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Subject: Ex-post advice Viapass Project

Ref.: Your letter T/ICN/2015/003713 of 25 June 2015

Dear Mr Delporte,

Thank you for your letter dated 25 June 2015 including the request for an ex-post advice from Eurostat and the NAI's assessment of this project. After having closely examined the arguments put forward in your request and the documentation provided, Eurostat is now in a position to express its view on this matter.

1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS REQUESTED

The issue to be analysed is the statistical treatment of the Viapass DBFMO¹ project and the allocation (on or off-government balance sheet) of the assets required in the framework of a contract signed between the interregional unit Viapass and the special purpose vehicle (SPV) Satellic SA.

Description of the case

The three regions in Belgium have decided to set up an electronic toll charging system per kilometre for trucks (Heavy Goods Vehicles, HGVs²) from the year 2016 onwards. For this purpose, the regions created an interregional entity, Viapass, which launched a public tendering for calculating and collecting the toll over a period of 12 years.

The public tendering was won by Satellic, who signed a contract with Viapass on the 25 July 2014, for the DBFMO of the toll system over 12 years.

¹ Design, Build, Finance, Maintain and Operate.

² Trucks exceeding 3.5 tons.

In national accounts, Viapass is classified as part of the regional government sector (S.1312).

Satelllic is a private SPV created by affiliates of Deutsche Telekom AG and Strabag AG Österreich. Satelllic is classified outside the government sector and is privately controlled.

Satelllic has no powers to determine the toll; this is under the exclusive competence of the regions. Satelllic will calculate, charge and collect the tolls from users and will transfer them to Viapass, which will, in turn, transfer them to the three regions.

The construction phase will last 1.5 years. It is the understanding of Eurostat that construction already started in 2014. The implementation of the system was originally foreseen in the contract to start on 1st January 2016. However, it seems that this has now been delayed to April 2016.

The assets needed to operate the toll scheme can be divided in two groups as follows:

- Assets needed for the registration of the km covered and the toll calculation, collection and transfer. These consist mainly of the following:
 - On board units (OBUs), electronic devices to be placed in each vehicle and which will register the km covered. OBUs should be purchased by Satelllic through tender.
 - Service points to distribute and collect the OBUs. These will be located on the Belgian highways across the borders of the country and the harbours. They will be located on existing infrastructure such as fuel stations, parking grounds or sites provided by service partners. Special automatic vending machines will be used to achieve a 24/7 availability.
 - Back office and IT infrastructure to calculate and collect the tolls.
- Enforcement assets, consisting mainly of:
 - Fixed equipment (portiques and infrastructure placed in highways with cameras and other mobile equipment in order to exercise control). The fixed equipment becomes the property of Viapass from the availability date onwards, as it is placed under the property of the different regional governments.
 - Mobile equipment (cameras placed on the fixed equipment and cars)
 - Back office for the enforcement part

There will be neither financing nor guarantees from government to Satelllic.

After the construction phase, there will be a milestone payment from Viapass to Satelllic of around EUR 121 mn³. It is the understanding of Eurostat that such payment is foreseen to finance the purchase of the OBUs by Satelllic. In addition, Viapass would have to make a further payment of EUR 47 mn⁴ in case the number of OBUs exceeds the amount agreed in the contract⁵ by more than 300,000 units.

³ Referred to in the contract as "*paiement d'étape* (MP_{GEN})"

⁴ Referred to in the contract as "*paiement d'étape* (MP_{OBU})"

⁵ The contract was agreed for 700,000 OBUs.

After the construction phase, Satellic will maintain and operate the toll system for 12⁶ years and receive a quarterly fee from Viapass. At financial close, the quarterly fee was estimated to be around EUR 29 mn for the first quarter.

The cost of the assets needed for the toll system is assumed to be around EUR 314 mn, which is a rather small amount as compared to the total operating cost estimated to be paid by Viapass over 12 years (around EUR 1.4 bn).

According to the NAI, all the assets needed for the registration and collection of the toll will remain the property of the Satellic at the end of contract. It is to be noted, however, that most of the assets needed to operate the scheme do not have service lives beyond the contract period and will need to be replaced a few times to deliver the service agreed.

On the other hand, Satellic has the obligation to remove and demolish all or part of the fixed installations of the electronic toll charging system at the request of Viapass. In case Viapass would not ask for the removal of the fixed enforcement equipment, Satellic would pay a maximum of EUR 800,000 to government.

2. METHODOLOGICAL ANALYSIS

Eurostat has carried out its analysis according to the rules of ESA2010 and the MGDD 2014 version “implementation of ESA 2010”. Contracts with non-government units related to fixed assets and PPPs are covered by chapters VI.3 and VI.4 of the MGDD, respectively.

It is to be noted that, although the Viapass project takes the form of a DFBMO contract, it has features that are different in substance from those of other contracts analysed by Eurostat in the past and submitted by the NAI.

Eurostat agrees with the view of the NAI that the Viapass project does not have the features of a PPP contract.

The SPV will receive payments from the users of roads in Belgium and such payments will be transferred to government. In substance, final users will make payments to government for the use of the roads, through tolls. The assets being put in place to measure and collect the toll will allow government to perceive the tolls paid by Heavy Goods Vehicles for the use of the roads and are purely instrumental to the measurement and collection of the tolls. In fact, the assets needed to operate the toll system are strictly linked to the use of the roads and should not be considered as separate assets "per se". They should be considered as an extension or a change to the existing assets (the roads). Therefore, in line with the provisions in the Guidance Note on EPC contracts, the Viapass project cannot fall under the rules of PPPs, for which a significant capital expenditure is required (in this case, the total value of capital expenditure needed to put in place the toll system will be quite low, well below the value of the roads that will be tolled).

In addition, contrarily to typical PPP contracts, most assets in this project have service lives shorter than the contract period.

The Viapass project does not have the features of a concession contract either, as government will make regular payments to the SPV, constituting the majority of the fees received by the SPV.

⁶ The contract can be extended 3 times for periods of one year.

Following all the above, the analysis of this project will not be done following the usual guidance for PPP and concession contracts (risk and rewards analysis, financing, early termination, etc.).

The project seems in fact to have the features of a service contract. However, government would not be exclusively purchasing services, as it seems to have fixed specific requirements regarding the assets needed for the toll system. The specific requirement of government concerning the assets would point at the contract being beyond a traditional contract for the procurement of goods and services.

It could be argued that the project should in fact be treated as a traditional procurement contract followed by a service contract. However, this treatment would pose the problem that certain assets for which government takes no decisions and has no responsibility for (such as the back office or the IT infrastructure) would be recorded on-government balance sheet.

On the other hand, it should be recalled that the fixed equipment will be the property of government after the construction phase. Such assets are placed on land which is the property of government and government will take the final decision on whether they should be removed or not at the end of the contract. Therefore, a recording off-government balance sheet of such assets would not be correct, as government is not only the legal owner, but also the economic owner of such assets.

In addition, it is the understanding of Eurostat that the milestone payment of EUR 121 mn is intended to finance the OBUs and so would the potential further payment of EUR 47 mn.

3. CONCLUSION

Considering all the above, Eurostat agrees with the view of the NAI that the ViaPass project does not have the features of a PPP contract and could instead be treated as a service contract. However, the following caveats should be taken into account:

- The one-off payment after the construction phase (EUR 121 mn and the potential additional EUR 47 mn) will be considered as government expenditure. Eurostat has no objection to the treatment as investment grant proposed by the NAI. The time of recording of the transaction will be clarified bilaterally before the October 2014 EDP Notification.
- The fixed equipment and any other assets legally owned by government, placed on the property of government or for which government takes the decision on removal at the end of the contract should also be considered as government assets.
- Following the above, the quarterly fee paid by Viapass would need to be split, one part being recorded as payment of a service and the other part adjusted accordingly to avoid the double counting of government expenditure previously recorded.

4. PROCEDURE

This 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.

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. In case you have objections concerning the publication of this specific case, we would appreciate if you could let us know before 1st September 2015.

Yours sincerely,

(eSigned)

Eduardo Barredo Capelot
Director