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ANNEX 8

ANNEX

Country annex

FRANCE

to the

REPORT FROM THE COMMISSION

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

FRANCE

France 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 26 November 2012.

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

- the Constitution (Articles 34 and 55),
- the Organic Law No 2012-1403 of 17 December 2012 on the Programming and Governance of the Public Finances (henceforth, the OLPGPF),
- the decisions 2012-653 DC and 2012-658 DC of the French *Conseil constitutionnel* of 9 August 2012 and 13 December 2012 respectively,
- the Law No 2014-1653 of 29 December 2014 on the programming of public finances for the years 2014-2019 (henceforth, the programming law)¹,
- the internal ruling of the High Council for Public Finances (henceforth, HCPF)² published on 29 March 2013.

1. Legal status of the provisions

Article 34 of the Constitution states a broad principle of equilibrium of the public finances. According to Article 55 of the Constitution, ratified international treaties have an authority superior to that of the laws provided it is applied by the other party. The OLPGPF is an organic law of supra-legislative nature which complements the Constitution. The OLPGPF mandates programming laws setting the medium-term objective (MTO) in line with the TSCG. The OLPGPF determines the information to be found in programming laws, sets the principles of the correction mechanism, and lays out most provisions relating to the HCPF. The programming law, which is an ordinary law, sets the MTO and the adjustment path thereto and gives further specifics on the correction mechanism.

As stated by the *Conseil constitutionnel* in its 2012 decision, the legislator can always amend or replace a programming law during the programming period (§ 14). Therefore, according to the *Conseil constitutionnel* Article 3 of the TSCG does not undermine the powers of the government derived from Article 20 of the Constitution to conduct and determine the policy of the nation. The same goes for the powers of the Parliament when it examines and votes budgetary laws.

Against that background, the Commission sought further information as to the presence of effective judicial remedies in event that an annual budget deviates from the TSCG or the programming law.

The reply of the French authority dated 19 July 2016 refers to the fact that the *Conseil constitutionnel* is a judicial independent body that takes an active part in the good functioning of the budgetary process and in the effective implementation of the TSCG. In addition, the French authorities expressed the view that "*il va de soi que sa mise en oeuvre sera pleinement cohérente avec ces dispositions.*" (It goes without saying that its [the body of French law

¹ That programming law followed a prior programming law, Law No 2012-1558 of 31 December 2012, over the years 2012-2017.

² The HCPF is the monitoring institution in France.

giving effect to the TSCG] implementation shall be fully consistent with those provisions [of the TSCG and the common principles]).

The uncertainty and the apparent weakness of the available legal review should nevertheless be balanced by two important considerations.

Firstly, the French authorities gave a formal commitment that the national legal framework giving effect to the TSCG would be implemented in a manner fully consistent with the TSCG and the common principles³.

Secondly, the strict enforcement of the OLPGPF 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 formal commitment provided by national authorities to interpret the organic law consistently with Article 3(2) of the TSCG and of the positive assessment of the existence of an independent and operational monitoring institution, France'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 implemented via several legislative instruments ranging from the Constitution, the organic law to an ordinary law.

Firstly, the rule is anchored at the constitutional level in Article 34 of the Constitution, which contains a general principle that the multiannual guidelines for public finances are in line with the objective of balanced budget of public administration.

Secondly, based on that general principle, the OLPGPF sets rules and objectives for the development of the multiannual programming laws. The approach followed in the OLPGPF to implement the balanced budget rule is based on recalling the rules of the TSCG and complementing them by references to the latter. In that vein, Article 1 of the OLPGPF provides that the programming law should set the level of the medium-term objective (MTO), which is defined in the OLPGPF by a reference to Article 3 of the TSCG. By means of that reference, the OLPGPF implements in the national legislation the TSCG specific lower limits. The OLPGPF also requires the programming law to present the break-down of the nominal general government balance by sub-sector.

Thirdly, based on the provisions of the OLPGPF, the programming law sets the MTO at the level of a structural balance, which is compliant with the TSCG. The procedure of setting the level of the MTO in the programming law enables taking into account of the regular updates of the MTO, as envisaged by Regulation (EC) No 1466/97.

Convergence towards the MTO: Article 1 of the OLPGPF requires the programming law to set the path of the structural balance in view of meeting the MTO. It also refers to the TSCG and requires the path to be in line with it.

Escape clauses: Exceptional circumstances are defined by a reference to the TSCG and they play a role in the functioning of the correction mechanism.

Overall, the balanced budget rule is compliant with TSCG requirements.

³ Letter of the French authorities of 19 July 2016.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Article 23 of the OLPGPF, complemented by Article 6 of the programming law.

Activation: According to Article 23 of the OLPGPF, the correction mechanism is activated on an ex post basis in the event of a significant deviation of the structural balance from the objectives of the programming law. The definition of a significant deviation is similar to the notion embodied in the Union budgetary surveillance framework, and involves an examination of both the outcome of the previous year, and the outcomes of the past two years on a cumulative basis.

The identification of significant deviations is the responsibility of the HCPF. The HCPF delivers its assessment as part of the finance settlement bill, which is generally deposited in the spring following the year concerned and at the latest by 1 June. If a significant deviation is identified by the HCPF, the correction mechanism is automatically activated. The government must explain the sources of the significant deviation during the debate of the finance settlement bill, and must present the envisaged corrective measures in early summer during the debate on the orientations of the public finances.

Substance of the correction: According to the OLPGPF, the government has to take into account the significant deviation at the latest in the subsequent budget, and the envisaged corrective measures shall be "with a view to returning to the multiannual orientations of structural balance set in the programming law of the public finances" (Article 23(3)).

In addition, the OLPGPF (Article 2(5)) requires the programming law to set out more specific provisions regarding the size and timeline for the corrective measures. Accordingly, the programming law states that the corrective measures shall allow the return to the structural balance path of the programming law at the latest two years after the year when the significant deviation is reported (Article 6). This latter provision implies that the return to the original structural path would occur three years after the year when the deviation occurred, thereby spreading out the correction over several years. The existence of a maximum horizon for the correction is consistent with the TSCG requirement of correcting the deviations 'over a defined period of time', although it is uncertain how the corrective requirement would be set if the maximum horizon for correction exceeded that of the programming law.

The provisions preserve some scope for flexibility in the operation of the correction mechanism. First, the OLPGPF allows the government to keep the option of departing from the specific corrective measures set out in the programming law, provided that it offers justifications (Article 23 3(2)). The French authorities have clarified that this possibility does not remove the obligation for the government to present corrective measures aiming at restoring the original structural path. Second, the programming law itself may be revised, opening the risk that the trajectory of the structural balance serving as the reference for the correction becomes ill-defined. According to the French authorities, notwithstanding the requirement of correction within a defined period of time, revisions of the programming laws may be necessary to allow the incorporation of large revisions in macroeconomic assumptions and accounting bases, consistently with the implementation of Union budgetary surveillance.

As an added feature of the correction mechanism, the definition of expenditure ceilings and floors on the amount of discretionary tax measures in the programming law should facilitate the achievement of structural balance objectives over the medium-term and the implementation of corrections in the event of significant deviations.

The HCPF is mandated to assess the corrective measures at the time of their presentation by the government, and follow up on the implementation of the correction as part of its broader mandate.

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles in light of the clarifications provided by the French authorities. The correction mechanism is automatically activated once the HCPF identifies a significant deviation. The legal provisions governing the substance of the correction allow a significant degree of flexibility. They are consistent with the TSCG requirements and the common principles in light of the clarifications provided by the French authorities regarding the operation of the corrective rule.

4. The monitoring institution

The French monitoring institution is the HCPF.

Set-up and statutory regime: The HCPF is grounded in the OLPGPF, which is an organic law (Articles 11 to 23 of the OLPGPF). It is attached to the French Court of Auditors (*Cour des Comptes*), which itself conducts independent financial audits of public accounts, good governance audits, and provides information and advice to the French Parliament and administration. Pursuant to Article 21 of the OLPGPF, the HCPF adopted its own rules of procedure⁴. The governing body of the HCFP is composed of 11 Members including its Chairman, the President of the French Court of Auditors. It is supported by dedicated staff. The monitoring institution started operating on 21 March 2013.

Mandate: The HCPF's mandate covers the tasks foreseen by the Fiscal Compact and the common principles. The HCPF is tasked with identifying at least once per year (basing itself on the draft budget bill) any significant deviation from the multi-annual budgetary objectives, set in line with the balanced-budget rule, contained in the French Medium-Term Budgetary Framework taking into account, if appropriate, exceptional circumstances within the meaning of Article 23(I) of the OLPGPF. Once the correction mechanism has been triggered, Article 23(III) of the OLPGPF requires the HCPF to issue an opinion on the corrective measures foreseen in annual draft budget bills and social security financing bills. In addition, as regards monitoring the progress of the correction, the French authorities have confirmed that according to Articles 14 and 15 of the OLPGPF the government is obliged to share the draft text of all budgetary laws with the HCPF in order to allow the latter to assess the coherence of the proposed laws with the multi-annual targets, the latter incorporating the correction necessary to return to the fiscal path laid down in the programming law.

Comply-or-explain principle: If the HCPF identifies a significant deviation, the government must explain the reason for such a deviation (in the June draft settlement bill) and suggest corrective measures during the summer budget orientation debate at the Parliament, to be inserted at the latest in the next October draft budget bill or social security financing bill (Article 23(III) of the OLPGPF). The provisions regarding the application of the comply-or-explain principle are only implicit in respect to the assessment of the progress of the correction and the existence of exceptional circumstances. However, in their letter of 19 July 2016 to the Commission, the French authorities formally committed to respecting the comply-or-explain principle regarding all assessments issued by the HCPF.

⁴ *Règlement intérieur du Haut Conseil des finances publiques (Journal Officiel de la République Française No 75 of 29 March 2013).*

Freedom from interference and capacity to communicate: The HCPF is set up as an independent body according to Article 11 of the OLPGPF. Its members may not seek or take instructions from the French government or from any person, public or private (Article 11 of the OLPGPF). The HCPF is to publish its reports on its own website⁵.

Nomination procedure: The HCPF consists of the President of the Court of Auditors (who presides the HCPF), four judges of the Court of Auditors nominated by its President, the Director General of the Statistical Office and five members qualified in the field of public finances and macroeconomic forecasting, nominated respectively by the president of the lower chamber of Parliament, the president of the Senate, the president of the Finance Committee of the lower chamber of Parliament, the president of the Finance Committee of the Senate and the president of the Economic, Social and Environmental Committee. The members are appointed for a five-year term. Membership in the HCPF cannot be combined with a political office. Dismissal is limited to cases of physical incapacity or serious misconduct and the decision of the appointing authority must be confirmed by the HCPF.

Resources and access to information: The HCPF is financed by the general State budget under a dedicated line (*programme 340*). The HCPF has a secretariat of five staff and may draw on its budget for the provision of external expertise. The HCPF can call qualified personnel from the government in the area of public finances to testify. The government is obliged by law to reply to the HCPF's requests for information.

Overall, the set-up of the French monitoring institution is compliant with the TSCG requirements and common principles in light of the formal commitment provided by national authorities to apply the comply-or-explain principle in line with the common principles. The monitoring institution has been grounded in 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 provided for explicitly in the law in respect to the assessment on the triggering of the correction mechanism, while the implicit provision of that principle in relation to assessments on the progress of the correction and the existence of extraordinary circumstances has been reinforced by a formal commitment of the French authorities to 'comply-or-explain' regarding all assessments issued by the HCPF. Adequate provisions on the HCPF's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by France 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 national authorities to interpret the organic law consistently with Article 3(2) of the TSCG together with the compliant set-up of the monitoring institution, the clarifications provided by national authorities on the substance of the correction mechanism, and the formal commitment provided by national authorities to apply the comply-or-explain principle in line with the common principles.

⁵ <http://www.hcfp.fr>