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EUROSTAT

Directorate D Government Finance Statistics (GFS)

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Statistics Lithuania
National Accounts Department
Ms Jūratė Petrauskienė
Director General
29 Gedimino Ave.
LT – 01500 Vilnius

Subject: Request for an ex-post advice concerning the amendment to the contract related to the PPP project for the construction of police headquarters buildings in the town of Siauliai

Ref.: Your e-mail of 17 October 2023

Dear Ms Petrauskienė,

Following your e-mail under reference, and after analysing the documentation provided, Eurostat with this note is delivering its opinion on the statistical treatment of the amendment to the PPP Agreement in subject.

A. Description of the case

With a note dated 23 June 2023, Eurostat delivered to the Lithuanian statistical authorities its ex-post advice concerning the statistical treatment of the PPP project related to the design, construction and maintenance of the police headquarters buildings at Purienu St.48, in the town of Siauliai.

Eurostat's advice of 23 June 2023, in section D.12, observed that the provisions included in the analysed PPP contract based the compensation payable by the Authority in case of early termination due to Partner's fault on the senior debt outstanding. Such a provision, according to the PPP Guide¹ (Theme 12, clause 12.1.5, Approach 5, page 108) is akin to a financing guarantee, and has to be assessed according to the rules stating that government financing of

¹ Guide to the Statistical Treatment of PPPs, published jointly by the EIB and Eurostat in September 2016 (hereafter, the PPP guide). https://www.eib.org/attachments/thematic/epec_eurostat_statistical_guide_en.pdf

50% or more of the capital expenditure imply that the PPP is automatically recorded on balance sheet of government (Theme 14.4, page 121).

The PPP contract analysed included an article that foresaw the possibility for the parties to amend the contract *“In accordance with official requests (letters) from the European Union and/or the state authorities of Lithuanian to ensure that the Contract is not recorded in the government balance sheet”* (Art. 37.2.4).

On 6 October, 2023, taking into account the opinion of Eurostat, the Authority, the Investor and the Partner of the Siauliai police headquarters PPP signed an amendment to the contract, with the following modifications:

- 1) the compensation formula in case of early termination of the contract due to the Partner's fault is changed (Clause 43.1 of the Agreement), and the two addendums that made reference to the reimbursement of the Funder are dropped;
- 2) new provisions are added, stating that if the Partner does not correct the non-compliance of the Asset when returning it, the Authority must be compensated not only for the costs of correcting the non-compliance of the Asset, but also for the additional costs of maintenance of the Asset and/or other services that the Authority incurs or will incur due to the improper condition of the Asset (Clauses 10.15 of the Agreement).

C. Analysis of the amendment to the contract

Eurostat analysed thoroughly the PPP contract of the Siauliai police headquarters in its advice of 23 June 2023, and found only one provision that was relevant for the statistical treatment of the contract on-balance sheet of government, the one related to the compensation that the Authority will have to pay to the Partner in case of early termination due to Partners' fault, thoroughly analysed in section D.12 of the advice.

The amendments of 6 October 2023 only affect few articles of the contract, those related to the compensation in case of early termination (Clauses 43.4, 44.4 and 45.4 of the Agreement) and those related to the conditions of the assets transferred (Clause 10.15).

The amendments change completely the compensation formula, eliminating the two addendums that referred to the reimbursement of the Funder; the amendments also eliminate the previously existing cap determined by the market value of the asset.

Eurostat takes note that, in the amended contract, the main component of the compensation formula is the book value of the assets transferred to the Authority at the moment of the termination.

Such a compensation formula corresponds to the one described as Approach 4, in the PPP Guide.

According to the PPP Guide, Theme 12, clause 12.1.4, page 107 *“Provisions that calculate the compensation payable on Partner default on the basis of the **book value of the asset but do not take into account the Authority’s remediation costs** do influence the statistical treatment and automatically lead to the PPP being ON BALANCE SHEET for government.*

...

If only some remediation costs are deducted from the book value of the asset calculation (e.g. additional maintenance/operating costs are not deducted), the provisions do influence the statistical treatment and are an issue of HIGH importance”.

Eurostat checked, in the amended contract, the treatment of the remediation cost.

The formula for determining the compensation requires the deduction of “VN”, direct losses incurred by the Authority, from the book value of the assets.

Art 43.1, defines “direct losses” (“VN”), as those that may arise from any personal injury or death of any person, damage to or loss of property, or otherwise, arising out of the Party’s default on or improper performance of any of its obligations. Eurostat notes that “VN” does not seem to consider the costs for the Authority to complete/rectify the asset and the additional operating, maintenance and financing costs.

The costs for the Authority to complete/rectify the asset in case of termination are covered by the provisions of Art 10.15 of the contract, which has also been amended, extending its coverage. According to the amended art 10.15, the Partner has to compensate not only the costs of non-compliance of the asset, but also *“the costs of additional maintenance and/or other services that the Authority incurs or will incur due to the improper condition of the assets”*.

It seems to Eurostat that the amended articles 43.1 and 10.15 take in account most but not all the remediation costs: the future costs for the authority related to re-tendering, financing, operating and maintaining (those not linked to the improper condition of the asset at the moment of termination, but to the normal use of the asset) are still not considered.

Eurostat recalls that, if only some remediation costs are deducted from the book value of the asset calculation, the provisions do influence the statistical treatment and are an issue of HIGH importance.

D. Conclusions and Eurostat’s view

Considering that, after the amendment, the PPP contract examined includes only one provision of potentially high importance for the statistical treatment of the contract, Eurostat agrees with the Lithuanian statistical authorities: the amendments introduced to this contract are sufficient to allow its recording off the balance sheet of government.

E. Procedure

This view of Eurostat is based on the information provided by the Lithuanian statistical 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 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-post 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