

Bratislava, July 15 2016

Ref.: MF/016596/2016-1811

Dear Vice-President of the European Commission,

Dear member of the European Commission,

In response to your letter dated 19 May 2016 (ref. Ares(2016) 2930007 – 2336098) regarding Commission preliminary assessment against the requirements set by the Article 3(2) of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, please find below observations on the foregoing issues in compliance with the Article 8(1). These observations address each of the outstanding issues referred to in the Commission's letter annex.

Please note that this letter has also been published on the website of the Ministry of Finance of the Slovak Republic, as was proposed in the Commission's letter, dated 19 May 2016.

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1. Legal status of provisions

With regard to legal status of Article 30a in Act on General Government Budgetary Rules (Act No 523/2004) it should be emphasized that the Slovak Republic proceeded in accordance with Common principles for national fiscal correction mechanisms which in more detailed recommended transposition of TSCG.

According to principle 1 (Legal status) of the Commission Communication Common principles for national fiscal correction mechanisms, the correction mechanism shall be enshrined in national law through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes. The mechanism shall fully respect the prerogatives of national Parliaments.

Act on General Government Budgetary Rules has the character of law approved by the parliament, is fully binding and must be respected by all budgetary authorities throughout the national budgetary process.

Generally, international treaties are promulgated by a notice of the Ministry of Foreign and European Affairs of the Slovak Republic about the conclusion of an international treaty which is published in the Collection of Laws of the Slovak Republic (in the annex).

TSCG was promulgated by notice No. 18/2013 Coll. of the Ministry of Foreign and European Affairs of the Slovak Republic. According to notice No. 18/2013 Coll. the Parliament expressed its consent to the TSCG by decree No. 384 of 18 December 2012 and decided that TSCG is a treaty which has primacy over the laws according Article 7 paragraph 5 of the Constitution of the Slovak Republic.

As stated above the Parliament decided that TSCG takes precedence over laws and TSCG is recognized as an international treaty according Article 7 paragraph 5 of the Constitution of the Slovak Republic.

2. The monitoring institution

Article 30a paragraph 2 of the Act No. 523/2004 Coll., on General Government Budgetary Rules, as amended reads as follows: "the Government shall decide on the correction mechanism, as part of which it shall also decide on the proposed public expenditure ceiling and approve measures to be implemented as part of the correction mechanism; before the Government takes the decision, the proposal shall be assessed by the Council for Budget Responsibility.^{42ah)} If the Government chooses not to apply the correction mechanism, it shall deliver to the Parliament a written justification of the decision not to apply the correction mechanism".

„Comply-or-explain" principle is explicitly expressed in Article 30a paragraph 2 last sentence and also in Article 30a paragraph 4. This provision reads as follows: "the Council for Budget Responsibility shall assess and publish its assessment of the application or non-application of the correction mechanism pursuant to paragraph 2 and of the beginning and the end of the duration of exceptional circumstances in line with paragraph 3; the Ministry of Finance shall publish its opinions on such assessments".

Regular assessment of the application or non-application of the correction includes also information on whether the correction is proceeding in accordance with national rules and plans. In this case "comply-or-explain" principle is applied because the proposal of the application or non-application of the correction is assessed by Council for Budget Responsibility before the Government takes the decision. The Ministry of Finance shall publish its opinions on such assessments. If the Government chooses not to apply the correction mechanism, it shall deliver to the Parliament a written justification of the decision not to apply the correction mechanism.

It follows that „comply-or-explain" principle is stipulated by the provisions of the Act No. 523/2004 Coll. not only in relation to the Parliament as legislative body but also in relation to the Council for Budget Responsibility as independent body and therefore the Slovak Republic represented by state bodies is legally obligated to respect „comply-or-explain" principle.

State bodies are obligated to respect the law according to Article 2 paragraph 2 of the Constitution of the Slovak Republic. This provision reads as follows: "state bodies may act solely on the basis of the Constitution, within its scope and their actions shall be governed by procedures laid down by a law".

Moreover, the mandate of the Council for Budget Responsibility is not only regulated by the Act No. 523/2004 Coll. but also by the constitutional law No. 493/2011 Coll. on fiscal responsibility. Therefore the mandate of the Council for Budget Responsibility cannot be strictly considered by provisions of the Act No. 523/2004 Coll.

According to Article 4 of the constitutional law No. 493/2011 Coll. on fiscal responsibility the Council for Budget Responsibility shall inter alia draw up and submit a report on compliance with the fiscal responsibility and fiscal transparency rules under this Act for the previous budgetary year, always by 31 August of the current year.

The Council for Budget Responsibility is responsible for monitoring and assessing compliance with Fiscal Responsibility and Transparency Rules and its mandate is defined broadly enough to allow publication of the regular assessment on whether the correction is proceeding in accordance with national rules and plans.

Yours sincerely,

V. Z. 