Brussels, 22.2.2017
C(2017) 1201 final

ANNEX 11

ANNEX

Country annex

IRELAND

to the

REPORT FROM THE COMMISSION

presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union

IRELAND

Ireland deposited its instruments of ratification of the Treaty on Stability, Coordination and Governance in Economic and Monetary Union (TSCG) with the General Secretariat of the Council of the European Union on 14 December 2012.

The national provisions considered in this assessment are those provided for by Article 29.10 of the Constitution of Ireland and the Fiscal Responsibility Act of 2012 (FRA 2012), which was enacted on 27 November 2012 and which came into operation on 31 December 2012.

1. Legal status of the provisions

A constitutional amendment approved by referendum on 31 May 2012 introduced what is now Article 29.10 of the Constitution of Ireland, which allowed Ireland to ratify the TSCG. That provision does not incorporate either the TSGC or the balanced budget rule into the Irish constitution.

Articles 3 and 4 of the TSCG are implemented in Irish law through the FRA 2012. Although the FRA 2012 is an ordinary law in form, it is afforded constitutional protection under Irish law as of a result of the inclusion of Article 29.10 in the Constitution (meaning that, to the extent that the FRA 2012 is in line with Article 29.10, that legislation cannot therefore be impugned as being contrary to the Constitution). That provision gives constitutional recognition to the obligations of the State under the TSCG. The Irish authorities have pointed out to the Commission that any government contemplating an amendment to the FRA 2012 would be conscious that the Irish people have expressed their preference in a referendum.

In addition, any effort to dilute the obligations pursuant to the FRA 2012 would be subject to review by the Attorney General, who must consider whether any proposed legislation would breach EU, ECHR or constitutional requirements before any such legislation is proposed by the government. The review by the Attorney General is a process internal to government. She is a Constitutional Officer, who acts as the legal adviser of the State. Her opinions are not made public. While there is certainly a constitutional convention that her opinions are respected, it would go too far to state that they are binding. Nevertheless, given the constitutionally endorsed foundation of the FRA 2012, the prospect of such diluting legislation being put forward by the government is essentially excluded.

Finally, all legislative acts are open to judicial review for constitutionality, which is generally a posteriori. There is nothing uncommon about a provision in the budgetary law being struck down as unconstitutional since such legislation enjoys no special constitutional immunity or additional presumption of constitutionality. Reference could be made to Article 29.10 of the Constitution in the context of any such judicial action.

Against that background, Ireland's provisions comply with the criterion of being of "binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes".

2. Balanced budget rule

Formulation: The formulation of the balanced budget rule in Sections 2 and 3 of the FRA 2012 follows closely the wording of the TSCG. The rule is satisfied if one of the following

conditions is satisfied: (i) the budget condition or (ii) the adjustment path condition (on the latter, see convergence towards the MTO).

The budget condition is satisfied if the annual structural balance of the general government is at its medium-term objective (MTO), unless exceptional circumstances occur and the failure to meet the MTO does not endanger medium-term fiscal sustainability. The MTO is defined in Part 1 of the FRA 2012 by reference to Regulation (EC) No 1466/97 and Section 5 of the FRA 2012 sets the limits for the MTO which are consistent with the TSCG.

Section 2 states that "*The Government shall endeavour to secure*" that the requirements stemming from the rules are complied with. According to the interpretation submitted by the authorities, this formulation creates an obligation to strictly meet the rules – an interpretation consistent with the TSCG – and not a looser requirement to 'try to achieve' the rules, an interpretation that would have opened a loophole in the commitment to abide by the rules. That particular formulation was chosen to take into account the separation of powers where the government recommends the budget and the parliament must approve or enact it. In other words, it reflects the fact that the government cannot force the parliament to adopt a finance law but can only "endeavour to secure" its adoption. As brought forward by the authorities, the government is the only body that can recommend the appropriation of public moneys. This implies that Section 2 entails the obligation for Ireland to respect the balanced budget rule.

Convergence towards the MTO: The adjustment path condition, set out in section 3(3) of the FRA, is satisfied if the annual structural balance of the general government is converging towards the MTO in line with the timeframe set in accordance with Regulation (EC) No 1466/97, unless exceptional circumstances occur and the failure to be on the convergence path does not endanger medium-term fiscal sustainability.

Escape clauses: Exceptional circumstances are defined in Article 1 in a manner which is consistent with the TSCG. Section 8 of the FRA 2012 requires the Irish Fiscal Advisory Council (IFAC) to monitor and provide an assessment of, inter alia, whether exceptional circumstances exist or have ceased to exist.

Overall, the balanced budget rule complies with the TSCG requirements. While the formulation *"endeavour to secure"* that the requirements stemming from the rules are complied with could have introduced uncertainty regarding the obligation to strictly meet the rules, the interpretation provided by the Irish authorities ensures compliance with the TSCG.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Section 6 of the FRA 2012.

Activation: Section 6(1) provides that the correction mechanism is automatically triggered if the Commission addresses a warning to Ireland under Article 6(2) of Regulation (EC) No 1466/97. According to the same Article, the government may also activate the correction mechanism on its own initiative if it considers that there is a significant deviation from the MTO or the adjustment path thereto. The government may also act preventively if it sees risks of a deviation (section 6(5)). In addition, the IFAC is explicitly mandated to assess the existence of significant deviations, and the government must take position *vis-à-vis* these assessments (Section 8(3)-(6)).

Substance of the correction: In the event of activation, within two months, the government has to prepare and present to Dáil Éireann (the lower house of Parliament) a corrective plan

securing compliance with the balanced budget rule (Section 6(1)). The plan must set out the timeframe for the correction, annual budgetary targets, and revenue and expenditure measures by sub-sectors of general government (Section 6(2)).

The requirements for the corrective plan focus on ensuring compliance with European rules and decisions. The provisions require that the correction plan be consistent with the Stability and Growth Pact and recommendations from the Union institutions based thereon (Section 6(3)). The legislation also requires the corrective plan to be consistent with the current stability programme.

The main characteristic of the arrangement is to focus on consistency of the national mechanism with Union recommendations. The legislation does not contain specific national corrective rules. The duty to strictly abide by recommendations made by the Union institutions is thus the principal means to ensure compliance with the TSCG requirement of correcting the deviations "over a defined period of time" and with the common principles.

Finally, the IFAC is explicitly tasked with assessing at least annually the implementation of the corrective plan.

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. It stresses consistency with the Union budgetary surveillance framework, whereby the activation and substance of the correction are linked to recommendations made by the Union institutions, and allows preventive corrections. There are no specific national provisions on the substance of the correction in the legislation. The IFAC is given a significant role in monitoring the correction mechanism.

4. The monitoring institution

The Irish monitoring institution is the IFAC.

Set-up and statutory regime: The IFAC is a statutory body established by the FRA 2012. The latter mandates the IFAC with various tasks including notably the assessment of compliance with the structural balanced-budget rule. The IFAC consists of five members including a chairperson, assisted by a secretariat.

Mandate: The mandate assigned by the FRA 2012 includes the assessment of official forecasts[1], the appropriateness of the government fiscal stance, and – in relation to the TSCG requirements - , the monitoring of the structural balanced-budget rule. In particular, the IFAC is required to monitor and assess at least once a year i) the existence and termination of exceptional circumstances; ii) the compliance of the budget position with the budget balance rule; iii) the appropriateness of the correction plan proposed by government; iv) the proper implementation of that correction plan.

Comply-or–explain principle: Section 8(6) of the FRA 2012 provides that if the government does not accept an assessment from the IFAC, the Minister for Finance must communicate to Dáil Éireann a statement of the government's reasons. This should be done within two months after the government was given a copy of the said assessment by the IFAC.

Freedom from interference and capacity to communicate: The FRA 2012 sets out that the IFAC is independent in the performance of its functions (Section 8(1)). The members cannot be candidates or elected members of the Irish Parliament or the European Parliament, nor can

[1] The IFAC is responsible for endorsing the macroeconomic forecasts underlying the annual budgets and stability programmes – that mandate is granted by the Ministries and Secretaries (Amendment) Act 2013 (Section 3), which is an amendment to the FRA 2012.

they be members of a local authority (Section 7 of the Schedule to the FRA 2012). The same restrictions apply to staff members, who in such cases should be seconded and not paid by the IFAC.

In terms of communication, the IFAC must publish each of its assessments within 10 days after giving a copy of it to the Minister of Finance (Section 8(5)). The assessments are made publicly available on the IFAC's website[2].

Nomination procedure: The five board members are appointed by the Minister for Finance, taking into account "*competence and experience in domestic or international macroeconomic or fiscal matters*" (Section 1 of the Schedule to the FRA 2012). The Minister designates one of the members to be chairperson. Members serve staggered four-year terms (with up to two consecutive terms); the Minister takes the ultimate decision to dismiss any of the members, but only in reference to a number of predetermined serious cases laid down in Section 4(2) of the Schedule to the FRA 2012 and only after resolution approving the removal and stating the ground for it has been passed by Dáil Éireann. In order to assist the board members, the IFAC can appoint as many persons to be members of staff paid out of the budget of the IFAC, on terms to be determined by the IFAC with the prior consent of the Minister of Finance.

Resources and access to information: The IFAC is financed from the Central Fund, over which the government has limited discretion, as it is outside the annual budget procedure. The FRA 2012 provided a budget of EUR 800 000 for IFAC in its first year of operation, to be subsequently indexed yearly (Section 9(1) of the Schedule to the FRA 2012)[3].

To secure access to information, there is a general clause whereby the IFAC has all powers necessary to the performance of its functions (Section 8(7) of the FRA). More specifically, the official forecasts must set out the data required to assess whether the balanced-budget rule is complied with (Section 2(2)). The Ministry of Finance and the IFAC concluded in August 2013 a Memorandum of Understanding with a view to ensuring an efficient exchange of information between the two institutions.

Overall, the set-up of the Irish monitoring institution complies with the TSCG requirements and the common principles. The IFAC is grounded in law and its mandate encompasses the tasks prescribed by the TSCG and the common principles. The legal framework includes appropriate safeguards for functional autonomy. The comply-or-explain principle is explicitly provided for in the law. Adequate provisions on IFAC's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Ireland are compliant with the requirements set in Article 3(2) of the TSCG and in the common principles.

[2] http://www.fiscalcouncil.ie/

[3] For each subsequent year, the sum which applies for the preceding year is adjusted by the annual percentage change in the Harmonised Index of Consumer Prices published by Ireland's Central Statistics Office in respect of the preceding year.