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Risk Distribution and Balance Sheet Treatment

Practical Guide

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Table of Contents

Introduction

Risk distribution and balance sheet treatment are important aspects of any PPP structure. Understanding the underlying issues, and their consequences, is of great concern to procuring authorities. EPEC issued a report in 2010 on the *Eurostat Treatment of Public-Private Partnerships*[1] to explain the context of these issues. The report clarifies the meaning and purposes of the accounting and statistical treatment of PPPs and the Eurostat rules dealing with the impact of PPPs on government deficits and debt (the "Eurostat treatment"). It also analyses Eurostat rules for government support measures for PPPs. Finally, the report examines recent trends in the accounting treatment of PPPs and describes how these changes may affect, in practice, the process for determining the Eurostat treatment of PPPs in the future.

To build on this initial analysis, EPEC has now prepared in this document practical guidance on the statistical treatment of PPPs in national accounts based on the Eurostat rules. The guidance relates to the balance sheet treatment of both PPPs and concessions. The differences in treatment of these two forms of contracts are explained in section 1.2.

This document is in two parts:

- a short legal background; and
- a checklist of issues designed to help determine the possible statistical treatment of a project (the "Checklist").

This document is intended to give practical advice on the impact on government deficits and debt of the risk distribution between government and the PPP partner. However, PPP project structures vary greatly and need to be considered "case by case" for their balance sheet assessment. More importantly, the analysis of an individual characteristic of a PPP contract can not provide a definitive conclusion regarding the statistical recording of the transaction. The structure of any given PPP operation must be considered as a whole to determine whether statistical classification should be on or off the government's balance sheet. The Checklist provides a practical tool for such comprehensive assessment.

This document reflects the Eurostat rules contained in the *Manual on Government Deficit and Debt – Implementation of ESA95 (2010 edition)*, published on 29 October 2010[2]. Eurostat staff has provided comments on this document that are gratefully acknowledged. Nevertheless, the Checklist serves only to provide indicative statistical classification guidance for PPP projects.

Final decisions on statistical classification remain with national statistical authorities and, ultimately, with Eurostat. National statistical authorities should always be consulted when the balance sheet treatment of a project is likely to be a determining factor in the procurement decision of a public authority. This is particularly important where PPP projects contain structures for which no specific Eurostat guidance exists in the manual referred to above.

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[1] See http://www.eib.org/epec/resources/epec-eurostat-statistical-treatment-of-ppps.pdf

[2] See the "Manuals" section of the Eurostat website at http://epp.eurostat.ec.europa.eu/portal/page/portal/government_finance_statistics/introduction

1. Legal Background

1.1 Statistical Rules

Long-term PPP contracts raise questions about the recording of project assets on either the government's balance sheet or on the private partner's balance sheet[3]. Recording them on the government's balance sheet may have important consequences for government statistics, both for government deficits and for government debt[4].

The "excessive deficit procedure" defined by the Maastricht Treaty (Article 104[5]) has been in force in the European Union since 1994. The European Commission (Eurostat[6]) endeavours to guarantee a proper application of the European System of Accounts[7] (ESA95), in order to obtain reliable and comparable statistics[8] on the debt and deficit position of Member States. Since December 1996, ESA95[9] has been the conceptual reference framework for these data. Its use is legally binding in the European Union.

ESA95 is a system for producing economic statistics and does not contain explicit rules for PPPs. ESA95 seeks to record the economic reality of transactions rather than their legal form. This can involve looking through complex financial operations to understand who bears the financial risks and who benefits from the rewards, irrespective of how the contracts have been legally constructed.

In practice, it has been necessary for Eurostat to supplement the general rules of ESA95 with additional guidance relating for PPPs. A *New decision of Eurostat on deficit and debt – Treatment of public-private partnerships*[10] was published on 11 February 2004 and concerns the statistical treatment of long-term partnership contracts between government and non-government units. It specifies the treatment of PPPs and its recording in government deficits and debt.

This decision led to more descriptive guidance, also issued by Eurostat in 2004 – *Long term contracts between government units and non-government partners (Public-private partnerships)* (the "old manual"[11]) – and expanded in 2010 by the revised *Manual on Government Deficit and Debt – Implementation of ESA95* (referred to below as "MGDD"[12]).

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[3] The International Public Sector Accounting Standards Board ("IPSASB") noted that the lack of specific guidance on PPPs for the public sector had occasionally resulted in PPP assets not being reported in either the government's or the non-government partner's balance sheet. As a result, IPSASB has started a consultation process on the treatment of PPPs within the public sector. For more information, see http://www.ifac.org/Guidance/EXD-Details.php?EDID=0134

[4] Manual on Government Deficit and Debt – Implementation of ESA95, Chapter VI.5.2.3.

[5] Currently Article 126 TFUE.

[6] "Legal framework for European statistics – The Statistical Law" is available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-31-09-254/EN/KS-31-09-254-EN.PDF

[7] Council Regulation (EC) 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310, 30.11.1996, p.1), as amended. The European Parliament is working currently on a revision of ESA95. For further details please visit http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2010/0374

[8] Manual on Government Deficit and Debt – Implementation of ESA95, Preface.

[9] A user-friendly version of ESA95 is available at http://circa.europa.eu/irc/dsis/nfaccount/info/data/esa95/esa95-new.htm

[10] The Eurostat Decision of 11 February 2004 is available at: http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-11022004-AP/EN/2-11022004-AP-EN.HTML

[11] The "old manual" is available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BE-04-004/EN/KS-BE-04-004-EN.PDF

[12] MGDD is available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-09-017/EN/KS-RA-09-017-EN.PDF

MGDD is an indispensable complement to ESA95. It assists greatly in calculating government deficit and debt data. The 2010 edition is an important update of the manual. In comparison with the previous edition, MGDD clarifies certain issues and contains additional guidance on government financing of PPP projects, government guarantees and contract termination provisions.

In the event of doubt as to whether the ESA95 and MGDD rules apply to a given contract, the national statistical offices of EU Member States can ask Eurostat for its assessment. Such a request can refer to a project that has already been implemented (ex post) or one that is still under preparation (ex ante). Eurostat however only gives opinions on projects that are already structured and does not issue guidance on hypothetical cases or different variants of the same project[13]. Its opinions, in the form of letters to national statistical offices, are published on the Eurostat website[14].

1.2 Distinguishing PPPs and Concessions (according to Eurostat)

Under EU law, there is no definition of PPPs. The legal definition of concessions is very general[15]. The market has come to interpret PPPs much more widely than was originally expected by Eurostat. Therefore, in MGDD, Eurostat gives its own definitions of PPPs and concession contracts that are only relevant for the purposes of statistical analyses. The exact delineation between PPPs and concessions is important in this context, because distinct statistical rules apply to each kind of contracts. This means that, like a PPP, a concession can be on or off balance sheet for government. It is just that the tests are different[16].

MGDD's statistical concepts may differ from the legal definitions, or commonly used terminology, applied in the Member States. It is important to emphasise that Eurostat's distinction between PPPs and concessions is to enable national accountants to differentiate between different contractual arrangements in order to apply the correct statistical rules. This distinction may be very different from those used in national law by individual Member States. For statistical purposes, whenever a Member State definition is different from the Eurostat one, the Eurostat definition prevails and is taken into consideration[17].

The fact that a contract is procured in a particular way (public procurement or concession) is not in itself relevant in defining whether the contract is a PPP or a concession for statistical purposes. This means that statistical concepts of a PPP and a

[13] Guidelines for Eurostat's ex ante advice on methodological issues are available at http://epp.eurostat.ec.europa.eu/portal/page/portal/government_finance_statistics/documents/EUROSTAT_ADVISE_19_JULY_2006.pdf

[14] Available at http://epp.eurostat.ec.europa.eu/portal/page/portal/government_finance_statistics/methodology/advice_member_states

[15] A 'Public works concession' is a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment. 'Service concession' is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment. See Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114–240).

[16] The statistical treatment of concessions is described in chapter VI.4.1.5, whereas the recording of PPPs is discussed in chapter VI.5 (MGDD VI.4.1.5/15).

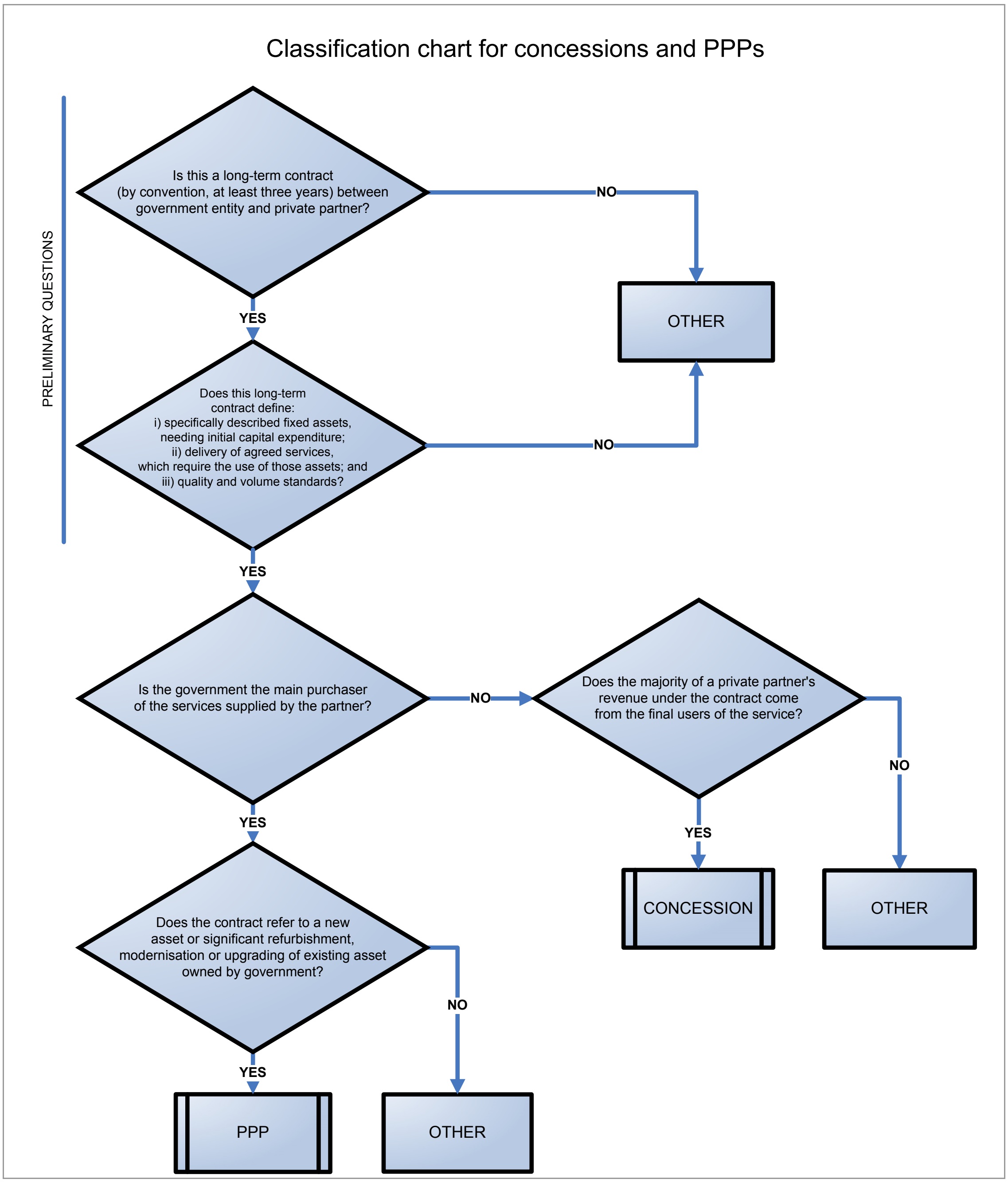
[17] A similar issue was raised by the EC in the Green paper on public-private partnerships and community law on public contracts and concessions; Com (2004) 327, point 22 - *the interpretation given by national law or by the parties has no impact on the legal interpretation of concession contracts for the purposes of the application of a Community law on public contracts and concessions*.

concession have to be clearly separated from the procedure used by the procuring authority to select the private partner.

There is no uniform award procedure in EU law specifically designed for PPPs[18]. According to EU directives, PPPs are structured around a public procurement contract or are procured as work or service concessions[19]. In other words, the underlying contract of all PPPs is either a public contract or a concession. The fact that a project can be classified as a concession from a statistical point of view does not mean that it is a concession from a procurement point of view.

The chart on the following page sets out the first questions of the Checklist that are aimed at defining the contract as either a PPP or a concession from a statistical perspective. If the contract is neither a PPP nor a concession from a statistical point of view, the Checklist is not applicable. In this case, the procuring authority is advised to contact its national statistical office to discuss the relevant ESA95 rules.

[18] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions, COM (2005) 569.
[19] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, Mobilising private and public investment for recovery and long term structural change: developing Public Private Partnerships, COM(2009) 615.


Classification chart for concessions and PPPs
PRELIMINARY QUESTIONS
Is this a long-term contract (by convention, at least three years) between government entity and private partner?
NO
OTHER
YES
Does this long-term contract define: i) specifically described fixed assets, needing initial capital expenditure; ii) delivery of agreed services, which require the use of those assets; and iii) quality and volume standards?
NO
YES
Is the government the main purchaser of the services supplied by the partner?
NO
Does the majority of a private partner's revenue under the contract come from the final users of the service?
NO
YES
CONCESSION
OTHER
YES
Does the contract refer to a new asset or significant refurbishment, modernisation or upgrading of existing asset owned by government?
NO
YES
PPP
OTHER

2 Practical Guide

2.1 Content of the Checklist

The Checklist consists of 95 questions, divided into 11 sections. As shown in the table below, all the Checklist sections are relevant to PPPs, whereas only some concern concessions.

Section	Relevant to	
	PPPs	Concessions
I. General questions	√	√
II. PPP or concession?	√	√
III. Statistical sector classification of the partner	√	√
IV. Assessment of the risks – Introduction	√	
V. Construction risk	√	
VI. Availability risk, including penalties/bonuses	√	
VII. Demand risk	√	
VIII. Final risk distribution questions	√	
IX. Guarantees and similar mechanisms	√	√
X. Early termination	√	√
XI. End of the contract	√	√

2.2 How to Use the Checklist

The questions of the Checklist require a “yes” or “no” answer. For each question, background information and the relevant MGDD extracts are provided in the “EPEC comment” column.

Most of the questions contained in the Checklist are linked to one another: each section of the Checklist starts with a set of detailed questions, the answers to which lead to the main (core) questions marked in bold.

The majority of the answers to the Checklist questions will not lead to a final determination regarding the statistical treatment of a project. However, any tick in one of the “blue cells” automatically means that the project is on-balance sheet for government.

Although users may be tempted to answer the “blue cell” questions first, we recommend that they review and answer all the questions of the Checklist. Doing this will lead to a comprehensive review of all the aspects relevant to the statistical analysis of a project. Determining whether a project is on or off the government’s balance sheet is often only possible once a detailed analysis of the entire project structure has been carried out.

The Checklist should help users collect all the information required by statisticians (national statistical offices and Eurostat) to assess a project. It should also facilitate discussions with these institutions.

2.3 Important Caveats

The Checklist is aimed at procuring authorities. The Checklist is likely to be reliable if, when working through it, the analysis leads to the conclusion that a project is on the government's balance sheet. It will not however help determining with certainty that a project is off the government's balance sheet.

For projects where the Checklist does not provide decisive guidance on the statistical treatment, consultation with the national statistical office, and ultimately, Eurostat is advisable.

The checklist collates all the MGDD topics relevant for the statistical analysis of PPPs. This should enable users to take a more systematic approach when preparing or assessing PPP contracts. This is relevant both in the contract preparation phase as well as when major changes are introduced to an existing contract (e.g. renegotiations, early termination).

The list of questions contained in the Checklist is as exhaustive as the issues raised by MGDD permit. If a given contract contains features and/or contractual arrangements that are not covered by the Checklist, they should not be disregarded and the relevant national statistical authorities should be contacted for an assessment.

2.4 Checklist

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
I. General questions						
This preliminary section contains introductory questions identifying initial criteria for a further statistical analysis of PPPs and concessions. The Checklist is not applicable if the answer to at least one of the questions in this section is "no". This also means that the "blue cell" questions are not applicable. In this case, it is advisable to contact the national statistical office for determining the balance sheet treatment of the contract.						
1	Is the contract a long-term contract (by convention, at least three years) between a government entity and a private partner?				This Checklist is designed for long-term contracts. If the answer is "no", the contract is neither a PPP nor a concession according to Eurostat.	VI.5.2.1
2	Does this long-term contract define: i) specifically described fixed assets, needing initial capital expenditure; and ii) delivery of agreed services, which require the use of those assets; and iii) quality and volume standards for the asset and services?				*Specifically designed assets* (e.g. infrastructure) *generally require either significant initial capital expenditure or major renovation or refurbishment (which is precisely why government uses such arrangements in many instances).* If the answer to all three questions is "yes", *it is the service component that differentiates PPP and concession contracts from leases.* Statistical rules for leases are specified in part VI of the MGDD. If the answer to at least one of the sub-questions is "no", the contract is neither a PPP nor a concession according to Eurostat.	VI.5.1 VI.5.2.2/16
II. PPP or concession?						
In MGDD, Eurostat gives definitions of PPPs and concession contracts that are only relevant for purposes of statistical analyses. The exact delineation between PPPs and concessions is important in this context, because distinct statistical rules apply to each kind of contracts. This means that, like for a PPP, a concession can be on or off balance sheet for government. It is just that the tests are different. The fact that a contract is procured in a particular way (public procurement or concession) is not, in itself, relevant in defining whether the contract is a PPP or a concession.						
3	Is government the main purchaser of the services supplied by the partner? In other words, is government paying the partner (on a regular or irregular basis) all or most (over 50%) of the fees received by the partner under the contractual arrangement?				*A given threshold between government and third party demand on this point needs to be just above 50%. This is irrespective of whether the demand originates directly from government itself or from third party users (as for health and education services, and some types of transport infrastructure). It is necessary to estimate whether payments (directly or indirectly) from the government (in cash or in kind) constitute the majority of the corporation's revenue under the contract.*	VI.1.1 VI.4.2./19 VI.5.1/2 VI.5.2.2/18 VI.5.2.2/19 VI.5.3.6/69
4	Does the majority of the partner's revenues under the contract come from the final users of the service?				For example, final users of the infrastructure/equipment pay tolls or other fees that are levied by the partner.	VI.4.1.5/14 VI.1.1/4
5	Does the contract refer to a new asset or significant refurbishment, modernisation or upgrading of an existing asset owned by government?				In PPP contracts *new assets are built or the existing ones refurbished.* For the latter case, *expenditure for renovation* must *represent the majority* (over 50%) *of the value of the asset after renovation.*	VI.5.2.2/17
6	Does the major part of the partner's revenues come from the direct sale of services to a variety of units under fully commercial conditions?				Please note that there may be specific government requirements, which might be *compensated by government in the form of subsidies.*	VI.4.1.5/13
7	Are there any payments under the contract from the partner to government?				*Payments may occur initially (for example, they may be described as the purchase of a related licence) or during the lifetime of the contract (royalties, specific taxes, etc.).*	VI.4.1.5/13
8	**Is the project a PPP project?**				**The project is a PPP project in statistical terms if the answers in questions 1 and 2 and 3 and 5 are "yes". Please continue to complete the Checklist until the end.**	VI.5.1
9	**Is the project a concession project?**				**The project is a concession project in statistical terms if the answers in questions 1 and 2 and 4 are "yes". Questions 6 and 7 are not decisive, but indicative of a concession. Please continue to complete the Checklist in section III (Sector classification of the partner) and then from section IX (Guarantees and similar mechanisms), X (Early termination) and XI (End of the contract). Please skip sections IV to VIII, as they are applicable only to PPP projects (i.e. not to concessions) from a statistical point of view.**	VI.4.1.5

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
III. Statistical sector classification of the partner A PPP/concession between government and a non-private partner (i.e. a public company that is referred to in ESA95 as "public corporation") is possible from a statistical point of view. However, such "public-public partnership" should fulfil certain conditions in order to be classified off balance sheet for government. This section considers the issue that is at the core of such an analysis: classification of a non-private PPP partner into a statistical institutional sector.						
10	Is the partner a public entity?				The partner *is public if, according to national accounts (ESA95) rules, government or a public unit determines its general corporate policy.* It is also the case if it performs a government function or is controlled by another public unit (see question 16 for the assessment of a control). If the answer is "no", the unit involved in this transaction is private. Please go to question 35.	VI.5.3.1/24 VI.4.1.6/18
11	Does the partner (in this case a public corporation) show clear competence (experience) in the area of activity covered by the PPP?				If the answer is "no", it suggests an on-balance sheet treatment. It is very unlikely that the partner will be interested to be involved in the activity in which he does not have a clear competence. The term "competence" here means experience, not the legal/statutory right to provide particular activity. If the public corporation nevertheless engages in a PPP without relevant competences, its autonomy of decision would need to be confirmed (see questions 13 and 16).	VI.5.4.1/73
III.A. Public corporation This sub-section is applicable if the partner is a wholly or almost wholly government-owned public corporation.						
12	Is the PPP contract one of several commercial activities of the public corporation?				If the answer is "no", reclassification as a government unit is not required if the answer to questions 17 and 18 and 19 is "yes". In cases where the contract with government is the exclusive source of revenues of the wholly or almost wholly public-owned corporation, *payments by government under a PPP contract are a predominant part of the "private" partner's revenue. These payments should be analysed to determine whether they can be classified as sales* (statistical notion of sales is specified in part V of the MGDD), *particularly if this contract alone results in a significant change in the size or nature of its activities. This corporation could be reclassified as a government unit.*	VI.5.3.1/26 VI.5.4.1/73 VI.5.4.1/74
13	Does the partner (in this case a public corporation) have the power to take decisions in respect of its principal function?				*In order to be said to have the freedom to take decisions in respect of its principal function, a unit must: i) be entitled to own goods or assets in its own right, which means that it will be able to exchange the ownership of goods or assets in transactions with other institutional units; and ii) be able to take economic decisions and engage in economic activities for which it is itself held to be directly responsible and accountable at law; and iii) be able to incur liabilities on its own behalf, to take on other obligations or further commitments and to enter into contracts. If the entity does not have the freedom to take decisions in the exercise of its principal function, it should be combined with the unit that controls it.*	I.2.2
14	Does the partner (in this case a public corporation) keep a complete set of accounts or would it be possible and meaningful, from both an economic and legal viewpoint, to compile a complete set of accounts if they were required?				*In order to be said to keep a complete set of accounts, a unit must keep accounting records covering all its economic and financial transactions carried out during the accounting period, as well as a balance sheet of assets and liabilities. If the entity does not keep a complete set of accounts (or it would not be possible and not meaningful to compile a complete set of accounts if required), its partial accounts are to be integrated with the institutional unit's accounts. Units which are not individual legal entities but do keep a complete set of accounts, are engaged in market activity and whose economic and financial behaviour is similar to that of corporations are deemed to be free to take decisions and are classified as quasi-corporations in the corporations sector, outside the general government sector* (criteria for classifying units to the government sector are specified in part I.2 of the MGDD).	I.2.2

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
15	Is the partner (in this case a public corporation) an institutional unit?				*ESA95 sets out the rules according to which an entity can be considered as an institutional unit - a resident unit is regarded as constituting an institutional unit if it has decision making autonomy in respect of its principal function, and either keeps a complete set of accounts or it would be possible and meaningful, from both an economic and legal viewpoint, to compile a complete set of accounts if they were required.* The answer is "yes" and the partner is an institutional unit from a statistical point of view, if the answer to questions 13 and 14 are "yes". If the answer to any of the questions 13 or 14 is "no", the partner should be combined with the unit that controls it. If government controls it, the PPP project is on-balance sheet for government.	I.2.2
16	Is the partner (in this case a public corporation) controlled by government?				*Control is defined* in ESA95 *as the ability to determine the general (corporate) policy or programme of an institutional unit by appointing appropriate directors or managers, if necessary.* But even if this is not the case, the partner can still lack autonomy. *Control may be exercised by government directly or indirectly (through a public holding corporation, for example). Owning more* than 50% *of the shares of a corporation is a sufficient, but not a necessary condition for control. Government can also exercise control over a corporation through special legislation, decree or regulation that empowers it to determine corporate policy or appoint the directors. The government secures control of a unit when it influences the management of the specific unit independently of the general supervision exercised over all similar units. Public intervention in the form of general regulations applicable to all units engaged in the same activity should not be however considered to be relevant when deciding whether the government has control over an individual unit.* If the answer to this question is "yes" and the answer to any of the questions 17 or 18 or 19 is "no", the project is on-balance sheet.	I.2.3 I.6.2./7
17	Are prices charged for sales by the partner (in this case a public corporation) economically significant?				If the answer is "no", the partner (in this case a public corporation) is a non-market unit. *A price is said to be economically significant when it has a significant influence on the amounts producers are willing to supply and purchasers wish to buy. Conversely, a price is said to be not economically significant when it has little or no influence on how much the producer is prepared to supply and is expected to have only a marginal influence on the quantities demanded. It is thus a price that is not quantitatively significant from the point of view of either supply or demand. Such prices are likely to be charged in order to raise revenue or achieve a reduction in the excess demand that may occur when services are provided completely free, but they are not intended to eliminate such excess demand.*	I.2.4.1
18	Do the prices that generate sales cover more than 50% of production costs?				If the answer is "no", the partner is a non-market unit. *In distinguishing market and other non-market* units *by means of the 50% criterion, "sales" and "production costs" are defined as follows:* *i) "sales" excludes taxes on products but includes all payments made by general government or the institutions of the EU and granted to any kind of producer in this type of activity, i.e. all payments linked to the volume or value of output are included, but payments to cover an overall deficit are excluded;* *ii) "production costs" are the sum of intermediate consumption, compensation of employees, consumption of fixed capital and other taxes on production. For this criterion other subsidies on production are not deducted.* *To ensure that the concepts "sales" and "production costs" are used consistently when applying the 50% criterion, production costs should exclude all costs made for own-account capital formation. The 50% criterion should be applied over a period of years: only if the criterion holds for several years or for the present year and is expected to hold for the near future, should it be applied strictly. Minor fluctuations in the volume of sales from one year to another do not necessitate reclassification of institutional units.*	I.2.4.2 I.2.4.3

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
19	Is the partner (in this case a public corporation) a market unit?				The answer to this question is "no" when answer to any of questions 17 or 18 is "no". *If the unit is financed by sales of goods and services at economically significant prices then it is a market unit. Market units are classified in the corporations sector* (i.e. outside the government sector). Non-market units are units that provide most of their output to others free of charge or at prices that are not economically significant.	I.2.4
20	Does government provide significant recurrent support to the partner (in this case a public corporation)?	on-balance sheet			If recurrent support results in a shift from a market activity to a non-market activity of the partner, its classification in the government sector might be required. The term "significant" means that *the majority of the production costs are no longer being covered by payments considered as "sales", but instead by transfers from government.* If the answer is "yes", the assets will be assigned to the government's balance sheet as a result of the classification of the partner in the government sector.	VI.5.3.1/29
21	Has the partner (in this case a public corporation) shifted an activity from market to non-market?	on-balance sheet				
22	**Is the partner (in this case a public corporation) statistically classified outside the general government sector?**		**on-balance sheet**		**The answer is "yes" as long as it acts as a market unit (50% cost coverage criterion, see question 18) and payments by government can be considered as sales.** **If the answer is "no", the project is on-balance sheet for the government.**	VI.4.1.6/18 VI.5.3.1/25
23	**Is the partner (in this case a public corporation) included in the general government sector?**	**on-balance sheet**			**The answer is "yes" if the answer to question 16 is "yes" and the answer to questions 17 or 18 or 19 is "no".** ***The general government sector may comprise four sub-sectors (central government, state government, local government, social security funds), although not all apply in every country.***	I.2.1

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
III.B. Special purpose vehicle (SPV) The purpose of this sub-section is to consider some additional aspects that needs to be taken into account according to the rules specified in MGDD if the partner in a PPP/concession contract is a Special Purpose Vehicle (SPV) set up with some government involvement in it. This may be observed in the case of building innovative and complex assets that need the close cooperation with firms on technical matters.						
24	Does the performance of the contract take place under the legal umbrella of an SPV?				If the answer is "no", go to question 35. *Normally, such a legal entity would have a definite life limited to the length of the PPP contract. It can be expected to have been created solely for legal purpose.*	VI.5.2.2/15 VI.5.4.1/75 VI.5.4.1/76
25	Does one or more private partners that are the operational contracting parties control the SPV?				If the answer is "yes", there is no question as to the classification of an SPV as a non-government unit.	VI.5.4.1/76
26	Does the board of the SPV consist wholly of non-government appointees?				Even if the answer is "yes", the *SPV may still not be autonomous*.	I.6.2./7
27	Is the SPV located in a country other than that of the activity in which it is engaged?				The location of an SPV taking part in a PPP contract has no influence on treatment of such a PPP in ESA95.	I.6.2/9
28	Does the SPV have the capacity to acquire assets and incur liabilities in its own right?					VI.5.4.1/77
29	Does the SPV have the capacity to enter into contracts with non-government units?					VI.5.4.1/77
30	Does the SPV have the freedom to take decisions concerning the management and disposal of its assets and liabilities?				If the answer to questions 28 or 29 is "no", the SPV does not have the freedom to take decisions. Although SPVs are established to implement a contract, this does not automatically imply that the SPV does not have the freedom to take decisions. This could arise, for instance, if: *i) the SPV does not have the right or capacity to actively manage its assets in response to market conditions (e.g. if government has the right to approve any significant disposal), or* *ii) there is a pre-arranged contract signed by government fully determining the SPV's operations.*	I.6.2./4 I.6.2./10 I.6.3/12
31	Can the SPV be considered to be an independent institutional unit according to national accounts?		on-balance sheet		If the answer to question 30 is "no", the SPV cannot be considered to be an independent institutional unit. In this case, it could be classified as an *"ancillary" unit* to government or deemed as acting on behalf of government, *so that it might be more appropriate to say that the fees paid by government are not sales receipts for a "real partner", but just transfers within the general government sector.*	I.6.3/12 VI.5.4.1/77
32	Are the government payments made to the SPV market-oriented?				*Market-oriented means of a similar kind to that observed between other market units, i.e. economically significant prices.* A more detailed explanation is given in rows 17 and 18 and 19.	VI.5.4.1/74
33	Does government bear only risks that an SPV would not normally be expected to bear?				*Examples of such risks are political or security risks.* If the answer to questions 32 and 33 is "yes" the classification of the SPV as a government unit is not required, even when the SPV is 100% government-owned corporation.	VI.5.4.1/74
34	**Can an SPV be statistically classified in the non-financial corporation sector?**		**on-balance sheet**		**No, if the answers to questions 31 or 32 is "no".** **The answer is "yes" as long as it acts as a market unit (50% cost coverage criterion) and payments by government may be considered to be sales.** **If the answer is "no", the partner should be classified in the "general government" statistical sector, implying in any case that the project is on-balance sheet.**	VI.5.4.1/77

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
IV. Assessment of the risks – Introduction Risk is transferred only if the non-government partner faces sufficient financial consequences. To demonstrate a clear risk transfer, the costs that accompany a risk occurrence should generate financial consequences for the non-government partner. Such financial consequence should be sufficient to put at risk not only the non-government partner's operating margin but also expose its equity to significant losses. When a risk is also allocated to third parties (lenders, insurers, guarantors, etc.), the PPP assets should be classified off the government's balance sheet if most of the risk is borne by the non-government partner and the third parties together.						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.17).
35	Has a risk analysis been prepared?		on-balance sheet		*What is observed in partnerships between government and its counterparts is a sharing of risks. Analysis of risks borne by the contractual parties is the core element as regards statistical classification of the assets involved in the contract, to ensure that the impact on the government deficit of this type of partnership is correctly accounted for. However, it may be seen as normal that some risks are taken by government (for instance, in the case of force majeure or for such government actions that change the conditions of activity that were agreed previously).* Taking into account a central role of risk analysis for statistical classification of PPPs, the relevant authorities should undertake such assessment. If a risk analysis has not been prepared, it is not possible to assess the PPP project according to Eurostat rules. Projects for which no risk analysis is available will be classified on the government's balance sheet.	VI.5.3.2/31
36	Does the risk sharing analysis rely on the potential effect on the private partner's profits (lower income and/or higher cost) and/or on the probability (even roughly estimated) of occurrence of the risk, assessed and estimated according to relevant statistical methods?		on-balance sheet		*It should not be acceptable for a private partner to bear only risks that are potentially highly damaging but have a very low reasonable expectancy.* However, please note that when considering guarantees in PPP contracts, in practice, the probability with which the event triggering the guarantee will/can occur is not considered by Eurostat.	VI.5.4.2/78
37	Does the analysis take into account the combined impact of government financing and guarantees in relation to capital costs?				*It might well be the case in PPP contracts that government provides a minority of the total capital costs but then guarantees a major part of the remaining project finance (directly relating to the partner loan liabilities or indirectly, e.g. through guaranteed availability payments). In this case, the combined effect of the government's support would represent more than a majority of the capital costs, leading to the conclusion that the majority of risks rest with government* (see also below questions 40, 78 and 84 for instance). *Additionally, in the cases where a PPP is majority financed by equity, a special analysis needs to be undertaken to assess the impact on the risk distribution between government and the partner of the contract provisions relating to the equity stake.*	VI.5.3.5/67
38	Are the payments linked to both availability and demand risk?				*Some contracts may combine payments linked to both availability and demand risks in a quite balanced way, as reflected in the indicators relating to the level of payments where no category seems to be predominant. Therefore, the analysis of the risks borne by each party must assess which party is bearing the majority of the risk in each of the categories mentioned above.* However, when contracts combine payments linked to demand and availability in such a way that government receives revenue from tolls and the private partner is remunerated through availability payments, such contracts are not considered by Eurostat to be either PPPs or concessions. A decision for the asset classification needs to take into account the total volumes of these two flows: if government revenues from tolls exceed 50% of availability payments to the private partner, then the asset and corresponding debt is recorded on the government's balance sheet.	VI.5.3.2/39 VI.5.3.2/40

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
V. Construction risk Eurostat considers the financing risk as an integral part of the construction risk. When government bears the majority of the financing risk (whether through debt, equity or direct or indirect guarantees), the PPP assets should be reported on its balance sheet. This does, however, not apply to government undertakings towards the re-financing of a PPP project post-completion as, in this case, the financing risk refers to the original financing put in place to deliver the project assets. This is clearly an important point in the context of a number of PPP support measures put in place by Member States. *This risk must not be confused with the appropriateness of the "design" of the assets, where the degree of initiative of the partner may be very limited. The main point here is that a partner would not normally agree to bear risks relating to the construction, if the government's requirements are unusual and alter the commercial viability of the asset. In addition, the private partner should not be regarded as responsible in the event of a government action such as changing the specifications in the course of the construction or modifying certain standards requirements.*						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.9 and 18). VI.5.4.2/81
39	Does government itself take part in the financing?				*Frequently a private partner is not able to borrow at the same rate of interest as government, thus increasing the cost of the project. Thus, government may offer a certain level of financing for the PPP project, to entice greater interest by private sector entities in the project, to reduce the total cost of financing, and/or simply to ensure the viability of the project.* This form of government assistance is different from a possible capital injection into a given structure in the form of an equity stake to which the rules in part III.2 of MGDD apply.	VI.5.3.4/57 VI.5.3.4/58
40	Does government provide a majority financing of the total capital cost (e.g. by covering the predominant part of the capital cost at inception or during the construction phase)?	on-balance sheet			*This might take various forms, e.g. investment grants, loans, etc.* If the answer is "yes", this means that government bears the majority of the risk. The same rule applies when government provides an upfront payment for future services. *The term "capital cost" refers to the cost of construction or refurbishment of the asset referred to in the PPP project contract* and includes cost of financing (cost of capital, i.e. interest). *Another term used in some countries with the same meaning is "capital value".*	VI.5.3.4/59 VI.5.3.5/67
41	Does government have an obligation to start making regular payments to the partner without taking into account the actual state of the assets that are delivered?	on-balance sheet			If the answer is "yes", government bears the majority of the construction risk and is acting de facto as the final owner of the assets as from inception.	VI.5.4.2/79
42	Does government make payments to systematically cover any additional construction cost, whatever their justification?	on-balance sheet			This is a clear indication that the construction risk stays with government.	VI.5.4.2/79
43	Is government obliged to pay for any event resulting from defective management of the construction phase by the partner?	on-balance sheet			This applies when the private partner acts *either as a direct supplier or only as a coordinator/supervisor.*	VI.5.4.2/80
44	Is the private partner responsible for unexpected exogenous events not normally covered by insurance companies?				*This risk must not be confused with the appropriateness of the "design" of the assets, where the degree of initiative of the partner may be very limited. The main point here is that a partner normally would not agree to bear risks relating to the construction, if government's requirements are unusual, and alter the commercial viability of the asset.*	VI.5.4.2/81
45	Is the private partner going to receive an existing government asset as a necessary part of the project?				*The construction risk applies only to the new capital expenditure under the responsibility of the private partner, whatever the condition of the asset transferred.* Expenditure for renovation, refurbishment, modernisation, upgrading, etc. must *represent the majority* (over 50%) *of the value of the asset after renovation*, refurbishment, modernisation, upgrading, etc.	VI.5.2.2/17 VI.5.4.2/81

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
46	Does the private partner bear the costs due to late delivery of the asset?		on-balance sheet		The answer must be "yes" if the asset is to be regarded as a non-government asset.	VI.5.1/5 VI.5.3.2/34
47	Does the private partner bear the costs due to non-compliance with specified standards during the construction stage?		on-balance sheet		The answer must be "yes" if the asset is to be regarded as a non-government asset.	VI.5.3.2/34
48	Does the private partner bear significant additional costs during the construction stage?		on-balance sheet		The answer must be "yes" if the asset is to be regarded as a non-government asset.	VI.5.3.2/34
49	Does the private partner bear the costs due to technical deficiency during the construction stage?		on-balance sheet		The answer must be "yes" if the asset is to be regarded as a non-government asset.	VI.5.3.2/34
50	Does the private partner bear the costs due to external negative effects (including legal and environmental risk) triggering compensation payments to third parties during the construction stage?				Possible contractual arrangements due to legal or environmental issues that arise during the construction phase would need to be taken into account in the analysis, but are treated as complementary criteria due to the specific nature of these aspects of the construction risk. The private partner does not have to bear the risk itself as it can also be insured against.	VI.5.3.2/34
51	**Does government bear the construction risk?**	**on-balance sheet**			***"Construction risk" covers events related to the state of the asset(s) in question at the commencement of services. The magnitude of the different components of this risk can be estimated by the amount that each partner would be obliged to pay if a specific deficiency were to occur, taking into account that eventuality according to the mathematical expectancy approach. This risk might be quite significant if the assets involve major research and development or technical innovation, whereas it could be more limited for conventional structures.*** **Government bears the construction risk if the answer to questions 40 or 41 or 42 or 43 is "yes".** **Questions 39, 44, 45, 46, 47, 48 and 50 give additional elements to be taken into account in the risk analysis.** **A majority or minority of yes/no answers does not give the final answer.**	VI.5.1/5 VI.5.3.2/34 VI.5.4.2/80

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
VI. Availability risk, including penalties/bonuses Availability risk covers cases where, during the operation of the asset(s), the responsibility of the non-government partner is called upon, because of insufficient management performance, resulting in a lower volume of services than was contractually agreed or in services not meeting the quality standards specified in the PPP contract. The essence of an availability scheme is that government payment to a non-government partner is made only when the infrastructure service provided is made "available" (i.e. is provided according to a contractually specified standard). When: (i) the PPP contract does not provide for automatic and significant non-performance penalties to be applied in case of non-performance by the non-government partner, or (ii) when such penalties are not systematically applied, government bears the majority of the availability risk.						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.9). VI.5.4.2/82
52	Are there performance indicators mentioned in the contract?				If "yes", availability risk would be a core feature of the analysis of risk sharing. *For instance, the available number of beds in a hospital, of classrooms, of places in a prison, of lanes on a highway opened to traffic, etc.* If the answer is "no", this is an indication that the availability risk is on the government side.	VI.5.4.2/82
53	Does the government payment depend on the actual degree of availability ensured by the partner for a given period of time?				If the answer is "no", the availability risk is on the government side.	VI.5.4.2/82
54	Is government entitled to reduce significantly its periodic payments if the partner is defaulting in its service obligations (i.e. certain performance criteria are not met)?				If the answer is "no", the availability risk is on the government side. *This would apply mainly where the partner does not meet the required quality standards, resulting from a lack of performance. It may be reflected in non-availability of the service, in a low level of effective demand by final users, or low level of user satisfaction. In some cases, the partner could invoke an "external cause", such as a major policy change or "force majeure". But such exceptions should be accepted only under very restrictive conditions, explicitly stated in the contract.*	VI.5.3.2/44 VI.5.4.2/82
55	Does the private partner bear the costs because of inadequate management (bad performance)?				If the answer is "no", the availability risk is on the government side. *Inadequate management ("bad performance") results in a volume of services lower than what was contractually agreed, or in services not meeting the quality standards specified in the contract.*	VI.5.1/5 VI.5.3.2/35
56	Is the application of penalties for the non-respect of quality standards or under-performance clearly set in the contract?				If the answer is "no", the availability risk is on the government side.	VI.5.3.2/44 VI.5.4.3/83
57	Do the penalising mechanisms have a significant effect on the partner's revenues/profit?				*Penalising mechanisms must not be purely symbolic or "cosmetic". They must significantly affect the operating margin of the unit and could even exceed it in some cases, so that the partner would be severely penalised financially for inadequate performance. They may also take the form of automatic renegotiation of the contract and even, in an extreme case, of dismissal from the contract of the original partner. The existence of marginal penalties would be evidenced by a reduction in the government payment far less than proportional to the amount of services not provided, and such a situation would be contrary to the basic philosophy of a significant transfer of risks to the partner.*	VI.5.3.2/44 VI.5.4.3/83 VI.5.4.3/84
58	Does the contract state a maximum amount or percentage of penalties that could be applicable in the event of inadequate performance?				If "yes", this would suggest that this risk has not been significantly transferred to the private partner.	VI.5.4.3/84
59	Are the government payments to the private partner expected to fall to zero if the asset is not available for a significant period of time?				This mechanism plays a key role in risk distribution. The payments in question might be independent from guarantees of debt to financial institutions.	VI.5.3.2/44 VI.5.4.3/84
60	Is the private partner entitled to keep all or most of the profit resulting from its own initiative?				When private partner bears the availability risk, he should not only be penalised for bad performance, but also should be entitled to *keep all or most of the subsequent profit resulting from its own initiative.*	VI.5.3.2/44
61	**Does government bear the availability risk?**				**Government bears the availability risk if the answer to any of the following questions is "no": 53 or 54 or 55 or 56 or 57 or 58 or 59.**	VI.5.1/5

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
VII. Demand risk This risk covers a shift of demand not resulting from inadequate or poor quality of the services provided by the partner or any action that changes the quantity/quality of the services provided. Government will be assumed to bear the risk where it is obliged to ensure a given level of payment to the partner independently of the effective level of demand expressed by the final user, rendering fluctuations in the level of demand irrelevant to the partner's profitability. *However, this statement does not apply where the shift in demand results from an obvious government action, such as decisions of units of general government (and thus not just the unit(s) directly involved in the contract) that represent a significant policy change, or the development of directly competing infrastructure built under government mandate.* However, because the assurance of this level of payment is normally provided through a minimum revenue guarantee or a guarantee of minimum demand (provided by government), such provisions need careful analysis.						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.9). VI.5.1/5 VI.5.3.2/36 VI.5.4.2/87
62	Are the government payments mainly linked to the actual use of the assets?				If the answer is "yes", the demand risk would be a core feature of the analysis of risk sharing. If "no", government is assumed to bear this risk.	VI.5.3.2/38
63	Does the final user have a free choice as regards the service provided by the partner?				If the answer is "no", the demand risk is not applicable to the risk analysis and it is on the government side. This is the case if there is a lack of alternative infrastructure. *This applies of course to facilities such as prisons, but it may also be the case for hospitals or schools under certain conditions, and in some cases sports and cultural infrastructure.*	VI.5.3.2/36 VI.5.3.2/37
64	Is government obliged to ensure a given level of payment to the partner independently of the effective level of demand expressed by the final users, rendering fluctuations in the level of demand irrelevant to the partner's profitability?				If "yes", government is assumed to bear this risk.	VI.5.4.2/85
65	Does the private partner bear the costs due to the variability of demand (effective use by end-users), irrespective of the cause?					VI.5.1/5 VI.5.3.2/36
66	Is the variability of demand due to the behaviour (management) of the private sector partner (e.g. due to inadequate quality of the services provided by the partner)?					VI.5.4.2/85 VI.5.3.2/36
67	Does the private partner bear the costs if they result from such factors as the business cycle, new market trends, a change in final users' preferences or technological obsolescence?					VI.5.3.2/36 VI.5.4.2/85
68	Is the partner able to manage an unexpected decrease in its revenue by various actions under its own responsibility, such as increasing promotion, diversification, redesign, etc.?				*In this respect, the partner is carrying out its activity in a commercial manner.*	VI.5.4.2/86
69	Is the partner allowed under the contractual clauses to use the assets for purposes other than those that have been agreed with government?				If this is the case *(of course, within certain limits), it is frequently an indication that the partner is effectively bearing the demand risk.*	VI.5.4.2/86
70	Does the contract allow the absence of an adjustment in the regular payments or even a compensation payment to the partner?				If the answer is "yes", it would not necessarily imply the recording (or reclassification) of the PPP assets on the government balance sheet *if the shift in demand results from an obvious government action, such as decisions by government (and thus not necessarily only by the unit(s) directly involved in the contract) that represent a significant policy change, or the development of directly competing infrastructure built under government mandate.*	VI.5.4.2/87
71	Are there exceptional "external" events that might have a significant impact on the level of the demand?				If "yes", such risks can be retained by government without requiring the classification of the asset on its balance sheet. *They must be considered under very restrictive conditions and should be limited to those for which insurance coverage is not available on the market at a reasonable price.*	VI.5.4.2/88
72	**Does government bear the demand risk?**				**Government bears the demand risk if the answer to question 62 or 63 is "no" or if the answer to question 64 is "yes". Questions 65 to 70 provide additional elements to be taken into account in the risk analysis.**	VI.5.1/5

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
VIII. Final risk distribution questions The purpose of this section is to summarise the most relevant questions from sections IV - VII. This section provides also some additional guidelines in case the questions from sections IV-VII did not provide the final answer.						
73	Does the private partner bear construction risk and both availability and demand risk?				*Some contracts may combine payments linked to both availability and demand risks in a quite balanced way (or based on fragile hypotheses), as reflected in the indicators relating to the level of payments where no category seems to be predominant.* It is recommended that additional criteria be used for determining the overall risk transfer mentioned in sections IX and X and XI.	VI.5.3.2/39
74	**Does the private partner bear construction risk and at least one of either availability or demand risk?**		**on-balance sheet**		***If the construction risk is borne by government, or if the private partner bears the construction risk but no other risk, the assets are recorded in the government's balance sheet.*** **If the answer is "yes", then the assets may be off the government's balance sheet, provided that, there is no other mechanism in place, such as a guarantee (see section IX) or government financing which transfer these risks back to government. If government assumes the risks through another mechanism (see section IX), or if the answer is "no", the assets are to be recorded on the government's balance sheet. For borderline cases, it is appropriate to consider other criteria, such as what happens to the assets at the end of the PPP contract (see section XI).**	VI.5.1/6 VI.5.3.2/42 VI.5.3.2/43 VI.5.1/7 VI.5.1/8 VI.5.1/9
75	Is the value of the asset split between the private partner and government?				The answer can not be "yes". ESA95 requires national accounts to use a "binary" reporting system: assets are to be classified either as wholly government assets or as wholly non-government partner assets (i.e. their ownership cannot be split between government and non-government partner). *The rule is that an asset appears in the balance sheet of only one economic agent, for its total value. It cannot be split in national accounts.* The analysis of the risks borne by each party must assess which party is bearing the majority of the risk in each of the categories mentioned above (construction, availability, demand).	VI.5.3.2/32 VI.5.3.2/40
76	Does the degree of government financial involvement increase during the course of the project, so that it surpasses the threshold of 50% of the project capital cost (as in question 37)?	on-balance sheet			Risk sharing and risk analysis is a crucial part of the project implementation not only at the preparation phase, but over the whole life of the project. In other words, risk distribution is important not only at the particular point in the time (e.g. before contract signature) but also during project implementation when events occur that shift the distribution of risks between government and the partner (e.g. renegotiation of the contract). If the answer is "yes", *this triggers a reclassification of the assets to government accounts, at the time of the increase.*	VI.5.3.4/59
77	Does government receive revenues from the asset (e.g. tolls)?				Whether government collects the tolls using its own staff or via private partner resources is irrelevant. If the value of tolls received by government exceeds 50% of the payments that are made by government to the private partner under a contract (i.e. the cost of the service for government), the asset should be classified on the government's balance sheet. Eurostat does not consider such cases as PPPs and the risk assessment rule described in question 74 (between the private partner and government) is not applicable. See also a case study on motorways in Portugal (available at www.eib.org/epec).	VI.5.3.2/39 VI.5.3.2/40

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
IX. Guarantees and similar mechanisms Eurostat considers that guarantees covering more than 50% of the capital cost of a given PPP project have an impact on the distribution of most of the project risk between the parties to a contract, irrespective of the probability of guarantees actually being called during the contract. In such cases the PPP assets should be recorded on the balance sheet of the government. In Eurostat's view, when classifying PPP assets, it is necessary to look at the individual and aggregate impact of guarantees in order to test whether these cover more than 50% of the capital cost of the project. Relevant guarantees include partial or total credit guarantees, minimum revenue guarantees and guarantees of minimum demand provided to the non-government partner. Additional information about guarantees (also from a statistical point of view) can be found in EPEC's document "State Guarantees in PPPs, A Guide to Better Evaluation, Design, Implementation and Management", published in April 2011.						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.19).
78	Does government provide mechanisms such as guarantees - direct (e.g. loan repayment guarantees) or indirect (e.g. fixed elements of availability payments) - or majority financing (e.g. investment grants, loans)?				Guarantees or majority financing are mechanisms by which government *re-assumes the majority of the project risks that would have an impact on which balance sheet the asset is recorded in.* *Guarantees have an impact on the distribution of risks between the parties. The scope of a guarantee, depending on its coverage and how it is structured, may influence the recording of the PPP assets. It may result in the (re-)assumption by government of some of the risks analysed* above. *The guarantees to consider when analysing the risk distribution between government and the partner take into account guarantees provided to the creditors or to the partner, in various forms, such as insurance or derivatives, or any other arrangements with similar effects.* *In those cases where government finances a part of the PPP and also guarantees all or part of the partner's equity and/or debts, these actions should be seen as cumulative from the point of view of risk analysis.*	VI.4.2./19 VI.5.3.2/45 VI.5.3.5/62 VI.5.3.5/63 VI.5.3.5/66 VI.5.4.2/90
79	Does government provide a guarantee that fully covers the project-related borrowing of the private partner?	on-balance sheet			*Generally, this helps the partner to raise funds on the markets at a lower cost and improve its credit rating. In some cases, a debt guarantee can trigger a classification of the partner's debt as government debt.*	VI.5.3.5/60 VI.5.3.5/61
80	Does government provide a guarantee that partially covers the project-related borrowing of the private partner?					
81	Are there legal provisions that transfer to government all or part of the debt service?				*In some cases, a debt guarantee can trigger classification of the partner's debt as government debt.*	VI.5.3.5/61
82	Is the private partner obviously unable to service the debt?					VI.5.3.5/61
83	Is the coverage of a guarantee wider than just one specific project-related instrument?				*The scope of a guarantee, depending on its coverage and how it is structured may influence the recording of the PPP assets. It may result in the (re-) assumption by government of some of the risks analysed* above (part V, VI and VII).	VI.5.3.5/63
84	Does the government guarantee cover a majority of the capital cost of the PPP project (or the private partner's project-related debt) at inception or during the construction stage?	on-balance sheet			If the answer is "yes", *the asset is recorded in the government's balance sheet.*	VI.5.3.5/64 VI.5.3.5/65
85	Is a given return assured by the public entity to the private partner in all circumstances?	on-balance sheet			*For instance, government could ensure a given return on equity, whatever the performance of the partner or the effective level of demand from final users.* If the answer is "yes", the asset is recorded on the government's balance sheet.	VI.5.3.5/64 VI.5.3.5/65
86	Is there a possibility of a change in the economic ownership of the assets (at their remaining value) if a guarantee is actually called?				If the answer is "yes", the reclassification of the assets is required at the time of that event.	VI.5.3.5/68
87	If a guarantee is actually called, does this change the share of risks borne by the parties?				*This could be the case if government takes control of the partner and no longer pays on the basis of asset availability and demand, but mainly on the basis of operating costs.* If the answer is "yes", the reclassification of the assets is required at the time of that event.	VI.5.3.5/68

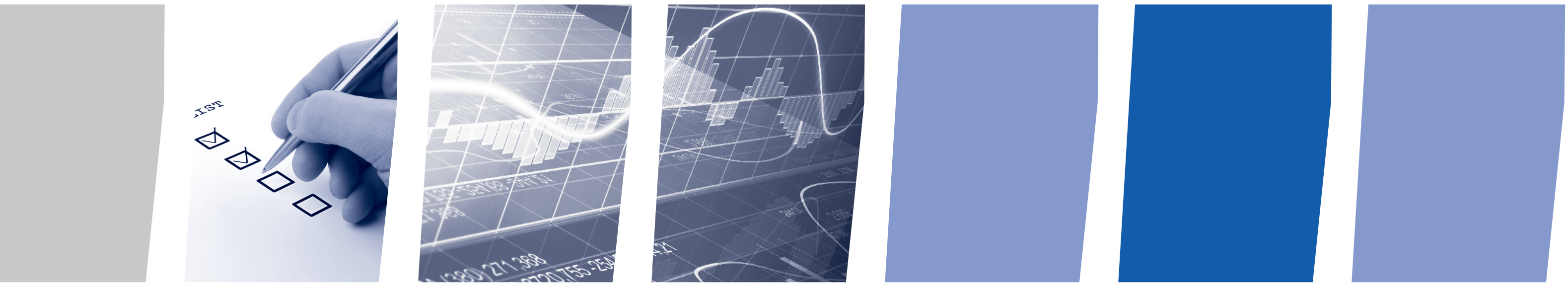
Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD

X. Early termination

The purpose of this section is to discuss the Eurostat rules relevant to projects terminated before the end of their contract life and where contractual changes occur during their lifetime.
Background information regarding contract termination can be found in EPEC's document "The Guide to Guidance - How to Prepare, Procure and Deliver PPP Projects" (chapter 4.1.6), published in July 2011.

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
88	Is government required to acquire the asset according to the termination clauses?				*PPP contracts include termination clauses in case the government or the partner cannot fulfil the contract or they persistently fail to meet their contractual obligations. In addition, government may use* voluntary termination rights. *Termination clauses will often require the government to acquire the asset and take on board all or part of the debt, with a penalty to be paid by the party at fault. Possible maintenance costs should also be taken into account. This is because the PPP asset is often a "dedicated asset" with limited resale value on the market for the partner and because government usually wants to retain a major influence on the asset.*	VI.5.3.3/52 VI.5.3.3/53
89	Is government required to take on board all or part of the debt according to the termination clauses?					
90	Does the contract require a refund by government based on the capital costs, instead of the assessed market value of the asset at the time in the event of termination due to the partner's default?	on-balance sheet			If the answer is "yes" and indemnity is based on, for instance: (i) the non-amortised cost of construction, or (ii) the net present value of the remaining contractual payments to the private partner, or (iii) the outstanding debt liabilities of the private partner, the construction risk is generally deemed to be with government.	VI.5.3.3/54
91	Do amendments to the existing contract change the statistical treatment of the project?				Risk sharing and risk analysis are crucial over the whole life of a project. In other words, risk distribution is important not only at the particular point in the time (e.g. before contract signature) but also during project implementation whenever events occur that may change the risk distribution (e.g. renegotiations). *Renegotiations are a kind of termination without explicit penalty. They can be considered as cancelling the previous contract and creating a new one. Such renegotiations need to be analysed in order to assess whether changes introduced in the contract are substantial and if they alter the distribution of risks between government and the partner.*	VI.5.3.3/55

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD
XI. End of the contract *An analysis of the clauses dealing with the ownership/transfer of the PPP assets at the end of the contract period can be used as a supplementary criterion for determining the overall risk transfer, in particular where the risk analysis mentioned above does not lead to clear conclusions (e.g. if the risk distribution is borderline).*						VI.5.3.3/46
92	Are the provisions for the ownership/transfer of the assets at the end of the contract period taken into account in the balance sheet treatment analysis?				The final allocation of the assets cannot be the *single straightforward criterion for the recording of the PPP assets but, notwithstanding this, it might in some cases provide additional insight into risks among the contract partners, as the clauses concerning the final allocation of the asset might help in assessing whether a significant risk remains with the private partner.*	VI.5.3.3/46
93	Do the assets remain the property of the partner at the end of the contract period?				*If the assets remain the property of the private partner at the end of the project, whatever their economic value at this time (but frequently their future economic life is still quite significant, notably in cases of infrastructure that has only slightly depreciated over time), then recording of the asset in the private partner's balance sheet would have an additional justification.*	VI.5.3.3/47 VI.5.1/9
94	Does government have the freedom to buy the assets at the end of the contract or at any given point in time, at the then market value?				If the answer is "yes", *the private partner bears the risks associated with the continued demand for the asset and its physical condition. This also reinforces the recording of the assets in the private partner's balance sheet.*	VI.5.3.3/48
95	Does the contract foresee a transfer of the PPP assets to government at the end of the contract?				If the risk analysis mentioned in sections IV-VIII for PPP projects does not give clear conclusions, this aspect is taken into account for the balance sheet treatment. If the answer is "yes", the following cases give arguments for the asset to be classified on the government's balance sheet: i) government commits to purchase the PPP assets at a pre-determined price which is higher than their economic value; or *ii) the pre-determined price is obviously higher than the expected economic value of the assets at the end of the contract; or* *iii) the price paid by government is lower than the economic value (or even nil) but government has already paid for the acquisition of the assets throughout the contract by making regular payments that reached a total amount very close to the full economic value of the assets*. In some circumstances, the price paid by government is more than economic value (e.g. prisons, hospitals) because the private partner is unable to take the residual value risk. This does not automatically mean that the project should be classified on-balance sheet.	Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.17). VI.5.3.3/49 VI.5.3.3/50



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