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ANNEX 16

ANNEX

Country annex

MALTA

to the

REPORT FROM THE COMMISSION

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

MALTA

Malta 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 28 June 2013.

National provisions considered in this assessment are mostly those provided for by the Fiscal Responsibility Act of 8 August 2014 (FRA).

1. Legal status of the provisions

The hierarchy of legal norms in Malta comprises the Constitution, Acts, and Legal notices (subsidiary legislation). The FRA is an ordinary law (Act) which sets the budgetary framework. Article 17 of the FRA specifically requires the annual budget act to be consistent with the framework and the fiscal rules set out in the FRA.

Article 65(1) of the Constitution provides *inter alia* that "Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malta in conformity with full respect for human rights, generally accepted principles of international law and Malta's international and regional obligations ...". The reference in Article 65 of the Constitution to "international obligations" (including therefore the TSCG) creates a requirement that all Acts are in compliance with Malta's international obligations.

While it not explicit due to its hierarchical status in the Maltese legal order that the FRA would have precedence over a Budget Act, Article 116 of the Constitution of Malta creates an *actio popularis* allowing any person to bring judicial proceedings for a declaration that any law is invalid by reason of inconsistency with the Constitution, which would permit a Budget Act to be challenged for non-compliance with the TSCG on the basis of Article 65 of the Constitution.

Against that background, Malta'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 Articles 6, 7 and 8 of the FRA.

Its formulation follows closely the wording of the TSCG. Article 6 sets objectives of fiscal policy, which among others, is to achieve a balanced general government budget over the economic cycle. That latter objective is further translated into the budgetary rule. The rule consists of two conditions: (i) the budget condition and (ii) the adjustment path condition (on the latter, see convergence towards the MTO).

Article 7 explicitly specifies that the requirements related to the budgetary condition derive from the TSCG. According to Article 8(2) the rule is satisfied if the annual structural balance of the general government is at its medium-term objective (MTO), unless exceptional circumstances occur and the failure to meet the MTO does not endanger medium-term fiscal sustainability. The MTO is defined in Article 2 by reference to Regulation (EC) No 1466/97, while Article 10 sets the limits for the MTO consistent with the TSCG. All terms used are defined appropriately in Article 2(1), while Article 2(2) specifies additionally that all terms, unless otherwise specified, have the same meaning as in the TSCG.

The specific requirement in Article 7 is that "*The Government shall endeavour to secure*" that the requirements stemming from the rules are complied with. According to the clarifications submitted by the authorities, that formulation creates an obligation to strictly meet the rules – an interpretation consistent with the TSCG – and not a looser requirement to 'try to achieve' the rules, an interpretation that would have opened a loophole in the commitment to abide by the rules. That particular formulation was chosen to cater for cases where it is possible to deviate from the balanced budget rule due to the existence of "exceptional circumstances".

Convergence towards the MTO: The adjustment path condition, set out in Article 8(4), is satisfied if the annual structural balance of the general government is converging towards the MTO in line with the timeframe set in accordance with the Regulation (EC) No 1466/97, unless exceptional circumstances occur and the failure to be on the convergence path does not endanger medium-term fiscal sustainability.

Escape clauses: Exceptional circumstances are defined in Article 2. Taken together with the provisions of Article 8, the escape clauses are defined consistently with the TSCG.

Overall, the balanced budget rule complies with the TSCG requirements. While the formulation "*endeavour to secure*" (that the requirements stemming from the rules are complied with), could have introduced uncertainty regarding the obligation to strictly meet the rules, the clarifications provided by the authorities ensures compliance with the TSCG.

3. The correction mechanism

The provisions relating to the correction mechanism are mostly found in Article 11 of the FRA.

Activation: Article 11(1) of the FRA specifies that the correction mechanism is automatically triggered if the Commission addresses a warning to Malta under Article 6(2) of Regulation (EC) No 1466/97. Article 11(1) additionally provides that the government may also activate the correction mechanism on its own initiative if it considers that there is failure to comply equating a significant deviation, with the notion of significant deviation referring to Regulation (EC) No 1466/97. In addition, the Fiscal Advisory Council is explicitly mandated to assess the existence of significant deviations, and the government must take a position *vis-à-vis* those assessments (Article 13).

Substance of the correction: In the event of activation, the government has to prepare and present to Parliament within two months a corrective plan securing compliance with the budgetary rule (Article 11(1)). The plan must set out the timeframe for the correction, annual budgetary targets, and revenue and expenditure measures by sub-sectors of general government (Article 11(2)).

The requirements for the corrective plan focus on ensuring 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 11(3)). The legislation also requires the corrective plan to be consistent with the current stability programme.

The main characteristic of the arrangement is to focus on consistency of the national mechanism with Union recommendations. The legislation does not contain specific national corrective rules. 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.

Finally, the Fiscal Advisory Council is explicitly tasked with assessing at least annually the implementation of the corrective plan.

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. There are no specific national provisions on the substance of the correction in the legislation. The Fiscal Advisory Council is given a significant role in monitoring the correction mechanism.

4. The monitoring institution

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

Set-up and statutory regime: The FAC was established on the basis of Article 42 of the FRA and its members were nominated in January 2015. The overall purpose of the FAC is to assess the effectiveness of the government's fiscal and economic policies. The FAC consists of three members including the Chairperson, supported in their work by a bureau.

Mandate: The mandate of the FAC encompasses the tasks foreseen by the Fiscal Compact and the common principles i.e. the provision of assessments of the occurrence of circumstances warranting the activation of the correction mechanism associated with the structural balanced budget rule, of whether the correction is proceeding in accordance with the plan, and of whether exceptional circumstances exist or have ceased to exist (Article 13(2) of the FRA). More generally, the FAC is charged with monitoring the respect of fiscal rules and has the right to issue recommendations for the government to that effect. The FAC is also responsible for assessing and endorsing the macroeconomic and budgetary forecast prepared by the Ministry of Finance.

Comply-or-explain principle: The FRA obliges the government to consider the FAC's opinions and recommendations when preparing and approving its fiscal strategy and the annual budget. If the government chooses to depart from the FAC's recommendation, the Minister of Finance is obliged by law to present to the Parliament reasons for that within two months of the issue of the recommendation (Article 13(6-7)).

Freedom from interference and capacity to communicate: According to the FRA, the FAC members are independent in the performance of their duties. The FRA explicitly forbids the Council's members to receive instructions from any institutions. The FRA obliges the FAC to make its assessments public and disseminate them in a manner it sees fit. The FAC's assessments are available on its website¹.

Nomination procedure: The members of the FAC are appointed and dismissed by the Minister of Finance, who also designates the Chairperson of the FAC. The Parliament's approval is necessary in case of a member's dismissal. The FRA enumerates the following reasons for dismissal: ill-health, proven misbehaviour and conflict of interest. The members' term lasts four years and is renewable but only once consecutively. The office of member of the FAC may not be combined with that of a member of the Maltese Parliament or the European Parliament. The law requires the members to have competence and experience in domestic and international macroeconomic and fiscal matters.

¹ <https://mfac.gov.mt/>

Resources and access to information: The FAC is financed from the State budget. The FAC's budget for the first full year of its operation amounted to EUR 250 000. The FAC is supported by a bureau staffed with employees whose number is determined by the FAC itself (currently five employees). The FAC is entitled to request any information necessary to fulfil its mandate from any public entity.

Overall, the set-up of the Maltese monitoring institution is compliant with the TSCG requirements and common principles. Pursuant to the FRA, the FAC is endowed with functional autonomy. Its mandate contains the tasks prescribed by the TSCG and the common principles. The comply-or-explain principle is explicitly provided for in the law. Adequate provisions on the FAC's endowment with resources and access to information are in place.

5. Conclusion

The national provisions adopted by Malta are compliant with the requirements set in Article 3(2) of the TSCG and in the common principles.