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Mr Jaume García Villar
Presidente
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Madrid 28046
Spain

Subject: Formal consultation on the classification of the assets in the Public-private partnership (Irrigable area of the Navarra Canal, Phase 1)

Ref.: Your letter of 4 October 2010
Our letter of 2 February 2011
Your letter of 16 June 2011

Dear Mr García Villar,

After careful examination of the issue by Eurostat, I am in a position to inform you about the conclusions that have been reached.

The case

The issue for which an opinion is being sought is a determination of the correct EDP accounting treatment of the classification of the assets in the Public-Private partnership (PPP) contract for the construction and operation infrastructures in the general interest of the irrigable area of the Navarra Canal, Phase 1.

Documentation provided

- Report from the Working Group on General Government issues - INE (National Institute for statistics), IGAE (Government Audit Office) and Banco de España - on the classification of the PPP assets;
- A note prepared by the Comunidad Autónoma de Navarra on the analysis of the PPP contract;
- Specific Administrative Terms and Conditions of the PPP contract "Irrigable zone of the Navarre Canal, phase 1".
- Additional information, as requested by Eurostat.

Description of the case

The issue for which an opinion is being sought is a determination of the correct classification of the PPP assets of "Irrigable area of the Navarra canal, phase 1".

The Spanish statistical Working Group on General Government issues examined all the documentation related to the above-mentioned PPP contract in order to determine the classification sector of the PPP assets. As a result of this analysis, the Working Group considered that the assets should be classified on the balance sheet of government (S.13), with impact on government deficit and debt.

In line with the Article 8c of the Council Regulation 2103/2005 of 12 December 2005 and following a request of the Comunidad Autónoma de Navarra to INE, INE asked Eurostat for a formal consultation on the classification of the PPP assets in question.

Methodological analysis and clarification by Eurostat

Applicable accounting rules

- The Eurostat ESA95 Manual on government deficit and debt (MGDD), 3rd edition; chapter (Part VI.5) on Public Private Partnerships

Availability of national accounting analysis

Based on the analysis of the transfer of risks, the Working Group considers that the PPP assets should be classified on the balance sheet of general government (S.13), with impact on government deficit and debt.

The opinion of the Working Group is that the construction risk is transferred to the private partner.

The payment system provides for two components payable by government:

- Demand fee
- Fee for infrastructure management and quality

With this system based on two components payable by the Government, it may occur that the private partner, in the absence of water consumption, receives no payment for the demand fee and 100% of the quality and management fee. Conversely, in the event of poor availability, it will receive the demand fee for the water actually delivered and nothing for the quality and management fee. This represents a limitation to the total risk assumed by the concessionaire, since the contract allows it to receive payments even in the absence of demand or in the case of mismanagement.

The opinion of the Working Group is thus that the payment system is not considered to guarantee the necessary transfer of these risks to the private partner.

Analysis by Eurostat

After an examination of the documentation provided by the Spanish statistical authorities, Eurostat has reached the following views.

Notwithstanding the arguments put forward by the Working Group, Eurostat notes that the *Clause 19 of Special Administrative Terms in the Tender (PCAP)* provides the circumstances when the economic-financial balance of the contract must be re-established. This clause states that the contracting company must re-establish the economic-financial balance of the contract, to the benefit of the corresponding party, in some specific circumstances.

Eurostat understands that this clause is to be applied only in particular circumstances. These circumstances as well as the measures through which the economic-financial balance is re-established were carefully analysed.

In this context, it seems that the maintenance of the economic balance of the contract is such that it is not compatible with a full assumption of risks. The compensation to be paid to the private partner is foreseen on the basis of the estimated forecast of water consumption done by the private partner and not on the basis of actual average consumption. The opinion of Eurostat is that the compensation should be strictly proportioned to the exact impact on the lost revenue of the private partner.

Eurostat would also like to recall that such a clause on "*re-establishment of economic-financial balance of the contract*" was a deciding factor that some other EU Public-Private Partnership projects were recorded on the balance sheet of government.

Therefore, Eurostat agrees with the opinion of the Working Group that the asset should be classified on the balance sheet of the government (S.13), with impact on government deficit and debt.

Conclusion

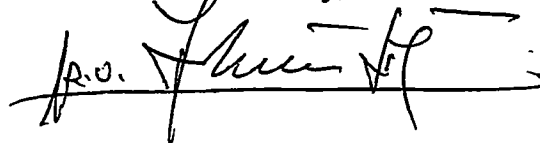
On the basis of the above considerations, Eurostat agrees with the opinion of the Working Group that the assets should be classified with the Navarra government and the related gross fixed capital formation expenditure would be recorded in the government accounts.

Procedure

This preliminary 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.

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 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 the Eurostat website. In case you have objections concerning this specific case, we would appreciate if you let us know before 29 August 2011.

Yours/sincerely,

A handwritten signature in black ink, appearing to read 'F. Lequiller', written over a horizontal line. The signature is stylized and cursive.

François Lequiller
Director