



Brussels, 22.2.2017
C(2017) 1201 final

ANNEX 18

ANNEX

Country annex

PORTUGAL

to the

REPORT FROM THE COMMISSION

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

PORTUGAL

Portugal 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 25 July 2012.

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

- the Budgetary Framework Law (BFL) approved by Law No 151/2015 of 11 September 2015,
- the Articles currently in force of the Budgetary Framework Law approved by Law No 91/2001 of 20 August (2014 BFL)¹, in particular taking into account the fifth amendment introduced by Law No 22/2011 of 20 May, the seventh amendment introduced by Law No 37/2013 of 14 June and the eighth amendment introduced by Law No 41/2014 of 10 July,
- the Law No 54/2011 of 19 October 2011 approving the Statutes of the Portuguese Public Finance Council, as amended by Article 187 of Law No 82-B/2014 of 31 December (PFC Statutes).

1. Legal status of the provisions

The BFL lays down the budget framework for general government and in particular the rules and procedures for the State Budget, including social security. The BFL is an ordinary law with reinforced value as the State budget must fully comply with the rules laid down in the BFL. Article 112(3) of the Constitution provides that laws with reinforced value are those that, under the Constitution, are regulatory prerequisites of other laws or that other laws must respect them. According to Article 4 of the BFL, the provisions of BFL prevail over all other provisions setting out specific budget rules which are incompatible with them.

Against that background, Portugal'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 formulated in Article 20 of the BFL.

Article 20(1) defines the medium-term objective (MTO) by reference to the Stability and Growth Pact (SGP). Subsequently, Article 20(3) lays down the requirement that the structural balance must not be below the MTO "*(...) set in the Stability and Growth Pact, with the aim of reaching a minimum structural deficit of 0.5% of GDP (...)*". That provision was introduced by an amendment to a previous version of the BFL, which among other provisions aimed at introducing the TSCG-specific -0.5% limit for the MTO. The authorities confirmed

¹ Article 7(1) of Law No 151/2015 repealed the Budgetary Framework Law previously in force, which had been approved through Law No 91/2001. However, Article 8(2) of Law No 151/2015 envisages that Article 3 and Articles 20 to 76 of the BFL will produce effects only three years after the entry into force of Law No 151/2015. In the meanwhile the provisions of Law No 91/2001 on the budgetary procedure, the content and structure of the State Budget, budgetary implementation, budgetary amendments, budgetary control and financial liability, significant divergence and the correction mechanism, the accounts, budgetary stability, guarantees of budgetary stability and the final provisions remain in force (Article 7(2) of Law No 151/2015).

that "[this new provision] establishes that the goal of the fiscal policy is to maintain a structural deficit at or below 0.5% of GDP". The structural balance is defined in Article 20(3) and (4) and should be set in accordance with the SGP. According to Article 2 the BFL covers the general government sector.

Convergence towards the MTO: Article 20(2) of the BFL provides that the convergence path towards the MTO is laid down in the stability programme. Article 20(6) further specifies that until the MTO is reached the annual adjustment in the structural balance cannot be below 0.5% of GDP.

Escape clauses: Article 22(5) of the BFL provides in line with the TSCG that a temporary deviation from the MTO or the adjustment path is allowed in exceptional circumstances provided that it does not endanger medium-term fiscal sustainability. Article 22(5) of the BFL defines exceptional circumstances in a manner consistent with the TSCG.

Article 22(5) also allows for a deviation from the MTO or the adjustment path towards it in case of structural reforms, provided that this does not jeopardise budgetary stability in the medium-term. Article 22 (6) and (7) set that the identification of a significant deviation by the Council of the European Union automatically triggers the correction mechanism. This effectively ensures that any deviation stemming from the implementation of structural reforms is consistent with the conditions laid down by the European Union.

Overall, the balanced budget rule complies with the TSCG requirements. The BFL was complemented, in its previous version, with an amendment introducing the TSCG-specific lower-limit of - 0.5% for the MTO. The allowed deviation in case of structural reforms is set out in such a manner as to be consistent with the conditions set by the European Union.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Articles 22 and 23 of the BFL.

Activation: The correction mechanism is activated on an ex post basis in the event of a significant deviation from the MTO or the adjustment path thereto (Article 22(3)). The definition of a significant deviation is similar to the notion embodied in the Union budgetary surveillance framework, includes an analysis of the development of expenditures net of new revenue measures on the adjustment path, 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 correction mechanism is automatically triggered in the event of a Council recommendation under Article 6(2) of Regulation (EC) No 1466/97, which ensures consistency with the EU procedure. The correction mechanism may also be activated at the initiative of the government. In that case, the government must first consult the Public Finance Council (PFC), which is the Portuguese monitoring institution. In addition, the PFC may assess compliance with the fiscal rules and make other reports which it considers appropriate (Articles 6(b) and 7(3) of the Statutes), allowing it to monitor the need for activation on its own initiative.

Substance of the correction: In the event of activation, the government must present to Parliament within 30 days a corrective plan with measures aimed at restoring the targets from the balanced budget rule (Article 23(1)).

The legislation specifically requires that the correction be implemented in a maximum of two years following the identification of the deviation, with at least 2/3 of the correction

implemented in the first year with a minimum of 0.5% of GDP (Article 23(2)). This timeframe for the correction is consistent with the TSCG requirement of correcting 'over a defined period of time' and with the common principles (principle n° 4). The correction plan must also ensure respect of the debt rule (Article 23(3)).

The correction plan must be set out in the stability programme (Article 23(5)). The PFC assesses the correction plan (Article 23(5)) and its broad mandate may allow it to follow its subsequent implementation.

Overall: The correction mechanism is compliant with the TSCG requirements and the common principles. It is automatically triggered in the event of a significant deviation defined as in the EU framework. The corrective measures must take effect within two years after the occurrence of the deviation and be proportioned to the deviation.

4. The monitoring institution

The Portuguese monitoring institution is the PFC.

Set-up and statutory regime: The PFC was established through the fifth amendment of the Budgetary Framework Law approved by Law No 22/2011 and is currently grounded in Article 7 of the BFL. Its Statutes have been approved by Law No 54/2011 of 19 October 2011, as amended by Article 187 of Law No 82-B/2014. According to Article 1 of the PFC Statutes, the PFC is a public law legal person, having the nature of an independent administrative entity. The PFC started operating following the appointment of its Senior Board in February 2012. The Senior Board of the PFC is a collegiate body composed of five members (including two non-executive members preferably from other EU Member States) and supported by dedicated staff.

Mandate: Pursuant to the BFL (Article 7), the PFC's mission is to undertake an assessment of the objectives proposed for the macroeconomic and budgetary scenarios, the long-term sustainability of public finances and compliance with the rule on the budget balance, the rule on central government expenditure and the rules on indebtedness of the autonomous regions and local authorities. The PFC Statutes (Article 4) further specify that its mission is to undertake an independent assessment of the consistency, compliance and sustainability of fiscal policy, while fostering its transparency. According to Article 7 of the PFC Statutes, the PFC must present reports on SGP procedures, the multiannual budgetary framework programming and the State draft budget, as well as on fiscal sustainability and other reports it may consider appropriate.

More specifically with respect to the TSCG-related tasks, Article 72 -B(7) of the 2014 BFL provides that the government consults the PFC before recognising the existence of a significant deviation on its own initiative². Plans to correct a significant deviation which are set out in the stability programme must be preceded by a non-binding opinion of the PFC ((Article 72 -C(5) of the 2014 BFL)³. A non-binding opinion of the PFC should also precede the recognition of exceptional circumstances (Article 72 -D(2) of the 2014 BFL), whereas no such requirement exists with regard to their possible extension or repealing of the exceptional circumstances. Likewise, no specific provisions are laid down for assessments of whether the correction is proceeding in accordance with national rules and plans. However, the Portuguese authorities have formally confirmed that, while the assessments of whether the correction is

² An analogous provision is included in the BFL (Article 22(6)).

³ Referring to the BFL (Article 23(5)), the letter from the Portuguese authorities of 20 July 2016 confirmed that the correction plan must be preceded by a consultation of the PFC.

proceeding in accordance with national rules and plans and the occurrence of circumstances for extending and exiting escape clauses are not codified *per se* in the BFL, they are included in the overall principles and in the spirit of the law⁴. In the light of the broad responsibilities entrusted by law to the PFC, its mandate is considered to provide the necessary basis for carrying out the tasks foreseen by the Fiscal Compact and the common principles.

Comply-or-explain principle: According to Article 72 -C of the 2014 BFL concerning the deviation correction mechanism, after a significant deviation is identified the recommendations of the PFC with regard to the correction plan proposed by the government have to be attached to the annual stability programme (Article 72 -C(6)(a)) along with the government's views on them and the reasons for their possible rejection or acceptance (Article 72-C(6)(b))⁵. On the other hand, the government has no obligation to 'comply or explain' with respect to PFC assessments of the occurrence of circumstances warranting the activation of the correction mechanism (i.e. the identification of a significant deviation) or of whether the correction is proceeding in accordance with national rules and plans, and it also has no such obligation as regards the extension or cancellation of exceptional circumstances. Those shortcomings remain unaddressed by the provisions of the BFL which will take effect as of September 2018. However, the Portuguese authorities have formally reaffirmed their full commitment to the common principles of the TSCG⁶, which is understood to include the 'comply-or-explain' principle.

Freedom of interference and capacity to communicate: The PFC is established as an independent body according to its Statutes (Article 5). The PFC and the members of its governing bodies must act independently while performing the functions assigned to them by the law and the PFC Statutes and cannot request or receive instructions from the parliament, the government or any other public or private entity. Provisions on conflict-of-interest and incompatibilities with political offices apply.

As regards the capacity to communicate, the PFC Statutes require the production of some specific reports, but also envisage that the PFC should produce other reports that it may consider relevant (Article 7(1) and 7(3)). All the reports have to be made available on the PFC's website⁷.

Nomination procedure: The five members of the Senior Board (including its President) are appointed for a seven-year term by the Council of Ministers, on a joint proposal of the National Court of Auditors and the Bank of Portugal (Article 13 of the PFC Statutes). The term of office is non-renewable, except for that of the two non-executive members, which can be renewed once (Article 14(3) of the PFC Statutes). Outgoing members cannot be appointed again within a period of five years after the end of their previous term. All Board members have to be personalities of acknowledged merit, with experience in the economics and public finance areas (Article 12(2) of PFC Statutes). The PFC Statutes (Article 15) list the reasons that trigger the end of the term of office and specify that the procedure to determine a dismissal for serious misconduct has to be agreed jointly by the President of the Court of Auditors and the Governor of the Bank of Portugal.

Resources and access to information: The PFC is financed by appropriations from the State budget. Article 27(3) of the PFC Statutes provides that State budget appropriations for the PFC can only be reduced in duly justified exceptional circumstances. According to the PFC

⁴ Letter from the Portuguese authorities of 20 July 2016.

⁵ Analogous provisions are included in the BFL (Article 23(6)).

⁶ Letter from the Portuguese authorities of 20 July 2016.

⁷ <http://www.cfp.pt>

Statutes (Article 26(1)), the PFC is endowed with the staff required for carrying out its tasks (18 staff members in 2015). Employee recruitment and selection procedures are set in internal regulations. The Statutes also establishes the PFC's access to all the economic and financial information necessary to accomplish its mission; all public entities are required to timely supply such information as well as additional clarifications requested to them (Article 8(1)). The PFC should mention cases of non-delivery on its webpage (Article 8(5)); serious cases of non-delivery have to be communicated to the President of the Republic, the parliament, the National Court of Auditors and the Bank of Portugal.

Overall, the set-up of the Portuguese monitoring institution is compliant with the TSCG requirements and common principles in light of the clarifications provided by the national authorities on the scope of the PFC's mandate and their formal commitment to apply the 'comply-or-explain' principle in line with the common principles. The PFC is grounded in law and its mandate provides the necessary basis for carrying out the tasks foreseen by the Fiscal Compact and the common principles. The legal framework includes appropriate safeguards for functional autonomy. The 'comply-or-explain' principle is only partially provided for in the law, i.e. with respect to the plan proposed by the government to correct a significant deviation and to the recognition of exceptional circumstances. However, the Portuguese authorities have formally confirmed their commitment to the common principles, which is understood to include the obligation to 'comply-or-explain'. Adequate provisions on the PFC's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Portugal are compliant with the requirements set in Article 3(2) of the TSCG and in the common principles in light of the clarification provided by the national authorities on the scope of the mandate of the monitoring institution and the formal commitment provided by the national authorities to apply the comply-or-explain principle in line with the common principles.