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EUROSTAT

Directorate D: Government Finance Statistics (GFS)

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Ms Aija Žīgure
President
Central Statistical Bureau of Latvia
Lāčplēša Street 1
Riga 1301
Latvia

Subject: Request for ex-ante advice on the statistical treatment of the model Energy Performance Contract of the Republic of Latvia

Reference: Your e-mail and letter from 17 July 2019 Nr.0100 – 15/2020/625 and attached model contract

Dear Ms Žīgure,

Following your e-mail from 17/07/2020, and enclosed documentation, with the request for bilateral advice on the statistical treatment of the model Energy Performance Contract with Guaranteed Energy Savings of the Republic of Latvia, Eurostat would like to provide you with its opinion regarding the statistical treatment of the model Energy Performance Contract of the Republic of Latvia.

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1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS REQUESTED

A preliminary advice is requested on the statistical treatment of the model Energy Performance Contract (EPC) with Guaranteed Energy Savings (hereinafter – EPC model) and the recording of the liabilities of the general government sector entities arising from such a model contract. This analysis is based on the model agreement provided by the Central Statistical Bureau of Latvia.

Background information

Energy Performance Contracting (EPC) is a particular form of energy efficiency investment. The EPC involves an Energy Service Company (ESCO), which provides various services, such as financing and guaranteed energy savings. The remuneration of the ESCO depends on the achievement of the guaranteed savings.

Public sector stakeholders are under increasing pressure to reduce their overall energy consumption and, in doing so, to look at ways of improving the energy efficiency of their buildings and other infrastructure. Decisions to undertake the up-front investments needed in order to deliver energy efficiency improvements are, however, sometimes influenced by expectations as to how they will impact governments' balance sheets according to the European system of accounts (the so-called "statistical treatment"). In certain circumstances, EPC can be recorded "off balance sheet" for government.

Documentation provided

The Central Statistical Bureau of Latvia (CSB) provided to Eurostat, by e-mail from 17/07/2020, a copy of the model EPC agreement for energy performance contracts (EPCs) with guaranteed energy savings for the Republic of Latvia and their methodological analysis for such EPC arrangement.

Eurostat's analysis is based on these documents, which can be amended by negotiation of the parties. Therefore, any amendments of the current model agreement should be analysed, case by case, to assess the statistical treatment of each particular EPC contract.

2. DESCRIPTION OF THE CASE

General information

The EPC market although popular in the private residential sector, among multifamily buildings, is still at its beginnings in the Latvian public sector. This situation of low or inexistent level of demand of EPC projects in the public sector is mainly related to informational, public procurement and tendering procedures barriers' and to an *unclear nature of the long-term liabilities occurring as a result of the EPC contract,* leading to possible impacts in the compilation of public debt.

The Latvian EPC model

In order to open the way for the implementation of EPC contracts in the public sector in Latvia, which might facilitate renovations of public sector buildings and energy efficiency optimization, an EPC model agreement was developed to comply with terms and recommendations as provided in the EPC Guide. The Ministry of Economics of Latvia (MoE) and the Law Office Spridzans, developed the model contract with the assistance of the European Investment Bank within a JASPERS initiative.

The final version of the model contract agreement also includes comments from a range of stakeholders from public and private sector to which the document was provided for discussion. It is the wish of the Latvian authorities to confirm the compliance of the document with off-balance sheet treatment criteria. Thereafter the model contract agreement is foreseen to be used by general government sector entities in energy performance contracting in Latvia. MoE envisages to initiate EPC pilot projects, starting with several target buildings owned by VAS *Valst nekustamie Ipasumi* (State owned real estate operator, a company fully owned by the State).[1]

The Latvian EPC contract with guaranteed energy savings model provides a template for EPC projects aiming at the achievement of permanent energy savings via the renovation of energy efficiency infrastructure. The energy efficiency is enhanced through the realisation of capital investments in *(i) the refurbishment and renovation of the Infrastructure [including the fitting out of energy generation installations] and (ii) the implementation of energy cost-efficient operation of the Infrastructure [including energy generation installations]*.(EPC model, point (A))

3. METHODOLOGICAL ANALYSIS

Applicable accounting rules

Eurostat carried out its analysis based on the EPC Guide to Statistical Treatment of Energy Performance Contracts (EPCs), published jointly by the EIB and Eurostat in May 2018 (EPC Guide)[2], which is relevant for the analysis. The guide completes comprehensively the general rules specified in ESA 2010 and the Manual on Government Deficit and Debt in force.

Availability of national accounting analysis

The Latvian statistical authorities provided to Eurostat, in their letter from 17/07/2020, a methodological analysis of the classification of the model contract, having based their analysis on the EPC Guide.

The CSB's conclusions are that *since the model contract has no VERY HIGH, HIGH or MODERATE, or AUTOMATIC ON BALANCE SHEET items, (…) based on ESA 2010 methodology, the model contract is to be considered off-balance sheet (…) for government accounts purposes. (…) At the same time, CSB takes account of the fact that CSB will assess the statistical treatment of particular contracts as they stand at the date of financial close, taking into account the specificity of each case.*

[1] CSB's letter from 17.07.2020

[2] https://ec.europa.eu/eurostat/documents/1015035/8885635/guide_to_statistical_treatment_of_epcs_en.pdf/f74b474b-8778-41a9-9978-8f4fe8548ab1

Methodological analysis

3.1. The features of an EPC

The particular features of an arrangement that need to be analyzed to determine whether it falls or not within Eurostat's own definition of an EPC are:

a. Statistical sector classification of the parties

The definition of an EPC requires that the Beneficiary is for statistical purposes classified inside government. Whereas, the Provider has to be an entity, classified for statistical purposes, outside the general government sector.

The submitted EPC model explicitly reflects that the EPC contract is signed between the Beneficiary and a private partner (the Provider) under clause 10.1.7 which states that *the Provider represents and warrants to the Beneficiary that it is not a General Government Sector Entity*.

This classification implies that the Provider is not controlled by government, or if being controlled by government, the entity should be a market producer by passing the qualitative and quantitative assessment. The test is to be applied by CSB to each individual EPC and on a case by case basis.

It is to be noted that the EPC model does not ensure that the Beneficiary shall be a government entity. If for statistical purposes, the Beneficiary is classified outside the general government sector (e.g. a company that is owned by government but, in statistical terms, considered a "market producer"), the arrangement is not considered to be an EPC for the purposes of the Rules and the EPC Guide does not apply.

There is no statement in the model agreement clearly excluding the possibility of the Provider being a Special Purpose Vehicle (SPV). In the case where the Partner is a SPV, further test should be applied in order to prove that government does not control the entity. The Provider shall always, for statistical purposes, be a unit classified outside general government and this should apply in the eventual case where the model agreement will be delivered through a SPV. If the SPV is controlled by government it will, for statistical purposes, be classified inside general government and as a result the arrangement will not be considered to be an EPC and it will be on balance sheet for government.

b. Type of assets and scope of services provided by the Provider under the contract

The EPC involves initial capital investment in one or a series of measures (e.g. construction works, provision of equipment and the delivery of related services) designed to improve energy efficiency through reducing the energy consumption of existing infrastructure that, as indicated in footnote 4 of the EPC model, should be clearly defined in Schedule [2] of the model agreement. In order to assess if the contract will therefore qualify as an EPC agreement (EPC Guide chapter 2), CSB needs to analyze, case by case, if the features described in schedule [2] of the contract guarantee that all the conditions required by the Guide are met. Without any capital investment in the provision of new or renewed assets or equipment, the arrangements are, for statistical treatment purposes, to be treated as service contracts, and are outside the scope of the Guide.

Furthermore, the Provider must, as a minimum, be obliged to maintain (and, as necessary, replace) the EPC assets for the duration of the contract with a view to ensuring their ongoing ability to deliver the energy consumption and/or cost savings required under the EPC.

c. Duration of the contract

The duration of the EPC should be sufficient to cover a meaningful part of the economic life of the EPC assets. The model agreement would have a duration of eight years minimum or longer as stated in clause 14.1 and footnote 28 of this clause.

d. Type of contract payments

In exchange, the Partner (the Provider) receives from the Authority (the Beneficiary) routine performance-based payments linked to the energy consumption and/or cost savings delivered by those measures.

In the EPC model, the Provider is not remunerated on the basis of the availability of and/or demand for the existing infrastructure, but receives from the Beneficiary routine performance-based payments linked to the amount of energy consumption savings, energy-related cost savings and/or revenues guaranteed under the energy performance contract (clause 7.1 of the EPC model and GES definition).

e. Third party revenues generated from the arrangements

At financial close, the extent to which the Provider and the Beneficiary each benefit from third party revenues affect whether the arrangement falls within the EPC definition. The effect of third-party activity on guaranteed energy savings infrastructure and target parameters is to be discussed on an individual case basis (the EPC model calls attention to this issue under footnote 22). If the measures implemented under an energy efficiency arrangement are expected to generate revenues from third parties, those amounts should be forecasted for the Provider as below the total amount of the contractual payments that it receives from the Beneficiary; and for the Beneficiary, as less than 50% of the total amount of the contractual payments that it is forecast to make to the Provider.

In conclusion, the statistical treatment of the EPC will be assessed using the Rules of the EPC Guide to see if the several above mentioned features are met. All the features are referred to in the EPC model, but the conditions are not in all cases clearly ensured by the text of the contract. Consequently, a case by case analysis is needed to confirm the features of the agreement as an EPC are met.

3.2. Statistical treatment of the EPC

The analysis of the EPC provisions below, namely, the assessment of the allocation of risks and rewards borne by each contracting party and all entities classified in the general government sector, could influence or not the statistical treatment of the EPC, meaning the EPC being on balance sheet for government or being neutral to the statistical treatment.

a. The partner’s responsibilities

Legal ownership and access rights: the site and the EPC assets

The legal ownership of the site (i.e. the land and/or facilities in/for which the energy efficiency measures will be implemented) remains with the Beneficiary for the duration of the EPC (and after its expiry)(EPC model, definition of “Site” [or “sites”]) and the Beneficiary grants access rights over the site to the Provider. Furthermore, according to EPC model, clause 6.7, the ownership of any and all renovated assets is transferred to the Beneficiary, even if according to footnote 20 of the EPC model the parties may agree on exceptions regarding some assets.

The Provider is restricted to exercising its access rights over the infrastructure and the site to the extent necessary to perform its obligations and exercise its rights under the EPC. For the realisation of the project, as referred to in clause 6.2 of the EPC model, the Beneficiary agrees to allow the Provider to access all relevant places to execute its work, as well as, to provide the required information related to the condition and operation of the infrastructure requested by the Provider for the purpose and in the scope necessary for its performance.

The here discussed provisions developed in the model agreement will have no influence on the statistical treatment of the EPC arrangement (EPC guide theme 1).

Specification, design, construction and installation of the EPC assets

Within the EPC model, the Provider is responsible for the design, the construction, installation and the maintenance of the EPC assets, based on the project specifications set in the tender documents, at its own risk and under the close supervision of the Beneficiary. (EPC model, point (B); clause 2.2; and, clause 3 Provider’s obligations during the preparation period and renovation period).

The provider is responsible for the implementation of the project no later than by the designated deadlines and will bear all the costs it incurs for its performance. *Should any error, omission, ambiguity, discrepancy, deficiency or any other defects be detected in the Provider’s Design, they shall be rectified at the Provider’s expense, notwithstanding the Beneficiary’s consents or approvals.* (EPC model clause 3.3)

The here discussed provisions developed in the model agreement will have no influence on the statistical treatment of the EPC arrangement (EPC guide theme 2).

Maintenance and operation of the EPC assets

The maintenance and the guaranteeing of the functionality and smooth running of the EPC assets so that the Guaranteed Annual Savings are achieved is the sole responsibility of the Provider, who has to carry it out, under the control of the Beneficiary. The Beneficiary is entitled to inspect the proper maintenance and the condition of the assets and to monitor the meeting of the requirements for the minimum amount of the Guaranteed Annual Savings (EPC model, clauses 5.4 and 5.5).

The manuals for assembly, maintenance and operation of the EPC assets shall be delivered by the Provider to the Beneficiary on the renovation completion date along with the execution and handover of the Acceptance Certificate. The provider has to address on its own costs any incompleteness of the maintenance and no later than the Final Date (EPC model, clauses 3.11 and 15.1.1.3).

Where some maintenance of the EPC assets sits outside the scope of the Provider's obligations, the Beneficiary undertakes to ensure that this maintenance is carried out (either by itself or by a sub-contractor) in accordance with the Provider's instructions and any relevant manufacturers' warranties etc.

The here discussed provisions developed in the model agreement will have no influence on the statistical treatment of the EPC arrangement (EPC guide theme 3).

b. The Guaranteed Energy Savings (GES)

The provider undertakes to guarantee the level of energy savings pursuant to schedule [8] of the EPC model. This is a guarantee from the provider that the EPC assets will deliver a minimum level of energy consumption and/or cost savings for the beneficiary over the lifetime of the contract.

The Provider guarantees to the Beneficiary that the agreed savings will be achieved under the Project, and guarantees a financial compensation in the event of a shortfall or failure to achieve savings under the agreed terms and conditions.

The EPC model envisages the possibility of several sites. Different energy efficiency targets for each such site may be set and the excess savings on one site may compensate for a savings shortage on another site.

Clause 5.5 of the EPC model concerns the ongoing monitoring and measurement of the EPC assets' performance in delivering the energy consumption and/or cost savings. The Provider shall notify the Beneficiary of the outcome of such monitoring under the terms and conditions, and within the scope and periods referred to in schedule [12] (Intermediate Inspections and Monitoring of the Guaranteed Annual Savings). Furthermore, in accordance with a report template defined in schedule [10] of the EPC model, the Provider prepares on a regular basis, an assessment report to the Beneficiary (EPC model, clause 1, definitions and interpretations, definition of "assessment report").

Actual Annual Savings are calculated every year and may vary depending on the event of changes to the input parameters/ assumptions based on which the Baseline and Guaranteed Annual Savings have been determined. Schedule [9] of the model agreement identifies the changes, routine and non-routine changes that may be considered relevant for such recalculation, and refers to EPC model, footnote 42.

The EPC model requires in clause 4.1 that the Provider guarantees that the renovated assets are free of any functional defects and undertakes remediation or rectification measures, at its own discretion, to improve the performance of any EPC assets that are found to be under-performing. Breaches to this obligation are penalized with the payment of a fee.

The general provisions set in the model agreement comply with the rules set in the EPC Guide (theme 4) and would therefore not lead to the classification of the EPC arrangement on the authority's balance sheet.

c. The payment mechanism

The Operational Payments (the GES payments) are designed to reimburse the Provider's costs of delivering the EPC and make available an element of profit. According to clauses 7.1 to 7.3 of the EPC model, from the first date of the Guarantee Period the annual amount is due in equal monthly or quarterly instalments. The amount of the Payments for GES may be reduced or increased due to the contractual mechanism in place. For instance, reductions may occur due to breaches to the obligation to rectify any defect in the Renovation or to breaches to the obligation of monitoring the condition of the Assets and the minimum amount of the Guaranteed Annual Savings and to notify the Beneficiary of the outcome of such monitoring (clause 5.6 of the EDP model). However, clause 5.7 determines a maximum amount of the Reducing Amount resulting from the breaches by the Provider. Likewise, the Payments for *GES will be automatically adjusted by the savings shortfall or savings Excess approved in the assessment report.* Following the principle of proportionality, the Provider shall be entitled to at least 2/3 of the Energy Savings Excess (EPC model, clause 7.9.).

The monthly GES payment can be positive, zero or negative (in the latter case, the difference is settled against the future Payments for GES, in accordance with the rules settled in clause 7.11 of the EPC model.

The payment mechanism follows the rules set in the EPC Guide (theme 5) and allows recording the EPC assets on the private partner's balance sheet.

d. Force majeure events

The definition of force majeure can be found in clause 1.1 of the EPC model: *Force Majeure shall mean solely the following circumstances (in each case provided that they meet the abovementioned conditions): war, sabotage, a terrorist act, blockade, strike, epidemic, nuclear explosion, radiation, chemical or biological contamination, plane crash and natural disasters (earthquakes, landslides, fires, floods, storms, windstorms, volcanic eruptions, avalanches, hailstorms, droughts).*

Force majeure events are detailed in the EPC model and are all totally out of the control of the parties. Clause 12 of the EPC model agreement sets the force majeure rules for the arrangement and determines that *the Parties shall be relieved from liability for partial or complete non-performance of their obligations hereunder if such non-performance is caused by Force Majeure.*

A Force Majeure event can result in the early termination of the agreement.

For the avoidance of doubt, laws and regulations adopted, actions of public administration institutions and documents adopted by them, changes of an economic, political, financial or currency nature, change of the economic conditions of any Party or Subcontractor, or failure or refusal to issue any decision by a public authority shall never be considered a Force Majeure event.

These provisions of the model agreement will have no influence on the statistical treatment of the EPC contract (EPC Guide theme 6).

e. Changes to the EPC / Changes in law

Changes can occur only in the situations specifically defined in the contract. If those are proposed by the Provider, the approval of the Beneficiary is requested.

On the other hand, if the Beneficiary is aware of any changes of circumstances, there is the obligation to notify the Provider of those. This situation could result in the recalculation of the Guaranteed Annual Savings pursuant to the EDP model, Schedule [2] Tender Proposal of the Provider (such as changes to the use of the Infrastructure, changes to the working schedule, changes in the number of persons using the Infrastructure, disruption of the Infrastructure, and the Beneficiary's activities that could have a material effect on energy consumption, etc.). (EPC model, clause 6.10).

In this case, the change is recognised as justified and the EPC model allows adjustments to the annual payment, as long as the Provider will not be in a better or worse position than before.

Furthermore, the EPC model, in clause 6.12, entitles the Provider to a reimbursement of its direct expenses and reasonable profit (to be discussed) if a change to the scope of the performance and an amendment is made to the contract based on a unilateral request of the Beneficiary. Any compensation or relief given to the Provider should be limited to address just the effect of the authority change. If this is not the case, then there might be an issue of high importance for the statistical assessment.

The EPC model allows changes resulting from changes in the Law that were *not and could not have been foreseeable at the time of the execution of the Contract.*

If during the performance of the Contract a change in laws occur, (…) either Party shall be entitled to request a reasonable change to the Contract (…). For this purpose, the Parties shall be obliged to enter mutual negotiations regarding amending the Contract at the request of either Party. (EDP model, clause 13)

The authority bears no risk of changes in law and the private partner has no right of a compensation. However, any unforeseeable change will be discussed and assessed between the parties.

The provisions included in the framework agreement as described will have no influence on the statistical treatment of the EPC assets (EPC Guide theme 7 and EPC Guide theme 8).

f. Insurance

The EPC model includes the obligation for the Beneficiary to enter at its own expense into an insurance policy for the insurance of the Infrastructure including insurance against damage and destruction resulting from a natural disaster without any limitation. (EDP model, clause 9)

Nevertheless, during the implementation of the Project, the Provider shall be obliged to have in place, an insurance policy for professional liability. Only these insurances could influence the statistical treatment.

As the insurance premiums related to the performance of the provider are to be covered by the provider, the provisions set in the model agreement would have no influence on the statistical treatment. (EPC guide theme 9).

g. Warranties and Indemnities

Warranties given by the two partners are linked to typical commercial warranties (EPC model, clause 10). Any indemnity is only due by either party if there is a breach of the obligations or due to negligence by one party (EPC model, clause 11).

Furthermore, *if a sanction is imposed by a competent authority directly on the Beneficiary as a result of the Provider's breach of its obligations, the Provider shall be obliged to indemnify the Beneficiary for the amount of the imposed sanction in full.* (EPC model, clause 11.2).

The provisions included in the model agreement would not lead to the classification of the EPC on the authority's balance sheet (EPC Guide theme 10).

h. Early termination of the EPC

According to the EPC model, clause 14, the contract may be terminated early by: agreement of the Parties; withdrawal from the contract by the relevant party in accordance with the terms and conditions of contract, for instance due to default by the provider or by the beneficiary, or due to an event of force majeure; and, by unilateral decision of the Beneficiary, in accordance with the terms and conditions of the contract.

The provisions included in the model agreement would not lead to the classification of the EPC on the authority's balance sheet (EPC Guide theme 11).

i. Compensation on early termination of the EPC

The EPC model provides for the payment of compensation by the Beneficiary to the Provider on early termination of the EPC. The rules for the calculation of the amount of compensation payable varies depending on the circumstances giving rise to termination (for example, clause 15.3.1.2 defines a compensation for the case of early termination due to a breach of the Provider) and are in accordance with Schedule [11] of the model agreement which are to be established in accordance with the Guide, Theme 12 (footnote 44 of the EPC model).

No liabilities of the Provider to the Beneficiary that pre-date termination of the EPC are cancelled (EPC model, clause 15.1.4).

The EPC model contains provisions that require the Provider to co-operate with the Beneficiary to ensure a smooth transition in the hand-over of the construction, operation and maintenance of the EPC assets back to the Beneficiary (or to a third party)(for instance, clause 15.3.3 of the EPC model).

The responsibility for the EPC assets themselves reverts to the Beneficiary or, if the EPC is re-tendered by the Beneficiary, to a third party.

The provisions included in the model agreement would not lead to the classification of the EPC on the authority's balance sheet (EPC Guide theme 12).

j. Expiry of the EPC

The EPC expires on the final date which is the definitive period of time from its effective date until the lapse of time from the initial date of the Guarantee period (EPC model, clause 14.1 and 15.1).

Regarding the allocation of the EPC assets on expiry, the model agreement contains provisions by which the Provider takes the risk that, on expiry of the contract, the physical condition of the EPC assets meets a minimum specified standard that is consistent with them having been maintained in accordance with the contract. An audit of energy efficiency of the Infrastructure shall be conducted for the assessment of the standard (EPC model, clause 15.1.1).

The provisions included in the model agreement will not lead to the classification of the EPC on the authority's balance sheet (EPC Guide theme 13).

k. Financing arrangements

As stated in clause 8.1 of the EPC model, *the costs of the implementation of the Renovation and the provision of Services shall be borne by the Provider, who shall ensure the financing of the Renovation and the provision of Services from its own or external resources.*

The Provider is limited by the EPC guide on the sources of financing. Any form of authority commitment to finance the EPC should be thoroughly examine as it will have an influence on the balance sheet treatment according to the EPC Guide (footnote 26 of the EPC model). EPC model, clause 8.2, defines some rules for the use of resources by the Provider other than its own. For example, clause 8.2.2 notes that the financing *[does not use] / [or uses not more than [●] % of the amount of the Investment Costs] financial resources that can be deemed to be government financing pursuant to the Guide for the performance of its obligations hereunder;*

Schedule [5] of the EPC model provides the description of Sources of Financing Including Preliminary Agreement with Financier of Renovation including all the documentation related to financier(s).

The Beneficiary agrees to make the Payments for GES in accordance with the terms and conditions of the Contract. (EPC model, clause 8.4)

According to the EPC model, clause 16.3, factoring is allowed but under certain conditions, such as, *at all times not more than [80%] of the amount of the Payments for GES made by the Beneficiary under the relevant provisions and subject to the terms of this Contract and the entitlement to the compensation* [payable in an event of early termination]. In general, refinancing shall not deteriorate the Beneficiary's position under the contract.

The provisions included in the model agreement will not lead to the classification of the EPC on the authority's balance sheet (EPC Guide theme 14).

l. Government influence

If the government's share in the ownership of the Provider leads to a statistical classification of the Provider to the general government sector, the arrangement shall not be considered an EPC and is on balance sheet for government. Moreover, the amount invested by government in the shares of the Provider is considered government financing and may influence the statistical treatment of the arrangement. In addition, any entitlement by government to the Provider's profits is considered to be government reward from the asset and does influence the statistical treatment as described in the EPC guide.

The beneficiary step-in rights should be reflected in the EPC model and have deductions for unavailability and/or poor performance service performance applied to the operational payments by the government. Likewise, the EPC should not include any provision that caps the amount of revenue or profit that the Provider can make from the EPC, otherwise the EPC will be considered immediately on balance sheet of the government.

4. EUROSTAT'S VIEW

Statistical treatment of the EPC contract

Considering the EPC model as a framework agreement for the future Energy Performance Contracting in the Republic of Latvia, the analysis of its statistical treatment seems to indicate that most of the risks and rewards are either borne by the Provider (the private partner) or shared by the Beneficiary (the government authority) and the Provider. Nevertheless, prudence is required as the model agreement template is lacking details on several points, leading to a situation where actual contracts need to be analysed on an individual basis, since full coverage of issues is not explicitly ensured by the EPC template.

According to the three steps methodology for the assessment of the statistical treatment of an EPC referred to in the EPC Guide, the information provided seems to lead to the conclusion that the provisions would not require a statistical classification of the EPC assets on the Beneficiary's balance sheet. Therefore, and if the conditions and remarks done in the EPC model are followed appropriately, it is reasonable to presume that the EPC could be off balance sheet for Beneficiary (government) and the EPC would be recorded on the balance sheet of the private partner.

On the basis of the above considerations and analysis, Eurostat has reached an indicative and provisional advice on the classification of EPC assets, which under the current framework agreement seems to indicate an off-balance sheet classification. Thus, with limitations, Eurostat supports the Latvian authorities' sector classification proposal.

Limitations

Eurostat would like to stress that this opinion has a preliminary character and can be changed on a case by case basis. The EPC model will be subject to amendments related to the specification of each individual project. Therefore, any amendment related to project specific features or amendments in general, which have an impact in particular, but not limited to, on:

– the sector classification of the Provider; including in the case where the Provider is a special purpose vehicle, further test should be applied in order to prove that government does not control the entity;

– the financing of the Provider by the Beneficiary, including compensation or relief arrangements;

– the sharing of risks and rewards between the Provider and the Beneficiary should be carefully assessed against the EPC Guide in order to classify the particular EPC project accordingly.

5. PROCEDURE

This view of Eurostat is based on the information provided by the Latvian 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