for comparability reasons national accountants should gather the necessary information, for example on similar schemes in other Member States, in order to estimate the AF.66 liability, after discussing with Eurostat. However, new schemes, with very specific features, might raise additional difficulties.
59. The recognition of newly created standardised guarantee schemes should be based on the main features of standardised guarantees as described in the section 7.4.1 paragraph 7 of this Manual. The fact that an estimate of an average loss based on a statistical estimate would, by definition, not exist, or the fact that an estimate would not be deemed to be reliable⁽³⁴¹⁾ would not be sufficient reasons for not recognising and not recording in government accounts a standardised guarantee scheme.
60. There might be cases when guarantee schemes are introduced for a very short period (up to two years). It should be noted that the concept of short-term is applicable for the time during which the guaranteed loans need to be repaid, as well as for the number of years upon which new guarantees are provided. If the guaranteed loans, granted over a short period, would mature within two years, as a practical solution, such guarantee schemes may be treated as one-off schemes. Special attention should be given nevertheless to cases of extensions of such guarantee schemes. They should be reassessed and reclassified as standardised guarantee schemes at the time the extension decision is taken.
61. The increased number of standardised guarantee schemes inevitably leads to more estimates used in government accounts, and more sizeable or/and frequent revisions might be required. For standardised guarantees schemes, revisions would be acceptable within one year after the granting of guarantee⁽³⁴²⁾.
62. The B.9 impact cumulated over the life of the scheme should be equal to the cumulated cash flows. This implies that the difference between the expected loss at inception (at time of guarantee) and the realised loss observed after more than one year will have to be recorded as further expense or expense reversal, at some point in time. As a result, there should be no positive or negative cumulated other economic flows (OEF) recorded over the life of the standardised guarantees scheme⁽³⁴³⁾.
63. It might happen that government would have to face guarantee calls higher than the provisions (F.66L) set in advance at the time the loans were granted. This should be recorded as a new capital transfer. Government will have, also, to reconstitute the provision for the remaining portfolio of loans under a new capital transfer. The liability could also be revised upwards in case the risk of default would be further estimated higher. By consistency with the treatment at inception, a new capital transfer would also be recorded (it is assumed that this would be observed for all existing loans portfolio and not only for the new loans which would show a specific default rate).
64. Conversely, the risk could be lower than expected and the liability could be downward adjusted, first by an imputation on the capital transfer related to the new operations in the year and, for any excess, by a reverse capital transfer. However, the downward adjustment should in principle take place only when the

⁽³⁴⁰⁾ Usually, this depends on two parameters: 'Probability of default' and 'Loss given default'. However, it may happen that auditors would not request for provisioning, in case the impact is deemed rather negligible for the unit and if the uncertain time of the possible future impact would rather take place in a distant future.

⁽³⁴¹⁾ In case an estimate is deemed not to be reliable, then a better estimate should be done and used. This applies to all standardised guarantees and not only to newly created standardised guarantees schemes.

⁽³⁴²⁾ Even if the revision of the initial estimate could be accepted during the first year, the data sources should be justified.

⁽³⁴³⁾ The stock AF.66 can nonetheless be re-adjusted from one period to the next by other change in the volume (ESA 2010 paragraph 6.14d) when the expectations of claims (calls) on the entire risk portfolio are re-estimated upwards or downwards. This would be the case when the stock AF.66 is based on the provisions observed in the own account of the grantor without further statistical adjustments, while the flow is compiled separately. However, this other change in the volume should cumulate to zero over time.

improvement in the recovery of the claim is observed over a rather long period and is considered to be irreversible.

65. As an operationalization/implementation of the two paragraphs above, a so-called 'delayed revenue approach' would be applied. According to this approach, in case of an upward revision of the estimate of the average loss, a new capital transfer is to be recorded immediately (with F.66L counterpart). In case of a downward revision, revenue recognition (D.9r) is to be delayed in the following way: first, revenue is netted from the capital transfer (D.9p, with an associated impact on F.66L) of the period, and the residual is reported forward and further netted from the D.9p of the following periods. Second, in the case where not enough D.9p occurs, a D.9r is eventually recorded at the time of the expiration of the guarantee concerned (with a counterpart entry in F.66L (-)). This approach impacts B.9 fairly automatically, removes arbitrariness and also postpones any revenue recording to the end/guarantee expiration (with gains reducing expenditure flows, in the meanwhile). The approach removes uncertainty over the recording and promotes harmonization across countries.
66. However, flexibility is given to compilers when the further losses are reasonably small and mostly due to unrealised losses. 'Small' could be defined here as 20% of the initial capital transfer or as 10% of the stock of existing AF.66. In addition, compilers could decide not to net the gains (realised/unrealised) from expenditure relating to the new guarantees when lack of data makes the netting difficult or when such netting is judged inappropriate. In this case, the (gross) revenue (D.9r) is still to be postponed until the expiration of the relevant guarantees.

7.4.3.2. RATIONALE OF THE TREATMENT

67. The reasons why such guarantees should be treated in national accounts similarly to non-life insurance are given in ESA 2010 (see ESA 2010 paragraph 5.191 and following) and in 2008 SNA (chapter 17 Cross-cutting and other special issues, Part 3: The treatment of standardised guarantees in the SNA). The generally small individual amounts covered by the guarantees and the repetition of similar features a large number of times, explains the focus on the global treatment of the total guaranteed amount rather than at the individual level, something that it is not managed directly by the guarantor. The purpose of such government standardised guarantees is generally to implement a public interest policy for a large number of potential beneficiaries, while one-off guarantees are rather linked to the specific situation of individual entities or small groups of units.
68. ESA 2010 paragraph 5.192 explains that standardised guarantees are usually provided by financial corporations classified in S.12 but can also be granted by government. The formers are provided on a commercial basis. The methodology was created to work similarly to non-life insurance. Government involvement is for public policy reasons rather than on a commercial basis. The ESA category is adopted for all sectors of the economy, with some adaptation of the recording for government due to its non-market nature.
69. In the case of government's standardised guarantees, the fees paid by the beneficiaries are often not fixed in order to cover all or almost all costs of the scheme, as mentioned in 2008 SNA paragraph 17.223. Government does not aim for a neutral impact on its income statement by fixing the fees at a level where, on a time-equivalence perspective, they should cover most, if not all, of the expected defaults on the underlying assets. Government intervention through standardised guarantees schemes takes place in the context of policies, the objective of which is to improve market access for some specific categories of borrowers. In this regard, one can expect an unrequited transaction element (for the part not covered by fees) behind such arrangements.
70. It is also appropriate to record the unrequited transaction at inception because this reflects the market value of the guarantees (i.e., in case government would sell off these), and, accordingly, the impoverishment of government should be reflected in its net worth.
71. It can be noted that the B.9 impact across time implied by the above paragraphs 63, 64 and 65 is actually consistent with the non-life insurance approach as described in ESA 2010, chapter 16 Insurance, which involves a B.9 impact due to actual claims (D.72), compared to the expected claims (D.71) over time. In case of non-market non-life insurance, the non-payment of the fee would in addition imply an expenditure upfront (D.9p), while there would still be a difference between the expected claim (D.71) and the actual claim (D.72), further impacting B.9 positively or negatively.
72. As a further justification of why the B.9 impact is relevant later on, is the fact that when, for standardised guarantees, a capital transfer at inception would be considerably underestimated, the guarantee call later on would imply a B.9 impact similar to one-off guarantees.

73. It should be noted, however, that the 'delayed revenue approach' for standardised guarantees takes into account unrealised losses or gains and not only realised losses or gains, contrarily to non-life insurance recording, where D.72 net of D.71 contains only realised gains or losses. Thus, a further B.9 impact is justified for unrealised gains/losses, though modulated by applying the 'delayed revenue approach'. This is because non-life insurance policies typically provide coverage on an annual basis with an adjustment of insurance premium (if needed) upon contract renewal, while standardised guarantees are often granted over a longer period. That is, a default rate in typical non-life insurance is calculated for one year, while the typical standardised guarantee covers a number of years of potential default. The risk exposure is thus completely different. Moreover, in the case of standardised guarantees, the lender benefits from the certainty that loans are guaranteed for several years at a fixed fee.

74. The AF.66 may only reflect the expected calls net of expected recoveries, in which case, the expected future fees, if any, are to be recorded on the asset side (AF.8) (gross recording). Alternatively, the AF.66 may reflect the expected calls net of expected recoveries and net of future fees (net recording). The gross approach is to be considered as superior, as ESA 2010 prefers avoiding netting, and as the AF.66 may otherwise turn negative.

7.4.4. Accounting examples

Standardised guarantees – 'delayed revenue approach'

The Government establishes a new guarantee scheme for SME at the end of year t . It is assumed that the new scheme is a standardised guarantee scheme. The loans granted and guaranteed for 10 years under the scheme amount to 1000 in year t . The government estimates the total guarantee calls for the loans granted during the guarantee period (10 years, year $t+1$ to year $t+10$) at 100 in year t . The financial institutions issuing the loans covered by the standardised guarantee scheme have to pay a guarantee fee of 1% of the loan volume (1000), which is to be paid in ten annual instalments (i.e., 1 in each year, in total 10), starting from year $t+1$ onwards. The guarantee fee is neither sufficient to cover the expected losses nor the administrative costs incurred by the government for the standardised guarantee scheme. To simplify the example, the government's production costs/output for the standardised guarantee scheme are not shown, also recoveries are neglected. In year t , the standardised guarantee scheme is only set up. The government has a stock of cash of 500 at the beginning of year t . The D.99p to be recorded in year t is 90 (i.e., $D.99p = \text{Expected loss} - \text{guarantee fee}$; $D.99p = 100 - 10$). The provisions for calls under standardised guarantees (F.66L) to be recorded in year t is 100.

In year $t+1$, government receives the annual guarantee fee of 1 (which is also paid in the following years) and guarantee calls of 10 take place (actual call corresponds to the initial estimation). In year $t+2$, guarantee calls of 12 take place. In year $t+3$, guarantee calls of 8 take place and the 'delayed revenue approach' is applied. In year $t+4$, guarantee calls of 13 take place. In year $t+5$, guarantee calls of 8 take place. In addition, the government reassesses the risks related to the scheme and reduces the expected guarantee calls at the end of year $t+5$ by 15 (from 50 to 35), which means that for the remaining maturity of the scheme, on average, guarantee calls of 7 per year are expected. In year $t+6$, guarantee calls of 17 take place. In year $t+7$, guarantee calls of 7 take place and government increases the expected calls by 7. In the example it is presumed that the stock of the standardised guarantees follows the own accounts of the government, and the accountant does not change the expectation for the first four years, even though the realisation of the calls has changed from one year to the next.

The table shows only the accounting entries in the guarantor accounts (i.e., the government accounts).

		Year t		Year t+1		Year t+2		Year t+3		Year t+4		Year t+5		Year t+6		Year t+7	
Opening balance sheet		A	L	A	L	A	L	A	L	A	L	A	L	A	L	A	L
AF.2	Currency	500		500		491		480		473		461		454		438	
AF.8A	Other accounts receivable			10		9		8		7		6		5		4	
AF.66L	Standardised guarantees				100		90		80		70		60		35		28
B.90	Net worth		500		410		410		408		410		407		424		414
Non-financial account		U/ΔA	R/ΔL	U/ΔA	R/ΔL	U/ΔA	R/ΔL	U/ΔA	R/ΔL	U/ΔA	R/ΔL	U/ΔA	R/ΔL	U/ΔA	R/ΔL	U/ΔA	R/ΔL
D.99	Capital transfer	100-10				2				3-2				10-10			
B.9	Net lending (+) / net borrowing (-)	-90		0		-2		0		-1		0		0		0	
Financial account		ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL
F.2A	Currency			-10+1		-12+1		-8+1		-13+1		-8+1		-17+1		-7+1	
F.8A	Other accounts receivable	10		-1		-1		-1		-1		-1		-1		-1	
F.66L	Standardised guarantees		100		-10		-12+2		-8		-13+3-2		-8		-17		-7
B.9F	Net lending (+) / net borrowing (-)		-90		0		-2		0		-1		0		0		0
Other economic flows		ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL	ΔA	ΔL
K.5_AF.66L									-2		+2		-15-2		+10		+7
B.102									-2		+2		-15-2		+10		+7
Closing balance sheet		A	L	A	L	A	L	A	L	A	L	A	L	A	L	A	L
AF.2A	Currency	500		491		480		473		461		454		438		432	
AF.8A	Other accounts receivable	10		9		8		7		6		5		4		3	
AF.66L	Standardised guarantees		100		90		80		70		60		35		28		28
B.90	Net worth		410		410		408		410		407		424		414		407
Memo Item:																	
Stock of delayed revenue								2		0		15+2		7		0	

7.5. Keywords and accounting references

Debt assumption and debt cancellation	ESA 2010, 5.36-5.39, 20.222-20.232
Write-offs and write-downs	ESA 2010, 6.14(b), 20.233-20.235
Other capital transfers	ESA 2010, 4.164-4.167
Contingent asset/liability	ESA 2010, 5.08-5.11

8

Measurement of general government debt

8.1. Overview

1. The 2012 consolidated Treaty on the Functioning of the European Union (TFEU) provides a specific definition of government debt for the Excessive Deficit Procedure (EDP). It is fully coherent with ESA 2010 concerning the definition of the government sector and the definition of the liabilities covered. However, EDP government debt valuation differs from ESA 2010 valuation rules because it is measured at face value.
2. For EDP purposes (see Council Regulation (EC) No 479/2009), the nominal value is considered equivalent to the face value of liabilities (also referred to as 'value at par'). The valuation in ESA 2010 balance sheets is the market value for most categories but also nominal value, where appropriate.
3. However, confusingly, the nominal value referred to in ESA has a different definition to that in the Regulation mentioned above. ESA 2010 paragraph 7.39 specifies: nominal valuation reflects the sum of funds originally advanced, plus any subsequent advances, less any repayments, plus any accrued interest. Nominal value is not the same as face value.
4. In simple terms, for a debt security, the ESA 2010 nominal value is equal to the issue price (above or below par, any premium or discount being spread over the lifetime of the instrument) plus any interest that has accrued but not yet been paid (interest is typically paid regularly — annually or every six months — or only at time of redemption, as is the case for short-term debt instruments).⁽³⁴⁴⁾
5. Government debt is also referred to as EDP or Maastricht debt. The debt is measured gross, in the sense that financial assets are not netted-off. It is consolidated, both at the level of the sector and at the level of the subsectors, so that any liability of general government units that is an asset of another general government unit does not add to the general government total. Chapter 8.2 describes the calculation of general government debt for EDP purposes.
6. Chapter 8.3 discusses swaps and the treatment of currency swaps, as they have an impact on the measurement of government debt. This chapter also covers the case of 'off-market swaps', which do not have a nil market value at inception, so that a loan component must be identified.
7. Chapter 8.4 covers financial transactions named 'repurchase agreements' and 'securities lending', which, under certain circumstances, may have an impact on government debt.
8. Finally, chapter 8.5 covers borrowing in the form of on-lending from supranational entities.

⁽³⁴⁴⁾ For instance, a 2-year debt instrument with a face value of 100 but issued with a discount of 4 will be recorded for 96 at inception, then 98 after one year. Similarly, a 2-year debt issued with a premium of 4 will be recorded for 104 at inception, then 102 after one year.

8.2. The calculation of general government debt

8.2.1. Measurement of liabilities in ESA 2010

1. There is no definition of government debt in ESA 2010. In ESA 2010, the core equivalent concept is total financial liabilities, which involve a wider list of financial instruments than included in government debt.
2. The relevant paragraphs on valuation of government liabilities are:
 - *ESA 2010 paragraph 1.94*: Flows and stocks shall be measured according to their exchange value, i.e., the value at which flows and stocks are in fact, or could be exchanged for cash. Market prices are ESA's basic reference for valuation.
 - *ESA 2010 paragraph 7.33*: Assets and liabilities are valued at the market prices on the date to which the balance sheet relates.
3. The stock of liabilities in the closing balance sheet of the general government sector (S.13) should be recorded in national accounts at their market value at the end of the accounting period.
4. This stock of government liabilities under ESA 2010 includes all liabilities in the following financial instruments: monetary gold and special drawing rights (F.1)⁽³⁴⁵⁾, currency and deposits (AF.2), debt securities (AF.3), loans (AF.4), insurance, pensions and standardised guarantee schemes (AF.6), financial derivatives (AF.7) and other accounts payable (AF.8). For some specific types of units classified in the government sector it could also include equity (AF.5).

Stock of government liabilities under ESA 2010 (at the end of the year) =

= AF.1 + AF.2 + AF.3 + AF.4⁽³⁴⁶⁾ + AF.6 + AF.7 + AF.8 + AF.5 (if any)⁽³⁴⁷⁾

5. Trade credits liabilities of the general government with long-term original maturity (more than one year according to ESA 2010 paragraph 5.A1.14 definition) are classified as loans in application of ESA 2010 paragraph 20.132.

8.2.2. Government debt for EDP purposes

8.2.2.1. COVERAGE OF GOVERNMENT DEBT FOR EDP PURPOSES

6. For the purpose of the Excessive Deficit Procedure in the Economic and Monetary Union (EMU), as well as for the Growth and Stability Pact, the current Protocol 12, annexed to the 2012 consolidated version of the Treaty on the Functioning of the European Union, provides a complete definition of government debt: *debt means total gross debt at nominal value⁽³⁴⁸⁾ outstanding at the end of the year and consolidated between and within the sectors of general government.*
7. This definition is supplemented by Council Regulation (EC) No 479/2009, as amended by the Commission Regulation (EU) No 220/2014 (which only updated references to ESA 2010 instruments) specifying the components of government debt with reference to the definitions of financial liabilities in ESA 2010.
8. In this context the stock of government debt in the Excessive Deficit Procedure (EDP debt) is equal to the sum of liabilities at the end of the year in the following categories of all units classified within the general government sector (S.13):

AF.2 (currency and deposits) + AF.3 (debt securities) + AF.4 (loans).

⁽³⁴⁵⁾ In ESA 2010, F.12 (included in this item) — special drawing rights — are recognised as both assets and liabilities. For EU Member States, F.12 usually appears in central bank's balance sheet but SDRs may also be allocated to government.

⁽³⁴⁶⁾ AF.5 could occur usually in the case of the classification of non-market public enterprises within the government sector (see Part 1 Delimitation of the general government sector).

⁽³⁴⁷⁾ Including military goods and services.

⁽³⁴⁸⁾ The nominal value is to be assimilated to the face value in Council Regulation (EC) No 479/2009.

Box 1 – Coin issued by government

The financial instrument category currency (AF.21) concerns notes and coin issued as national currency into circulation as a means of payment. Banknotes and coin are liabilities of the institution issuing them. Banknotes are traditionally issued by central banks and coin is minted and issued by governments, hence notes are usually considered as liabilities of central banks and coin as liabilities of central governments. Commemorative coin used for collections rather than payments is classified as valuables (AN.13) rather than currency.

As regards the euro currency, article 128 of the Treaty on the functioning of the European Union gives the power to the Eurosystem⁽³⁴⁹⁾ in the matter of banknotes issuance in the euro area and leaves the matter of coin issuance to the Member States, without specifying the actual issuer institution.⁽³⁵⁰⁾

ESA 2010 specifically mentions the recording of banknotes and coin liabilities issued by the Eurosystem in its box 5.2. ESA 2010 B5.2.2 states that *coins are issued by central governments in the euro area, although, by convention, they are treated as liabilities of the national central banks which as a counterpart hold a notional claim on general government*.

So, in addition to the central bank AF.21 liability for the coin in issuance, the central bank has a notional claim on central government. This is recorded, by convention, in other deposits (AF.29). The consequence of this is that coin issuance increases government debt.

The drafting in the ESA box seemingly followed on from the presumption that governments were always the actual issuers of euro coin. However, the central government is not the actual issuer of coin in all Member States. In some euro area countries, the national central bank is the legal and sole issuer of coin, and may retain the risks and rewards linked to the coin issuance, so that there is no direct financing effect for government that is neither the legal nor the economic issuer (i.e., it does not have the associated economic risks and rewards). In this respect, it was agreed⁽³⁵¹⁾ that the ESA box should be interpreted in a descriptive manner as far as euro coin is concerned, describing the generally prevailing situation (with some possible deviations), and not in a prescriptive manner (determining the principles of recording).

As a result, no government notional AF.29 liability is needed for euro coin when the economic issuer is deemed to be the central bank, which depends on the following conditions being met: (i) the sole competence to issue euro coin is assigned to the national central bank, and (ii) the national central bank is the liable issuer in the sense of directly carrying the risks and reaping the associated rewards, and the government has no financing effect from the issuance.

Countries that have not joined the euro area record coin issued by government as liabilities (AF.21) of central government if they are effectively issued by this subsector. However, if coin issued by government is recorded in national accounts for some reasons as liabilities of the central bank, then for the consistency with the euro area Member States, it is recommended to record the financial instrument between the central bank and the central government as other deposit (AF.29).

9. It should be noted that long-term trade credits and advances⁽³⁵²⁾ contracted (granted to) or provided by entities classified inside government, independently of the goods or services concerned⁽³⁵³⁾, should be recorded as long-term loans AF.42 and not as trade credits AF.81 following ESA 2010 paragraph 20.132.⁽³⁵⁴⁾

⁽³⁴⁹⁾ The European Central Bank plus the national central banks of the EU Member States that have adopted the euro as their sole official currency.

⁽³⁵⁰⁾ According to the article 128 of the TFEU *Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue*.

⁽³⁵¹⁾ For more information, see Eurostat decision on the statistical recording of the Euro coin
<https://ec.europa.eu/eurostat/documents/1015035/2041337/ESTAT-decision-Recording-of-euro-coins.docx/30ebd86d-e0fa-7dc3-ec06-3cc2eaea1830>

⁽³⁵²⁾ At original maturity.

⁽³⁵³⁾ Including military goods and services.

⁽³⁵⁴⁾ Consistent recording should be applied in the counterpart sector of those transactions involving government when compiling financial accounts of the whole economy.

10. Indeed, according to ESA 2010 paragraph 20.132 *financing presented as long-term trade credits or accounts receivable/payable arrangements are to be classified as loans, because these involve the provision of long-term financing to the benefit of the borrowing party that is distinguished from a treasury facility that sellers commonly provide buyers with short-term trade-credit. In extending the maturity of the payment obligation considerably, the constructor assumes a financial role that is separate from its other activity of producer.*
11. Note that in ESA 2010, the time classification is based on the maturity agreed at inception by parties. This must be distinguished from the common meaning of 'arrear' which correspond to trade credits which have not been repaid at the initial agreed maturity.
12. The existing amounts of such long-term trade credits is not expected to be considerable, notably in the context of Directive⁽³⁵⁵⁾ 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, which states that public units, in their commercial relations, should pay in a maximum period of 60 calendar days, and that interest should be charged if the payment does not occur within the limit period.
13. While ESA 2010 paragraph 5.239 indicates that the trade credits and advances can be short-term or long-term⁽³⁵⁶⁾, this is not applicable when government is the counterpart following ESA 2010 paragraph 20.132. It should be noted that Directive 2011/7/EU makes the same or similar distinction between 'public authorities' and 'undertakings'⁽³⁵⁷⁾.

8.2.2.2. VALUATION OF GOVERNMENT DEBT FOR EDP PURPOSES. THE NOMINAL VERSUS FACE VALUE

14. In Council Regulation (EC) No 479/2009 (EDP Regulation), the nominal value is considered equivalent to the face value of liabilities (article 1). The face value is commonly defined (e.g., in statistical manuals, for instance ESA 2010 paragraph 5.90(d)) as the amount, contractually agreed, that the government will have to refund to creditors at maturity. It is also generally on this amount (the principal) that the interest is calculated.
15. This definition of nominal value retained by Council Regulation (EC) No 479/2009 deviates from the ESA 2010 nominal value definition. In contrast to ESA 1995, which did not define nominal value in statistical terms, ESA 2010 defines nominal value in paragraph 7.39 the following way: *Nominal valuation reflects the sum of funds originally advanced, plus any subsequent advances, less any repayments, plus any accrued interest. Nominal value is not the same as face value...*
16. With respect to face value, it should be further specified that for:
- deposits (or assimilated instruments classified in AF.2, such as non-negotiable notes): the face value includes interest accrued when it is deemed 'capitalised'. Capitalisation can be presumed when interest⁽³⁵⁸⁾:
 - is undistinguishable from the principal;
 - is actually credited to the holder (e.g., appearing in the bank statement or equivalent);
 - is legally acquired;
 - is added to the principal, or
 - is bearing interest⁽³⁵⁹⁾.

⁽³⁵⁵⁾ The Directive foresees that public authorities have to pay for the goods and services that they procure within 30 calendar days or, in very exceptional circumstances, within 60 calendar days. Businesses have to pay their invoices within 60 days, but can choose a longer payment term as long as it is expressly agreed in the contract and provided that it is not 'grossly unfair to the creditor'.

⁽³⁵⁶⁾ According to ESA 2010 paragraph 5.239 Trade credits and advances may be divided by original maturity into short-term and long-term trade credits and advances.

⁽³⁵⁷⁾ The Directive 2011/7/EU term 'undertakings' is synonymous of the word 'corporations' used in ESA 2010.

⁽³⁵⁸⁾ It is thus likely that in many cases the face value on deposits or assimilated instruments will coincide with the ESA 2010 definition of nominal value, as interest accrued will often meet the criteria for being considered capitalised.

⁽³⁵⁹⁾ In some cases, the encashment value of Treasury certificates is steeply curved towards maturity — so to encourage holding to maturity. In such case, the distinction of whether interest bears interest or not is not applicable and the encashment value is, for such instruments, the face value. Following chapter 2.4 paragraph 76, compilers may decide to record within D.41 the change in encashment value so that, face value and ESA nominal value would coincide. On the contrary, when they decide to spread (linearly or, more correctly, exponentially) the expected D.41 over the lifetime of the bond, the face value would be somewhat lower than the ESA nominal value during the life of the instrument.

When interest accrued is available for withdrawal at any time by the creditor, the part of interest that can be cashable is deemed capitalised, because the creditor is considered to have made a deliberate reinvestment decision, and, accordingly, the face value is then equal to this encashment value;

- index-linked bonds: the face value corresponds to the (initial) face value adjusted by the index-related capital uplift accrued to the end of the year (with often a guaranteed minimum redemption value), as foreseen by Council Regulation (EC) No 479/2009, article 1. This applies to bonds that are indexed on either a 'general price index' or a 'narrow index'.⁽³⁶⁰⁾ Bonds that pay a unique lump-sum (at termination) indexed on an indicator and that are advertised as 'capitalised interest bonds' are treated as index-linked bonds;
- zero-coupon bonds (treasury bills, for example): the face value is the redemption value. Bonds that pay a unique pre-fixed lump-sum (at termination) and that are advertised as 'capitalised interest bonds' are treated as zero-coupon bonds;
- bonds with capitalised interest, which are instruments that pay a unique lump-sum (at termination date) that is neither pre-fixed nor indexed: the face value is the issue value plus the capitalised interest, similarly to the recording of indexed-linked bonds, to be capitalised period by period according to the formula included in the contract. This value will differ, during the lifetime of the bond, from the redemption value, given that the latter is not known until redemption;
- stripped bonds: stripping of coupon and principal does not modify the face value of the original bond.⁽³⁶¹⁾ The reverse of stripping ('restripping') is also possible;
- financial leasing: debt includes the imputed loan, which at inception is equal to the gross fixed capital formation;
- on-lending from supranational entities (SURE loans and assimilated loan borrowing) or within general government: the face value of the loan is equal to the face value of the corresponding bond issued by the supranational entity.

8.2.2.3. ACCRUED INTEREST

17. In national accounts, interest is recorded when accruing. Therefore, whether or not it is actually paid, accrued interest affects net lending/borrowing (B.9).
18. Under ESA 2010, accruing interest is continuously added to the value of the instrument in the balance sheet. That value is reduced when the interest is actually paid. The ESA nominal value contains the stocks of accrued interest.
19. Under the EDP provisions, government debt is measured at nominal value (according to the Treaty), which is assimilated to the face value, as mentioned above, by the EDP Regulation, and not to the ESA 2010 nominal value. Accordingly, accrued interest is not recorded under the corresponding debt instrument, unless it is deemed capitalised.

8.2.2.4. DEBT IN FOREIGN CURRENCY

20. In national accounts, liabilities denominated in foreign currencies are converted into the national currency at the representative spot market exchange rate prevailing on the last working day of each year. The derivatives instruments which can relate to them (exchange rate risk hedging, notably) are

⁽³⁶⁰⁾ ESA 2010 paragraph 4.46 (c) states that the change in the value of the principal outstanding between the beginning and the end of a particular accounting period due to the movement in the relevant index is treated as interest accruing in that period, in addition to any interest due for payment in that period. This should apply only for linkage to a general price index ('broad index') and not for an index referring instrument or commodity ('narrow index'). In the latter case, holding gains might be recorded, for a part of the change (see chapter 2.4 of this Manual), i.e., theoretically the change in the index which was not anticipated at inception. This distinction is not mentioned in the EDP Regulation. However, ESA 2010 paragraph 5.94 indicates that debt securities with both principal and coupon linked to a foreign currency are classified as denominated in that foreign currency. In other words, the change in the value of national currency of the instrument denominated in foreign currencies is treated as nominal holding gains. Thus, the issue on narrow index would concern reference to a commodity (such as gold) or a given financial instrument (such as a given share).

⁽³⁶¹⁾ When a government unit intervenes on the secondary market and buys separately a stripped coupon or a stripped principal (from a bond issued by government), the consolidation process requires a specific valuation of these strips. The valuation is to be based, in principle, on the face value of the original bond appropriately apportioned amongst the remaining strips in circulation (i.e., the elements of strips that still have to be repaid). A pro-rata of the observed ESA nominal value, or alternatively the observed market value, of each strip existing at that time (see also sub-section 2.4.3.8 Stripped bonds) could be used. It is not appropriate if face value of each element of strip to be used for consolidation purposes is equal to the redemption value (like in a normal zero-coupon bond), because in such case, the face value of any debt could be fully extinguished by merely buying back the stripped principal. In practice, when repurchased strips are limited in amounts, consolidating them for their market value, or for a market value adjusted by a coefficient, may be an acceptable approximation.

recorded separately. However, the Council Regulation (EC) No 479/2009 states that if a liability denominated in foreign currency is exchanged through contractual agreements to one or more other foreign currencies, it must be converted into the other foreign currencies at the rate agreed upon in those contracts and then converted into the national currency according to the general rule (stated in the previous paragraph).

21. The same principle applies in the case of debt denominated in national currency swapped into a foreign currency. This principle implies that liabilities denominated in a foreign currency and exchanged through contractual agreements to the national currency are converted into the national currency at the rate agreed upon in those contracts.

8.2.2.5. THE CHANGE IN GOVERNMENT DEBT

22. The change in government debt between two points in time (e.g., between the end of year N and the end of year N-1) is equal to the issuance in year N of new liabilities (in F.2, F.3, and F.4) minus redemption — and to other changes in the volume (K.5 and K.6) of debt liabilities. With the exception of the cases of index-linked debt and unhedged debt in foreign currency, valuation effects have no impact on government (EDP) debt. As government debt is recorded on a consolidated basis, it may also change because of transactions between holders classified within the government sector and holders belonging to other sectors (including the rest of the world).

The EDP notification tables

23. In the EDP notification tables filled in by the EU Member States, sent twice a year to the European Commission, Table 3 describes the link between government net lending/borrowing (B.9) and the change in government debt. Analytically, an increase in government debt should be viewed as due to two main factors:

- the net lending/borrowing of general government (B.9);
- the net acquisition of financial assets by general government (flows recorded in the financial account).

24. Some adjustments have to be made to obtain the final change in government debt:

- to other flows (other changes in volume of debt liabilities, holding gains and losses — in particular due to foreign currency debt);
- to the EDP definition: exclusion of non-EDP financial liabilities (mainly accounts payable and financial derivatives), corrections from interest accrued to interest paid and, for debt securities, from transaction value to face value. The last mentioned is the difference between the redemption price and the nominal value, taking account of the fact that the redemption price may include the payment of accrued interest. So, the difference to the nominal value must be calculated by deducting from the redemption price the part corresponding to the payment of accrued interest (repurchase coupon).

25. Finally, a statistical discrepancy should be identified, mainly due to the discrepancy between the financial and non-financial accounts (existing in practice).

$$\begin{aligned}
 \text{Change in government (consolidated) debt} &= \\
 &(-) \text{ net lending/net borrowing} \\
 &+ \text{ net acquisition of financial assets (F.1+F.2+F.3+F.4+F.5+F.6+ F.7+F.8)} \\
 &+ \text{ adjustments (to other flows and to EDP definition of government debt)} \\
 &+ \text{ statistical discrepancies}
 \end{aligned}$$

Box 2 – Treatment of negative interest

Introduction

Under rather exceptional circumstances, negative interest rates can be observed.

Background

The countries facing negative interest rates are those with a rather high international rating, a liquid debt market, and benefiting from favourable anticipations by investors.

In theory, an interest payable could be distinguished into the following components:

- risk free rate;
- risk premium;
- service of the issuing government towards the investor.

The risk premium is absent when interest rates are negative. The service component refers to acting as a safe haven for the investors.

Treatment in national accounts

First, distinguishing a service component in the interest on debt securities would create severe problems. One should — for consistency reasons — distinguish this element also in case of positive rates. Secondly, estimating the value of the service component within the amount of interest would constitute a major problem and would necessitate a specific algorithm. Thirdly, the amounts of negative interest are deemed to be exceptional and fairly small. Therefore, a service component should not be distinguished.

The total amount of negative interest should be seen as negative interest payable by government and as negative interest receivable with the investors. Therefore, negative and positive interest flows under these government instruments should be netted.

Treasury paper is issued at a negotiated price whereas the redemption value is set in the conditions of the issue. In most cases, the redemption value equals 100 %. If the interest rate offered by government is positive, the issuance is at a discount and if the interest rate is negative, the issuance is with a premium.

In practice, the amount of the negative interest can be calculated as the difference between the issue price above par and the redemption value.

8.3. Recording of swaps

8.3.1. Overview on swaps

1. The main classes of derivatives are swaps, options and futures, but there are many types of derivatives in each class and even products made up of combinations among the classes (see ESA 2010, chapter 5 Financial transactions). This chapter focuses on swaps because these are the type of derivatives most used in the context of public debt management.
2. A swap is a legal agreement between two parties to exchange periodic payments over a defined period in the future. On one hand, they are used by some economic agents to hedge a risk linked to a market variable such as an interest rate or an exchange rate on an underlying financial instrument (like an issued bond) but, on the other hand, they also allow agents to materialise their own anticipations with generally a significant leverage effect. The banking industry is very active in the swap market.
3. Swaps are used by many governments as a financial tool for risk management purposes. Concerning debt, such management may be used for hedging exchange rate risks when the debt is issued in a foreign currency, minimising the cost of the debt on the basis of the current and anticipated yield curve (change in all short-/long-term interest rates), optimising overall liability portfolio and hedging future debt instrument issuances.
4. Government debt managers may decide to use the most suitable debt management tools according to their objectives and constraints. It is frequent to distinguish 'micro-hedging', attached to a particular debt instrument, from 'macro-hedging', linked to a more global risk exposure coming from a set of debt instruments. Risk management may also cover the assets' side, notably when government units place themselves at risk exposure for liquidity investments. As regards risk management, in substance, public debt managers in Ministries of Finance or in dedicated agencies might not fundamentally act differently from financial/treasury corporate managers.
5. A very common 'vanilla' type is 'interest rate swaps' (IRS), where parties agree to exchange flows of interest. In many contracts, one party agrees to pay to the other a fixed rate of interest in exchange for a variable rate of interest (plus, possibly, a constant spread depending on market conditions). The payments may be on any timescale but are commonly semi-annual or annual. They may be different for each leg of the swap and net settlements are frequent where applicable.
6. At inception, the obligations due by both parties are balanced (except in the case of off-market swaps), which is frequently referred to as a 'par swap' with a nil value. Over the life time of the contract, as the market conditions will change (e.g., the floating rate), one party may potentially make a gain and, symmetrically, its counterparty a loss. Thus, the swap shows a negative value (referred to as 'out of the money') for one party and a symmetrical positive value ('in the money') for the counterparty.
7. A great number of interest rate swaps contracts cover an exchange of 'fixed-for-floating' in the same currency which appears to be the standard type of transaction. During recent decades, many other types of swaps have appeared on markets, such as 'basis swaps' ('floating-for-floating'), inflation swaps (payments in one leg depending on change in a price index), amortising swaps (declining notional amount), asset swaps (conversion of cash flow from an underlying instrument), constant maturity swaps (periodical rest of interest on one leg), total return swaps (exchange of revenue and risks on assets), commodity swaps (floating price against fixed price) and range accrual swaps.
8. One could also add 'debt equity swaps', 'equity swaps', 'dividend swaps', etc. The various types listed (as illustrative) do not seem to be used by government units on a large scale, notably by managers of central government debt or treasury. They might however be observed for public corporations included in the government sector.
9. In addition, there was a huge development of swaps related to credit risk, such as credit default swaps (CDS), which are in substance an insurance mechanism against creditors' default events (see ESA 2010 paragraph 5.218). Government does not seem to take part in such transactions but CDS on sovereign debt are usually relevant market signals and are the main category of such instruments.
10. A currency swap (and close derivative instruments, see below) operates similarly. Most often they are connected to underlying loans or debt securities and parties exchange flows denominated in different

currencies. They are used by debt managers which have issued debt securities in foreign currency and wish (frequently it is in fact an obligation, as no exchange risk exposure may be allowed) to hedge the currency risk to which they are exposed. There are different types of currency swaps that differ by the time of exchange of principal and the nature of involved interest rate ('fixed-for-fixed', 'fixed-for-floating').

11. The more common currency swap, with exchange of principal both at inception and at termination date, allows a borrower in one currency to fully hedge the underlying exchange risk, as if the original currency denomination has been shifted into another one. It is frequently observed that government units, not only when their domestic market is rather narrow but even in the euro area with deep and large financial markets, issue part of debt in a foreign currency (namely in US dollars, Japanese yen, British pounds or Swiss francs) for various reasons, such as enlarging the basis of investors or benefitting from a final lower cost of borrowing under some markets conditions.⁽³⁶²⁾
12. The recourse to using swaps is quite various among EU Member States, for different reasons related to internal regulations, debt strategy, structure of the debt, etc. Debt managers have different opinions about the extent to which such debt management tools — and/or risk management — may be adequate. Several purposes may be observed, as the change in the maturity of a debt, for instance by transforming a long-term debt into short-term debt, as regards the sensibility to market rates (government paying a (floating) short term rate and receiving the (fixed) long-term rate related to a given coupon or average in case of macro-hedging). The swaps may also be used in order to reduce refinancing risk, based on some specific anticipations related to change in yield curve.
13. The swaps book itself may also give rise to active management in case government has entered, or in some cases will enter, into contracts whose conditions no longer seem 'optimal' at a future point in time or following a revision in market expectations. Government may enter into a 'mirror' swap which would negatively duplicate (as much as possible) the exposure taken in a related contract, so that there would be neutralisation (or quasi) of any negative impact. In other cases (if allowed), there may be various arrangements — such as granting to a party this right permanently or only at some agreed dates over the life time of the contract — to cancel the swap.
14. Normally a swap cancellation gives rise to the payment of an indemnity from one party to the other, which is generally equal to the market value of the swap; in an interest rate swap, it is the present value of the future flows of interest which would have been exchanged (also referred to as 'freezing the swap', all variable elements of the swaps being fixed on the basis on the current conditions at the time of the cancellation). The flows are treated as financial transactions, with no impact on government net lending/borrowing. However, it may happen that the payment is spread over the remaining life time of the contract. In this case, a loan, included in government debt, should be recorded. Imputed interest on that loan will have an impact on net lending/borrowing. The recording in national accounts (amounts and time) is based on the cash exchanged between the contractors.

8.3.2. Treatment of debt in foreign currency under the EDP

15. Apart from foreign-exchange options and foreign futures, exchanged on an organised market or 'over-the-counter',⁽³⁶³⁾ there are several categories of derivatives transactions, which have in common the exchange of principal amounts in different currencies. A foreign exchange swap contract consists of a spot sale/purchase of currencies and a simultaneous commitment to a forward purchase/sale of the same currencies. A forward foreign exchange contract consists in a commitment to transact, at a designated future date and agreed-upon exchange rate, a given amount of specified foreign currencies.
16. Currency swaps (also referred to as 'cross currency interest rate swaps', hereafter CCS) are a major traded type of transaction for exchange rate purpose by government units. In these contracts, parties exchange flows denominated in different currencies, both for principal and for interest (see also ESA 2010 paragraph 5.213). There are different types of currency swaps that differ by time of exchange of principal and nature of involved interest rate ('fixed-for-fixed', 'fixed-for-floating').
17. A common case, with exchange of principal both at inception and at termination date, allows a borrower in one currency to fully hedge the underlying exchange risk, as if the original currency denomination has been shifted into another one. This is frequently observed for government units that, even in the euro

⁽³⁶²⁾ For other information about swaps in national accounts, see ESA 2010 paragraphs 5.199–5.219.

⁽³⁶³⁾ Following the financial crisis, notably in the context of the 'European Market Infrastructures Regulation', some OTC derivatives could be traded through 'Central Counterparty Clearing' or could be declared to 'Central Data Repositories'.

area where financial markets are deep and large, issue a minor part of their debt in a foreign currency (namely in US dollars, Swiss francs and Japanese yen) for various reasons, such as enlarging the basis of investors or benefiting from a lower cost of borrowing.

18. All the flows under derivative contracts related to foreign currencies are recorded as financial transactions both in national accounts and also in the EDP statistics. As far as the measurement of stock of debt is concerned, for the EDP purposes, all the three types of contracts are subject to Council Regulation (EC) No 479/2009. These provisions are examined in detail in the following paragraphs. It is understood that, when it is the case, the amount in foreign currency initially exchanged comes from the proceeds of a given debt instrument (with any maturity) whereas the amount in foreign currency received at the term of the contract is actually used to redeem a given debt instrument, possibly different for the previous one.
19. For the purpose of the calculation of government debt for EDP purposes, it is worth describing how liabilities denominated in, or exchanged from and/or in foreign currency, are recorded. This is also referred to as 'after swaps' debt recording.
20. The conversion of debt instruments denominated in foreign currencies is needed in order to aggregate figures and estimate the total amount of 'consolidated gross government debt.' Any conversion at a point in time means the use of a given rate of exchange. It does not mean that a debt would be necessarily reimbursed for the amount resulting from the conversion at this point of time because of possible change in the future exchange rate, in a volatile environment. Thus, there would be no sense referring to the exchange rate prevailing at time the new liability incurred.
21. The Council Regulation (EC) No 479/2009 indicates that:
 - *Liabilities denominated in a foreign currency, or exchanged from one foreign currency through contractual agreements to one or more other foreign currencies shall be converted into the other foreign currencies at the rate agreed on in those contracts and shall be converted into the national currency on the basis of the representative market exchange rate prevailing on the last working day of each year.*
 - *Liabilities denominated in the national currency and exchanged through contractual agreements to a foreign currency shall be converted into the foreign currency at the rate agreed on in those contracts and shall be converted into the national currency on the basis of the representative market exchange rate prevailing on the last working day of each year.*
 - *Liabilities denominated in a foreign currency and exchanged through contractual agreements to the national currency shall be converted into the national currency at the rate agreed on in those contracts.*
22. Thus, when a debt instrument denominated in foreign currency is swapped into national currency, the conversion into the latter must be based on the 'rate agreed upon in those contracts'. In most cases, this rate of exchange is the spot market rate prevailing at time of the transaction, but this may be different (see section 8.3.3 Off-market swaps). In the course of the contract, the value of the swap will take into account the trend in the market rate of exchange between the two currencies involved in the contract.
23. In fact, debt managers may use financial derivatives not only to suppress/mitigate any exchange risk resulting from the initial incurrence of a new liability. They can also aim to reduce the final cost of borrowing. Under these conditions, they may enter swap contracts through which they modify the exchange risk exposure, benefiting from market opportunities (or failures). According to their anticipations, debt managers can swap the proceeds in one currency resulting from debt issuance into another foreign currency. In this case, the same reasoning valid for swaps into national currency should apply. The currency denomination of the debt is changed.

In this case, a step approach has to be implemented:

- first, the debt instrument is converted into the currency received at inception of the swap contract, on the basis of the cross-exchange rate for both foreign currencies agreed upon the contract;
- then, the conversion into national currency is based on the current exchange rate prevailing at the end of the year for the currency resulting from the first conversion;
- in case of a 'chain of successive swaps' into different various foreign currencies, the final currency in which the debt is denominated has to be determined and the conversion into the national currency is based on the current exchange rate against this foreign currency.

24. It is clear that, where an original debt instrument denominated in a foreign currency is swapped into the national currency, flows of settlements are fixed in the contract between the parties, i.e., government on the one hand and one or several bank counterparts on the other. In the simple case where amounts and maturity of debt instrument and swaps are fully matched, government will regularly pay an amount in national currency and receive an amount in foreign currency. The latter will be used to pay interest or repay principal to the creditors/holders of the underlying debt instruments.
25. Under these conditions, it is obvious that government no longer has exchange risk exposure concerning payments for the original instruments. It has no need to use the exchange market in order to get the currency amounts linked to the debt service of the original debt. A rate of conversion has been implicitly fixed. In this case, the exchange rate agreed in the contract is more relevant than the current market one as the latter would in no way impact the debt instrument that is now insensitive to exchange market trends and volatility. Finally, for the part covered by a currency swap agreement, the debt can be considered to be transformed into national currency. This is similar to a case where the debt would have been originally issued in national currency, for the principal amount set in the contract.
26. The Council Regulation (EC) No 479/2009 also covers the specific, rather infrequent cases, where covering/modifying an exchange risk exposure is not the motive for writing a swap but would on the contrary create a currency exposure. A debt originally denominated in national currency might be swapped into foreign currency. In this case, the debt must be treated as if it were denominated in the foreign currency, on the basis of the exchange rate within the contract. For the required conversion into the national currency, the current exchange rate must be used, so that the final amount in national currency should come from the original proceeds from the issuance.
27. As a consequence, the impact of currency swaps on the debt may occur only through rates of exchange. Effectively, a basic provision ESA 2010 paragraph 6.64 states that any debt instrument denominated in foreign currency has to be converted into national currency at the current exchange rate prevailing at time of compilation of balance sheets on the basis of the 'representative market exchange rate prevailing at the dates to which the balance sheet relate' but this is not applicable for statistics for the EDP purposes. In ESA 2010 these swaps and debt instruments are recorded independently.
28. However, the EDP conversion rules only concern currency swaps based on existing liabilities, i.e., swaps 'against the book' linked to actual underlying debt instruments. Currency swaps which do not refer to existing liabilities are recorded under financial derivatives (AF.71). However, in many countries, debt managers, at least at central government level (the largest part of government debt), are not allowed (by law or other regulations) to enter into currency swaps with no reference to existing liabilities, i.e., to enter in a total risk exposure. Any currency swaps based on non-existing liabilities have no impact on the existing stock of government (EDP) debt as they are not accounted for in the calculation.
29. It is important to take note that, as long as the currency swap is based on an existing debt instrument, no restrictions are imposed for applying the above-mentioned provisions; notably, derivative contracts⁽³⁶⁴⁾:
- a) are not necessarily written at the time of the underlying debt instrument issuance, they may be implemented at any point of time; however, some debt managers are, for regulatory reasons, obliged to hedge exchange risk very shortly after an issuance;
 - b) may have any maturity within issuance and maturity of the underlying debt instrument. It may happen that debt managers do not manage to enter in a CCS contract for the same maturity (and amount) of the underlying debt instrument;
 - c) may set an exchange of settlements inferior to the flows of principal resulting from the underlying instrument. In the rather theoretical opposite case, any amount of CCS higher than the hedged debt instrument should be treated as a financial derivative (AF.71) for the excess value;
 - d) may refer to a 'book' of debt instruments and not to a specific one, covering a risk exposure bearing on several debt instruments.

⁽³⁶⁴⁾ These cases are largely hypothetical but not totally unlikely to be observed.

8.3.2.1. ACCOUNTING EXAMPLES

1. Debt denominated in foreign currency swapped against the national currency

Nominal value of debt instrument: \$100.

Swap US dollar against euro: \$100/€74.07 (exchange rate in the swap agreement: €1=\$1.35).

Permanent valuation of the debt instrument according to the Regulation: €74.07.

Comments:

The rate of exchange of the swap contract is more appropriate than the market rate for reflecting the cost of the debt in national currency. At maturity, for receiving \$100 from the swap counterpart (used for the repayment to the holder of the instrument), the issuer has to provide €74.07 with certainty.

2. Debt denominated in foreign currency swapped against another foreign currency

Nominal value of debt instrument: \$100.

Swap US dollar against yen: \$100/¥10 000 (exchange rate: \$1=¥100).

New nominal value of the debt: ¥10 000.

Valuation of the debt instrument in euro according to the Regulation: €90.1

(On the basis of a market exchange rate: €1=¥111)

Comments:

The swap has changed the exchange risk. The valuation of the debt instrument depends now on the evolution of the €/¥ rate and no longer on the €/ \$ rate. The debt is in fact treated as if it had originally been issued in yen. At the end of each period, the debt is converted into the national currency (euro) on the basis of the market exchange rate €/¥, as the risk of exchange in yen is not covered.

3. Debt denominated in national currency swapped against foreign currency

Nominal value of debt instrument: €100

Swap euro against US dollar: €100/\$135 (exchange rate €1=\$1.35)

New nominal value of the debt: \$135

Valuation of the debt instrument according to the Regulation: €96.43 (on the basis of a market exchange rate increased to: €1=\$1.40)

Comments:

The liability is no longer in national currency but in foreign currency as the debtor has only to make a payment in foreign currency. Using the market exchange rate shows the effective cost of the US dollars he will have to buy (or borrow) on the market. In the example, the appreciation of the national currency reduces this cost for €3.58.

4. 'Chain' of swaps

Nominal value of debt instrument: \$100

Swap US dollar against yen: \$100/¥10 000 (exchange rate: \$1=¥100)

Swap yen against Swiss franc: ¥10 000/120 CHF (rate of exchange: ¥100=CHF 1.2)

Final nominal value of the debt: CHF 120

Valuation of the debt instrument according to the Regulation: €83.92 (on the basis of a market rate of exchange: 1€=CHF 1.43)

Comments:

- a. The relevant denomination of the debt in foreign currency is the final currency received at each swap inception by the issuer under a 'chain' of swaps.

- b. Within the 'chain', the euro may be used in one leg of a swap. If it is at the end of the chain, then the debt instrument should be valued as in case 1 (exchange rate agreed in the swap contract). If not the case, the debt is converted into euro on the basis of the market exchange rate of the currency received at inception of the last swap agreement. The rate of exchange against euro agreed on an intermediate swap contract is not relevant.

5. Swaps on a 'partial' amount

Note: This case may be combined with any other case – case 1 is used in this example.

Nominal value of debt instrument: \$100 (half of which is swapped against the national currency and half of which is not).

Swap US dollar against euro: \$50/€37.04 (exchange rate in the swap agreement: €1=\$1.35).

Valuation of the debt instrument according to the Regulation: €72.74, of which

* for the half which was swapped: €37.04

* for the half which was not swapped: €35.71

(on the basis of a market exchange rate: €1=\$1.40)

Comments:

The rate of exchange of the swap contract is more appropriate than the market rate for reflecting the cost of the part of the debt swapped against the national currency.

8.3.3. Off-market swaps

30. As far as the recording of swaps in national accounts is concerned, a fundamental issue is whether the swap is conducted on market terms or whether it has an 'off-market' nature. Such 'off-market' swaps may concern any swaps, including interest rate swaps and currency swaps. This is independent from the objective of the swap, which can be for instance benefit from anticipated favourable market trends by entering into a new risk exposure.
31. As mentioned above, in most cases a swap is initialised on market terms, i.e., at inception the present values of all payments due by each party are strictly equivalent. This is neutral on the net worth of each counterpart in the agreement. The mutual obligations agreed upon reflect the prevailing market conditions (including adjustment by a spread in one leg). Such swaps have a zero market value and are named 'par swaps' or 'at the money'. Afterwards, the impact on parties, fully symmetrical, will reflect the net change in present value of the streams of payments for each leg following the trend in market conditions.
32. In the case of a swap implemented on 'off-market' terms, the conditions have been agreed by parties ensuring that, at inception of the swap, the terms related of the flows exchanged under the swap are unbalanced in favour of one party. The market value is not nil at the start of the swap. Thus, the conditions agreed upon result in a 'loser' and a 'winner' which are clearly identified. This is one possible feature of 'off-market swaps' and is a sufficient condition for describing it. In such a case, it appears that there must be a 'counterpart' to this unbalanced swap linked to another government operation (see paragraph 35 below). Another (non-standard) feature, but (possibly) with a global zero market value at inception, would be a deviation from the cash-flow structure of a standard plain vanilla swap.⁽³⁶⁵⁾ Therefore, any swap contract in which government enters showing a cash flow structure different from standard (plain vanilla) swaps at market conditions must be closely analysed to check whether it must be recorded according to the following specific rule; notably, the possible existence of successive periods where the market value is significantly different from zero should be considered.

⁽³⁶⁵⁾ The cash flow structure of swaps can be constructed in any imaginable way. However, plain vanilla swaps at market conditions have a straightforward structure. For example, an interest rate swap has a fixed leg and a variable leg. In a plain vanilla interest rate swap, the fixed leg would have a constant interest rate over the whole lifetime of the swap. In an off-market interest rate swap, the fixed leg might not be constant over the whole lifetime of the swap — thus not being plain vanilla/standard anymore. Another example for an off-market swap would be a non-constant spread over the lifetime of the interest rate swap. Furthermore, the variable leg in an interest rate swap must be at market conditions. Otherwise, this would be an indicator for an off-market swap. For example, the variable leg of a plain vanilla interest rate swap at market conditions would refer to (observable) market expectations of a market interest rate (e.g. EURIBOR). In case of an off-market interest rate swap, the variable leg might rely on discretionary set variable interest rates.

33. Under these conditions an off-market swap must be divided into two parts:

- a) a conventional swap based on the prevailing spot market conditions, with nil market value at inception and recorded according to the usual rules. This is the implicit 'par' or 'at the money' component, similar to a 'standard swap'. This component is recorded as a financial derivative (AF.71) and hence is not part of the government (EDP) debt. Thus, any change in the value of the swap component will reflect the impact on the trend in market conditions. In public accounts, such swaps would be recorded on the asset side of its balance sheet if they have a positive value for government and on the liability side in the opposite case. Positive flows are, in principle, a financial transaction on the assets side of the EDP table 3 (if the swap is an asset) and negative flows are a financial transaction on the liability side (when the swap is government liability). In addition, as the market value is the net present value of the future flows at the point of time the balance sheet relates to, there is also a revaluation effect.⁽³⁶⁶⁾
- b) a loan (AF.4) for the off-market component. This is recorded at the initial market value (in some cases the payments for balancing the whole arrangement), usually at the start of the swap contract (an upfront payment or possibly spread during the lifetime) and not at the moment of the signature, which may in some exceptional cases, significantly differ. The loan is amortised over the life of the instrument. Interest will be imputed on it. This 'loan component' is part of government (EDP) debt. Symmetrically, government might enter off-market swaps with loan components provided to the counterparties, as an asset of government.

34. In other words, this means that one part of the flows exchanged during the life of the contract is to be considered as an amortisation of the loan, while another part is interest, with an impact on government net lending/net borrowing (B.9). The interest is calculated on the basis of a market fixed spot rate as observed at the start (trade date) of the swap contract (see sub-section 2.4.3.18).⁽³⁶⁷⁾ In principle, the loan is amortised similarly to an 'amortising loan', i.e., not redeemed in its totality at final maturity but through 'annuities' in which the share in principal reduction and interest varies over time. There might however be other redemption schedules depending of the exact deviation of the cash flows structure compared to a plain vanilla swap.⁽³⁶⁸⁾ These two components, interest and reduction of principal, fully set at inception, are deducted from the effective exchange of flows under the contract and the 'residual' is the effective flows to be recorded as a transaction in financial derivatives (F.71) in the financial accounts. The loan should, in principle, have strictly the same maturity as the swap contract (it could depart from it⁽³⁶⁹⁾ although only in exceptional cases). Should the swap be cancelled, the loan would be automatically cancelled too (as an early redemption). Therefore, the imputed loan can never be longer than the swap.

35. There is a straightforward case where, at inception, the benefitting party provides to the other compensation in order to re-balance the deal, under the form of a lump sum paid in cash by the counterpart 'in the money'. It is difficult to deny, in this case, the existence of a loan. This compensation may be subject to specific agreements (instalments payments⁽³⁷⁰⁾, writing-off of liability, etc.) that may make it more difficult to identify the 'real' rebalancing element. In case the 'counterpart' of this unbalanced payment is linked to other government operations with no evident link with the swap in question, this counterpart transaction has to be identified.⁽³⁷¹⁾ However, in practice, complex arrangements may also be observed, such as a combination of different swaps and/or other instruments, in a 'package', which avoids the recording of an immediate negative impact in government accounts.⁽³⁷²⁾ In fact, some significant off-market swaps identified for this purpose do not result in the payment of a lump sum at inception.

⁽³⁶⁶⁾ According to ESA 2010 paragraph 5.229, in national accounts a swap with a net liability value should also, by convention, be recorded on the asset side to avoid flipping between the asset and the liability side.

⁽³⁶⁷⁾ Given that these swaps are off-market, using any of the rates mentioned in their legs is not particularly appropriate. More generally, the formula used in any one leg of any swap (off-market or not) can be modified without limit by way of having the same amounts also modified in the other leg.

⁽³⁶⁸⁾ For example, the 'disbursement' of a loan component and its redemption could be achieved by adjusting the spread for several periods.

⁽³⁶⁹⁾ For instance, in a very simple example, a loan may result from an extraordinary high spread in period *t*, which is completely neutralized by a corresponding (negative) spread adjustment in the following period, while the overall lifetime of the swap might be much longer.

⁽³⁷⁰⁾ For illustration, a swap could have various 'configurations', starting with a nil value at inception and then need 'rebalancing' cash instalments, taking place later over the lifetime of the swap. In this case, a loan component should be recorded at the time of the first received instalment, and then the loan should be progressively increased, after deduction of repayments, if any.

⁽³⁷¹⁾ When the off-market swap is linked to a restructuring of the balance sheet of government, an imputed transaction must be recorded. For instance, a shift from financial derivatives (AF.71) to a loan (AF.4) must be recorded as two simultaneous transactions.

⁽³⁷²⁾ The value of the swap may also include fees which payment is spread all over the duration of the swap.

36. The absence of a lump sum payment does not mean there would be no recording of a loan to government, because an off-market swap means that government has deliberately accepted to enter into a contract where it will have to pay back to the counterparty more than it has received (or will receive). Therefore, off-market swaps include a financing schedule (i.e., getting the cash needed at the exact time of the exchange of flows). It would not be frequent to deliberately enter into such contract, designed in unfavourable terms, if there were not behind the transaction some other (sometimes more or less hidden) reasons than a pure hedging in risk management. It is important to note that the same reasoning could apply where government is the net creditor in the financial schedule at inception of the swap. As mentioned above, a loan asset should be recorded in the balance sheet of government. This could for instance result from swaptions held by government (and then exercised because in the money for the government) or from forward swaps. It could also take place in the context of the restructuring of a swap in asset position — positive value — (see below).
37. One could argue that the market trends could turn to be favourable to government ('better fortune') so that, finally, it could have to pay back, in net terms, less than what was originally recorded as balancing item or less than other types of counterpart transactions in complex arrangements. However, this situation is quite different from a par swap, where one could assume that both parties started in equal conditions, i.e., that *ex-ante*, there is no need for balancing payments and nobody can be absolutely sure which party will win or lose in the transaction, i.e., there is uncertainty on the final result. The change in the value of a swap is by definition a win-lose situation, at least at the level of the individually considered swap.
38. There is a fundamental difference between a par swap at inception and an off-market swap, in which government starts with a real 'disadvantage'/a 'handicap' as far as the flows under the swap recorded as financial derivatives (F.71) are concerned. Only if the market trend is highly favourable could the net payments be reduced. However, because of the market uncertainty, the situation may also worsen from the already disadvantageous initial one. This has been observed in some cases. This is why the loan component must be definitively fixed at inception, on the basis on the value calculated at that time. Any further improvement or worsening must be imputed exclusively on the par component, which may only be affected by market trends. In national accounts there is no market value for loan.⁽³⁷³⁾
39. Off-market swaps must be identified as such in the context of each individual contract agreed by government, independently of the motive of the operation. They may be originated under various situations. For instance, off-market swaps may result from a completely new agreement between government and a counterparty.
40. It may also be the result of the entry into force of a swap previously agreed under a swaption, which gives to its holder the right (but not the obligation) to enter into an underlying swap specifically designed. Generally, the seller of the swaption ('writer') receives a premium at inception.⁽³⁷⁴⁾ The option was created some years before and the conditions of the swap might have been frequently balanced (at par) at inception. This could also be observed for forward swaps (a swap agreed at a point of time but starting later, sometimes after a few years).
41. However, when the option is exercised this will, by definition, no longer be the case. The swap will show a market value (otherwise the option would have not been exercised) and the only feature to take that into account is that government will enter in an unbalanced transaction in a new financial instrument. What counts would not be the date at which the swaption contract was signed but the date at which a swap is effectively implemented. This would also be applicable to the case of other kind of agreements (not optional) which foresee an entry in force of a swap at a future date.⁽³⁷⁵⁾ As these result in a specific new swap contract, this must be treated according to the general rule related to the 'out of the money' swaps.

⁽³⁷³⁾ As a reminder (see ESA 2010 paragraph 5.122): if a loan becomes regularly traded (and not only exceptionally traded, which means that there is *de facto* a rather active market), it must be reclassified as a debt security.

⁽³⁷⁴⁾ There is a distinction between a 'payer swaption', giving the owner of the swaption the right to enter into a swap where it pays the fixed leg and receives the floating leg, and a 'receiver swaption' giving the owner of the swaption the right to enter into a swap in which it will receive the fixed leg and pay the floating leg. Government may be involved in both.

⁽³⁷⁵⁾ It is important to make a distinction between a swaption which is an option, theoretically tradable separately, and any embedded option included in a swap (this may refer to 'cancellation right' but also for instance to a shift from a fixed rate to another or from floating to fix etc.) which cannot be traded separately and which, moreover, does not need the signature of a new contract when exercised. In this case, no specific treatment is required.

42. An off-market swap may also appear in the context of a renegotiation/restructuring of an on-going swap, such that a new swap (which is agreed under a new contract replacing any previous one) would start with a negative value for government because the market value of the swap — just before the restructuring takes place — was not settled but applies in the restructured swap.

Box 3 – Restructuring of swaps

In general terms, a swap restructuring (also referred to as renegotiation, amendment, revision) before the contractual termination of a swap, means that the parties involved agree on a change in several basic parameters of the swap: maturity, notional principal amount, level of a fixed rate, floating reference, spread, options, etc. It is explicitly mentioned that a new swap contract replaces the previous one, nullifying any previous obligations between parties.

This must be seen as similar to the cancellation of an existing swap and the origination of a new swap. The difference is that, instead of the counterpart showing a negative value (a liability) paying an indemnity, recorded as a financial transaction, to its counterpart (immediately or spread over time, according to market practice, which would require the recording of a loan liability), the compensation related to this early termination would be 'embedded' in the new swap. This means that the payments due by each party are adjusted on purpose. Therefore, the treatment of swap restructuring must be equivalent in national accounts to a swap cancellation, which is followed by the entry in a new swap at par. In substance, the transactions are very close, even if (in terms of scheduled actual payments) there are normally differences. In national accounts, and for EDP purposes, the use of these management tools of risk position of government must finally result in a same effect on government (EDP) debt.

In this context, the initial nature of the swap that is restructured has no importance. The key point is that there is a new swap contract, which, deliberately, does not start with a nil value for the flows recorded as financial derivatives (F.71). In national accounts, the fact that government enters in a new arrangement based on different parameters reflecting a change in its anticipations, must prevail in the analysis. According to the design of the new swap, there should be different consequences on the future financial position of government.⁽³⁷⁶⁾

It must also be stressed that a swap may be restructured several times. Thus, considering the nature of the very initial contract is not relevant, as each restructuring is a rescission in the previously agreed obligations. In case the swap before restructuring included already a loan component (negative or positive market value for government), the remaining principal amount of the loan would have to be revalued as all or one part of the market value of the previous swap would not have been recorded as a loan component.

At present, restructuring of swaps seems not frequent on markets, notably for swaps with short/middle term maturities. Normally, a counterpart is not obliged to accept a restructuring and it may prefer the swap to be cancelled or reach its contractual maturity. However, government (notably at central level) is usually a significant issuer on markets in terms of volume, and the counterparts consider these acquired assets normally as 'risk free'. For this purpose, government enters into markets essentially through a selected number of counterparts, generally referred to as 'primary dealers'. For business reasons, one could assume that the latter could more likely agree upon a restructuration with a significant partner.

In this context, any alternative for the counterpart, which was asked to enter into a renegotiation, must be neutral, as far as its financial position is concerned. In other words, its positive or negative market value in the previous swap should be unchanged in the new swap contract, apart from technical reasons, which have a minor impact.⁽³⁷⁷⁾ For this reason, change in swap parameters must be consistent. For instance, if the maturity of the new contract is shorter (longer) than in the previous one, all things being equal (fixed rate, floating reference), the notional amount would be increased (decreased) to neutralise this effect.⁽³⁷⁸⁾

⁽³⁷⁶⁾ For instance, a longer maturity exposes government to more market volatility than in the previous swap. Similarly, a shorter maturity (generally together with a higher principal amount) would imply higher annual cash disbursements.

⁽³⁷⁷⁾ It may happen however, that the fees charged for such transaction (generally not negligible) are integrated in the new market value of the swap, i.e., their payment is spread over the lifetime of the new swap. In this case, the market value is by definition changed.

⁽³⁷⁸⁾ This means that the sensitivity of the value to a given change in variable market reference is similar. The restructuring takes normally place in one day and the valuation are based on the same market conditions

This 'market value equivalence' is a condition for a swap restructuring. That is, a counterpart with a positive value (asset) would normally not enter in an unbalance swap if it is not ensured to start from the same position in the new swap. Being a profit-oriented unit, engaged in commercial business, there seems to be no reasons for accepting a reduction in its claim on government. Similarly, government has no interest to renegotiate a swap which would result in an increase of such liability.

After the restructuring, government may expect an improvement in its position, which would be reflected in the market value of the 'swap component', starting at zero, as mentioned above. However, in most cases, the counterpart is not anticipating a total reversal of its asset position (for instance following a reversed yield curve when it is short payer and fixed receiver under the swap). Government may in addition protect itself against adverse trends by various means (global management, options, etc.).

Finally, in most cases, the restructuring takes place with the same contractors, but it happens that the new swap is arranged with a new non-government counterpart, for various reasons (a case referred to as 'novation', including transfer of swaps to a central counterparties). The treatment on restructuring of swaps should not apply when only one counterpart in a swap is changed and no other parameter.

43. It must be stressed that, in some cases, through off-market swaps, government might benefit from large one-off cash payments, which, if not recorded as a loan, are evidently a 'hidden' government (EDP) debt. Moreover, government may use such swaps to postpone payments due at a point of time and spread them over a relatively long period. It may also result in an artificial improvement (or hidden worsening) of the actual government debt position. This would be in contradiction with the fundamental principle in national accounts to provide a measure of the situation 'in substance' at any time.
44. Finally, in the absence of treatment of off-market swaps as stated in this chapter, government units would have the opportunity to undertake specific operations, sometimes complex, for other purposes than debt management, i.e., not directly related to hedging/mitigating risks on existing liabilities. This is frequently referred to as 'window-dressing' (one-off measures improving the financial situation) and might also 'hide' the cost of such operations (notably by spreading it). All off-market swaps transactions must always be totally reflected in the level of the government debt at the time they are concluded.

8.3.3.1. ACCOUNTING EXAMPLE OF OFF-MARKET SWAPS

a) The case of an interest rate swap

An interest rate swap has been agreed with the following conditions:

Maturity: 10 years, notional amount: 100, fixed rate payment by bank counterparty: 4.5 %, floating rate payment by a government unit counterparty: Euribor 12m + 5.50 %.

It is clear that such arrangement is very obviously unbalanced, and the bank counterparty will be a net receiver all along the contract (the Euribor 12m rate would need to be – 1 % to achieve parity).

On the basis of the spot market conditions the par value of the swap (again so that at inception it would be equal for both parties) can be evaluated and the 'off market' component (such as the balancing payment) may be deduced.

Assume that, in this case, the present value of the net payments (without the rebalancing payment) is estimated at 50. The bank counterparty must pay this sum to the government at inception. The impact on EDP data would be as follows:

At inception, there is no impact on net lending/borrowing (B.9) as the lump sum is not recorded as revenue. At inception, there is an increase in the debt by 50 as the lump sum is recorded as a loan (AF.42) that is amortised over the life of the swap, here 10 years.

Each year over the lifetime of the swap, there is a negative impact on the net lending/borrowing (B.9) due to the interest imputed on the loan (as the counterparty is a bank, this is actually partitioned into D.41 interest and FISIM, but this is not shown here for reasons of simplicity); all other flows are recorded as financial. Part of these other flows under the swap is to be recorded as amortisation of the loan.

It is recommended to use the following method:

- the loan is at a fixed, and not revisable, interest rate;
- that fixed interest rate is derived using the funding cost of the government unit;

- the loan imputation involves payment of regular instalments (annual or semi-annual) at constant amount that are split between redemption of the principal and payment of interest on the basis of the fixed rate as mentioned above;
- the interest on the loan must be recorded on an accrual basis;
- each year over the lifetime of the swap, government debt is reduced by the repayments of the loan until the final maturity date of the loan component.

In this example, Euribor 12m was 3 % at inception of the swap. The fixed interest rate applicable for the loan is 4 %. The following transactions would be recorded:

Initial AF.4 liability: 50

Interest rate 3 % (from Euribor)

Imputed loan annuity: 6.165 (the amount required for constant annual payments to repay the loan at the interest rate used of 4 %)

Net swap cash settlements: after one year +4.5 (by bank), 8.5 (by government; 3 + 5.5) = net payment of 4 by government

Entries in the accounts would be:

D.41 interest payable: 2 (4 % on principal of 50)

Amortisation of principal in first year: 4.2 (F.4 liability flow)

F.2 asset flow of –4 (the cash settlement)

F.71 asset flow of –2.2 to balance the accounts.

The closing period AF.4 liability is: 45.8 (50–4.26)

One assumes no revaluation in AF.7 assets/liabilities during year 1

At inception							
General government				Bank			
Non-financial account							
U/ΔA		R		U/ΔA		R	
B.9	0			B.9	0		
Financial account							
ΔA		ΔL		ΔA		ΔL	
F.2	50	F.4	50	F.2	-50		
		F.7	0	F.4	50		
				F.7	0		
		B.9F	0			B.9F	0
Closing balance sheet							
A		L		A		L	
AF.2	50	AF.4	50	AF.2	-50		
		AF.7	0	AF.4	50		
		B.90	0	AF.7	0	B.90	0

Year 1							
General government				Bank			
Non-financial account							
U/ΔA		R		U/ΔA		R	
D.41	2					D.41	2
B.9	-2			B.9	2		
Financial account							
ΔA		ΔL		ΔA		ΔL	
F.2	-4	F.4	-4.2	F.2	4		
		F.7	2.2	F.4	-4.2		
		B.9F	-2	F.7	2.2	B.9F	2
Closing balance sheet							
A		L		A		L	
AF.2	46	AF.4	45.8	AF.2	-46		
		AF.7	2.2	AF.4	45.8		
		B.90	-2	AF.7	2.2	B.90	2

b) The case of a currency swap

Assume that a government unit has issued a euro-denominated fixed rate long-term bond with a nominal value of 100. The remaining maturity on the bond is now 10 years. For various reasons, government would like to reduce its nominal debt figures.

The following arrangement takes place:

Government enters into a currency swap EUR/US\$ (here fixed/floating) where the exchange rate agreed in the contract is EUR/US\$ = 1 whereas the spot market exchange rate is EUR/US\$ = 1.25 (equivalent to US\$/EUR = 0.8).

At inception, government exchanges €100 and receives US\$100 from its counterpart (and not 125 at the prevailing spot market exchange rate).

At the end of the swap contract (if no early cancellation takes place), government will return \$100 and get back €100 that will be used for redeeming the underlying bond. Due to the use of the less favourable rate of exchange for the euro, this arrangement would effectively result in a reduction of government debt as, under EDP methodology, the conversion would be as follows:

€100=US\$ 100 (at 1:1, using contractual rate); then converted back to €80 (at EUR/US\$=1.25, using market spot rate)

The cash flows on the currency leg would be adjusted so that the government unit will repay US\$ 125 over the life of the swap.

In market terms (without recognizing the balancing payment), the swap would be unbalanced, with a market value of US\$25 (€20), in favour of the counterpart (that has provided only US\$100 in the swap initial exchange).

Under these conditions, it would have to pay an equivalent lump sum of US\$25 (€20) to government at inception.

In the absence of the Eurostat rules on off-market swap, at the signature of the contract government unit would have benefited from a reduction of its debt (conversion).

As a counterpart, government would pay more 'net interest' payments during the lifetime of the contract (offsetting the initial positive effect) and, moreover, would have taken an exchange risk exposure. It has changed the original debt in domestic currency into a foreign currency debt, the value of which is sensitive to adverse market movements (here a depreciation of the domestic currency).

Under the Eurostat rules on off-market swaps, such an arrangement would not help this government to meet its initial objective as:

- the currency swap would be split into a 'par/at the money swap', on the basis of the prevailing market rate of exchange at the start of the contract (EUR/US\$=1.25) and a loan in foreign currency (recorded in AF.4) for the amount of the additional cash payment received by government;
- the loan, denominated in foreign currency, would be amortised, over a period of 10 years, by the regular 'interest net payments' during the contract, following the method described in the previous example of the off-market interest rate swap.

Thus, the 'favourable' effect on the debt resulting from the use of an off-market rate of exchange is totally offset by the entry of a loan liability.

8.4. Repurchase agreements and securities lending

8.4.1. Background

1. Repurchase (repo) transactions may be used in both money markets and securities markets. Debt securities issued by general government are often used in repo transactions: they commonly represent the main vehicle due to various considerations on liquidity and risk for securities issued by central government. However, the crucial point here is that units classified in the general government sector may enter into such contracts, either as liquidity provider or as cash borrower.
2. Under these conditions, repos may have an impact on the calculation of general government debt, directly where a general government unit is the 'cash receiver' in such transactions (recording of a new liability). As a reminder, where two units included in this sector are involved, there is no impact because of the consolidation rule, except in the case of a resale of the asset by the assignee. In addition, it must be pointed out that repos are frequently used by government debt managers in the context of the investment of the funds that may be available generally for a short-term period.
3. ESA 2010 paragraph 5.127 states that *a securities repurchase agreement is an arrangement involving the provision of securities like debt securities or shares in exchange for cash or other means of payment, with a commitment to repurchase the same or similar securities at a fixed price. The commitment to repurchase may be either on a specified future date or an 'open' maturity.* 2008 SNA paragraph 11.74 specifies that a repo is a repurchase agreement *where securities are provided for cash with a commitment to repurchase the same or similar securities for cash at a fixed price on a specific future date.* Repos are usually set for very short-term period, e.g., overnight or one day.⁽³⁷⁹⁾
4. In economic terms a repo is a 'secured' loan, due to the existence of collateral. In addition, a repo is a sale and repurchase agreement in which there is a firm commitment — and this is a fundamental feature — not a simple promise for one counterpart. Effectively, at maturity, or before where the contract makes provision for it, the temporary 'purchaser' (or assignee) is obliged to return the security (or an equivalent one) to the original 'seller' (or assignor) that is engaged to buy it back at the price fixed in the contract. Generally, national regulations require separate identification of the securities used in a repurchase agreement from the rest of the portfolio. In addition, on some markets, more complex features may be observed, such as 'margining'.

8.4.2. Treatment in national accounts

8.4.2.1. TREATMENT IN ESA 2010

5. ESA 2010 specifies clearly the treatment of repos, in line with 2008 SNA and BPM 6th Manual. The main point is that a new financial instrument appears in a repo transaction. A repo creates a new relationship between two counterparts. There is clearly a new set of reciprocal claims and liabilities. For the seller, there is an increase in the balance sheet for the cash received and available for any purpose, on the asset side, and for its counterpart, on the liability side. For the purchaser, there is no increase but only a substitution on the asset side from cash to another item.
6. The treatment of repos is clarified in ESA 2010 paragraphs 5.127 to 5.133. It is notably based on the nature of the original holder of the security. ESA 2010 paragraph 5.130 states that *The supply and receipt of funds under a securities repurchase agreement, or securities lending with cash collateral, do not involve any new issuance of debt securities. Such provision of funds to institutional units other than monetary financial institutions is treated as loans; for deposit taking corporations⁽³⁸⁰⁾ it is treated as deposits.*

⁽³⁷⁹⁾ The term 'reverse repo' is used from the point of view of the receiver of the cash/security taker but in this chapter only the term repo is used. Government may be both receiver/taker in the context of short-term treasury management.

⁽³⁸⁰⁾ *Id est* monetary financial institutions.

7. An important point is that 'the securities provided under securities lending and repurchase agreements are treated as not having changed economic ownership because the lender is still the beneficiary of the income yield by the security, and subject to the risks or benefits of any change in the price of the security' (ESA 2010 paragraph 5.129).
8. The rationale is that there is no change of ownership for the underlying security from an economic point of view, which prevails in ESA 2010 over legal arrangements. Effectively, the seller is exposed to a change in market valuation of the underlying asset. Under a repo, the underlying assets are kept in ESA 2010 within the accounts of the original holder. As no change in economic ownership is recognised, no transaction can be recorded in securities. The underlying security is not directly the purpose of a repo. It is not a means of investing in financial markets. It is clearly shown by the associated rate of interest, based on the maturity of the engagement.

8.4.2.2. FURTHER COMMENTS

9. Several points must be made more explicit:
 - a) the difference between the selling price and the repurchasing price should be recorded as interest, on an accrual basis, and included in property income;
 - b) provisions about repos apply to any asset used in a similar transaction (thus relating to any kind of collateral) and not only to securities;
 - c) the treatment specified in ESA 2010 for repos is applicable only in the case the original seller of the asset has an unquestionable commitment (and not only an option or a commitment subject to some conditions) to repurchase it under conditions agreed at inception;
 - d) the case of an effective delivery of securities used in a repo, notably through electronic depository systems, has no effect on the conceptual treatment;
 - e) where an economic agent resells an asset 'acquired' under a repo arrangement, a negative entry should be recorded in their balance sheet;
 - f) securities lending with cash, and only them, should be treated in a similar way to repos, as mentioned in ESA 2010 paragraph 5.128: *Securities lending with cash collateral and repurchase agreements (repos) are different terms for arrangements with the same economic effects: those of a secured loan, as both involve the provision of securities as collateral for a loan or a deposit, where a deposit taking corporation sells the securities under such an arrangement....*

8.4.3. Rationale of the treatment

8.4.3.1. VALUATION

10. Repurchase agreements are considered loans or deposits, recorded in national accounts at nominal value. Thus, the value is based on original funding. In other words, the cash amount exchanged at the beginning of the period is the value of the new financial instrument. There are no holding gains as in the case of outright transactions in securities. Accrued interest is also included in the price of the transaction. However, there might be a need for adjusting the amount recorded as interest:
 - first, in order to exclude commissions or fees recorded as service charge (but from a practical point of view, where very negligible, the amount could be ignored);
 - second, for transactions in assets denominated in foreign currencies:
 - in this case, the change in the value of the asset due to a possible effect of the change in the exchange rate is not imputed on the remuneration of lending/borrowing of funds;
 - the repurchasing price should be estimated on the basis of the original rate of exchange and any difference recorded as nominal holding gains or losses in the revaluation account;
 - for practical reasons, it may be easier to start from the amount of holding gains or losses (provided that the effect of the change in the exchange rate is rightly identified) and to deduct the interest on repos by using an estimate based on an average maturity.

8.4.3.2. UNDERLYING ASSETS

11. ESA 2010 and 2008 SNA deal only with repos backed by securities, generally government bonds and treasury bills because of their deep and liquid markets. In some countries, other assets can also be used, namely loans to non-financial agents according to some criteria, and even real estate assets. Treatment as repos should also apply to those cases. Thus, the definition of repos may be enlarged to cover any arrangement concerning the provision of cash for a given period of time to an economic agent that, in counterpart, 'supplies' as collateral any asset he holds with a repurchase engagement.

Repurchasing clause

12. As mentioned, for the original seller (assignor/borrower of funds) there must be a firm commitment to repurchase the securities. From a legal point of view, there exists an unquestioned claim held by the buyer or assignee. At the maturity date, automatically, the initial position would be offset by a reverse transaction, whatever the new conditions on the market. Where contracts stipulate that the seller has only an option to buy back the securities, the treatment of repos should not be implemented. The arrangement includes only a kind of promise. The expression 'spurious repurchase agreements' is sometimes used in this case.

13. This may also be observed in sale/buyback transactions where there are strong similarities with repos concerning the economic nature of the transaction but also some technical differences. Sale/buybacks should, however, be treated as repos where the original holder has a strict obligation to buy back and the assignee an unquestioned claim to get back liquidity. Therefore, the transactions should be recorded in the same way and, if necessary, the sources used for compilation should be corrected, notably in the respective portfolios.

14. Where the original seller does not have a firm commitment to repurchase the asset(s), it should be considered an effective transfer of economic ownership. As a consequence, for securities, a change in both contracting parties' portfolios should be recorded, with no increase in the balance sheet of the seller. As a reminder, the contingent asset corresponding to the possible resale should not be included at all in the financial account, according to ESA 2010 paragraph 5.09.

15. In some cases, the repurchasing transaction, even if not firmly legally based, is in fact quite certain because of the nature of the parties. For instance, a repo is undertaken by two units classified in general government. However, it is recommended here to apply the rule about firm commitment in a rather restrictive way, i.e., in limited situations where there is very strong evidence that in case of conflict the commitment would be certainly recognised by legal or arbitration authorities. Some very infrequent 'conflicting' cases were observed and resulted generally in the obligation to repurchase.

8.4.3.3. DELIVERY OF SECURITIES

16. According to national regulations and market practice, securities may effectively be delivered to the buyer. It is notably the case where it needs only an adjustment in the book-entry depository system via efficient electronic delivery-payment organisation. Fundamentally, this feature does not change the nature of the operation as a repo from an economic point of view. But, obviously, it adds, however, some complexity in the compilation process and may be the source of discrepancy as mentioned later.

17. As the transaction is recorded in loan/deposit instruments and the assignee is supposed not to have bought securities, the purchaser's portfolio must be corrected if the asset has been entered. It may be the same in the portfolio of the original holder so that he keeps the asset in his portfolio, in addition to the new instrument representing the temporary cash lending.

18. Even in the case of delivery, it is assumed that the 'seller' keeps his right of property on the securities he has transferred. The main point is that he assumes risks, for instance, when the value of the securities would be less than the repurchase price due to change in market conditions. Moreover, in case of default from the issuer of the security, he would have to repay the fixed sum to the lender. Normally, the seller continues to receive benefits (e.g., interest) associated with the securities. It means that if such payment occurs during the contractual period, the temporary buyer has to repay it.

8.4.3.4. SALE OF ASSET DURING A REPO ARRANGEMENT

19. It may happen that the buyer ('assignee'/liquidity provider) sells the asset received under the repo transaction before the second 'leg' of the transaction. In this case, a negative entry is to be recorded in

the purchaser's portfolio in counterpart to the cash taken from the sale. However, the initial relationship resulting from the repo does not disappear and is not at all changed by the second transaction.

20. The temporary purchaser has a liability to provide a 'comparable' security back. This is the reason why their balance sheet has to show a negative asset. This entry also shows that the purchaser is now theoretically exposed to market risk, which was not the case before the resale. However, this treatment may raise some difficulties that are not, nevertheless, specific to the transactions undertaken by general government units but is a general issue for repos. Identifying such transactions may in addition be particularly difficult in the case of cross-border flows.

8.4.3.5. SECURITIES LENDING

21. Securities lending may also be largely used by investors on securities' markets for various reasons such as covering short-term positions (as in the case of short selling) or for derivatives' position management.
22. Where there is an effective flow of cash, it is clear, from an economic point of view, that the case is very similar to a repurchase agreement transaction. Effectively, there is no definitive change of economic ownership and there is a firm commitment concerning the reverse transaction on securities. Thus, the transaction should be recorded in loans or deposits, according to the general rules mentioned above, notably the absence of transactions in securities in national accounts. In this case, a negative entry is also required in the purchaser's portfolio.
23. On the contrary, securities lending without a flow in cash (generally for very short maturity) should not be treated as a repurchase agreement, as specified in ESA 2010 paragraph 5.131: *If a securities lending does not involve the supply of cash, that is, if there is an exchange of one security for another, or if one party supplies a security without collateral, there is no transaction in loans, deposits or securities.*
24. Generally, in the accounting system of the contracting parties there is no effect on the balance sheet but possibly an entry in the 'off-balance sheet', in order to record the forward reverse transaction. But in some countries, portfolios directly reflect the transaction, i.e., they change according to the transaction. Two cases should be distinguished:
- where the distinction between securities lending with cash and without cash is available, for lending without cash, the counterpart in the balance sheet of parties would be preferably classified under other accounts receivable/payable (for consistency reasons no entry under deposits or loans). Nothing should be recorded in national accounts;
 - where the distinction is not available, the treatment would depend on the estimated share (through specific information) of each kind of transaction within the global figures. However, a good proxy seems to consider that only a few transactions are cash-free and, thus, to apply a 'repo-like' treatment for the whole.

8.4.4. Effect on government debt

25. There may be different effects on general government debt of this category of financial instruments where:
- a unit in general government is 'assignor', temporary seller of securities and 'cash receiver', there is an impact on gross debt as the item loans (AF.4) is increased in counterpart to the borrowed funds. Of course, if the counterpart is another unit classified in general government, the effect is nil at a consolidated level;
 - government is 'assignee', placing liquidities and providing funds to an economic agent classified in another sector, namely a monetary financial institution, there is no impact on the debt at consolidated level, but a change in the structure of its assets;
 - the transaction is not recognised or else treated as a repo, without a firm commitment concerning the reverse transaction, there is a change in economic ownership of the assets. Government debt would be changed only when a unit classified in general government lends or borrows government securities with a counterpart classified outside the general government sector.
26. The latter effect comes from the consolidation rules. Thus, consolidated debt is increased when the government unit is lender (decrease in assets) or reduced when the government unit is borrower

(increase in assets). There is no impact for transactions on securities with a unit classified in general government, whatever the instruments involved.

8.4.5. Accounting examples

Government enters into a **repurchase agreement** (on treasury bonds) for a value of 100 with a bank. The original maturity is 3 months. The repurchase price is 101.

1. At inception

General government				Bank			
				Financial Account			
ΔA		ΔL		ΔA		ΔL	
F.22	-100			F.22	100	F.29	100
F.29	100					B.9F	0
		B.9F	0			B.9F	0

2. Over the remaining period

General government				Bank			
				Non-financial account			
U/ ΔA		R/ ΔL		U/ ΔA		R/ ΔL	
		D.41	1	D.41	1		
B.9	1			B.9	-1		

				Financial account			
ΔA		ΔL		ΔA		ΔL	
F.22	101			F.22	-101	F.29	-100
F.29	-100					B.9F	-1
		B.9F	1			B.9F	-1

8.5. On-lending from supranational entities

8.5.1. Background

1. Supranational entities, such as the European Union, may borrow on the markets at more favourable rates than many Member State governments can achieve and on-lend the amounts to national governments in the form of loans. Similarly, some general government units/subsectors may be able to borrow more efficiently than others, and thus on-lending arrangements also exist at national level, i.e., within the general government subsectors. The aim of this chapter is to address the appropriate recording of this type of loans and similar instruments in government accounts.
2. The European Commission, on behalf of the EU⁽³⁸¹⁾, uses a back-to-back funding approach in its 'borrowing and lending' operations. Under this approach, the Commission issues bonds and transfers the proceeds directly to the beneficiary country on the same conditions under which it received the loans (in terms of interest rate, maturity, etc.).
3. Borrowing schemes designed by supranational entities are normally intended to finance specific purposes. An example is the SURE⁽³⁸²⁾ instrument, established by the European Commission in 2020 to mitigate the negative economic and social impact of the coronavirus pandemic. Under the SURE instrument, the European Commission uses the capital markets to raise funds and then on-lends them to national governments in the form of loans.
4. Paragraphs 5 to 7 below describe the borrowing and lending provided under the SURE instrument. The general context explained in this chapter is applicable to any on-lending scheme from supranational entities or from other entities⁽³⁸³⁾ with similar (though not necessarily identical) features⁽³⁸⁴⁾.
5. Under the SURE instrument, the European Commission (EC) issues bonds and subsequently grants loans to governments on identical terms under which it was able to place the underlying bonds on the capital markets. The loans are disbursed to national governments a few days after the issuance of the bonds. The loan agreements distinguish the principal of the loan from the 'net disbursement amount'; the latter meaning the proceeds of the bond issue (including potential premiums and discounts on its issue price compared to its face or redemption value) less any commissions, fees and costs related to the bond issue, its preparation and its execution. The cost of borrowing incurred by the European Commission is charged to the Member States' governments receiving the loans. If bonds are issued by the EC at a premium to their face value (i.e., above par), the premiums are transferred to the benefiting governments as part of the net disbursement amount but this amount is not included in the loan principal and as such does not need to be repaid. Similarly, when bonds are issued by the EC with a discount (below par), the net amount disbursed to national governments in the on-lent loan is lower than the loan principal.
6. The repayment schedule of loans disbursed to Member State governments is established in such a way as to generally mirror the overall bond and coupon repayment schedule of the European Commission⁽³⁸⁵⁾.
7. The provision of funds under identical conditions to those obtained by the European Commission on the capital markets is specified in the loan agreement between the lender (the EC) and the borrower (an EU Member State's government). Due to this, the features of the loan (the interest rate/period, the due for repayment dates, the maturity date) are closely related to those for the bond. In addition, the beneficiary governments routinely cover the administrative costs associated with the fundraising, such as contract preparation costs, liquidity management costs and other administrative expenses incurred during the lifetime of contracts.

⁽³⁸¹⁾ The European Commission borrows from the international capital markets on behalf of the European Union.

⁽³⁸²⁾ Temporary Support to Mitigate Unemployment Risk in an Emergency. Council Regulation (EU) 2020/672.

⁽³⁸³⁾ As for instance on lending within general government units/subsectors.

⁽³⁸⁴⁾ For instance, under the SURE instrument the EC issues bonds to finance loans to countries. The same provisions would apply regardless of the borrowing instrument used by the EC to finance the loans.

⁽³⁸⁵⁾ There are some practical differences, such as the governments repaying the principal and interest on the loan 20 business days before the corresponding bond matures or coupons become due.

8. In such cases of on-lending involving supranational entities, there are two issues for government accounts that need interpretation:
- (a) the effect on Maastricht debt; and
 - (b) the effect on the net lending/net borrowing.

8.5.2. Treatment in national accounts

8.5.2.1. EFFECT ON MAASTRICHT DEBT

9. The borrowing schemes described in this chapter involve two financial transactions. The first transaction arises when a supranational entity accesses the capital markets to raise the necessary funding. Typically, it is expected that the original source of funding at the supranational level is the supranational entity issuing debt securities, such as in the case of SURE. The second transaction occurs when the funds are on-lent to a government in the form of loans.
10. The financial relationship between the beneficiary government and the supranational entity is recorded as a loan (AF.4) and is included in the Maastricht debt of the beneficiary Member State at face value. For EDP purposes, the valuation of debt instruments should follow the principles laid down in Council Regulation (EC) No 479/2009⁽³⁸⁶⁾, which requires government debt to be valued at face value⁽³⁸⁷⁾. The face value of the loan liabilities from the on-lending should equal the face value of the corresponding instrument⁽³⁸⁸⁾ issued by the supranational entity.
11. In national accounts, debt securities are recorded in balance sheets at market value (ESA 2010 paragraph 7.67) while loans are recorded at nominal value (ESA 2010 paragraph 7.70, with nominal value defined in paragraph 7.39). Therefore, in the financial accounts, the loan liability should be recorded at the ESA 2010 nominal value of the corresponding bonds. At inception, the ESA 2010 nominal value of the loan is equal to the issue price of the on-lent bonds⁽³⁸⁹⁾. Later on, the value of the bonds will fluctuate following market movements, while the nominal value of the loan will remain unchanged, aside from the increases or decreases due to accrued interest (including amortisation of premium and discounts) and repayments.

8.5.2.2. EFFECT ON NET LENDING/NET BORROWING

12. Bonds can be issued above or below their face ('par') value. If a supranational entity places bonds on the market 'above par' (at a premium), it obtains more cash than the face ('par') value of the bonds issued. As the terms of the borrowing are entirely passed on to the beneficiary government, the premium obtained is disbursed to government as part of the net disbursement amount. Consequently, the cash inflow received by government exceeds the corresponding increase in Maastricht debt.
13. Interest payable on loans from supranational entities to governments should be recorded as interest expenditure (D.41) of the beneficiary governments.
14. The main question is how to record the premiums obtained by the European Commission on bond issuance that are subsequently passed on to governments as part of the net disbursement amount. In the case of a premium at issuance, the excess cash is to be treated as reductions to interest expenditure spread over the lifetime of the instrument, thus having a positive B.9 impact.
15. The same question stands for the case when the bonds are issued at a discount and the disbursed amount is lower than the on-lent loan liability recorded. In the case of a discount at issuance, the shortfall in cash is treated as additional interest expenditure accruing over the lifetime of the instrument (similarly to those for bonds and bills described respectively in ESA 2010 paragraph 6.53 and MGDD section 2.4.3.6).

⁽³⁸⁶⁾ Article 1.5.

⁽³⁸⁷⁾ According to ESA 2010 paragraph 5.90d, the face value of a debt security is the redemption price, i.e., the amount to be paid by the issuer to the holder at maturity.

⁽³⁸⁸⁾ Typically bonds (as in the case of SURE), but not necessarily. In the case of SURE, the loan liability recorded is equal to the face value of the corresponding bond tranche.

⁽³⁸⁹⁾ This being equal to the cash disbursed.

16. The supranational entity may also raise funds through loans. In this case, it passes on to government the part of the (total) loan that is allotted to that government. The value of the Maastricht debt of the beneficiary Member State thus increases by the amount of the loan allotted, with the interest gradually impacting the net lending/net borrowing (B.9) as it accrues over the lifetime of the loan. In rather exceptional cases, a loan might be charged with a negative interest rate. If so, this is to be recorded as negative interest expenditure.
17. The treatment in national accounts can be summarised as follows:
- amounts provided by a supranational entity to governments in the context of on-lending arrangements as described in this chapter should be recorded by the borrowers as loan liabilities (AF.4L), irrespective of the underlying financial instrument funding the loans at the supranational level;
 - these loan liabilities should be recorded in the Maastricht debt at their face value, which, if funded by bonds, should equal the face value of the corresponding bonds issued. In the financial accounts, the loan liability should be recorded at the ESA 2010 nominal value of the corresponding bonds. At inception, this will be equal to the issue price of the on-lent bonds;
 - interest on these loans should be recorded as interest expenditure (D.41) of the borrowers and interest revenue of the supranational entity (equalling the interest expenditure of the supranational entity related to the financial instrument funding the loans);
 - premiums passed on to government in on-lent loans should be treated in the same manner as a premium on bonds⁽³⁹⁰⁾. They should be incorporated into the interest rate structure of the loans granted to Member States and should be amortised as reductions to interest expenditure (D.41) spread over the lifetime of the loan. Similarly, discounts at issuance should be accrued in D.41 expenditure over the lifetime of the loans.
18. The aforementioned accounting provisions shall apply to all on-lending schemes set up by supranational authorities to provide funds to governments as described in this chapter and to other lending schemes with similar features. The features include on-lending created for a specific government policy objective and maturity and interest of the on-lending scheme matching that of the debt raised by the supranational authority.

8.5.3. Rationale of the treatment

19. The on-lending from a supranational entity to a national government is recorded as a loan (AF.4), irrespective of the underlying financial instrument that raised the funds. The recording as a loan is substantiated by ESA 2010 paragraph 5.122, as it is a non-negotiable instrument (no secondary market for these claims exists) and by ESA 2010 paragraph 5.121, as each loan is underpinned by the existence of a single document and each transaction is carried out between one single lender and one single borrower.
20. When the terms achieved by the supranational entity are passed on directly to Member States, the Member States may receive a higher/lower amount in cash than they will have to repay. Such premium/discount on the loan is treated in the same manner as a premium/discount on bonds.
21. In such cases, the amount on-lent should enter the Maastricht debt for its face value, i.e., without the premiums/discounts (just like in the case of bonds). This valuation approach has the advantage of not depending on the classification decision of the credit instrument between the Commission and Member States: as a loan or as a bond.
22. As regards the effect on government deficit, in the above cases premiums/discounts on the amounts on-lent should accrue in the accounts of the benefitting government as they do for the debt securities issued by the supranational entity. Accruing any premiums/discounts on the amounts on-lent as interest expenditure (negative/positive) in the accounts of the government is to reflect the on-lending nature of the arrangement. The cash inflow at inception is higher/lower than the amount to be redeemed because there will be higher/lower interest payments all along than would have been the case without premium/discount. In national accounts, a correction is needed to reflect the economic reality and to capture the correct effect on B.9 and B.9F (i.e., nil at inception).

⁽³⁹⁰⁾ The corresponding entries should be reported in EDP Table 3 in the lines of Issuances above (-)/below (+) nominal value and in Difference between interest (D.41) accrued (-) and paid (+).

23. An alternative recording of a D.99 capital transfer from the supranational entity to the borrowing governments, instead of interest accruing, would not be justified unless the premium would be intended to provide a gift. Nevertheless, this is not the case in the on-lending schemes described in this chapter, which are financing schemes provided according to commercial terms. The provision of funds under identical conditions to those obtained by the European Commission on the capital markets is specified in the loan agreement. As the amounts are on-lent, the loans are precisely granted according to the identical terms on which the underlying funding was raised in the market. In addition, a D.99 capital transfer would need to be recorded from the borrowing government to the Commission in case of discount.
24. In the case of SURE, for instance, recording a capital transfer would not reflect the economic reality, as the aim of the SURE instrument is to provide cheaper financing and not to grant a benefit. The premiums or discounts are passed to the beneficiaries primarily due to the fact that the on-lend loans are designed to mirror the conditions of the bonds; a premium is observed when the coupon interest is higher than the market rate, and similarly a lower coupon rate results in the issuance at a discount.
25. As these on-lending schemes are set up in order to facilitate financing under commercial terms, rather than to provide a gift, the difference between the amount received at inception and the amount to be repaid by the debtor at maturity is to be treated as interest.
26. In ESA 2010, financial instruments where there is mismatch between the cash received and the amount to be redeemed are treated similarly. In all such cases, the difference between the amount initially received and the amount repaid is treated as interest, which should be accrued continuously over the life of the instrument (see ESA 2010 paragraphs 4.45, 6.53, 20.184 and 20.187 concerning bills, zero coupon bonds and index-linked securities). The only exception concerns narrow index securities, with interest defined in a different way.
27. Although the instruments described in the ESA paragraphs quoted above are all debt securities, it makes sense that all instruments issued at premium/discount are treated in a similar way. The MGDD explicitly extends the treatment for debt securities to all instruments issued at discount⁽³⁹¹⁾. It seems therefore reasonable to apply such treatment to the loans described in this chapter, when there would be a mismatch between the cash received and the amount to be repaid.
28. The recording of two financial transactions (one for raising the funds and one for on-lending them) is in line with the general provisions for on-lending operations as described in MGDD section 7.4.2.1.7 on on-lending from governments to corporations. The result in GFS would be identical if the principal party recording were considered.

⁽³⁹¹⁾ MGDD section 2.4.2 paragraph 2 states that *all instruments issued at a discount are treated in a similar way*.

8.6. Keywords and references

Financial assets and liabilities	ESA 2010, 7.01-7.13
Valuation of financial assets and liabilities	ESA 2010, 7.33-7.35, 7.37-7.39
Currency and deposits (AF.2)	ESA 2010, 7.64-7.66
Debt securities (AF.3)	ESA 2010, 7.67-7.69
Loans (AF.4)	ESA 2010, 7.70
Financial derivatives (AF.7)	ESA 2010, 7.86-7.89, 20.188
Other accounts payable (AF.8)	ESA 2010, 7.90
Index-linked securities	ESA 2010, 4.46 (c), 5.100-101, 20.187
Discounted and zero-coupon bonds	ESA 2010, 20.184-20.186
Financial leasing	ESA 2010, 5.134-5.135, 15.13-15.22
Swaps	ESA 2010, 5.210-5.213
Securities lending and repurchase agreements	ESA 2010, 5.126-5.131
Credit default swaps	ESA 2010, 5.11, Box 5.1, 5.218-5.219
Off-market swaps	ESA 2010, 20.133

Annex Legal texts (references and links)

Legal texts:

<https://ec.europa.eu/eurostat/web/government-finance-statistics/legislation>

European System of Accounts 2010 (ESA 2010):

[Regulation \(EU\) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union](#)

[European System of Accounts — ESA 2010 — interactive version](#)

Transmission programme:

[ESA 2010 Transmission programme of data](#)

Excessive Deficit Procedure Statistics:

[Commission Regulation \(EU\) No 220/2014 of 7 March 2014 amending Council Regulation \(EC\) No 479/2009 as regards references to the European system of national and regional accounts in the European Union](#)

[Council Regulation \(EU\) No 679/2010 of 26 July 2010 amending Council Regulation \(EC\) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure](#)

[Council Regulation \(EC\) 479/2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community](#)

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Manual on Government Deficit and Debt – Implementation of ESA 2010

This new 2022 edition of the Manual is an updated version of the edition published in August 2019. In the current edition, at least one chapter or section of all parts has been amended in substance (see full list of amendments in the preface of the Manual), except Part 5 Sale of assets. In addition, the following new texts were introduced: section 2.6.4 Statistical recording of the EU Recovery and Resilience Facility (RRF) associated flows; chapter 3.5 Capital injections into foreign direct investment; chapter 4.6 Securitisation of non-performing loans with government guarantees; chapter 4.8 Recording of loans not expected to be fully repaid; sub-section 6.3.1.6 Energy Performance Contracts; chapter 8.5 On-lending from supranational entities. As usual, this edition is the result of a collective work under the supervision of Eurostat, in cooperation with experts representing EU Member States and other international institutions.

For more information

<https://ec.europa.eu/eurostat/>



Camera dei Deputati
VI Commissione Finanze

Audizione del Direttore dell'Agenzia delle entrate

Avv. Ernesto Maria Ruffini

Decreto-legge 16 febbraio 2023, n. 11

“Misure urgenti in materia di cessione dei crediti di cui all'articolo 121 del decreto-legge 19 maggio 2020, n. 34, convertito, con modificazioni, dalla legge 17 luglio 2020, n. 77”

A.C. 889

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Premessa

Signor Presidente, Onorevoli Commissari,

ringrazio innanzitutto per l'opportunità concessa all'Agenzia delle entrate di fornire il proprio contributo in merito ai contenuti del decreto-legge 16 febbraio 2023, n. 11 (d'ora in poi "Decreto"), intervenuto recentemente in materia di *bonus* edilizi con importanti modifiche alla disciplina della cessione dei relativi crediti d'imposta.

Si tratta, nel loro complesso, di disposizioni che modificano l'articolo 121 del decreto-legge 19 maggio 2020, n. 34 ("Decreto Rilancio").

In sintesi, il Decreto:

- elimina la facoltà di optare per lo sconto in fattura o per la cessione dei crediti, ferma restando la possibilità di avvalersi di tali istituti per le operazioni in corso;
- delinea con maggiore precisione i profili della responsabilità dei soggetti che intervengono nelle operazioni di cessione;
- esclude le pubbliche amministrazioni dal novero dei soggetti che possono essere cessionari dei crediti.

Ad ogni modo, prima di illustrare nel dettaglio il contenuto del Decreto, ritengo utile avviare la trattazione con una rapida disamina dell'evoluzione normativa della disciplina dei *bonus* edilizi e della cessione dei relativi crediti, caratterizzate da diversi interventi correttivi negli ultimi due anni. Dopo l'illustrazione delle nuove disposizioni recate dal Decreto, riporterò alcuni dati numerici relativi alle cessioni dei *bonus* edilizi.

1. Brevi cenni alla disciplina dei *bonus* edilizi e della cessione dei crediti

Prima di procedere con l'illustrazione delle novità normative introdotte dal Decreto, è utile una breve digressione sull'evoluzione della disciplina dei *bonus* edilizi e della cessione dei relativi crediti registrata negli ultimi anni.

L'**articolo 121** del **Decreto Rilancio** ha "**ampliato**" l'istituto **della cessione del credito**. In particolare, l'intervento normativo ha riguardato i ***bonus* edilizi**¹, per i quali, accanto alla fruizione

¹ Per tali si intendono le detrazioni fiscali - con aliquote variabili ricomprese, a seconda della tipologia di lavori, tra il 50 per cento e il 110 per cento - riconosciute ai soggetti che sostengono spese per determinate tipologie di lavori (come le ristrutturazioni edilizie e la riqualificazione energetica), che hanno lo scopo di incentivare il miglioramento qualitativo degli edifici, anche sotto il profilo del consumo di energia e della sicurezza sismica, tra i quali si ricordano:

da parte del beneficiario di una detrazione in diminuzione delle imposte dovute in base alla propria dichiarazione dei redditi, mediante una ripartizione su più anni d'imposta², è stata **ampliata** la **possibilità** di **trasferimento** del **beneficio** ad altri soggetti sotto forma di credito d'imposta, attraverso i meccanismi:

- dello **sconto in fattura** (che il beneficiario può richiedere e ottenere dal fornitore);
- della **cessione** diretta ad altri soggetti di un credito corrispondente alla detrazione.

Nelle predette ipotesi, il soggetto che ha praticato lo sconto in fattura o ha acquistato il credito recupera le somme attraverso un credito d'imposta **utilizzabile** in compensazione delle imposte, tasse e contributi versati con i **modelli F24**, con la **ripartizione annuale** corrispondente a quella **prevista per la detrazione** sorta in capo a coloro che hanno effettuato i lavori.

In linea di principio, a meno che non sia espressamente vietato dal Legislatore³, attraverso l'istituto della compensazione possono essere pagati tutti i tributi e contributi riscossi mediante il modello F24, anche a seguito di accertamento e controllo. A titolo esemplificativo (e non esaustivo) si fornisce un'elencazione delle somme che, per espressa previsione normativa⁴, sono pagabili con compensazione in F24:

- imposte sui redditi, le relative addizionali e ritenute alla fonte;
- IVA;
- imposte sostitutive delle imposte sui redditi e dell'IVA;
- IRAP;
- tributi comunali (ad esempio l'IMU);
- altre imposte e tasse;
- contributi previdenziali e premi assicurativi (INAIL).

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- il c.d. *Superbonus* dal 110 al 65 per cento (riqualificazione energetica o riduzione del rischio sismico degli edifici);
 - il *Bonus* ristrutturazione (con aliquota del 50 per cento, ristrutturazioni edilizie);
 - il *Bonus* facciate (con aliquota del 90 per cento, per il recupero o restauro della facciata esterna degli edifici, e del 60 per cento per le spese sostenute nell'anno 2022);
 - l'*Ecobonus* (con aliquota base tra il 50 e il 65 per cento, maggiorabile a seconda della tipologia degli interventi anche al 70-75 per cento, per la riqualificazione energetica);
 - il *Sismabonus* (50 per cento, maggiorata al 70-80 per cento o 80-85 per cento a seconda della tipologia di intervento).

² Per il *Superbonus* la ripartizione avviene in 4 anni (per le spese sostenute nel 2022, come previsto dalla Legge 30 dicembre 2021, n. 234 – Legge di bilancio 2022) o in 5 anni (per le spese effettuate in precedenza), in 5 anni per il *Sismabonus* e per l'abbattimento delle barriere architettoniche e 10 anni per gli altri *bonus* edilizi.

³ Si tratta di divieti specifici e limitati: ad esempio, è vietato utilizzare i crediti in compensazione per pagare i debiti derivanti da talune "sanatorie".

⁴ Articolo 17 del decreto legislativo 9 luglio 1997, n. 241.

Inoltre, in base al comma 3 dell'articolo 121 del Decreto Rilancio, l'utilizzo in compensazione dei crediti da *bonus* edilizi non soggiacciono agli ordinari limiti previsti dalle norme tributarie, quali:

- il limite generale di compensabilità dei crediti su base annua⁵;
- il divieto di utilizzo dei crediti in presenza di debiti iscritti a ruolo⁶.

L'**ampliamento** della **possibilità** di cessione dei crediti è passato attraverso l'**eliminazione di molte delle limitazioni** fino ad allora vigenti, che riguardavano:

- la **tipologia di interventi** da cui poteva originare un credito cedibile (ad esempio, la cedibilità riguardava inizialmente solo gli interventi di riqualificazione energetica di parti comuni degli edifici condominiali);
- la **platea di soggetti** a cui spettava la facoltà di cessione del credito (inizialmente tale facoltà era possibile solo per i contribuenti "incapienti");
- le **categorie di possibili cessionari** del credito (inizialmente erano solo i soggetti che effettuavano gli interventi oggetto dell'agevolazione);
- la **possibilità di effettuare ulteriori cessioni** dopo la prima.

2. Le modifiche alla disciplina della cessione dei *bonus* successive al Decreto Rilancio

Successivamente all'emanazione del Decreto Rilancio, anche a fronte dell'emersione dei rilevanti fenomeni di frode individuati nell'ambito delle operazioni di cessione del credito, il Legislatore è intervenuto a più riprese con diversi correttivi alla relativa disciplina, volti alla tutela delle ragioni erariali. In estrema sintesi, si ricordano le seguenti modifiche normative:

a) **il decreto-legge n. 157 del 2021** (Decreto Anti-frodi), che ha previsto:

- l'obbligo del visto di conformità (che attesta la sussistenza dei presupposti che danno diritto alla detrazione d'imposta) e dell'asseverazione della congruità dei prezzi da parte di professionisti abilitati, nel caso di cessione di qualsiasi tipologia di *bonus* edilizi (in precedenza i predetti obblighi erano previsti solo per il *Superbonus*);

⁵ Cfr. articolo 34 della legge 23 dicembre 2000, n. 388 e articolo 1, comma 53, della legge 24 dicembre 2007, n. 244.

⁶ Cfr. articolo 31, comma 1, del decreto-legge 31 maggio 2010, n. 78.

- la possibilità per l'Agenzia delle entrate di effettuare controlli preventivi, sulla base di determinati profili di rischio⁷, e procedere alla eventuale sospensione della fruizione dei crediti ceduti;
- un'adeguata verifica antiriciclaggio da parte dei soggetti tenuti a tale controllo, con conseguente obbligo di astensione dal compiere operazioni sospette;

b) il decreto-legge n. 4 del 2022 (Decreto Sostegni-*ter*), che ha limitato il numero dei trasferimenti del credito ad un'unica operazione di cessione⁸;

c) il decreto-legge n. 13 del 2022, con il quale:

- sono state consentite due ulteriori cessioni del credito, ma solo se effettuate a favore dei "soggetti qualificati"⁹;
- è stato fatto divieto di procedere a cessioni parziali dei crediti¹⁰;
- è stato inasprito il quadro delle sanzioni penali nei casi di frode¹¹ ed è stato previsto che i soggetti che rilasciano attestazioni e asseverazioni debbano stipulare una polizza di assicurazione per la responsabilità civile per ogni intervento, con massimale pari agli importi dell'intervento;

⁷ Prima dell'introduzione della normativa in commento, l'Agenzia non disponeva di tutti i poteri di intervento in via preventiva, ma poteva, ai fini fiscali, solo agire *ex post*, con il rischio di non riuscire più a recuperare le somme indebitamente percepite.

⁸ Per rendere graduale il passaggio alle nuove regole era stato previsto un regime transitorio, in virtù del quale i crediti che alla data del 7 febbraio 2022 erano stati oggetto di sconto in fattura o cessione del credito potevano essere oggetto esclusivamente di una ulteriore cessione ad altri soggetti. Il termine è stato poi prorogato al 17 febbraio dal provvedimento dell'Agenzia delle entrate del 4 febbraio 2022, per consentire l'aggiornamento del canale per la trasmissione delle comunicazioni delle opzioni di cessione o sconto in fattura.

⁹ Si tratta, ai sensi dell'articolo 121, comma 1, del Decreto Rilancio, di: banche e intermediari finanziari iscritti all'albo previsto dall'articolo 106 del testo unico delle leggi in materia bancaria e creditizia, di cui al decreto legislativo 1° settembre 1993, n. 385, di società appartenenti a un gruppo bancario iscritto all'albo di cui all'articolo 64 del predetto testo unico delle leggi in materia bancaria e creditizia ovvero di imprese di assicurazione autorizzate ad operare in Italia ai sensi del codice delle assicurazioni private, di cui al decreto legislativo 7 settembre 2005, n. 209.

¹⁰ A tal fine è stato previsto (a partire dalle comunicazioni della prima cessione del credito o dello sconto in fattura inviate all'Agenzia delle entrate a partire dal 1° maggio 2022) il tracciamento del credito ceduto, mediante l'attribuzione di un codice identificativo univoco da indicare nelle comunicazioni delle eventuali successive cessioni.

¹¹ Con l'inserimento del comma 13-*bis*.1 nell'articolo 119 del Decreto Rilancio, è stata prevista la reclusione da due a cinque anni e la multa da 50.000 euro a 100.000 euro per il tecnico abilitato che nelle asseverazioni di cui al comma 13 del medesimo articolo e all'articolo 121, comma 1-*ter*, lettera b), del Decreto Rilancio (vale a dire le asseverazioni previste per il *Superbonus* e le attestazioni della congruità della spesa relative ai *Bonus* diversi dal *Superbonus*) espone informazioni false, omette di riferire informazioni rilevanti sui requisiti tecnici del progetto di intervento o sulla effettiva realizzazione dello stesso oppure attesta falsamente la congruità delle spese. Se il fatto è commesso al fine di conseguire un ingiusto profitto per sé o per altri, la pena è aumentata.

- è stato previsto che i termini per l'utilizzo dei crediti d'imposta oggetto di sequestro disposto dall'Autorità giudiziaria sono aumentati – in caso di successivo dissequestro – di un periodo pari alla durata del sequestro medesimo, fermo restando il rispetto del limite annuale di utilizzo dei predetti crediti;

d) il decreto-legge n. 17 del 2022 (c.d. "Decreto Energia"), che ha aperto a un'ulteriore cessione, consentendola esclusivamente alle banche nell'ipotesi in cui abbia ad oggetto un credito per il quale è esaurito il numero delle possibili precedenti cessioni e se il cessionario è un correntista della banca cedente;

e) il decreto-legge n. 50 del 2022 (c.d. "Decreto Aiuti"), che ha introdotto la possibilità per gli intermediari finanziari di cedere i crediti acquisiti ai propri correntisti "professionali privati", senza dover attendere le due cessioni possibili tra gli stessi intermediari finanziari¹².

In sede di conversione del decreto-legge (ad opera della legge 15 luglio 2022, n. 91), alle banche e alle società appartenenti a gruppi bancari iscritti all'albo di cui all'articolo 64 del decreto legislativo 1° settembre 1993, n. 385, è stato consentito di cedere i crediti sempre a favore dei propri correntisti o dei correntisti della banca capogruppo, diversi dai consumatori o utenti (come definiti dall'articolo 3, comma 1, lettera a), del codice del consumo, di cui al decreto legislativo 6 settembre 2005, n. 206);

f) il decreto-legge n. 115 del 2022 (c.d. Decreto Aiuti-bis), che ha modificato il Decreto Aiuti, introducendo per i *bonus* diversi dal *Superbonus*, la facoltà per il cessionario, al fine di limitare la propria responsabilità ai soli casi di dolo o colpa grave, di acquisire, "ora per allora", le asseverazioni e i visti di conformità anche per interventi sostenuti fino alla data dell'11 novembre 2021 (quando tali certificazioni non erano obbligatorie).

In sintesi, in base alle regole dettate dall'articolo 121 del Decreto Rilancio, come modificato dai vari interventi normativi appena illustrati:

- i beneficiari della detrazione e i fornitori che hanno realizzato gli interventi e praticato lo "sconto in fattura" possono cedere i crediti a chiunque;
- i "primi" cessionari (diversi dai fornitori) e coloro che hanno acquistato i crediti dai fornitori che hanno praticato lo sconto in fattura possono cedere i crediti solo in favore di banche e

¹² Con riferimento alle cessioni dei crediti effettuate a decorrere dal 1° maggio 2022.

intermediari finanziari, società appartenenti a gruppi bancari e compagnie di assicurazione (d'ora in poi "soggetti qualificati");

- nell'ambito dei suddetti "soggetti qualificati", i crediti possono essere oggetto ancora di tre passaggi (ossia, tra "soggetti qualificati" possono essere effettuate fino a tre cessioni in sequenza);
- le banche e le società appartenenti a gruppi bancari possono cedere sempre i crediti in favore dei propri correntisti, ovvero dei correntisti della banca capogruppo, non aventi lo *status* di consumatore o utente ai sensi dell'articolo 3, comma 1, lettera a), del Codice del consumo¹³.

In alternativa alle ulteriori cessioni, i fornitori e i cessionari, "soggetti qualificati" o meno, possono utilizzare i crediti in compensazione per il pagamento dei propri tributi e contributi, tramite il modello di versamento F24. Ai correntisti che acquistino i crediti dalla banca o dalla società del gruppo bancario non sono consentite ulteriori cessioni e la compensazione in F24 rappresenta l'unica modalità di utilizzo di tali crediti.

3. Le novità introdotte dal decreto-legge 16 febbraio 2023, n. 11

Il Legislatore è intervenuto, da ultimo, con il decreto-legge 16 febbraio 2023, n. 11, il quale, agli articoli 1 e 2, ha apportato alcune modifiche alla disciplina relativa alla cessione o sconto in fattura di cui all'articolo 121 del Decreto Rilancio.

Nello specifico, l'articolo 1, comma 1, lettera a), del Decreto, introduce il **comma 1-quinquies** all'articolo 121 del Decreto Rilancio.

Tale disposizione esclude per le **pubbliche amministrazioni** la possibilità di **acquistare i crediti d'imposta** derivanti dagli interventi elencati al comma 2 dello stesso articolo 121. Si tratta degli interventi di:

- recupero del patrimonio edilizio;
- efficienza energetica ordinaria e *Super Ecobonus*;
- misure antisismiche ordinarie e *Super Sismabonus*;
- *bonus* facciate,

¹³ Di cui al decreto legislativo 6 settembre 2005, n. 206.

- installazione di impianti fotovoltaici e colonnine di ricarica;
- abbattimento delle barriere architettoniche.

Il novero dei **soggetti per cui vige tale divieto**, secondo quanto previsto dall'articolo 1, comma 2, della legge 31 dicembre 2009, n. 196 (legge di contabilità e finanza pubblica), comprende:

- le **pubbliche amministrazioni di cui all'articolo 1, comma 2, del decreto legislativo 30 marzo 2001, n. 165**, e successive modificazioni¹⁴;
- le **Autorità indipendenti**;
- gli altri **enti e soggetti individuati dall'ISTAT nell'elenco** di cui all'articolo 1, comma 2, della legge n. 196 del 2009.

La norma, come anche evidenziato nella relazione tecnica, *«mira ad evitare effetti negativi sui saldi di finanza pubblica, considerato che le operazioni di cessione o sconto in fattura potrebbero determinare l'aumento del debito pubblico»*.

Inoltre, l'**articolo 1, comma 2, lettera b)**, introduce i **commi da 6-bis a 6-quater** all'articolo 121 del Decreto Rilancio, **circoscrivendo il perimetro della responsabilità solidale del fornitore che ha applicato lo sconto e dei cessionari**.

In base al comma 6 del citato articolo 121, il recupero dell'agevolazione non spettante avviene nei confronti del soggetto beneficiario. Tuttavia, nei casi in cui abbiano **concorso nella violazione** ai sensi dell'articolo 9 del decreto legislativo 18 dicembre 1997, n. 472, e abbiano agito con **dolo o colpa grave**, il Legislatore prevede la **responsabilità** del **cessionario** o del **fornitore** che ha applicato lo sconto in fattura. Sul punto giova evidenziare che, in base all'articolo 14, comma 1-bis.1, del decreto-legge n. 50 del 2022, la limitazione della responsabilità dei cessionari ai casi di concorso nella violazione con dolo o colpa grave di cui all'articolo 121, comma 6, del Decreto Rilancio opera con riferimento ai crediti da *bonus* edilizi per i quali, nel rispetto delle previsioni di legge, siano stati acquisiti i visti di conformità, le asseverazioni e le attestazioni previste dagli articoli 119 e 121, comma 1-ter, del Decreto Rilancio. Ai sensi del successivo comma 1-bis.2 del citato articolo 14, per i crediti da *bonus* edilizi sorti quando l'acquisizione della anzidetta documentazione non era obbligatoria, ai fini della limitazione della responsabilità in solido del cessionario ai casi di

¹⁴ Si tratta di tutte le amministrazioni dello Stato, ivi compresi gli istituti e scuole di ogni ordine e grado e le istituzioni educative, le aziende ed amministrazioni dello Stato ad ordinamento autonomo, le Regioni, le Province, i Comuni, le Comunità montane, e loro consorzi e associazioni, le istituzioni universitarie, gli Istituti autonomi case popolari, le Camere di commercio, industria, artigianato e agricoltura e loro associazioni, tutti gli enti pubblici non economici nazionali, regionali e locali, le amministrazioni, le aziende e gli enti del Servizio sanitario nazionale, l'Agenzia per la rappresentanza negoziale delle pubbliche amministrazioni (ARAN) e le agenzie fiscali.

dolo o colpa grave, è richiesto che il cedente, a condizione che sia diverso dai soggetti qualificati e che coincida con il fornitore, acquisisca, “ora per allora”, tale documentazione.

L'Agenzia delle entrate, con la circolare n. **33/E del 22 ottobre 2022**, ha evidenziato che per la corretta individuazione delle nozioni di **dolo o colpa grave** occorre fare riferimento al decreto legislativo n. 472 del 1997, in materia di sanzioni amministrative per le violazioni di norme tributarie, e ai chiarimenti già forniti con la circolare n. 180 del 10 luglio 1998, ove si precisa che:

- si considera dolosa, ai sensi dell'articolo 5, comma 4, del decreto legislativo n. 472 del 1997, *«la violazione attuata con l'intento di pregiudicare la determinazione dell'imponibile o dell'imposta ovvero diretta ad ostacolare l'attività amministrativa di accertamento»*.
- la colpa grave, ai sensi dell'articolo 5, comma 3, del decreto legislativo n. 472 del 1997, sussiste *«quando l'imperizia o la negligenza del comportamento sono indiscutibili e non è possibile dubitare ragionevolmente del significato e della portata della norma violata e, di conseguenza, risulta evidente la macroscopica inosservanza di elementari obblighi tributari [...]»*.

In continuità con le indicazioni già fornite con la **circolare n. 23/E del 23 giugno 2022** sugli indici da utilizzare per la valutazione della diligenza del cessionario, l'Agenzia, con la circolare n. 33/E del 2022, ha, altresì, fornito alcune **esemplificazioni della ricorrenza degli elementi del dolo e della colpa grave**:

- il **dolo** ricorre quando il cessionario è **consapevole dell'inesistenza** del credito, come ad esempio nel caso in cui quest'ultimo abbia preventivamente concordato con l'asserito beneficiario originario le modalità di generazione e fruizione dello stesso ovvero qualora il carattere fittizio del credito sia manifestamente evidente ad un primo esame, da chiunque condotto, e ciononostante il cessionario proceda comunque all'acquisizione e alla compensazione dello stesso nel modello F24, traendo un beneficio fiscale indebito correlato al credito inesistente;
- la **colpa grave** ricorre quando il cessionario abbia **omesso**, in termini “**macroscopici**”, la **diligenza** richiesta, come, ad esempio, nel caso in cui l'acquisto dei crediti sia stato eseguito in assenza di documentazione richiesta a supporto degli stessi o in presenza di una palese contraddittorietà della documentazione prodotta dal cedente (ad esempio, nel caso in cui l'asseverazione si riferisca a un immobile diverso da quello oggetto degli interventi agevolati).

Il nuovo **comma 6-bis dell'articolo 121 del Decreto Rilancio** (aggiunto dal Decreto) intende offrire agli operatori un **quadro di certezza**, incidendo positivamente sulla propensione all'acquisto dei crediti d'imposta. In particolare, tale comma prevede che, **ferme le ipotesi di dolo**, il **concorso nella violazione** che determina la **responsabilità in solido** del fornitore che ha applicato lo sconto e dei cessionari è in ogni caso **escluso** nei confronti di coloro che congiuntamente **dimostrino di aver acquisito il credito di imposta** e che siano in possesso della seguente **documentazione**, relativa alle opere che hanno originato il credito di imposta, le cui spese detraibili sono oggetto delle opzioni per la cessione del credito o dello sconto in fattura:

- **titolo edilizio abilitativo degli interventi**, oppure, nel caso di interventi in regime di edilizia libera, **dichiarazione sostitutiva dell'atto di notorietà**, in cui sia indicata la data di inizio dei lavori ed attestata la circostanza che gli interventi di ristrutturazione edilizia posti in essere rientrano tra quelli agevolabili, pure se i medesimi non necessitano di alcun titolo abilitativo, ai sensi della normativa vigente;
- **notifica preliminare dell'avvio dei lavori all'azienda sanitaria locale**, oppure, nel caso di interventi per i quali tale notifica non è dovuta in base alla normativa vigente, dichiarazione sostitutiva dell'atto di notorietà che attesti tale circostanza;
- **visura catastale ante operam** dell'immobile oggetto degli interventi, oppure, nel caso di immobili non ancora censiti, domanda di accatastamento;
- **fatture**, ricevute o altri documenti comprovanti le spese sostenute, nonché **documenti attestanti l'avvenuto pagamento delle spese medesime**;
- **asseverazioni**, quando obbligatorie per legge, dei **requisiti tecnici** degli interventi e di **congruità delle relative spese**, con relative ricevute di presentazione e deposito presso i competenti uffici;
- nel caso di interventi su parti comuni di edifici condominiali, **delibera condominiale** di approvazione dei lavori e relativa tabella di ripartizione delle spese tra i condomini;
- nel caso di interventi di **efficienza energetica**, la documentazione prevista dall'articolo 6, comma 1, lettere a), c) e d) del decreto del Ministro dello sviluppo economico, di concerto con i Ministri dell'economia e delle finanze, dell'ambiente e della tutela del territorio e del mare e delle infrastrutture e dei trasporti, del 6 agosto 2020 in materia di c.d. **Ecobonus**, oppure, nel caso di interventi per i quali uno o più dei predetti documenti non risultino dovuti in base alla normativa vigente, dichiarazione sostitutiva dell'atto di notorietà che attesti tale circostanza;

- **visto di conformità** dei dati relativi alla documentazione che attesti la sussistenza dei presupposti che danno diritto alla detrazione sulle spese sostenute per le opere, rilasciato dai soggetti abilitati;
- **un'attestazione**, rilasciata dai soggetti sottoposti alla disciplina **antiriciclaggio** che intervengono nelle cessioni, di avvenuta osservanza degli obblighi di segnalazione di operazioni sospette e di astensione dal compimento di operazioni di cui, rispettivamente, agli articoli 35 e 42 del decreto legislativo n. 231 del 2007.

L'articolo 1, comma 1, lettera b), ha introdotto, altresì, al citato articolo 121, il **comma 6-ter**, secondo cui **non sono, altresì, responsabili i soggetti, diversi dai consumatori o utenti** che acquistino i crediti di imposta da una banca, o da altra società appartenente al gruppo bancario della medesima banca, con la quale abbiano stipulato un contratto di conto corrente, mediante il rilascio di un'attestazione di possesso, da parte della banca o della diversa società del gruppo cedente, **di tutta la documentazione** rilevante elencata al comma **6-bis**.

Il Legislatore, con l'introduzione del comma **6-quater**, ha altresì precisato che il **mancato possesso di parte della documentazione rilevante non costituisce**, da solo, **causa di responsabilità solidale per dolo o colpa grave del cessionario**. Tale soggetto può dunque fornire, con ogni mezzo, prova della propria diligenza o non gravità della negligenza.

Rimane ferma l'applicazione dell'articolo 14, comma 1-bis.1, del decreto-legge 17 maggio 2022, n. 50, ai sensi del quale la limitazione della responsabilità solidale al dolo e alla colpa grave riguardano solo i crediti per i quali sono stati acquisiti, nel rispetto delle previsioni di legge, i visti di conformità, le asseverazioni e le attestazioni di legge.

L'**articolo 2, al comma 1**, stabilisce, a partire dal 17 febbraio 2023, il **divieto di optare**, in luogo della fruizione diretta della detrazione, per un **contributo anticipato sotto forma di sconto** dai fornitori dei beni o servizi o per **la cessione del credito** corrispondente alla detrazione spettante per gli interventi previsti all'articolo 121, comma 2, del Decreto Rilancio.

La norma, tuttavia, prevede delle **deroghe** al divieto introdotto al comma 1, riconoscendo una serie di **condizioni** in presenza delle quali, agli **interventi già in corso**, **non si applica la nuova disciplina**.

Il **comma 2** stabilisce, infatti, che il **divieto non si applica** alle opzioni relative alle spese sostenute per gli interventi rientranti nella disciplina del **Superbonus** (articolo 119 del Decreto Rilancio) che **in data antecedente al 17 febbraio 2023** rispettino determinate condizioni. In particolare, le norme introdotte al comma 1 **non si applicano**:

- per gli interventi **diversi da quelli effettuati dai condomini** qualora risulti presentata la comunicazione di inizio lavori asseverata (**CILA**);
- per gli **interventi effettuati dai condomini** qualora risulti adottata la **delibera** assembleare che ha approvato l'esecuzione dei lavori e risulti presentata la **CILA**;
- per gli interventi comportanti la **demolizione** e la **ricostruzione** degli edifici qualora risulti presentata l'istanza per l'acquisizione del **titolo abilitativo**.

Il **comma 3** introduce **ulteriori deroghe** prevedendo che le disposizioni di cui al comma 1 non si applicano alle opzioni relative alle spese sostenute per gli **interventi diversi dal Superbonus** per i quali in data antecedente al **17 febbraio 2023**:

- risulti presentata la richiesta del **titolo abilitativo**, ove necessario;
- per gli interventi per i quali non è prevista la presentazione di un titolo abilitativo, siano già **iniziati i lavori**;
- risulti regolarmente registrato il contratto **preliminare** ovvero stipulato il contratto **definitivo** di compravendita dell'immobile nel caso di acquisto di unità immobiliari per interventi di **restauro e risanamento conservativo** e di **ristrutturazione edilizia** riguardanti interi fabbricati o per interventi realizzati nei comuni ricadenti nelle zone classificate a rischio sismico 1, 2 e 3 mediante demolizione e ricostruzione di interi edifici, allo scopo di ridurre il rischio sismico.

Il **comma 4** **abroga** anche una serie di norme che, **nella disciplina previgente** all'articolo 121, **già riconoscevano** la possibilità di cessione del credito per interventi di riqualificazione energetica e di ristrutturazione importante di primo livello (prestazione energetica) per le parti comuni degli edifici condominiali, nonché di ristrutturazione edilizia antisismica.

4. L'entità del fenomeno della circolazione dei crediti

Prima di fornire i dati numerici relativi alla cessione dei crediti da *bonus* edilizi, è utile premettere che, da un punto di vista procedurale, tali cessioni avvengono con le seguenti modalità:

- lo sconto in fattura e le c.d. "prime cessioni" dei crediti sono comunicati telematicamente all'Agenzia delle entrate, che procede, con cadenza mensile, al "caricamento" dei crediti su una piattaforma dedicata (di seguito "Piattaforma"), rendendoli disponibili al cessionario, che deve "confermare" l'operazione. Per esemplificare, i crediti derivanti dalle comunicazioni delle prime cessioni inviate all'Agenzia nel mese di gennaio 2023 sono stati "caricati" sulla Piattaforma dal 7 al 10 febbraio 2023;

- le cessioni successive alla prima sono comunicate dal cedente all'Agenzia delle entrate sempre tramite la suddetta Piattaforma e il nuovo cessionario può "confermarle" solo dopo che siano decorsi cinque giorni lavorativi¹⁵.

Fatta questa premessa, nella tabella che segue sono esposti, suddivisi per anno, i dati delle "prime cessioni" e degli sconti in fattura comunicati all'Agenzia delle entrate, rilevati sulla Piattaforma al 1° marzo 2023, distinti per tipologia di detrazione e di intervento, con l'indicazione dell'ammontare complessivo dei crediti compensati tramite modello F24.

Bonus edilizi: sintesi delle cessioni e degli sconti in fattura rilevati a partire dal 15 ottobre 2020 fino al 1° marzo 2023 ANNO DI SOSTENIMENTO DELLA SPESA								
	Tipo detrazione	Tipo intervento	Ammontare <i>bonus</i> (SAL o lavori conclusi)					
			in milioni di euro					
			2020	2021	2022	2023	Totale	N. operazioni
Prime cessioni e sconti in fattura	Superbonus 110%	Riqualificazione energetica (Super <i>Ecobonus</i>)	316,1	13.596,6	34.038,0	551,9	48.502,6	5.419.421
		Riduzione rischio sismico (Super <i>Sismabonus</i>)	130,5	3.556,2	9.522,2	210,1	13.419,0	655.974
		Totale Superbonus 110%	446,6	17.152,8	43.560,2	762,0	61.921,6	6.075.395
	Altri bonus	<i>Bonus</i> ristrutturazione	1.096,0	6.306,8	3.525,4	19,3	10.947,5	2.227.989
		<i>Bonus</i> facciate	651,2	24.076,2	281,4		25.008,8	3.015.063
		<i>Ecobonus</i>	836,4	7.674,1	3.033,1	32,4	11.576,0	2.153.491
		<i>Sismabonus</i>	162,7	959,6	259,9	5,2	1.387,4	39.090
		Totale altri bonus	2.746,3	39.016,7	7.099,8	56,9	48.919,7	7.435.633
	Totale generale		3.192,9	56.169,5	50.660,0	818,9	110.841,3	13.511.028

¹⁵ Cfr. provvedimento dell'Agenzia delle entrate del 1° dicembre 2021.

<i>di cui compensati (in milioni di euro)</i>	<i>Crediti già compensati tramite modello F24 (utilizzati a scomputo di tributi e contributi) rispetto al controvalore pari a 110.841,3 milioni di euro</i>	11.311,8

Va opportunamente messo in evidenza che le prime cessioni e gli sconti in fattura dei *bonus* edilizi relativi alle spese sostenute nel 2022 potranno essere comunicati all'Agenzia ancora per tutto il mese di marzo 2023¹⁶. Pertanto, un dato piuttosto consolidato relativo ai *bonus* derivanti dalle spese del 2022 sarà disponibile solo nella prima decade di aprile 2023, allorquando, cioè, i dati saranno stati caricati sulla Piattaforma¹⁷.

Bonus edilizi residui delle imprese operanti nel settore delle costruzioni

In relazione ai soggetti con codice ATECO principale appartenente alla sezione "F – Costruzioni", alla data del 1° marzo 2023, i *bonus* edilizi in capo a tali imprese ammontano complessivamente a 20.391 milioni di euro, pari a circa il 18,4% del totale¹⁸. Di seguito si riporta il dettaglio dei dati, suddivisi per tipologia di *bonus*:

Bonus edilizi residui in capo alle imprese della sezione ATECO "F - Costruzioni" (al 1° marzo 2023)	
Tipo <i>bonus</i>	Ammontare credito (in milioni di euro)
<i>Superbonus</i>	10.540,7
<i>Bonus facciate</i>	5.969,0
<i>Ecobonus ordinario</i>	2.045,6
Ristrutturazione e altro	1.632,5

¹⁶ Il termine del 31 marzo 2023 è stato stabilito dall'articolo 3, comma 10-*octies*, del decreto-legge 29 dicembre 2022, n. 198, convertito, con modificazioni, dalla legge 24 febbraio 2023, n. 14 (c.d. "Decreto Milleproroghe").

¹⁷ Per completezza, va considerato che i contribuenti potranno inviare le comunicazioni relative alle spese del 2022 anche fino al 30 novembre 2023, avvalendosi dell'istituto della c.d. *remissione in bonis*, disciplinata dall'articolo 2, comma 1, del decreto-legge 2 marzo 2012, n. 16, con il versamento della sanzione di 250 euro. Non è, pertanto, escluso che, anche successivamente, vengano comunicate cessioni di rate residue delle detrazioni per spese degli anni 2022 e precedenti, ma dovrebbe trattarsi di un fenomeno relativamente contenuto.

¹⁸ Il dato indicato è stato rilevato al 1° marzo 2023 e per sua natura è soggetto a oscillazioni, anche significative, in ragione dei crediti quotidianamente acquistati e venduti dalle imprese del settore in esame.

<i>Sismabonus</i> ordinario	203,2
Totale	20.391,0

Nella tabella seguente sono riportate le rate dal 2023 in poi dei *bonus* edilizi attualmente in capo alle medesime imprese del settore delle costruzioni e le compensazioni dei relativi crediti nel 2023:

Bonus edilizi in capo alle imprese della sezione ATECO “F – Costruzioni” e fruiti in F24 - importi in milioni di euro <u>elaborazione del 1° marzo 2023</u> (rate annuali in scadenza dal 2020 al 2033)					
Anno rata credito	Bonus edilizi disponibili dal 2023			Bonus edilizi fruiti in F24 nel 2023	Bonus residui
	Altri <i>bonus</i>	Superbonus	Totale <i>bonus</i>		
2023	897,40	2.373,20	3.270,60	520,60	2.750,00
2024	986,20	2.609,40	3.595,60		3.595,60
2025	1.010,30	2.623,90	3.634,20		3.634,20
2026	1.025,20	2.623,70	3.648,90		3.648,90
2027	1.010,60	101,40	1.112,00		1.112,00
2028	970,60		970,60		970,60
2029	971,10		971,10		971,10
2030	972,90		972,90		972,90
2031	964,40		964,40		964,40
2032	170,30		170,30		170,30
2033	1,80		1,80		1,80
Totale complessivo	8.980,80	10.331,60	19.312,40	520,60	18.791,80

Bonus edilizi residui delle banche e delle società del gruppo

Relativamente al sistema bancario, risultano *bonus* edilizi acquistati dal 15 ottobre 2020 e detenuti al 1° marzo 2023 pari complessivamente a 51.297,40 milioni di euro, pari a circa il 46,3

per cento del totale¹⁹. Si precisa che l'Agenzia delle entrate non dispone di informazioni relative a **impegni assunti dalle banche in corso di lavorazione**, non ancora comunicati alla Piattaforma. Pertanto, i dati riportati potrebbero essere sotto dimensionati, poiché includono solo le operazioni già inserite in Piattaforma.

Nella seguente tabella è riportato il dettaglio di tali crediti, suddivisi per tipologia.

Bonus edilizi residui in capo alle banche e alle società del gruppo bancario (comunicati dal 2020 al 2023)	
Tipo bonus	Ammontare credito (in milioni di euro)
<i>Superbonus</i>	33.757,90
<i>Bonus facciate</i>	9.325,60
<i>Ecobonus ordinario</i>	3.611,30
Ristrutturazione e altro	4.254,70
<i>Sismabonus ordinario</i>	347,90
Totale	51.297,40

Dei *bonus* edilizi finora effettivamente acquistati e comunicati all'Agenzia delle entrate, come detto pari a 51.297,40 milioni di euro, restano in capo alle banche (e alle società del gruppo) le rate dei crediti d'imposta da fruire per gli anni 2023 e successivi pari a 47.735,50 milioni di euro, suddivisi come da tabella seguente:

¹⁹ Il dato indicato per sua natura è soggetto a oscillazioni, anche significative, in ragione dei crediti quotidianamente acquistati e venduti dalle imprese del settore in esame.

Bonus edilizi in capo alle banche e alle società appartenenti a gruppi bancari e fruiti in F24 - importi in milioni di euro <u>elaborazione del 1° marzo 2023</u>					
Anno rata credito	Bonus edilizi disponibili dal 2023			Bonus edilizi fruiti in F24 nel 2023	Bonus residui
	Altri bonus	Superbonus	Totale bonus		
2023	1.800,0	7.677,6	9.477,6	2.668,7	6.808,9
2024	1.822,5	7.993,3	9.815,8		9.815,8
2025	1.823,4	7.994,3	9.817,7		9.817,7
2026	1.811,2	7.937,7	9.748,9		9.748,9
2027	1.783,8	43,7	1.827,5		1.827,5
2028	1.731,5		1.731,5		1.731,5
2029	1.731,2		1.731,2		1.731,2
2030	1.731,1		1.731,1		1.731,1
2031	1.608,1		1.608,1		1.608,1
2032	244,8		244,8		244,8
2033	1,3		1,3		1,3
Totale	16.088,9	31.646,6	47.735,5	2.668,7	45.066,8

Bonus edilizi residui delle compagnie di assicurazione

I *bonus* edilizi acquistati dalle compagnie di assicurazione dal **15 ottobre 2020** e detenuti al **1° marzo 2023** ammontano a **4.527,90 milioni di euro**.

Bonus edilizi residui in capo alle compagnie di assicurazione (comunicati dal 2020 al 2023)	
Tipo <i>bonus</i>	Ammontare credito (in milioni di euro)
<i>Superbonus</i>	4.219,30

Bonus edilizi residui in capo alle compagnie di assicurazione (comunicati dal 2020 al 2023)	
Tipo bonus	Ammontare credito (in milioni di euro)
<i>Bonus facciate</i>	206,90
<i>Ecobonus ordinario</i>	57,50
Ristrutturazione e altro	35,90
<i>Sismabonus ordinario</i>	8,30
Totale	4.527,90

Dei *bonus* edilizi finora effettivamente acquistati e comunicati all'Agenzia delle entrate, come detto pari a 4.527,90 milioni di euro, restano in capo alle compagnie di assicurazione le rate dei crediti d'imposta da fruire per gli anni 2023 e successivi pari a 4.270,50 milioni di euro, suddivisi come da tabella seguente:

Bonus edilizi in capo alle compagnie di assicurazione e fruiti in F24 - importi in milioni di euro					
<u>elaborazione del 1° marzo 2023</u>					
Anno rata credito	Bonus edilizi disponibili dal 2023			Bonus edilizi fruiti in F24 nel 2023	Bonus residui
	Altri bonus	Superbonus	Totale bonus		
2023	34,0	984,5	1.018,5	513,7	504,8
2024	34,8	997,4	1.032,2		1.032,2
2025	34,8	997,4	1.032,2		1.032,2
2026	34,8	993,8	1.028,6		1.028,6
2027	28,5	12,8	41,3		41,3
2028	28,4		28,4		28,4
2029	28,4		28,4		28,4
2030	28,4		28,4		28,4

Bonus edilizi in capo alle compagnie di assicurazione e fruiti in F24 - importi in milioni di euro <u>elaborazione del 1° marzo 2023</u>					
Anno rata credito	Bonus edilizi disponibili dal 2023			Bonus edilizi fruiti in F24 nel 2023	Bonus residui
	Altri bonus	Superbonus	Totale bonus		
2031	27,5		27,5		27,5
2032	5,0		5,0		5,0
Totale	284,6	3.985,9	4.270,5	513,7	3.756,8

La capacità delle banche di assorbire i *bonus* edilizi in compensazione tramite modello F24

Esaminando i dati dei modelli F24 presentati nel **2022**, risulta che le banche hanno **versato 20,4 miliardi di euro di tributi e contributi**, che possono ragionevolmente ritenersi ricorrenti²⁰ e hanno utilizzato in compensazione crediti per complessivi 3,7 miliardi di euro, altrettanto ricorrenti (diversi dai *bonus* edilizi).

Pertanto, considerando le rate dei *bonus* edilizi attualmente a disposizione delle banche per il 2023, pari a circa 9,5 miliardi di euro, risulterebbe una capacità di acquistare e assorbire in compensazione ulteriori *bonus* edilizi per circa 7,2 miliardi di euro su base annua (debiti ricorrenti 20,4, meno rata anno 2023 *bonus* edilizi 9,5, meno crediti ricorrenti 3,7).

Se si applica la stessa metodologia, per gli anni successivi le banche avrebbero una capacità di acquistare e assorbire in compensazione ulteriori *bonus* edilizi su base annua, in media, pari a:

- 6,9 miliardi di euro per ciascuno degli anni **dal 2024 al 2026** (debiti ricorrenti 20,4, meno rata media anni 2024/2026 *bonus* edilizi 9,8, meno crediti ricorrenti 3,7);
- 15 miliardi di euro per ciascuno degli anni **dal 2027 al 2031** (debiti ricorrenti 20,4, meno rata media anni 2027-2031 *bonus* edilizi, 1,7 meno crediti ricorrenti 3,7).

²⁰ Si tratta di un'ipotesi prudenziale che prende in considerazione i versamenti effettuati a titolo di contributi INPS, ritenute IRPEF, imposta di bollo assolta in modo virtuale, ritenute sui bonifici parlanti, IVA, Tobin tax (imposta sulle transazioni finanziarie) e imposta sostitutiva sui finanziamenti a medio e lungo termine, con esclusione delle imposte sui redditi, dell'IRAP e delle imposte sostitutive e ritenute sui proventi di natura finanziaria (i versamenti complessivi ammontano a circa 32,9 miliardi di euro).

La situazione sopra descritta si riferisce **all'intero sistema bancario** e, quindi, risulta **differenziata con riferimento alle singole banche**. In altri termini, è stato rilevato che alcune banche hanno sostanzialmente esaurito la "capienza fiscale" per l'acquisto di ulteriori crediti, mentre altre avrebbero ancora ampi margini per ulteriori operazioni.

Resta fermo che, per valutare la reale capacità delle banche di acquistare e assorbire ulteriori *bonus* edilizi, sarebbe necessario conoscere anche l'ammontare dei crediti relativi a **pratiche in corso di lavorazione**, che, come già detto, non è noto all'Amministrazione finanziaria.

La capacità delle compagnie di assicurazione di assorbire i *bonus* edilizi in compensazione tramite modello F24

Esaminando i dati dei modelli F24 presentati nel **2022**, risulta che le compagnie di assicurazione hanno **versato 13,5 miliardi di euro di tributi e contributi**, che possono ragionevolmente ritenersi ricorrenti²¹ e hanno utilizzato in compensazione crediti per complessivi 2,3 miliardi di euro, altrettanto ricorrenti (diversi dai *bonus* edilizi).

Pertanto, considerando le rate dei *bonus* edilizi attualmente a disposizione delle compagnie di assicurazione per il 2023, pari a 1,0 miliardi di euro (1.018,5 milioni di euro), risulterebbe una capacità di acquistare e assorbire in compensazione ulteriori *bonus* edilizi per 10,2 miliardi di euro su base annua (debiti ricorrenti 13,5, meno rata anno 2023 *bonus* edilizi 1,0, meno crediti ricorrenti 2,3).

Se si applica la stessa metodologia, per gli anni successivi le compagnie di assicurazione avrebbero una capacità di acquistare e assorbire in compensazione ulteriori *bonus* edilizi su base annua, in media, pari a:

- 10,2 miliardi di euro per ciascuno degli anni **dal 2024 al 2026** (debiti ricorrenti 13,5, meno rata media anni 2024/2026 *bonus* edilizi 1,0, meno crediti ricorrenti 2,3);

²¹ Si tratta di un'ipotesi prudenziale che prende in considerazione i versamenti effettuati a titolo di imposta sui premi delle assicurazioni, imposta sulle riserve matematiche dei rami vita, ritenute IRPEF, imposta sostitutiva sui redditi compresi nei capitali corrisposti in dipendenza di contratti di assicurazione sulla vita e di capitalizzazione, contributi INPS, imposta di bollo assolta in modo virtuale, IVA e ritenute operate sui capitali corrisposti in dipendenza di assicurazione sulla vita, con esclusione delle imposte sui redditi, dell'IRAP e delle imposte sostitutive e ritenute sui proventi di natura finanziaria (i versamenti complessivi ammontano a circa 15,2 miliardi di euro).

- 11,2 miliardi di euro per ciascuno degli anni **dal 2027 al 2031** (debiti ricorrenti 13,5, meno crediti ricorrenti 2,3), tenuto conto che, per tale periodo, le rate dei *bonus* edilizi attualmente in capo alle compagnie di assicurazione sono pressoché trascurabili.

Per completezza si evidenzia che:

- le compagnie di assicurazione che finora hanno acquistato e mantenuto in portafoglio *bonus* edilizi sono in numero contenuto rispetto al totale (15 compagnie su 120 soggetti con debiti ricorrenti annui maggiori di 5 milioni di euro) e nessuna ha esaurito la capacità di acquistare e compensare *bonus* edilizi;
- alcune compagnie di rilevanti dimensioni, pur avendone in teoria la capacità, non risultano finora aver acquistato e mantenuto in portafoglio *bonus* edilizi;
- anche le compagnie di assicurazione potrebbero cedere i *bonus* edilizi acquistati ad altri soggetti qualificati (banche, società appartenenti a gruppi bancari e intermediari finanziari).

Si sottolinea che nel settore delle assicurazioni operano anche compagnie straniere che potrebbero avere una scarsa propensione ad acquistare *bonus* edilizi. Anche in questo caso, si evidenzia, infine, che all'Amministrazione finanziaria non è noto l'ammontare delle operazioni in corso di lavorazione da parte delle assicurazioni.

* * *

Fermo restando che – come appena rilevato – l'Amministrazione finanziaria non conosce i dati delle operazioni di cessione non ancora concluse e, quindi, non ancora comunicate alla Piattaforma e considerato quanto emerso dall'analisi dei dati sopra esposti, si può ragionevolmente ritenere che le rate annuali dei crediti in capo alle imprese del settore delle costruzioni, potrebbero essere assorbite dal sistema bancario e assicurative.

5. Le frodi e le attività di contrasto e prevenzione

All'interno degli imponenti volumi di cessioni e sconti in fattura, l'attività di analisi e controllo svolta dall'Agenzia delle entrate e le indagini della Guardia di Finanza, cui si sono aggiunte le segnalazioni di cittadini vittime inconsapevoli di raggiri, ha consentito di individuare numerosi casi di irregolarità e abusi.

Questi ultimi hanno riguardato la creazione di crediti d'imposta inesistenti per importi pari a diversi miliardi che, anche dopo articolate concatenazioni di cessioni a società e persone fisiche interposte

(preordinate a ostacolare i controlli e l'accertamento delle responsabilità dei soggetti coinvolti), sono stati in parte ceduti presso intermediari finanziari o società di capitali. In alcuni casi, i proventi delle frodi sono stati trasferiti all'estero.

L'Agenzia delle entrate, al fine di monitorare il fenomeno, ha attivato un'apposita *task-force* in sinergia con la Guardia di Finanza. Grazie all'attività di analisi, l'Agenzia ha concentrato l'attenzione sulle operazioni che presentavano indici di rischio significativi, riuscendo a intercettare operazioni fraudolente. Tuttavia, la normativa previgente al decreto-legge 11 novembre 2021, n. 157, non consentiva un sistematico controllo preventivo da parte dell'Amministrazione finanziaria.

L'Agenzia ha comunicato le ipotesi di reato riscontrate alle competenti autorità giudiziarie (ad esempio, false comunicazioni alla Piattaforma per la cessione dei crediti, indebite compensazioni, violazioni in materia di riciclaggio, ecc.). Le successive indagini sono state delegate alla Guardia di Finanza che, in alcuni contesti, ha avviato anche autonome investigazioni.

L'Autorità giudiziaria, condividendo gli esiti delle analisi svolte dall'Agenzia e dalla Guardia di Finanza, ha successivamente sottoposto a sequestro i crediti ceduti nell'ambito delle frodi riscontrate, impedendo nella gran parte dei casi il loro utilizzo da parte dei soggetti cessionari, acquirenti dei relativi crediti.

La misura cautelare disposta dall'Autorità giudiziaria ha carattere impeditivo, ai sensi dell'articolo 321, comma 1, del Codice di procedura penale e richiede esclusivamente – come confermato dalla giurisprudenza di legittimità (sentenza Corte di Cassazione, III Sezione penale, 21 settembre 2022, n. 40867) – *«la prova di un legame pertinenziale tra la res ed il reato, ossia un collegamento che comprende non solo le cose sulle quali o a mezzo delle quali il reato è stato commesso o che ne costituiscono il prezzo, il prodotto o il profitto, ma anche quelle legate solo indirettamente alla fattispecie criminosa»*; per l'effetto, i crediti divengono inutilizzabili, in costanza di sequestro, da parte del cessionario.

Fino ad oggi, l'attività di analisi e controllo ha consentito all'Agenzia delle entrate e alla Guardia di Finanza **di individuare un ammontare complessivo di crediti d'imposta irregolari pari a 9 miliardi, di cui circa 3,6 miliardi oggetto di sequestro da parte dell'Autorità giudiziaria²²**. In tale ricostruzione **sono ricompresi crediti irregolari pari a 2,1 miliardi di euro che**, a seguito

²² Una parte delle operazioni fraudolente individuate riguardano anche le cessioni del c.d. *bonus* locazioni, ossia il credito d'imposta introdotto durante l'emergenza pandemica, pari a una quota del canone di locazione degli immobili ad uso non abitativo.

delle disposizioni introdotte dal decreto-legge n. 157 del 2021 (controlli preventivi sulle comunicazioni di cessione del credito), **l'amministrazione è stata posta nelle condizioni di sospendere preventivamente e scartare.**

Al riguardo, si evidenzia che, nell'ambito del contesto normativo originario, la possibilità di comportamenti fraudolenti risultava sensibilmente agevolata dall'assenza di limitazioni legate al numero delle cessioni e alla tipologia dei cessionari, dalla possibilità di cessioni parziali del credito originario, nonché dalla mancanza di un codice univoco di identificazione di ciascun credito oggetto di successiva cessione. **Tale particolare struttura normativa ammetteva, quindi, la facoltà di cedere un credito fittizio innumerevoli volte, creando una distanza anche notevole tra l'asserito beneficiario (primo cedente) e il cessionario (utilizzatore finale),** nonché di frazionarlo in più parti, che potevano essere oggetto di svariate successive cessioni a terzi, **rendendo così assai difficoltosa la ricostruzione a ritroso del flusso originario.**

Pertanto, il Legislatore è intervenuto a più riprese con contromisure e correttivi normativi dei quali, a seguire, vengono forniti i tratti principali:

- **il visto di conformità** (che attesta la sussistenza dei presupposti che danno diritto alla detrazione d'imposta) **e l'asseverazione della congruità dei prezzi** da parte di professionisti abilitati, **sono stati resi obbligatori in tutti i casi** di cessione o sconto in fattura dei *bonus* edilizi (in precedenza, tali requisiti erano richiesti solo per il *Superbonus*);
- sono stati messi a disposizione dell'Agenzia delle entrate strumenti di controllo più efficaci (**controlli preventivi**), **con meccanismi di sospensione della fruizione dei crediti** ceduti in presenza di determinati profili di rischio; in precedenza, l'Agenzia non disponeva di tutti i poteri di intervento in via preventiva, ma poteva, ai meri fini fiscali, solo agire *ex post*, con il rischio di non riuscire più a recuperare le somme indebitamente percepite;
- è stato introdotto, per i soggetti obbligati alle verifiche antiriciclaggio, il **divieto di acquisizione** del credito in caso di sussistenza dei presupposti per l'invio delle segnalazioni di operazioni sospette ovvero di impossibilità oggettiva di effettuare l'adeguata verifica della clientela;
- **sono state introdotte limitazioni al numero delle cessioni e alla platea dei potenziali cessionari;**
- **sono state vietate le cessioni parziali** dei crediti ed è stata prevista **la tracciabilità delle cessioni con l'attribuzione**, a ciascuna rata annuale in cui sono suddivisi i *bonus* edilizi, di un codice identificativo univoco che consente di ricostruire puntualmente la circolazione del

credito.

Nella tabella seguente sono riportati i crediti irregolari individuati a seguito delle indagini condotte dall'Agenzia delle entrate e dalla Guardia di Finanza.

Crediti irregolari individuati		Importi (in miliardi di euro)
Distinzione dei crediti oggetto di indagini svolte o in corso	1. Oggetto di sequestri preventivi riferiti prevalentemente a crediti generati ante d.l. 157/2021	3,7
	2. Sospesi e scartati dall'Agenzia sulla piattaforma "cessione crediti" – procedura art. 122 bis D.L. 34/2020	2,1
	3. Indagini in corso (stima): crediti individuati come fittizi e oggetto di valutazione da parte dell'amministrazione	3,2
TOTALE		9,0

Di seguito viene fornito il dettaglio della distribuzione percentuale delle irregolarità tra le varie tipologie di *bonus*:

Tipologia <i>bonus</i>	% statistica crediti irregolari
<i>Bonus</i> facciate	58%
<i>Ecobonus</i> ordinario	23%
<i>Sismabonus</i> ordinario	8%
<i>Superbonus</i>	5%
<i>Bonus</i> locazioni	5%
Ristrutturazione	1%

* * *

Grazie per l'attenzione.



Luxembourg,
ESTAT/D-2/LA/GB/DI/pr D(2023)

Mr Gian Carlo Blangiardo
President
Istituto Nazionale di Statistica
Via Cesare Balbo, 16
I - 00184 Roma
Italia

Subject: Statistical recording of Superbonus 110%, Transition 4.0 and other renovation tax credits

Reference: Exchange of emails in March 2020;
Final findings of the EDP dialogue visit to Italy of 7-8 January 2021¹;
Follow-up of Action Point 25 issued during the 2021 EDP dialogue visit;
Eurostat advice letter on the recording of Bonus 110% and Transition 4.0 of June 2021²;
Main conclusions and action points of the EDP dialogue visit to Italy of 15-16 November 2022 and 16 December 2022³;
Follow-up of Action Points 22 and 23 issued during the 2022 EDP dialogue visit;
Your request for formal advice of 24 February 2023;

Dear Mr Blangiardo,

Following bilateral discussions in the EDP dialogue visits to Italy on 7-8 January 2021 and on 16 December 2022, subsequent bilateral exchanges, the discussions held in the videoconference of 6 February 2023 as well as your official request for advice dated 24 February 2023, Eurostat would like to provide you with its opinion regarding the statistical

¹ [93eadd4a-6203-5090-3685-000eae93da90 \(europa.eu\)](#)

² [6af5ce6b-9994-39c5-368e-7729d8164deb \(europa.eu\)](#)

³ Findings of the EDP visit to Italy not yet published.

recording of the Superbonus 110% tax credit, other renovation tax credits and the Transition 4.0 tax credit.

1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS PROVIDED

The issue for which an opinion is being provided is the statistical recording of some existing tax credits in Italy, namely: the Superbonus 110%, other renovation tax credits and the Transition 4.0 tax credit, according to the updated Manual on Government Deficit and Debt (MGDD 2022) published on Eurostat's website on 1 February 2023⁴.

1.1. Documentation provided

Prior to the EDP dialogue visit in January 2021, ISTAT provided Eurostat with a note on the statistical recording of some new tax credits introduced in the context of the COVID-19 pandemic, including a description of Superbonus 110%. The issue was followed up in an exchange of views relating to action point 25 agreed in the visit. In May 2021, the Italian statistical authorities requested an official methodological advice on the recording of Bonus 110% (also known as Superbonus 110%) and Transition 4.0 tax credits, which was published by Eurostat in June 2021.

The statistical recording of Superbonus 110% and Transition 4.0 tax credits was then re-discussed in the EDP dialogue visit in December 2022, based on the forthcoming new version of the MGDD. During the meeting, it was decided to organise a follow-up video conference, where details of the statistical treatment were to be discussed (action point 22 of the 2022 visit) and, for this purpose, the Italian statistical authorities provided a detailed analysis of the tax credits in question (action point 23).

Following bilateral discussions and clarifications provided during the 2021 and 2022 EDP visits and during the video conference of 6 February 2023, as well as in your formal request for advice of 24 February 2023, Eurostat is now providing its opinion in this letter.

1.2. Description of the cases

In the context of the COVID-19 crisis, the Italian government introduced a number of measures to mitigate the economic impact on households and businesses, including several new tax credits.

Superbonus 110%

The Superbonus 110% tax credit is extended to beneficiaries that carry out energy efficiency measures on their residential buildings starting from 1 July 2020. The tax credit is (currently) equal to 110% of the costs incurred, in particular, for specific investments aimed at enhancing energy efficiency ("Ecobonus") and at anti-seismic interventions ("Sismabonus"). For all the interventions, compliance with the technical requirements and the corresponding appropriateness of the expenses incurred must be certified by qualified technicians ("asseverazione"). Only in the case of energy efficiency interventions ("Ecobonus"), a copy of the "asseverazione" must be submitted to the National Agency for New technologies, energy

⁴ [Manual on Government deficit and debt - Implementation of ESA 2010 \(europa.eu\)](https://european-council.europa.eu/media/1000000/1/Manual_on_Government_deficit_and_debt_-_Implementation_of_ESA_2010.pdf)

and sustainable economic development (ENEA) that provides an identification code. The “*asseverazione*” must be sent to ENEA within 90 days of the completion of the works.

The Superbonus 110% tax credit may be claimed in the following ways:

- 1) By an original beneficiary as a deduction (“*detrazione*”) from the tax liability in the tax return over five years in equal annual instalments and always within the limits of the beneficiary's tax liability of each year. In this case, it can be used starting from the first submission of the tax return in the year following the one when the expenditure was incurred, i.e., from September/November T+1 if expenditure was incurred in year T.
- 2) As an alternative to the direct use, the beneficiary can opt for the discount on the invoice (partial or total) or for the transfer of the tax credit for an amount equal to the deduction due and/or not yet used. Suppliers and/or transferees use the tax credit exclusively to offset their fiscal debt and under the same conditions set for the original beneficiary. This option has to be communicated by the beneficiary of the deduction to the Revenue Agency by 16 March of the year following the one in which the expenditure was incurred. The transferred tax credit can be used for offsetting the total fiscal debt starting from the year following the one in which the expenditure was incurred and always after the 10th day of the month following the proper submission of the communication to the Revenue Agency.

Eurostat notes that, while the original beneficiary can flexibly designate the part of the Superbonus 110% tax credit that they would sell and the part that they would retain, the choice however had to be made via a notification to the Revenue Agency (web based application) by 16 March T+1 (or by November T+1 at a fee), and after that time is then irrevocable – such that some tax credits may eventually be lost if the original taxpayer miscalculated their own fiscal space.

Superbonus 110% is currently recorded as a non-payable tax credit.

EDP dialogue visit in 2021

Eurostat discussed the statistical recording of Superbonus 110% in the EDP dialogue visit in 2021. In the national accounts, the Italian statistical authorities recorded Superbonus 110% as a non-payable tax credit. Eurostat considered that, due to the multiple transferability of the tax credit, the likelihood that the tax credit would be paid by the government to any of the beneficiaries/transferees was very high and, therefore, considered that Superbonus 110% should possibly be recorded as a payable tax credit, although an interpretation of ESA 2010 would also be necessary. The Italian statistical authorities informed Eurostat that they considered that the transferability did not constitute an unconditional claim of the beneficiary, according to existing methodological rules. Eurostat therefore agreed that, provisionally, Superbonus 110% could remain classified as a non-payable tax credit until the issue would be discussed at the EDP Statistics Working Group and finally settled, in the context of a new edition of the MGDD.

Eurostat's advice on the recording of Superbonus 110% published in June 2021

In May 2021, the Italian statistical authorities requested an official methodological advice on the recording of Bonus 110% (also known as Superbonus 110%) and Transition 4.0 tax credits. Eurostat reiterated in its official letter that Superbonus 110% could be seen as a borderline case and that further investigations were needed on this issue, also at European level. In view of the

forthcoming MGDD update, Eurostat intended to introduce specific methodological guidance that would cover the cases of transferable and deferrable tax credits. The advice letter was published on Eurostat's website in June 2021.

Other renovation tax credits

The other tax credits related to renovation measures, such as *Bonus facciate*, *Ecobonus e fotovoltaico*, *Ristrutturazione patrimonio edilizio*, etc., are similar in nature to Superbonus 110% but provide for different refunding rates on the expenditure incurred by a beneficiary (36%, 40%, 50%, 65%, 90% etc.). As in the case of Superbonus 110%, these tax credits can be used in the following ways:

- 1) By the original beneficiary as a reduction in the tax liability within the income tax limit in a year,
- 2) By a transferee, when the tax credit is transferred or used as a discount on the invoice by the original beneficiary, to offset the overall fiscal debt.

Generally, all other renovation tax credits can be used in ten annual instalments of an equal amount.

The renovation tax credits, other than Superbonus 110%, are currently recorded as non-payable tax credits in the Italian national accounts. These tax credits were discussed for the first time in specific detail with the Italian statistical authorities in the video conference of 6 February 2023.

Transition 4.0 tax credit

In Italy, the Transition 4.0 plan aims at supporting the digital transformation of Italian enterprises by incentivising private investment to support digitalization. It is addressed to enhance basic and applied research, facilitate technology transfer and promote the digital transformation of manufacturing processes as well as investment in intangible assets.

In this context, in 2020 a new tax credit scheme was introduced that allowed companies to obtain a tax credit for the investments in tangible and intangible assets, software, R&D&I initiatives and specific training activities. The size of the tax credit depends on the type of assets purchased and is proportional to the amount of the expenditure incurred (e.g., from 5% to 70%).

Eligible companies might use the tax credit to offset their total fiscal debt (i.e., covering other tax obligations and social contributions) in three or five equal instalments, depending on the type of assets. In 2020, when firstly introduced, the tax credit could be used from the year following the one in which the assets became operational (for assets other than 4.0) or interconnected with the production process (for the so-called assets 4.0). Starting from 2022, it can be used in the same year when the asset becomes operational or interconnected. Transfer of these tax credits is not allowed.

If the amount of the tax credit that can be used in the year exceeds the total tax liability of the beneficiary in the year (including any fiscal obligations if they act as a withholding agent), the exceeding amount cannot be reimbursed to the beneficiary but can nonetheless be used for offsetting the fiscal debt in the following years. It should be noted that the three or five years rule does not by itself limit the number of years in which the tax credit can be used, but is instead used to calculate the maximum amount of tax credit that might be used in a given year.

The Transition 4.0 tax credit might be therefore used for an unlimited number of years until fully exhausted.

Eurostat's advice on the recording of Transition 4.0 tax credit published in June 2021

In June 2021, as previously mentioned, Eurostat published a methodological advice on the recording of two tax credits, including the Transition 4.0 one. In its letter, Eurostat confirmed the view of ISTAT that, for all the reasons described in the analysis section below, the Transition 4.0 tax credit should be considered as a payable tax credit.

2. METHODOLOGICAL ANALYSIS AND CLARIFICATION

2.1 Applicable accounting rules

The applicable accounting rules are the following:

- ESA 2010 chapter 4, paragraph 4.81 and chapter 20, paragraphs 20.167-20.168
- The 2022 Manual on Government Deficit and Debt (MGDD), Recording of tax credits in section 2.2.2.4.

2.2 Availability of national accounting analysis

The Italian statistical authorities provided Eurostat with analytical notes and additional clarifications on the recording of the tax credits in question, during 2021-2022, as described in point 1.1 above.

In their most recent analysis, the Italian statistical authorities have considered that, taking into account the additional clarifications included in the new 2022 version of the MGDD, the Superbonus 110% should be reclassified as a payable tax credit since 2020, when it was introduced. As a result, the benefit provided to the beneficiaries should be recorded as a government expenditure at the time the tax credit is earned, that is, at the time when the investment is made, and not as a reduction in tax revenue at the time when the tax credit is used. The government expenditure should however be adjusted by those amounts deemed to be lost, based on past evidence.

According to the proposal of the Italian statistical authorities, the other renovation tax credits, except *Bonus facciate*, should remain classified as non-payable tax credits, mainly due to the non-negligible amounts already lost, based on past evidence, or expected to be lost in future years. As regards *Bonus facciate*, the Italian statistical authorities considered that the beneficiaries overwhelmingly opted for transferring the tax credits (they could be used in the ten following years) rather than using it directly, in order to decrease the risk of losing them. For this reason, they proposed to record *Bonus facciate* as a payable tax credit, similarly to Superbonus 110%.

Concerning the Transition 4.0 tax credit, the Italian statistical authorities considered that the tax credit should remain recorded as a payable tax credit. However, due to the non-availability of early estimates and due to the risk of potential large revisions, they proposed to record the government expenditure on the basis of information from tax returns, which are currently considered the only reliable approximation of accrual amounts, i.e., in the year of tax return rather than in the year of the expenditure, therefore with a one year delay compared with the accrual principle.

2.3 Methodological analysis and clarification by Eurostat

The distinction between payable and non-payable tax credits and, accordingly, their recording in the national accounts, is defined by ESA 2010 (as well as SNA 2008), following an amendment to SNA 1993 and ESA 1995.

In particular, ESA 20.167 reads: *“Tax credits can be payable, in the sense that any amount of the credit that exceeds the tax liability will be paid to the beneficiary. In contrast, some tax credits are non-payable, and described as ‘wastable’. They are limited to the size of the tax liability.”* The treatment in the national accounts (ESA paragraph 20.168) then depends on the classification of the tax credit: either as a non-payable tax credit (which reduces the government tax revenue at the time of use) or as a payable tax credit (recorded as government expenditure).

ESA paragraph 4.81 (second indent, notably) suggests that this distinction primarily aims at avoiding distorting national accounts by inappropriately recording government spending interventions as a reduction of government revenue, for the sole reason that these interventions are transiting/settled via the tax system, although they indeed have the nature of an expenditure. The criteria selected by ESA 2010 to distinguish between expenditure and reduction in revenue is ‘wastability’.

The ‘non-wastability’/‘wastability’ delineation was commonly understood as based on whether the tax authorities would refund / not refund beneficiaries when the tax credit exceeded their tax liability, often an income tax liability. Eurostat however noted the emergence of new types of tax credits, seemingly wastable but where the likelihood of waste (therefore of gain) for government would be very low, either because the tax credit can be offset against the total tax liabilities, or can be transferrable, or can be indefinitely deferrable.

Thus, the updated 2022 MGDD chapter on the recording of tax credits provides elements to better distinguish between tax credits for which a government expenditure/liability should be recognized (payable/non-wastable tax credits) and those that are to be recorded as a reduction in government tax revenue (non-payable/wastable tax credits).

The MGDD part 2.2.2.4.3 paragraph 38 reads: *“When the tax credit can be transferred to any party (with the exception of related parties), the likelihood that it will be lost is very low and it is thus to be considered as a payable tax credit, unless there is evidence that a non-negligible amount will be wasted”*.

According to the MGDD part 2.2.2.4.3 paragraphs 48 and 49, the possibility to offset the total fiscal debt towards tax authorities, rather than a specific tax (often the income tax), i.e., including other tax liabilities (e.g., VAT) and/or social contributions, considerably increases the opportunities for taxpayers to actually use the tax credit and thus the likelihood that the government will eventually suffer from an outflow of resources. Accordingly, such tax credits should be considered as payable tax credits.

Similarly, tax credits that can be deferrable indefinitely are likely to be used in full, especially if their use can be preserved in case of corporate takeover or acquisition or if they are refunded upon bankruptcy. In all these cases, such tax credits would again be deemed to be payable, unless there were good grounds to suggest that non-negligible amounts may be however wasted.

By the same token, if a tax credit can be transferred to third parties, it is deemed to be a payable tax credit and should be considered as a claim of the taxpayer and a liability of the government, because it is sufficiently certain that it will be used by any of the parties benefiting from the transfer. Indeed, if the taxpayer's claim is transferrable (*de facto* sellable), the tax credit should be recorded in the national accounts as an asset (claim of the taxpayer holding the tax credit), implying recording a related counterpart liability of the government (AF.8L/F.8L, not part of Maastricht debt).

Superbonus 110%

As previously described, Superbonus 110% is provided to individuals or associations of individuals that carry out energy efficiency measures on their residential buildings. The size of the tax credit depends on the volume of the work undertaken for energy efficiency or anti-seismic interventions. Currently, the amount of the tax credit is equal to 110% of the costs incurred, which constitutes a considerable incentive, and explains the very large amount of tax credits earned in 2021 and 2022.

Superbonus 110% is a tax credit of the kind described (in the MGDD 2.2.2.4.3 paragraphs 30-32) as a borderline case between the payable and non-payable tax credit. Although the amount of the tax credit exceeding the tax liability is not directly refunded in cash to the original beneficiary (ESA paragraph 20.167: "*Tax credits can be payable, in the sense that any amount of the credit that exceeds the tax liability will be paid to the beneficiary*"), other elements point to the fact that the tax credit granted will most likely be used at some point either by the original beneficiary or by another entity, such that the government will incur a loss of resources for the amount granted. While the loss of cash resources by the government might not be immediate, there is sufficient certainty that the government will eventually lose cash in relation to this tax credit, because either the original beneficiary or the final one will likely use it to reduce or settle their tax liability.

Superbonus 110% can be used by an original beneficiary as a reduction of their tax liability over five years, in annual instalments of equal amounts, but always within the limits of the beneficiary's tax liability in each year. Any amount exceeding the size of the tax liability of a given year cannot be reimbursed to the beneficiary and, therefore, will be lost. To prevent wasting the tax credit, the original beneficiary might alternatively opt for a discount on the invoice (partial or total) or for the transfer of the credit to a third party. The transferee can use the tax credit in a similar way as the original beneficiary with, however, the considerable difference that they can use it to offset their **total** tax liability (and not only their **income tax** liability) or can transfer the tax credit further. In any case, the original beneficiary or the first transferee have a strong motivation to either directly use the tax credit (by settling their own tax liability with this tax credit) or otherwise sell it (in whole or in part) to a third party, if there is a significant risk of losing the tax credit or some part of it.

Since its introduction in 2020, Superbonus 110% has been undergoing frequent legislative changes impacting the conditions under which it might be transferred. In particular, the multiple transferability feature introduced in the original scheme in 2020 was thereafter limited to a certain number of transfers in 2022. According to the legislation currently in force, Superbonus 110% might be transferred to the supplier of the service (i.e., construction companies) or to so-called 'qualified' entities, i.e., financial institutions and insurance companies. Both transferees can further transfer it, either once or twice.

The transferees (suppliers of the service but also financial institutions and insurance companies) can use the tax credit to offset their total fiscal debt, although under the same time conditions as defined for the original beneficiary.

As a result, the MGDD criteria on ‘non-wastability’ are clearly met in the case of Superbonus 110%.

Eurostat’s attention was raised by the fact that, in recent months, the beneficiaries of Superbonus 110% seemed to experience difficulties in transferring the tax credit to other beneficiaries, including financial institutions, which temporarily stopped accepting further tax credits. This situation seemed to imply that sizeable amounts of existing tax credits could be wasted in the future.

However, the Italian statistical authorities informed Eurostat that, while the market has been disrupted because some financial institutions seemed to have temporarily reached their own fiscal capacity for absorbing such tax credits and/or because of some uncertainty related to certain recent court rulings, the Italian government was actively looking for a solution to stimulate the transfers of Superbonus 110%. In addition, the Italian statistical authorities also informed Eurostat that, as banks can on-sell to other interested parties (e.g. non-financial companies), ‘fiscal space’ was sufficient for banks to restart purchasing Superbonus 110%, and that cases of fraud were very limited in size. It was therefore considered by the Italian statistical authorities that the disruption of the market was only temporary and did not imply that sizeable amounts of tax credit should eventually be wasted.

Nevertheless, Eurostat took note that some amounts of Superbonus 110% might still be lost due to various reasons (e.g., insufficient tax liabilities of original beneficiaries, fraudulent claims), though these amounts are currently not considered by the Italian statistical authorities as being significant.

On the basis of the arguments above, Eurostat can agree with the proposal of the Italian statistical authorities that Superbonus 110% should be recorded as a payable tax credit. In the national accounts, the government expenditure and the related liability (AF.8L/F.8L) is to be recorded at the time when the tax credit is earned, i.e., when the expenditure for renovation measures was incurred, because it refers to the time when the economic conditions for obtaining the right to use the tax credit in future were fulfilled. Taking into account the (non-sizeable) amounts of the tax credit expected to be lost in the future, the government expenditure (and liability) recorded for the amount of the tax credit earned by beneficiaries might be adjusted by some small amounts expected to be lost, based on the information from past experience.

As regards the availability of data sources, Eurostat took note that information on Superbonus 110% tax credits earned and used is generally timely for the calculation of the expenditure to be recorded. First, taxpayers must notify within 90 days (for the “Ecobonus”) the expenses incurred certified by qualified technicians (“*asseverazione*”) to ENEA, which provides an identification code. Second, taxpayers must notify their use options by 16 March T+1 through the Revenue Agency application using this identification code. Third, the so-called Form F.24 (“*compensazioni fiscali*”) provides monthly information on the amount of the Superbonus 110% transferred or discounted that were effectively used in the month to offset fiscal debt (“*in compensazione*”). Fourth, the tax return of the original beneficiary (available with a delay) will

report the tax credits earned that are under the option of direct use, as well as tax credit effectively used in a period.

Recording in 2020 and 2021

In the Italian government accounts, Superbonus 110% is provisionally recorded as a non-payable tax credit due to reasons described in point 1.2 above, in line with Eurostat's provisional advice provided on this issue and published in June 2021. In the April 2023 EDP notification, the Italian statistical authorities will reclassify Superbonus 110% to a payable tax credit, following their proposal and as confirmed by the advice provided in this letter.

Concerning the years 2020 and 2021, the Italian statistical authorities will record government expenditure for the amounts of tax credits earned adjusted for the amount expected to be lost, according to past evidence (communication on transfer to the Revenue Agency, tax declarations, etc.).

Recording in 2022

For the year 2022, the Italian statistical authorities will similarly record government expenditure for the amounts of tax credits earned in 2022, using the provisional information on transferred tax credits received from the Revenue Agency. The expenditure will also be adjusted for the expected future losses, on the basis of past evidence. As concerns the tax credits used directly by original beneficiaries, in the absence of data, an estimate will be included in the government expenditure. Eurostat took also note that the data for 2022 on transferred tax credits might be revised in the October 2023 EDP notification, taking into account communications about the transferred Superbonus 110% received by the Revenue Agency after the April 2023 EDP reporting. It is understood however that the amounts to be revised are not expected to be significant.

Recording in 2023 and recent legislative changes

Eurostat took note of a recent decree, approved by the Italian Council of Ministers on 16 February 2023, that eliminates the possibility for taxpayers to transfer the new tax credits originated after the date of the decree as well as the possibility of using them as a discount in the service provider's invoices. Pending the final approval of the decree by the Italian Parliament, the recent changes imply that Superbonus 110% could be used, from now on, only directly by the original beneficiary, in order to reduce their tax liability during a number of years.

Although in its letter of 24 February 2023 ISTAT did not present a proposal for the recording of the Superbonus 110% earned in 2023, Eurostat acknowledges that the decree might change the nature of Superbonus 110% and considers that tax credits originated after the date when the decree comes into force could be seen as non-payable, given the high likelihood that a sizeable part of the tax credit might be lost. However, before making a final decision on the recording of Superbonus 110% valid after the date of the decree, a number of elements will have to be confirmed by the Italian statistical authorities: (i) the exact date when the legislation in force will change the nature of Superbonus 110%, (ii) the final version of the legislative changes concerning Superbonus 110%, after being adopted by the Italian Parliament and (iii) other possible events which could impact the Superbonus, as being debated in Italy at present, that could have an impact on the government deficit and/or debt according to national accounts rules. A decision on the payable or non-payable nature of the Superbonus 110% in 2023 will

in any case have to be made by ISTAT and Eurostat before 30 June 2023, at which time ISTAT will have to notify to Eurostat the government deficit and debt figures for the first quarter of 2023.

Other renovation tax credits

These tax credits (e.g. *Bonus facciate*, *Ecobonus e fotovoltaico*, *Ristrutturazione patrimonio edilizio*, etc.) function in a way similar to Superbonus 110%. The beneficiaries may obtain tax credits for expenditure incurred on renovation measures, depending on the type of expenditure. Similarly to Superbonus 110%, these tax credits can be used by an original beneficiary either as a reduction in the tax liability within the income tax limit in a year, or as a discount on the invoice submitted by the service provider. Alternatively, these tax credits might be transferred, and, in this case, the transferee might use them to offset their overall fiscal debt. In all cases, the beneficiary might use the tax credit in ten annual instalments of an equal amount.

Eurostat took note that the main features of other renovation tax credits are very similar to Superbonus 110%, with the main difference being in the share of expenditure eligible for receiving the tax credit (36%, 40%, 50%, 65%, 90% etc.). Eurostat however considers that a difference in the share of expenditures eligible for obtaining the tax credits would not have an impact on the statistical recording.

In their analysis, the Italian statistical authorities pointed at sizeable amounts of other renovation tax credits that might be potentially lost, mainly in case of direct use by the original beneficiary. Eurostat took note that, in future, limitations to the possibility of transferring the tax credits and further restrictions are expected. Consequently, direct use of the tax credits is currently expected to prevail over the option to transfer the other renovation tax credits.

However, this would not apply to *Bonus facciate*, for which the share of direct use by an original beneficiary decreased from 60% in 2021 to 5% in 2022. The beneficiaries were, most likely, motivated to transfer it than to have it wasted due to an insufficient tax liability. This tax credit will be abolished in 2023. The transferees have the possibility to use the *Bonus facciate* for a reduction of their total fiscal debt in the following ten years. On this basis, it might be considered that, similarly to Superbonus 110%, *Bonus facciate* should be recorded as a payable tax credit because it is very likely that the tax credit will be paid.

For the remaining renovation tax credits, Eurostat took note that, based on the information provided by the Italian statistical authorities, the amounts wasted were sizeable in previous years. Due to the foreseen limitations, described above, it is expected that also in the future the amounts wasted could be significant. Eurostat therefore considers that, following the proposal of the Italian statistical authorities and taking into account the information provided to Eurostat on this issue, other renovation tax credits, with the exception of *Bonus facciate*, can at this stage continue to be recorded as non-payable tax credits, that is, reducing the government tax revenue at time of use.

Transition 4.0 tax credit

Taxpayers investing in tangible and intangible assets, software, R&D&I initiatives and specific training activities might benefit from this Transition 4.0 tax credit, which might be used to offset the total fiscal debt in three or five equal instalments (e.g., also including VAT or social contributions). The Transition 4.0 tax credit is not transferable.

According to the MGDD paragraph 49, *“By extending the scope of tax debts eligible for settlement by way of use of tax credits, e.g., from the underlying tax liability up to the total fiscal debt of the taxpayer, the government is providing support to companies. Such tax credits should be considered as payable tax credits, implying the recording of government expenditure for the amount of the tax credits earned”*.

The Transition 4.0 tax credit might be used, in addition, for an unlimited number of years, until fully exhausted. According to the Italian statistical authorities, the condition set of using it in three or five equal instalments (depending on the type of assets), determines the maximum amount usable in an annual instalment, *de facto* representing an annual cap, and does not actually limit the number of years in which a credit can be used. The MGDD in paragraph 40 reads: *“Cases of tax credits, for which the use can be indefinitely deferred are generally deemed payable, unless there is evidence that the tax credit is expected to be wasted for non-negligible amounts. Such evidence might be available, for example, from the own accounts of the beneficiary or from the experience”*.

The possibility granted to a taxpayer to reduce their overall debt position over an unlimited period of time considerably increases the likelihood that the tax credit will eventually be paid by the government and therefore will not be lost. For these reasons, the Transition 4.0 tax credit should be recorded in the national accounts as a payable tax credit. Eurostat thus confirms the current recording of this tax credit by the Italian statistical authorities as payable, consistently with the previous Eurostat’s advice provided in June 2021.

Time of recording

The MGDD in paragraph 33 reads: *“Thus, the general guiding principle is to record a government expenditure (and F.89 liability) for those tax credit schemes where the likelihood that the tax credit will be used, one way or another, by the beneficiary, is very high and where the claim on government is established with sufficient certainty and for a sufficiently determined value. In such case, a payable tax credit is deemed to exist, and a government expenditure (and liability) should be recorded for the amount earned by a taxpayer”*.

Taking into account the features of the Transition 4.0 tax credit described above, there is a high likelihood that the all the tax credit will be used. Concerning the time of recording of the government expenditure relating to the tax credit earned, the normal recording would be at the time of investment.

However, the Italian statistical authorities informed Eurostat that reliable data sources which would determine the amount to be recorded with sufficient certainty, are commonly available only with a delay of two years. Furthermore, according to the Italian statistical authorities, budget forecasting has not proved reliable. As such, an estimation of the amount of government expenditure using preliminary and unreliable data sources and forecasting would imply a risk of significant revisions later on.

Considering the risk of frequent and sizeable revisions to the first and even the second yearly EDP notifications, stemming from the unreliability of potential estimates due to non-availability of timely data sources, Eurostat exceptionally agrees, based on the information provided to Eurostat on this issue and following the proposal of the Italian statistical authorities, that the government expenditure relating to the Transition 4.0 tax credit can be recorded (for the amounts of the tax credit earned) at the time when the tax return is available, which would

be the best proxy of the time when the beneficiary's claim (and the government obligation) will be established with sufficient certainty.

3. CONCLUSIONS

Taking into account the elements above, Eurostat considers that Superbonus 110% (for the years 2020 to 2022) and *Bonus facciate* are to be recorded in government accounts as payable tax credits, with an expenditure at the time of investment by the beneficiary. Other renovation tax credits (e.g. *Ecobonus e fotovoltaico*, *Ristrutturazione patrimonio edilizio*, etc.), based on the current information provided by the Italian statistical authorities, can remain recorded as non-payable tax credits. Concerning the Transition 4.0 tax credit, Eurostat considers (consistently with its previous advice provided in June 2021) that this tax credit should remain classified as a payable tax credit and can, by exception, be recorded at the time of tax return.

Eurostat would also like to draw the attention of the Italian statistical authorities on the fact that tax credits deemed non-payable according to the MGDD could be reclassified as payable later on, in case of legislative changes, for instance allowing their transferability, potentially impacting the deficit at the time of legislative change for the whole amounts reclassified.

4. PROCEDURE

This view of Eurostat is based on the information provided by the Italian 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 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 is therefore publishing all official methodological advice (ex-ante and ex-post) given to Member States on its website.

Yours sincerely,

(e-Signed)

Luca Ascoli
Director



Luxembourg,
ESTAT/D-2/LA/VG/DI/pr D(2023)

Mr Francesco Maria Chelli
Acting President
Istituto Nazionale di Statistica
Via Cesare Balbo, 16
I - 00184 Roma
Italia

Subject: Statistical recording of Superbonus according to new legislation adopted in 2023

Reference: Methodological advice on the statistical recording of Superbonus 110%, Transition 4.0 and other renovation tax credits of February 2023¹;
Your note on the new legislation on Superbonus 110% of 28 June 2023 and additional clarifications of 9 July 2023 and of 10 August 2023.

Dear Mr Chelli,

Following the bilateral exchanges on the subject, Eurostat would like to provide you with its opinion on the statistical recording of the Superbonus tax credit taking into account the legislative changes adopted in the beginning of 2023.

1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS PROVIDED

The issue for which an opinion is being provided is the statistical recording of the Superbonus tax credit, after Decree Law No.11 of 16 February 2023 (converted into Law No.38 of 11 April 2023 that took effect on 12 April 2023) introduced changes to the previous mechanism of this tax credit. This ex-post advice is therefore closely linked to the previous methodological advice provided by Eurostat in February 2023 mentioned above. The latter clarified the statistical recording of Superbonus 110% according to the legislation valid at the time, based on Decree Law No.34 of 19 May 2020 (*'Decreto Rilancio'*) converted to Law No.77 of 17 July 2020, and following amendments.

1.1. Documentation provided

In June 2023, ISTAT provided Eurostat with a note describing the legislative changes introduced by the new Law and proposed two approaches for the recording of the 2023 Superbonus in government accounts. ISTAT also explained the implications as regards the availability of data. Following questions raised by Eurostat, the Italian statistical authorities provided further details on the amended scheme in July and in August 2023.

¹ [Advice letter on Superbonus February 2023](#)

In addition to the above-mentioned additional details and information, Eurostat also bases its opinion on the documentation provided by the Italian statistical authorities that is referred to in the February 2023 methodological advice on the statistical recording of Superbonus 110%.

1.2. Description of the case

1.2.1. Initial features of the Superbonus 110% and related advice

Initial features of the Superbonus 110%

The features of Superbonus 110% tax credit were described in detail in the methodological advice provided in February 2023. They are summarised below.

The Italian government introduced the said tax credit in 2020 with the aim, amongst other, to mitigate the economic impact on households and businesses of the COVID-19 pandemic. The beneficiaries that carried out energy efficiency measures on their residential buildings could obtain a tax credit equal to 110% of the costs incurred. Superbonus 110% could be used in several ways.

First, it could be used by the original beneficiary, as a deduction (*‘detrazione’*) from the tax liability in the tax return over four or five years, in equal annual instalments, and always within the limits of the beneficiary's tax liability of each year.

Second, as an alternative, the beneficiary could opt either for a discount on the invoice (partial or total) on the energy efficiency costs undertaken or for the transfer of the tax credit for amounts not yet used. The legislation has undergone several changes since 2020 in terms of deadlines, percentages of expenses eligible for the benefit, type of beneficiaries and numbers of possible transfers. Depending on the applicable legislation, the spectrum of potential transferees varied from not specified third parties (2020) to, exclusively, suppliers and financial institutions and insurance companies (2022). Suppliers and/or other transferees could use the tax credit to offset their total fiscal debt (i.e., including VAT and other taxes), but under the same time conditions set for the original beneficiary.

Methodological considerations

The ESA 2010 distinguishes tax credits depending on whether they are payable or not payable, based on whether they cannot or can be wasted. ESA 20.167 and 20.168 provide the references for the classification of tax credits in national accounts: either as a non-payable tax credit (which reduces government tax revenue at time the tax credit is used) or as a payable tax credit (recorded as government expenditure at time the tax credit is earned), with implications not only on the ESA measure of total revenue and expenditure but also, importantly, on the timing of the impact on the general government deficit (B.9).

The 2022 MGDD chapter on the recording of tax credits provides elements to better distinguish between tax credits for which a government expenditure/liability should be recognized (payable/non-wastable tax credits) and those that are to be recorded as a reduction in government tax revenue (non-payable/wastable tax credits).

Although ESA paragraph 20.167 states that “*Tax credits can be payable, in the sense that any amount of the credit that exceeds the tax liability will be paid to the beneficiary*”, it was agreed that tax credit could also be deemed payable in an ESA 2010 sense, even if never to be paid

out to the initial beneficiary, in those circumstances where the tax credit granted will most likely be used at some point by the original beneficiary or by a transferee, either because the tax credit can be transferred to a significant number of counterparts or can be settled against one's total tax bill.

The MGDD part 2.2.2.4.3 paragraph 38 provides the following guidance on the transferability: *“When the tax credit can be transferred to any party (with the exception of related parties), the likelihood that it will be lost is very low and it is thus to be considered as a payable tax credit, unless there is evidence that a non-negligible amount will be wasted”*. The MGDD part 2.2.2.4.3 in paragraph 49 additionally describes the case of a tax credit that is used to reduce the total fiscal debt: *“By extending the scope of tax debts eligible for settlement by way of use of tax credits, e.g., from the underlying tax liability up to the total fiscal debt of the taxpayer, the government is providing support to companies. Such tax credits should be considered as payable tax credits, implying the recording of government expenditure for the amount of the tax credits earned”*.

Initial advice on Superbonus 110% (February 2023)

Eurostat agreed with ISTAT, based on the information provided by ISTAT, that the Superbonus 110% transferability feature as well as the possibility to deduct the tax credit from the whole fiscal debt should normally imply, overall, a very low expectation that non-negligible amounts could potentially be wasted (i.e., high likelihood that the tax credit will eventually be settled by government). Taking into account all these elements, Eurostat accepted ISTAT's proposal that the Superbonus 110% was to be recorded as a payable tax credit in government accounts for the years 2020-2022.

1.2.2. Superbonus modifications and new request for advice

The main changes introduced by the new legislation in 2023 concern the following:

- i. A reduction in the amount to be obtained as a tax credit from 110% to 90% of the cost incurred. An exception remained, however, for single-family villas and single dwellings, as those were still eligible for the 110% benefit until 30 September 2023, if at least 30% of the work was completed by 30 September 2022.
- ii. For the new tax credits, that originated after 17 February 2023, the possibility to transfer the tax credit or to use the invoice discount was seemingly eliminated altogether. Accordingly, these new tax credits can only be used by the original beneficiary to reduce its income tax liability within the limit of the income tax.
- iii. An extension of the deadline (to 30 November 2023) to communicate to the Revenue Agency the decision to transfer the Superbonus earned on the costs incurred in 2022 (*‘remissione in bonis’*) was nonetheless granted. This option applies only to transfers to banks, financial intermediaries, companies belonging to a banking group or insurance companies. For using the possibility of the late communication to the Revenue Agency, the beneficiary has to pay a fee, however.
- iv. In case that tax credits were transferred before 31 March 2023, a transferee can use this tax credit in ten equal annual instalments, instead of four or five allowed by the previous legislation.
- v. In the case of Superbonus 110% earned on costs incurred in 2022 that will directly be used by the original beneficiary, the Law introduced a possibility to also use the tax credit

in ten equal annual instalments, instead of four. This option might be used in the tax return for the year 2023 submitted in 2024 under the condition that the instalment earned for the year 2022 is not already included in the relevant tax return.

- vi. Certain financial institutions that exceeded their tax capacity and will therefore be unable to use the acquired tax credits earned on expenditures incurred until December 2022, have a possibility starting from 2028 to use excess tax credits to subscribe to the issue of Treasury Bonds (BTP) with a maturity of not less than ten years. The subscription is however capped at 10% of the annual excess portion of the tax credits.
- vii. The purchase of tax credits by public administration was prohibited.

Even though, by the new legislation, the possibility to transfer tax credits was generally abolished, several exceptions were nevertheless introduced to this rule, in particular:

- i. The option remained to transfer the tax credit or to use it as an invoice discount for certain well-defined cases². In all these cases, the transferees can still use the Superbonus to offset their total fiscal debt.
- ii. A transition period was introduced during which the tax credit transfers are still allowed in relation to works that were in progress and were officially notified (*‘comunicazione di inizio lavori asseverata’* - CILA) before 16 February 2023. In the case of interventions carried out by condominiums, the possibility to transfer the tax credits is allowed even in absence of a CILA, if the resolution approving the execution of works has been taken by the assembly before 16 February 2023. In both cases, however, works have to be concluded by 31 December 2023. Also in this case, the transferees can use Superbonus to offset their total fiscal debt.

2. METHODOLOGICAL ANALYSIS AND CLARIFICATION

2.1 *Applicable accounting rules*

The applicable accounting rules are the following:

- ESA 2010 chapter 4, paragraph 4.81 and chapter 20, paragraphs 20.167-20.168
- The 2022 Manual on Government Deficit and Debt (MGDD), Recording of tax credits in section 2.2.2.4.

2.2 *Availability of national accounting analysis*

In their analysis on the recording of the 2023 Superbonus, the Italian statistical authorities have considered that the new legislation has substantially altered the features of this tax credit and, therefore, according to them, it is now undoubtedly to be considered non-payable in nature (beyond the exceptions provided).

They take however also into account the two overlapping 2023 pieces of legislation and, in particular, the fact that the expenditures incurred in 2023 may refer to both 2022 provisions

² These cases are the following: building renovation projects involving autonomous social housing institutions (IACP) and indivisible-ownership cooperatives, interventions on buildings damaged by seismic events occurred after 1 April 2009, interventions on buildings located in the Marche Region damaged by weather events occurring after 15 September 2022 for which a state of emergency has been declared, demolition and reconstruction work in seismic zone for which the application for the acquisition of the permit has been submitted by 16 February 2023 and interventions related to architectural barriers.

(when Superbonus was transferable and could be used by transferees to offset the fiscal debt), as well as to 2023 provisions (when, in general, transfers are not allowed and the tax credit can be used only to reduce the income tax liability of the original beneficiary). In ISTAT's note, it is also considered that a number of exceptions introduced to the general principle of the non-transferability do not allow for a straightforward interpretation of the measure.

Based on these arguments, the Italian statistical authorities proposed in their note two recording approaches. The first option proposed to differentiate between tax credits only to be used by the original beneficiary and tax credits that could still be transferred due to the exceptions. Accordingly, all tax credits transferred and uploaded in a specific platform would be considered as referring to the previous legislation (i.e., tax credit equal to 110% of the costs incurred and the feature of transferability), although earned on 2023 expenditures, and thus to be recorded as payable tax credits, whereas the tax credits submitted in 2024 tax declarations (related to expenses incurred in 2023) and used to reduce the income tax liability of an original beneficiary would be considered as referring to the new legislation (90% of the costs incurred and abolished transferability) and thus would be recorded as non-payable tax credits.

The second option proposed in the note (being more convenient from the implementation and data availability point of view) would consider all tax credits earned on expenditures incurred in 2023 as payable and all tax credits earned on expenditures incurred in 2024 (when all currently existing exemptions will presumably not be applicable anymore) as non-payable.

2.3 Methodological analysis and clarification by Eurostat

The Superbonus 110% valid until the February 2023 Decree Law was recorded as a payable tax credit in the Italian government accounts. The parameters applicable at that time (transferability, deferability, possibility of reducing the total fiscal debt and negligible amounts expected to be wasted, according to information provided by ISTAT) were considered as sufficient indicators that there was a very high likelihood that any of the parties (original beneficiary or a transferee) will benefit from the entirety of the tax credit at a certain point of time so that it will not be lost.

Decree Law No.11 of 16 February 2023 converted into Law No.38 of 11 April 2023 eliminated, in general, the possibility for taxpayers to transfer the new tax credits originated after 17 February 2023 as well as the possibility of using them as an invoice discount. By this amendment, the use of the tax credit was narrowed and, currently, the new Superbonus can only be used for reducing the income tax liability of an original beneficiary within its limit. The amount of the tax credit exceeding the income tax liability cannot be paid to the beneficiary or used in other way (e.g., transferred as it was previously the case) and, therefore, the likelihood for it to be lost would seem to become significant.

The new Law however introduced a number of exceptions to the abolition of transfers, so it can be considered that the transferability of Superbonus in 2023 was not totally or mainly eliminated but only partly rather limited. The issue remains to evaluate whether the tax credits earned on expenditures incurred in 2023 relate, fully or mostly, to the previous Superbonus (payable tax credit) or to the new one that might have some features of a non-payable tax credit, mainly due to restrictions on its transferability and on the scope of its use.

First, it is still possible to apply the transfer/invoice discount, without any restrictions, in certain cases specified by legislation (e.g., autonomous social housing institutions, interventions on buildings damaged by seismic events, interventions on buildings located in the Marche Region,

etc.). The transferred tax credits can be further used to offset the total fiscal debt in four or ten annual instalments. Accordingly, the Superbonus earned in this case is fully consistent with the definition of payable tax credit.

Second, transfers are still allowed, on a provisional basis, in the cases where the renovation works already started and they were appropriately notified to authorities before 16 February 2023. Consequently, provisions of the previous legislation (the possibility to offset the total fiscal debt and to defer the use of the tax credit to four or ten years) are still applicable. Considering that the works have to be concluded in this particular case by 31 December 2023 at the latest, it implies that the tax credit valid according to the old legislation can still be earned on expenditures incurred in 2023 and it can be, under these conditions, considered as a payable tax credit.

According to the Italian statistical authorities, reliable data on the size of tax credits earned following the new and under the old legislation are not currently available. It can however be assumed that, after restricting the favourable conditions in February 2023, the tax credit earned on 2023 expenditures and covered by the exceptions allowing the transferability (i.e., a payable tax credit) would prevail in 2023 over the tax credit earned by original beneficiaries and usable only for reduction of the income tax liability (accepting thus a higher risk of losing it, if not used). According to the Italian statistical authorities, the dynamic of the tax credit transfers currently observed tends to signal that most of the 2023 tax credits processed continue to be covered by the old legislation. Hence, their proposal to continue to record the tax credits earned in 2023 as payable.

Concerning the amounts of tax credits that might be wasted, the Italian statistical authorities consider that the recent dynamics of used and transferred credits do not signal a higher probability of wasting the credits with respect to previous years, and that the amounts of the tax credit expected to be lost in the future on tax credits earned in 2023 should be considered as negligible.

Eurostat agrees with the Italian statistical authorities that the interpretation of the new Superbonus is not straightforward due to a number of exceptions allowed by the legislation and the practical difficulties to identify data on the tax credit earned according to the new and according to the old legislation. Nevertheless, it seems that a considerable part of Superbonus earned on 2023 expenditures can be assigned to the previous legislation.

Thus, based on the information provided by ISTAT, Eurostat can agree with the proposal of the Italian statistical authorities to record the Superbonus earned on the expenditures incurred in 2023 as a payable tax credit, i.e., as government expenditures with related liabilities (AF.8L/F.8L) in 2023.

As regards the treatment of Superbonus in 2024, Eurostat considers that the statistical recording of the tax credit will have to be re-examined at the latest before the end of the first half of 2024, also with regard to how the situation with currently stranded tax credits will evolve and with regard to the interventions that the Italian government will undertake in order to solve this problem.

In this context, it should be noted that significant concerns emerged at occasions, in the course of 2023, relating to significant difficulties in tax credit transfers (occasionally blocked/suspended), originating either from certain legal uncertainties (e.g., implication of cases of rejected tax credits by tax authorities) or from concerns that banks and other potential

purchasers may have reached their fiscal capacity. The issue apparently concerned all sorts of tax credits originated to date, and not only those originated in 2023. These developments raised the expectation at that time that the tax credits eventually wasted may not turn out negligible after all, contrary to what was stated by the Italian statistical authorities until now. Eurostat understands that ISTAT is currently confident that, due to measures taken so far and to new measures which will be taken by government, these problems will soon be resolved, and will not end-up in significant wasted amounts of tax credits. Eurostat raises the attention of ISTAT on the fact that, according to rules, if the amount of tax credits which will be wasted will not be considered as nil or negligible, this might result in a reclassification of the tax credits issued since 2020 as non-payable, as a payable nature of tax credits must necessarily imply that no or very negligible amounts will be lost. As specified above, the situation in this respect will be reassessed at the latest before the end of the first half of 2024 and Eurostat invites ISTAT to provide by that time the most precise and updated information on this issue in order to take a final decision, including the measures that will be presented by government in this respect.

3. CONCLUSIONS

Taking into account the elements above, Eurostat considers that the Superbonus amended by Decree Law No.11 of 16 February 2023 converted into Law No.38 of 11 April 2023, earned in 2023, is for the moment to be recorded in government accounts as a payable tax credit in 2023.

Regarding the recording of Superbonus earned in 2024, Eurostat requests ISTAT to re-examine the issue at the latest before the end of the first half of 2024, taking into account the development with stranded tax credits and the interventions that the government might undertake in order to solve the problem.

Eurostat stresses that both this advice as well as the initial February 2023 advice are based on the assumption that the amounts of tax credits that will eventually be lost, will turn out negligible (for 2020-2023 tax credits).

4. PROCEDURE

This view of Eurostat is based on the information provided by the Italian authorities. If this information turns out to be incomplete, or the implementation of the operation differs in significant ways from the information presented, Eurostat reserves the right to reconsider its view on this advice and possibly on the initial advice as well.

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 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 is therefore publishing all official methodological advice (ex-ante and ex-post) given to Member States on its website.

Yours sincerely,

(e-Signed)
Luca Ascoli
Director



CORTE DEI CONTI

SEZIONI RIUNITE IN SEDE DI CONTROLLO

AUDIZIONE NELL'AMBITO DELL'INDAGINE CONOSCITIVA SUGLI
STRUMENTI DI INCENTIVAZIONE FISCALE CON PARTICOLARE
RIFERIMENTO AI CREDITI D'IMPOSTA

COMMISSIONE 6^A FINANZE E TESORO DEL SENATO DELLA REPUBBLICA



MARZO 2023



CORTE DEI CONTI

AUDIZIONE NELL'AMBITO DELL'INDAGINE CONOSCITIVA SUGLI
STRUMENTI DI INCENTIVAZIONE FISCALE CON PARTICOLARE
RIFERIMENTO AI CREDITI D'IMPOSTA

MARZO 2023

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PREMESSA

La Corte dei conti è chiamata ad esprimersi nell'ambito dell'indagine conoscitiva sugli strumenti di incentivazione fiscale con particolare riferimento ai crediti d'imposta.

Si tratta di un tema complesso, caratterizzato da una lunga serie di interventi normativi, che nel corso degli anni hanno profondamente dilatato l'area delle misure agevolative. Un tema di cui la Corte ha avuto modo di occuparsi più volte nell'ambito dell'attività di controllo¹ e da ultimo, in sede di audizione presso le Commissioni bilancio riunite della Camera dei deputati e del Senato della Repubblica sul disegno di legge di bilancio 2023², ove si sono esaminati, in particolare, i contributi previsti a favore delle imprese per compensare l'aumento dei costi energetici.

Nel testo predisposto ci si sofferma sui fenomeni e sulle criticità emerse più di recente in relazione ad alcuni bonus e in particolare al cd. *Superbonus*, in un quadro normativo ulteriormente mutato con la emanazione del decreto-legge 16 febbraio 2023, n.11 (A.C. 889), che è intervenuto, in particolare, sulla possibilità di cessione dei crediti di imposta maturati.

LE DIVERSE TIPOLOGIE DI TAX EXPENDITURE E IL FENOMENO CRESCENTE DEI CREDITI D'IMPOSTA

Il Rapporto sulle spese fiscali allegato alla legge di bilancio per il 2023 censisce 626 unità agevolative, per un impegno finanziario di oltre 82 miliardi. Rispetto al precedente Rapporto si registra un aumento in termini di numerosità delle misure (da 592 a 626), ma

¹ Tra gli altri nel Rapporto 2021 sul coordinamento della finanza pubblica (par. 10 Le agevolazioni fiscali, pag. 97 e segg.) sono state esaminate le dimensioni complessive del fenomeno delle *tax expenditure*, le diverse tipologie di agevolazioni e sono stati svolti alcuni approfondimenti sulle spese fiscali relative agli immobili; nella Relazione in materia di crediti di imposta per ricerca e sviluppo – Sezione centrale di controllo sulla gestione delle amministrazioni dello Stato, Deliberazione 5 marzo 2021, n. 4/2021/G. Sull'esame degli effetti patologici sulla gestione legati alle misure di incentivazione, che hanno indotto il Governo all'emanazione del decreto-legge 11 novembre 2021, n. 157, recante "Misure urgenti per il contrasto alle frodi nel settore delle agevolazioni fiscali ed economiche", finalizzato a contrastare i comportamenti fraudolenti nell'utilizzo dei benefici fiscali si è tornati in occasione dell'audizione sul bilancio di previsione dello Stato per l'anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024 (A.S. 2488. In tale occasione si è avuto modo di rilevare come "l'azione del legislatore volta a rinnovare con alcuni correttivi le agevolazioni edilizie, nel quadro di un solido sistema di vigilanza e di controllo dei comportamenti fraudolenti, oltre a rendere più certe le valutazioni sulle dimensioni finanziarie delle misure in termini di impatti sulla finanza pubblica, potrebbe permettere di programmare eventuali nuovi e diversi strumenti di intervento, volti a coadiuvare politiche più incisive di riduzione delle emissioni di CO2". Ancora elementi conoscitivi sulle spese fiscali sono stati forniti nell'ambito della Relazione sul Rendiconto generale dello Stato 2021, nella quale in particolare sono stati riportati elementi sui bonus edilizi e sull'ammontare delle compensazioni utilizzate fino ai primi mesi del 2022.

² Corte dei conti - Sezioni Riunite in sede di controllo - Audizione sul bilancio di previsione dello Stato per l'anno finanziario 2023 e bilancio pluriennale per il triennio 2023-2025 (A.C. 643).

una sostanziale invarianza degli importi: l'effetto finanziario previsto per il 2023 è pressoché uguale a quello censito per il 2022.

Le scelte metodologiche che guidano la redazione del Rapporto necessariamente portano ad includere/escludere elementi che dagli osservatori e studiosi possono essere considerati via via superflui o assenti. Si ricorda che l'approccio scelto dalla Commissione è *benchmark* legale o giuridico: si utilizza la legislazione tributaria effettivamente in vigore per definire il *benchmark* e si mira a identificare gli aspetti che si discostano dalla definizione generale o "normale". Si tratta dunque di enucleare i provvedimenti che costituiscono un elemento strutturale del tributo, da quelli che rappresentano un allontanamento o un beneficio per una platea ristretta di beneficiari. In questo quadro sono stati esclusi, quindi, quegli elementi che rappresentano: a) elementi costitutivi del disegno della progressività (come ad esempio le detrazioni per lavoro dipendente) e del rispetto dei principi costituzionali, b) scelte consolidate sulle basi imponibili o sulle aliquote (come il regime sostitutivo delle attività finanziarie o l'articolazione delle aliquote IVA su un livello di aliquota ridotta e super-ridotta)³, c) vincoli che derivano da Trattati internazionali (ad esempio le esenzioni e l'aliquota zero sulle esportazioni dell'IVA).

Nonostante il considerevole apporto informativo del Rapporto, che si arricchisce di anno in anno di nuove tavole, una lettura diacronica e "congiunturale" di questi dati va presa con estrema cautela, sia perché la normativa considerata si ferma al primo semestre dell'anno precedente a quello a cui gli effetti finanziari si riferiscono, sia perché i criteri di registrazione possono non essere sempre omogenei.

Ad esempio, in alcuni casi i provvedimenti complessi vengono condensati in un'unica spesa fiscale, sommando caratteristiche ed effetti finanziari di tutte le eventuali componenti, comprese le proroghe, mentre in altri casi le diverse componenti di un unico intervento vengono trattate separatamente. Questo, dunque, può influire sull'identificazione del "numero" delle spese fiscali⁴. Inoltre, gli impatti finanziari non sono presenti per un numero molto elevato di norme (quasi il 50 per cento) e dunque il riferimento al totale delle risorse, che dal punto di vista metodologico deve essere comunque considerato con cautela, può essere sottostimato.

La riduzione dell'onere di imposta a una particolare categoria di beneficiari o per un campo di incentivazione specifico può essere attuata con diversi strumenti, tra cui si ricordano deduzioni, detrazioni, esenzioni, riduzioni di aliquota e regimi forfettari o sostitutivi, per rimanere alle categorie principali.

A titolo di esempio si riportano le principali tipologie di spese fiscali che hanno effetti finanziari nel 2023 per natura dell'agevolazione e per tipologia di norma di introduzione, considerando sia il Rapporto sulle Spese fiscali del 2022, sia la legge di bilancio per il 2023. Si può notare come la maggior parte sia stata introdotta con legislazione ordinaria e nella sessione di bilancio, come dovrebbe essere previsto nel caso dell'Irpef, ma poco meno di un quarto è stato introdotto con decretazione di urgenza, strumento che determina spesso la necessità che sulla normativa iniziale di riferimento si intervenga con correzioni a più riprese. In particolare, 42 crediti di imposta sugli 89 censiti risultano introdotti con decreto-legge, fenomeno

³ La scelta di non includere il mancato gettito che emerge dall'adozione delle aliquote IVA ridotte e super-ridotte è una di quelle più controverse, anche per l'ingente ammontare delle risorse in gioco, che si aggira intorno a 40 miliardi di euro. Va comunque evidenziato che al primo semestre 2022 solo un paese UE, la Danimarca, adotta una sola aliquota, mentre la maggior parte dei paesi adotta almeno 3 aliquote.

⁴ A titolo di esempio si può notare che nell'ultima edizione del Rapporto vengono mantenuti provvedimenti per cui dovrebbero essere cessati gli effetti finanziari ma di cui si valuta probabile la loro proroga.

questo particolarmente rilevante negli ultimi 3 anni, quando risultano essere stati introdotti con tale modalità 39 dei 42 interventi complessivamente adottati.

SPESE FISCALI CON EFFETTI FINANZIARI NEL 2023 PER TIPOLOGIA E NORMATIVA DI INTRODUZIONE
(NUMERO)

	Legge Finanziaria /Bilancio	Decreto Legge	Decreto Legislativo	Legge ordinaria	Altra tipologia	Totale
Detrazioni	22	23	7	26	-	78
Crediti di imposta e bonus	33	42	5	9	-	89
Regimi forfetari, sostitutivi e speciali	45	22	8	40	-	115
Deduzioni, Esclusioni, Esenzioni, Riduzioni di aliquota, altro	90	70	38	186	3	387
Total	190	157	58	261	3	669

Fonte: Rapporto sulle spese fiscali per il 2022 e Legge Bilancio 2023

Per quanto riguarda le risorse complessive, aggiungendo al totale degli effetti finanziari per il 2023 identificato dal Rapporto sulle spese fiscali (82 miliardi) gli effetti dei principali provvedimenti introdotti con la legge di bilancio per il 2023, si arriva a 94 miliardi, di cui il 65 per cento corrisponde a misure in vigore da oltre 5 anni. Detrazioni e crediti di imposta impegnano metà delle risorse stimate, ma nel caso delle detrazioni corrispondono in massima parte a una normativa entrata in vigore da più di 5 anni, l'opposto per i crediti di imposta.

SPESE FISCALI: EFFETTI FINANZIARI PER IL 2023 (MILIONI)

	In vigore da meno di 5 anni	In vigore da oltre 5 anni	Totale
Detrazioni	- 2.284	- 25.029	- 27.313
Crediti di imposta e bonus	- 19.337	- 2.022	- 21.359
Regimi forfetari, sostitutivi e speciali	843	- 10.775	- 9.933
Deduzioni, Esclusioni, Esenzioni, Riduzioni di aliquota, altro	- 11.502	- 24.316	- 35.818
Totale	- 32.280	- 62.142	- 94.423

Fonte: Rapporto sulle spese fiscali per il 2022 e Legge Bilancio 2023

Negli ultimi anni, e in particolare dal 2019, si è fatto ampio ricorso alla categoria dei crediti di imposta le cui caratteristiche sono in parte sovrapponibili a quelle delle detrazioni. In entrambi i casi si tratta di strumenti che riducono i versamenti di imposta, ma non influiscono sul calcolo della base imponibile e dell'imposta lorda. Le detrazioni influiscono sul calcolo dell'imposta netta o dovuta di uno specifico tributo (dando luogo a compensazioni verticali), mentre i crediti di imposta che rilevano per le spese fiscali costituiscono sostanzialmente una modalità di estinzione del debito di imposta. Una detrazione, in via generale, è riferibile a una specifica imposta e non dà luogo a rimborso, per cui può essere usufruita solo fino a concorrenza con l'imposta lorda (capienza) e non può essere riportata a nuovo. Il credito di imposta, pur non potendo anch'esso essere

riportato a nuovo, può invece in alcuni casi dare diritto a rimborso e può essere portato in compensazione di diversi obblighi tributari e contributivi (compensazione orizzontale), allargando così l'ambito della capienza. Inoltre, non concorre alla formazione del reddito. Nell'attuale regime esistono tuttavia diversi limiti, quantitativi e procedurali, per la compensazione orizzontale dei crediti di imposta.

Solo una parte delle possibili tipologie di crediti di imposta è riconducibile alle agevolazioni o spese fiscali. Distinguendo le tre principali accezioni del termine credito di imposta – credito con l'erario per versamenti eccedenti il dovuto, crediti volti a eliminare le doppie imposizioni e crediti per sussidio o incentivazione – è solo con riferimento alla terza categoria che si possono individuare delle agevolazioni fiscali. In questo caso i crediti di imposta, detti anche crediti di imposta in senso stretto, hanno caratteri contigui a quelli delle detrazioni fiscali. Le detrazioni sono generalmente calcolate come percentuale di una specifica spesa (di solito con tetti), mentre alcuni crediti d'imposta possono prevedere meccanismi di determinazione più complicati, come ad esempio quelli di tipo "incrementale". In alcuni casi il credito di imposta può essere condizionato alla presentazione di una domanda di accesso all'agevolazione (a volte un *click day*) e in questo caso è frequente anche la presenza di un limite all'impegno delle risorse per la finalità selezionata⁵.

Anche se di non facile attuazione pratica, è in linea di principio possibile distinguere il caso di detrazioni e crediti di imposta a carattere di *sussidio*, che prevedono uno sconto fiscale legato a particolari settori, situazioni o spese meritevoli di protezione, dalla tipologia *incentivante*, dove si può rintracciare una premialità in ragione di scelte discrezionali fatte dai soggetti che concorrono al raggiungimento di obiettivi collettivi, come ad esempio gli investimenti in ricerca o il taglio delle emissioni climalteranti.

Il carattere di sussidio si riscontra più frequentemente nel caso delle detrazioni, in particolare per spese personali a valere sull'Irpef. In questo gruppo si possono ricomprendere anche i crediti di imposta di sostegno congiunturale, utilizzati sia nel periodo Covid, sia come sostegno alle imprese per l'aumento dei prezzi dell'energia.

Alla finalità incentivante concorrono sia detrazioni sia crediti di imposta. Tra i più rilevanti di quest'ultimo gruppo si possono ricordare quelli per le assunzioni di personale, per favorire la ricerca e lo sviluppo, l'acquisto di beni strumentali, e gli investimenti legati all'efficienza energetica e all'uso delle fonti energetiche rinnovabili.

Un caso particolare è l'incentivazione ibrida che consente la possibilità di trasformare detrazioni in sconto sul corrispettivo (cd. *sconto in fattura*) o in credito d'imposta cedibile, possibilità particolarmente rilevante nel caso degli incentivi legati

⁵ Esempi di crediti di imposta erogabili fino a concorrenza con il limite di spesa fissato sono il credito di imposta per investimenti in pubblicità, per l'acquisto di carta dei giornali, ma anche per l'acquisto dei purificatori d'acqua e dei mezzi di trasporto non inquinanti del 2020.

all'efficientamento energetico degli edifici⁶. In particolare lo sconto in fattura (per un importo massimo pari al corrispettivo dovuto) diventa il corrispettivo dei soggetti che hanno effettuato gli interventi, recuperato sotto forma di credito d'imposta, che può essere poi ceduto ad altri soggetti⁷; nel secondo caso la detrazione si trasforma in credito d'imposta di pari ammontare nel momento in cui viene ceduta dal soggetto beneficiario ad altri soggetti, compresi istituti di credito e altri intermediari finanziari.

La possibilità di cessione della detrazione, con una sua trasformazione in credito di imposta è stata introdotta dal comma 74 dell'art. 1 della legge n. 208/2015. Tale trasformazione era inizialmente prevista per le spese di riqualificazione energetica di parti condominiali solo per i soggetti impossibilitati a sfruttare la detrazione (ovvero che ricadevano nella *no-tax area*). Si trattava dunque di una fattispecie molto specifica volta a favorire la partecipazione agli incentivi di riqualificazione di condomini. Il decreto n. 34/2020 ha esteso questa possibilità a tutti i contribuenti – a prescindere da limiti di reddito – e ne ha allargato l'ambito a tutti gli incentivi legati all'adeguamento del patrimonio edilizio.

Tale caso di incentivazione ibrida, nel quadro di un ricorso massiccio ai crediti di imposta degli ultimi anni, si spiega con la rilevanza che è stata data al tema della incapienza delle detrazioni. Si tratta di un tema sensibile, perché collegato alla necessità di coordinare il sistema di prelievo con il sistema dei trasferimenti a favore delle famiglie meno abbienti, che è emerso anche in relazione alla *just transition strategy*, ovvero una visione inclusiva della politica energetica e ambientale che tenga conto dell'impatto distributivo avverso delle politiche di transizione energetica.

Il tema dell'impossibilità per i redditi bassi di poter fruire delle detrazioni è stato sollevato in particolare in relazione all'Irpef. Da più parti, negli anni, si è aperta una riflessione sulla opportunità che tali soggetti possano ottenere – per la parte non fruita – un'erogazione monetaria. In alcuni casi, questa possibilità è stata assimilata al concetto di imposta negativa sul reddito, dal quale tuttavia si differenzia notevolmente, dato che l'imposta negativa – nella sua forma pura – corrisponde ad un sussidio pari al prodotto tra l'aliquota di imposta del primo scaglione e la differenza tra il minimo esente e il reddito effettivo (nel caso, appunto, che il reddito sia inferiore al minimo individuato). Il rimborso delle detrazioni incapienti, di per sé, ha una finalità condivisibile; tuttavia, rischia di complicare il sistema sia in ragione del differente ruolo che le detrazioni assumono all'interno del sistema di imposizione, sia per il fatto che un effetto maggiore (e più trasparente) potrebbe essere ottenuto utilizzando espliciti trasferimenti monetari.

⁶ I settori più importanti per cui è possibile maturare lo strumento ibrido detrazioni/crediti di imposta sono: gli interventi di recupero del patrimonio edilizio, di efficienza energetica, di adozione di misure antisismiche, di recupero o restauro della facciata degli edifici esistenti (cd. *Bonus Facciate*), di installazione di impianti fotovoltaici, di installazione di colonnine per la ricarica dei veicoli elettrici, di superamento ed eliminazione di barriere architettoniche.

⁷ Tali crediti d'imposta cedibili sono utilizzati in compensazione con F24 sulla base delle rate residue di detrazione non fruita, e con la stessa ripartizione in quote annuali con la quale sarebbe stata utilizzata la detrazione. La quota di credito d'imposta non utilizzata nell'anno non può essere usufruita negli anni successivi e non può essere richiesta a rimborso. Inizialmente il contribuente aveva la possibilità di una sola cessione del credito d'imposta, poi le norme hanno permesso di effettuarne fino a sei (d.l. n. 17/2022 e poi d.l. n. 176/2022).

PREGI E DIFETTI DEI CREDITI DI IMPOSTA (IN SENSO PROPRIO)

Costituiscono pregi dei crediti di imposta in senso stretto – cioè quelli che configurano una agevolazione – i bassi costi di transazione della procedura, data la quasi generale automaticità del procedimento, e i tempi in via di principio certi quanto alla fruizione dell’agevolazione. La fruizione del credito di imposta corrisponde, in via generale, al recupero effettivo delle risorse, ma questo recupero incontra il limite della capienza – che è solo ampliata rispetto al caso della detrazione ma non illimitata - laddove non sia espressamente previsto il diritto di rimborso. Inoltre, come già anticipato, esistono crediti di imposta che possono essere fruiti fino al limite di un ammontare di risorse assegnato, superato il quale il sussidio o l’incentivo non può essere erogato. Dal lato dell’Amministrazione, oltre alla ricordata diminuzione dei costi amministrativi e di gestione, tra i pregi dei crediti di imposta da utilizzare in compensazione va ricordata la possibilità di monitorare “tempestivamente” l’andamento delle risorse complessive impegnate attraverso i flussi informativi dei versamenti effettuati mediante F24.

Tra i difetti dell’utilizzo di detrazioni e crediti di imposta, vanno segnalati l’automaticità, la limitata selettività, l’ampio spazio per comportamenti scorretti difficili da rilevare con tempestività e la connessa maggiore difficoltà dei controlli. Tale ultimo aspetto ha costituito e costituisce tuttora uno dei maggiori punti di debolezza delle agevolazioni erogate sotto forma di credito d’imposta, anche se alcune delle frodi più gravi collegate ai bonus edilizi sono state individuate e parte degli importi illecitamente conseguiti sono stati o saranno recuperati.

L’utilizzo di strumenti automatici attraverso i crediti di imposta, può inoltre rendere più difficile stimare *ex ante* le risorse pubbliche impiegate nella specifica politica e fa ritenere consigliabile l’apposizione di un limite alle somme utilizzabili⁸.

Con particolare riguardo agli incentivi alle imprese, la crescente integrazione dei mercati reali e finanziari e l’ampliarsi della disciplina degli Aiuti di Stato hanno messo in crisi sin dagli anni novanta il tradizionale disegno della politica industriale. Il perseguimento, almeno teorico, dell’idea di un mercato europeo unico e competitivo ha fatto sì che le agevolazioni sul lato fiscale assumessero crescente importanza come meccanismi incentivanti per spingere al rafforzamento e all’ammodernamento del capitale produttivo o dell’attività di ricerca.

⁸ Nel caso del credito di imposta legato alla legge n. 388/2000, ad esempio, il successo non preventivato dall’incentivo determinò il passaggio nel 2003 da uno strumento totalmente automatico senza limiti di spesa alla necessità di presentare una istanza per poter ottenere il credito, in modo da accettare solo le domande che rientrassero in uno stanziamento predeterminato.

La rinuncia alla selettività ha comportato in molti casi anche la rinuncia a una attenta modulazione degli interventi. Se si eccettua l'ipotesi degli incentivi per gli investimenti alle imprese, in cui le aliquote dei crediti di imposta sono frequentemente fissate in base alla dimensione di impresa, le altre forme di incentivazione adottano raramente una parametrizzazione esplicita, anche nel caso dell'efficienza energetica, dove la scelta tra diverse tecnologie e materiali non produce risultati omogenei.

Nel caso di incentivi agli immobili, ad esempio, è stato recentemente inserito un requisito legato al reddito familiare, che sembra voler spostare il focus dell'incentivo dall'immobile, indipendentemente dalla situazione sociodemografica e reddituale di chi effettua l'investimento, alla famiglia con riferimento al reddito equivalente. Si tratta dei requisiti introdotti per la possibilità di usufruire del *Superbonus* per le unità abitative monofamiliari: il decreto "Aiuti-Quater" (d.l. n. 176/2022) ha previsto che, per usufruire dell'incentivo, gli immobili devono essere classificati come abitazione principale e il contribuente deve avere un reddito di riferimento familiare equivalente non superiore a 15 mila euro⁹.

I comportamenti illeciti sono legati in primo luogo all'automaticità dell'incentivo che può essere richiesto e ottenuto senza aver sostenuto effettivamente la spesa prevista, ma anche alla circolazione – a tratti illimitata - e non adeguatamente monitorata dei crediti d'imposta. L'emergere di crediti di imposta "indebiti" ha, dunque, costretto il legislatore ad intervenire con una serie di correttivi per limitare le frodi e gli episodi di riciclaggio di denaro, tra cui le misure introdotte con il già ricordato d.l. n. 157 del 2021.

Le complicazioni e gli oneri procedurali che ne sono seguiti rischiano di far scomparire il pregio iniziale dell'automaticità. In particolare, il *plafond* di compensazione orizzontale è stato più volte variato – tuttora molto basso per i crediti IVA e invece innalzato per i crediti incentivanti fino a 2 milioni di euro - così come sono stati variati più volte il limite al numero di cessioni dei crediti e la ripartizione tra cedenti e cessionari della responsabilità di illeciti nel caso specifico del *Superbonus*.

Ulteriori ricadute negative derivano, almeno nel caso delle detrazioni di ammontare percentualmente più elevato, dall'indebolimento del ruolo di controllo del committente, stante la sua limitata partecipazione alla spesa, dalla non selettività degli interventi e, non ultimo, dall'andamento dei prezzi.

È evidente, dunque, la necessità di sviluppare un sistema di controlli, sia preventivi sia successivi, idoneo a prevenire le frodi e a salvaguardare l'effettiva utilità e qualità degli

⁹ Il reddito equivalente, che non può essere superiore a 15 mila euro annui, viene calcolato non in base all'ISEE ma escludendo completamente la componente patrimoniale e con una ennesima scala di equivalenza (o quoziente familiare) *ad hoc*, che non corrisponde né a quella dell'ISEE, né a quella del Reddito di Cittadinanza, né a quella utilizzata dall'Istat per la determinazione delle soglie di povertà.

interventi e la compatibilità degli stessi per la finanza pubblica, visto che rimane elevato il rischio di comportamenti elusivi di regole difficili da individuare senza adeguati strumenti di presidio tecnico-amministrativo.

LE DETRAZIONI DELL'ULTIMO BIENNIO E L'INGORGHI DEI CREDITI DI IMPOSTA

Il crescente ricorso allo strumento del credito di imposta ha determinato nell'ultimo anno un vero e proprio "ingorgo", ovvero un ammontare molto elevato di crediti rispetto alla capienza generale del sistema.

Per rimanere agli strumenti più recenti e rilevanti per la posizione di imprese e famiglie tra il 2022 e il prossimo biennio si può far riferimento sia a quei crediti di imposta di puro sostegno, ovvero di aiuto a fronteggiare i costi dell'aumento dei prezzi dell'energia, sia alla massiccia trasformazione delle detrazioni in crediti di imposta legati agli interventi edilizi per l'efficientamento energetico.

Il regime dei crediti di imposta per aiutare le imprese a fronteggiare l'aumento dei costi delle materie prime energetiche (d.l. n. 4/2022) ha visto lo stanziamento di risorse per oltre trenta miliardi ed ha subito diverse modifiche in relazione alle tipologie di impresa (inizialmente solo le cd. energivore e gasivore), alle aliquote e alle scadenze con cui possono essere portati in compensazione i crediti di imposta maturati.

Per attutire gli impatti derivanti dall'impennata dei prezzi energetici è stato stanziato un contributo straordinario, sotto forma di credito d'imposta, parametrato alla spesa sostenuta per l'acquisto di elettricità e gas tra il 2022 e il primo trimestre 2023, a condizione che il prezzo di riferimento unitario abbia subito un incremento del costo superiore al 30 per cento relativo al medesimo periodo dell'anno 2019. Le aliquote in vigore per il credito di imposta del primo trimestre 2023 sono del 45 per cento per gli acquisti di gas naturale di tutte le imprese e gli acquisti di elettricità delle cosiddette imprese energivore e del 35 per cento per gli acquisti di elettricità di tutte le altre imprese. Un contributo straordinario, sempre sotto forma di credito di imposta, è stato previsto per il settore agricolo e della pesca con un'aliquota pari al 20 per cento della spesa sostenuta.

STANZIAMENTI PER CREDITI DI IMPOSTA PER ACQUISTI DI PRODOTTI ENERGETICI (MILIONI DI EURO)

	2022	2023
Crediti di imposta per acquisti gas e elettricità	20.265	9.847
- <i>Primo Semestre</i>	4.259	9.847
- <i>Secondo Semestre</i>	16.006	

Fonte: Decreti Legge e legge di bilancio per il 2023

Se anche gli ingenti stanziamenti hanno forse lievemente sovrastimato i costi energetici sostenuti dalle imprese, la spendibilità di questi crediti potrebbe essere stata meno facile del previsto, sia in termini di capienza delle imprese presso cui maturava il diritto al credito, sia in relazione alle possibilità di individuare soggetti cessionari. Testimonianza ne è il continuo allungamento delle scadenze per la fruizione dei crediti - che avevano un calendario inizialmente molto stringente - e l'allargamento del perimetro di cessione a terzi.

La legge n. 6/2023, di conversione del d.l. "Aiuti-Quater", ha allungato al 30 settembre 2023 il termine di compensazione di tutti i crediti di imposta maturati nella seconda metà del 2022 e nel primo semestre 2023, mentre per i crediti maturati nel primo semestre la scadenza per la compensazione è rimasta a fine 2022. Il limite temporale è stato allungato anche per il regime dei crediti di imposta maturati per l'acquisto di beni strumentali nel 2022 dalla legge di bilancio per il 2023.

La tabella sottostante evidenzia le compensazioni effettuate tramite versamenti F24 a seconda del semestre di maturazione di crediti nel corso del 2022. I crediti maturati nel primo semestre, valutati dalle relazioni tecniche in 4,2 miliardi sono stati compensati per circa 3,5 miliardi. Ulteriori 5,2 miliardi sono stati già compensati con riferimento al secondo semestre 2022.

COMPENSAZIONI PER CREDITI DI IMPOSTA PER ACQUISTI DI PRODOTTI ENERGETICI¹⁰

	2022	2023
Primo Semestre 2022	3.473	94
Secondo semestre 2022	3.058	2.167
Totale	6.531	2.261

Fonte: Agenzia delle Entrate

La detrazione c.d. *Superbonus*, prevista dal d.l. 34/2000 con aliquota al 110 per cento, costituisce un potenziamento delle detrazioni per l'efficientamento energetico e per le spese di consolidamento sismico (cd. *Ecobonus* e *Sismabonus*) già introdotte dalla legge n. 296/2006. L'innalzamento al 110 per cento dell'aliquota di detrazione, congiuntamente alla già menzionata sua possibile trasformazione in credito di imposta cedibile, rispondeva all'obiettivo di dare un forte impulso all'economia durante il delicato periodo Covid, in coerenza con una strategia di transizione energetica e, nel contempo, di allargare la platea degli utilizzatori di questo tipo di incentivi, rimuovendo *ab origine* il problema della mancanza di capienza tipico della detrazione¹¹.

¹⁰ I dati sulle compensazioni sono quelli disponibili al 5 marzo 2023.

¹¹ Come accennato, questa detrazione poteva essere trasformata, tramite lo sconto in fattura o direttamente, in credito di imposta e essere ceduta, così da configurare una forma ibrida.

La fissazione di una aliquota al 110 per cento da applicare ai costi sostenuti per gli investimenti per ottenere la detrazione costituiva un considerevole guadagno sia per i fruitori che avevano anticipato le spese e volevano utilizzare le detrazioni, sia per i cessionari. Il guadagno era poi tanto più elevato in considerazione del ridotto numero di rate (4 per le spese sostenute nel 2022) in cui era possibile sfruttare la detrazione o il credito di imposta. È bene sottolineare che un sussidio che copre interamente (anzi più che interamente in questo caso) il costo dell'intervento annulla il contrasto di interessi configurando la classica situazione del “terzo pagante”: né il committente né l'esecutore dei lavori hanno interesse a contenere i costi dell'intervento se rimangono all'interno dei massimali previsti.

Alla convenienza determinata dall'aliquota del 110 va aggiunta l'iniziale ripartizione in 5 annualità (anziché le 10 previste dal preesistente sistema di incentivazione Ecobonus), poi ridotte a 4 per le spese sostenute nel 2022. Il decreto n. 34/2020, inoltre, aveva esteso senza particolari condizioni il meccanismo dello sconto in fattura e della cessione del credito a tutti gli interventi che accedono al Superbonus, all'Ecobonus, al Bonus Facciate e agli interventi di ristrutturazione edilizia e di manutenzione straordinaria.

Tali caratteristiche hanno determinato un enorme successo dei sostegni interessati dal d.l. n. 34/2020, tanto che l'importo degli investimenti autorizzati per il solo Superbonus ha raggiunto i 65 miliardi di euro a gennaio 2023 e il costo atteso per l'erario i 71 miliardi. A questi importi vanno aggiunti i costi dell'Ecobonus, dei Sismabonus, dei Bonus Facciate e Ristrutturazioni Edilizie che hanno visto accelerare gli investimenti nel 2021, proprio a seguito dell'estensione della possibilità di cessione dei crediti prevista dal d.l. n. 34/2020.

Secondo il Rapporto Enea, per l'Ecobonus, ad esempio, si contano 53 miliardi di investimenti tra il 2007, anno di introduzione del provvedimento, e il 2021. Si nota però una notevole accelerazione nel 2021, quando si sono registrati oltre un milione di interventi e gli investimenti hanno raggiunto i 7,5 miliardi di euro, con un risparmio energetico stimato in 2652 Gwh/anno. La stima del costo-efficacia degli interventi tra il 2014 e il 2021 ha oscillato tra i 7 e i 55 centesimi di euro per ogni kWh di energia risparmiato durante tutta la vita utile dell'intervento, con il costo più contenuto associato alle opere di coibentazione dell'involucro e quello più alto associato agli interventi di domotica.

CARATTERISTICHE DEGLI INTERVENTI INCENTIVATI CON IL MECCANISMO DELL'ECOBONUS

	Costo in Miliardi		Risparmio energetico in Gwh/anno	
	Valori assoluti	Media annuale	Valori assoluti	Media annuale
2007-2021	53,000	3,5	22.600	1.507
di cui 2014-2020	23,645	3,4	8.426	1.204
di cui 2021	7,537	7,5	2.652	2.652
	Cessioni e sconti in fattura	Compensazioni con F24		
2020	836	87,4		
2021	7.674	200		
2022	3.033	1.971		

Fonte: Enea e Agenzia delle Entrate per le Cessioni e le Compensazioni

Per il Superbonus si registravano oltre 91 mila asseverazioni nel 2021 che sono più che triplicate in un anno. Gli investimenti sono passati da 15 miliardi a 62,5 alla fine del 2022, con un costo medio degli interventi passato da 165 mila euro a 174 mila. Gli investimenti totali registrati dall'Enea hanno raggiunto alla fine di febbraio i 68,5 miliardi, per un costo complessivo atteso per l'erario di oltre 75 miliardi.

CARATTERISTICHE DEGLI INTERVENTI INCENTIVATI CON IL MECCANISMO DEL SUPERBONUS

	Fino al 31.12.2021			Fino al 31.12.2022			Fino al 28.02.2023		
	Mld €	Freq. (asseverazioni)	Costo medio (in 000 di euro)	Mld €	Freq. (asseverazioni)	Costo medio (in 000 di euro)	Mld €	Freq. (asseverazioni)	Costo medio (in 000 di euro)
Condomini	7,290	13.521	539,193	28,795	48.087	598,81	32,795	54.860	597,79
Edifici unifamiliari	5,084	47.916	106,111	23,732	208.622	113,76	25,191	221.138	113,92
Unità funzionalmente indipendenti	2,825	30.442	92,807	9,97	102.275	97,44	10,537	108.954	96,71
Castelli	0,000	1	346,572	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.
Investimenti ammessi in detrazione	15,200	91.880		62,493	358.984	174,08	68,523	384.952	178,00
Costo per l'erario	16,720			68,742			75,375		
Risparmio energetico (Gwh/anno)		2293,8			n.d.			n.d.	

Fonte: Enea

L'incentivo ha avuto un andamento certamente esplosivo nel corso del 2022, sia per il tempo necessario a completare gli interventi avviati nel difficile biennio delle restrizioni Covid, sia perché, alcuni specifici interventi (edifici costituiti da una sola unità immobiliare e unità funzionalmente indipendenti) dovevano completare il 30 per cento dei lavori a settembre 2022. Nel solo mese di settembre si sono registrati infatti investimenti per oltre 8 miliardi. Il risparmio energetico associato al *Superbonus* del 2021 è leggermente inferiore a quello previsto dall'*Ecobonus* lo stesso anno (2294 GWh/anno contro 2652 dell'*Ecobonus*). Va sottolineato però che i dati non sono immediatamente comparabili dato che nel totale delle spese del *Superbonus* sono incluse alcune voci (in particolare barriere architettoniche e installazione pannelli) a cui non è associato un valore di risparmio energetico. A fronte dei 68 miliardi totali di investimenti, sono state registrate cessioni e sconti in fattura per 48 miliardi. La differenza include una quota di investimenti per cui non c'è stata cessione e sconto in fattura, sfasamenti temporali nei dati e la difficoltà di trovare cessionari dei potenziali crediti. I 6,6 miliardi di crediti già compensati in F24 si riferiscono alle sole cessioni e si riferiscono alla quota annuale compensabile in ogni anno che dipende, dalle annualità in cui poteva essere detratta l'agevolazione originaria (4,6, o 10 anni a seconda della fattispecie).

DETRAZIONI, PRIME CESSIONI E CREDITI COMPENSATI IN F24 (SOLO SUPERBONUS)

	2020-2022	2020-feb 2023
Totale Investimenti ammessi in detrazione	62,493	68,523
Costo per l'erario tot. investimenti ammessi	68,742	75,375
Investimenti conclusi e ammessi in detrazione	46,631	53,184
Costo per l'erario investimenti conclusi	51,294	58,502
Prime cessioni e sconti in fattura (*)	47,951	48,502
Crediti compensati in F24 (**)	3,205	6,609

(*) dati riferiti al 1 marzo 2023

(**) dati riferiti al 5 marzo 2023.

Fonte: Enea per gli investimenti, Agenzia delle Entrate per le Cessioni e le Compensazioni

In sintesi, nel periodo che va dal 2021 ai primi due mesi del 2023, ai potenziali circa 30 miliardi di crediti legati alle spese energetiche delle imprese (da compensare interamente nell'arco del 2023, ma con possibilità di cessione), si possono sommare i 75 miliardi accertati dall'Enea per il Superbonus, a cui si stima vadano sommati almeno 60 miliardi di altri incentivi (Ecobonus, Sisma, Facciate, Ristrutturazioni...)¹². Si tratta di un ammontare indicativo¹³ ma estremamente ingente – più del doppio della quota di sovvenzioni del PNRR - che ha esaurito la capienza delle imprese che effettuavano i lavori oggetto dei bonus edilizi e ha messo sotto pressione, già nell'autunno del 2022, i “cassetti fiscali” delle imprese finanziarie che potevano essere i cessionari privilegiati di questi crediti di imposta. All'esaurimento dello spazio fiscale si è poi aggiunta una interpretazione restrittiva della responsabilità legata alla corretta esecuzione della procedura autorizzativa e degli stessi investimenti edilizi, che può rimanere anche sul cessionario del credito se non viene dimostrata una adeguata diligenza nell'acquisizione e nella verifica della documentazione.

Relativamente all'esaurimento della capienza fiscale dei cessionari, il decreto “Aiuti-Quater” (convertito dalla legge 6/2023) aveva riconosciuto la possibilità di un allungamento dei termini per avvalersi dell'agevolazione fiscale nei casi di cessione dei crediti d'imposta legati al *Superbonus*, aumentando in tal modo la capienza fiscale del cessionario. Si stabilisce infatti che, limitatamente ai crediti d'imposta le cui comunicazioni di cessione o di sconto in fattura sono state inviate all'Agenzia delle entrate entro il 31 ottobre 2022, sia possibile ripartire l'utilizzo del credito residuo in 10 rate annuali anziché nelle 4 previste.

¹² Per gli altri bonus non sono disponibili dati dettagliati come quelli forniti dal monitoraggio mensile dell'Enea. L'ordine di grandezza delle risorse interessate dagli altri bonus è dunque approssimativamente ricavabile dai dati sulle prime cessioni e sconti in fattura che, al netto del *Superbonus*, hanno raggiunto la cifra di 62 miliardi tra il 2020 e i primi mesi del 2023. Si veda a questo proposito la Memoria dell'Audizione del Direttore dell'Agenzia delle Entrate presso la VI Commissione della Camera dei Deputati del marzo 2023.

¹³ La somma va considerata come una mera indicazione delle risorse impegnate e non una stima della loro manifestazione in termini di cassa. Come ricordato nel testo, ogni bonus ha infatti uno specifico profilo temporale in cui può essere portato in detrazione o il cui credito di imposta può essere compensato in F24.

Si può peraltro notare che la possibilità di allungare le scadenze rende meno conveniente l'acquisto del credito in un quadro di inflazione e tassi di interesse crescenti.

Quanto ai profili di responsabilità, l'Agenzia delle entrate con la circolare 23/E del 2022 aveva ribadito che l'eventuale recupero della detrazione non spettante è effettuato nei confronti del soggetto beneficiario, e soggetti cessionari e che dunque ciascun cessionario deve aver preventivamente operato con la necessaria diligenza all'atto dell'acquisto del credito. Su questo quadro, che metteva a repentaglio le cessioni è intervenuta la legge n. 142/2022 (conversione d.l. "Aiuti-bis") limitando la responsabilità solidale ai casi di dolo e colpa grave. Tuttavia, diverse pronunce della Corte di cassazione nel corso del 2022 sono intervenute sul tema dei sequestri legati al bonus, confermando che il cessionario può subire un sequestro impeditivo del credito nel caso in cui si accertasse la nullità del contratto di cessione. E' dunque intervenuto nuovamente sul tema il decreto legge n. 11/2023, prevedendo all'articolo 1 (comma 1, lettera b) una forte riduzione dei profili di responsabilità solidale dei cessionari, nel caso le agevolazioni originarie fossero indebitamente fruite. Il concorso dei cessionari nella violazione, infatti, viene escluso se il cessionario ha acquisito adeguata documentazione – a parte il caso di dolo - e in ogni caso, anche l'assenza della adeguata documentazione, si specifica, non costituisce prova di dolo o colpa grave.

Il meccanismo di cessione multipla dei crediti, inizialmente detonatore di un boom degli interventi, ha dunque determinato - per raggiunta capienza e dubbi interpretativi sui profili di responsabilità dei cessionari - una crisi di liquidità sulla quale si è cercato di intervenire con ripetuti provvedimenti di aggiustamento del numero di cessioni, del numero di rateazioni e dei termini di responsabilità senza, peraltro, aver realmente sbloccato la situazione, tanto da suggerire anche l'introduzione di nuove garanzie pubbliche¹⁴. Per contribuire a sciogliere le difficoltà del mercato delle cessioni dei crediti di imposta, era iniziato nei primi mesi del 2023 un interessamento di Enti Locali e Regioni come potenziali acquirenti dei crediti. In questo quadro è intervenuto il decreto legge n. 11/2023 che ha escluso il coinvolgimento degli Enti appartenenti all'aggregato delle Pubbliche Amministrazioni come possibili cessionari dei crediti di imposta (articolo 1) e ha abolito la possibilità di cessione del credito legata ai bonus edilizi (articolo 2) per tutti gli interventi per i quali, alla data di entrata in vigore del decreto, non fosse stata presentata la documentazione di inizio lavori asseverata¹⁵. Risulta difficile quantificare al momento quanti sono gli investimenti che non ricadono nel nuovo regime, secondo cui l'agevolazione può essere usufuita solo come detrazione. I margini di profittabilità della disciplina antecedente al decreto-legge n. 11/2023 sono, infatti, certamente più ampi

¹⁴ Il decreto "Aiuti-Quater" ha infatti introdotto la possibilità per la SACE di concedere garanzie a favore dei prestiti che le banche concederanno alle imprese per trasformare in liquidità i crediti acquisiti a seguito di interventi rientranti nella disciplina del Superbonus.

¹⁵ Il divieto di cessione dei crediti di imposta non si applica, per quanto concerne il *Superbonus*, per gli interventi per cui sia stata presentata la comunicazione di inizio lavori asseverata (CILA) e la delibera assembleare per i condomini. Per gli interventi diversi dal *Superbonus* è sufficiente che sia stata presentata la richiesta del titolo abilitativo, o siano già iniziati i lavori per i casi dove il titolo abilitativo non è necessario. In caso di interventi in seguito ad acquisti per restauro conservativo è sufficiente che sia stato registrato il contratto preliminare.

rispetto a quelli del regime attuale ed è dunque ipotizzabile che la maggior parte degli investimenti potenziali siano effettivamente portati a compimento.

PROFILI DI COPERTURA DELLE SPESE FISCALI

Il tema delle agevolazioni fiscali come strumento di sviluppo, settoriale o complessivo, presenta risvolti che attengono anche alle procedure di valutazione dell'impatto di tali misure sulle grandezze di finanza pubblica e sul saldo di bilancio in particolare. Ciò con riguardo sia agli obblighi di informazione cui assolvere nell'elaborazione delle varie relazioni tecniche di accompagnamento ai provvedimenti legislativi sia alla stessa scelta di metodi coerenti e possibilmente più soddisfacenti avuto riguardo alla quantificazione di tali effetti finanziari.

I vari profili sono strettamente connessi, peraltro, e passano anche per una riflessione sulle stesse procedure previste nel nostro ordinamento a presidio dello storico problema delle modalità con cui garantire l'equilibrio tra oneri e compensazioni in riferimento a disposizioni di durata di medio periodo, soprattutto in casi particolarmente complessi come quelli in cui l'onere consista nella cd. spesa fiscale.

A questo riguardo, va rilevato che nella legge di contabilità n. 196 del 2009, mentre da un lato si prevedono – molto opportunamente - vincoli abbastanza stringenti di elaborazione ed esposizione di dati nelle relazioni tecniche in riferimento a rilevanti settori di spesa, come il pubblico impiego e la materia pensionistica (art. 17, comma 7) nonché in ordine alla sostenibilità delle clausole di neutralità (art. 17, comma 6-bis), non si prevedono analoghi obblighi per l'intervento consistente in agevolazioni fiscali. Ciò nonostante il fatto che, come la Corte ha avuto più volte modo di segnalare in riferimento ai più rilevanti provvedimenti con tali ultime caratteristiche, proprio in tale settore si siano storicamente determinati casi di pronunciata difficoltà sia nella calibrazione *ex ante* degli oneri netti, sia nella garanzia che nel tempo rimanga preservato l'equilibrio nell'andamento degli oneri rispetto a quello delle coperture¹⁶.

¹⁶ A titolo esemplificativo, con particolare riferimento al credito di imposta per “ricerca e sviluppo” è stato osservato (Sezione centrale di controllo sulla gestione delle amministrazioni dello Stato, deliberazione n. 4 del 2021), nello specifico settore considerato che l'eliminazione del limite legale della spesa erogabile, previsto originariamente dall'art.3, comma 1, del d.l. 145 del 2013, ma in realtà mai attuato e poi modificato a partire dal 2015, ha comportato l'aumento delle difficoltà di governo dell'evoluzione della spesa fiscale. Infatti, nonostante la previsione di limiti quantitativi per la spesa indicati da fonte regolamentare (dm 27.05.2015), la dimensione delle spese ammesse a

Per quanto concerne le stime *ex ante*, come la letteratura in materia ha da tempo messo in luce, uno dei fattori più rilevanti da considerare è il cd. “peso morto”, ossia la stima della quota di attività oggetto di agevolazione che comunque avrebbe avuto luogo e la cui agevolazione quindi finisce con il porre le premesse per un peggioramento dei saldi tendenziali, con conseguente necessità di copertura. In altre parole, una parte di dette attività si sarebbe svolta a prescindere dall’agevolazione, il che comporta, a parità di condizioni, una minore entrata (dovuta all’agevolazione) e quindi un peggioramento del saldo vigente.

Altro elemento da valutare in materia, sempre in riferimento alle stime *ex ante*, sta nel fatto che le attività oggetto di agevolazione – se non di carattere del tutto innovativo – possono comportare effetti di sostituzione di attività similari, il cui svolgimento comunque ha costituito un elemento che è andato a comporre la previsione di entrata di cui alla manovra varata in termini di bilancio, con il risultato che, anche per tal via, si potrebbero determinare vuoti di gettito rispetto ai “tendenziali” in essere.

Soprattutto in materia di agevolazioni fiscali, sullo sfondo rimangono poi due questioni metodologiche di rilievo.

In ordine alla quantificazione dell’onere netto della singola spesa fiscale, permane *in primis* il tema della valutazione dei cd. effetti indiretti, che, al di là della pur rilevante differenza tra quelli di carattere automatico e quelli di carattere discrezionale (in quanto legati a comportamenti individuali ovvero variabili esogene non sempre sotto controllo), continua a presentare profili di rilevante difficoltà operativa, con la conclusione che solo le valutazioni a consuntivo finiscono con il rappresentare la sede idonea per aver piena contezza delle conseguenze sul bilancio e in termini macroeconomici, il che però stride con gli obblighi di copertura, calibrati necessariamente sull’*ex ante*.

In secondo luogo, nella materia delle agevolazioni va considerata la questione circa la scarsa praticabilità della possibilità, concessa dalla legge di contabilità, di quantificare l’onere in termini non di previsione, bensì di tetto di spesa, in quanto si tratta di un

compensazione ha di gran lunga superato nel tempo gli stanziamenti di copertura. Si è in particolare manifestata l’esigenza di un puntuale monitoraggio sugli effetti della misura, attività certo complessa, ma non irrealizzabile, soprattutto attese le precise indicazioni normative in tal senso ed il tempo trascorso dall’introduzione della misura stessa. In tale contesto, anche le scelte del legislatore in ordine all’assetto strutturale del credito d’imposta, dimostrano l’esigenza di un adeguato sistema di verifica dell’efficacia del credito d’imposta per ricerca e sviluppo.

meccanismo, quest'ultimo, che, sebbene garantista dal punto di vista della tenuta complessiva dei saldi di bilancio, introduce però un oggettivo elemento di incertezza nella posizione del potenziale beneficiario dell'intervento agevolativo. Il rischio è quindi di vanificare l'intento della singola disposizione di incentivo, sia esso di carattere settoriale ovvero complessivo, nel momento in cui si rende difficile ogni programmazione finanziaria ed operativa nell'incertezza circa il *quantum* dell'incentivo da percepire, se sottoposto a riparto per rispettare il tetto di spesa in funzione inversa rispetto alle richieste.

Tutto ciò non sembra sempre essere stato sempre oggetto di accurate analisi da parte delle relazioni tecniche che hanno accompagnato i vari provvedimenti, soprattutto di proroga, di agevolazioni fiscali, nonostante l'ampia modellistica disponibile e basata sulla microsimulazione, in virtù della quale ci si sarebbe potuto ragionevolmente attendere non la periodica, acritica riproposizione delle stime precedenti, ma un'adeguata riconsiderazione alla luce dell'esperienza concretamente determinatasi. Ciò forse anche in conseguenza dell'assenza di una norma, nella legge di contabilità, che imponga obblighi informativi e metodologici in tal senso.

Quanto al secondo aspetto evidenziato, ossia il rispetto dei vincoli procedurali in ordine alla garanzia nel tempo del mantenimento di un congruo parallelismo tra oneri e coperture, anche qui la vicenda (in particolare) delle agevolazioni fiscali contribuisce a mettere in luce l'incongruità della modifica intervenuta nel 2016 nella legge di contabilità, come a suo tempo segnalato dalla Corte, circa il più generale meccanismo delle cd. clausole di salvaguardia.

Si ricorda infatti che, per le leggi ordinarie, il regime previgente poneva l'obbligo al legislatore di individuare con chiarezza, nello stesso provvedimento dettante il beneficio, le modalità - da individuare con norma - con cui far fronte ad eventuali scostamenti tra oneri e coperture nel corso del tempo. Anche forse sulla scorta della non felice applicazione in via analogica del meccanismo alla legge di bilancio (cd. "clausole IVA"), che ha consentito talvolta di dar corso ad interventi con compensazioni future, il regime procedurale in questione, relativo alle leggi ordinarie, fu ritenuto troppo rigido e, con la citata riforma del 2016 (con la legge n. 163), si passò ad un sistema basato su indicazioni di carattere procedurale.

In estrema sintesi, in caso di scostamento nel primo anno di vigenza della singola norma si sarebbero dovuti attivare interventi a carico del bilancio del singolo dicastero interessato oppure, come secondo passaggio in caso di insufficienza, si sarebbe dovuto procedere ad una riduzione di spesa orizzontale tra i vari bilanci dei ministeri con apposito dPCM ed infine si sarebbe potuto intervenire con un provvedimento legislativo *ad hoc*, fermo rimanendo che, negli anni successivi, sarebbe stata la manovra di bilancio la sede per chiudere il *gap* tra oneri e compensazioni, sia pur agendo “prioritariamente” sul lato dell’onere (art. 17, commi 12 e ss, della legge di contabilità n. 196).

Si tratta di un meccanismo che continua a presentare elementi di farraginosità e di scarso realismo, risultando calibrato, infatti, per un verso, su tagli di spesa per finalità compensative che possono risultare concretamente, per molte ragioni, poco realizzabili e, per altro verso, su ipotesi di “scopertura” di carattere quantitativamente marginale, che non sembra essere il caso delle agevolazioni fiscali, per rimanere al tema in esame. Non casualmente, pertanto, la riforma non sembra aver sortito effetti apprezzabili, sottraendo di fatto il legislatore dall’obbligo di indicare, contestualmente alla proposizione dell’intervento, un meccanismo automatico di aggiustamento in caso di differenza, anche nel corso del tempo, tra oneri e compensazioni e svuotando in tal modo il senso dell’obbligo di copertura al di là dell’anno iniziale.

Anche questo può costituire un motivo di riflessione, ove si dovesse aprire una stagione di riconsiderazione della legge di contabilità, con particolare riguardo al tema della cd. spesa fiscale, che continua a presentare rilevanti problemi di quantificazione degli effetti finanziari proprio per l’elevato numero delle variabili coinvolte, alcune delle quali di natura esogena.

CONSIDERAZIONI CONCLUSIVE

Le risorse pubbliche assorbite da detrazioni e crediti di imposta tra il 2021 e il 2022 sono state particolarmente rilevanti. Il governo in carica ha confermato e anticipato il *decalage* delle aliquote dei crediti di imposta (al 90 per cento per il 2023 per il *Superbonus*, al 60 per cento per il Bonus Facciate nel 2022, non prorogato per il 2023), e soprattutto ha sospeso la cedibilità dei crediti, riducendo così drasticamente la convenienza ad attuare

gli investimenti sovvenzionati. Tuttavia, anche a fronte di una forte riduzione dei flussi annuali, le rate di compensazione nei prossimi anni avranno un impatto non trascurabile e ancora non del tutto quantificabile sulle entrate fiscali.

Questo straordinario ammontare di risorse – non inferiore a 135 miliardi per i soli bonus edilizi - ha prodotto certamente un aiuto e uno stimolo di grande rilevanza al sistema economico, ma ha anche impegnato una quota di risorse considerevole, comportando una diversa distribuzione delle risorse tra le “missioni” della spesa pubblica. Con riferimento al solo *Superbonus*, lo scarto tra le stime iniziali previste dalle varie relazioni tecniche dei provvedimenti (dal decreto-legge n. 34/2020 ai successivi nove interventi normativi) è infatti particolarmente consistente: a fronte dei 12 miliardi iniziali previsti dal decreto-legge n. 34/2020 gli interventi di proroga hanno portato le attese delle risorse impegnate a 33 miliardi¹⁷, a fronte di un onere per l'erario al momento stimato in oltre 75 miliardi. L'ammontare delle risorse impegnato nei bonus legati all'edilizia è, in definitiva, cresciuto oltre ogni previsione iniziale e senza che si fosse realmente in grado di fermare il lievitare delle detrazioni e dei crediti di imposta e, purtroppo, i casi di frode. Nel caso di bonus così innovativi - nell'ammontare dell'incentivazione, nei meccanismi di circolazione dei crediti, nelle tecnologie promosse etc. - sarebbe stato certamente consigliabile introdurre dei limiti di stanziamento, raggiunti i quali si sarebbe potuta avviare una approfondita riflessione sull'efficacia dell'incentivazione e, quindi, sulla sostenibilità finanziaria della misura. Inoltre, le risorse impegnate non sembrano essere state sufficientemente focalizzate né con riferimento ai soggetti fragili e realmente bisognosi dello stimolo, né agli obiettivi di efficienza energetica di lungo periodo, che richiederanno interventi continuativi nei prossimi anni.

Oltre a contribuire alla riduzione delle emissioni climalteranti e a una maggiore indipendenza energetica, l'incremento di efficienza energetica degli edifici residenziali e l'incentivazione dei pannelli solari potrebbe essere una importante arma contro la povertà energetica delle famiglie. Esistono diversi indicatori di povertà energetica, ma si stima che tra l'8 per cento e il 18 per cento delle famiglie possa essere considerata vulnerabile, a seconda dell'indicatore prescelto¹⁸. Le famiglie vulnerabili sono anche quelle che hanno maggiori difficoltà ad accedere agli incentivi anche per barriere di conoscenza e delle risorse iniziali che possono servire per avviare la pratica e purtroppo i provvedimenti di Ecobonus e Sismabonus hanno dato per scontato il coinvolgimento delle famiglie vulnerabili sulla sola base dell'incentivazione monetaria,

¹⁷ Complessivamente, hanno contribuito a disegnare la normativa 7 decreti-legge e 3 leggi di bilancio (per il 2021, 2022 e 2023). Per i dettagli si vedano le memorie del Dipartimento delle Finanze e dell'Ufficio Parlamentare di Bilancio depositate per questa stessa indagine conoscitiva.

¹⁸ Si veda ad esempio il sito dell'*Energy Poverty Advisory Hub* per i dati europei o l'Osservatorio Italiano sulla Povertà energetica per i dati nazionali.

senza interventi mirati e senza tener conto che la maggior parte delle famiglie vulnerabili può non essere proprietaria dell'abitazione in cui risiede. A titolo di esempio, le detrazioni per risparmio energetico nelle dichiarazioni Irpef dell'anno di imposta 2020 – un anno rappresentativo solo per l'Ecobonus con limitata cedibilità del credito - hanno riguardato il 6 per cento dei contribuenti con meno di 40.000 euro e circa il 40 per cento di quelli con oltre 150 mila euro. Sul fronte delle politiche di medio periodo, la proposta di direttiva sull'efficienza del patrimonio immobiliare che fa parte del pacchetto "Fit for 55" prevede un adeguamento minimo alla classe energetica D per gli edifici residenziali esistenti entro il 2033 e il raggiungimento di classi più elevate per gli edifici di nuova costruzione. Si richiede dunque il raggiungimento di target che prevedono in molti casi il salto di tre classi di efficienza energetica, visto che l'Enea stima che il 60 per cento del patrimonio residenziale italiano sia classificabile in classe G o F.

Sul fronte della finanza pubblica, oltre all'impegno per la copertura delle risorse, in parte provenienti dal PNRR, si pone il tema degli effetti sui saldi. La possibilità di cessione del credito di imposta aperta dal d.l. n. 34/2020 (diversi soggetti e ripetute cessioni dello stesso credito) ha configurato – secondo l'ultima versione del manuale Eurostat - il caso di "credito pagabile" (o "*non-wastable*") che va iscritto tra le uscite nel momento in cui il credito diventa per l'erario definito, secondo un criterio di competenza¹⁹. Questa interpretazione è stata recepita dall'Istat che ha proceduto a una revisione dei deficit tra il 2020 e il 2022 per l'entità dei crediti maturati, modificando il rapporto deficit/Pil di diversi punti (dal 9,5 al 9,7 nel 2020, da 7,2 a 9,0 nel 2021 e da 5,6 a 8 nel 2022). Per quanto la classificazione dei crediti in base al criterio di cassa o di competenza sia tuttora oggetto di dibattito, la riclassificazione ha certamente incrementato la trasparenza dell'impatto dell'utilizzo dei crediti di imposta sui conti pubblici. Adottare il criterio di competenza ha implicato operare una correzione dei saldi sugli esercizi passati, in anni in cui i meccanismi di coordinamento della politica fiscale a livello europeo sono stati sospesi e dunque non ci sono state immediate ripercussioni nella percezione dei mercati e a livello di coordinamento della politica fiscale. Il decreto n. 11/2023, bloccando la possibilità di cessione, ha dunque riportato le detrazioni nella definizione di crediti "non pagabili" che quindi possono essere contabilizzati con un criterio di cassa. Tuttavia, come discusso, è ancora difficile quantificare i crediti di imposta o gli sconti in fattura che devono ancora emergere ma possono conservare la possibilità di cessione, determinando dunque un altro insieme di crediti "pagabili", che avranno un diretto impatto sul deficit 2023.

¹⁹ Si veda il paragrafo 2.2.2.4. Recording of tax credits del Manual on Government Deficit and Debt, Eurostat, Edizione 2022, Gennaio 2023.

Per la sostenibilità è però necessario guardare anche agli effetti sull'economia reale. Certamente le ristrutturazioni edilizie hanno determinato un contributo alla crescita dell'attività economica e dell'occupazione, che ha anche favorito un recupero del gettito attraverso le imposte dirette e l'IVA. È al momento prematura una valutazione sull'entità della crescita generata – stimata comunque intorno all'1 per cento del Pil nel 2022²⁰ - e dell'incremento di gettito che può ipotizzarsi non trascurabile, ma a questi aspetti positivi vanno contrapposti i forti aumenti dei prezzi dei materiali e dei capitolati, aggravati dalla presenza del già ricordato fenomeno del “terzo pagante”. Tali aumenti, uniti all'impennata dei prezzi dell'energia, hanno determinato una spirale che, in alcuni casi, ha messo in crisi anche il sistema dei massimali di spesa e dei prezzi di riferimento introdotti nell'intento di limitare la crescita dei costi che davano diritto alla detrazione.

Il sistema delle incentivazioni fiscali per l'edilizia, erogate attraverso detrazioni e crediti d'imposta, si presenta dunque estremamente complesso, frammentato e incerto, conseguenza di una lunga sequenza di interventi normativi introdotti con la decretazione di urgenza in assenza di un disegno organico. L'improvvisa abolizione della possibilità di cessione, pur con una lunga fase di transizione, acuisce i problemi di liquidità creatisi con l'esaurimento della capienza fiscale delle imprese e dei potenziali cessionari e accentua il carattere di potenziale regressività dei sussidi, certamente d'ora in poi utilizzabili solo in presenza di ampia capienza fiscale²¹ da parte dei beneficiari. Inoltre, le troppe fattispecie esistenti, caratterizzate da discipline non omogenee - per tipologia di immobile e proprietà, aliquote, rate, possibilità di cessioni e profili di responsabilità - rendono il quadro difficilmente governabile sul piano tecnico e amministrativo, anche in relazione alle concrete possibilità di controllo.

Occorre, dunque, da un lato semplificare il sistema e dall'altro effettuare scelte sui settori di impiego delle risorse ritenuti prioritari, selezionando gli interventi in coerenza con gli obiettivi di interesse generale in un'ottica di lungo periodo, e modulando l'intensità dell'aiuto in relazione a obiettivi specifici.

²⁰ Si vedano le valutazioni dell'Ufficio Parlamentare di Bilancio e, da ultimo, OCPI (2023).

²¹ Si veda Corte dei conti (2021) dove si notava che le agevolazioni per l'efficienza energetica precedenti al decreto 34/2020 – il regime Ecobonus - avevano un effetto nettamente regressivo visto che erano utilizzate da poco meno di un quarto dei contribuenti più ricchi (ultimo ventile) e da meno del 2 per cento degli appartenenti alla metà più povera in termini di reddito complessivo. Per una analisi della concentrazione dei beneficiari si veda anche la memoria dell'Ufficio Parlamentare di Bilancio (2023).

Le ingenti risorse destinate all'efficienza energetica con il *Superbonus* hanno fino ad ora permesso di intervenire su meno di 400 mila immobili, una quota notevolmente ridotta rispetto ai 57 milioni di unità immobiliari e ai circa 20 milioni di abitazioni principali esistenti nel nostro Paese. L'indiscriminato "libero accesso" ai benefici, pur mitigato, per quanto riguarda il *Superbonus* delle unità unifamiliari, dalle limitazioni soggettive (reddito familiare) e oggettive (abitazione principale) introdotte dal 2023, favorisce comunque i proprietari più dotati di risorse (finanziarie, ma anche tecnico-professionali). Quanto al sistema dei controlli, esso appare oggi in linea di massima idoneo a prevenire le vere e proprie frodi connesse alla creazione fittizia di crediti, ma poco in grado di assicurare l'effettiva qualità, utilità e durata degli interventi finanziati.