

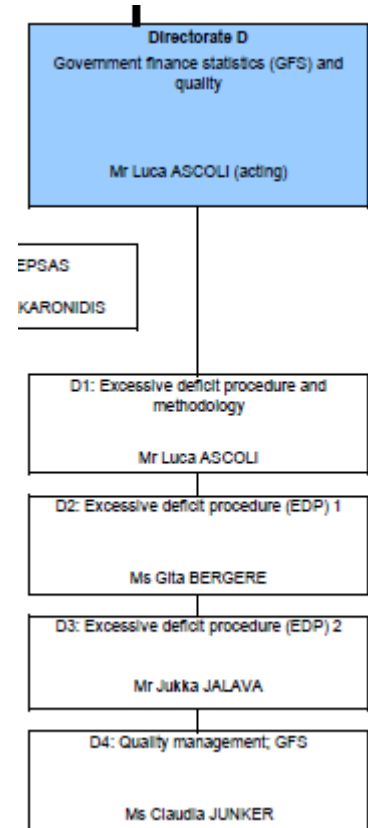


# **Principales cambios introducidos en el SEC-2010 respecto a la clasificación sectorial de entes y contratos de colaboración público privada y su aplicación por Eurostat**

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# Quienes somos

- The European Commission is responsible for providing the data used for the EDP, and within the European Commission this task is undertaken by Eurostat. This is done on the basis of the GFS and EDP statistics provided by the EU Member States. In addition, Eurostat has sole competence within the European Commission for the statistical methodological basis on which the data for the EDP are compiled.



# Esquema de la presentación

Dos partes:

1. Una parte introductoria sobre cambios introducidos por SEC-2010 respecto a la clasificación sectorial
2. Una parte más detallada sobre contratos de colaboración público-privada

Ambas se articulan en relación a los textos normativos y de referencia en un orden jerárquico y lógico (general => específico)



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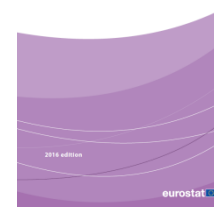
europa

eurostat  
Research and statistics

Manual on Government Deficit and Debt  
Implementation of ESA 2010



A Guide to the Statistical Treatment  
of PPPs  
September 2016



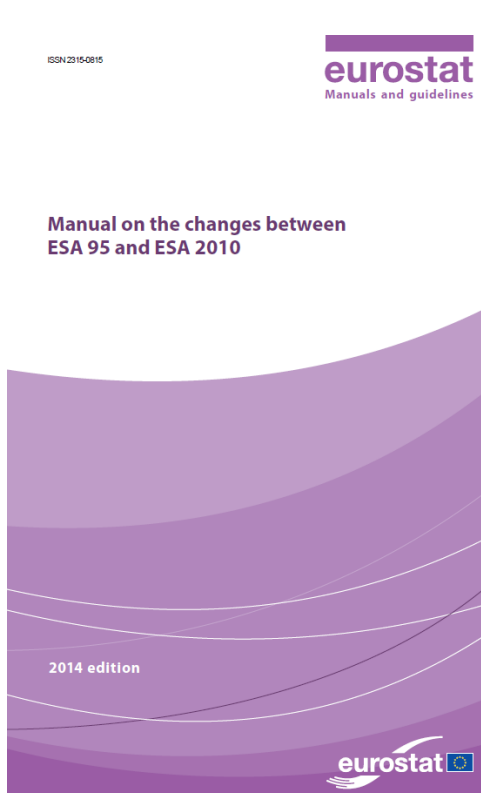
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# Part I: Sector classification



# Background: ESA 2010 (SEC-2010)

## *ESA 2010:*

- *Expanded guidance on the sector boundaries between government, public corporations and private corporations (aim: strict rules on how to decide whether a unit was operating mainly as a market or non-market institution).*

# Background: ESA 2010 (SEC-2010)

*SNA 2008, ESA 2010:*

- *Financial corporations sector (S.12) =  
Financial intermediaries + Financial auxiliaries +  
other (captive) financial corporations*
- *Corporations with passive holding or financing  
functions become part of the financial sector*

# Background: SEC-2010

Table 16.1: Correspondence between ESA 95 and ESA 2010 financial corporations sub-sectors

ESA 95 Financial corporations sub-sectors		ESA 2010 Financial corporations sub-sectors		ECB labels
Central Bank	S.121	S.121	Central Bank	MFIs
Other Monetary and Financial Institutions	S.122	S.122	Other Monetary and Financial Institutions	
		S.123	Money market funds	
Other financial intermediaries	S.123	S.124	Non-Money-Market Investment Funds	OFIs
		S.125	Other financial intermediaries	
Financial auxiliaries	S.124	S.126	Financial auxiliaries	
		S.127	Captive financial institutions	
Insurance corporations and pension funds	S.125	S.128	Insurance corporations	ICPFs
		S.129	Pension Funds	
Non-financial corporations	S.11	S.11	Non-financial corporations	

# Background: ESA 2010 (SEC-2010)

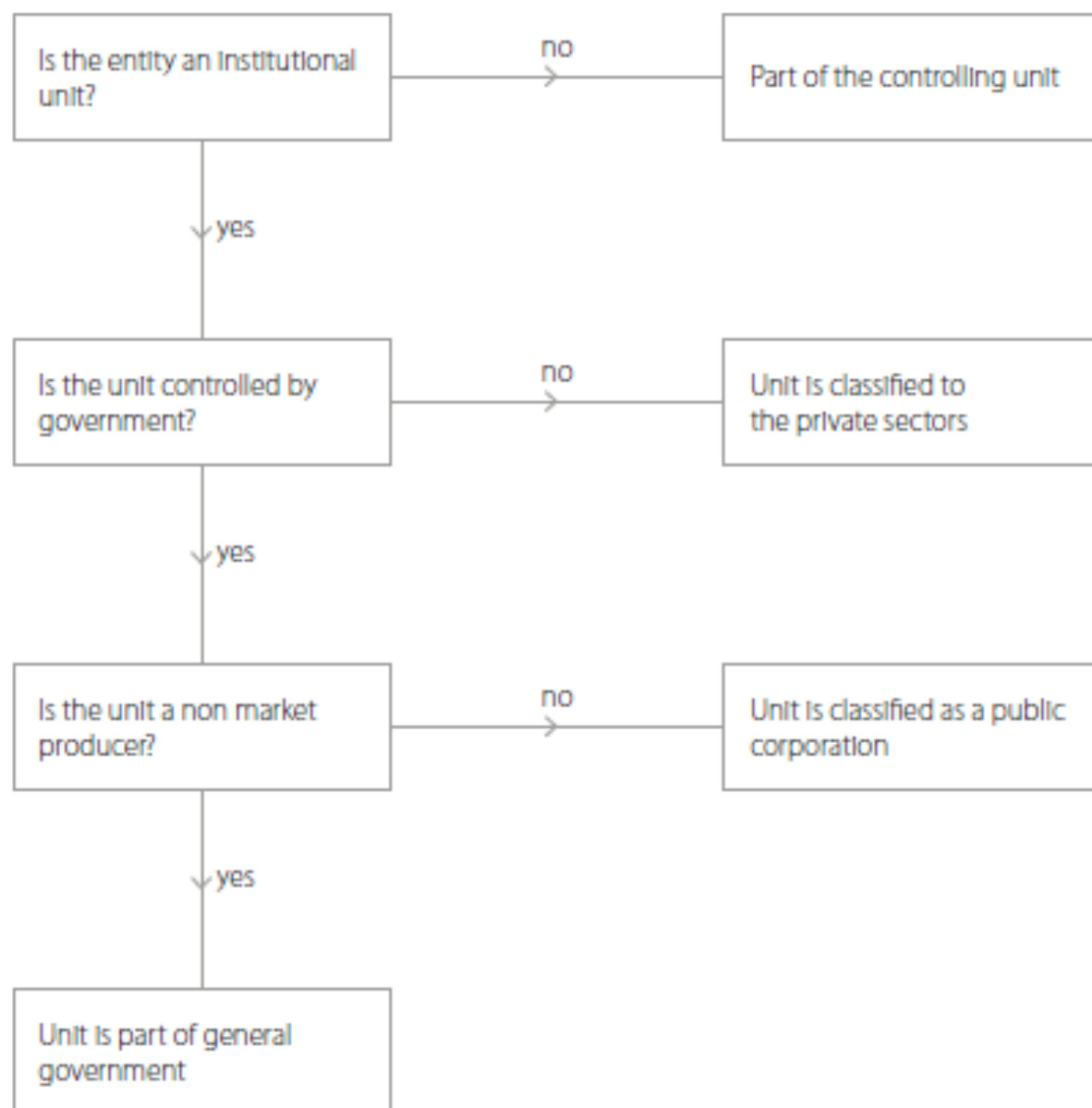
- The changes include expanded guidance on the sector boundaries between government, public corporations, and private corporations (strict rules on how to decide whether a unit was operating mainly as a market or non-market institution).
- In ESA 2010, the ability to undertake market activity is checked notably through the usual quantitative criterion (the 50% criterion). However, in order to decide whether a producer that operates under the control of government is a market unit some qualitative criteria must also be taken into account.

# Background: ESA 2010 (SEC-2010)

- If the ratio of sales to production costs is above 50%, the unit is in principle market. For the market / non-market test, the 50% criterion compares sales (paragraph 20.30) and production costs (paragraph 20.31). In this test, ESA 2010 includes, in production costs, the costs of capital which may in general be approximated by the net interest charge.

# Background: ESA 2010 (SEC-2010)

- However, an assessment of its activity and resources remains necessary based on qualitative criteria:
  - - When the unit sells only to government, and does not compete with private producers (general government); or
  - - When the unit is a single supplier, sells less than 50% to non-government units and it did not compete with private producers (general gov.)
  - - When the producer has no incentive to adjust supply to ensure profit-making activity, to operate in market conditions and to meet its financial obligations (general gov.)

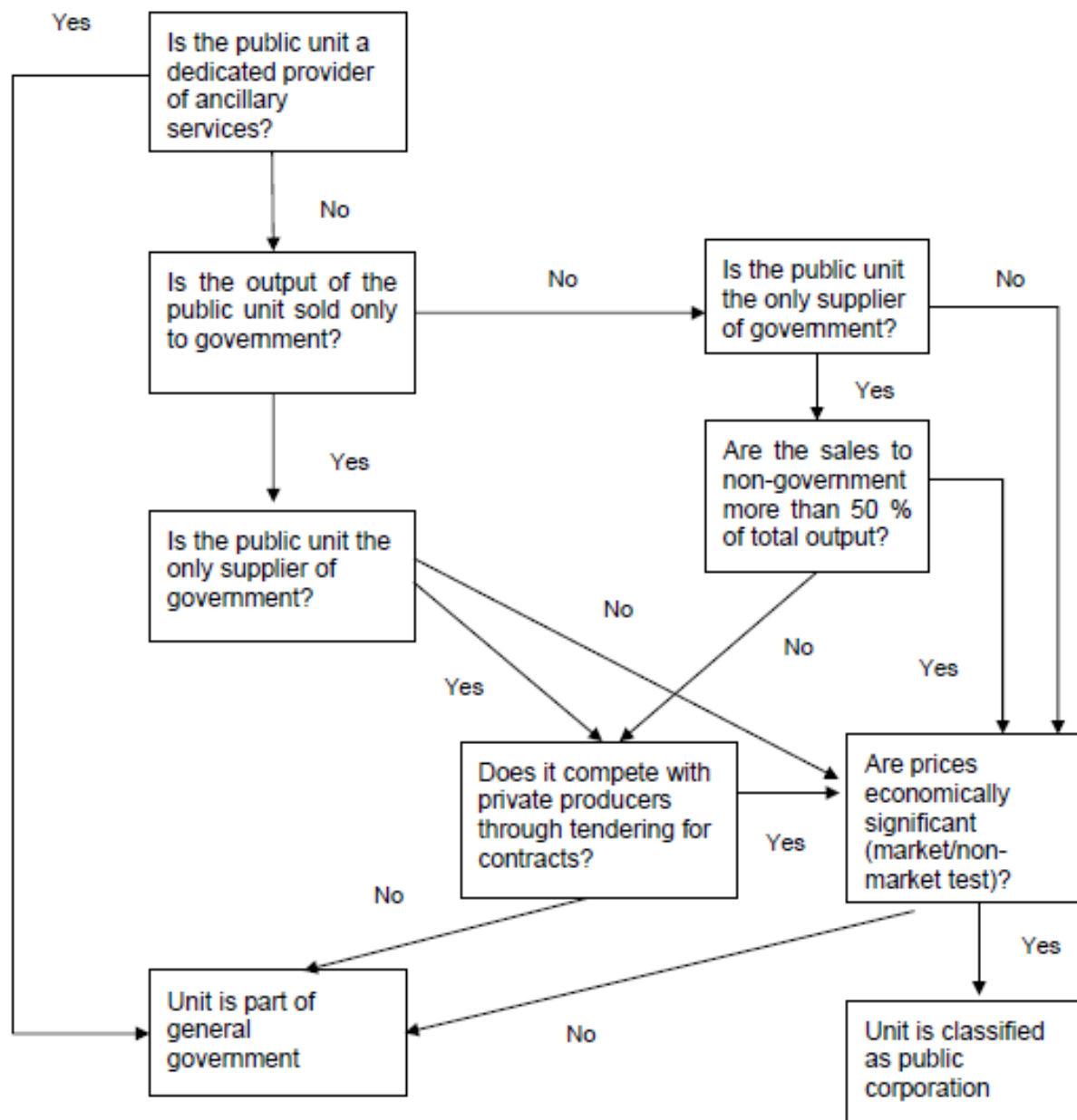


# Background: ESA 2010 (SEC-2010)

- **20.18: Control over an entity is the ability to determine the general policy or programme of that entity.**
- **2.38: The following indicators:**
  - (a) majority of the voting interest;**
  - (b) control of the board or governing body;**
  - (c) control over key personnel;**
  - (d) control of key committees in the entity;**
  - (e) golden share;**
  - (f) special regulations;**
  - (g) dominant customer;**
  - (h) borrowing from government.**

# Background: MGDD 2016

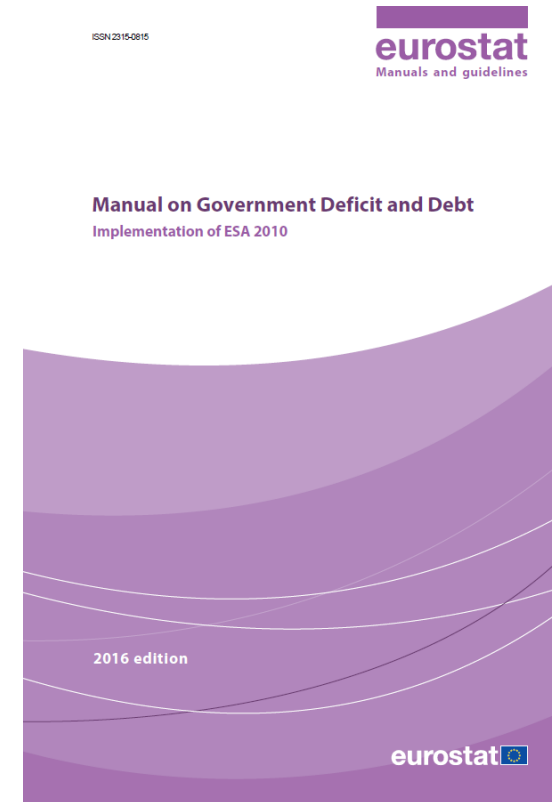
- *Individually sufficient criteria:*
  - 1) Rights to appoint, remove, approve or veto a majority of officers, board of directors, etc.**
  - 2) Rights to appoint, veto or remove a majority of appointments for key committees (or sub-committees) of the entity having a decisive role on key factors of its general policy**
  - 3) Ownership of the majority of the voting interest**
- *Other criteria:*
  - 4) *Rights to appoint, veto or remove key personnel*
  - 5) *Rights under special shares and options*
  - 6) *Rights to control via contractual agreements*
  - 7) *Rights to control from agreements/permission to borrow*
  - 8) *Control via excessive regulation*
  - 9) *Others (statute)*



# Some challenges remain

- *1) Autonomy is not automatically evidenced by the legal status. SNA 2008 seems to support the 'legal approach' to autonomy of decision. But, ESA 2010 avoids the term 'legal/legally independent' in the context of the definition of autonomy of decision (first three criteria in ESA 2010 2.12 may support the legal view).*
- *2) Influence: Sport federations*
- *3) Control: in-house implementation bodies.*
- *4) Public units in liquidation (control by liquidator is not relevant, reclassification based on market test)*
- *5) Market/non-market test. Subsidies on production not sales. Realistic business plan. 3 years or less.*

# Part II: PPPs



# PPP, ESA 2010

## *ESA 2010:*

- Public-private partnerships (PPPs) are complex, long-term contracts between two units, one of which is normally a corporation called the operator or partner, and the other normally a government unit called the grantor.
- *Risk rewards approach:*
  - 1) Construction risk**
  - 2) Availability risk**
  - 3) Demand risk**
  - 4) Residual value and obsolescence risk**
  - 5) Grantor financing or guarantees**

# PPP, ESA 2010

- The risks and rewards are with the operator if the construction risk and either the demand or the availability risks have been effectively transferred. (*Majority financing, guarantees covering a majority of financed levied, or termination clauses providing for a majority reimbursement of finance provider on termination events at the initiative of the operator lead to the absence of effective transfer of either of these risks.*)
- Other factors: government determines design, quality, size and maintenance of the assets/ gov. determines services produced.

# PPP, MGDD

- The key statistical issue is the classification of the assets involved in the PPP contract – either as government assets (thereby immediately influencing government net lending/borrowing (B.9) and debt) or as assets of the partner (spreading the impact on government net lending/borrowing (B.9) – and on imputed debt – over the duration of the contract). This is an issue which has some similarities with the one of distinguishing between operating leases and financial leases, as explained in ESA 2010 chapter 15.

# PPP, MGDD

- **Three** main categories of risk:
- ☐ “construction risk”: covering events like late delivery, respect of specifications and increased costs;
- ☐ “availability risk”: covering the volume and the quality of output (linked to the performance of the partner);
- ☐ “demand risk”: covering the variability of demand (the effective use of the asset by end-users).

# PPP, MGDD

- The PPP assets are to be classified off-government balance sheet, if:
- ☐ the partner bears the construction risks.
- ☐ the partner bears at least one of either availability or demand risk
- ☐ the risks are not incurred by government through other means, such as through (e.g.) government financing, government guarantees and early redemption clauses.

# PPP Guide

- What is the Guide?

**A practical and user-friendly guide on the statistical treatment of PPPs**

**A “contract-feel”**

**Covers typical PPP contract provisions and structures**

**Captures EU-wide market practice**

**As clear and precise as possible on how specific contract provisions affect the statistical treatment**

# PPP Guide

It is detailed and technical and assumes a good working knowledge of PPPs

**It is comprehensive but will not address every detail of every transaction**

**Consider substance / commercial impact rather than form**

**It should be used as a whole and not in discrete sections**

**It does not deal with “value for money” or “bankability”**

# PPP Guide

Chapter 2: is the project a PPP?

Chapter 3: the influence of PPP contract provisions

- Theme 1 – The project site
- Theme 2 – Design and construction of the asset
- Theme 3 – Operation and maintenance of the asset
- Theme 4 – The payment mechanism
- Theme 5 – Other payment arrangements
- Theme 6 – Compensation, relief and force majeure events
- Theme 7 – Changes to the PPP contract
- Theme 8 – Changes in law
- Theme 9 – Insurance
- Theme 10 – Warranties and indemnities
- Theme 11 – Early termination of the PPP contract
- Theme 12 – Compensation on early termination of the PPP contract
- Theme 13 – Expiry of the PPP contract
- Theme 14 – Financing arrangements
- Theme 15 – Government influence
- Theme 16 – Miscellaneous provisions

# PPP Guide

Eurostat's comment:

- does not influence
- does influence:
  - **MODERATE**
  - **HIGH**
  - **VERY HIGH**
  - **ON BALANCE SHEET FOR GOVERNMENT**

Chapter 4: Concluding the assessment Step 1:

**No influential issues – OFF BALANCE SHEET**

**Influential (ON BALANCE SHEET) issues – ON BALANCE SHEET**

**Influential (VERY HIGH/HIGH/MODERATE) issues – MOVE TO STEP 2**

# PPP Guide

- Step 2: Project-specific re-categorising (no if thresholds are specified)
- Step 3: Conclusion

Strong presumption of **OFF BALANCE SHEET** treatment if *(note further analysis may be undertaken and will include assessing the Authority's control of the asset)*

	VERY HIGH	HIGH	MODERATE
Issues identified	$\leq 1$	0	$\leq 2$
Issues identified	0	$\leq 2$	$\leq 1$
Issues identified	0	$\leq 1$	$\leq 4$
Issues identified	0	0	$\leq 7$

# A Closer look to the PPP Guide

Chapter 2: is the PPP a project?

Sector classification of the contracting parties

- **Authority must be public (government) and Partner must be private (non-government)**
- **General rules (not PPP-specific) apply**
- **Watch for government control of the Partner (e.g. through equity, direct government investment instructions to national public banks)**
- **Different tests for SPVs and other entities**

Source of Partner revenue

- **Majority Partner revenue from government = PPP**
- **Majority Partner revenue from users = concession**

# A Closer look to the PPP Guide

## The asset

- **Clearly identifiable, an element of specific design**
- **Examples may include accommodation, roads, bridges, street-lighting, IT systems**
- **PPP asset may have interfaces with other projects/infrastructure**
- **Value of works relevant on refurbishment, renovation or upgrade of existing assets (50% rule)**

## Economic life of asset / contract duration

- **Indication, operational period > 10 years likely to be a PPP (e.g. roads, accommodation projects). Short-term contracts (< 10 years) unlikely.**
- **Asset life should be longer than the contract**
- **Contract should include major maintenance/replacement of the asset**

# A Closer look to the PPP Guide

Scope of services provided by the Partner

- **Maintenance is the core service for a PPP**
- **Inclusion / exclusion of secondary services (e.g. cleaning, catering) does not affect whether a project is defined as a PPP**

Government revenues from the project

- **Government revenues > 50% government payments, the project is not a PPP**
- **Test applied at financial close (use best estimates) AND reviewed throughout the contract life**
- **Applies to all types of third party revenue (e.g. road user charges, out of hours use of schools)**
- **Does not catch purely internal government funding arrangements (e.g. central government funding for school pupils received by local government)**



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# PPP Guide

## **Theme 2 – Design and construction of the asset**

**Authority design/specification → consider risk of buildability and availability**

**Completion criteria → objective and robust**

**Phased completion → “useable” phases linked to proportional Operational Payments**

**Snagging → minor issues only (not availability-related)**

**Links to Theme 5 (Payments) and Theme 6 (Compensation, Relief and Force Majeure Events)**

# PPP Guide

## **Theme 3 – Operation and maintenance of the asset**

**Core maintenance service (Partner) vs “secondary services” (Partner or Authority)**

**Project might involve a PPP asset and other assets outside the PPP (e.g. assets the Partner provides/builds only)**

**Operation and maintenance standards → genuinely linked to the asset being useable; monitored/applied through the contract**

**Maintenance costs → risk/reward must sit with the Partner**

# PPP Guide

## Theme 4 – The payment mechanism

### Availability-based

**An effective availability regime → genuine availability standards and appropriate levels of deductions**

**Deductions → calculated objectively and not open to negotiation**

**Proportionality → full availability = full payment; but zero availability = zero payment (in between = broad proportionality)**

# PPP Guide

## Theme 4 – The payment mechanism

### Demand-based

**Banding mechanisms affect the principle of proportionality**

**Minimum revenue/use guarantees (any amount) →  
ON BALANCE SHEET**

**Payments not linked to demand → use a mixed availability / demand mechanism**

### Mixed availability/demand mechanisms

**A separate mechanism can be used for “secondary services”, in other cases, assess the availability and demand components separately against the requirements of the Guide**

# PPP Guide

## **Theme 5 – Other payment arrangements**

**Payments for the asset start when the asset is complete and available**

**Benchmarking/market-testing → no influence if limited to “secondary services” and minimum 5 yearly intervals**

**Authority taking utilities price risk → no influence**

**Authority taking utilities consumption risk → no influence if consumption is not in the Partner’s control**

# PPP Guide

## Theme 5 – Other payment arrangements

**Indexation → use generally recognised indices**

**Third party revenues received by the Authority:**

**> 50% of payments to Partner = on balance sheet**

**≥ 20% of payments to Partner = HIGH importance**

**< 20% of payments to Partner = MODERATE**

**importance < 5% of payments to Partner = no  
influence**

**Third party revenues received by the Partner only  
relevant to the PPP vs. concession question**

# PPP Guide

## **Theme 6 – Compensation, relief and force majeure**

**The list of events → finite and events well-defined  
(no “or similar” catch-all provisions)**

**Some due diligence is expected (the occurrence of the event, or its consequences, must not be reasonably foreseeable)**

**Events should exclude acts/omissions of the Partner**

**Special attention given to public law doctrines (e.g. economic re-balancing)**

# PPP Guide

## **Theme 12 – Compensation on early termination of the PPP contract**

**Market value of the contract (set through re-tendering or estimated) can be used for Partner default compensation (detailed conditions apply)**

**Other methods of calculating Partner default compensation (e.g. book value, senior debt) → might influence**

**Force majeure compensation → should be lower than full compensation (i.e. Authority default / Authority voluntary)**

# PPP Guide

## Theme 13 – Expiry of the PPP contract

**Asset reversion to the Authority for no payment → no influence if:**

- Operational Phase > 10 years AND
- The Partner is forecast to recover its investment/lifecycle costs over the life of the contract

# PPP Guide

## Theme 14 – Financing arrangements

**Relevance of government financing defined by specific thresholds applied to total construction cost:**

**$\geq 50\%$  = on balance sheet**

**$< 50\%$  but  $> 1/3$  = VERY HIGH importance**

**$\leq 1/3$  but  $> 10\%$  = HIGH importance**

**$\leq 10\%$  = MODERATE importance**

**Apply 2.5 multiplier to highest-risk finance and a sensible multiplier to finance between lowest and highest risk**

# PPP Guide

## Theme 14 – Financing arrangements

### Right to refinance

Authority rights of approval/veto

Authority right to force refinancing

### Sharing refinancing gains

Authority takes share generated by its actions OR

Authority take a specified % share (**fixed no higher than 1/3**)

**Interest rate risk with the Authority until financial close → no influence**

**Exchange rate risk with the Authority → no influence**

**Authority risk on financing availability = financing guarantee**

# Additional sources of information

**eurostat**  
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Eurostat provides bilateral advice to EU Member States when requested on specific cases. This may transactions themselves are undertaken. The advice takes the form of letters addressed to t Authorities.


In certain cases of future transactions, where the preparation for the transaction is of a confidential not publish its advice until the transaction is announced by the national authority concerned.

Guidelines for [Eurostat's ex-ante and ex-post advice \(clarifications and decisions\) on methodologica](#)

ADVICE PROVIDED IN 2018

 [Hungary - Statistical classification of the MNB's foundations and their subsidiaries \(3\)](#)

 [Annex 1: KSH letter to Eurostat \(2\)](#)

 [Annex 2: Statistical classification of the MNB's foundations and their subsidiaries \(2\)](#)

# **Additional sources of information**

- **June 2018: UK - Ex-ante advice Welsh Mutual Investment Model (WMIM) for Public Private Partnership (PPP) Projects**
- **July 2018: LV - Ex-ante advice on the statistical treatment of the Public Private Partnership (PPP) Project E67/A7 Kekava bypass**
- **July 2018: LT - Ex ante consultation on the PPP project Panevezys County Police Headquarters Building with Lokups**

# Additional sources of information

Guidance notes and  
clarifications

Advice to Member States

Legislation

Excessive Deficit Procedure

EDP Notification Tables

EDP inventories

**EUROSTAT EDP VISITS TO  
MEMBER STATES**

Supplementary table for  
government interventions to  
support financial institutions

Eurostat EDP processes

Contingent liabilities

Candidate Countries

Government accounting




Statistics illustrated

Links



The following reports summarise the final findings of Eurostat dialogue, upstream (UDV), metropolitan (MDV) and ad hoc visits.

Note: The upstream dialogue visits have been integrated in dialogue visits since mid-2014.

## Visits in 2018

- Greece (19-20 September) [Mission findings not yet available]
- Belgium (28-29 June) [Mission findings not yet available]
- Bulgaria (7-8 June) [Mission findings not yet available]
-  [Malta \(31 May-1 June\)](#) [PDF, 565 KB]
-  [Lithuania \(17-18 May\)](#) [PDF, 315 KB]
- Greece (21-22 March) [Mission findings not yet available]
- Poland (1-2 March) [Mission findings not yet available]
- Germany (19-20 February, 12 March) [Mission findings not yet available]
- Romania (6-8 February) [Mission findings not yet available]
-  [Finland \(25-26 January\)](#) [PDF, 561 KB]
- The Netherlands (22-23 January, 26 February) [Mission findings not yet available]

## Visits in 2017

-  [Spain \(27-28 November\)](#) [PDF, 640 KB]
-  [Slovakia \(14-15 November\)](#) [PDF, 361 KB]

# Additional sources of information

## Extracts from Final findings report, visit to Spain

A majority of PPPs in the central government and all PPPs in the local government sub-sectors are classified on the balance sheet of government. The majority of PPPs were observed in the state government sub-sector, of which about half are classified on the balance sheet of government.

....

### ***Extraordinary Road Investment Plan (Plan Extraordinario de Inversión en Carreteras PIC)***

The PIC includes a number of actions, such as priority roads, which might be managed in a Private Public Partnerships (PPP) and may be financed through the European fund EFSI<sup>23</sup> (Juncker Plan). The PPPs would be governed in the form of availability payments for which will be paid a monthly fee...



# Gracias!

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