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ANNEX 20

ANNEX

Country annex

SLOVAKIA

to the

REPORT FROM THE COMMISSION

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

SLOVAKIA

Slovakia 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 17 January 2013.

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

- the Constitution,
- the Act No 436/2013 Coll. adopted on 29 November 2013 which introduced in Act No 523/2004 Coll. on the General Government Budgetary Rules a new Article (Article 30a),
- the constitutional law on fiscal responsibility No 493/2011 Coll. of 8 December 2011, which established the Council for Budget Responsibility as a monitoring institution.

1. Legal status of the provisions

The provisions of Article 30a are part of an ordinary law. As such, they have binding force on the public administration and on private persons. The text of Article 30a indicates no temporal limitation of its validity and can therefore be considered a permanent measure. On the other hand, Article 30a is an ordinary law and is clearly not of a constitutional nature, as opposed to the constitutional law on fiscal responsibility.

Article 59(1) and (2) of the Slovak Constitution provide that both the annual budget and the general budgetary rules be adopted by ordinary law. Therefore, it cannot be excluded that the law on the annual budget would expressly amend Article 30a or that it would contain provisions that would be incompatible with it.

However, despite the Act on General Government Budgetary Rules being an ordinary law, Article 7(5) of the Constitution ensures the primacy of international treaties over conflicting national laws. Article 86(d) of the Constitution empowers the Slovak Parliament to decide on whether a particular treaty is an international treaty according to Article 7(5) of the Constitution, thereby establishing its primacy over conflicting national laws. The Slovak authorities informed the Commission that according to Notice No 18/2013 Coll. of the Ministry of Foreign and European Affairs of the Slovak Republic, which is the instrument by which the TSCG was promulgated, the Parliament decided that the TSCG is a treaty which has primacy over the laws for the purposes of Article 7(5) of the Constitution¹. Consequently, pursuant to Article 125(1)(a) of the Constitution, the Constitutional Court of the Slovak Republic has competence to review the compatibility of ordinary laws with the TSCG. According to Article 130(1) of the Constitution, that procedure can only be initiated by at least one-fifth of all members of the Slovak parliament; the President of the Republic; the government; a Slovak court; the prosecutor general; or the ombudsman if the issue concerns human rights.

Against that background, Slovakia'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 Slovak authorities of 15 July 2016.

2. Balanced budget rule

Article 30a(1) requires the "*general government budget*" to be balanced or in surplus. That requirement applies to the general government balance in structural terms, as specified in Article 30a(1) and confirmed by the Slovak authorities. The enshrinement of the medium-term objective (MTO) in the legislation is ensured by Article 30(a)(1) which refers to the requirement to respect the adjustment path towards the MTO, therefore acknowledging the MTO as the overarching fiscal target. Article 30a(1) also mentions that the MTO one must be defined in line with the TSCG and the Stability and Growth Pact (SGP)². Moreover, the MTO is also referred to as the central target in Article 30a(2), on the triggering of the correction mechanism in the event of a significant deviation.

Article 30a(1) also specifies that the "*general government budget*" is considered balanced if the structural deficit is equal to or lower than 0.5% of GDP. The structural deficit can be equal to or lower than 1% of GDP under the conditions specified in Article 30a(1) in line with the TSCG. As confirmed by the authorities, those provisions set the lower limits for the structural balance at 0.5% of GDP or 1.0% of GDP in line with the TSCG.

Convergence towards the MTO: The adjustment path condition set out in Article 30a(1) is satisfied if the adjustment path towards the medium-term objective is ensured in line with the TSCG and the SGP.

Escape clauses: Article 30a(3) provides that the correction mechanism does not apply in the event of exceptional circumstances. They are not displayed directly in the Act, but by mean of reference to Article 3(3)(b) of the TSCG. The existence of exceptional circumstances is declared by the government on the proposal by the Ministry of Finance and subject to a prior assessment by the Council for Budget Responsibility (CBR).

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

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Article 30a(2).

Activation: According to Article 30a(2), the Ministry of Finance publishes a notice within given deadlines (30 June and 30 November) on whether a significant deviation from the MTO or from the adjustment path thereto has occurred. Article 30a(2) refers explicitly to the notion of significant deviation in Regulation 1466/97. As confirmed by the Slovak authorities, the correction mechanism is automatically triggered following the identification of a significant deviation at Union-level under Article 6(2) of Regulation 1466/97. The Ministry of Finance may also activate the correction mechanism on its own initiative if it identifies a significant deviation from the MTO or the adjustment path thereto. Finally the CBR is mandated to assess the existence of significant deviations, and the government must take position *vis-à-vis* those assessments (Article 30a(4)).

Substance of the correction: In the event of activation, the Ministry of Finance must prepare a corrective plan and discuss the corrective measures with representatives of sub-levels of the general government, after which the government decides on the content of the corrective plan.

The correction plan must respect recommendations addressed to Slovakia under the preventive and corrective arms of the SGP (Articles 5 and 6 of Regulation (EC) No 1466/97

² "A balanced budget or a surplus budget of the general government, including the adjustment path towards the medium-term objective, shall be ensured in line with the international treaty binding on the Slovak republic and separate Regulations".

and Article 3(4) of Regulation (EC) No 1467/97). The main safeguard is therefore the obligation to ensure consistency with recommendations adopted at Union level under the SGP.

In addition, the amount of the correction must take into account the magnitude of the deviation. Therefore, while the legislation does not contain a specific national corrective rule, it incorporates an implicit reference to the principle of proportionality, as confirmed by the Slovak authorities.

Finally, the CBR will assess the correction plan and regularly monitor its implementation, as confirmed by the Slovak authorities (see Section 4).

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. As confirmed by the Slovak authorities, it stresses consistency with the Union budgetary surveillance framework, whereby the activation and substance of the correction are linked to recommendations addressed by the Union institutions, and the substance of the correction must respect the principle of proportionality and be regularly monitored.

4. The monitoring institution

The Slovak monitoring institution is the CBR.

Set-up and statutory regime: The CBR, which started operating on 1 March 2012, is grounded in the constitutional law on fiscal responsibility of 8 December 2011 (Articles 3 and 4). It is a stand-alone body, set up to monitor and assess public finance developments as well as compliance with fiscal rules. The CBR consists of a chairman and two members, who are supported by a permanent secretariat.

Mandate: Article 30a(2) and (4) of Act No 523/2004 confers upon the CBR the specific responsibilities required under the Fiscal Compact and the common principles. The mandate includes publishing assessments over the occurrence of circumstances warranting the activation of the correction mechanism and assessing the proposal for correction. The CBR is also entrusted with the responsibility for stating the beginning and the end of the duration of special circumstances warranting the activation of escape clauses (Article 30a(4)). Whereas the law does not explicitly foresee a delivery of regular assessments by the CBR of the progress of the correction, the Slovak authorities have formally confirmed³ that the law should be understood as providing implicitly that assessment of application or non-application of the correction includes also information on whether the correction is proceeding in accordance with national rules and plans. As a part of its broader mandate, the CBR is also tasked with producing analyses of long-term sustainability of public finances, general assessments of compliance with fiscal rules and any reports relating to the management of public finances.

Comply-or-explain principle: According to Article 30a(4) of Act No 523/2004, the Ministry of Finance is obliged to publish its opinions on the CBR's assessments regarding the possible activation of the correction mechanism and the application of the escape clauses. Should the Government choose not to apply the correction mechanism proposed by the Ministry of Finance (on which proposal the CBR had previously published its assessment), it is obliged to present a written justification for its decision to the Parliament. Regarding the assessments on whether the correction is proceeding in accordance with national rules and plans, that task is

³ Letter from the Slovak authorities of 15 July 2016

implicitly conferred upon the CBR and consequently the "comply-or-explain" principle is not specified in that respect. However, the Slovak authorities have formally confirmed that the Ministry of Finance would also publish opinions on CBR assessments regarding the progress of the correction.

Freedom from interference and capacity to communicate: The constitutional law on fiscal responsibility (Article 3) clearly states that the CBR is an independent body and its members are banned from simultaneously holding certain important (mainly political) offices enumerated by the law. The CBR has the capacity to communicate freely in a timely manner, among others by the means of its dedicated website⁴.

Nomination procedure: The chairman of the CBR is elected and dismissed by the Parliament upon a proposal by the Government. The other two members are nominated by the Parliament based on the proposal by the President of the Slovak Republic and the Central Bank Governor respectively. The members' term is non-renewable and lasts seven years. The nomination procedure ensures that the CBR members possess adequate skills and experience as the law requires them to hold a master's diploma and have no less than five years of experience in the area of public finance and macroeconomics. The CBR members can only be dismissed from office by the parliament in case of a sentence for an intentional criminal offence, judicial deprivation or limitation of legal capacity or incapability of performing the office for six months.

Resources and access to information: The CBR is financed from the budget of the central bank, which in turn can request reimbursement from the Ministry of Finance. Its budget in 2015 amounted to EUR 1.3 million. The CBR has a secretariat which employs 13 experts in economics and budgetary matters assisted by four employees responsible for administrative tasks. Any entity within the general government sector is obliged by law to provide information requested by the CBR.

Overall, the set-up of the Slovak 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 CBR has been grounded in a constitutional 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. The "comply-or-explain" principle is explicitly provided for in the law in terms of the activation of the correction mechanism as well as escape clauses and the Slovak authorities have formally confirmed that it would also be applied regarding the assessment on the progress of the correction. Adequate provisions on the CBR's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Slovakia 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 apply the comply-or-explain principle in line with the common principles.

⁴ <http://www.rozpovetovara.sk>