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ANNEX 1

ANNEX

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AUSTRIA

to the

REPORT FROM THE COMMISSION

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

AUSTRIA

Austria 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 30 July 2012.

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

- the Agreement (ASP) between the federal level (*Bund*), the federal states (*Länder*) and the municipalities (*Gemeinden*) on an Austrian Internal Stability Pact 2012 (*Österreichischer Stabilitätspakt 2012*), published on the Federal Law Gazette I on 23 January 2013,
- the Federal Act, amending the Federal Act establishing the Public Debt Committee, establishing the Fiscal Council (published on the Federal Law Gazette I on 31 July 2013),
- a Regulation of the Federal ministry of finance, the so called 'debt-brake' Regulation, which lays down detailed rules for the implementation of the framework (published on the Federal Law Gazette II on 22 March 2013).

The Federal Budget Law of 2013 (published on the Federal Law Gazette II on 22 March 2013) sets the broader budgetary framework.

1. Legal status of the provisions

The ASP is an agreement, similar to a treaty of international law, between the different parts composing the federation of which Austria is composed. As an agreement the ASP is binding on the *Bund*, the nine *Länder* and the municipalities (*Gemeinden*). Article 15a of the Federal Constitution envisages the type of agreement in which the ASP is embodied. Such agreements – and thus the ASP – must be ratified by Parliaments at both federal level and state level and are enforceable by any of the entities being a party to them before the Austrian Constitutional Court (Article 138a of the Federal Constitution). This contributes to giving the ASP higher force than an ordinary law adopted at federal or state level. The treaty-like construction of the ASP ensures that the parliaments enacting the budgets, both at federal and at state level, are bound to respect the ASP because the ASP has been ratified with their consent and became enforceable. The ASP has thus binding force on budgetary authorities of all levels.

Moreover, in contrast to the predecessors to the ASP, which were typically in force for a few years, the ASP contains permanent provisions. Due to its treaty-like nature, any of the parties may decide to file a notice of termination in relation to the ASP. Furthermore, the ASP may be revised with the unanimous agreement of all its parties. However, the detailed arrangements for termination or amendments require the same parliamentary processes as comparable international law treaties. In addition, since Austria has a monist legal system, any termination or amendment of the ASP would not remove the obligation for budgetary authorities at all levels to respect the TSCG as an international agreement.

Against that background, the Austrian 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 the ASP. The ASP obliges the involved parties to "jointly safeguard sustainable compliance with criteria governing budgetary discipline, especially on the basis of Articles 121, 126 and 136 TFEU" and to transpose the Stability and Growth Pact (SGP) rules as well as to comply with the TSCG.

Article 4 of the ASP sets the general requirement that the budgets of the federal government, provinces (*Länder*) and municipalities should be balanced or in surplus over the cycle. Article 4 further specifies that for the general government, that criterion is satisfied if the general government structural balance does not fall below -0.45% of GDP. That limit is more stringent than the lower limits for the structural balance set in the TSCG. That aggregated limit is distributed between, on the one side, the federal government (including social security funds), whose structural balance limit is set at -0.35% of GDP, and on the other side – federal states and municipalities as a whole, whose structural balance limit is set at -0.1% of GDP. According to Article 5 of the ASP, the structural balance of the general government shall be calculated using the EU methodology and the overall structural balance limit is distributed between the federal government, federal states and municipalities, based on a method developed by the Federal Minister of Finance.

The formulation of the balanced budget rule does not refer to the medium-term objective (MTO). However, the limit set for the general government is consistent with the MTO applicable to Austria. In addition, the ASP contains provisions (in Articles 1 and 4) requiring compliance with Union law and the TSCG. Moreover, Article 28 contains a general commitment pursuant to which in case of changes in EU provisions (including the SGP) the parties commit to promptly align the ASP with the amended EU provisions.

Convergence towards the MTO: Austria has adequately converged to the MTO in respect with the national provisions. Potential deviations from the MTO are catered for by the correction mechanism.

Escape clauses: Article 4(4) of the ASP allows for a deviation in case of natural disaster or exceptional circumstances outside the control of the Member State, which have a major impact on the budgetary position of general government. While natural disasters are not explicitly envisaged by the SGP, they can be associated with "unusual events" referred to in the SGP. Moreover, the revision has to be authorised by the *Nationalrat* for the federal government or by a *Landtag* for the federal states and municipalities, and it is conditional on a reduction plan setting the reduction in an appropriate timeframe in line with Union law.

Overall, the balanced budget rule complies with the TSCG requirements. While its definition does not refer explicitly to the MTO, specific safeguards have been introduced in the legislation to ensure that the rule always sets a structural target consistent with the MTO. The targeted level of the structural balance is consistent with the current MTO applicable to Austria and compliance in case of a possible revision of this MTO is accounted for by the general review clause and requirements of consistency with the Union law.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in the ASP, and in particular in its Article 4, Articles 7 to 8 (control accounts) and Articles 18 to 25 (monitoring of fiscal outcomes and system of penalties).

Activation: The obligation to adopt annual budgets that respect the ASP's targets (as set in Article 4 of the ASP), and in particular the MTO, creates an in-built correction mechanism. Indeed, it follows from Article 4 of the ASP that, in the event of an observed deviation, the MTO must be restored as soon as the following year. In consequence, the ASP requires automatically the presentation and adoption of budgets consistent with the balanced budget rule, irrespective of possible deviations in previous years.

In addition, a system of so-called control accounts is put in place from 2017 onwards for the federal government, the federal states and the municipalities (Article 7 of the ASP). Those accounts register, for each layer of government, differences between required structural balance targets and observed outcomes. The ASP sets thresholds for cumulated deficits registered in control accounts of respectively 1.25% for the federal government, 0.25% for federal states jointly and 0.117% for municipalities jointly.

When assessing those criteria, the EU methodology has to be used for measuring potential output and structural balances, but possibly based on national parameterisation. Statistics Austria (the National Statistical Institute) is entrusted with carrying out calculations. The Court of Audit is responsible for concluding on whether deviations exceed the thresholds (Article 18 of the ASP). The Fiscal Council is also mandated with monitoring the activation, extension and end of the correction within the system of control accounts. The exact delineation of roles between the Fiscal Council, on the one hand, and Statistics Austria and the Court of Audit, on the other hand, is not apparent.

Substance of the correction: As noted above, the provisions of the ASP imply that following any possible deviation corrective action is taken for re-establishing a budgetary position at the MTO within one year. That requirement de facto reflects the notions of proportionality and MTO adherence encapsulated in the common principles. That corrective rule applies irrespective of the size of possible deviations. In particular, the ASP provides no basis for spreading out over time the return to the MTO following a large deviation therefrom.

The system of control accounts described above provides a 'debt brake type' safeguard on cumulated deviations over time. If one of the thresholds of the control accounts is reached, the relevant entity must take action to reduce the control account below the threshold, implying overachievement of the structural balance targets set in the ASP. This only has to take place in good times, assessed as a positive change in the output gap (Article 7(6) of the ASP). There is also flexibility regarding the pace of recouping past deficits.

The procedures associated with the system of control accounts may be long-lasting. Statistics Austria is not required to assess the control accounts before September of the year following the year being assessed (Article 18 of the ASP). There is no specific deadline for the ensuing report of the Court of Audit. A mediation committee with representatives of the federal states and municipalities is then convened in order to notify the need for a corrective plan to the entity accountable for the deviations, which then has to be adopted within two months (Article 19 of the ASP).

The system of penalties laid down by the ASP allows for possible financial sanctions and aims at strengthening the credibility of the corrective framework. The sanction to be paid to the federal budget by the entity responsible for non-compliance could reach 15% of the deviation from the target of the relevant entity (Article 21 of the ASP).

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. The ASP implies a binding *ex ante* structural balanced budget rule, which as such constitutes an automatic correction mechanism in the event of deviations, with no basis for flexibility even in the event of large deviations. The system is complemented by a debt brake mechanism based on control accounts, which provides a safeguard against cumulated deviations over time, though the associated procedures may be protracted.

4. The monitoring institution

The Austrian monitoring institution is the Fiscal Advisory Council (FAC).

Set-up and statutory regime: The FAC is a successor of the Government Debt Committee that was founded in 1970 as a body advising the government on public debt financing and was subsequently entrusted with advisory responsibilities in the field of fiscal policy. The FAC has operated under its new name and with its extended mandate since November 2013 on the basis of Law No 149/2013. The FAC is hosted by the Austrian Central Bank. The FAC consists of 12 members (including a chairman) with voting rights, three members without voting rights and two advisory members representing the Central Bank and the Budget Committee of the federal parliament. The FAC is assisted in its work by a bureau.

Mandate: Law No 149/2013 (Article 5) endows the FAC with the responsibilities envisaged for independent fiscal institutions in the Fiscal Compact, Council Directive 2011/85 and Regulation (EU) No 473/2013 (with the exception of producing/endorsing macroeconomic forecasts used for budgetary planning). In particular, it entrusts the FAC with the task of monitoring the conditions which would warrant the activation, prolongation or termination of the correction mechanism and with issuing recommendations regarding the correction mechanism. The responsibility for publishing assessments over the occurrence or cessation of exceptional circumstances which would warrant triggering escape clauses is implicitly provided for by reference to Article 5 of Regulation (EU) No 473/2013. The FAC's mandate goes beyond the TSCG-related tasks and encompasses broadly the monitoring of compliance with national and EU fiscal rules, analysis of sustainability and quality of the fiscal and economic policy of all levels of government, as well as issuing recommendations on those subjects.

Comply-or-explain principle: While the law does not explicitly formulate a comply-or-explain rule as requested in the common principles, each year (typically in July) the FAC publishes an annual report on public finance developments including recommendations on the federal government's fiscal policy. The law obliges the Minister of Finance to forward the report and recommendations of the FAC to the federal government and the federal parliament. The Budget Committee of the federal parliament then holds a debate with the Minister of Finance on the findings of that report and accompanying recommendations. Moreover, with a view to guaranteeing full respect and adherence to the 'comply-or-explain' principle throughout the national budgetary process, the Austrian authorities formally committed¹ that the Austrian legal framework would be consistently applied in line with the 'comply-or-explain' principle as outlined in the Communication from the Commission on common principles for national fiscal correction mechanisms. That commitment consists in publishing statements of the Ministry of Finance concerning all relevant assessments by the FAC on the ministry's website.

Freedom from interference and capacity to communicate: Law No 149/2013 (Article 7) explicitly states that the FAC is an independent institution whose members must not accept instructions from the institutions by whom they were nominated or from any other external bodies. The FAC's members cannot hold offices such as member of the government or parliament, whether at the federal or federal state level. In the event that they take up such duties, the member of the FAC must step down. Law No 149/2013 does not specify any other

¹ Letter from the Austrian authorities of 7 July 2016

reason for dismissal. The FAC can express itself freely without restriction and its assessments are published on its website².

Nomination procedure: Out of the 12 members with voting rights, six members (including the chairman) are appointed by the federal government, three by the Federal Economic Chamber and three by the Federal Chamber of Labour. The three members without voting rights are appointed, respectively, by the Association of Municipalities, the Association of Austrian Cities and Towns and the governments of the federal states. The members' term lasts six years and is renewable. Article 7 of Law No 149/2013 requires that the FAC members must be acknowledged experts in the area of budgetary matters.

Resources and access to information: The costs of the functioning of the FAC are borne by the Central Bank, which also provides the necessary staff and materials. Its bureau consists of six employees. Law No 149/2013 (Article 14) obliges any entity within the general government sector to provide upon request any information necessary for the FAC to fulfil its duties.

Overall, the set-up of the Austrian 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 FAC has been grounded in law and its mandate encompasses the tasks prescribed by the TSCG and the common principles. The legal framework includes appropriate safeguards for functional autonomy. Whereas a 'comply-or-explain' principle as envisaged in the common principles is not explicitly enshrined in the law, the Austrian authorities have formally committed to consistently apply the national legal framework in line with that principle. Adequate provisions on the FAC's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Austria 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.

² <https://www.fiskalrat.at/>