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ANNEX 3

ANNEX

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BULGARIA

to the

REPORT FROM THE COMMISSION

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

BULGARIA

Bulgaria 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 January 2014.

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

- the Law on Public Finance (LPF), in particular, chapter two thereof, published on 15 February 2013, in force since 1 January 2014, as amended on 7 June 2016,

- the Law on Fiscal Council and Automatic Correction Mechanisms (LFCCM), adopted on 8 April 2015 and in force since 21 April 2015.

1. Legal status of provisions

The LPF has a permanent nature. It regulates, combined with the LFCCM, the budgetary framework. The LPF and the LFCCM are ordinary laws.

According to paragraph 4 of the Additional Provisions of the LPF, the LPF may only be amended, supplemented or repealed by a new law on public finances or a special instrument amending and supplementing that Act. That paragraph intends to bar amendments to the LPF via a provision included in a law which has another main subject, such as, for example, the annual budget law. Paragraph 4 does not prevent a simple majority in Parliament from amending the LPF at any time. However, since the introduction of a separate reasoned bill is always required to amend that law, paragraph 4 seeks to ensure that amendments to the LPF cannot be adopted hastily or without specific reasoning. No provision resembling paragraph 4 of the LPF can be found in the LFCCM.

There is no doubt that the LPF and the LFCCM contain provisions, which are "binding" and "permanent" (in the sense that their application is not limited in time in advance; they are applicable until repealed by Parliament). While they are not of constitutional character but are ordinary laws, the procedural constraints which are intended to prevent the amendment of the LPF by means of an annual budget law leads to the conclusion that the budget authority is bound by the LPF.

Against that background, the Bulgarian 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 set out in Article 23 of the LPF.

Article 23(1) lays down lower limits for the medium-term objective (MTO) in line with the lower limits envisaged in Article 3 of the TSCG. The LPF does not define explicitly the concept of the MTO nor refer to the SGP for that purpose. However, Article 23(3) refers to Regulation EC) No 1466/97 to identify deviations from the MTO. In that respect, the LPF implicitly recognises a concept of the MTO that is consistent with the SGP. Moreover, Article 23(4) contains provisions regulating the updates of the MTO made pursuant to Regulation (EC) No 1466/97.

Article 22 of the LPF requires that the fiscal rules set in its subsequent articles must be observed by all entities of the general government sector when establishing, adopting and implementing public budgets.

Convergence towards the MTO: Bulgaria was already at the MTO when the LPF entered in force. Therefore, deviations from the MTO are catered for by the correction mechanism.

Escape clauses: The escape clauses are defined explicitly in the LPF by broadly replicating the provisions of the SGP and additionally referring to Regulation (EC) No 1466/97. Specifically, Article 24(1) of the LPF provides that deviation from the MTO is allowed in exceptional circumstances and refers to Article 9 of Regulation (EC) No 1466/97. Exceptional circumstances are also defined separately in Article 24(3). The definition is in line with Regulation (EC) No 1466/97 and it includes a reference to Article 9 of that Regulation. Article 24 of the LPF finally specifies the size of the economic downturn, which constitutes exceptional circumstances, as 3% in real terms. This is a stringent condition which is consistent with the TSCG where "severe economic downturn" is mentioned as an exceptional circumstance.

Article 24(2) allows for a temporary deviation from the MTO in the event of major structural reform. That possibility is conditioned on major impact of the reform on fiscal sustainability and should not lead to an excess of the reference value of 3%. Article 24(2) reflects the provisions of Article 9 of Regulation (EC) No 1466/97 which provide that Member States are allowed to deviate temporarily from their MTO provided that they implement structural reforms with verifiable positive impact on long-term sustainability of public finances and provided that an appropriate safety margin with respect to the 3% reference value is preserved.

Overall, the balanced budget rule complies with the TSCG requirements. While the definition of the MTO is not spelled out, the provisions are specific enough to remove risks of ambiguity. The escape and structural reform clauses are formulated in line with the TSCG.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Article 23(3) of the LPF and chapter III (Articles 17-23) of the LFCCM.

Activation: The correction mechanism is automatically triggered in the event of an observed significant deviation from the MTO or the adjustment path thereto (Article 23(3) of the LPF and Article 17 of the LFCCM). The notion of a significant deviation is based on Regulation (EC) No 1466/97. The existence of the significant deviation is identified by either the Commission, in accordance with Article 6(2) of Regulation (EC) No 1466/97, the Fiscal Council, or the Minister of Finance on its own initiative, with any one of the three being sufficient to activate the process (Article 18 of the LFCCM).

Substance of the correction: The activation of the mechanism requires the presentation of a corrective plan within two months. The Minister of Finance is to submit the plan to the government, which then has to submit a corrective plan to Parliament (Article 19 of the LFCCM).

The corrective plan has a horizon of up to two years following the occurrence of the significant deviation (Article 20 of the LFCCM). The LFCCM is explicit that the measures provided in the corrective plan must ensure achievement of the MTO within the timeline set before the occurrence of the significant deviation (Article 21 of the LFCCM). It also requires consistency with Union recommendations addressed to Bulgaria under Regulation (EC) No

1466/97 (Article 22 of the LFCCM). Finally, the Fiscal Council is required to provide opinions on the corrective plan and its implementation (Article 7 of the LFCCM).

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. It is triggered automatically in the event of a significant deviation consistent with Regulation (EC) No 1466/97. The corrective plan requires a two-year maximum horizon for measures to produce their effects, adherence to the original deadline for the MTO, and consistency with Union recommendations addressed to Bulgaria.

4. The monitoring institution

The Bulgarian monitoring institution is the Fiscal Council.

Set-up and statutory regime: The Fiscal Council was established on the basis of the LFCCM. Its five board members, including a president, were appointed by the Parliament on 25 November 2015. The LFCCM provides that the FC is created as an independent advisory body on fiscal governance issues attached to the Parliament (the latter provides administrative and technical support). A three-member Secretariat, including an administrative assistant, was recruited in the first half of 2016 and started its operation.

Mandate: Article 6 of the LFCCM confers on the Fiscal Council the tasks foreseen by the TSCG and the common principles. Thus, the Fiscal Council must prepare a reasoned opinion on the existence of a significant deviation as defined in Article 23(3) of the LPF. The Fiscal Council must also issue a reasoned opinion on the corrective plan and its implementation. Finally, it must draft a reasoned opinion on the existence of exceptional circumstances as defined in Article 24(3) of the LPF. The mandate of the Fiscal Council is, however, much broader than those tasks and also includes preparing reasoned opinions on the spring and autumn official macroeconomic forecasts, the draft State budget law as well as on the draft budget of the Pension Fund and the Health Fund, the draft medium-term budgetary framework, the execution of the State budget, and the systematic evaluation of the macroeconomic forecasts.

Comply-or-explain principle: Article 6(2) of the LFCCM provides that whenever the Council of Ministers does not accept the Fiscal Council's reasoned opinions and recommendations, it must state its reasons in writing. The reasons must be published on the webpages of the Council of Ministers and the Ministry of Finance.

Freedom from interference and capacity to communicate: The Fiscal Council is set up as an independent body on fiscal governance issues pursuant to Article 3 of the LFCCM. Its leadership must not seek or take any instructions from the Council of Ministers or other authorities and institutions (Article 6(5)). The Fiscal Council's opinions and recommendations must be public and published on its website[1] (Article 6(3) of the LFCCM).

Nomination procedure: The five board members, including the president, are nominated by the Parliament and appointed for a term of six years. The members may not be elected for more than two consecutive terms. Board members are required to hold a Master's degree in Economics, have significant experience ("*not less than 10 years*") in the field of macroeconomics and/or public finance management, and be persons of high moral character (Article 8(1) of the LFCCM). Incompatibility and dismissal clauses set the circumstances under which a person may not become a member of the Fiscal Council or that person's term of office is to be terminated prior to expiry.

[1] www.fiscalcouncil.bg

Resources and access to information: The Fiscal Council is financed through the budget of the Parliament, with the necessary funds earmarked under a separate budget heading. The Fiscal Council benefits from the organisational and technical support of a three-person expert staff, recruited from the Parliament's administration in accordance with the competence requirements decided by the Fiscal Council. The Fiscal Council's right to request and receive information from State bodies is grounded in the LFCCM (Article 6(4) of the LFCCM).

Overall, the set-up of the Bulgarian monitoring institution is compliant with the TSCG requirements and common principles. The legal framework sets out the necessary components of the Fiscal Council's mandate and 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 Bulgaria are compliant with the requirements set in Article 3(2) of the TSCG and in the common principles.