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From:	General Secretariat of the Council
To:	Working Party of Financial Counsellors
Subject:	EGR - Second round of comments - Amendment explainer (Preventive arm regulation)

Delegates will find enclosed in view of the FiCo meeting of 28 September Presidency explanations related to the second round of Presidency draft amendments for the preventive arm regulation.

Economic Governance Review –

Amendments explainer

FiCo WP 28.09.2023

This note explains the rationale behind some of the amendments introduced to the proposed regulation repealing Regulation 1466/97. It does not reflect every change to the proposal, but those where the interpretation of the amendment is not straightforward and a more detailed explanation could be useful to steer the discussion among delegates.

Articles 6, 12(a), 15(2) and Annex 1 - Fiscal requirements for the technical trajectory and the medium-term fiscal-structural plans

The proposal for a Regulation replacing Regulation (EC) No 1466/97 (preventive arm) contains references to fiscal requirements, not always identical, in the following articles:

- Requirements for the technical trajectory in article 6.
- Criteria for setting the technical trajectory in annex I.
- Requirements for the medium-term fiscal-structural plan in article 12(a).
- Assessment of the national medium-term fiscal-structural plans in article 15(2).

Without prejudice of the final agreement on the appropriate fiscal requirements, the Presidency proposes to streamline and increase the coherence of the Regulation by defining a single set of fiscal requirements exclusively in two articles:

- Requirements for the technical trajectory in article 6.
- Requirements for the medium-term fiscal structural plans in article 15(2).

Both set of requirements should be identical. Where needed, the Regulation will use cross-references to Article 6 or Article 15(2)

Article 7(3) – Prior guidance by the Commission

Article 7(3) established that the technical trajectories and the quantitative guidance should be updated at least once every 4 years (even if plans have a 5-year horizon).

The Presidency proposes to delete the paragraph in order to avoid redundancies with the proposed formulation for Article 7(1) and Article 9. In particular, the updated version of Article 7(1) contemplates that the Commission has to put forward a technical trajectory every time a Member State has to submit a medium-term fiscal-structural plan (every four or five years depending on the length of the national legislature). Note that in the absence of this provision, a Member State with a 5-year legislature would receive a technical trajectory four years after the first submission of the plan (as per the old 7(3)) and again in the fifth year when the Member State has to prepare and submit the new plan.

Similarly, Article 9 now reflects not only the first submission of Plan but also the subsequent plans.

Article 14 – Revised national medium-term fiscal-structural plan

March Council Conclusions established that “all plans could be aligned, upon request, with the national electoral cycle, revised with the accession of new governments, and updated in objective circumstances, while upholding the ambition of the fiscal adjustment”.

When materializing this in Article 14, the Presidency proposes to include Article 14(1bis) to reflect that the duration of the revised plan should match the length of the new legislature. If this were not the case, the length of the revised plan could be understood the same as the length of the plan it revises, implying that the same government has to submit two plans during its national legislature.

Article 23, 31 and 35 - Commission warning and Council recommendation for policy measures.

Article 23 of the Commission proposal establishes a Commission warning and a Council Recommendation for policy measures in the event of “*significant risk of deviation*” from the net expenditure path. The concept of “*significant risk*” is however not defined and the difference between the Recommendation for policy measures and the Council Recommendation setting the net expenditure path according to Article 16 also remain unclear.

In the framework currently in force (Article 6(2) of Regulation 1466/97), and as part of the Significant Deviation Procedure, the Commission warning and the Council Recommendation are triggered only in the event of a “*significant observed deviation*” from the adjustment path to the medium-term budgetary objective (i.e. on the basis of outturn data and the well-defined concept of “significant deviation”, instead of ex ante “significant risks of deviation”, as now proposed).

There appears to be agreement that the Significant Deviation Procedure will now be replaced by the adapted debt-based Excessive Deficit Procedure, where enforcement actions will be based on observed (cumulated) deviations from the net expenditure path, to be recorded in the new control account (Article 21, which will be clarified).

For the ex ante prevention of risks, Article 34 also establishes that the Commission shall carry out missions with a view to identify “any risks or difficulties complying with the objectives of this Regulation”. The ex ante monitoring of risks will also continue to take place through the regular European Semester process (e.g. annual country-specific recommendations, annual implementation reports, assessment of draft budgetary plans...).

Therefore the Presidency proposes to delete Article 23 and, for consistency, the references to it in Article 31 and 35.

Annex 6 – Common priorities of the Union

Annex 6 comprises the Common priorities of the Union. In this case, the Presidency has decided to leave the Annex unchanged without prejudice to the decision taken about the delegation powers, as it refers to living documents and strategies that will need to be specified outside the articles.

Articles 7, 9, 20, 15.1 and 16 - Calendar and process

Delegates have in general requested more time for Member States to design their medium-term fiscal-structural plans and to extend the assessment period of the Council, in order to preserve a proper multilateral surveillance.

The Presidency proposes a revised calendar. Following the request of Member States, the proposal envisages that:

- The Commission puts forward the technical trajectory on 15 January.
- The Member State submits its national medium-term fiscal-structural plan on 30 April.
- A six-week period for the Commission's assessment.
- A six-week period for the Council's adoption.

This calendar would ensure that the ECOFIN can adopt the plans in July so that Member States can start their national budgetary processes in due time.

Both Article 15(1) and Article 16 foresee some limited flexibility. In the case of the Commission assessment, a possible extension of *up to two weeks as a rule* is envisaged. In the case of the adoption of the recommendation by the Council, the period is six weeks *as a rule*.

As a transitory solution, the Presidency proposes a different calendar for 2024. Given that the cost of ageing estimates will only be adopted by the Economic Policy Committee by the end January 2024, a transitory provision has been included so the deadline included in Article 7(1) is exceptionally postponed to 15 February in 2024

