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Risk Distribution and Balance Sheet Treatment

Practical Guide

Second Edition, November 2014

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Introduction

Risk distribution and balance sheet treatment are important aspects in PPPs. Understanding the underlying issues and their consequences is often of great concern to procuring authorities. In 2010, EPEC issued a report on the *Eurostat Treatment of Public-Private Partnerships*[1] to set the context of these issues. The report clarified 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 reviewed Eurostat rules for government support measures to PPPs.

To build on this initial analysis, EPEC prepared in 2011 the first edition of a practical guide on the statistical treatment of PPPs and concessions[2] in national accounts, based on the Eurostat rules of the European System of Accounts in place at that time (ESA95).

Following the introduction of a new European System of Accounts (ESA10, in force from September 2014), this second edition updates the practical guide to reflect the main changes introduced to the Eurostat rules on PPPs and concessions. It reflects the Eurostat rules contained in the *Manual on Government Deficit and Debt* (the "MGDD") – *Implementation of ESA10 (2014 edition)*, published on 29 August 2014. Eurostat staff have provided clarifications on the changes introduced between the ESA95-based MGDD and the ESA10-based MGDD and have commented on this practical guide. These contributions are gratefully acknowledged.

This practical guide is intended to give advice on the impact that the risk distribution between government and the PPP or concession partner (the "partner") in a specific project has on government deficit and debt. It contains a checklist of issues (the "Checklist") designed to help procuring authorities determine the possible statistical treatment of a PPP or concession project.

As PPP or concession project structures vary greatly, there is a need to consider each transaction "case by case" when assessing its balance sheet treatment. It is important to stress that the analysis of a single feature of a PPP or concession contract cannot provide a definitive conclusion as to the statistical recording of the transaction. The structure of any given PPP or concession transaction must be considered as a whole to determine whether its statistical classification should be on or off the government's balance sheet. The Checklist is a tool aimed to help such comprehensive assessment.

It is worth clarifying that the Checklist serves only to provide indicative statistical classification guidance. 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. This is particularly important where PPP or concession projects feature structures for which no specific Eurostat guidance exists.

This practical guide is structured in two parts. Section 1 provides a short background on the Eurostat rules and Section 2 contains the Checklist.

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

[2] The practical guide deals with the balance sheet treatment of both PPPs and concessions. The difference in treatment of these two forms of contracts is explained in section 1.2.

1 Background

1.1 Statistical Rules

Long-term PPP or concession contracts raise questions regarding the recording of the project assets (and their corresponding liabilities) either on the government's balance sheet or on the partner's balance sheet.[3] Recording them on the government's balance sheet may have important consequences in terms of government statistics, both for government deficit and 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 the proper application of the European System of Accounts[7] (ESA), in order to gather reliable and comparable statistics[8] on the debt and deficit position of Member States. As of September 2014, ESA10[9] is the reference framework for this data. Its use is legally binding for all European Union countries.

ESA10 is aimed at producing economic statistics and 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. ESA10 contains rules for the statistical classification of PPPs and concessions that reflect Eurostat's work on this subject since 2004,[10] as explained below.

Eurostat rules on PPPs and concessions were first published on 11 February 2004 under the *New decision of Eurostat on deficit and debt – Treatment of public-private partnerships.*[11] This decision concerned the statistical treatment of long-term partnership contracts between government and non-government units, in which the government is the main purchaser of the services provided by the partner. It specified the main principles for the statistical treatment of PPPs and their recording in government deficits and debt. This decision led to more descriptive guidance issued by Eurostat in 2004, in the form of a new chapter of the Eurostat MGDD,[12] and in 2010 with the revised *Manual on Government Deficit and Debt - Implementation of ESA95*.

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, in October 2011, IPSASB published a public sector accounting standard for PPPs and concessions. For more information, see: www.ifac.org/sites/default/files/publications/files/B8%20IPSAS_32_0.pdf

4 Manual on Government Deficit and Debt – Implementation of ESA10, Chapter VI.4.2.3.

5 Currently Article 126 of TFUE.

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

7 Council Regulation (EC) 549/13 of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174/1, 26.06.2013, p.1).

8 Manual on Government Deficit and Debt – Implementation of ESA10, Preface.

9 ESA10 is available at: epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-02-13-269/EN/KS-02-13-269-EN.PDF

10 See ESA10 paragraphs 20.276-20.2290, pages 453-456.

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

12 Long term contracts between government units and non-government partners (Public-private partnerships), see: epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BE-04-004/EN/KS-BE-04-004-EN.PDF

Following this, the ESA95-based MGDD was updated every year with relatively minor changes, the latest version being dated January 2013.[13]

The current version of the MGDD (*Manual on Government Deficit and Debt – Implementation of ESA10*)[14] is harmonised with the newly introduced system of accounts and therefore replaces the ESA95-based MGDD entirely. As was previously the case under ESA95, the new MGDD remains an indispensable complement to ESA10. The most significant changes/additions introduced by the ESA10-based MGDD regarding PPPs and concessions concern the use of EU funds, government guarantees, exogenous events and contract termination provisions.

Contrary to the previous system of accounts, which was based exclusively on a “risks and rewards” approach, ESA10 provides for the possible application of the “control” criterion to assess the statistical classification of PPP assets.[15] According to Eurostat, where the usual approach based on risks and rewards is inconclusive, the control criterion should be used to assess the degree of government involvement in the definition of the PPP assets and the services to be delivered from them. The control criterion is deemed to apply in particular to complex contracts.

It is important to stress that ESA10 requires national accounts to use a “binary” reporting system. Accordingly, PPP or concession projects are to be classified either as wholly government projects or wholly non-government partner projects (i.e. their economic ownership cannot be split between government and the partner). As a result, when a project is found to be on balance sheet for government, the aggregate value of the project assets (and the related liabilities) has to be recorded.

In the event of doubt as to whether the ESA10 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 under preparation (*ex-ante*). However, it should be noted that Eurostat only gives opinions on projects that are already structured and does not issue guidance on hypothetical cases or different variants of the same project.[16] Its opinions, which take the form of letters to national statistical offices, are published on its website.[17]

13 The 2013 edition of the MGDD – implementation of ESA95 is available at: epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-13-001/EN/KS-RA-13-001-EN.PDF

14 The 2013 edition of the MGDD – implementation of ESA10 is available at: epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-GQ-14-010/EN/KS-GQ-14-010-EN.PDF

15 See ESA10, paragraph 20.285, page 455.

16 Guidelines for Eurostat's *ex-ante* and *ex-post* advice on methodological issues (update 2013) are available at: epp.eurostat.ec.europa.eu/portal/page/portal/government_finance_statistics/documents/Ex-ante_advice_final_2013-01-18.pdf

17 Available at: epp.eurostat.ec.europa.eu/portal/page/portal/government_finance_statistics/methodology/advice_member_states

1.2 Distinguishing Between PPPs and Concessions (According to Eurostat)

There is no definition of PPPs under EU law. The 2014 Directive on the award of concession contracts provides a rather general definition of concessions to be used for public procurement purposes only.[18]

The dividing line between what is a PPP and what is a concession is an important matter as distinct statistical rules apply to each category of contracts. As for a PPP, a concession can be on or off balance sheet for government, but the tests to be applied are different to those relevant to PPPs.[19] As a result, in the MGDD, Eurostat provides its own definitions of PPPs and concessions, although these are only relevant for statistical analysis purposes.

It is important to emphasise that the MGDD definitions may differ from those used by Member States or commonly understood by market players. Eurostat's distinction between PPPs and concessions is only aimed at enabling national accountants to differentiate between contractual arrangements in order to apply the correct statistical rules. For statistical purposes, whenever a Member State definition of PPPs or concessions is different to Eurostat's, the Eurostat definition prevails.[20] The fact that a contract is procured in a particular way or through a particular domestic law (for example under a public procurement law or a concession law) is not in itself relevant to the determination of whether the contract is a PPP or a concession for statistical purposes.

The chart below sets out the first questions of the Checklist aimed at defining the contract as either a PPP or a concession from a statistical viewpoint. 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 find out what the relevant ESA10 rules may be.

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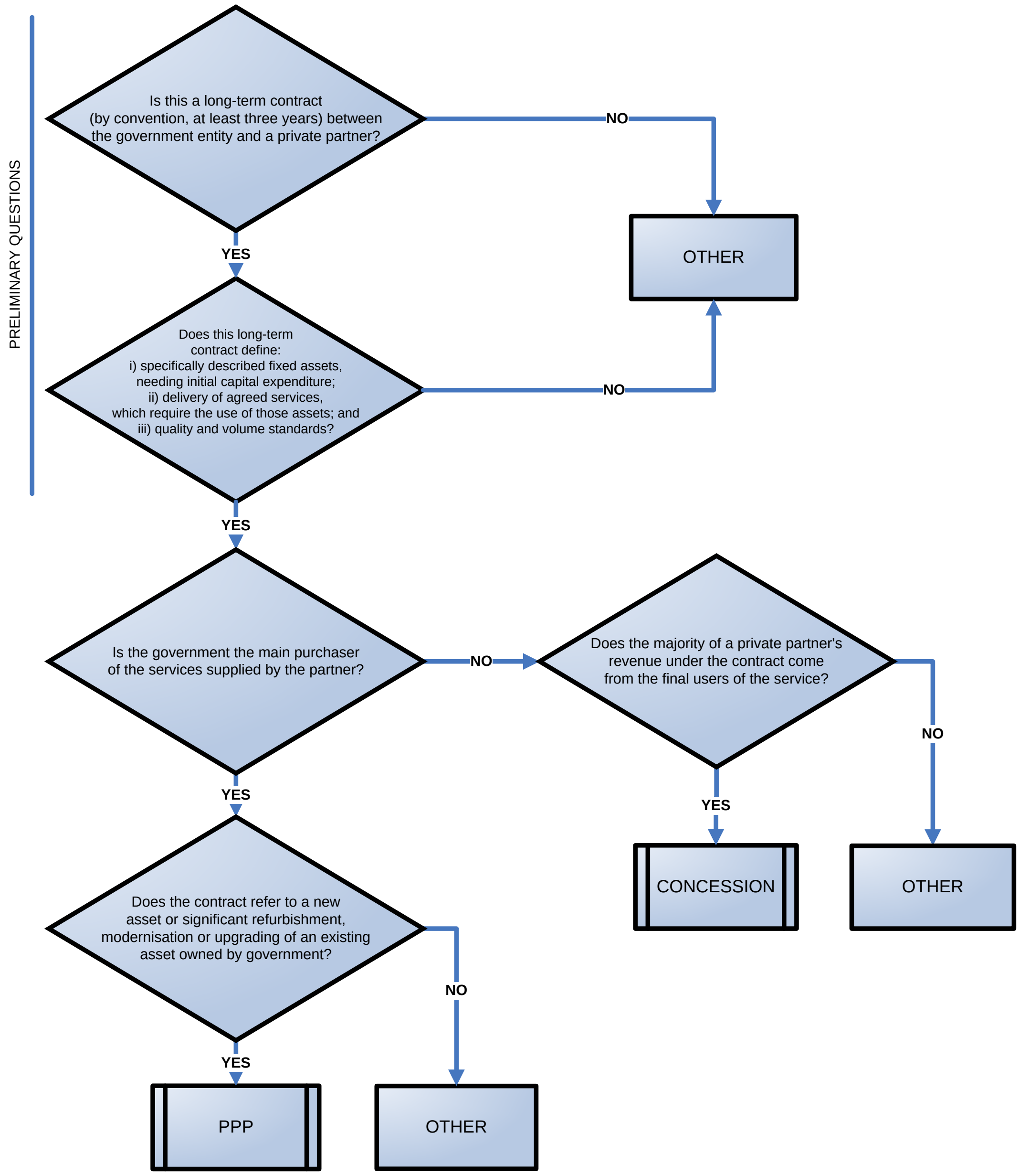
18 *'Concessions' means works or services concessions, as defined in points (a) and (b): (a) 'works concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment; (b) 'services concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in point (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment.* (Article 5 of the Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, available at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023&from=EN)

19 The statistical treatment of concessions is described in chapter VI.3.1.5, whereas the recording of PPPs is discussed in chapter VI.4.

20 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*.

Classification chart for concessions and PPPs



2 Practical Guide

2.1 Content of the Checklist

The Checklist consists of 84 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	√	
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 most questions, background information and the relevant MGDD extracts (in *italics*) 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 the project. However, any tick in one of the “blue cells” automatically means that the project is on balance sheet for government.

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

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

2.3 Important Caveats

The Checklist collates all the MGDD topics relevant for the statistical analysis of PPPs and concessions. It should enable the user to take a more systematic approach when assessing PPP or concession contracts.

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

Where the Checklist does not provide any decisive statistical treatment guidance, consultation with the national statistical office, and ultimately, Eurostat is advisable.

The statistical analysis of a PPP or a concession is normally undertaken during the preparation phase of the project (i.e. before the contract is awarded or signed). However, it is important to note that Eurostat undertakes a regular monitoring of PPP and concession projects during their implementation phase.[21] As a result, whenever major changes are introduced to an existing contract, a new statistical assessment needs to be performed in full. In case of major changes to the contract, the user is therefore advised to apply the entire Checklist to the new overall contractual position, not limiting the exercise to the amended project features.

The most common events that would require a new statistical assessment to be performed and which may lead to the reclassification of the project during its contract life are:

- major renegotiations and rescues;
- the provision of additional government support (e.g. debt repayments, supplementary guarantees);
- the triggering of government guarantees;
- changes in the status and nature of the activities of the partner;
- early termination.

The list of questions contained in the Checklist is as exhaustive as the issues raised by the 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 their assessment.

[21] For example, see the "Decision of Eurostat on government deficit and debt - Supplement on contingent liabilities and potential obligations to the EDP related questionnaire of 22 July 2013", available at: epp.eurostat.ec.europa.eu/portal/page/portal/government_finance_statistics/documents/ESTAT_decision-Suppl_on_conting_liab_EDP_Q.pdf

2.4 Checklist

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
I. General questions This preliminary section contains initial gateway questions that determine whether the statistical analysis for PPPs and concessions is relevant to the specific project. 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 project.						
1	Is the contract a long-term contract (by convention, at least five years) between a government entity and a non-government partner (private or public company, Special Purpose Entity - see section III B)?				This Checklist is designed for long-term contracts. If the answer to question 1 is "no", the contract is neither a PPP nor a concession according to Eurostat.	VI.4.2.1
2	Does the long-term contract define: i) specifically designed fixed assets, requiring an initial capital expenditure; ii) the delivery of agreed services, which require the use of those assets; and iii) qualitative and/or quantitative standards for the assets and services?				*Specifically designed assets* (e.g. infrastructure) *either need a 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 sub-questions is "yes", the project is a PPP according to Eurostat definition. *It is the service component that makes PPP contracts differ from leases.* Statistical rules for leases are specified in Chapter 15 of ESA10 and parts VI.1, VI.3.1.4 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.4.1 VI.4.2.2/15

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
II. PPP or concession? In the MGDD, Eurostat provides definitions of PPP and concession contracts that are only relevant for statistical analysis purposes. The dividing line between PPPs and concessions is important in this context as distinct statistical rules apply to each kind of contract. This means that, as for a PPP, a concession can be on or off balance sheet for government, although the tests applied are different. The fact that a contract is procured in a particular way (public procurement or concession) is not in itself relevant to the categorisation of the contract as PPP or concession for statistical analysis purposes.						
3	Is government the main purchaser of the services supplied by the partner? In other words, is government paying (on a periodic or irregular basis) all or most (over 50%) of the revenues 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).* Note that it is therefore necessary to assess whether payments (direct or indirect) from government (in cash or in kind) constitute the majority of the partner's revenues under the contract.	VI.1.1 VI.3.2/22 VI.4.1/2 VI.4.2.2/17 VI.4.2.2/18
4	Are the majority of the partner's revenues under the contract sourced from the final users of the service?				For example, final users of the infrastructure/equipment may pay tolls or other forms of tariffs that are levied by the partner.	VI.3.1.5/16 VI.1.1/4
5	Does the contract refer to a new asset or the significant refurbishment, modernisation or upgrading of an existing asset owned by government?				PPP contracts *refer either to a new asset or significant refurbishment, modernisation or upgrading of existing assets, initially owned and operated by government. If the contract is for renovation, etc., this work must represent a majority part of the value of the asset after completion. For some assets there is no observed market price as transactions do not exist or the assets are too specific to allow a comparison method for valuation. In this case, the value must be based on the "re-valued acquisition costs less accumulated write-downs". In addition, this value must take into account the exact shape of the assets, which can result in low value where there is a strong need for renovation. Another problem is that it may happen that the refurbishment/renovation expenditure will increase the value of the full assets, even for the parts not at all renovated, above the expenditure incurred. This effect is difficult to measure. A practical rule is to check whether the foreseen capital expenditure exceeds at least the current value of the assets before renovation.*	VI.4.2.2/16
6	Does the major part of the partner's revenues come from the direct sale of services to third parties on fully commercial conditions?				In this context, the definition of 'revenues' of the partner is broad. In the calculation of revenues, transfers from government should also be taken into account. In fact, there may be *specific government requirements* for the project, which might be *compensated by government in the form of e.g. subsidies.*	VI.3.1.5/14
7	Does the contract foresee any payment from the partner to government?				*Where the asset is judged to be economically owned by the non-government, receipts may occur initially (recorded as government permission, tax or service) or regularly during the lifetime of the contract (rents, specific taxes, etc.).*	VI.3.1.5/15

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
8	**Is the project a PPP?**				**The project is a PPP project in statistical terms if the answer to each of the questions 1, 2, 3 and 5 is "yes". In this case, the user should continue to respond to all the Checklist questions.**	VI.4.1
9	**Is the project a concession?**				**The project is a concession project in statistical terms if the answer to each of the questions 1, 2 and 4 is "yes". Questions 6 and 7 are not decisive, but indicative of a concession. In this case, the user should respond to the Checklist questions in section III (Sector classification of the partner) and then section IX (Guarantees and similar mechanisms), X (Early termination) and XI (End of the contract). The user should skip sections IV to VIII, as these are only applicable to PPPs.**	VI.3.1.5

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
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 ESA10 as a "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 the analysis: the classification of a non-private partner into a statistical institutional sector.						
10	Is the partner a public entity?				The partner *is a public unit if, according to national accounts rules, government or a public unit determines its general corporate policy.* It is also a public unit if it performs a government function or is controlled by another public unit (see question 16 for the assessment of a control of an entity). If the answer to this question is "no", the unit involved in this transaction is private. In this case, the user should proceed to question 33.	VI.4.3.1/23 VI.3.1.6/19
11	Does the partner (in this case a public corporation) have clear "competence" in the area of activity covered by the PPP/concession?				A "no" answer to this question suggests an on balance sheet treatment for government. Note that the term "competence" here means experience, rather than the legal/statutory right to engage in a particular activity. If the public corporation nevertheless engages in a PPP/concession without relevant competences, its decision autonomy would need to be confirmed (see questions 13 and 16).	VI.4.4.1/73
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/concession contract one of several commercial activities of the public corporation?				If the answer to this question is "no" and the answers to questions 17 and 18 and 19 are "yes", classification of the partner as a government unit is not required. 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 partner's revenue. These payments should be analysed to determine whether they can be classified as sales* (the statistical notion of sales is specified in part I 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.* In concessions, *specific attention should be given to cases where government is the unique shareholder of a corporation which is involved in only one concession contract.*	VI.3.1.6/21 VI.4.3.1/25 VI.4.4.1/73 VI.4.4.1/74

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
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 be:* *i) 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) able to take economic decisions and engage in economic activities for which it is responsible and accountable at law; and* *iii) able to incur liabilities on its own behalf, to take on other obligations or further commitments and to enter into contracts.* *iv) able to draw up a complete set of accounts, comprised of accounting records of covering all its transactions carried out during the accounting period, as well as balance sheet of assets and liabilities.* *If an entity, while keeping a complete set of accounts, has no autonomy of decision in the exercise of its principal function, it should be part of 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, for it to compile a complete set of accounts if this was required?				*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* of the controlling unit*. Entities, keeping a complete set of accounts, that do not have a separate legal status, but have an economic and financial behaviour comparable to that of corporations (i.e. market producers) that is different from that of their government owners are deemed to have autonomy of decision and are classified as quasi-corporations in the corporations sector outside the general government sector* (the criteria for classifying units to the government sector are specified in part I.2 of the MGDD).	I.2.2
15	Is the partner (in this case a public corporation) an institutional unit?				*ESA10 2.12 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 in the economic territory where it has its centre of predominant economic interest if it has decision-making autonomy and either keeps a complete set of accounts, or is able to compile a complete set of accounts.* If the answers to questions 13 and 14 are "yes", the answer to this question should be "yes". If the answer to any of questions 13 or 14 is "no", the partner should be combined with the unit that controls it. If government controls it (see question 16), the project is on balance sheet for government.	I.2.2

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
16	Is the partner (in this case a public corporation) controlled by government?				*Control* over an institutional unit *is defined* in ESA10 *as the ability to determine the general policy or programme of that entity.* *Each of the following criteria of control would individually be sufficient to determine government control:* *i) Rights to appoint, remove, approve or veto a majority of officers, board of directors, etc.;* *ii) 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;* *iii) Ownership of the majority of the voting interest.* *In case the above-mentioned criteria of control are inconclusive, the other following series of criteria should be considered. This needs a case-by-case approach.* *iv) Rights to appoint, veto or remove key personnel;* *v) Rights under special shares and options;* *vi) Rights to control via contractual agreements;* *vii) Rights to control from agreements/permission to borrow;* *viii) Control via excessive regulation;* *ix) Others,* including *provisions in the statute of an entity where public sector approval would be required for some important decisions such as allocation of its results, the development or the abandonment of activities, merging and acquisition operations, dissolving and changing statute.* If the answer to this question is "yes" and the answer to any of questions 17, 18 or 19 is "no", the project is on balance sheet for government.	I.2.3/12 I.2.3/13 I.2.3/14
17	Are the sales prices charged by the partner (in this case a public corporation) economically significant?				If the answer to this question is "no", the partner is a non-market unit. *A price is said to be economically significant when it has a significant influence on the amounts of products the producers are willing to supply and on the amounts of products that the purchasers wish to acquire. 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 has only a minor influence on the quantities demanded. It is thus a price that does not determine the observed levels of supply or demand.*	I.2.4.1/26

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
18	Do the prices that generate sales cover more than 50% of production costs?				If the answer to this question is "no", the partner is a non-market unit. *In distinguishing market and other non-market units by means of the 50% test, "sales" and "production costs" are defined as follows: i) "sales" (equal to the market output increased by payments for non-market output, if any) exclude taxes on products but include all payments made by general government or the Institutions of the EU and granted to any kind of producer in this type of activity. Other sources of revenue, such as holding gains, dividends, investment grants, other capital transfers, are excluded from the notion of sales;* *ii) "production costs" are the sum of intermediate consumption, compensation of employees, consumption of fixed capital and other taxes on production and the net interest charged. For this criterion other subsidies on production are not deducted.* *To ensure consistency between the concepts of "sales" and "production costs" when applying the 50% test, the production costs should exclude all imputed costs made for own-account capital formation. The 50% test should be applied by looking over a range of years on an individual unit basis (even when entities are part of a group): only if the test holds for several years (at least 3 years) or if, in some cases where the unit had previously passed the test, is observed for the present year and is strongly expected to hold for the near future, should it be applied strictly. Minor fluctuations (or deemed to be one-off exceptional case) in the size of sales from one year to another do not necessitate a reclassification of institutional units, similarly to exceptional costs.*	I.2.4.2/28b I.2.4.3/30
19	Is the partner (in this case a public corporation) a market unit?				The answer to this question should be "no" when the answer to any of questions 17 or 18 is "no". *If the unit finances its operational activity by sales of goods and services at economically significant prices then it is a market producer. Market producers are classified to the corporations sectors* (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.2.4/24
20	Does government provide significant recurrent support to the partner (in this case a public corporation)?	on balance sheet			If recurrent government support or economic factors significantly impact the levels of sales or costs of the partner, its classification in the government sector might be required. The term "significant" means here that the entity is *no longer satisfying the criteria as to be considered as engaged in market activity.* In particular, a detailed analysis of whether there is government support to the partner would be required in cases where the PPP contract is the sole activity of the partner. If the answer to this question is "yes", the project will be assigned to the government's balance sheet as a result of the classification of the partner in the government sector.	VI.4.3.1/28

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
21	**Is the partner (in this case a public corporation) statistically classified outside the general government sector?**		**on balance sheet**		**The answer to this question should be "yes" as long as the partner (in this case a public corporation) acts as a market unit (using the 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 government.**	VI.3.1.6/21 VI.4.3.1/25
22	**Is the partner (in this case a public corporation) included in the general government sector?**	**on balance sheet**			**The answer to this question should be "yes" if the answer to question 16 is "yes" and any of the answers to questions 17, 18 or 19 is "no".** ***The general government sector is divided into four sub-sectors (central government, state government, local government, social security funds),*** **although not all apply in every country*.***	I.1/3 VI.3.1.6/21
III.B. Special Purpose Entity (SPE) The purpose of this sub-section is to consider certain additional aspects that need to be taken into account according to the rules specified in the MGDD if the partner in a PPP/concession contract is a Special Purpose Entity (SPE) set up with some government involvement in it. This may be the case for innovative and complex assets that need a close cooperation with private firms on technical matters.						
23	Is the partner an SPE?				If the answer to this question is "no", the user should proceed to question 33. *Normally, such a legal entity* (i.e. an SPE) *has a finite life limited to the length of the PPP contract. It can be expected to have been created solely for legal purpose* or to raise debt for PPP arrangements*.*	I.6.1/2 VI.4.2.2/14 VI.4.4.1/75 VI.4.4.1/76
24	Do private parties that have a role in the project (e.g. construction, service provision) control the SPE?				If the answer to this question is "yes", the SPE is a non-government unit.	VI.4.4.1/76
25	Was the SPE created by government or by a public corporation?				If the answer to this question is "yes", this does not automatically mean that the SPE is consolidated with government as *ESA10 2.18 foresees the case of SPEs set up by government which might be classified outside the government sector. However, there should be in the case strong evidence that SPE created by government would actually act "independently" and not under a restrictive framework totally defined by government.*	I.6.2/13 VI.4.4.1/77
26	Does the SPE have the capacity to acquire assets and incur liabilities in its own right?					VI.4.4.1/77
27	Does the SPE have the capacity to enter into contracts with non-government units?					VI.4.4.1/77

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
28	Does the SPE have the freedom to take decisions concerning the management and disposal of its assets and liabilities?				If the answer to questions 26 or 27 is "no", the answer to this question should be "no". *The lack of independence of action could be indicated, among other factors, by:* *i) the absence of the right or capacity to actively manage its assets in response to market conditions (arbitrage), such as government having the right to approve any significant decision in this matter; or* *ii) a contract or convention signed by government fully determining the SPE's operations.*	I.6.2/13
29	Can the SPE be considered to be an independent institutional unit according to national accounts?		on balance sheet		If the answer to question 28 is "no", the SPE 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 the revenue of a "real partner", but instead transfers within the general government sector.*	I.6.3/41 VI.4.4.1/77
30	Are the government payments made to the SPE market-oriented?		on balance sheet		*Market-oriented means of a similar kind to that observed between other market units,* i.e. economically significant prices. A more detailed explanation of this is given in questions 17, 18 and 19.	VI.4.4.1/74
31	Does the SPE only bear risks which are typical for a partner in a PPP or a concession?				*For instance, very high political or security risks.* If the answers to questions 30 and 31 are both "yes", the classification of the SPE as a government unit is not required, even when the SPE is a 100% government-owned corporation.	VI.4.4.1/74
32	**Can the SPE be statistically classified in the non-financial corporation sector?**		**on balance sheet**		**The answer to this question should be "no", if the answer to questions 29 or 30 is "no". In this case, the partner should be classified in the "general government" statistical sector, implying in any case that the project is on balance sheet for government.** **The answer to this question should be "yes" as long as the SPE acts as a market unit (50% cost coverage criterion) and payments by government can be considered as sales.**	VI.4.4.1/77

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
IV. Assessment of the risks – Introduction Under Eurostat rules, a risk is meant to be transferred only if its occurrence has significant financial consequences for the partner. These financial consequences should be such not only to put at risk the partner's operating margin but also to expose its equity to significant losses. It should be noted that when the partner allocates a risk to a third party (e.g. lenders, insurers, guarantors), the statistical assessment is performed considering the risk borne by the partner and the third party taken together.						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.17).
33	Has the procuring authority prepared a risk analysis for the project?		on balance sheet		What *is usually observed in partnerships* is *a sharing of risks between government and the partner. 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 the correct accounting of the impact on the government net lending/borrowing and debt of this type of partnerships.* However, *it may be seen as normal that some risks might be taken by government (for instance, in the case of* force majeure, *very exceptional events or for government actions that change the conditions of activity that were agreed previously).* Given the central role of the risk analysis for the statistical classification of PPPs, the procuring authority should undertake such assessment. If a risk analysis has not been prepared, it will not be possible to assess the PPP project according to Eurostat rules. As a result, projects for which no risk analysis is available will be classified on the government's balance sheet. Although, *as a matter of principle Eurostat focuses its verification on the respect of the criteria developed in* MGDD *based on a risk and rewards approach, a different classification of the assets* may result *under other accounting frameworks (such as IFRS or IPSAS* - that are based on a control approach*).* The user should note that some control approach elements for the statistical assessment of the economic ownership of the PPP assets feature in ESA10, but Eurostat has not developed these further in the MGDD. According to ESA10, the application of the control approach for statistical analysis of PPPs would be relevant to *complex arrangements and when the assessment of risks and rewards is not conclusive.* It would involve determining *which unit has a decisive influence on the nature of the asset and how the terms and conditions of the services produced with the asset are determined, notably* through analysis of the following aspects*:* *(i) the degree to which the government determines the design, quality, size, and maintenance of the assets,* *(ii) the degree to which the government is able to determine the services produced, the units to which the services are provided, and the prices of the services produced.*	VI.4.2.1/11: footnote 159 VI.4.3.2/30 VI.4.3.2/44: footnote 166 ESA10 20.285

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
34	Does the risk analysis address the potential effect of risks on the partner's profits (lower income and/or higher cost) and/or the probability (even roughly estimated) of the occurrence of the risks, assessed and estimated in accordance with widely accepted risk modelling methodologies (e.g. "probability of default", "loss given default")?		on balance sheet		*It should not be acceptable that the partner bears only risks with highly potential damageable effects but with a very low reasonable likelihood.*	VI.4.4.2/78
35	Does the project involve a combination of government financing and guarantees?				*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 38, 73 and 76 for instance). *Additionally, in the cases where a PPP is majority financed by equity, a special analysis needs to be undertaken assessing the impact on the risk distribution between government and the partner from the contract provisions relating to the equity stake.*	VI.4.3.6/67
36	Are the partner's revenues under the contract linked to both availability and usage of the assets?				*Some contracts may combine regular (unitary) payments related to the availability of the assets and other regular (unitary) payments linked to the actual use of the assets (demand), both being identifiable. The partner may be seen bearing several risks.* Unless the value of one of the two types indicated above exceeds 60% of the *total government unitary payments, both availability and demand risks must be assessed separately. If it appears that one type of payment is the predominant part, higher than 60% of the total, the analysis should focus on the corresponding risk as a priority. In all cases, 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, under the conditions mentioned above.* It is important to note that when a contract combines payments linked to demand and availability in such a way that government receives revenues from tolls and the partner is remunerated through availability payments, Eurostat considers that such a contract is neither a PPP nor a concession. The decision regarding the asset classification needs to take into account the total volumes of these two flows: if the government revenues from tolls are in excess of 50% of the availability payments due to the partner, then the project should be recorded on the government's balance sheet.	VI.4.3.2/38 VI.4.3.2/39

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
V. Construction risk *"Construction risk" covers events related to difficulties faced during the construction and to the state of the involved asset(s) at the commencement of services. In practice, it is related to events such as late delivery, non-respect of specified standards, significant additional costs, legal and environmental issues, technical deficiency, and external negative effects (including environmental risk) triggering compensation payments to third parties.* It is important to note that Eurostat considers the financing risk as related to the construction risk. When government bears the majority of the financing risk (whether through debt, equity or the provisions of direct or indirect guarantees), the project should be recorded on its balance sheet. Note that this does not apply to government undertakings regarding refinancing of a PPP project post-completion. Here, a case-by-case analysis is recommended by Eurostat, taking into account the arrangements for sharing of costs or revenues from refinancing, in the broader context of a situation on the financial markets. The construction *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 case 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.4.3.2/33 VI.4.4.2/81
37	Does government take part in the financing of the project?				*Frequently a private partner is not able to borrow at the same rate of interest as government, thus increasing the cost of the project. Therefore, 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 support is separate from capital injections (equity stakes) which are regulated in part III.2 of the MGDD.	VI.4.3.5/57 VI.4.3.5/58
38	Does government financing cover a predominant part of the project's capital cost?	on balance sheet			If the answer to this question is "yes", government is deemed to bear the majority of the risk. The same rule applies when government provides an upfront payment for future services. Government financing might take *various forms, e.g. investment grants, loans, etc.* The term "capital cost" refers to the cost of construction or refurbishment of the assets referred to in the PPP contract and includes financing costs (i.e. interests). It is important to note that this rule *applies only to financing from national government units, therefore excluding any financing from international entities resulting from inter-governmental agreements, such as from EU funds that are granted to non-government units. On the contrary, if some direct expenditure by government is reimbursed by the EU, this does not fall under* this *provision, as this is just a means to cover the government expenditure in the PPP contract.*	VI.4.3.5/59: footnote 168 VI.4.3.6/68
39	Does government have an obligation to start making periodic payments to the partner without taking into account the actual state of the assets that are delivered?	on balance sheet			If the answer to this question is "yes", government is deemed to bear the majority of the construction risk and is acting de facto as the final owner of the assets from inception.	VI.4.4.2/79
40	Does government make payments to systematically cover any additional construction costs, whatever their source?	on balance sheet			If the answer to this question is "yes", there is a clear indication that the construction risk stays with government. See also the comment to question 44.	VI.4.4.2/79

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
41	Is government obliged to pay for the consequences of events resulting from a mismanagement of the construction phase by the partner?	on balance sheet			If the answer to this question is “yes”, there is a clear indication that the construction risk stays with government.	VI.4.4.2/79
42	Does government bear the risk of unexpected exogenous events?				If the answer to this question is “yes”, this does not necessarily indicate that government bears construction risk. The partner is not expected to bear the risk of exogenous / force majeure events if they are *not normally covered by insurance companies*. The same applies to events which occurrence *was not reasonably possible to be estimated before the beginning of the works (e.g. environmental and archaeological risks).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.4.4.2/81
43	Does the project involve an existing government asset?				*The construction risk applies only to the new capital expenditure under the responsibility of the partner, whatever the condition in which the* existing government *asset has been transferred* to the project. Expenditure of the partner for renovation, refurbishment, modernisation, upgrading, etc. must *represent a majority part* (over 50%) *of the value of the asset after completion,* refurbishment, modernisation, upgrading, etc.	VI.4.2.2/16 VI.4.4.2/81
44	Does the partner bear the cost resulting from a late delivery of the asset?		on balance sheet		If the answer to this question is “no”, the project should be recorded on the government’s balance sheet. However, the partner *may not be responsible for over-costs and delays that could result in legal risks resulting from an inadequate regulation/legislation by government.*	VI.4.1/5 VI.4.3.2/33 VI.4.4.2/81
45	Does the partner bear the cost resulting from its failure to meet specified construction standards?		on balance sheet		If the answer to this question is “no”, the project should be recorded on the government’s balance sheet.	VI.4.3.2/33
46	Does the partner bear the risk of significant additional costs during the construction phase (excluding cost increases that are attributable to government actions/decisions)?		on balance sheet		If the answer to this question is “no”, the project should be recorded on the government’s balance sheet. It should be noted that *the partner should not be taken as responsible in case of a government action such as changing specifications in the course of the construction or modifying some standard requirements.*	VI.4.3.2/33 VI.4.4.2/81
47	Does the partner bear the cost resulting from construction deficiencies?		on balance sheet		If the answer to this question is “no”, the project should recorded on the government’s balance sheet.	VI.4.3.2/33

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
48	Does the partner bear the cost resulting from external negative effects (including environmental risks) triggering compensation payments to third parties during the construction phase?				Contractual arrangements covering environmental issues that arise during the construction phase need to be taken into account in the statistical treatment analysis, but are treated as a complementary criteria.	VI.4.3.2/33
49	**Does government bear the construction risk?**	**on balance sheet**			***"Construction risk" covers events related to difficulties during the construction and to the state of the asset(s) 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 is deemed to bear the construction risk if the answer to any of questions 38, 39, 40 or 41 is "yes"; or if the answer to any of questions 44, 45, 46 or 47 is "no". Questions 37, 42, 43 and 48 provide additional elements to be taken into account in the analysis. A majority or minority of "yes" or "no" answers to these questions is not conclusive.**	VI.4.1/5 VI.4.3.2/33 VI.4.4.2/78 VI.4.4.2/80

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
VI. Availability risk Availability risk applies where, during the operational phase of the project, the partner is required to provide a contractually agreed volume of services at quality standards specified in the PPP contract. The essence of an availability scheme is that government payments to the partner are made only when the project assets and/or services are “available” (i.e. in accordance with contractually specified standards). When (i) the PPP contract does not provide for automatic and significant underperformance penalties to be applied in case of poor performance by the partner or (ii) such penalties are not systematically applied, government is deemed to bear the majority of the availability risk.						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.9). VI.4.4.2/82
50	Does the contract contain performance indicators?				If the answer to this question is "yes", the availability risk should be a key feature of the risk analysis. *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 may be an indication that the availability risk is borne by government.	VI.4.4.2/82
51	Do government payments depend on the actual level of asset availability achieved by the partner?				If the answer to this question is "no", the availability risk is deemed to be borne by government.	VI.4.4.2/82
52	Is government entitled to reduce its periodic payments significantly in case the partner is not meeting its service obligations (i.e. certain performance criteria are not met)?				If the answer to this question is "no", the availability risk is deemed to be borne by government. *This would mainly apply 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 and be explicitly stated in the contract.* See also the comment to question 55 on the notion of "significantly".	VI.4.3.2/43 VI.4.4.2/82
53	Does the partner bear the cost resulting from its inadequate management (poor performance)?				If the answer to this question is "no", the availability risk is deemed to be borne by government. The partner should be responsible for cases of *insufficient management (“bad performance”) resulting in a volume of services lower than what was contractually agreed, or in services not meeting the quality standards specified in the contract.*	VI.4.1/5 VI.4.3.2/34
54	Is the application of penalties for the non-achievement of quality standards or underperformance clearly set in the contract and not subject to bargaining?				If the answer to this question is "no", the availability risk is borne by government.	VI.4.3.2/43 VI.4.4.2/83

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
55	Does the penalty mechanism have a significant effect on the partner's revenues/profit?				*Application of the penalties must be automatic and must also have a significant effect on the partner's revenue/profit and, therefore, must not be purely symbolic. They must significantly affect the operating margin of the unit and could even exceed it in some cases, so that the partner would be heavily financially penalised for its inadequate performance. It 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 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.4.3.2/43 VI.4.4.2/83 VI.4.4.2/84
56	Does the contract state a maximum amount or percentage of penalties that can be applied in the event of inadequate performance?				If the answer to this question is "yes", this suggests that the availability risk has not been significantly transferred to the partner.	VI.4.4.2/84
57	Are government payments to the partner expected to fall to zero if the asset is not available for a significant period of time?				If the answer to this question is "no", this suggests that the availability risk has not been significantly transferred to the partner. Note that certain projects feature government guarantees which cover the partner's debt service payments to lenders. In such cases, these guarantees need to be analysed in accordance with the rules specified in section IX of this Checklist, despite the fact that availability payments to the partner may fall to zero.	VI.4.3.2/43 VI.4.4.2/84
58	Is the partner entitled to keep all or most of the profit resulting from its good performance?				When the partner bears the availability risk, he should be penalised for poor performance but also be entitled to *keep the subsequent profit* resulting from a better than expected performance (e.g. *higher productivity, lower costs of input, lower financial conditions, etc.).*	VI.4.3.2/43
59	**Does government bear the availability risk?**				**Government is deemed to bear the availability risk if the answer to any of questions 51, 52, 53, 54, 55 or 57 is "no", or if the answer to question 56 is "yes".**	VI.4.1/5

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
VII. Demand risk Some PPP contracts feature government payments which are based on the actual usage of the asset by end-users (e.g. shadow toll motorways). In this context, demand risk covers the variations in users' demand for the services provided that these are linked to economic factors (e.g. business cycles). Variations in users' demand that result from a poor performance of the partner are not covered under the statistical analysis of demand risk. Under Eurostat rules, government will be deemed to bear the demand risk where it is obliged to ensure a given level of payment to the partner independently of actual final users demand (assuming that the partner meets its obligations concerning the quality of the service), making fluctuations in the level of demand irrelevant to the partner's profitability. This occurs for instance where government provides minimum revenue or minimum demand guarantees.						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.9). VI.4.1/5 VI.4.3.2/35 VI.4.4.2/85 VI.4.4.2/87
60	Are government payments mainly linked to the actual usage of the asset?				If the answer to this question is "yes", the demand risk should be a core feature of the risk analysis. If the answer is "no", government is deemed to bear the demand risk.	VI.4.3.2/37
61	Is government obliged to ensure a certain level of payments to the partner independently of the actual level of final users demand, making fluctuations in the level of demand irrelevant to the partner's profitability?				If the answer to this question is "yes", government is deemed to bear the demand risk.	VI.4.4.2/85
62	Does the partner bear the costs resulting from variations in end-users demand, irrespective of their cause?					VI.4.1/5 VI.4.3.2/35
63	Does the partner bear the costs resulting variations in demand linked to business cycles, new market trends, changes in final users' preferences or technological obsolescence?				These aspects are key to the demand risk analysis as they reflect the *usual "economic risk" borne by private entities in a market economy.*	VI.4.3.2/35 VI.4.4.2/85
64	Is the partner able to manage (at its own initiative/responsibility) an unexpected fall in revenues (e.g. through strengthening promotion, diversification)?				*In this respect, the partner is carrying out its activity in a commercial manner.*	VI.4.4.2/85
65	Is the partner allowed under the contract to use the asset 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* for those activities not regulated under the contract.	VI.4.4.2/85
66	Does the contract allow for adjustments to the periodic payments or compensation payments to the partner in case of a government action that affects demand?				It should be noted that demand risk is not considered to be affected by provisions under which a *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.4.4.2/87

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
67	Does the contract include a list of exceptional/external events that might have a significant impact on the level of demand?				Such exceptional/external risks can be retained by government without requiring the classification of the project on its balance sheet. However, *they must be considered under very restrictive conditions (a precise list, excluding any "macro-economic" risks normally borne by economic agents) and should be limited to those for which insurance coverage is not available on the market at a reasonable price or is limited to a fixed amount which could be out of proportion with the potential real costs of the damages.*	VI.4.4.2/88
68	**Does government bear the demand risk?**				**Government bears the demand risk if the answer to questions 60 is "no" or if the answer to question 61 is "yes". Questions 62 to 67 provide additional elements to be taken into account in the analysis.**	VI.4.1/5

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
VIII. Final risk distribution questions The purpose of this section is to summarise the most relevant questions raised in sections IV to VII. This section also provides additional guidelines in case the questions raised in sections IV to VII do not lead to any conclusion.						
69	Does the partner bear the construction risk and both the availability and demand risks?				*Some contracts may combine regular (unitary) payments related to the availability of the assets and other regular (unitary) payments linked to the actual use of the assets (demand), both being identifiable. The partner may be seen bearing several risks. Where neither of the separate types of payments does not exceed 60% of total government unitary payments, both availability and demand risks must be assessed separately.* Answering "yes" to this question does not imply that the project is with certainty off the government's balance sheet. Additional criteria need to be applied to determine the overall risk transfer, such as contractual provisions related to guarantees, early termination and end of contract (see sections IX and X and XI).	VI.4.3.2/38
70	**Does the partner bear the construction risk and at least one of either the availability or the demand risks?**		**on balance sheet**		**If the answer to this question is "yes", the project may be off the government's balance sheet, provided that, there is no other mechanism in place, such as a government guarantee (see section IX), government financing or generous early termination provisions (see section X) which transfer the risks back to government.** **If government assumes the risks through other mechanisms (see section IX), or if the answer to this question is "no", the project should be recorded on the government's balance sheet. Indeed, *if the construction risk is borne by government, or if the private partner bears only the construction risk but no other risk, the assets are recorded in the government's balance sheet.*** **For borderline cases, it is appropriate to consider other criteria, such as the asset allocation at the end of the PPP contract life (see section XI).**	VI.4.1/6 VI.4.3.2/41 VI.4.3.2/42 VI.4.1/7 VI.4.1/8 VI.4.2.1/9
71	Does government receive revenues from the asset (e.g. user tolls)?				If the value of tolls levied by government (either directly or through the partner) exceeds 50% of the payments that are made by government to the partner under the contract (i.e. the cost of the service for government), the project should be classified on the government's balance sheet. Indeed, Eurostat does not consider such arrangements as PPPs and the risk assessment rule described in question 70 is not applicable. See also the EPEC case study of motorways in Portugal (available at http://www.eib.org/epec/resources/estat-portugal.pdf).	VI.4.3.2/29 VI.4.3.2/38 VI.4.3.2/39 VI.4.3.4/55

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
IX. Guarantees and similar mechanisms Eurostat considers that government guarantees covering more than 50% of the capital cost of a PPP project have an impact on the distribution of the project risk between the parties to the contract, irrespective of the probability of guarantees actually being called over the contract life. In such cases, the project should be recorded on the balance sheet of government. In Eurostat's view, when classifying a PPP asset, 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. Government guarantees include partial or total credit guarantees, minimum revenue guarantees and minimum demand guarantees provided to the partner. Additional information about government guarantees (including 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 (see http://www.eib.org/epec/resources/epec-state-guarantees-in-ppps-public.pdf).						Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.19).
72	Does government provide support 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 support mechanisms under which government *re-assumes the majority of risks of the project determine that the asset is recorded on government's balance sheet.* *Guarantees have an impact on the distribution of risks between the parties. The scope of a guarantee, including the case where it covers not only a specific project-related debt instrument, may influence the recording of the PPP assets. It may result in the (re-)assumption by government of some of the risks analysed above.* *In addition to the straightforward case of an explicit debt guarantee, 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 by way of 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 aspect of risk analysis.*	VI.3.2/23 VI.3.2/24 VI.4.3.2/44 VI.4.3.6/62 VI.4.3.6/63 VI.4.3.6/66 VI.4.4.2/90
73	Does government provide a guarantee that fully covers the project-related borrowing of the partner?				If the answer to this question is "yes", the analysis should look at whether the guarantee covers the majority of the capital cost of the project (see question 76). There is no automatic classification of the project on government balance sheet if the debt which is fully guaranteed by government represents less than 50% of the capital costs.	VI.3.2/23 VI.4.3.6/60 VI.4.3.6/61
74	Does the transaction feature government commitments to assume all or a part of the partner's debt service?				*The existence of legal provisions transferring to government all or part of the debt service would trigger a classification of the partner's debt as government debt.*	VI.4.3.6/61
75	Is the coverage of the government guarantee wider than the specific project-related debt?				*The scope of a guarantee, including the case where it covers not only a specific project-related debt instrument* (e.g. *government provides a guarantee to a corporation engaged in various activities, and not only the PPP project, for all debt issued by the unit*), *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.4.3.6/63

Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
76	Does the government guarantee cover the majority of the capital cost of the project (or the partner's project-related debt) at inception or during the construction phase?	on balance sheet			If the answer to this question is "yes", the project should be recorded on the government's balance sheet. The user should also note that when considering government guarantees in PPP contracts covering the majority of the capital cost of the project, the probability of occurrence of the event triggering the guarantee is not considered in the statistical analysis.	VI.3.2/23 VI.4.3.6/64 VI.4.3.6/65
77	Does government ensure a certain financial return to the 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 to this question is "yes", the project should be recorded on the government's balance sheet. Note that *Eurostat favours an exhaustive list of contingent events considered to result from "force majeure", thus excluding any responsibility of the partner in the deterioration of its financial situation, by opposition to an "open" formulation which could lead to a disputable interpretation and de facto an insufficient transfer of risks. In any case, this should exclude economic risk linked to business cycles and endured by producers in their field of activity.* *However, in the context of exceptional and dramatic unfavourable economic conditions, a temporary and limited support provided by government might not lead necessarily to a reclassification of the* project *assets.*	VI.3.2/25 VI.4.3.6/64 VI.4.3.6/65

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<tr><th>Nr</th><th>Question</th><th>YES</th><th>NO</th><th>User comments</th><th>EPEC comments and MGDD extracts (in italics)</th><th>Reference to MGDD 10</th></tr>
<tr><td colspan="7">X. Early termination

The section deals with the Eurostat rules regarding the early termination of the contract. Background information regarding early contract termination can be found in EPEC's documents (i) "The Guide to Guidance - How to Prepare, Procure and Deliver PPP Projects" (chapter 4.1.6), published in July 2011 (available at http://www.eib.org/epec/resources/guide-to-guidance-en.pdf), and (ii) "Termination and Force Majeure Provisions in PPP Contracts - Review of current European practice and guidance", published in March 2013 (available at http://www.eib.org/epec/resources/Termination_Report_public_version.pdf)</td></tr>
<tr><td>78</td><td>Does the contract foresee that the assets be transferred to government in case of early termination?</td><td></td><td></td><td></td><td rowspan="2">PPP contracts include termination clauses in the event that government or the partner cannot fulfil the contract or they persistently fail to meet their contractual obligations. In addition, government may use its exceptional sovereign right.
Termination clauses will often require the government to acquire the asset and take on board part or all of the partner's PPP-related debt and pay the partner compensation. 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 conditions in which services are provided from the asset. As a matter of principle, any compensation in the context of an early termination due to a default by the partner must take into account any insufficient performance by the partner and, therefore, must be different to a compensation payment resulting from an early termination at the initiative of government.</td><td rowspan="2">VI.3.2/24
VI.4.3.4/51
VI.4.3.4/52</td></tr>
<tr><td>79</td><td>Are termination clauses such that government is required to take on board all or part of the partner's debt?</td><td></td><td></td><td></td></tr>
<tr><td>80</td><td>In the event of termination due to a partner's default during the construction phase, does the contract foresee a government compensation payment based on capital costs, not taking into account penalties to be charged to the partner for any possible negative consequences of the default (e.g. delays or cost overruns)?</td><td>on balance sheet</td><td></td><td></td><td>If the termination is due to the partner's default during the construction phase, generally the contract will require just a refund by government based on the capital costs (or operation). In addition, in the absence of penalties charged to the partner for any possible negative consequences of the default (delays, cost overruns), the construction risk is deemed to be borne by government.
If the answer to this question is "yes", the project should therefore be recorded on the government's balance sheet.</td><td>VI.3.2/25
VI.4.3.4/52</td></tr>
<tr><td>81</td><td>In the event of termination due to a partner's default during the operating phase, does the contract require government to pay a compensation which is not calculated by reference to the market value of the assets assessed at the time of termination?</td><td>on balance sheet</td><td></td><td></td><td>The contract should explicitly mention that the compensation due to the partner, if any, at the time government takes over the asset from the partner, should not exceed the current market value of the asset (taking into account the likely cost required to bring the asset to an adequate condition), as reliably estimated by independent experts. If these conditions are not met (e.g. compensation based on the present value of future flows foreseen in the contract or some amounts not reflecting the current value of the asset), the transfer of (availability or demand) risks to the partner is deemed to be insufficient.
If the answer to this question is "yes", the project should therefore be recorded on the government's balance sheet.</td><td>VI.4.3.4/52</td></tr>
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Nr	Question	YES	NO	User comments	EPEC comments and *MGDD extracts (in italics)*	Reference to MGDD 10
XI. End of the contract *An analysis of the contract clauses relating to the disposal of the PPP asset at the end of the contract* period is not the criterion for the classification of the project in its own right but it *can be used as a supplementary criterion for determining the overall risk transfer.* In particular, *where the risk analysis does not give clear conclusions* (e.g. *if the risk distribution is estimated as balanced or is based on fragile hypotheses).* Such analysis might *give, in some cases, additional strong insight into risks among the contract partners, as such clauses* (concerning the final ownership of the asset) *might help to assess whether a significant risk remains with the private partner.*						VI.3.2/25 VI.4.3.3/45
82	Does the asset remain 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 remains quite significant, notably in cases of infrastructure that has only slightly depreciated over time), then recording the asset in the partner's balance sheet would have an additional justification.*	VI.4.3.3/46
83	Does government have the freedom to buy the asset at the end of the contract or at any given point in time, at the then market value?				If the answer to this question is "yes", *the partner bears the risks associated with the continued demand for the asset and its physical condition during the contract period. This also reinforces the recording of the assets in the partner's balance sheet during the contract period.*	VI.4.3.3/47
84	Does the contract foresee a transfer of the PPP asset to government at the end of the contract?				For PPP projects, if the risk analysis carried out under sections IV to VIII is not conclusive, contractual provisions regarding the ownership of the asset at the end of the contract are *used as a supplementary criterion for determining overall risk transfer.* The allocation of the assets at the end of the contract is not in itself a criterion sufficient to determine whether a PPP is on or off balance sheet for government. In this context, the analysis must consider the following features: *i) the pre-determined price is fixed as a remaining part of the initial cost of capital, without any reference to the asset's expected market value at the end of the contract;* *ii)* government commits to purchase the PPP assets at *the pre-determined price* which *is obviously higher than the expected market value of the assets at the end of the contract;* *iii) the pre-determined price is lower than an expected market value at time of the transfer (or even nil) but government effectively prepays for the acquisition of the assets throughout the contract by making regular payments that reached a total amount very close to the full market value of the assets; or* *iv) if it is not specified in the contract that there should be a thorough check by an independent body of the exact condition of the assets ("rendez-vous" clauses) a few years before final termination, such that government is entitled to ask for supplementary expenditure and/or reducing the pre-determined price, where necessary.*	Eurostat Treatment of Public-Private Partnerships, EPEC 2010 (p.17) VI.4.3.3/45 VI.4.3.3/48 VI.4.3.3/49

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