

Subject: Ex-post consultation on the statistical recording of three PPP military projects, signed on 8 January 2021

Description of the cases

The Ministry of National Defence of the Republic of Lithuania and different private parties signed three agreements on 8 January 2021. They foresee the design, construction and maintenance of military unit buildings in Rokantiškės Village (Vilnius region), Šiauliai and Šilalė. The design and construction of the assets will be finished within two and a half years following the date of the signature. Their maintenance will take place during the twelve and a half years following the construction completion.

The three projects represent a combined capital investment of 78,691,702 Euros. The Lithuanian statistical authorities have informed Eurostat that the provisions in all three agreements are the same, only differing in the investment amount, location and Partner.

The assets specified in the agreements are of different nature, including residential and sports facilities, warehouses, technical parks, administrative and control areas. All of them are destined for the use of military personnel. The scope of the services contracted mainly include cleaning the facilities and managing utility providers.

The accounting issue

In view of the signing of the agreements on 8 January 2021, the Lithuanian statistical authorities asked Eurostat, on 19 May 2021, for an ex-post opinion concerning the appropriate statistical recording of the agreements in national accounts and in the EDP statistics. The Lithuanian statistical authorities provided Eurostat with a copy of the agreements and some of their annexes, in Lithuanian and English, as well as their opinion regarding the accounting classification.

Documentation provided (English translations)

- Partnership agreements
- Financial activity models
- Terms of settlement and payments (Annex 3 to the partnership agreements)
- Matrix of risk distribution among the Parties (Annex 4)
- Assets lifetime (Annex 11)
- Supplement No 4 - Assessment and Acceptance of Works to the Specifications
- Opinion of Statistics Lithuania regarding the accounting classification of the agreements

Documentation not provided

The following annexes are referred to in different parts of the partnership agreements, although the Lithuanian statistical authorities did not consider them relevant for the analysis and have not provided them to Eurostat:

- Annex 1 - Terms of procurement

- Annex 2 - Tender¹
- Annex 5 - List of the mandatory insurance agreements
- Annex 6 - List of associated companies
- Annex 7 - Specifications
- Annex 8 - Preconditions for the Agreement's entry into force
- Annex 9 - Direct agreement
- Annex 10 - List of employees of the Private Partner and Sub-suppliers

Methodological analysis and clarification by Eurostat

Applicable accounting rules

Eurostat has carried out its analysis based on ESA 2010, the Manual on Government Deficit and Debt (MGDD 2019) in particular chapter 6.4 Public-Private Partnerships (PPPs) and the Guide to the Statistical Treatment of PPPs, published jointly by the EIB and Eurostat in September 2016 (PPP guide)².

Eurostat view

Based on the information reviewed, Eurostat supports the view of the Lithuanian statistical authorities that the agreements do not include combinations of provisions that would indicate the recording of the PPP assets on government balance sheet. This opinion is valid as long as the annexes to the agreements that have not been provided to Eurostat do not include any provision that materially affects the distribution of risks and rewards.

Eurostat notes that there are two provisions in the agreements that, although they do not alter the overall economic substance of the project, have some moderate importance in its accounting analysis and should be monitored by the Lithuanian statistical authorities:

a) Changes in the law

Within the list of events that trigger the payment of a compensation from the Authority to the Partners, the agreements include the following case (Article 22.1.1):

New legislation, imposing additional requirements for the performance of Works and / or provision of Services are changed or passed, and when such legislation is classified as Substantial changes in law;

The agreements define a substantive change in law as “*a change in Special Legislation (...) that adversely affects the rights and obligations of the Parties under the Agreement, or a change in other applicable legislation (...)*”, whereas a Special Legislation means a “*change of the legal act of the Republic of Lithuania and the European Union, related to the regulation of the performance of Works, the provision of the Services, or the rights and obligations of the Private partner's shareholders, arising from the activities of the Private partner*”.

Eurostat's view on this matter is that provisions that allocate change-in-law risk to the Authority do influence the statistical treatment if they include the Authority taking the risk of

¹ The technical specifications that were part of the Šilalė tender were provided in Lithuanian.

² https://www.eib.org/attachments/thematic/epec_eurostat_statistical_guide_en.pdf

changes in law that are general in nature. If this is not the case, this issue is of moderate importance to the statistical treatment.

The Lithuanian statistical authorities consider that Article 22.1.1 excludes changes of law that are general in nature. However, based on the definitions used in the agreements, Eurostat cannot exclude this possibility and reminds the need to monitor this aspect.

b) Step-in

The agreements include a clause foreseeing the right for the Partner's lenders (the "funder") to step-in and attempt to rectify any Partners defaults that would otherwise trigger the Authority's right to terminate the contracts early (Article 30.1):

The Funder is entitled to exercise the step-in right, set forth in the Direct agreement, in accordance with the requirements and procedure set forth in the Direct agreement as well as other rights of the Funder set forth in the Direct agreement. The Public Authority cannot exercise actions conflicting with the Direct agreement.

Eurostat's view is that provisions for lenders' step-in rights do influence the statistical treatment if the exercise of those lenders' rights changes the Authorities' rights or liabilities under the PPP contract before, during or after step-in. Where this is the case, the issue is of moderate importance to the statistical treatment.

Eurostat has not received a complete version of Annex 9 of the agreements, where the direct agreement is disclosed, and reminds about the need to monitor this issue. Eurostat notes that the Lithuanian statistical authorities consider that the step-in right conditions foreseen in Annex 9 do not affect the Authority's rights and obligations.

Conclusions

Eurostat supports the view of Statistics Lithuania that the agreements do not include combinations of provisions that would indicate the recording of the PPP assets on the balance sheet of government. Notwithstanding the above, Eurostat calls the Lithuanian statistical authorities to monitor two provisions of moderate importance in the accounting analysis.

Procedure

This view of Eurostat is based on the information provided by the Lithuanian statistical 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-post 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.