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From:	General Secretariat of the Council
To:	Working Party of Financial Counsellors

Subject:	EGR - Technical draft suggestions from the Presidency on Block 4 (Regulation 1466/97)
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Delegations will find attached technical draft suggestions from the Presidency to be discussed at the Financial Counsellors Working Party on 18 July 2023.

Economic Governance Review

Block 4: Escape Clauses

Issues for discussion for FiCo 18 July

Articles		
18 July 2023 Block 4: Escape clauses	24	Severe economic downturn in the euro area or the Union as a whole
	25	Exceptional circumstances outside the control of the Member State leading to a major impact on the public finances of the Member State concerned

1. Escape clauses in the current fiscal framework

The **2011 six-pack reform of the Stability and Growth Pact introduced several flexibility provisions** allowing Member States to take appropriate budgetary measures to face exceptional circumstances. In the preventive arm, the conditions under which this flexibility can be applied are specified in articles 5(1) and 9(1), as well as 6(3) and 10(3) of Regulation 1466/97¹.

“In the case of an unusual event outside the control of the Member State concerned which has a major impact on the financial position of the general government or in periods of severe economic downturn for the euro area or the Union as a whole, Member States may be allowed temporarily to depart from the adjustment path (...) provided that this does not endanger fiscal sustainability in the medium term” – Articles 5(1) and 9(1) of Regulation 1466/97.

The **unusual events clause** has been applied in response to, amongst others, exceptional refugee inflows or heightened terrorist threats in several Member States. The **severe economic downturn** clause was first activated in 2020 in the aftermath of the health and economic crisis triggered by the COVID-19 pandemic. In its 20 March 2020 Communication, the Commission asked the Council to endorse this decision so as to provide clarity to Member States². On 23 March 2020, Ministers of Finance agreed with the assessment of the Commission that the conditions for the use of the general escape clause were fulfilled. On 8 March 2023, the Commission adopted a communication providing fiscal policy guidance for 2024 which confirmed that the general escape clause will be deactivated at the end of 2023..

¹ The corrective arm also contains so-called “escape clauses” allowing for the extension the deadline for the correction of the excessive deficit or a revised notice under Article 126(9) TFEU (articles 3(5) and 5(2) of Regulation 1466/97). These provisions will be discussed separately at FiCos, as part of the discussion on the Commission proposal 241/2023 amending Regulation 1467/97.

² Commission Communication 123 final, 20 March 2020, on the activation of the general escape clause of the Stability and Growth Pact.

2. Clarifying the use of escape clauses

As part of the **March Council Conclusions** (*paragraph 5i*), Member States resolved to: (i) specify a general and a country-specific escape clause that may allow temporary deviations from the fiscal adjustment path; (ii) establish appropriate procedures for activation and prolongation of escape clauses and (iii) that the Council should play a role in the application of the escape clauses on the basis of a Commission assessment.

With the publication on 26 April of the **Commission Proposal repealing Council Regulation (EC) 1466/97**, the unusual events and the severe economic downturn clauses were reformulated in Articles 24 and 25 (so-called national and general escape clauses, respectively). In line with existing legislation, Articles 24 and 25 of said Proposal foresee the possibility to temporarily deviate from the net expenditure path. However, compared to the existing Regulation, these articles are clearer in specifying what is the role for the Commission and the Council in the activation and prolongation of the clauses and require to set explicitly a time-limit for the deviation, which can be extended.

The **written comments** to the Commission Proposal submitted by Member States point to several issues which require further discussion. Some countries consider that the activation of escape clauses should be a prerogative mainly of the Commission, as has been the case in practice so far, while others consider that the Council should be more involved and some also propose to involve independent institutions. For country-specific escape clauses, some have requested to step-up the role of the concerned Member States, for example by allowing them to make a request for the activation. Other Member States seek to further clarify the conditions for the activation, operationalisation and deactivation of the escape clauses, including by means of quantitative indicators. Finally, there have been suggestions to allow for temporary deviations from other elements of the Plan besides the fiscal adjustment path, such as reforms.

3. Questions for discussion

1. Do delegates consider that the activation of the escape clauses should be **decided by the Council** as in the Commission proposal or should it be a prerogative of the Commission? How can we ensure that the procedure remains agile and compatible with a timely policy response to extraordinary circumstances?
2. Do delegates believe that the **conditions for the activation and prolongation** provide sufficient flexibility to react to unforeseen circumstances, while maintaining the necessary level of specificity and control by the Commission and the Council?
3. How can the process be improved? How to allow for a **timely deactivation**?
4. Do delegates consider that the activation of the escape clauses should provide flexibility in the implementation of **other aspects of the plan**, in addition to the net expenditure path?