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Subject: **SDV 16 – 17 May 2017, Action point 29 – Scottish Hub Model for Public Private Partnerships**

Reference: Your e-mail on 25 July 2017 and included documents
Our e-mail on 25 June 2018
Your e-mail on 27 June 2018
Our e-mail on 10 July 2018
Your e-mail on 26 July 2018

Dear Mr Bailey,

Thank you for the documents and the additional information provided. After having examined the arguments in the documents and our subsequent discussions, Eurostat is now in a position to express a view on this matter.

1. The classification issue

The issue is to analyse the statistical classification of projects under the amended Scottish Hub PPP Model and the relevant units. This analysis is, as an example, based on the classification of the Stirling Care Village Hub East Central DBFM[1] project.

Documentation provided

The ONS provided to Eurostat a copy of the following confidential documents:

- Classification decision Letter from the ONS to Scottish Government,
- The submission, by the Scottish Futures Trust classification advice to the ONS,
- Classification case document considered by the ESCC (ONS) – case document 2017-65,

[1] DBFM = Design, Build, Finance and Maintain

- Companies Act of the Hub East Central Ltd,
- The Stirling Care Village project agreement,
- The financing agreement,
- The Hub Community Foundation constitutions.

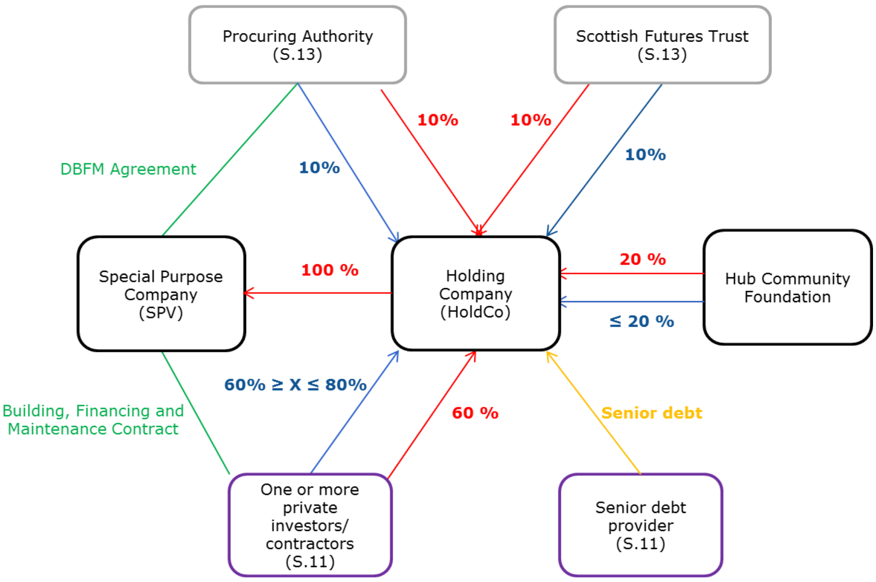
The Eurostat analysis is based on these documents, which constitute an example for the Scottish Hub Model for PPPs, as well as the Hub project update paper.

2. DESCRIPTION OF THE CASE

The Stirling Care Village Hub DBFM project (the project) is an integrated care development project composed by facilities for elderly people, day care, care training and four general practices. The financial close was in December 2016 and the DBFM contract, signed between the procuring Authority (the authority) and a consortium of private developers, will end in 2044 (25 years). The project amount is fixed at £ 35 m. The project has been awarded under a public tender.

In the opinion of the Scottish government, the underlying project and shareholder agreements have been adapted by the amended DBFM arrangements to the off balance sheet classification requirements outlined in ESA 2010 and the MGDD 2014 and 2016. The main changes introduced have been the limitation of government shareholding and subscription rights to subordinated debt in the SVP/HoldCo to 20% (SFT = 10% and procuring authority 10%) instead of 40% (SFT = 10% and procuring authority 30%). To address the reduced government shareholding represented by these two entities, the SFT proposed to create a charity (the Hub Community Foundation) to pick up the 20% of the share-capital of each project company[2]. In addition, several other provisions have been amended such as profit sharing and capping of profits devolved to private investors as well as the refinancing provisions. The following analysis is based, amongst other elements, on this shareholding structure

These amendments have been put forward by the Scottish Futures Trust (a Scottish government unit), agreed by the Scottish government and apply to all hub DBFM projects signed since the introduction of ESA 2010 and to all future projects under this framework. Each DBFM project has in general to be organised as follows:



[2] The classification of the Hub Community foundation is discussed in section 3.

The Scottish government decided the DBFM structure and in particular the percentage of shareholding in each DBFM project (including the shareholding of the Hub Community Foundation, currently classified as a private NPI) , the division of shares into classes for the different type of investors, the number of directors to be appointed by the shareholders, the right to invest in subordinated debt (main financial resource of each project provided by the shareholders) as well as the mandatory articles of association across all hub projects. Each private sector partner will have to comply with these arrangements.

The Stirling Care Village project follows closely the above described amended structure of the Scottish Hub model.

2.1. Legal structure

The project will be delivered to the authority through a group of project companies composed by the following units: NHS Forth Valley (S.13), Amber Blue East Central Ltd (S.11), Scottish Futures Trust Investment Ltd (S.13), Hub East Central Midco Ltd (subject of the discussion), Hub East Central Ltd (subject of the discussion) and the Hub Community Foundation (subject of the discussion).

a) NHS Forth Valley

The NHS Forth Valley is the procuring authority and as a central government body classified in the central government sector (S.1311). It takes a role as a minority investor holding 10% of the shares and 10% of the subordinated debt in the Hub East Central Midco Ltd (HoldCo). The NHS Forth Valley does not participate in any further financing activity.

b) Amber Blue East Central Ltd – the Developer

The Developer, the Private Sector Development Partner (PSDP) is a joint venture of three private companies, which are also part of the founders of the HCF (see below). The PSDP holds 60% of the project company holding (Hub East Central Midco Ltd).

c) Scottish Futures Trust Investment Ltd (SFTI)

The SFTI is an indirectly (through the Scottish Futures Trust) wholly owned subsidiary of the Scottish government. SFT and SFTI are classified since 2011 as central government units (S.1311). The SFTI is a minority shareholder with 10% equity interest and 10% of the subordinated debt.

d) Hub East Central Midco LTD (HoldCo)

This company is the holding company (100% of the shares) of the operational project company (Hub East Central Ltd).

e) Hub East Central Ltd (SPV)

This project company (SPV) is a special purpose vehicle, which has been established to design, build, finance and maintain the care village project. It is a wholly owned subsidiary of the HoldCo.

f) Hub Community Foundation

The Hub Community Foundation (HCF) is a charity set up by Scottish Futures Trust (a government body) and five private companies willing to invest in Scottish PPPs. The decision to set up the HCF has been taken by the Scottish government in consultation with private partners. These six units, plus any independent individual appointed by the board, are members of the charity trust. The Scottish government set-up this charity, together with the main private PPP developers, aiming to address the classification issues due to the introduction of ESA 2010[3]. HCF's primary objectives as charity are to serve households by (1) investing in health infrastructure through PPPs and (2) to distribute a portion of the earned revenues to social projects, in particular the advancement of education and health, the provision of recreational facilities and the relief of those in need. The shareholding of HCF in Scottish Hub PPPs is requested to comply with the Hub project structure. HCF is entitled to invest up to 20% of the shares and the subordinated debt issued by the HoldCo and entitled to receive up to 20% of the dividends and interest distributed. However, the share price of each project is very limited. Concerning subordinated debt, HCF has the possibility to sell the subscription rights of subordinated debt to private investors. The sale of subscription rights is the main financial resource of HCF.

Government involvement in this NPISH raises the issue of the National Accounts sector classification of HCF, which might have a significant impact on the classification of the Holdco/ProjectCo and of the PPP assets.

2.2. Shareholder agreement (SHA)

a) *Funding of the HoldCo, of the SPV and dividends*

Equity will be provided by the equity investors (SFTI: 10%, NHS Forth Valley: 10%, HCF: 20% and the PSDP: 60%). Three equity classes have been created. Class A (10%) shares are held by the SFTI, class B shares (30%) are held by the HCF and the authority represented by the NHS and class C shares are devoted to the PSDP (60% of the shares). The equity share of £100 is negligible for the funding calculation thresholds.

The subordinated debt will be provided either by the equity investors or by other private investors keen to provide long term financing. The opportunity to sell all or a portion of the subordinated subscription rights has been and will be used by HCF to finance itself in order to compensate the limited access to financial resources.

b) *Appointment of directors and disputes*

The board of directors is composed by five directors:

- Authority (SFT) has the right to appoint one director,
- The NHS Forth Valley appoints one director, or if not, the director will be appointed by the HCF,
- Three directors will be appointed by the private partner(s).

c) *Voting rights*

The SHA specifies the voting rules and in particular on specific "Consent Matters". The quorum of any board meeting is reached, when one director of each share class is represented. This theoretically gives the authority the possibility to outvote the PSDP representative. However, this possibility can be circumvented by the PSDP director by leaving the meeting whenever a decision might be taken against the interests of the private investors. In such a situation, the quorum is not reached and the decision will be postponed. In any subsequent meeting, the three PSDP directors can outvote the directors appointed by the authority.

In board meetings each director has one vote and the Chair shall not have any casting vote. The SHA includes some "Consent Matters", which need the consent of at least 75% of the shares:

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[3] http://www.nhsggc.org.uk/media/235052/nhsggc_board_paper_15-66.pdf

a) authorising the directors to allot shares or to grant rights to subscribe for, or to convert any security into any shares in the Company or its subsidiaries;

b) issue by the Company or its subsidiaries (except as provided in any Funding Agreement) of any debenture or loan stock (whether secured or unsecured) or the creation of any mortgage, charge, lien, encumbrance or other third party right over any of the Company's assets (or the assets of its subsidiaries) or the giving by the Company (or any of its subsidiaries) of any guarantee or indemnity to or becoming surety for any third party;

c) any arrangement for any joint venture or partnership or for the acquisition of the whole or substantially the whole of the assets and undertaking of the Company or its subsidiaries or an acquisition by the Company or its subsidiaries of any part of the issued share capital or of the assets and undertaking of another company;

d) any change in the nature of the business of the Company or DBFM Co;

e) the merger, acquisition or winding-up of the Company or its subsidiaries;

f) the making of any loan by the Company or its subsidiaries (other than as provided for pursuant to the Funding Agreements);

g) the remuneration to be paid to directors for their services to the Company or its subsidiaries as directors and for any other service which they undertake for the Company or its subsidiaries; and

h) the making of any contract out of the course of the normal business or otherwise not at arms-length by the Company or its subsidiaries (other than in accordance with the Project Documents and the Funding Agreements).

3. METHODOLOGICAL ANALYSIS

Classification decision of the Economic Statistics Classification Committee (ESCC)

The ESCC, after having previously classified HCF as a NPISH (S.15), concluded that the HoldCo and the SPV have to be classified in the private sector (S.11) and the project assets on the balance sheet of the SPV.

Applicable accounting rules

Based on the documents provided and further discussions with the ONS, Eurostat carried out its analysis based on ESA 2010 and the Manual on Government Deficit and Debt (MGDD 2016) in particular chapter VI.4 Public-Private Partnerships (PPPs) as well as the Guide to the Statistical Treatment of PPPs, published jointly by the EIB and Eurostat in September 2016 (PPP guide), which are relevant for the analysis.

Analysis

Before analysing the specific overall features of the contract, it is necessary to understand whether the PPP contract is signed between government and a private contractor. In this particular case, the SPV, which will be the counterpart of government in the PPP contract, has been set-up as partly owned by the private sector and partly owned by government. It is therefore necessary to understand whether the SPV can be considered as controlled by government or not.

The Scottish Hub framework agreement includes the possibility for the Scottish government through the SFT (and its subsidiary SFTI) to acquire 10% of the HoldCo shares. Additional 10% of the HoldCo shares are devoted to the procuring unit (in the current case the NHS Forth Valley) and 20% to the HCF. The equity participation and the attached right to appoint a member of the board of directors gives the authority some influence on the business of the HoldCo and the SPV. However, as long as the equity participation remains below 50% of the issued shares, the influence on the statistical classification of the HoldCo/SPV will not lead to an automatic classification of the HoldCo/SPV into the general government sector.

In order to assess the statistical classification of the SPV and the assets, it is necessary to analyse the classification of the HCF and the importance of the relevant "Consent Matters", which will have a predominant influence on the functioning of the SHA.

3.1. Classification of HCF, currently classified as a Non-Profit Institution Serving Households (NPISH)

The rules for the statistical classification of NPISH are detailed in ESA 2010 20.13[4]:

> *"Non-profit institutions (NPIs) that are non-market producers and are controlled by government units are units of the general government sector."*

ESA 2010 20.15 defines control of an NPI as the ability to determine the general policy or programme of the NPI and indicates that a single of the following five indicators can be sufficient to establish control (excluding general regulations applicable to all units working in the same sector):

a) The appointment of officers:

   The HCF has between three and five board members; one appointed by the SFT, one appointed by the PSDPs and between one and three independent board members. The independent board members are proposed by a nominations committee, which is composed by two independent board members and two independent individuals (not being members of the charity nor the board). The board decides by a majority of at least 2/3 on the proposal of the nomination committee. The SFT and the PSDP can remove only the board member they have appointed. Independent board members can only be removed by a majority vote of the board. SFT has no influence on the nomination committee and only voting rights of maximum 1/3. The HCF board is limited to trustees, which can, by their experience and skills, contribute substantially to the hub projects.

b) Other provisions of the enabling instrument, such as the obligations in the statute of the NPI:

   The HCF was designed by the Scottish government as well as was its financial model. The participation of the HCF in PPPs under the Scottish Hub model is required as stated in the DBFM agreement.

4 Although ESA 2010 paragraph 20.14 states that NPIs might be more efficient or detached than government agencies in specific fields, such as research and development as well as the setting and maintenance of standards in fields such as health, safety environment and education. The shareholding of government participation in PPPs would not enter in the meaning of this ESA paragraph.

Although, the SFT or the Scottish government has no veto rights for amending the statutes or to impose any action taken, any PPP under the Scottish Hub model requires the HCF shareholding complying with DBFM rules.

c) Contractual agreements:

Any investment decision will be taken by the charity members (authority 1/6) and the board (authority maximum 1/3) by majority vote. Although, there is no obligation for HCF to invest in any PPP, the HCF shareholding is required under the Hub model. As a consequence, a HCF refusal to invest in a PPP would lead to the impossibility to realise the project within the Hub model structure.

HCF has entered in already signed projects and the first and only available financial statement specifies the shareholdings and the sale of the subscription rights of subordinated debt by HCF to private financial investors.

d) Degree of financing:

The authority provides no funding to and has no financial or guarantee commitment in favour of HCF in whatever situation. The sole financing of HCF are dividends and interest payments from the HoldCo as well as the sale of subscription rights of subordinated debt.

e) Risk exposure:

The authority has no associated risk to any financing, winding-up, guaranteeing or legal situation of HCF.

Taking the above into consideration, the HCF does not have autonomy of decision concerning its principal way of functioning. It has been established on purpose; functions, objectives and operating provisions have been designed by the Scottish government. There is a strong influence from the Scottish government on the general policy of the HCF by the way it has been established, is governed and functions. The HCF will enter in contracts with government units (through the SPV) in order to perform tasks, which have been set by this same government, acting as a specialised operator in by government predefined areas. In fact, the private trustees have only a limited influence on the HCF's activity. HCF has entered in existing amended contracts and no new project can be carried out, within the framework of the Scottish hub model, without its involvement. In this specific context of the Scottish Hub Model, the HCF could be seen as an autopilot of the Scottish government. In addition, the private PPP investors, also being part of the HCF, will benefit from no rewards of the HCF activities. These rewards (the economic and social benefits) will be kept for the community.

As a consequence, HCF has to be considered as controlled by government and has to be classified into the general government sector (S.13) (ESA 2010 20.13 – 15).

3.2. Government control of the HoldCo/SPV

The Scottish Hub framework agreement includes the possibility for the Scottish government through the SFT (and its subsidiary SFTI) to acquire 10% of the HoldCo shares. Additional 10% of the HoldCo shares are devoted to the procuring unit (in the analysed case the NHS Forth Valley) and 20% to the HCF. The equity participation and the attached right to appoint a member of the board of directors gives the authority some influence on the business of the HoldCo and the SPV. However, as long as the equity participation remains below 50% of the issued shares, the influence on the statistical classification of the HoldCo/SPV will not lead to an automatic classification of the HoldCo/SPV into the general government sector.

The reclassification of HCF into the general government sector has a strong influence on government control of the SPV. Eurostat places a particular attention to the specific provisions of "Consent Matters" in the SHA.

A large majority of the provisions mentioned as "Consent Matters" (provision b, c, d, e (excluding the provision on winding up the HoldCo or the SPV), g and h) are considered in the PPP guide as having no influence on the statistical treatment of the HoldCo/SPV.

However, the provision (a) of allotting shares, granting rights or the conversion of any security in shares limit the possibility of the private partner to manage the business and is not mentioned in the PPP guide.

Under provision (e) is mentioned the winding up of the company, which is not discussed in the PPP guide, but is clearly mentioned in ESA 2010 20.309 as one of the control elements possibly leading to the reclassification of the unit into the government sector:

> *"… The following indicators of control are to be considered:…*
> (i) others. *Control may also be obtained from statutory powers or rights contained in an entity's constitution, for example… or prevent the entity changing its constitution, dissolving itself…"*

"Consent Matters" needs the approval of at least 75% of the voting rights. Considering that the authority holds up to 40% (SFTI 10%, NHS 10% and HCF 20%) it should be concluded that the authority holds a specific veto right.

As a result of the veto-rights given to the authority on the issuance of any new shares and the possibility to refuse any winding-up (ESA 2010 20.309), it should be concluded that the Scottish government has control over the SPV. Therefore, the SPV should be considered as controlled by government and classified in the general government sector (S.13).

3.3. Construction risk

a) Construction of the project

The design, following authority specifications set out in the tender, is the responsibility of the SPV. There are no provisions, that the authority will be responsible for any construction delays or deficiencies, increased construction, maintenance or operating costs, or any operational failures (MGDD 2016 VI.4.4.2 §96/ PPP guide theme 2.1 – 2.2).

The authority starts payments only after the Payment Commencement Date. This date is clearly specified in the legal documentation. The authority will start to make payments only when the construction is completed and when the asset is available (MGDD 2016 VI.4.4.2 / PPP guide theme 2.3).

b) Additional financial risk

The authority grants no loan or financing, other than the equity and subordinated loan, to the project nor guarantees for any of the private financings made available. Therefore, no additional government risk will be borne (ESA 2010 20.283.e / MGDD 2014 VI.4.4.2. §97).

3.4. Availability risk

a) Operation and maintenance

Operation and maintenance of the facility are the responsibility of the SPV. Any default by the SPV will result in reductions of the availability payments. Maintenance requirements are clearly defined in the relevant agreements. The authority can object the proposed maintenance, but the SPV is not relieved from any maintenance obligation. The maintenance plan defines the lifecycle replacements and the authority has no influence or control over this (PPP guide, theme 3).

b) Financing

At least a minimum of 60% will be provided by the private PSDP investors. The authority, including HCF, will not contribute to more than 40% of the equity and of the subordinated debt (MGDD 2016 VI .4.3.3). An equity participation of less than 50% does not lead to an automatic classification of the HoldCo/SPV in the general government sector (S.13). However, further elements will be considered in the sections below.

The equity and subordinated debt will amount to almost 10% of the total financing needs. The PPP guide (theme 14.4) specifies, that a limited equity / subordinated debt participation of up to 10% has a moderate influence on the statistical treatment of the project.

MGDD 2016 VI.4.3.3 §57 states, that financial instruments may involve different degrees of risk. A simple method to value any government subordinated debt financing implies using a multiplier of 2.5 when government holds a higher risk instrument, which is the case for subordinated debt. More complex financings would require a specific analysis. The total financing provided by government amounts to:

- SFTI: £0.375 million,
- NHS: £0.375 million,
- HCF in this specific project: £0.147 million, the subscription rights for the remaining £0.603 million have been sold to a private investor,

representing, weighted by the above mentioned multiplier of 2.5, £2.7 million and approximately 7.7% of the £35.0 million project's financing costs. Thus, following the PPP guide (theme 14.4), government financing has a moderate influence on the statistical treatment of the project.

If each government unit invests the maximum amount allotted, government subordinated debt financing (supposed 10% of the total financing needs) will represent:

- SFTI: 10%, (1% of total financing),
- NHS: 10%, (1% of total financing),
- HCF: 20%, (2% of total financing),

weighted (by the 2.5 multiplier) 10% of the total financing needs, reaching the maximum threshold for a moderate influence on the statistical treatment.

MGDD 2016 VI.4.3.3 §56 specifies that EU funding has to be excluded from the calculation of government financing, whereas financing from the European Investment Bank has to be considered to be provided by the private sector.

No shareholder is committed to subscribing any additional shares or providing any additional funding, any guarantee or other indemnity for the HoldCo or the SPV liabilities.

The remaining financial needs will be covered through bank loans and/or bond issues (i.e. EIB, private lenders, banks…).

The equity/subordinated debt participation of the authority gives it the right to receive a pro rata portion of the distributed dividends and interest on subordinated debt. Dividend payments to the authority will be limited to a maximum of 40% of the profits (the planned maximum shareholding). This has a very high influence on the statistical treatment of the project (PPP guide theme 15.1), but any change in the distribution of dividends, interest due to the equity or subordinated debt should be assessed against the threshold.

c) Financial flows

The SPV invoices the authority with an annual service payment, payable as a monthly unitary charge i.e. monthly availability payment less deductions (MGDD 2016 VI.4.4.2 §99/PPP guide theme 2.3). The possible indexation of any payment to be made by the authority should be based on an index (or indices) generally recognised. The documentation does include the possibility of indexation of the annual service payment by reference to the retail price index and the reference to inflation stated by the statistical authorities.

The documentation includes clear rules for the calculation of unavailability and poor service deductions. Unavailability of the whole asset would lead to a 100% deduction. Deductions are clearly specified in the documentation giving the possibility to assess the deductions presumably to be made (MGDD 2016 VI.4.3.2 §49). If the deduction exceeds the monthly unitary payment, the availability deduction is carried forward to the next month.

d) Financial surplus flows

The agreement, states that any surplus realised through any qualified refinancing will be shared between the shareholders, although the authority will receive 1/3 of the realised surplus (ESA 2010 20.283 / MGDD 2016 VI.4.3.3 §61). A qualified refinancing is defined as a refinancing, which leads to a refinancing surplus. The MGDD 2016 states that:

> *"... Under these conditions, if government was entitled no more than one third of the gain the assets should not be reclassified in government at inception of the PPP contract. ..."*

The PPP guide follows the same approach in theme 14.6.2 and thus the sharing of financial surplus as described will have no influence on the statistical classification of the project assets.

The provided documentation implies, that the authority, although holding only up to 40% of the shares in the HoldCo, would not only benefit from the profit sharing of refinancing gains (1/3), but also of 40% of the remaining 2/3 through dividend payments.

The authority has not the right to avoid the HoldCo to proceed to any refinancing, save it would lead to an increase of the authority's obligations.

e) Termination

After the term of the contract, the asset is transferred to the authority but without any purchase price payment (MGDD 2016 4.3.7). The agreement puts penalties if the assets have not been maintained as described in the handback procedure. The MGDD 2016 4.3.7 §84 states that:

"The following cases would strongly reinforce the analysis of other characteristics of the contract and would point to a recording of the assets as government assets: ...the predetermined price is lower than an expected market value at the time of transfer or the assets revert back to government at no cost, but government effectively prepays for the acquisition of the asset throughout the contract by making regular payments that reached a total amount very close to the full market value of the asset…"

However, the PPP guide (theme 13.2) gives further guidance on this issue, i.e., that if there is evidence that the Partner's forecast investment and lifecycle costs will be recovered through the revenues it will receive throughout the period of the PPP contract and if the operational phase is at least 10 years or longer, the statistical treatment is not influenced.

3.5. Demand risk

The authority is the only customer of the SPV. No payment is related to the demand. Therefore, the demand risk is to be considered as borne by the authority (MGDD 2016 VI.4.4.2 §102).

3.6. Early termination clauses and change in the nature of contract

The contract defines 5 termination events:

- Authority default and voluntary termination by the authority,
- Force Majeure,
- SPV default,
- Persistent breach by the SPV,
- Corruption gifts and payments.

The standard project agreement provides detailed provisions to the triggering and calculation of any sum to be paid. It handles also the way of retendering the contract in case of early termination mentioned above including detailed conditions and handling of disputes.

a) Authority default and voluntary termination / force majeure

The standard project agreement follows the PPP guide (theme 12.2 - 12.4) to set the terms of the indemnity to be paid to the private partner. The indemnity will be based on the senior debt amount at termination, including redundancy payments and subcontractor losses, as well as the share value of the SPV/HoldCO, less authorised and in detail specified deductions in accordance with the termination event. This provision will have no influence on the statistical treatment.

b) SPV default / persistent breach by the SPV / corruption gifts and payments

In the case of a SPV default, the standard project agreement gives two options. Either the contract is retendered or, if the authority chose not to retender the contract for whatever reason, the compensation is based on the estimation of the potential market value of the PPP assets based on the forecasted costs and revenues less specified deductions in accordance with the termination event. If no agreement is reached the dispute resolution provisions of the standard agreement will apply (PPP guide theme 12.1.3, having no influence on the statistical treatment).

3.7. Other contractual risks and rewards

a) Dispute resolution

Any dispute not solved between the SPV and the authority should be solved through a mediation process by a panel[5] of three independent adjudicators appointed by both parties or if there is no agreement by the President of the Institute of Chartered Arbitrators in England and Wales (PPP guide theme 16.1).

b) Increased costs due to change in law

The annual service payment will be adapted accordingly, if the SPV is required to incur additional costs due to a change in the law, which excludes any influence on general operating costs, VAT and taxes. This provision has no influence on the statistical classification of the asset (PPP guide theme 7.2).

c) Insurance

The insurance costs, after approval by the authority, are directly passed through to the authority. This provision has a high influence on the statistical treatment of the assets (PPP guide theme 9.3).

If a risk becomes uninsurable (not due to any action by the SPV) the parties will consult and the authority has either the possibility to terminate the contract by using the force majeure clause or to bear the risk on its own. This provision excludes all actions by the SPV leading to such an event. This provision has no influence on the statistical treatment of the assets (PPP guide theme 9.4).

4. EUROSTAT'S VIEW

Sector classification of the HoldCo and the SPV

Considering the legal and economic framework of the standard project agreement of the Scottish Hub model, the HoldCo and the SPV should be considered as institutional units (ESA 2010 2.12). However, due to the close relationship between the HoldCo maintaining a 100% ownership in the SPV, and the sharing of the board of directors, which means that they cannot take decisions independently of each other, these two entities should in fact be considered as one institutional unit.

The adjudication of the project is realised by a public tender for the operations, so it might be considered as a market producer (ESA 2010 20.25).

Eurostat put a particular attention to the shareholding and the role of HCF. HCF has been designed by the Scottish government as a Charity (Non-Profit Institution Serving Households) on purpose to reduce apparent government shareholding and influence on the HoldCo/SPV, while keeping the economic and social benefits for the community. The very specific conditions under which the HCF has been constituted and its particular role within the Scottish Hub Model made Eurostat to consider it as similar to a government autopilot and to classify the HCF as a government unit (S.13).

Eurostat put also a particular attention to the provisions in the SHA, concerning the fact that the authority might have specific veto-rights. In such cases, it is important to consider whether the

[5] The project agreement includes two distinct panels for the construction and the operational matters.

HoldCo/SPV is controlled by the private sector or by government. The SHA includes numerous specific voting rights, which can be assimilated to veto-rights, for any shareholder controlling 25% or more of the issued shares. The so called "Consent Matters" concern decisions by the board of directors or in the shareholder meetings. The consent matters apply to the HoldCo and the SPV where relevant. Almost all of the consent matters included in the framework agreement have no influence on the statistical treatment following the PPP guide.

However, the SHA gives a veto-right to the authority (SFT, procuring authority and HCF together) on the issuance of new shares. This veto-right has an influence on the statistical classification of the SPV/HoldCo. In addition, the authority benefits also from a veto-right on any decision to winding up or dissolve the SPV/HoldCo.

The threshold is set to 25% of the shares to exercise such veto-rights on "Consent Matters", while the authority controls a maximum of 40% of the shares. Therefore, it has to be concluded that the authority benefits from such a veto-right.

Considering the foregoing, Eurostat considers that the HoldCo/SPV has to be considered as controlled by government and therefore shall be classified into the general government sector (S.13). Any change to the agreement should lead to the reassessment of the final documentation against the relevant statistical rules.

Classification of the SPV assets

The classification of the HoldCo/SPV in general government leads automatically to the classification of the HoldCo/SPV's assets in general government. However, if the framework agreement would be amended to remove government influence through "Consent Matters" the classification of the assets will have to be assessed.

For the classification of the asset off government balance sheet, the analysis should conclude that the private partner i.e. the HoldCo/SPV bears simultaneously most of the risks and most of the rewards (ESA 2010 VI.4.1 §4). The analysis shows that a large portion of the risks and rewards are either borne by the HoldCo/SPV or shared proportionally according to the equity shareholding by the authority.

Three elements need to be considered further:

a. Considering the specific Stirling Care Village PPP, the portion of authority financing will represent less than 10% of the total financing needs. This will have a moderate influence on the statistical treatment of the assets.

b. SFT, the NHS Forth Valley and HCF are entitled to receive dividends proportionate to their equity stake in the HoldCo. This right has an influence on the classification of the assets. As long as the authority's portion of dividends remains at a maximum of 10%, there is no influence. However, the Scottish Hub model allows the authority to take an equity share of up to 40% and subsequently the authority is entitled to receive up to 40% of the dividend payments, this has a very high influence on the statistical classification of the asset.

c. Finally the provision that the insurance costs are passed directly through to the authority, leads to the fact that the authority will bear the insurance risk, having a high influence on the statistical treatment of the assets.

The PPP guide states that if there is no more than one very high importance, no high importance and not more than two moderate importance provisions included in the agreement, the asset should not to be considered as being on government balance sheet. The information provided leads to recognise that there will be one very high, one high and one moderate influence on the statistical treatment of the asset. Therefore, even if the HoldCo/SPV are not be classified in general government sector, the assets of the PPP should be classified on government balance sheet.

Considering the available information, the ONS can apply the described treatment only to the projects where the financial closing is 1 January 2019 or later.

5. PROCEDURE

This view of Eurostat is based on the information provided by the UK 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.

Yours sincerely,

(e-Signed)

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Acting Director