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Mr Réginald Massant
President
Institut des Comptes Nationaux
City Atrium C, Rue du Progrès, 50
B-1210 Bruxelles

Subject: Sector classification of BAM Antwerp Masterplan projects

Ref.: Your letter T/C2/2007/017467 dated 14 November 2007
Our letter ESTAT/C-3/LN/LA/MW/mg D(2007) 30382 dated 27 November 2007
Your letter T/C2.NW/2008/000917/lpb dated 23 January 2008
Our letter ESTAT/C-3/LN/MW/ji D(2008) 30150 dated 11 June 2008
Your letter T/C2/2008/014422 dated 5 September 2008
Our letter ESTAT/C-3/MHF/MW/ji D(2008) 30227 dated 2 October 2008
Your letter T/C2/2008/019328 dated 25 November 2008
Our letter ESTAT/C3/WR/C3/MW/ji D(2009) 30018 dated 12 March 2009
Your letter T/ICN/2010/005949 dated 4 May 2010

Dear Mr Massant,

Following technical discussions with the representatives of the Belgian statistical authorities (ICN/INR) conducted in Luxembourg on 3 May 2007 and 19 March 2010, and during the EDP dialogue visit on 19 June 2008 in Brussels, as well as your letters, I am in a position to reply to the question you asked on the appropriate statistical treatment of the above-mentioned case.

The accounting issue for which a clarification is requested

The initial ex-ante request of the Belgian statistical authorities for an opinion of Eurostat referred to the appropriate statistical treatment of the sector classification of the Beheersmaatschappij Antwerpen Mobiel (BAM) planned infrastructure projects in Antwerp within the so-called "Masterplan Mobility Antwerp" other than the Oosterweel Link bridge, in particular the Albert Canal and the Van Cauwelaert Lock.

Due to initially planned complex institutional and financial arrangements between all projects of the Antwerp Masterplan, Eurostat also enquired about the envisaged recording by ICN/INR of the Oosterweel Link bridge assets outside general government. In this context, Eurostat considered that the statistical treatment of this infrastructure project depends on the national accounts treatment of BAM, a central entity of the whole Antwerp Masterplan, and its operations.

In May 2010, following several exchanges of information, ICN/INR submitted to Eurostat a methodological request with a description of a reviewed financial and organisational structure of the Oosterweel Link.

Documentation provided

During the rounds of correspondence, the Belgian statistical authorities provided Eurostat with the following documentation:

1. A summary note "The Antwerp Masterplan" (received in November 2007).
2. A note by ICN/INR on the classification of BAM in ESA95 (received in November 2007, in Dutch).
3. Projects of contracts and financial arrangements between De Scheepvaart and BAM concerning Albert Canal Projects (received in November 2007, in Dutch).
4. A note by BAM "ESA95 Qualification of Albert Canal Project: Overview of rights and obligations of BAM and De Scheepvaart within the Albert Canal Project and BAM and the Antwerp Port Authority within the Van Cauwelaert Lock Project" (received in January 2008).
5. Methodological notes in the context of the 2008 EDP dialogue visit follow-up on a sector classification of BAM and of the assets of the Albert Canal and the Van Cauwelaert Lock (received in September 2008).
6. Additional information received in September 2008 on:
 - (i) the organisational structure of BAM,
 - (ii) the capital injections of the Flemish Region to BAM and BAM business plan,
 - (iii) the financial structure and the so-called Tranche C Guarantee,
 - (iv) the periodical funding to BAM within the Van Cauwelaert Lock Project, and
 - (v) the Oosterweel Link Silent Partnership (SPV).
7. BAM Annual Report 2007 (received in September 2008).
8. A note describing new concession scheme "Oosterweel Link (OWV)" (received in March 2010).
9. A preliminary draft concession agreement of OWV with annexes and corresponding agreements (received in March 2010).
10. Articles of association of Tunnel Liefkenshoek (received in March 2010).
11. Annual accounts of Tunnel Liefkenshoek for 2009-2005 (received in March 2010).

Description of the case

The Antwerp Masterplan was developed and adopted in December 2000 by the Flemish government. It covers roads, waterworks and public transport infrastructure, and encompasses expenditure for new construction, as well as for the refurbishment of existing infrastructure. The total capital expenditure of the Masterplan is estimated at approx. 3.6 billion euro over several years.

The biggest project, with a total capital expenditure of approx. 2.5 billion euro, is the tolled road bridge Oosterweel Link that will provide a third crossing of the Schiedt River. The construction is planned to start in 2010 and to be completed by 2014. Initially, the project was intended to be undertaken as a PPP-type arrangement, with the operator receiving from the public authorities an availability fee for the operation of the bridge. Currently a concession-type scheme is envisaged with duration of 50 years to be granted by a public entity BAM, whereby the operator, a public company Tunnel Liefkenshoek (TLH), will be remunerated by the tolls paid by the users of the bridge.

BAM is a public limited company created in 2002 and owned mostly by the Flemish Region. The main task of BAM is the implementation and financing of various infrastructure projects of the Flemish Region, under the common programme called "Masterplan Mobility Antwerp". BAM employs approximately 20 full-time equivalent staff and relies heavily on external resources in fulfilling its tasks. A majority of BAM Board of Directors members represent public bodies of the Flemish Region. BAM is currently classified in national accounts by the ICN/INR in the general government sector (S.13).

A second entity involved in a future OWV concession, TLH, is a company owned by the Flemish Region whose main activity is the operation of the existing tolled road tunnel Liefkenshoek. TLH makes profits from its activity. ICN/INR classifies TLH as a public corporation, outside the general government sector.

Other projects than the Oosterweel Link in which BAM is involved include, among others, two smaller projects which were subject of an initial methodological request by the ICN/INR for an opinion of Eurostat: the Albert Canal and the Van Cauwelaert Lock (respectively approx. 5% and 1% of the total Masterplan cost). The first project foresees the enhancement of the ship transport capacities of the water channel Albert Canal (i.e. widening and deepening of the waterway, construction of higher bridges). The second one involves the modernisation of the major access gate to the Port of Antwerp (e.g. installation of inter-modal transport facilities). Apart from the financing, BAM involvement also includes oversight of the modernisation works to be executed by private contractors.

Eurostat does not have details on the method of implementation of the remaining Masterplan projects, accounting for around one-third of the total Masterplan costs, (calculation based on the table of the Masterplan projects costs as provided by the ICN/INR). However, it has understood from the Belgian statistical authorities that the intention is to undertake them using traditional procurement methods, i.e. direct contracts for construction with gross fixed capital expenditure recorded in the government sector.

Methodological analysis by Eurostat

After an examination of the documentation and following the letters provided by the Belgian statistical authorities, Eurostat has reached the following provisional views.

Applicable accounting rules

ESA95 paragraphs 1.28, 2.12 and 2.68-2.74 apply in this case. In addition, the Eurostat ESA95 Manual on government deficit and debt (MGDD) Part I "Delimitation of the general government sector" and Part IV.4 "Public infrastructure financed and exploited by the corporation sector" are also relevant.

Availability of national accounting analysis

The letter of ICN/INR of 4 May 2010 concerning the revised Oosterweel Link (OWV) arrangement expresses the opinion that, the sectoral classification of TLH outside S.13 is maintained also taking into consideration future TLH involvement in the OWV.

Concerning the sector classification of the OWV assets, ICN/INR considers that they should be recorded in the accounts of the concessionaire TLH, i.e. outside the general government sector.

Analysis

We note that following our advice expressed in previous correspondence on the Antwerp Masterplan and BAM's role in this project, BAM has been reclassified by ICN/INR inside S.13. This is shown in the questionnaire relating to EDP tables for the April 2010 EDP notification.

Eurostat considers being in possession of all relevant information necessary for the provision of its opinion on the revised Oosterweel Link (OWV) concession scheme.

Concerning the sectoral classification of THL in national accounts, Eurostat notes that the enterprise is incorporated under Belgian law as a limited liability company, has a complete set of accounts and disposes of autonomy of decision. The overwhelming majority of its revenue comes from the tolls paid by the users of the Liefkenshoek tunnel and THL has been recording profits from its operating activity for several years in a row.

Taking into account that the project is planned now to be pursued as a concession, i.e. with the remuneration of the partner directly by the third-party users, the classification of the assets to be constructed under the Oosterweel Link (OWV) would need to follow the MGDD chapter Part IV.4 "Public infrastructure financed and exploited by the corporation sector". In particular Eurostat considers that, according to the information available on the OWV project, the recording in national accounts and EDP would correspond to the case 2 a of the above-mentioned chapter of the MGDD, i.e. "*a corporation constructs and/or operates public infrastructure and finances the costs by charging users who are not the government*", implying that "*when infrastructure is a new one built by the corporation, it is GFCF by the corporation with no impact on government accounts*".

Conclusion

Concerning the sectoral classification of THL in national accounts, taking into account all the information provided by ICN/INR, Eurostat agrees that this public entity is to be classified outside the general government sector.

As far as the Oosterweel Link (OWV) recording is concerned, on the basis of the currently available information, Eurostat considers that it has features of a concession-style contract, i.e. with remuneration of the partner stemming from the third-party users' payments, and with a new infrastructure being built by the partner. In this case, a relevant MGDD chapter IV.4 foresees a recording of the gross fixed capital formation expenditure by the partner (corporation), without an impact on government accounts.

It should be however noted, that if during the operation phase of the concession government starts to provide payments to the partner (e.g. due to lower than expected partner revenue as a result of lower traffic), the share of such payments in the total partner revenues would need to be monitored by ICN/INR. In case government payments to the partner exceed 50% of the partner's revenue from the concession contract, the project would need to be analysed following the relevant MGDD chapter on Public-Private Partnerships, i.e. IV.4.2 "Long term contracts between government units and non-government partners (Public-Private-Partnership)".

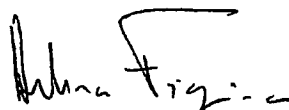
Procedure

There is no explicit Community legislation which governs a procedure by which Eurostat gives its views on operations which have not yet been enforced. Nevertheless, Eurostat is prepared to give a preliminary view on the statistical classification of such operations provided that it is in possession of all of the necessary background information. This preliminary view is given in accordance with the guidelines for ex-ante advice published on the Eurostat website.

This preliminary view of Eurostat is based on the information provided by the Belgian 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. To this end Eurostat could request to be informed of the final details of the operation (contract and accompanying papers where relevant) when they are available, or (should this be the case) information that the planned operation has been abandoned.

In this context, 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 the Council Regulation (EC) No 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 publishes 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. In any case (regardless of whether you have objections or not) we would like to receive an answer from you on the issue no later than 25 June 2010.

Yours sincerely,



Maria Helena Figueira
Acting Director