

Paris, July 23rd, 2021

Mr Ross Smith
Technical director
International Public Sector Accounting
Standards Board.
International Federation of Accountants
277 Wellington Street, 4th floor
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Re: Response to Request for Information, *Concessionary Leases and Other Arrangements Similar to Leases*

Dear Mr Smith,

The French Public Sector Accounting Standards Council (CNOCP) welcomes the opportunity to respond to the Request for Information, *Concessionary Leases and Other Arrangements Similar to Leases* published in January 2021 (the RFI).

As part of the process of collecting relevant information on arrangements that provide other forms of rights than the right of use as provided in a lease arrangement, we thought we would highlight upfront the main characteristics that we identified as pertaining to arrangements that are frequent in the public sector. We would also like to underline that of the characteristics identified, we only retained the substance of the features that we believe could be of interest to the *Board*; i.e. we chose not to list the arrangements in their various legal forms in a comprehensive manner.

In the attached appendix, we first describe the characteristics of arrangements that provide a right over an asset different from that covered by ED75; then, we address each question of the RFI and our response often refers to the upfront note.

Please, note that this response has not been discussed with the *Board* of the CNOCP; as such, it reflects the views of the authors and not necessarily that of the CNOCP.

APPENDIX

Upfront note

1. Preamble

1.1. Distinction between public and private property

We draw the Board's attention to certain characteristics of the public sector in France that are common to transactions allowing the beneficiary to have a right over an asset (e.g. right of occupation), that is not a right of use under ED75 (cf. §1(b) of the RFI). These transactions are thus likely to fall outside the scope of ED75.

These characteristics are related to the distinction that is made in France between the public and private property of a public sector entity. Whether an asset belongs to public or private property is determined by French law.

The specific principles relating to assets that belong to **public property** are described below as they may have implications on the accounting treatment of transactions involving such assets.

These assets are inalienable. Occupancy is intrinsically precarious, as the public sector entity that grants the right over the asset may require the occupant to return the property at any time. In addition, the public sector entity is only required to provide compensation up to the amount of investment expenses incurred by the occupant, less depreciation. However, the public sector entity must be paid (royalties or any other form of pay) in exchange for granting the right to occupy the property.

While the precarious nature of these transactions does not challenge the existence of a right to occupy the property, the occupant does not control this right a priori. It is precisely for this reason that these transactions differ from the lease contracts defined in §10 of ED 75. In the absence of control of the right, this right is not recognised as an asset on the occupant's balance sheet.

It should be noted that the relationship between the occupant and the public sector lessor may take the form of a unilateral act, as opposed to a common law contract that establishes rights and obligations for the parties to the contract. This public sector characteristic may need to be reflected in the accounting treatment of these transactions in both the lessor and the occupant's financial statements.

Other features relate to the duration (or absence of) in public sector type arrangements, to the identification and assessment of the consideration received in exchange for the property right, as well as to what extent protective rights may help determining control of the right over the property.

By contrast, when the asset subject to the transaction belongs to **private property**, the rules of private law apply; for instance, the duration mentioned in the agreement is enforceable upon both parties.

Additional information on the common characteristics of transactions in the scope of our response is provided further below (see § 3).

1.2. Purpose of these transactions in the public sector

In the public sector, for-profit transactions that grant rights of use (excluding leases) are uncommon. These transactions are primarily designed to either provide resources to carry out public services (or, more generally, public interest obligations devolved to the lessee), or to increase the value of the public sector lessor's property, which broadly represents the service potential that the public sector lessor may derive from the asset.

2. Scope

Our response focuses on transactions that involve tangible “immovable” assets. In our view, “movable” assets are most often interchangeable and result in transactions that are similar to the rendering of services.

We also excluded the following transactions from our response:

- Transactions that transfer control of the underlying asset and not just control of the right to use the asset: in this type of transactions, assets are supplied to public sector entities to serve the public interest.
- Transactions covered by IPSAS 32, *Service Concession Arrangements: Grantor*. These transactions address the right to operate an asset in the public interest, without transferring control of the exploited assets.
- Employer-provided housing for civil servants, which may fall under IPSAS 39 on employee benefits.

The transactions that we have considered are the following: temporary occupancy permits (*autorisations d'occupation temporaire*, or AOT) for public property, long-term leases (*baux emphytéotiques*, or BE), administrative long-term leases (*baux emphytéotiques administratifs*, or BEA), building leases (*baux à construction*, or BAC), leases under urban renewal programs (*baux à réhabilitation*, or BAR), tenancy agreements and low-income housing.

BAC and BAR contracts (and to a certain extent BEs and BEAs) are often part of larger contracts (e.g. concessions) or designed for very specific purposes. The intertwined nature of the transactions makes it difficult to analyse the control of a right over an asset and may, in our view, require elaborating further guidance. Specifically, it could be relevant to distinguish cases where all contracts must be analysed as a single transaction from cases where the analysis must be carried out at the level of each contract.

3. Main characteristics common to transactions included in the scope of our response

3.1. Duration of the right over an asset

As mentioned in the preamble, contracts related to the occupation of public property, whether signed between public sector entities or between a public sector entity and a private sector entity, may be terminated at any time by decision of the public sector entity that controls the public property. Any compensation owed to the lessee is limited in principle. Unless otherwise stated in the agreement, the compensation only covers expenses incurred by the beneficiary to develop the public property, less depreciation.

Leases contracts in low-income social housing public sector entities are open-ended and can be terminated by the lessor if the tenant's income exceeds predefined low-income housing limits (the tenant can also terminate the lease at will as long as appropriate notice is given).

Consistently with the precarious nature mentioned above in paragraph 3.1, public sector entity transactions related to assets belonging to public or private property can have lengthy terms (e.g. up to 99 years for administrative long-term leases). The duration can also be indefinite (e.g. social housing).

3.2. Consideration received by the lessor for the right granted on the underlying asset

Rents for low-income housing are controlled by public sector authorities. Since the rent is not freely fixed, it does not correspond to a market rate. Public subsidies allow the lessor to grant leases at below-market rates.

Other than in the case of low-income housing, the economic aspects of the transaction can be described in different ways:

- By granting a right over an asset, the lessor contributes economic resources to the beneficiary allowing it to perform public services through the use of the asset's service potential rather than through selling the asset. Consequently, the notion of consideration is irrelevant;
- In exchange for the right over the property, the beneficiary undertakes to maintain or enhance the transferred asset by way of renovation or new construction.

For BE, BAR, and BAC contracts, the control over any new construction or improvement made by the occupant during the contract is transferred to the lessor at the end of the contract. In addition, these contracts include a commitment by the tenant to provide certain services (maintenance, construction, renovation, etc.) that are not paid for by the lessor. More broadly, in the case of transactions with below-market consideration, the question of the measurement of an additional in-kind consideration arises.

3.3. Decision-making authority, i.e. exercising control of the right

When an asset is used to render public services, the occupant's right over the asset can be considered implicitly limited to the performance of the operation. The question for the public sector that arises here relates to the definition of control over the right to occupy the asset in light of the limits imposed by rendering public services. Does this simply relate to protective rights?

For BE/BEA, BAR, and BAC contracts, we believe that the occupant's rights over the underlying property are wider than those under a standard lease contract, given the very purpose of the contract.

4. Current accounting treatment for these transactions

In the accounts of the public sector entity that granted an AOT, the property subject to the AOT remains under the control of the lessor and lease payments are recognised as income (the occupant records an expense).

Transactions involving the transfer of rights over an asset aimed at increasing the value of the asset are analysed according to the specific characteristics of each contract, as well as by taking into account, where appropriate, other contracts that form the general framework of relations between the lessor and the occupant.

Leases contracts by low-income housing entities are accounted for as operating leases: the asset remains on the lessor's balance sheet and the lessor records lease payments as operating income.

Question 1

In your jurisdiction, do you have concessionary leases (or similar arrangements) as described in this RFI? If yes, please:

- (a) Describe the nature of these leases (or similar arrangements) and their concessionary characteristics; and*
- (b) Describe the accounting treatment applied by both parties to the arrangement to these types of leases (or similar arrangements), including whether the value of the concession is reflected in the financial statements.*

Scope: Low-income housing (public sector entity = lessor).

For these transactions, lease payments rates are set up by public authorities. The question of the latitude in setting lease rates arises: in practice does this reflect a subsidy from the low-income housing lessor to the lessee?

Accounting treatment: expenses and income for the period; the subsidised portion granted to the lessee is not reflected in the accounts.

See also Upfront note

Question 2

In your jurisdiction, do you have leases for zero or nominal consideration as described in this RFI? If yes, please:

- (a) Describe the nature and characteristics of this type of lease (or similar arrangement); and*
- (b) Describe if and how the value of the concession is reflected in the financial statements of both parties to the arrangement.*

Scope: Assets transfer agreements between Central Government and its operators or the local sector in the context of transfers of public service responsibilities. These transactions may transfer control of the underlying asset; in such case, we believe that they should be outside the scope of the RFI. The asset is then recognised on the lessee's balance sheet (lessor and lessee are public sector entities).

Accounting treatment:

- exchange transactions: the exchange consists of an increase in the ownership interest or rights that the lessor has in the lessee; "reclassification" of the asset provided as a financial interest in the transferor's financial statements; recognition of the asset received against equity in the transferee's financial statements;
- non-exchange transactions: derecognition of the asset from the transferor's balance sheet against equity in the transferee's financial statements.

In these situations, the subsidised portion is not reflected in the accounts.

See also Upfront note

Question 3

Does your jurisdiction have arrangements that provide access rights for a period of time in exchange for consideration? If yes, please describe the nature of these arrangements and how they are reflected in the financial statements of both parties to the arrangement.

In these situations, there is no consideration in exchange for the right of access in France.

Under French law, in the circumstances referred to by the IPSAS Board, the traditional system of easements, which apply to both private and public entities, is analysed more as a restriction to the right of the owner, than as a contract providing a right to a beneficiary.

Example: Forest road used to prevent and fight forest fires, giving free passage to fire fighting vehicles.

The beneficiary of the easement can either be a public sector entity or a private sector entity. The easements are not recognised in the financial statements. The barrier to recognition is the inability to reliably measure the reciprocal rights or obligations in the absence of consideration.

Question 4

In your jurisdiction, do you have arrangements with the same or similar characteristics to the one identified above? If yes, please describe the nature of these arrangements and how they are reflected in the financial statements of both parties to the arrangement.

On the national territory, private entities rarely provide for free of charge occupancy (less than 5% of the property concerned), as a private entity does not have the same mission as a public sector entity to act in the general public interest.

An analysis of a few cases shows that, in most instances, the private entity is under a legal obligation to provide free access to its property. Indeed, 86% of the associated assets relate to:

- the provision of premises in slaughterhouses to veterinary services to carry out health inspections (48%);
- the provision of premises to Central Government services within a concession agreement (police squads on motorway concessions, customs authorities at airport concessions, etc.) (38%).

With respect to the accounting treatment, and for the purpose of comprehensive inventory, assets provided to veterinary services were recorded in the Central Government's financial statements as assets against equity at a unit value of €2.

For assets provided under a concession agreement, the accounting treatment is the same as set out in Standard 18 of the Central Government Accounting Standards and the Public Establishments Accounting Standards Manual.

Question 5

In your jurisdiction, do you have arrangements involving social housing with lease-type clauses or other types of lease-like arrangements with no end terms? If yes, please describe the nature of these arrangements and how they are reflected in the financial statements of the social housing provider.

In the low-income housing sector, leases can be open-ended, with tenants being entitled to housing as long as they meet the social housing allocation criteria.

Accounting treatment: expenses and income for the period; the granted subsidised portion is not reflected in the financial statements.

See also Upfront note

Question 6

In your jurisdiction, do you have arrangements involving the sharing of properties without a formal lease contract? If yes, please describe the nature of these arrangements and how they are reflected in the financial statements of both parties to the arrangement.

No specific case identified.

Question 7

In your jurisdiction, do you have other types of arrangements similar to leases not mentioned in this RFI? If so, please describe the characteristics of these arrangements and how they are presently being reflected in the financial statements of both parties to the arrangement.

Temporary occupancy permits (AOT) are analysed as unilateral authorisations; they relate to public property and are precarious in nature. The terms of use are restricted in that the private use of public property must not prevent the public to access the property. Private use is therefore partial and is not accompanied by the control of a right over an asset. Moreover, the precarious nature of this right makes it difficult to measure reliably.

Accounting treatment:

In the accounts of the public sector entity that granted an AOT, the property subject to the AOT remains under the control of the lessor, and lease payments are recognised as income for the period (the occupant recognises an expense).

With respect to long-term leases (BE), whether under common or administrative law, they pertain to owners who generally have significant real estate assets and an interest in having them increase in value through occupancy by a third party. The leases are long in duration, between 18 and 99 years according to French law.

Building leases (BAC) and leases under urban renewal programs (BAR) follow a very similar approach.

In all of these transactions, the contract may be signed for a below-market value. However, any in-kind consideration that may be included in the contract should be taken into account: the consideration corresponds to the increase in property value brought about by the occupant as well as the transfer of control of any improvement or new construction carried out by the occupant during the contract to the lessor at the end of the contract.

Although the contract requires that the asset should be used for a specific purpose, the occupant still has some leeway as to how to use the asset (for instance the occupant may build constructions on the leased land). Such rights over assets are difficult to reflect in the financial statements.

Accounting treatment:

Current accounting principles do not address specifically BE, BEA, BAC and BAR contracts for which it is complicated to apply the accounting framework, particularly given that each transaction is unique.

See also Upfront note