EUROPEAN
COMMISSION

Brussels, 22.2.2017
C(2017) 1201 final

ANNEX 10

ANNEX

Country annex

GREECE

to the

REPORT FROM THE COMMISSION

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

GREECE

Greece 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 10 May 2012.

The national provisions considered in this assessment are essentially those provided for by the Law No 4270 on Fiscal Management and Supervision Principles (the LFM), adopted on 28 June 2014, as amended by Law No 4336 of 14 August 2015.

1. Legal status of the provisions

The LFM sets the Greek budgetary framework and in particular introduces the fiscal rules, correction mechanism and monitoring system called for by the Fiscal Compact. The LFM is ordinary budget legislation. Although the LFM is called 'organic', the term "organic" indicates a law that the Constitution provides as necessary to be adopted (such as the budget or the electoral law) rather than a law of higher hierarchical status than other legislation. Therefore, the LFM as such does not appear to prevail over an annual budget law.

At the same time, the TSCG was ratified by law which has, by virtue of Article 28 of the Greek Constitution, superior force to ordinary laws including the annual budget law. While the Commission sought further information about the existence of an internal system of, preferably judicial, review to enforce compliance with Greece's international obligation, no further observations on that point were provided by Greece.

However, the Greek authorities provided a commitment to amend national law to assign to the Hellenic Fiscal Council (HFC) the responsibility of effective assessment of whether draft budget law are in line with the TSCG with the submission of the budget law to Parliament being strongly conditioned on the approval of the HFC[1]. They have committed to legislate by June 2017 an amendment to the LFM to that effect and to include a requirement regarding the same independent assessment by the HFC in a Memorandum of Understanding that was under discussion between the Ministry of Finance and the HFC in July 2016.

Overall, against that background, and conditional on the adoption of the amendment to the LFM making the submission of a budget law to Parliament conditional on a positive assessment of compliance with the TSCG by the HFC, Greece'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 set out in Article 35 of the LFM. The formulation of the rule closely follows the provisions of Article 3 of the TSCG.

Article 35 of the LFM provides that the budgetary position of the general government should be balanced or in surplus. Following the provisions of the TSCG, Article 35(2) clarifies that that requirement is met if the annual structural balance of the general government has achieved the set medium-term objective (MTO). The MTO is defined in Article 14 by

[1] Letter of the Greek authorities of 22 July 2016.

reference to the TSCG. Article 35 complements that definition by setting the lower limits for the MTO in line with the TSCG. Article 35(4) requires the Minister of Finance to assess the level of the MTO at least every three years according to the procedures laid down in the SGP.

Convergence towards the MTO: Article 37 provides that the structural balance should converge to the MTO within the time-frame established on the basis of Regulation (EC) No 1466/97, in line with the TSCG.

Escape clauses: Article 35(4) and Article 37(3) allow for a temporary deviation from, respectively, the MTO and the adjustment path towards it, in case of exceptional circumstances, provided that such deviation does not endanger budgetary sustainability in the medium term. Exceptional circumstances are defined in Article 14 in conformity with the TSCG and with a reference to the SGP.

Article 14 also defines the "*period of implementation of major structural reforms*". Article 14 refers to Article 5(1) of Regulation (EC) No 1466/97 and specifies that a temporary deviation from the MTO or the adjustment path is allowed during the period of implementation of major structural reforms. That possibility can only be open following an approval by the relevant EU body. The LFM also adds a condition of lack of "important deviation" from the balanced budget rule set in Article 35.

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 Articles 38-41 of the LFM.

Activation: Article 38(4) specifies that the correction mechanism is automatically triggered following the adoption of a Council recommendation under Article 6(2) of Regulation (EC) No 1466/97, which ensures consistency with the Union-level procedure. The Minister of Finance may also activate the correction mechanism on its own initiative, taking into account the opinion of the HFC, if it identifies a significant deviation from the MTO or the adjustment path thereto (Article 38(3)). The notion of significant deviation refers explicitly to Regulation 1466/97 (Article 38(2)). Finally the HFC is mandated to assess the existence of significant deviations (Article 2(4)), and the government must take position *vis-à-vis* those assessments (Article 38(3)).

Substance of the correction: In the event of activation, the Minister of Finance has to prepare a corrective plan and, after obtaining government approval, submit it to Parliament within two months (Article 39(1)). The plan must set out the timeframe for the correction, annual budgetary targets, revenue and expenditure measures and the sub-sectors that they cover.

The requirements for the corrective plan emphasise compliance with Union rules and decisions. The provisions require that the correction plan be consistent with the Stability and Growth Pact and recommendations from the Union institutions based thereon (Article 39(2)).

The main characteristic of the arrangement is to focus on consistency of the national mechanism with Union recommendations. The duty to strictly abide by recommendations made by the Union institutions is thus the principal means to ensure compliance with the TSCG requirement of correcting the deviations "over a defined period of time" and with the common principles. In addition, while the legislation does not contain a specific national corrective rule, it incorporates the sub-principle of proportionality (principle n° 4), according to which larger deviations shall lead to larger corrections (Article 39(1)b).

The HFC is mandated to assess the corrective plan (Article 39(1)c), and report twice yearly on its implementation and the effective progress in delivering corrections (Article 40).

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. It stresses consistency with the Union budgetary surveillance framework, whereby the activation and substance of the correction are linked to recommendations made by the Union institutions. The provisions on the substance of the correction also incorporate the principle of proportionality and provide for regular monitoring.

4. The monitoring institution

The Greek monitoring institution is the HFC.

Set-up and statutory regime: The LFM established the HFC as a detached public legal entity. It is composed of five members including the Chairperson, who were appointed in November 2015. The members are supported by dedicated staff of up to 20 persons.

Mandate: The HFC is entrusted with a broad-based mandate, including most notably the monitoring of compliance with national fiscal rules and the evaluation of the macroeconomic forecasts used for budgetary planning. The tasks prescribed by the TSCG and the common principles are enshrined in the mandate. The HFC's opinion must be considered by the Ministry of Finance when it contemplates activating the correction mechanism for the structural balanced-budget rule. When a corrective action plan is drawn up by the government, first, based on Article 39(1) of the LFM, the HFC's opinion on the plan must accompany the document when submitted to Parliament. Subsequently, Article 40(1) of the LFM requires the HFC to prepare and publish twice a year a progress report on implementation. A prior opinion of the HFC is compulsory when it comes to the declaration and maintenance of the state of exceptional circumstances (Article 40(3-4) of the LFM).

Comply-or-explain principle: Regarding the activation of the correction mechanism, the principle is laid down in Article 38(3): if the Minister of Finance does not follow the HFC's opinion, he must send an open letter to the Parliament together with the reasons. As to the monitoring of the corrective action plan and the declaration and extension in time of exceptional circumstances, Article 40(6) of the LFM states that if the Minister for Finance does not accept the HFC recommendations on the matters in question, he/she shall inform the permanent Standing Committee of Financial Affairs of the Parliament of the reasons for non-acceptance. The Greek authorities have informed that such hearings are publicly accessible through the parliament’s website (in line with general parliamentary procedures) whereas the explanations would also be available on the website of the Ministry of Finance.

Freedom from interference and capacity to communicate: Pursuant to Article 2 of the LFM, the HFC enjoys operational autonomy and administrative and financial independence. It is not subject to control from government bodies or any other administrative authority. The five Board members (including the Chairperson) may not receive instructions from any public or private body (Article 2(3) of LFM). As regards the capability of the HFC to communicate, the LFM mandates the publication twice a year of a detailed report to monitor compliance with fiscal rules and provide information on the outcome of its assessments. Additional reports may be issued on a voluntary basis. Both types of reports are foreseen to be released on the HFC's website, which has recently been launched[2].

Nomination procedure: Article 5(1) of LFM establishes a set of eligibility criteria for Board members related to education, linguistic skills and professional experience, such as a doctoral (PhD) degree and at least 15 years of professional experience in areas related to the responsibilities of the HFC. Incompatibility clauses and conflict-of-interest rules apply (Articles 5(2) and 9 of LFM). Based on an open competition process resulting in a short list drawn by the Minister of Finance, the Governor of the Central Bank and the President of the Court of Audit, the government nominates Board members for non-renewable five-year terms, which are then confirmed by a Parliamentary committee. To ensure staggered mandates, the term of office for the first Chairperson and one member is six years, five years for two other members, and four years for another member. The government shall dismiss a Board member when specific circumstances laid down in legislation are met (i.e. irrevocable court decision for an offense, failure to disclose conflict of interest, insolvency, personal misconduct leading to being disqualified or suspended from practicing a profession).

Resources and access to information: As to resource adequacy, Article 13 of the LFM states that the amount of the State grant is determined by the public estimate of a cost-based budget prepared by the HFC Board. Recruitment rules are established in legislation. Article 8(2) of the LFM lays down a ceiling of 20 persons for staffing. Barring specific legislative confidentiality requirements, all public authorities and public law entities must provide the HFC with any information required.

Overall, the set-up of the Greek monitoring institution is compliant with the TSCG requirements and common principles. The HFC is grounded in law and its mandate includes the tasks foreseen by the TSCG and the common principles. The legal framework stipulates appropriate safeguards for functional autonomy. The comply-or-explain principle is explicitly provided for in the law. Adequate provisions on the HFC's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Greece are compliant with the requirements set in Article 3(2) of the TSCG and in the common principles subject to the adoption of the amendment to the Law No 4270 on Fiscal Management and Supervision Principles making the submission of a budget law to Parliament conditional on a positive assessment of compliance with the TSCG by the monitoring institution.

[2] https://www.hfisc.gr/