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Mr Andžs Ūbelis
Deputy State Secretary
Ministry of Finance
Smilšu ielā 1
LV-1919 Rīgā
Latvia

Subject: 2007-2013 programming period - Our comments for follow up of the Annual Examination Meeting between the Commission and Latvia on 26 March 2009 in Latvia

Ref.: Your letter N° 16-2-02-3/362 of 10 July 2009

Dear Mr Ūbelis,

On 10 July 2009 you asked by letter, how private co-financing should be treated under regulation 1083/2006, in particular when the partner of the project is a state owned enterprise, rephrasing a question which has been pending for quite some time.

In the framework of regulation 1083/2006, the definition of “public expenditure” or of expenditure “similar to the public expenditure” is made by reference to certain (but not all) entities which are qualified as “awarding authorities” or “awarding entities” under the public procurement Directives. In particular, under R.1083/2006, the definition of “public or assimilated expenditure” does not include the expenditure of public undertakings.

The award of public procurement contracts is governed by two Directives: either by the “General” Directive 2004/18/EC or by the “Utilities” Directive 2004/17/EC. The latter applies for contracts in the water, energy, telecommunications and postal sectors. These Directives apply to the State, the regional and local authorities, the public law bodies and their associations. To public undertakings only Directive 2004/17/EC applies.

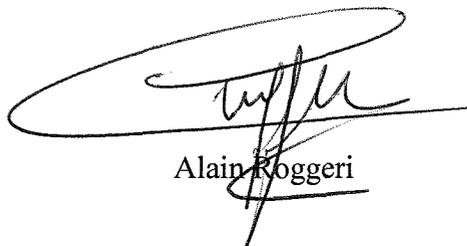
“Public law body” is defined as an entity which is controlled by public authorities and has been established for the specific purpose to meet needs of *general interest but not having an industrial or commercial character* (e.g. universities, foundations, agencies). (Article 1(9) of Directive 2004/18/EC (General Directive for public procurement) and Article 2(1)(a) of Directive 2004/17/EC (Utilities Directive). This definition of “public law body” obviously excludes the “public undertakings” (Article 2(1)b of Directive 2004/17/EC).

Article 2(5) of R.1083/2006 defines the “public expenditure” as the contribution to EC supported operations whose origin is the budget of the State, the budget of the regional and local authorities and the EU budget for the Structural Funds and the Cohesion Funds, as well as “any similar expenditure”. “Similar expenditure” is considered the contribution to operations from the budget of public law bodies and of associations of local authorities or public law bodies, by reference only to Directive 2004/18/EC (Article 1(9)) From the above, it appears that under regulation 1083/2006, there is no room for inclusion in the category of “public expenditure” of expenditure of such public undertakings operating in like the sectors of energy, water, telecommunications and in the postal sector which are covered by the Utilities Directive (2004/17/EC).

However, it is possible to qualify expenditure of public law bodies operating not only under Directive 2004/18/EC (General Public Procurement Directive) but also under Directive 2004/17/EC (Utilities Directive) as public expenditure.

The possibility of modifications of Operational Programmes could be envisaged in order to change priority axes calculation basis from public costs only to total costs.

Yours sincerely,



Alain Roggeri