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ANNEX 7

ANNEX

Country annex

FINLAND

to the

REPORT FROM THE COMMISSION

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

FINLAND

Finland 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 21 December 2012.

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

- The Constitution of Finland,
- The Act on implementation of the TSCG and the budgetary framework directive No 869/2012 (Law No 869/2012) ("Fiscal Policy Act") as well as its subsequent amendments as introduced by the Act No 18/2017,
- The Act on the National Audit Office No 676/2000 (Law No 676/2000),
- Amendments made to the Act on the National Audit Office (Law No 870/2012), adopted on 18 December 2012, as well as the Rules of Procedure of the National Audit Office (in their version adopted on 28 June 2016).

1. Legal status of the provisions

Finland's annual budget does not take the form of an Act of Parliament. The budget is given by way of a Government Proposal. Since the Fiscal Policy Act takes the form of an Act of Parliament, the budgetary process must comply with it. The budget (not being formally an Act of parliament) would need to respect the Fiscal Policy Act, which integrates the TSCG into the Finnish legal system.

The Chancellor of Justice (oikeuskansleri), who sits in Government sessions, advises on the legality of Government Acts (preventive check). The Chancellor of Justice is the supreme guardian of law in Finland. The Chancellor controls inter alia the legality of draft Government decisions. If there is an issue of legality raised by the Chancellor in relation to a proposal from a Ministry, the matter would be withdrawn from the Government session. Section 112 of the Constitution provides that if the Chancellor notices that there is reason to make observations on the legality of the decision he shall make his observations with reasons. If the observations are not taken into account, the Chancellor shall register his position in the minutes of the Government session or take other appropriate measures.

However, once the budget is adopted by the Parliament, there is apparently no effective judicial review of it.

The uncertainty of the available ex post legal review should nevertheless be balanced by the fact that the Fiscal Policy Act is of a higher status than the legal form of the budget, the role of the Chancellor of Justice and the fact the strict enforcement of the Fiscal Policy Act appears 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 the light of the positive assessment of the existence of an independent and operational monitoring institution, the Finnish 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 embedded in sections 1 and 2 of the Law No 869/2012.

Section 1 of the Law No 869/2012 provides that the legislative provisions of the TSCG "*are valid as law inasmuch as Finland has committed itself to them*", which incorporates the relevant part of the TSCG as part of the Finnish legal system. As confirmed by the authorities, section 1 ensures that the provisions of the balanced budget rule stemming from Article 3 of the TSCG are fully brought into force in the Finnish legal system. As those provisions are explicit in the case of the balanced budget rule (the structural balance should be at the medium-term objective (MTO); the lower limit should be -0.5% or -1%), their effective incorporation in national legal order is ensured without further specification in national legislation. Moreover, section 2 gives the government the responsibility to set the MTO in accordance with the TSCG.

Convergence towards the MTO: There are no provisions in Law No 869/2012 on the implementation of the TSCG regulating convergence towards the MTO, but as Finland reached the MTO after the Law No 869/2012 entered into force, it is the provisions on deviations from the MTO, i.e. the correction mechanism, which are relevant.

Escape clauses: As for the formulation of the balanced budget rule, section 1 of Law No 869/2012 ensures that the provisions regarding "exceptional circumstances" are directly brought into force in the Finnish legal system.

Overall, the balanced budget rule complies with the TSCG requirements. The transposition of the balanced budget rule is based on direct references to the TSCG, which ensures full consistency of national provisions with the TSCG. This way to bring the balanced budget rule into force in the Finnish legal system is acceptable because the related provisions included in the TSCG are explicit and specific enough.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Section 3 of Law No 869/2012, including amendments introduced by Act No 18/2017.

Activation: The activation of the correction mechanism is linked to the significant deviation procedure at Union level. The government may also trigger the procedure on its own initiative.

Specifically, following the issuance of a Council recommendation in accordance with the second subparagraph of Article 6(2) of Regulation (EC) No 1466/97, the government must present a report containing an assessment of the size of the deviation and an account of the measures required to correct the deviation before the end of the following calendar year at the latest. Moreover, in the event of a Council recommendation in accordance with the fourth or fifth sub-paragraphs of Article 6(2) of Regulation (EC) No 1466/97 (i.e., in the event of failure to take appropriate action following the issuance of a Council recommendation in accordance with the second subparagraph of Article 6(2)), the government must present without undue delay a statement to Parliament containing an evaluation of the size of the deviation in the structural balance as well as a corrective plan.

In addition, the government may also take corrective measures on its own initiative if it assesses that there is a deviation in the structural balance jeopardising the achievement of the medium-term objective. The legislation is consistent with either an ex ante use of this

provision, based on forecast data, or an ex post use, based on an observed significant deviation.

Finally, the National Audit Office is mandated (Section 7 of Law No 869/2012) to monitor compliance with the rules laid down in Law No 869/2012, and is enabled to issue assessments on the need for corrective policies.

Substance of the correction: The corrective plan consists of an account of the legislative and other measures required to correct the deviation before the end of the following calendar year at the latest (Section 3 of Law No 869/2012). That provision implies that the deviation of the structural balance from the MTO or the adjustment path thereto would be fully corrected two years after the occurrence of a significant deviation, a rule that is consistent with the TSCG's requirement of correcting 'over a defined period of time' and with the common principles by de facto ensuring conformity to the sub-principles of proportionality, MTO adherence and fixity (as per principle n° 4).

In addition, to the extent that the triggering of the national corrective procedure is linked to the significant deviation procedure at Union level, it can be expected as well that the substance of the correction would also be closely related to Union-level recommendations, in line with the principle of consistency with the Union budgetary surveillance framework.

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. The automatic activation of the correction mechanism is linked to recommendations made by the Union institutions. 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.

4. The monitoring institution

The Finnish monitoring institution is the National Audit Office (NAO).

Set-up and statutory regime: The NAO is an independent institution with a constitutional audit mandate, which has also been entrusted to perform the tasks laid down in Law No 869/2012. Within the NAO, the Performance and Fiscal Policy Audit Department (PFPAD) is in charge of monitoring and evaluating fiscal policy. The entity is headed by a Deputy Auditor General.

Mandate: The NAO's general mandate provides the necessary basis for carrying out the tasks foreseen by the Fiscal Compact and the common principles. Even before the TSCG ratification by Finland, the NAO had been assessing the observance of national fiscal policy rules and their effectiveness. Section 7 of the Law No 869/2012 confers upon the NAO the task of monitoring compliance with the balanced-budget rule, with further details provided in the Government Proposal for the Law No 869/2012. Given the new tasks assigned to the NAO, the Law No 870/2012 introduced changes to the Act concerning the National Audit Office. In accordance with the Rules of Procedure of the NAO, the PFPAD has specifically been assigned to carry out the monitoring and evaluation of fiscal policy. On the basis of this monitoring, the NAO is to inform the government on the findings. As the activation of the correction mechanism is closely associated with the EU procedure on significant deviation, NAO has been attributed a broad-based mandate in this area. Its role in triggering, extending and exiting escape clauses has been formulated in a general way. After the expiry of escape clauses, the NAO is to issue its assessment on whether the corrective measures to return to the MTO are sufficient. Other tasks assigned to the NAO refer to the submission of observations on the need of adjustment policies prior to the activation of the correction mechanism and the

assessment of the quality of the macroeconomic forecasts underlying Government's fiscal policy.

Comply-or-explain principle: According to the Act No 18/2017 amending Section 7 of the Law No 869/2012, following the NAO report to the Government on compliance with fiscal rules, the latter shall make, in case of diverging views, a public statement on the NAO conclusions. As additional background, it is worthwhile noting that, in accordance with the Constitution and with Section 5 of Law No 676/2000, the NAO may request a reply from the entity subject to its oversight. The NAO is also empowered to table a Parliamentary Report to the plenary of the Parliament and initiate a discussion, on the basis of which the Parliament may propose a vote of confidence on the Government. In the course of those parliamentary proceedings the Government and relevant ministries are also required to give replies.

Freedom from interference and capacity to communicate: NAO's independence is guaranteed according to Section 90 of the Constitution and the Act on National Audit Office. Its members' freedom from interference is in accordance with the general constitutional principle of independence guaranteed by the Act on the Civil Servants of the Parliament (Act No 1197/2003). The right for the NAO to report freely and to communicate publicly is also guaranteed. Section 6 of Law No 676/2000 specifies that the NAO shall submit a report on its activities to the Parliament each year and separate reports as necessary. More specifically in relation to the TSCG-related tasks, section 24 of the Rules of Procedure of the NAO authorise the Deputy Auditor General heading the PFPAD to decide on the reports and statements to be submitted to the Government. The PFPAD releases twice a year monitoring reports, which are published on its dedicated web page within NAO's website¹.

Nomination procedure: The Auditor General heading the NAO is elected by the Parliament and has a fixed mandate of six years, whereas there are no time limits for the rest of civil servants employed in the NAO, included the PFPAD. The Auditor General may only be removed from office by a decision of the plenary of the Parliament and only on the grounds defined in the Act, such as serious negligence of duties or incapacity to perform duties. The Deputy Auditor General heading the PFPAD is appointed by the Auditor General on the basis of merit. According to Section 43 of the Rules of Procedure of the NAO, the holder of that post must possess a suitable master's degree and good knowledge of audit, assessment or research activities and general government finances, central government and fiscal policy, as well as practical management skills and management experience. As there are no provisions establishing a fixed term for the Deputy Auditor General, the holder of the post can be reassigned subject to the decision of the Auditor General, which is suboptimal from the point of view of independence. As regards the staff of the PFPAD, like any other NAO personnel they may be removed from office or transferred to other positions only under circumstances defined in the Act on the Civil Servants of the Parliament and according to the procedure defined by the Act; such decisions may be appealed in the Court.

Resources and access to information: Section 3 of NAO's Rules of procedure states that NAO must allocate in its personnel and budget plan adequate personnel and other resources to the PFPAD for fiscal policy evaluation and assessment. Within the overall NAO budget, a specific item has been assigned to the PFPAD for fiscal policy evaluation. As regards the access to information, the Constitution itself (Section 90) guarantees NAO's right to receive all information and documents necessary for the performance of its duties from public authorities and other entities that are subject to its control.

¹ https://www.vtv.fi/en/functions/fiscal_policy_evaluation

Overall, the set-up of the Finnish monitoring institution is compliant with the TSCG requirements and common principles. The NAO is grounded in law and its mandate has been expanded to provide the necessary basis for carrying out – through the PFPAD – the tasks foreseen by the Fiscal Compact and the common principles. The legal framework includes appropriate safeguards for functional autonomy, although provisions establishing a fixed term for the Deputy Auditor General coordinating the PFPAD are lacking. The 'comply-or-explain' principle is explicitly provided for in the law. Adequate provisions on the NAO and PFPAD's endowment with resources and access to information are in place.

5. Conclusion

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