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ANNEX 21

ANNEX

Country annex

SLOVENIA

to the

REPORT FROM THE COMMISSION

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

SLOVENIA

Slovenia 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 30 May 2012.

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

- the Constitutional Act adopted on 24 May 2013, amending Article 148 of the Constitution, and entered into force on 31 May 2013,
- the Fiscal Rule Act adopted on 10 July 2015 and entered into force on 25 July 2015 (FRA).

1. Legal status of the provisions

A broad principle of balanced-budget over the medium term has been enshrined at constitutional level through the amended Article 148 of the Constitution. The FRA was adopted as implementing legislation of that constitutional rule, which required a qualified majority adoption by two-thirds of all members of Parliament. The FRA lays down the detailed arrangements and timeframe for the principle of medium-term balance anchored in the Constitution, the scope of permissible deviations from the principle, the procedure of eliminating deviations, exceptional circumstances in which deviation from the principle is possible and the manner of conduct upon the occurrence or termination of such circumstances as well as the setting up of independent monitoring institution (Fiscal Council). A budget law cannot therefore deviate from the FRA.

Against that background, Slovenia'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 obligation of a balanced budget has been included in Article 148 of the Constitution. The Constitution requires that "revenues and expenditure of the budgets of the State must be balanced in the medium term without borrowing, or revenues must exceed expenditure". The Constitution also calls for implementing legislation setting out that principle in more detail, which is done by the FRA.

Article 2(9) and Article 15 of the FRA incorporate in the national legislative order the medium-term objective (MTO), which constitutes the target for the structural balance, as defined in Union law. In addition, Article 3(1) of the FRA provides that the structural balance of general government shall not be lower than the minimum value defined in the TSCG. Article 2 specifies that the terms used in the FRA, such as "structural balance" or "general government", must be understood in the meaning of the Stability and Growth Pact (SGP).

Paragraphs 3 and 4 of Article 3 of the FRA also lay out the balanced budget rule, including formulas setting out the maximum level of expenditure given assumptions on revenues and the output gap. A distinction is made depending on whether gross domestic product (GDP) is below or above potential. When GDP is below potential (Article 3(3)), the requirement is a reformulation of the obligation for the structural balance to be no lower than the specific

normative lower limit envisaged in the TSCG (so-called 'mss' in the formula). When GDP is at or above its potential (Article 3(4)), the FRA sets requirements that are more stringent than those envisaged in the TSCG.

Article 6 requires the budgetary framework over a minimum of three years to be consistent with the rules defined in Article 3 and with the stability programme sent to the European Commission. It also introduces a connection between that multiannual framework and the draft annual budget.

Convergence towards the MTO: Article 15 provides that the balanced budget rule is considered fulfilled if the general government structural balance approaches the MTO in line with the pace determined on the basis of the SGP.

Escape clauses: Article 12(1) sets the two exceptional circumstances allowing a deviation from the principle of medium-term balance: (i) a period of severe economic downturn; (ii) unforeseeable events that cannot be influenced if such events have a major impact on the financial situation of the general government. Article 12(1) furthermore provides that those circumstances must be understood in line with the meaning of the SGP. Article 12(2) introduces an assessment of exceptional circumstances by the Fiscal Council.

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 11 of the FRA.

Activation: Article 11(1) implies that the correction mechanism is automatically triggered if a significant deviation is identified at Union-level on the basis of the SGP. In addition, the government may trigger the correction mechanism based on assessments by the Fiscal Council. Though the criteria for those latter assessments are not specified in the legislation, the Slovenian authorities have clarified that the Fiscal Council will rely on a notion that is consistent with the notion of significant deviation laid down in the SGP.

Substance of the correction: Upon activation the Minister of Finance makes use of pre-defined measures in order to restore the medium-term balance (Article 11(1)). Should the pre-defined measures not suffice to ensure compliance with the fiscal rule, the government, upon a proposal of the Minister of Finance, must present within three months a corrective plan (Article 11(2)).

The corrective plan must be in compliance with the SGP requirements (Article 11(3)). The main safeguard is therefore the obligation to ensure consistency with recommendations adopted at Union level under the SGP.

The corrective plan must ensure the return to the MTO, although the legislation is not specific regarding the time horizon for doing so. In addition, the legislation incorporates the principle of proportionality, according to which the corrective measures should be proportioned to the amount of the original deviation (Article 11(3)).

Finally, the Fiscal Council is tasked to assess and monitor the corrective plan (Article 11(2) and Article 7.2(5)-(6)).

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. In addition, the substance of the correction must respect the principle of proportionality and be regularly monitored.

4. The monitoring institution

The Slovenian monitoring institution is the Fiscal Council.

Set-up and statutory regime: The FRA provides for the establishment of the Fiscal Council as an independent State authority charged with the responsibility for monitoring the respect of fiscal rules, including the new structural balanced-budget rule. According to the FRA, the Fiscal Council is to consist of three members, supported in their work by a team of experts. However, the members have not been appointed to date, after several unsuccessful attempts¹. As a consequence, Slovenia has failed to put in place the independent monitoring institution required by the TSCG as part of the national correction mechanism for the structural balanced-budget rule.

Mandate: In terms of the tasks foreseen by the Fiscal Compact and the common principles, according to the FRA the Fiscal Council is responsible for the provision of assessments over whether the correction of deviation from the balanced-budget rule is proceeding in accordance with national rules and plans (Article 7.2(6)) and over the occurrence of circumstances for triggering, extending and exiting escape clauses (Article 7.2(7)). In conjunction with Article 11(1), the broad assessment of compliance with fiscal rules provided in Article 7.2(4) may be read as effectively mandating the Fiscal Council to issue assessments on the necessity to activate the correction mechanism. More generally, the overall mandate of the Fiscal Council is to publish timely assessments and recommendations to the government and the parliament regarding the consistency of fiscal policy with the fiscal rules.

Comply-or-explain principle: The government is obliged by law to present to the Parliament a written position on the assessments of the Fiscal Council. The Parliament has the right, on the basis of the Fiscal Council's assessment, to instruct the government to amend the proposed act or to prepare additional measures (Article 7(4)).

Freedom from interference and capacity to communicate: The law foresees explicitly that the Fiscal Council is an independent authority. In addition, it has the capacity to communicate freely.

Nomination procedure: The FRA establishes that the three members of the Fiscal Council are appointed by the Parliament upon a proposal by the government. The mandate of the Council's members may not be combined with other public function. The members' term lasts five years and is renewable once. The FRA states that a member can be removed from office on grounds of submission of resignation, receiving a sentence involving deprivation of liberty, permanent loss of ability to perform duties or disrespect of the constitutional or other law in the execution of duties. According to the law, the members must be experts in the field of finance or macroeconomics.

Resources and access to information: Funding of the Fiscal Council is provided for in the State budget upon the former's proposal. The law provides that the institution shall employ a

¹ The government's first public call (of August 2015) for applications for the Fiscal Council membership failed to attract a sufficient number of candidates. Following the second call, in February 2016 the government submitted a list of proposed candidates to the parliament, which was subsequently rejected by the latter. The third call for interest was then published setting the deadline for applications on 30 June 2016. On 22 September 2016 the government announced that it was not in a position to present the parliament with a list of candidates based on the applications submitted following the third call for interest.

maximum of four staff members. Administrative tasks for the Fiscal Council are performed by the services of the Court of Auditors. According to Article 7(5) of the FRA, the functioning of the Fiscal Council is to be defined in more detail in the law that regulates public finances. However, both the type of detail and the timing of adoption of the amended Public Finances Act are unknown to date. The law obliges all units of the general government to provide the Fiscal Council with access to all information it finds necessary to perform its duties.

Overall, the set-up of the Slovenian monitoring institution does not comply with the TSCG requirements and common principles to the extent that its members have not yet been appointed. The Fiscal Council has been grounded in law and equipped with appropriate safeguards as to its functional autonomy. Its mandate covers the tasks prescribed by the Fiscal Compact and the common principles, although the assessment of the necessity of triggering of the correction mechanism is only implicit. The comply-or-explain principle is explicitly provided for in the law. Adequate provisions on the Fiscal Council's endowment with resources and access to information are in place. However, its members have not been appointed to date (after several failed attempts) and therefore the institution is not in a position to carry out its independent monitoring function as part of the correction mechanism for the structural balanced-budget rule.

5. Conclusion

The national provisions adopted by Slovenia will be compliant with the requirements set in Article 3(2) of the TSCG and in the common principles if and when the members of the monitoring institution are appointed.