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ROMANIA

to the

REPORT FROM THE COMMISSION

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

ROMANIA

Romania 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 6 November 2012.

The national provisions considered in the assessment are mostly provided for by the Law on Fiscal and Budgetary Responsibility No 69/2010 (LFBR), as amended by Law No 377/2013 amending and supplementing the LFBR adopted on 23 December 2013. The latter was published in the Official Gazette of Romania on 23 December 2013 and its provisions entered into force on 1 January 2014. A codified version of the LFBR was republished in the Official Gazette of Romania on 14 May 2015.

1. Legal status of the provisions

The Law on Fiscal and Budgetary Responsibility as amended by Law No 377/2013 and republished in a codified form (codified LFBR) sets a framework for managing the public finances and annual budgets.

In the Romanian legal order the codified LFBR does not enjoy superior legal status over ordinary budgetary legislation. Moreover, under the Romanian Constitution, the provisions of the TSCG will not take precedence automatically, in the national legal order, over conflicting national laws. Such legal priority is only recognised, in Articles 20 and 148 of the Constitution, for international treaties concerning fundamental rights to which Romania is a party, and for EU legislation.

If a budgetary law were adopted which derogated explicitly or implicitly from the codified LFBR, the only available legal action could possibly be to challenge the conflicting budgetary law before the Constitutional Court for breach of Article 11(1) of the Constitution, according to which the Romanian State undertakes to fulfil as such and in good faith its obligations deriving from the treaties it is a party to. However, it has not been possible to establish definitively if such an action would constitute an effective legal remedy.

The uncertainty and the apparent weakness of the available legal review should nevertheless be balanced by two important considerations.

Firstly, the Romanian authorities gave a formal and public commitment that the national legal framework requires the annual budget bills (including their intra-year amendments) to be adopted in compliance of the provisions of the TSCG and the codified LFBR[1].

Secondly, the strict enforcement of the codified LFBR appear also to be guaranteed by the robustness of the monitoring mechanism set up in accordance with the TSCG (see section 4 below).

Against that background, and in light of the formal commitment provided by the national authorities to interpret the LFBR consistently with Article 3(2) of the TSCG together with the positive assessment of the existence of an independent and operational monitoring institution, Romania'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".

[1] Letter of the Romanian authorities of 29 July 2016.

2. Balanced budget rule

Formulation: Article 3 of the codified LFBR sets the medium-term objective (MTO) within the meaning of the Stability and Growth Pact as the target for the structural balance of the general government. That formulation is hence consistent with the TSCG. The structural balance of the general government is also defined consistently with relevant EU regulations and hence in a manner that is consistent with the TSCG. Subparagraphs (a) and (b) of Article 7 of the codified LFBR set the lower limit for the MTO in line with the specific lower limits laid down by the TSCG.

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

Escape clauses: Article 8(1) provides that a temporary deviation from the balanced budget rule is allowed only under exceptional circumstances and if that deviation does not endanger the fiscal and budgetary sustainability in the medium term. Exceptional circumstances are defined in Article 3 by replicating the relevant provision of the TSCG. The occurrence and the end of existence of exceptional circumstances is announced publicly by the government, after consultation of the Fiscal Council, supported by the comply-or-explain obligation for the government. The Fiscal Council may also directly inform the government, if it is of the opinion that exceptional circumstances have occurred or have ceased to exist. The Romanian Parliament and the Commission shall be informed accordingly.

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 14 of the codified LFBR.

Activation: Article 14 of the codified LFBR requires that the correction mechanism is triggered automatically in the event of a significant observed deviation. The notion of significant definition refers explicitly to the notion provided under Article 6(2) of Regulation (EC) No 1466/97. The identification of a significant deviation can stem from either the Union institutions, or from the government on its own initiative, in which case the opinion of the Fiscal Council is requested. The government has to notify Parliament of the existence of the significant deviation.

Substance of the correction: In the event of activation, the government has to approve or, as the case may be, send to Parliament for approval a set of corrective measures (Article 14).

The measures must take effect at the latest by the following budget year, i.e. two years after the occurrence of the significant deviation. The legislation explicitly states the sub-principle of proportionality, whereby the corrective measures shall be proportionate to the size of the deviation. In addition, the correction plan must be consistent with the Stability and Growth Pact and recommendations from the Union institutions based thereon, in line with the principle of consistency (principle n° 2). The measures must concern in priority the budgets or entities assessed to be at the origin of the significant deviation. The Fiscal Council is explicitly mandated to issue opinions on the corrective plan and its implementation.

The codified LFBR (Article 13) also incorporates a system of graduated response in the event that general government debt reaches successive thresholds, specifically 45%, 50%, 55% and

60% of GDP. The system provides for increasingly binding proposals for containing and reducing public debt, including the possibility of specific measures such as wage freezes.

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. It is automatically triggered in the event of a significant deviation defined as in the EU framework. The corrective measures must take effect within two years after the occurrence of the deviation, be proportionate to the deviation, and consistent with Union-level recommendations.

4. The monitoring institution

The Romanian monitoring institution is the Fiscal Council.

Set-up and statutory regime: The Fiscal Council is grounded in law (Chapter X of the codified LFBR). It is set up as an independent authority within the Romanian Academy since the start of its operations in June 2010. Pursuant to Article 53 of the codified LFBR, the Fiscal Council supports the government and parliament in preparing and carrying out budgetary policies. Its board consists of five members, including a President and a Vice-President, and is assisted by a technical secretariat.

Mandate: The codified LFBR confers upon the Fiscal Council the specific responsibilities required under the TSCG and the common principles. According to Article 53(2)(b), one of the chief tasks of the Fiscal Council is to monitor compliance with the fiscal rules specified in the codified LFBR (including those regarding the correction mechanism and exceptional circumstances). Article 14(7) provides that the government consults the Fiscal Council when identifying a significant deviation. The measures to correct the deviation and their implementation must also be assessed by the Fiscal Council (Article 14(8)). The government is obliged to also request an opinion from the Fiscal Council when claiming the beginning or end of exceptional circumstances (Article 8(2) and Article 8(5), respectively). Moreover, the Fiscal Council may identify and directly signal to the government the beginning or the end of exceptional circumstances, while presenting an underpinning economic analysis. As a part of its broader mandate, the Fiscal Council is also tasked with analysing the official macroeconomic and budgetary forecasts, the fiscal and budgetary strategy, annual budget laws, budget amendments and other legislative initiatives, and with assessing the performance of the government against the fiscal objectives (Article 53(2) of the codified LFBR).

Comply-or-explain principle: According to Article 8(9) of the codified LFBR, the government must publicly explain the differences of opinion whenever it fails to agree with the opinions issued by the Fiscal Council on the existence of a significant deviation, the measures to correct the deviation and their implementation, and the beginning or end of exceptional circumstances.

Freedom from interference and capacity to communicate: The independence of the Fiscal Council is stated in Article 53 of the codified LFBR. According to the same article, its members cannot request or receive instructions from public authorities or from any other institution or authority. As regards communication, the Fiscal Council must publish on its website[2] the opinions, forecasts, analyses and recommendations foreseen in Article 53(2) of the codified LFBR. By the end of May each year, the Fiscal Council publishes an annual report.

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

Nomination procedure: The five members of the board are appointed by the Parliament for a non-renewable nine-year term. The Romanian Academy, the National Bank of Romania, the Academy of Economic Studies in Bucharest, the Romanian Banking Institute and the Romanian Banking Association each nominate one member. The President and Vice-President are elected by the members of the Fiscal Council by simple majority. Board members are required to have professional experience in the field of economic, budgetary or financial policies, hold an economic university degree, professional seniority of at least ten years and have good reputation. Provisions on conflict-of-interest and incompatibilities with political offices apply. The law also establishes strict circumstances under which membership shall cease.

Resources and access to information: Article 60(1) of the codified LFBR provides that the Fiscal Council sets its own budget, which is an annex to the budget of the Romanian Academy, its host institution. The technical secretariat is organized within the Romanian Academy according to rules established by the Fiscal Council and may not exceed ten employees (currently, it employs seven experts in economic and budgetary issues and two administrative staff). Access to information and documents is grounded in law (Article 54 of the codified LFBR), and clear deadlines and consequences in case of non-delivery are foreseen.

Overall, the set-up of the Romanian monitoring institution is compliant with the TSCG requirements and common principles. The Fiscal Council 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 the Fiscal Council's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Romania are compliant with the requirements set in Article 3(2) of the TSCG and in the common principles in light of the formal commitment provided by the national authorities to interpret the LFBR consistently with Article 3(2) of the TSCG together with the compliant set-up of the monitoring institution.