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ANNEX

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LUXEMBOURG

to the

REPORT FROM THE COMMISSION

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

LUXEMBOURG

Luxembourg 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 8 May 2013.

The national provisions considered in the assessment are essentially those provided for by:

- the Law Approving the Treaty of 29 March 2013,
- the Law on the Coordination and Governance of the Public Finances of 12 July 2014, as amended on 23 December 2016,
- the Law on Multiannual Financial Programming for the period 2014-2018.

1. Legal status of the provisions

Luxembourg's authorities point out that, given the monist character of Luxembourg's legal framework, the rules of the Fiscal Compact already take effect in national law with the publication of the LAT, which was approved by Parliament in accordance with the procedure of Article 114(2) of the Constitution (necessitating a 2/3 majority). In that context, the LCGPF, which is an ordinary law, is an implementation law specifying those rules in the Luxembourgish legal order.

In response to queries from the Commission on the effectiveness of the Fiscal Compact, the Luxembourgish authorities informed it that they are in the process of reinforcing the mandates of the Constitutional Court and the ordinary courts in relation to international law in the context of the currently on-going review of the Constitution[1]. Under the modified provisions as they are currently envisaged, ordinary courts will not apply laws and regulations if they are contrary to superior rules of law and laws declared by the Constitutional Court not to be in conformity with international treaties would cease to have legal effect.

Against that background, and subject to completion of the review of the powers of the national courts in line with the position taken by the Luxembourgish authorities, Luxembourg'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 provisions relevant for the balanced budget rule are contained in Articles 2 to 6 of the LCGPF.

Article 2 provides that the budgetary position of the general government respects the medium-term objective (MTO), as defined in the TSCG. That general reference covers both the notion of the MTO as set out in the Stability and Growth Pact (SGP) and the limits enshrined in the TSCG. Article 2 is further detailed in Article 4, which provides that the annual structural balance of the general government is at least equal to the MTO, as defined in the TSCG. The MTO and the adjustment path are set out in the multiannual financial programming law.

[1] Letter of the Luxembourgish authorities of 19 July 2016.

Article 5 introduces a requirement for the social security administration and for local administrations to contribute to the balanced budget rule.

Convergence towards the MTO: Luxembourg has adequately converged to the MTO in conformity with the national provisions. Potential deviations from the MTO are catered for by the correction mechanism.

Escape clauses: Exceptional circumstances are referred to in Article 6 of the LCGPF, which defines the correction mechanism, and are defined by reference to the TSCG.

Overall, the balanced-budget rule complies with the TSCG requirements.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Article 6 of the LCGPF.

Activation: The correction mechanism is activated on an ex post basis in the event of a significant negative deviation of the structural balance from the MTO or the adjustment path thereto (Article 6(1)). The multiannual financial programming law serves as reference to define the structural balance targets against which the significant deviations are assessed. The definition of a significant deviation is similar to the notion embodied in the Union budgetary surveillance framework, and involves an examination of both the outcome of the previous year, and the outcomes of the past two years on a cumulative basis (Article 6(2)). The assessment is based on data notified by 1 April and 1 October (Article 6(3)).

The Luxembourgish authorities have clarified that, although it is not explicitly mentioned in the legislation, the correction mechanism would be automatically triggered in the event that a significant deviation were identified at Union-level. The government may also decide to trigger the correction mechanism on its own initiative. Moreover, the National Council of Public Finances (NCPF), which is the monitoring institution in Luxembourg, is mandated to assess the existence of significant deviations (Article 8).

Substance of the correction: According to Article 6(1) of the LCGPF, the government must take, at the latest in the budget of the subsequent year, "measures in order to restore the trajectory as foreseen in the multiannual financing programming law in the absence of deviations". The trajectory referred to in that provision is the trajectory of the structural balance. Given the precision that the trajectory must be re-established as "in the absence of deviations", the Luxembourgish authorities have made clear that the targets of the structural balance to be restored are those that prevailed in the initially programmed path, and that the correction has to be made in full at the latest in the budget of the subsequent year. Such a timeframe for the correction is consistent with the TSCG's requirement of correcting 'over a defined period of time' and with the common principles (principle n° 4).

The provisions preserve a degree of flexibility in the operation of the correction mechanism, in particular as the multiannual programming law itself may be revised which would thereby shift the very targets that are to be restored. The Luxembourgish authorities have clarified that such updates of the multiannual programming law may be necessary to allow large revisions in macroeconomic assumptions, other unforeseen events, and changes in the MTO determined within the SGP. However, most of those changes should not have a material impact either on the trajectory or on the fiscal targets themselves. In addition, in the event that the triggering of the national corrective procedure is linked to the significant deviation procedure at Union-level, it can also be taken that the substance of the correction would be closely related to

Union-level recommendations, in line with the principle of consistency with the EU framework (principle n° 2).

The NCPF is mandated to assess the implementation of the correction.

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. The correction mechanism is automatically activated once a significant deviation is identified at Union-level. The rule for correcting deviations within a maximum of two years after their occurrence is in line with the TSCG requirements and the common principles, in light of the clarifications provided by the Luxembourgish authorities regarding the operation of that corrective rule.

4. The monitoring institution

The Luxembourgish monitoring institution is the NCPF.

Set-up and statutory regime: The NCPF started operating as an independent body charged with monitoring the respect of fiscal rules (including the structural balanced-budget rule) on 12 November 2014 on the basis of the LCGPF. It consists of seven members including a President, who are assisted in their work by a permanent secretariat headed by a secretary general.

Mandate: The NCPF is entrusted with the general surveillance of the application of fiscal rules (including the structural balanced-budget rule) and the correction mechanism related to the structural balanced-budget rule (Article 8 of the LCGPF). The specific assessments referred to in the common principles are provided for by direct reference to Article 5(2) of Regulation (EU) No 473/2013. Beyond the TSCG-related tasks, the NCPF's mandate also encompasses an evaluation of the official macroeconomic and budgetary forecasts.

Comply-or-explain principle: No legal provisions oblige the government to comply with the recommendations of the NCPF or explain publicly any departures from them. With a view to guaranteeing full respect and adherence to the 'comply-or-explain' principle throughout the national budgetary process, in their letter to the Commission of 19 July 2016 the Luxembourgish authorities formally committed that the Luxembourgish legal framework would be consistently applied in line with the 'comply-or-explain' principle. This commitment entails that the government would comply with the assessments and recommendations of the NCPF or alternatively would publicly explain why it departs from them. Moreover, the government plans to sign a memorandum of understanding with the NCPF, which is to include an operationalisation of the comply-or-explain principle.

Freedom from interference and capacity to communicate: The LCGPF states that the NCPF is independent (Article 7(1)) and its members must be independent and neutral in executing their duties (Article 7(2)). No specific legal provisions regarding dismissals and conflict of interest are set out. The NCPF has the capacity to communicate freely; all its assessments must be made public by law (Article 8 of the LCGPF)[2].

Nomination procedure: The seven members of the NCPF are elected and dismissed by the Grand Duke of Luxembourg upon proposals by the parliament and the government (two members each), the court of auditors (one member), jointly by the Chamber of Commerce, Chamber of Crafts and Agricultural Chamber (one member), as well as jointly by the Chamber of Public Officials and Chamber of Labour (one member). The members' term lasts

[2] The NCPF's website is available at: http://www.cnfp.lu/fr/index.html.

four years and is renewable. The President of the Council is chosen by its members with absolute majority. As regards professional competence, the law requires all members to be acknowledged experts in finance and economics.

Resources and access to information: The NCPF is financed from the State budget (in Luxembourg the financing of all public institutions is included in the budget and has to be voted by Parliament with the budget bills). In practice, the financing of the NCPF is secured via the Ministry of Finance. The NCPF members are assisted by a permanent secretariat. While there are no legal provisions establishing the size of the secretariat, according to the Luxembourgish authorities the resources will progressively be scaled up in order to allow the NCPF to fulfil all its tasks adequately. The secretariat staff is recruited via the Ministry of Finance and thereafter seconded to the NCPF. Article 7(5) of the LCGPF confers upon the NCPF the right to require the hearing of representatives from any entity of the public administration in the area of public finances, statistics or economic forecasting to acquire the information necessary to exercise its duties.

Overall, the set-up of the Luxembourgish monitoring institution is compliant with the TSCG requirements and common principles in light of the formal commitment provided by the national authorities to apply the comply-or-explain principle in line with the common principles. The NCPF is grounded in law and its mandate includes the tasks prescribed by the TSCG and the common principles. At present a 'comply-or-explain' principle as envisaged in the common principles is not enshrined in the law. However, the Luxembourgish authorities have formally committed to consistently apply the national legal framework in line with that principle and, moreover, they envisage rooting the principle in a forthcoming Memorandum of Understanding with the NCPF. The legal framework includes appropriate safeguards for functional autonomy. Adequate provisions on the NCPF's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Luxembourg are compliant with the requirements set in Article 3(2) of the TSCG and in the common principles in light of the clarifications provided by the national authorities on the substance of the correction mechanism and of their formal commitment to apply the comply-or-explain principle in line with the common principles, and subject to the announced revision of the powers of the national courts.