

Applying ESA95 to PPPs

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Eurostat's mission under the Excessive Deficit Procedure

- Since the 1992 Treaty (“Maastricht Treaty”) the EU fiscal monitoring refers to the national account framework (ESA)
- This covers all the national accounts provisions (such as sector classification and time of recording) with some adjustments for the EDP (Council Regulation)
- ESA95 is a supra-national legal text (Regulation)
- Eurostat collects data (“transmission programme”) and is responsible for all methodological issues under ESA, including coordination with other international bodies
- Eurostat has also the task of controlling the notified EDP data on behalf of the EU Commission
- Eurostat has elaborated a specific *ESA95 Manual on government deficit and debt* (3rd edition 2011) – some provisions entered into SNA 2008 (chapter 22) and next ESA2010 (chapter 20)

Eurostat has taken a decision on PPPs in February 2004

- Growing interest for PPPs (notably Commission Papers)
- In some Member States already or planned change in their legislation
- Eurostat already asked for opinion by some MS but no clear guidance in ESA95 (and SNA1993)
- Eurostat committed to “equal treatment” of Member States for any methodological issue
- Procedure: Task Force (chaired by Eurostat) – Consultation of the CMFB – Decision (News Release)
- Specific chapter electronically added to the 2nd edition of the Manual for further guidance and practical implementation

What did Eurostat decide?

- Decision on PPPs *stricto sensu* (government as “main payer”)
- The crucial issue: “on/off” government balance sheet (deficit - GFCF - and debt impact)
- Assessment based on “risks and rewards” approach
- Basic rule: private partner with construction risk and either availability or demand risk (reflecting most projects at that time)
- Supplementary criteria (financing, guarantees, termination clauses, assets at maturity, public partner)
- Eurostat’s decision seen as a “general framework” and possible further works and additional guidance in view of experience
- Notably it was mentioned: “specific and complex borderline cases should be closely examined”

The implementation has not been accommodative

- Eurostat has frequently given a negative opinion (= “on”)
- In Member States the involvement of the Statistical Office is essential
- The role of Eurostat is “asymmetric”:
 - if “out”, OK (except if opinion specifically asked)*
 - if “on”, Eurostat checks and may reclassify*
- Access to contracts is crucial (no confidentiality reasons)
- Detailed contractual provisions must be closely considered
- A rather large variety of arrangements has been observed
- Eurostat has insisted on the fact that “any bad performance at any time by the private partner must have a real impact on its profits”
(progressivity is a must)
- In practice more focus on some complementary aspects in 2004 decision

What's new in the Manual 3rd edition on PPPs?

- This new edition has given the opportunity to better explicit the criteria and to take benefit of six years experience
- The case of concessions has been clearly separated (some specific issues, such as control and implicit guarantees)
- Eurostat has specified important rules, notably:
 - “Zero availability, Zero payment”
 - “50% maximum” (government guarantees/financing)
 - “More than 50%” (added value to existing assets)
- Finally the Manual provides more complete and practical guidelines but case-by-case analysis a matter of principle (except in cases of set of contracts derived from a “master contract”)

Some issues currently under close consideration

- Combined government payments (zero use but availability fee)
- Cases with 50-50 payments for availability and demand
- Definition of “force majeure”
- Allocation of refinancing risk
- Special financing/guarantee procedures
- Treatment of possible EU financing
- Need of a partner’s input in design
- Allocation of legal and environmental risks
- Review of risks (Generic categories vs. detailed list)
- Dual maintenance on new and existing assets
- Real autonomy of the partner on the assets
- Lifetime of the assets
- This is not an exhaustive list

What's next?

- The mission of Eurostat is to ensure that government deficit is the exact balance of revenue and expenditure whilst the debt must reflect the obligations of government units under an “equal treatment” principle
- Therefore Eurostat’s assessment does not consider the economic relevance of PPPs or their contribution to improvement of public services
- The “risks and rewards” approach will still be in the core of its assessment but other methodological references may be used as additional analytical tool
- Supplementary works at EU experts level will be carried out
- But currently no revision of the 2004 decision is foreseen
- However, Eurostat will continue to closely monitor that the “spirit” is fully met in all cases
- For information: chapter VI.5 in the Manual

http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/publication?p_product_code=KS-RA-09-017