



Brussels, 22.2.2017  
C(2017) 1201 final

ANNEX 12

**ANNEX**

**Country annex**

**ITALY**

*to the*

**REPORT FROM THE COMMISSION**

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

## ITALY

Italy 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 September 2012.

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

- the constitutional law No1 of 20 April 2012 amending the Constitution,
- the Law 243/2012 of 24 December 2012 on provisions for implementation of the balanced budget principle pursuant to Article 81 paragraph 6 of the Constitution, as amended by Law No 164 of 12 August 2016 (Law 243/2012).

### 1. Legal status of the provisions

The constitutional law No1 of 20 April 2012 (the 2012 constitutional law) has introduced in the Constitution a broad principle of budgetary balance and sustainability of public debt for the general government (Article 97), as well as a structural balance principle for the State (Article 81) and a headline balance principle for local governments (Article 119). The 2012 constitutional law also required the adoption of a law detailing those provisions and approved by an absolute majority of the members (i.e., abstentions count as a negative vote) in both Chambers of Parliament. That law, Law 243/2012, enshrines a structural balanced-budget rule for general government, the correction mechanism in the event of significant observed deviations, and the monitoring institution, the Parliamentary Budget Office (PBO). The relevant provisions are therefore anchored at constitutional level and laid out in a law of stronger force than ordinary budget law.

Against that background, Italy'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 balanced budget rule is implemented via the Constitution and Law 243/2012 which is a law that has a higher status than an ordinary law.

Article 97 of the Constitution contains a broad requirement that the general government shall ensure budgetary balance and sustainability of public debt in accordance with the EU legal order. Article 81 of the Constitution requires the State budget to ensure balanced budgets in cyclically-adjusted terms ("*taking into account the adverse and favourable phases of the economic cycle*"). Article 119 of the Constitution requires local governments to ensure balanced budgets in nominal terms and contribute to ensuring compliance with the budgetary constraints derived from Union law.

As required by Article 81 of the Constitution, those constitutional provisions have been developed in Law 243/2012. Article 3(1) of Law 243/2012 recalls the constitutional principle of Article 97 of the Constitution and requires all entities forming the general government sector to contribute to the achievement of the balanced budget. Article 3(2) specifies that a balanced budget corresponds to the medium-term objective (MTO). The law defines the MTO by reference to the "*EU legal order*".

In addition, the Italian authorities confirmed to the Commission that provisions stemming from the TSCG are also of direct effect in national law. As the lower limits for the structural balance are explicitly stated in Article 3(1)(b) of the TSCG, their effective incorporation in national legal order is ensured without further specification in national provisions. In addition, Law 243/2012 provides that the definition of the structural balance shall be "*in accordance with EU law*".

Article 3(3) of Law 243/2012 contains provisions incorporating the MTO in the budgetary planning. It requires financial and budgetary planning documents to set budgetary targets in such a way as to ensure the MTO is met or adherence to the adjustment path. Furthermore, Articles 14 and 15 of Law 243/2012 make a link between the targets set out in the planning documents and the annual budget law for the State. Specifically, Article 14(1) defines the State budget as balanced if the deficit is in line with the targets, while Article 15(1) requires the budget bill to contain provisions that are instrumental in achieving the targets. In addition, Article 9 specifies the conditions for a balanced budget of local governments in terms of both planning and outturn, in line with the principle set out in the Constitution.

**Convergence towards the MTO:** As noted, according to Article 3(3) of Law 243/2012, the financial and budgetary planning documents shall set budgetary targets in such a way as to ensure the MTO is met or the adjustment path is adhered to. This ensures consistency with the TSCG in respect of requirements regarding convergence to the MTO.

**Escape clauses:** Article 6 of Law 243/2012 provides that the temporary deviation from the balanced budget rule is allowed only in exceptional circumstances, which replicates the provisions of the TSCG. The definition of exceptional circumstances does not contain the requirement that the temporary deviation can be allowed only as long as it does not endanger medium-term fiscal sustainability. At the same time, Article 6 establishes the notion of "exceptional circumstances" in accordance with EU law and the TSCG, which offers a safeguard against an abusive interpretation. The implementation of a temporary deviation in the event of exceptional circumstances requires prior consultation with the Commission and a subsequent request to the Parliament, specifying the magnitude, duration and the use of resources obtained during the deviation, as well as the plan to reach again the budgetary targets. The law requires proportionality between the duration of the deviation and the seriousness of the triggering event. The request for deviation has to be approved by both Houses of the Parliament by an absolute majority.

Article 3(4) of Law 243/2012 provides that the budgetary targets can, in compliance with Union law, take into account the financial effects of major structural reforms with significant positive effects on the sustainability of public finances. That provision resembles the "structural reform clause" found in Article 5(1) of Regulation (EC) No 1466/97. Although the formulation of Article 3(4) appears more open, as it does not contain some requirements set out in Regulation (EC) No 1466/97, such as the need to preserve an appropriate safety margin against the deficit reference value, the requirement of compliance with Union law which it contains provides safeguards against too permissive interpretation of that provision.

**Overall,** the balanced budget rule complies with the TSCG requirements. Although the MTO is defined by references to "the EU legal order" which does not cover the 0.5% limit introduced by the TSCG, because the TSCG takes effect in Italian law directly the formulation of the balanced budget rule can be considered in line with the TSCG. That reasoning has been conveyed by the authorities to the Commission. The requirement of compliance with EU law as regards the escape clauses guards against an abusive use of the provision allowing a temporary deviation in the event of structural reforms.

### 3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Article 8 of Law 243/2012, complemented by provisions on the Parliamentary Budget Office (PBO), which is the Italian monitoring institution.

**Activation:** According to Article 8(1) of Law 243/2012, the correction mechanism is activated on an ex post basis in the event of a significant negative deviation of the structural balance from the programmed objectives, as set out in the planning documents required under Article 3(3). 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. As clarified by the Italian authorities, Article 8(1) requires automatic activation of the correction mechanism when a significant deviation is identified at Union-level in line with the provisions of Article 6(2) of Regulation (EC) No 1466/97. In addition, the government also monitors compliance during budget execution and reports to Parliament in case of risks of deviations (Article 7 of Law 243/2012). Finally, the PBO assesses the need for activation (Article 18(1) of Law 243/2012) although its advice is not binding for the government.

**Substance of the correction:** In the event of activation of the correction mechanism, the government must highlight the magnitude and causes of the deviation, and simultaneously indicate measures ensuring attainment of the structural programmed objective, with effect at least from the financial year following the year in which the deviation was ascertained (Article 8(1) of Law 243/2012). The financial and budgetary planning documents must indicate the size and time horizons of the corrections to be borne by sub-sectors of general government, taking into account their respective contributions to the deviation (Article 8(2) of Law 243/2012).

The main requirement of Law 243/2012 (Article 8(1)) is that the corrective measures should ensure attainment of the programmed structural targets at the latest the year following that in which the deviation is reported. This equates to requiring a return to the programmed structural target at most two years after the occurrence of a significant deviation, a corrective rule that is consistent with the TSCG requirement of implementing corrections "over a defined period of time" and the common principles (principle n° 4).

While a possible interpretation of Article 8(1) of Law 243/2012 is that it only creates an obligation for the government to indicate measures going in the direction of a correction without ensuring full correction, the Italian authorities have formally confirmed that, as a rule, Article 8(1) creates an obligation to present measures ensuring a return in full to the programmed structural target within the year following that in which the deviation is reported<sup>1</sup>.

In addition, while Law 243/2012 does not exclude the possibility of revision of the programmed structural targets, thereby introducing a risk of shifting forwards the objectives, the Italian authorities have also formally confirmed that the corrective plan must always be consistent with any recommendation at Union-level under the second, fourth and fifth subparagraphs of Article 6(2) of Regulation (EC) No 1466/97<sup>2</sup>. That commitment provides a safeguard in line with the principle of consistency with the Union budgetary surveillance framework (principle n° 2).

---

<sup>1</sup> Letter of the Italian authorities, 1 September 2016.

<sup>2</sup> Letter of the Italian authorities, 1 September 2016.

Finally, the PBO is mandated to assess the use of the correction mechanism (Article 18(1) of Law 243/2012).

**Overall:** The correction mechanism is compliant with the TSCG requirements and the common principles in light of the clarifications provided by the Italian authorities. The correction mechanism is automatically activated once a significant deviation is identified at national or 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 Italian authorities regarding the operation of that corrective rule.

#### 4. The monitoring institution

The Italian monitoring institution is the PBO.

**Set-up and statutory regime:** Article 5(1)(f) of the 2012 constitutional law provides for the "*establishment in the Chambers of Parliament, respecting their constitutional autonomy, of an independent body to be assigned the tasks of analysis and verification of public finance developments and compliance with the budget rules*". By way of execution of that obligation, Law 243/2012 (Article 16) established the PBO as "*an independent organism for the analysis and verification of public finances and for assessment of compliance with the budget rules*". The PBO consists of a Board of three members, including a President. The Board is assisted by dedicated support staff, under the steering of a Director General.

**Mandate:** Law 243/2012 (Article 18(1) and 18(2)) assigns to the PBO a number of broadly-defined functions concerning economic and financial analyses. Among those functions, the PBO performs analyses, verifications and assessments regarding compliance with budgetary rules, the activation and use of the corrective mechanism, and deviations from objectives arising from the exceptional circumstances referred to in Law 243/2012. Law 243/2012 provides that the PBO work plan must in any case provide for carrying out the functions assigned to the PBO in accordance with the EU legal order.

**Comply-or-explain principle:** Law 243/2012 (Article 18(3)) provides that if, in the exercise of the functions mandated by Article 18(1), the assessments by the PBO "*differ significantly from those of the Government, at the request of at least a third of the members of a Parliamentary Committee responsible for public finance issues, the Government shall illustrate the reasons why it intends to confirm its assessments or align them with those of the [PBO]*". Thus, the application of the 'comply-or-explain' principle is conditional on the fulfilment of a procedural step by the members of Parliament. However, the Italian authorities have formally committed to respond publicly in the case of possible significant differences in assessment compared to the PBO<sup>3</sup>.

**Freedom from interference and capacity to communicate:** According to Law 243/2012 (Article 16(2)), the PBO must operate with full autonomy and independence of judgement and assessment. Article 18(4) requires the assessments carried out by the PBO in the framework of the functions mandated by Article 18(1) to be published on its website<sup>4</sup>. According to Article 18(2), the PBO President has to attend hearings of the parliamentary committees responsible for public finances, if so requested.

**Nomination procedure:** Law 243/2012 (Article 16(2)) establishes that the Board members must be chosen from among persons of recognised independence and proven competence and

<sup>3</sup> Letter from the Italian authorities of 1 September 2016.

<sup>4</sup> <http://www.upbilancio.it>

experience in economics and public finance at the national and international level. The Board members are appointed by decree adopted jointly by the Presidents of the Senate and the Chamber of Deputies, chosen from a list of ten persons indicated by the parliamentary committees responsible for public finances. Board members serve non-renewable six-year terms. Their early dismissal is envisaged only in cases of serious breaches of duty, whereby members can be removed by decree of both Presidents of the Chambers of Parliament, upon request of the parliamentary committees in charge of public finance issues, adopted by a two-thirds majority of their members.

**Resources and access to information:** Law 243/2012 (Article 19) provides an authorisation of EUR 3 million per year in favour of each Parliamentary Chamber for the expenditure necessary for the functioning of the PBO. The financial resources established by Law 243/2012 can only be changed by the budget law and should in any case be sufficient to ensure effective fulfilment of the PBO functions. Within the limits of its budget, the PBO manages autonomously the expenditure for its functioning. By law the support staff is capped initially to 30 and ultimately to 40. According to Law 243/2012 (Article 17(1)) the PBO selects its staff in full autonomy, solely on the basis of merit and competence criteria, with exclusive reference to functional requirements.

According to Law 243/2012 (Article 18(6)), all government entities, public authorities and entities that belong to public holdings must ensure the PBO's access to all databases regarding economic or public finance issues, in order to allow the PBO to carry out its institutional tasks. For access to the data collected for statistical purposes, the PBO is treated the same as the institutions and offices within the national statistical system.

**Overall,** the set-up of the Italian 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 PBO is grounded in law and its mandate covers the tasks prescribed by the TSCG and the common principles. The legal framework includes appropriate safeguards for functional autonomy. The 'comply-or-explain' principle enshrined in the law is conditional on a procedural step that needs to be undertaken by the Parliament. However, the Italian authorities have formally committed to respond publicly in the case of possible significant differences in assessment compared to the PBO. Adequate provisions on the PBO's endowment with resources and access to information are in place.

## **5. Conclusion**

The national provisions adopted by Italy 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 the formal commitment provided by the national authorities to apply the comply-or-explain principle in line with the common principles.