

Fiscal Council's Opinion on the legislative proposal regarding the functioning of the Romanian Development Bank – EximBank S.A.

On November 24th 2016, the Fiscal Council received from the Department for Relations with the Parliament the letter no. 9743F/DRP requesting the Fiscal Council's opinion on supporting or rejecting a legislative initiative on the functioning of the Romanian Development Bank - Eximbank S.A. for formulating the government's point of view in this regard.

According to article 53, paragraph (2) of the Fiscal Responsibility Law (FRL), the Fiscal Council has among its tasks „analyzing and issuing opinions and recommendations on the annual budget laws before approval by the Government and before submission to Parliament, on the supplementary budgets and other legislative initiatives that may have an impact on the budgetary spending, as well as assessing their compliance with the principles and rules specified in this Law”. The present legislative proposal could be included in the category of legislative initiatives with a potential impact on the budgetary expenditures.

In essence the draft law amends the regulatory framework of Eximbank S.A. activity in the name of and in the account of the state, by extending the current mandate to that of a bank of national development, provides complementarity of the activities of a commercial bank (in own name and own account) with those pursued in the mandate of a development bank in the name and on behalf of the Romanian state, redefining the funding sources at its disposal including explicitly the possibility of getting reimbursable financing in the name and on behalf of the state, which are considered to have the nature of government debt liabilities.

The explanatory statement attached to the legislative project includes a preliminary estimate of the necessary additional funds that should be made available to the Romanian Development Bank - Eximbank S.A., of 317 million lei in 2017, 240 million lei 2018 and 239 million in 2019, while stating that those amounts would not have an impact on the budget deficit, representing financial investments of the State at the Development Bank of Romania. The Fiscal Council has no competences to decide on the opportunity of the legislative proposal and also cannot assess the amount of additional resources needed for extending the mandate of Eximbank due to the inherent discretionary nature of these allocations of financial resources. As regards the compliance with the principles and fiscal rules provided by FRL, the Fiscal Council considers that, to the extent that the necessary additional resources will be treated in statistical terms as a financial transaction, as indicated in the explanatory statement attached to the legislative proposal, the additional allocations should not transit through the consolidated budget and would not lead to a higher deficit.

However, we appreciate that, given the provisions of the legislative proposal, the risk is that the transfer of additional resources to be reflected as a non-financial transaction (capital transfer) which, unlike a financial transaction would result in increased budgetary spending and, *ceteris paribus*, of the budget deficit.

In this respect it is relevant quoting the Eurostat¹ Handbook on government deficit and debt, 2016 edition that designate (page 158, paragraph 9) as conditions for recording non-financial transactions (transfer of capital) one of the following cases:

- Funding is provided without receiving anything of equal value in return;
- Funds are provided without expecting a sufficient level of return on investment;
- Funds are provided for a corporation having a recent history of losses.

We consider that the second condition mentioned above is the source of the risk of classifying the transactions as non-financial operations, given that art. 5 paragraph. (2) of the legislative proposal stipulates that "the activity undertaken by the Development Bank of Romania aims to support sustainable and well-adjusted economic development and reducing social disparities, being directed towards the public interest and not to obtain profit."

However, even assuming that the additional sources of financing needed should be treated as non-financial transactions (transiting the budget), the budgetary expenditure resulted would not automatically put at risk the targets of the annual budget deficit, given the inherent discretionary nature of allocation of funds for this purpose and the fact that the allocations will be precisely defined only later, in the context of the actual budgetary construction. Moreover, the preliminary assessments of the necessary additional resources does not suggest, in the case it would be not treated as financial transactions, but as non-financial transactions, a major impact on the consolidated budget.

Another risk that the Fiscal Council identifies is that of a possible reclassification within the government sector (becoming part of the general consolidated budget), given the provisions of the legislative proposal, for at least those activities of the Development Bank of Romania - EximBank S.A. carried out in the name and behalf of the state. In this respect it is worth also to cite the Handbook on government deficit and debt, Edition 2016 published by Eurostat - this provides at paragraph 47 on page 69 that "an entity that undertakes financial activities and is controlled by the state would have the characteristics of a captive financial institutions and therefore it should be classified in the governmental sector and not in the financial institutions' sector (S.12) if the following conditions are cumulatively met:

¹ <http://ec.europa.eu/eurostat/documents/3859598/7203647/KS-GQ-16-001-EN-N.pdf/5cfae6dd-29d8-4487-80ac-37f76cd1f012>

1. The entity carries out a limited spectrum of activities limited by certain constraints established by the government (in the general framework of the public policy objectives);
2. The influence of the state and constraints would be highlighted at the same time at the level of both assets and liabilities of the entity;
3. The entity would not behave like a "normal" commercial one (it is not anticipated to generate return on investments).

Also, there are relevant the Eurostat opinions from 2014 on the Export Bank of Czech Republic², respectively in 2016 on the Export-Import Bank of Hungary³ (also called Eximbank), which in both cases concluded that those entities have the characteristics of captive financial institutions that should therefore be part of the government sector.

The clarification of statistical treatment in the two cases above mentioned is not a simple matter, and the Fiscal Council recommends the prior consultation of Eurostat about a possible change of statistical treatment that might arise from the changes introduced by the legislative proposal.

Considering the foregoing, the Fiscal Council believes that the proposal is not inconsistent with the provisions of FRL.

The opinions and the recommendations above mentioned by the Fiscal Council were approved by the Chairman of the Fiscal Council, according to Art. 56, para (2) letter d) of the Law no. 69/2010 republished, after being approved by the Council members through vote, on 6th December 2016.

6th December 2016

Chairman of the Fiscal Council,

IONUȚ DUMITRU

² <http://ec.europa.eu/eurostat/documents/1015035/2990403/CZ-Treatment-of-Czech-Export-Bank.pdf/bf86654a-9475-4b1a-8b78-d909d7adbbae>

³ <http://ec.europa.eu/eurostat/documents/1015035/7142247/Advise-2016-HU-Statistical-classification-of-Eximbank-Letter-1.pdf/e381865d-ca8b-44f5-89a2-822537dcdf52>