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Unit D1: Excessive deficit procedure, methodology and GFS

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Subject: Request for advice on an Energy Performance Contract

Ref: E-mail from the Irish Central Statistics Office, 28 July 2020

Dear Ms Jennifer Banim,

In July 2020, the Irish Central Statistics Office (CSO) requested the opinion of Eurostat on the treatment of an Energy Performance Contract signed in June 2020.

The CSO provided the original contract, its own detailed analysis of the case, and all the additional documents required by Eurostat. The CSO also kindly answered to all Eurostat's questions on various features of the contract.

Eurostat closely examined all the information provided, and is now in the position to express its opinion on the above-mentioned case.

In this version of the advice, all the references to the names of the parties involved in the contract and to the specific points of the contract itself have been removed, at the request of the CSO, to align with the requirements of the Irish Statistics Act, 1993.

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A. Background

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. The decisions to undertake the up-front investments needed in order to deliver improvements in energy efficiency are, sometimes, influenced by expectations as to how the investments will impact governments' balance sheets according to the European system of accounts (the so-called "statistical treatment").

Energy Performance Contracting is part of the instruments promoted by the EU Commission 2012 *Energy Efficiency Directive*[1] to facilitate energy savings in the EU Member States.

Eurostat released its first Guidance Note on the statistical treatment of Energy Performance Contracts (EPCs) in August 2015, an updated version of the Guidance in September 2017, and finally, jointly with the EIB, it published the *Guide to the Statistical Treatment of Energy Performance Contracts* in May 2018[2].

The *Guide to the Statistical Treatment of Energy Performance Contracts* (from now on "the EPC Guide") clarifies under which circumstances an EPC can be recorded off the balance sheet of government.

B. The accounting issue submitted to Eurostat's opinion

In June 2020, the Authority and the Partner signed an Energy Performance Contract (EPC), which was the first such a contract in Ireland to be assessed using the 2018 EPC Guide.

According to this EPC, the Partner will remove the old electricity, heating and ventilation systems, the old hot water and steam systems, and the old lighting system and replace them with new, more efficient ones.

The Partner's initial expenditure for the installation of energy saving assets is financed by an external Senior Funder, partly using funds made available by the Ireland Energy Efficiency Fund (IEEF), a financial corporation with a large government's participation.

The Authority will pay back the Partner, who will in turn pay the Senior Funder over a defined period, with monthly payments.

The Irish Central Statistics Office (CSO) submitted a provisional off government balance sheet statistical classification assessment to Eurostat, who are the final arbiters for all classification decisions.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012L0027-20210101&qid=1614621598850

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

C. Documentation provided by CSO or consulted

CSO provided to Eurostat a copy of the following confidential documents:

Agreement between the Authority and the Partner for the provision of energy and energy management facilities at the site, June 2020 (EPC).

CSO, *Analysis of Energy Performance Contract between the Authority and the Partner* (CSO Analysis).

Financial Statements for various bodies that are funding the project.

D. The accounting analysis provided by the CSO

The CSO analysed the EPC, and concluded that its terms are consistent with the EPC Guide. The CSO assessment is that the project can be treated as being off balance sheet for the purposes of National Account Classifications (CSO Analysis, p.10).

E. Eurostat's analysis of the contract

In the following paragraphs, Eurostat will review all the elements of the EPC that might be relevant for the statistical classification of the contract, in light of the prescriptions included in the EPC Guide. The terms "Authority", "Partner", "Senior Funder" and "Asset Owner" are underlined whenever the real name of the entities involved in the EPC examined have been suppressed, for confidentiality reasons.

E.0 Sector classification of the parties

The definition of an EPC included in the EPC Guide requires that, for statistical purposes, the authority is classified inside the general government sector, and the partner is classified outside the general government sector.

The EPC examined was signed, in June 2020, between an entity belonging to the central government sector and a corporation providing a comprehensive range of energy, waste and water solutions, which is a private market producer not controlled by government, classified by the CSO in the non-financial corporations sector S.11.

Both parties involved in this EPC contract satisfy the requirements established by the EPC Guide, page 20-24.

Examining further the EPC, reveals that the contract involves also other parties.

The Legal Owner of the EPC assets is a special purpose entity set up by the Senior Funder (see pages 5 and 15 of this document). The CSO classifies these two entities in the financial corporations sector S.12.

The **Carbon & Energy Fund/CEF** (see p.10 of this document) is an organization created by the Irish government to fund, facilitate and project manage complex infrastructure upgrades for the various sectors of the economy, which established the procurement framework for this EPC contract and will monitor the energy savings. The CSO classifies CEF in S.11.

Finally, the **Ireland Energy Efficiency Fund/IEEF** (see p.15 of this document), the entity providing the funds to the Senior Funder, is a financial corporation with a large government's participation, classified by the CSO in S.12

E.0.1 Duration of the contract

The EPC Guide requires that the duration of the contract is at least eight years, and sufficient to cover a meaningful part of the economic life of the EPC assets.

In the contract examined, the construction works will last a specific period, and are expected to be completed at the end of 2021 (*Completion Date*, as defined in the EPC).

From the day the works will be completed, the operation period of the EPC will start, and will last a specific period of time (*Project Term, as defined in* the EPC).

Eurostat recognizes that the contract examined does cover a meaningful part of the economic life of the EPC assets, as required by the EPC Guide, page 26.

E.l Types of new assets, and their ownership

According to the EPC Guide, an EPC must imply an initial capital investment in one or a series of measures designed to improve energy efficiency by reducing the energy consumption of the existing infrastructure.

According to the EPC examined, the Partner will remove the existing electricity, heating and ventilation systems, the existing hot water and steam systems, and the existing lighting system and replace them with new, more efficient ones.

Eurostat recognizes that the contract examined includes capital investment in measures designed to improve the energy efficiency of the Authority, in line with the requirements of the EPC Guide, page 24.

E.1.1 The ownership of the new EPC assets

At expiry of the contract, the ownership of the new equipment which constitutes "*a Fixture*" (a non-removable part), will be transferred to the Authority, while the rest of the equipment shall be removed by the Partner, at its own costs, in accordance with Good Industry Practice, and as may be agreed with the Authority (EPC).

It is worth noting that, according to this EPC, the *Asset owner* is not the Partner, but a third entity set up by the Senior Funder. The EPC defines the relation between the Partner, the Asset Owner and the Authority. The Authority shall make all the *Service Payments* on a bank account in the joint names of the Asset Owner and the Partner.

Eurostat recognizes that the contract examined does satisfy the requirements specified by the EPC Guide, page 35, in terms of* ownership of the assets *at the end of the contract.

E.2 Design and construction of the EPC assets

The Partner designed the proposal for the new energy equipment (which was submitted to the approval of the Authority), and will remove the old equipment and carry out all the construction works.

Design and construction risks lie with the Partner. If the Partner proposals does not fulfil the Authority requirements, the Partner shall, at its own expense, amend the proposal and rectify the works.

The Authority is not entitled to share eventual lower constructions costs than anticipated, since the amounts due for *Service Payments* shall not be reduced as a result of rectification of the works.

A *Completion Date* and a detailed *Programme* with key dates for achieving each successive step in the installation/construction are included in the EPC, and dates can change only with the written consent of the other party.

Pre-Completion inspections, tests for Practical Completion and a final Completion certificate released by the Authority and CEF are foreseen.

Provided the Partner gave notice to the Authority, delays in the construction due to a series of defined *Delay Events* translate in the fixing of a new *Completion Date*.

Eurostat recognizes that the contract examined does satisfy all the main requirements specified by the EPC Guide, pages 36, 38, 39 in terms of risks related to* design and construction *not falling on the Authority, and of criteria clearly set out for determining when the construction-installation of the EPC assets is complete.

In relation to "*Design and construction of the EPC assets*", Eurostat does not detect any feature relevant for the statistical treatment of the contract "on balance sheet".

E.3 Maintenance and operation of the EPC asset

From the date when the construction will be completed until the expiration of the contract, the Partner will be responsible for the programmed and un-programmed maintenance, and will bear all the related costs.

The EPC defines in detail the maintenance standards.

An Annex to the contract lists all the new items that will be built or installed, and clarifies that they are all covered by a "*Replacement guarantee*".

If any part of the Services are not supplied, the Authority shall be entitled to compensation. An Appendix breaks down the services provided by the Partner into 80 different tasks, and defines for each the monitoring method and the remedial periods.

The Partner will also operate the new *Energy Facilities* with all the necessary skilled labour. It will inspect, check, test, clean, adjust, and carry out all repairs and replacements where appropriate.

Eurostat noted that, as part of the Authority's responsibilities, there is a list of Authority Provided Associates (APA, electricians and plumbers). The Authority will pay the salary of this staff, which shall perform *operation and maintenance labour activities*, including planned and reactive maintenance in respect of the *Energy Facilities*. Eurostat investigated the role performed by the APAs in the maintenance of the EPC assets.

From the detailed information provided by CSO, Eurostat understands that, in this EPC, the Partner is fully "responsible" for the maintenance of the assets to very well defined standards, and an extremely detailed regime is laid down for monitoring the performance of the assets (as required by EPC Guide, p.44). However, the staff paid by the Authority will perform a non-negligible part of the field maintenance of the EPC assets.

According to the EPC Guide (p.43), "*the Authority taking some responsibility for maintaining and/or replacing the EPC assets (either itself or through a sub-contractor) does influence the statistical treatment and is an issue of HIGH importance. An exception to this is (i.e. that does not influence the statistical treatment) is where the Authority undertakes light maintenance activities that do not affect the performance of the EPC assets in delivering energy consumption and/or cost savings required under the EPC (e.g. cleaning, fitting replacement lamps provided by the Partner for an LED lighting system)*".

In the EPC analysed, the standards of maintenance are in line with the requirements of the EPC Guide, Theme 3.2 p.44, and Theme 3.3 p.45.

However, in Eurostat opinion, the list of maintenance labour activities in respect of the Energy Facilities that will be performed by the staff paid by the Authority, might go beyond light maintenance activities, and therefore could be considered as an issue of HIGH importance for the statistical treatment of this contract, according to EPC Guide (Theme 3.1, p.43). This issue would need to be further examined.

E.4 The guaranteed savings

E.4.1 Existence of a guaranteed level of savings

"*The EPC typically contains a guarantee from the Partner that the EPC assets will deliver a minimum level of energy consumption and/or cost savings for the Authority over the lifetime of the contract*" (EPC Guide, Theme 4, p.48).

In the EPC analysed, an Annex describes the Energy and non-energy savings guarantee.

The guaranteed savings comprise both Energy and *Operational*[3] Savings, quantified in an annual amount and subject to indexation to the Tariff for Natural Gas and import electricity.

The total amount of the Guaranteed Savings is the sum of the savings expected from each of the assets installed.

The method used to estimate the precise amount of the Guaranteed Savings is described in detail in the contract. It is based on the Authority's consumption of gas and electricity in the base year, expressed in volumes (units of energy, kWh), the reduction in consumption that will be delivered by the more efficient new assets, and the prices of gas and electricity in the base year.

Eurostat recognizes that the EPC contract examined does include a definition of* the Guaranteed Savings *in line with the requirements of the EPC Guide, Theme 4, page 48.

In relation to the* Guaranteed Savings, *Eurostat does not detect any feature relevant for the statistical treatment of the contract "on balance sheet".

E.4.2 Monitoring the delivery of the Guaranteed Energy Savings

According to the EPC Guide (p.53), "*the EPC must contain a regime that allows for objective and robust measurement of the EPC assets' performance in delivering the guaranteed savings.*" Furthermore, "*the EPC must provide for routine testing of performance against the guarantee at least annually*" (p.54).

The EPC defines how the actual energy savings shall be monitored, for each of the energy assets that will be installed. The monitoring includes a vast array of temporary, sample and continuous metering, depending on the asset.

It is not clear from the contract if the routine testing of performance is at least annual for all the assets. However, for all the assets whose energy saving performance is monitored continuously, all the diagnostic data shall be made available to the Authority and CEF.

[3] *Operational* Savings are those that the Authority will make through not having to replace, maintain and repair some of the assets.

Eurostat recognizes that the EPC examined does include a description of extensive measures to monitor the performance of each of the installed assets and the delivery of the Guaranteed Savings, as required by the EPC Guide, Theme 4.2 and 4.3, page 53 and 54.

E4.3 Guaranteed Savings and Operational Payments

Within an EPC, the Partner's investment in Energy Saving assets will procure the right for the Partner to receive service payments for a number of years, that government will pay and finance through the reduced energy bills payable to the energy suppliers. The EPC Guide requires that the service payments should be lower or equal to the expected savings of energy costs guaranteed by the Partner.

More precisely, according to the EPC Guide, page 50, "*the EPC must guarantee an amount of savings which, at financial close, are calculated so as to satisfy the following conditions:*

A) *on a net present value basis, the level of savings guaranteed over the duration of the EPC* ***is equal to or greater to the sum of (a)*** *the Operational Payments forecast to be made over the duration of the EPC,* ***and (b) any amount of government financing that is not repayable by the Partner (e.g. capital grant).***

B) the level of savings guaranteed for each period over which performance against the guarantee is tested is equal to or greater than the Operational Payments that the Authority is forecast to make to the Partner in that period

According to the EPC Guide, "*An EPC that does not meet either of these conditions does influence the statistical treatment and is automatically ON BALANCE SHEET for government*".

The EPC examined foresees an "Energy and Operational Savings Guarantee", with the annual guaranteed savings defined in such a way as to always be higher than the annual Service Payment.

Eurostat recognizes that, in the EPC examined, **the Guaranteed Savings** ***do satisfy the condition B above, as set by the EPC Guide, page 50.***

However, it should also be verified if the EPC satisfies the condition A) above, as set by the EPC Guide, page 50.

In the EPC Table defining the due milestone payments, **a small grant appears**, which reduces the overall cost related to the installation of the EPC assets.

The CSO explained that the Partner will get the grant from the sale of the "*Energy Credits"*. Energy Credits are a tool introduced by the Irish Energy Efficiency Obligation Scheme (EEOS)[4] run by the Sustainable Energy Authority of Ireland (SEAI), an entity belonging to the government sector. The EEOS scheme places obligations on energy suppliers and distributors to deliver energy savings. Companies which sell large amounts of energy are the "obligated

[4] https://www.seai.ie/business-and-public-sector/business-grants-and-supports/energy-efficiency-obligation-scheme/

parties". Obligated parties can offer support to make private homes or business more energy efficient. For every unit of energy saved through these projects, they achieve Energy Credits. The Partner secured Energy Credits in relation to this project, which reduces the capital investment required to install the EPC assets.

These Energy Credits represent an "***amount of government financing that is not repayable by the Partner",*** that would bring the net present value of the EPC out of line with condition A) above, as set by the EPC Guide, page 50. ***However, since this type of Energy Credits grant are paid to any energy supplier reducing energy consumption with any sort of investment, Eurostat considers that the grant obtained for this project is not relevant for the assessment of the respect of the above rule.***

E.5 The payment mechanism

The typical payments associated to an EPC are the "*Operational payments"*, regular payments that the Partner is entitled to receive after the construction and/or installation of the EPC asset is complete (EPC Guide, p.60). The EPC Guide foresees a number of possible contractual provisions that can influence the statistical treatment of the assets, related to payments made before the completion of the EPC assets, savings shortfalls and savings excesses. All these contractual elements need to be analysed.

The contract examined foresees "*Service payments related to the interim services*" and "*Service payments ... following the Commencement Date*", both to be invoiced monthly by the Partner to the Authority.

The EPC also includes provisions for the Partner to pay "*NCIS fees*" to CEF.

Finally, the EPC foresees, besides the *EPC service payments*, *Other service payments*.

Service payments are indexed to the Consumption Price.

E.5.1 Service payments related to the interim services

In the contract examined, "*Service payments relating to Interim Services*" are due until the *Actual Completion date*, and are "*included within the Construction Milestones*" payments.

According to the EPC Guide, p.61, "*an obligation on the Authority to start making Operational Payments in respect of the EPC assets before the date on which they are complete does influence the statistical treatment and automatically leads to the EPC being ON BALANCE SHEET for government*".

The contract describes the *Interim Services* provided by the Partner. Eurostat noted that, in the contract, it was not fully clear if the payments were or not related to reimbursements of capital expenditure incurred by the Partner during the installation of the infrastructure.

The CSO clarified that "*Interim services are to deal with the safety and performance guarantee aspects of the project installation before practical completion. … It would be dangerous to have the Authority's staff working as normal in a construction site, so the whole site is passed to the contractor, and they operate the plant, and provide services during construction*".

Eurostat agrees that provisions for payments to the Partner of interim services during the construction phase, as described by the CSO, do not influence the statistical treatment of the contract.

E.5.2 Payment of the NCIS fees

The EPC includes provisions for the Partner to pay "*NCIS fees*" to CEF. In case the Partner is in breach of this obligation, the Authority shall pay these fees. NCIS payments are also due on contract award and on practical completion and are included among the Milestone payments.

The NCIS fees are defined as a portion of the *Service Payments* that the Partner will receive from the Authority.

The National Contract Income Scheme/NCIS fees are paid to the **Carbon & Energy Fund Limited/CEF Ireland**. CEFI[5] is an organization created to fund, facilitate and project manage complex infrastructure upgrades for applicants.

The CEFI website explains that the entity provides "*project management, specialised technical, legal, procurement, financial and balance sheet support, our contract, our framework and cradle-to-grave project support. If the Authority decides to upgrade their carbon and energy infrastructure using the EPC model developed by CEFI, than a fee to compensate CEFI will be include in the project costs and covered by guaranteed savings".*

The CEFI will also provide Performance Contract Management: "*Every month the energy meter readings will be collected by the audit system, and the CEFI will monitor performance. Every quarter this will be reviewed more thoroughly and action taken if the contract is under performing. At the end of the year, the CEFI will review the project over the whole year and certify the level of savings generated. If the savings equal, or exceed the guaranteed savings, then all is well. Should the savings be below the guaranteed level, then the contractor will write the Member a cheque for the shortfall*".

The CSO considers the CEFI a consultancy corporation, and classifies it in S.11.

Eurostat agrees that provisions for payments of the NCIS fees do not influence the statistical treatment of this contract.

[5] http://www.carbonandenergyfund.ie/

E.5.3 Other Service Payments

The EPC examined foresees, besides the *EPC service payments*, also *Other services payments*.

This issue would need to be further examined.

E.5.4 Savings shortfalls and savings excesses

The Partner's obligation to ensure that the EPC assets deliver the guaranteed savings is at the core of the EPC.

In the EPC examined, if the annual actual savings are below the agreed *Guaranteed Savings*, the Partner shall pay to the Authority an amount equal to the savings shortfall, amount eventually taken from the *Excess Savings Pool*.

If the actual savings exceed the agreed *Guaranteed Savings*, they shall be divided between the Authority (33%), the Partner (34%) and an *Excess Savings Pool* (33%). The *Excess Savings Pool* can be used, in the following years, to compensate Savings Shortfalls or paid to the Partner on Expiry or Termination Date.

Eurostat agrees that the provisions related to savings shortfalls and excesses included in the EPC examined are in line with the principles (for not being statistically significant) established by the EPC Guide, Theme 5, page 70-71 (shortfalls), and 72-73 (excesses).

E.6 Relief and force majeure events

According to the EPC Guide (p.80), "*provisions by which the Authority takes or shares the risk of events that affect the delivery of the EPC* ***do not influence the statistical treatment if all of the following conditions are me****t: There is a finite number of well-defined events (i.e. the Authority should not be exposed to an indefinite number of risks); The events do not capture changes in macro-economic conditions; The events are not attributable to the acts or omissions of the Partner; and The events, or the consequences of the events, are not reasonably foreseeable or estimable".*

Furthermore (EPC Guide p.81), the provisions should "*not compensate or provide relief for anything other than the effects of the event in question*" and "*exclude from any compensation due by the Authority any amounts that the Partner should be able to recover under the required insurances*".

A well-defined list of Relief events and Force Majeure events is included in the EPC examined, none of them attributable to the Partner or related to macro-economic conditions. There is no compensation obligation for the Authority in case any of these events materialize, but the Authority has the obligation to continue paying the Service Payments, eventually discounted by any Availability or Performance reduction.

Eurostat recognizes that the EPC examined does not include any provision related to* Relief and Force Majeure *that could be relevant for the statistical treatment of the contract, as established by the EPC Guide, Theme 6, pp. 80-81.

E.7 Changes to the EPC proposed by the Authority

The EPC examined defines in detail how the Authority should proceed to propose changes to the terms of the contract.

The Authority can require changes in the capital expenditure or in the EPC Services according to a complex procedure. The Partner will estimate the additional expenditure required.

Eurostat recognizes that the EPC examined does not include any provision related to* Changes to the EPC proposed by the Authority *that could be relevant for the statistical treatment of the contract, as established by the EPC Guide, Theme 7, p.85.

E.8 Changes in law and additional costs

In the EPC examined, the consequences of changes in law that result in additional costs for the Partner are treated in the initial part of the contract. The Partner can seek compensation from the Authority for these additional costs, only if the changes in law were not reasonably foreseeable at the moment of signing the contract.

Eurostat recognizes that the EPC contract examined does not include any provision related to* Changes in law and additional costs *that could be relevant for the statistical treatment of the contract, as established by the EPC Guide, Theme 8, p.89.

E.9 Insurance

According to the EPC examined, the Partner shall, at its own costs, take out insurance before the commencement of the works covering the construction phase and maintain it until the Actual Completion date. The Senior Funder has to take out, at its own costs, insurance for material damage of the EPC assets during the operation term. The Partner has to take out third party liability insurance for the operational term.

The contract examined does not include obligation for the Authority to take out insurance for the benefit of the Partner, nor provisions for the Authority to share insurance costs. Uninsurable risk provisions are related to a demonstrated non-availability of market insurance, and a letter from an Insurer assuring their willingness to provide coverage already exists and is included in the contract.

Eurostat recognizes that the EPC contract examined does not include any provision related to* Insurance *that could be relevant for the statistical treatment of the contract, as established by the EPC Guide, Theme 9, p.91 and 92.

E.10 Warranties and indemnities

The few warranties included in the contract examined do not have any statistical relevance.

In the contract, indemnities are due from the Partner to the Authority in case of death and/or personal injury caused by the Partner, and of damages to Authority or third party assets arising out of acts of omission of the Partner. These indemnities are not due if they are caused by an act or omission of the Authority.

In the opposite direction, indemnities are due from the Authority to the Partner in case of death and/or personal injury caused by the Authority, and of damages to the Partner or third party assets arising out of acts of omission of the Authority. These indemnities are not due if they are caused by an act or omission of the Partner.

Eurostat recognizes that the EPC examined does not include any provision related to* Warranties and indemnities *that could be relevant for the statistical treatment of the contract, as described by the EPC Guide, Theme 10, p.96, p.98 and 99.

E.11 Early termination of the EPC

The contract examined outlines a number of Partner's events that can give to the Authority the right to call for an early termination: insolvency, failing to achieve the Practical and Actual Completion of the project, breach of contractual obligations, change of control of the Company.

The contract also lists the Authority's events that can give the right to the Partner to call for an early termination, e.g. the failure of the Authority to pay to the Partner the due amounts. Among the Authority's events of default there are no cases of the Authority taking the risk for Partner's own performance or general economic risks.

The contract also regulates termination due to Force Majeure, to substantial damage of the Authority's Estate or Energy Facilities, and voluntary termination by the Authority.

Eurostat recognizes that the EPC examined does not include any provision related to* early termination *that could be relevant for the statistical treatment of the contract, as described by the EPC Guide, Theme 11, p.102 and 104.

E.12 Compensation on early termination

In the contract examined, the compensation on early termination is determined with different methods depending on the early termination reason.

The EPC examined defines with extreme detail how each case of early termination should be treated, and establishes complex criteria for determining the compensation due.

The EPC foresees re-tendering following the "*expiry*" (see next paragraph E.13 in this document) of the contract, but not following its termination.

According to the EPC analysed, in case of **early termination due to Partner's default**, the Authority shall pay compensation to the Partner or, in certain circumstances, the Partner shall pay compensation to the Authority, with the amounts determined according to a complex method which differs depending on the termination occurring before or after the *Actual Completion Date*.

In case of early termination due to the Partner's default before the *Actual Completion Date*, the **compensation terms** included in the EPC examined **cover also the amounts advanced by the Senior Funder, including its costs for terminating and redeploying the funding**, hence unbalancing the level of risk between the Authority and the Partner.

According to the EPC Guide: "*The methodology for estimating the market value of the contract (where the re-tendering process is not followed) is designed to reflect the approach that the market would take in valuing the EPC and* ***not to ensure the recovery of the Partner's incurred costs or outstanding debt.*** *" … "Where either of the first two conditions (the second of the two conditions is the one just quoted) listed above is not met, the EPC is automatically ON BALANCE SHEET for government*." (EPC Guide, Theme 12, p.108-109).

Eurostat opinion is that the provision for the determination of compensation in case of early termination before Completion due to the Partner's default does not respect the rules established by the EPC Guide, Theme 12, p.108-109, and this implies that **the EPC examined should be recorded on balance sheet of government.**

E.13 Expiry of the EPC

The EPC examined shall terminate automatically on the expiry of the Project Term.

The contract does include provisions that require that each element of the Energy facilities are safe and operational when the EPC will expire.

The EPC examined does not include provisions related to **Expiry** ***that could be relevant for the statistical treatment of the contract, as described by the EPC Guide, Theme 12, p.116 and 118.***

E.14 Financing arrangements

In the contract examined, the Partner builds or installs the various Energy Saving assets, and the Senior Funder pays for this initial capital expenditure.

Payments for the installation of the new equipment will be due according to the achievement of seven successive construction milestones.

When a Construction Milestone is reached, the Partner informs the Authority, which issues a "*Construction Milestone Certificate*". The Partner will then issue a "*Payment Application*" including the amount payable that the Authority, after checking, will turn to the Senior Funder, which will pay the Partner.

In the EPC examined, the Senior Funder is a private company controlled by the Rest-of-the World sector. The Senior Funder controls the special purpose entity that legally owns the EPC assets (the Asset Owner).

CSO considers the Senior Funder and the Asset Owner as private financial corporations, both classified in S.12.

The CSO explained that the Senior Funder is funding the installation of the EPC assets using funds obtained from the **Ireland Energy Efficiency Fund (IEEF)**.

The CSO classifies the IEEF as an investment fund, in sector S.124. IEEF is regulated by the Central Bank of Ireland as an Alternative Investment Fund.

The website of the IEEF provides the following information: "*Ireland Energy Efficiency Fund was established in March 2014 to deliver energy efficiency projects across the Irish public and private sector.*''[6].

Eurostat noted that the IEEF does not appear anywhere in the EPC examined, and that the IEEF has four directors, two of which are also directors in the Senior Funder.

Eurostat checked the Financial Statements of the IEEF, and analysed the capital committed and the capital called, only the last one being relevant for ESA.

The Irish Government was, in 2020, the largest single contributor to the called capital of the IEEF. The IEEF called further capital from the private partners in 2020. The government contribution to the IEEF called capital decreased from 47.4% as of 31/03/2020, to 31% as of 31/03/2021.

According to the EPC Guide (Theme 14, p. 121), "*Financing **by a public entity** classified outside the general government sector ... is considered to be government financing if the public entity is considered by Eurostat to be acting on behalf of or on an express or implied instruction of government in connection with the project*".

[6] http://ieefund.ie/about-ieef/

The CSO clarified that the Irish Government has exactly the same decision/voting rights as the other investors within the IEEF. All shares have been issued under the same share class. Investment recommendations are made independently and subject to the approval by IEEF's Investment Committee.

Eurostat believes that the indirect government financing of the gross fixed capital formation related to this EPC ***is of HIGH importance*** *for the statistical classification of the contract, according to p.121 of the EPC Guide.*

F. Conclusion

After thoroughly analysing this EPC contract, Eurostat considers:

- That the **maintenance activities** in respect of the Energy Facilities that will be **performed by the staff paid by the Authority** might go beyond light maintenance, and therefore could be considered as **an issue of HIGH importance** for the statistical treatment of this contract, according to the EPC Guide (Theme 3.1, p.43). See page 6 of this document.
- That, in case of early termination before Actual Completion due to Company default, this EPC includes **provisions that ensure the recovery of the Senior Funder's incurred costs and outstanding debt**, which means that the contract fails the rules established by the EPC Guide (Theme 12, pages 108-109), **bringing the infrastructure installed ON BALANCE SHEET of government**. See page 14 of this document.
- That **government is indirectly financing part of the capital investment in this EPC via a public entity**, and this is an issue of **HIGH importance** for the statistical treatment of this contract (Theme 14, p. 121). See pages 15-16 of this document.

Eurostat identified two issues of HIGH importance for the statistical treatment of this EPC, which would by themselves not be sufficient for an on-balance-sheet treatment. However, Eurostat also identified one issue that, by itself, brings the infrastructure installed in the balance sheet of government. Eurostat therefore concludes that the EPC examined should be recorded in the balance sheet of the government.

G. Procedure

Eurostat is prepared to give its view on the statistical treatment of entities and transactions, provided it is in possession of all the necessary background information.

This view of Eurostat is based on the information provided by the country 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.

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 and the note on ex-ante advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat therefore will publish this advice on its web site.

Yours sincerely,

(e-signed)

Luca Ascoli

Director