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EUROSTAT

Directorate D: Government Finance Statistics (GFS) and quality

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Subject: Request for ex-ante advice

Statistical treatment of a DBFM project for School Buildings

Ref.: Your letter T/ICN/2016/002567 of 9 May 2016

Our letter Ares(2016)1537501 of 31 March 2016

Your letter T/ICN/2016/000551 of 28 January 2016

Dear Mr Delporte,

Thank you for your letter dated 9 May and the attached documentation providing technical clarifications on the DBFM¹ project for School Buildings in the Flemish Community.

As pointed out in the documentation provided on 9 May, the dossier has been submitted to Eurostat at an early stage. The public tendering has not taken place yet and some relevant documents for a complete statistical analysis are not available.

Please note that, based on the not complete information available at this stage, any view expressed by Eurostat in this letter should be considered as preliminary. Once all relevant documentation would be available, the case will be re-examined in order to take a final decision concerning the statistical treatment of the project.

Taking into account that Eurostat provided a detailed methodological analysis of the case already in its letter of 31 March 2016, the analysis will not be repeated in this exchange of views.

¹ Design, building, finance and maintenance.

(1) THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS REQUESTED

The issue to be analysed is the allocation (on or off government balance sheet) of several infrastructure assets to be built in the framework of a standard DBFM contract proposed by the Flemish Community.

Description of the case

The project relates to a standard DBFM contract for the design, building, finance and maintenance of school buildings in the Flemish Community. The standard contract will be then used for individual school projects, each to be signed between a school and a private partner.

The standard contract is at an early stage and cannot be considered as final. No public tendering has been launched so far for any individual project and therefore, Eurostat has not received information on the partner and the associated SPV. According to the Belgian National Accounts Institute (NAI), there is no intention of the Flemish government to take a stake in the SPV which will be selected as the private partner in any of the individual projects.

According to the standard contract, the selected partner will build the assets and, will have the right to exploit the assets and the obligation to maintain them during a period of 30 years after construction. The private partner will operate the assets in order to provide a service to the Flemish Community, which will pay an availability fee to the private partner in quarterly instalments.

The construction phase will include configuration² elements and non-configuration elements.

The partner will be responsible for maintaining the configuration assets during 30 years. As regards the non-configuration elements, the partner will not provide additional services after construction.

Some repair and maintenance tasks (as defined in Annex 23) will remain under the responsibility and the expense of the Flemish government. These concern mainly general cleaning, regular testing of emergency generators and the fire alarm system, removing snow/ice, protecting against frost, grease filter cleaning, delivery of fuel, pruning the trees, replacing the keys, etc.

Some services such as the cleaning and catering, which are not part of the agreement, could be purchased by government and invoiced separately.

According to the NAI, government financing and guarantees are not foreseen. However, the details of the financing have not been provided.

The Flemish Community will always have the property rights of the assets (it will be the legal owner of the assets during the contract as well as after termination). At the end of the contract (after 30 years) the right to exploit the assets and the associated obligations will be transferred back to the Flemish government without payment and there is a *rendez-vous* clause to check the quality of the infrastructure at the end of the period and determine whether some repairs will be needed.

The configuration assets are primarily intended for educational activities and secondarily for cultural, social, sports and recreational activities in general. The Flemish government will use

² Mainly the school building and the initial equipment as defined in Annex 22 of the contract.

the configuration assets all the calendar days that fall outside holiday periods, as well as on 30 days during weekends in each school year. Outside the period of use by government, the partner may use the premises or make them available to third parties (12 weeks over holiday periods and 74 days during weekends).

The total investment cost of the project is estimated at around EUR 200 mn³. The intention of the Flemish Community is to put clusters of EUR 30 to 60 mn capital expenditure into the market. Out of the amounts foreseen, it is not clear what will be the split between the construction of new assets and the renovation/refurbishment (if any) of assets which already exist.

Documentation provided

The NAI has provided a draft of the standard DBFM contract that is intended to be used for individual school projects. Eurostat has also received clarification concerning technical issues raised in its letter dated 31 March 2016.

As this is an ex-ante advice, some annexes are still missing and will be available only once the project is a final stage and some individual contract has been signed. The same applies to the Financial Agreement and the Direct Agreement.

Moreover, some information, in order to provide a complete assessment, is missing in the documentation provided to Eurostat. For instance, it is not yet known who will be the selected partner/s and, as a consequence, the statutes of the SPV and the shareholders agreement are not available. Besides, there is neither information on the financing nor on the amount of the gross availability payments per quarter. Finally, the technical specifications of the project and the BAFO⁴ are also not available.

Eurostat takes note of the statement in the documentation provided by the Flemish Community that "*the project proposed is a very pure DBFM-construction contract where it is not only the explicit aim that the risks and rewards are adequately transferred to the private partner, but also where no financial interest –directly or indirectly- will be held in the SPV in terms of participation, financing, provision of guarantees, control or otherwise*".

(2) CONCLUSION

Eurostat preliminarily agrees with the conclusion of the NAI as concerns the recording of non-configuration assets on government balance sheet, as no maintenance service will be provided by the partner.

On the basis of the information received and the statements of the Flemish Community as regards this project, Eurostat preliminarily agrees that configuration assets⁵ could be recorded off government balance sheet provided that the following conditions are eventually met:

- there would be no participation of government in the SPV;
- there would be no government financing or government guarantees;

³ Including interest and excluding VAT.

⁴ Best and final offer.

⁵ In case of renovation/refurbishment of assets which already existed, the work undertaken in this context must represent the major part of the value of the asset after completion. In cases where it would represent less than 50% of the value of the asset after completion, the contract could not be considered as a PPP.

- all macroeconomic risk would be adequately transferred to the partner;
- the potential financial disadvantages would not be linked to shortcomings of the partner during the construction or exploitation phase;
- there would be no mechanisms leading to reward sharing;
- penalties would be automatic and no payment will be undertaken by government in case of non-availability of the asset.

Given that key information necessary for a complete analysis of this project is still missing at this stage, Eurostat view provided above should be considered as preliminary and the final statistical treatment to be applied should be decided once all relevant documentation would be available.

Please also note that Eurostat is in the process of working on a comprehensive document on PPPs, in co-operation with the European PPP Expertise Centre of the European Investment Bank (EPEC). The note will be published under the responsibility of both institutions. Thus, further guidance will be produced in order to complement the existing PPP rules and help PPP practitioners to understand how the different features included in PPP contracts might impact the classifications of PPP projects. This further guidance should be available shortly after the summer. Therefore, Eurostat is not addressing some of the issues raised by the Flemish Community in the documentation provided, as the issues will be soon clarified in the aforementioned document being produced.

Finally, please note that Eurostat's role concerning PPP contracts is limited to an assessment of the statistical treatment of projects. Eurostat is not competent for providing advice on the drafting of contracts or on the marketability and value for money of projects.

(3) PROCEDURE

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.

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. Eurostat therefore publishes all official methodological advice (ex-ante and ex-post) given to Member States on its website.

Yours sincerely,

(e-Signed)

Eduardo Barredo Capelot
Director