

II

(Non-legislative acts)

DIRECTIVES

COUNCIL DIRECTIVE 2011/85/EU

of 8 November 2011

on requirements for budgetary frameworks of the Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third subparagraph of Article 126(14) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Central Bank ⁽²⁾,

Whereas:

- (1) There is a need to build upon the experience gained during the first decade of the economic and monetary union. Recent economic developments have posed new challenges to the conduct of fiscal policy across the Union and have in particular highlighted the need for strengthening national ownership and having uniform requirements as regards the rules and procedures forming the budgetary frameworks of the Member States. In particular, it is necessary to specify what national authorities must do to comply with the provisions of the Protocol (No 12) on the excessive deficit procedure annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 3 thereof.
- (2) Member State governments and government sub-sectors maintain public accounting systems which include elements such as bookkeeping, internal control, financial reporting, and auditing. Those systems should be distinguished from statistical data which relate to the

outcomes of government finances based on statistical methodologies, and from forecasts or budgeting actions which relate to future government finances.

- (3) Complete and reliable public accounting practices for all sub-sectors of general government are a precondition for the production of high-quality statistics that are comparable across Member States. Internal control should ensure that existing rules are enforced throughout the sub-sectors of general government. Independent audits conducted by public institutions such as courts of auditors or by private auditing bodies should encourage best international practices.
- (4) The availability of fiscal data is crucial to the proper functioning of the budgetary surveillance framework of the Union. The regular availability of timely and reliable fiscal data is the key to proper and well timed monitoring, which in turn allows prompt action in the event of unexpected budgetary developments. A crucial element in ensuring the quality of fiscal data is transparency, which must entail the regular public availability of such data.
- (5) With regard to statistics, Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics ⁽³⁾ established a legislative framework for the production of European statistics with a view to the formulation, application, monitoring and assessment of the policies of the Union. That Regulation also laid down the principles governing the development, production and dissemination of European statistics: professional independence, impartiality, objectivity, reliability, statistical confidentiality and cost-effectiveness, giving precise definitions of each of these principles. Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community ⁽⁴⁾, strengthened the Commission's powers to verify statistical data used for the excessive deficit procedure.

⁽¹⁾ European Parliament opinion of 28 September 2011 (not yet published in the Official Journal).

⁽²⁾ OJ C 150, 20.5.2011, p. 1.

⁽³⁾ OJ L 87, 31.3.2009, p. 164.

⁽⁴⁾ OJ L 145, 10.6.2009, p. 1.

- (6) The definitions of 'government', 'deficit' and 'investment' are laid down in the Protocol (No 12) on the excessive deficit procedure by reference to the European System of Integrated Economic Accounts (ESA), replaced by the European system of national and regional accounts in the Community, adopted by Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community ⁽¹⁾ (ESA 95).
- (7) The availability and quality of ESA 95 data is crucial to ensure the proper functioning of the Union's fiscal surveillance framework. ESA 95 relies on information provided on an accrual basis. However, these accrual fiscal statistics rely on the previous compilation of cash data, or their equivalent. These can play a relevant role in enhancing timely budgetary monitoring, so as to avoid the late detection of significant budgetary errors. The availability of cash-data time series on budgetary developments can reveal patterns warranting closer surveillance. The cash-based fiscal data (or equivalent figures from public accounting if cash-based data are not available) to be published should at least include an overall balance, total revenue and total expenditure. Where justified, for example where there is a large number of local government bodies, timely publication of data could rely on suitable estimation techniques based on a sample of bodies, with a subsequent revision using complete data.
- (8) Biased and unrealistic macroeconomic and budgetary forecasts can considerably hamper the effectiveness of fiscal planning and consequently impair commitment to budgetary discipline, while transparency and discussion of forecasting methodologies can significantly increase the quality of macroeconomic and budgetary forecasts for fiscal planning.
- (9) A crucial element in ensuring the use of realistic forecasts for the conduct of budgetary policy is transparency, which should entail the public availability not only of the official macroeconomic and budgetary forecast prepared for fiscal planning, but also of the methodologies, assumptions and relevant parameters on which such forecasts are based.
- (10) Sensitivity analysis and corresponding budgetary projections supplementing the most likely macrofiscal scenario allow the analysis of how main fiscal variables would evolve under various growth and interest rates assumptions, and thus greatly reduce the risk of budgetary discipline being jeopardised by forecast errors.
- (11) Forecasts by the Commission and information regarding the models on which they are based can provide Member States with a useful benchmark for their most likely macrofiscal scenario, enhancing the validity of the forecasts used for budgetary planning. However, the extent to which Member States can be expected to compare the forecasts used for budgetary planning with the Commission's forecasts varies according to the timing of forecast preparation and the comparability of the forecast methodologies and assumptions. Forecasts from other independent bodies can also provide useful benchmarks.
- (12) Significant differences between the chosen macrofiscal scenario and the Commission's forecast should be described and reasons therefor should be given, in particular if the level or growth of variables in external assumptions departs significantly from the values contained in the Commission's forecasts.
- (13) Given the interdependence between Member States' budgets and the Union's budget, in order to support Member States in preparing their budgetary forecasts, the Commission should provide forecasts for the Union's expenditure based on the level of expenditure programmed within the multiannual financial framework.
- (14) In order to facilitate the production of the forecasts used for budgetary planning and to clarify differences between the forecasts of the Member States and those of the Commission, each Member State should, on an annual basis, have the opportunity to discuss with the Commission the assumptions underpinning the preparation of macroeconomic and budgetary forecasts.
- (15) The quality of official macroeconomic and budgetary forecasts is critically enhanced by regular, unbiased and comprehensive evaluation based on objective criteria. Thorough evaluation includes scrutiny of the economic assumptions, comparison with forecasts prepared by other institutions, and evaluation of past forecast performance.
- (16) Considering the documented effectiveness of rules-based budgetary frameworks of the Member States in enhancing national ownership of the Union's fiscal rules promoting budgetary discipline, strong country-specific numerical fiscal rules that are consistent with the budgetary objectives at the level of the Union should be a cornerstone of the strengthened budgetary surveillance framework of the Union. Strong numerical fiscal rules should be equipped with well-specified target

⁽¹⁾ OJ L 310, 30.11.1996, p. 1.

definitions together with mechanisms for effective and timely monitoring. Those rules should be based on reliable and independent analysis carried out by independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States. In addition, policy experience has shown that for numerical fiscal rules to work effectively, consequences must be attached to non-compliance, where the costs involved may be simply reputational.

(17) By virtue of the Protocol (No 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland annexed to the TEU and to the TFEU, the reference values mentioned in the Protocol (No 12) on the excessive deficit procedure annexed to those Treaties are not directly binding on the United Kingdom. The obligation to have in place numerical fiscal rules that effectively promote compliance with the specific reference values for the excessive deficit, and the related obligation for the multiannual objectives in medium-term budgetary frameworks to be consistent with such rules, should therefore not apply to the United Kingdom.

(18) Member States should avoid pro-cyclical fiscal policies, and fiscal consolidation efforts should be greater in economic good times. Well-specified numerical fiscal rules are conducive to these objectives and should be reflected in the annual budget legislation of the Member States.

(19) National fiscal planning can be consistent with both the preventive and the corrective parts of the Stability and Growth Pact (SGP) only if it adopts a multiannual perspective and pursues the achievement, in particular, of the medium-term budgetary objectives. Medium-term budgetary frameworks are strictly instrumental in ensuring that budgetary frameworks of the Member States are consistent with the legislation of the Union. In the spirit of Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies ⁽¹⁾ and Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure ⁽²⁾, the preventive and corrective parts of the SGP should not be regarded in isolation.

(20) Although the approval of annual budget legislation is the key step in the budget process in which important budgetary decisions are adopted in the Member States, most fiscal measures have budgetary implications that go well beyond the annual budgetary cycle. A single-year perspective therefore provides a poor basis for sound

budgetary policies. In order to incorporate the multi-annual budgetary perspective of the budgetary surveillance framework of the Union, planning of annual budget legislation should be based on multiannual fiscal planning stemming from the medium-term budgetary framework.

(21) That medium-term budgetary framework should contain, inter alia, projections of each major expenditure and revenue item for the budget year and beyond, based on unchanged policies. Each Member State should be able appropriately to define unchanged policies and those definitions should be made public together with the assumptions involved, the methodologies and other relevant parameters.

(22) This Directive should not prevent a Member State's new government from updating its medium-term budgetary framework to reflect its new policy priorities. In this case, the new government should highlight the differences from the previous medium-term budgetary framework.

(23) Provisions of the budgetary surveillance framework established by the TFEU and in particular the SGP apply to general government as a whole, which comprises the sub-sectors central government, state government, local government, and social security funds, as defined in Regulation (EC) No 2223/96.

(24) A significant number of Member States have experienced a sizeable fiscal decentralisation with the devolution of budgetary powers to sub-national governments. The role of such sub-national governments in ensuring that the SGP is complied with has thereby increased considerably, and particular attention should be paid to ensuring that all general government sub-sectors are duly covered by the scope of the obligations and procedures laid down in domestic budgetary frameworks, in particular, but not exclusively, in those Member States.

(25) To be effective in promoting budgetary discipline and the sustainability of public finance, budgetary frameworks should comprehensively cover public finances. For this reason, operations of those general government bodies and funds which do not form part of the regular budgets at sub-sector level and that have an immediate or medium-term impact on Member States' budgetary positions should be given particular consideration. Their combined impact on general government balances and debts should be presented in the framework of the annual budgetary processes and in the medium-term budgetary plans.

⁽¹⁾ OJ L 209, 2.8.1997, p. 1.

⁽²⁾ OJ L 209, 2.8.1997, p. 6.

- (26) Similarly, due attention should be paid to the existence of contingent liabilities. More specifically, contingent liabilities encompass possible obligations depending on whether some uncertain future event occurs, or present obligations where payment is not probable or the amount of the probable payment cannot be measured reliably. They comprise for instance relevant information on government guarantees, non-performing loans, and liabilities stemming from the operation of public corporations, including, where appropriate, the likelihood and potential due date of expenditure of contingent liabilities. Market sensitivities should be duly taken into account.
- (27) The Commission should regularly monitor the implementation of this Directive. Best practices concerning the provisions of this Directive dealing with the different aspects of national budgetary frameworks should be identified and shared.
- (28) Since the objective of this Directive, namely uniform compliance with budgetary discipline as required by the TFEU, cannot be sufficiently achieved by the Member States and can therefore be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (29) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

This Directive lays down detailed rules concerning the characteristics of the budgetary frameworks of the Member States. Those rules are necessary to ensure Member States' compliance with obligations under the TFEU with regard to avoiding excessive government deficits.

Article 2

For the purposes of this Directive, the definitions of 'government', 'deficit' and 'investment' set out in Article 2 of

the Protocol (No 12) on the excessive deficit procedure annexed to the TEU and to the TFEU shall apply. The definition of sub-sectors of general government set out in point 2.70 of Annex A to Regulation (EC) No 2223/96 shall also apply.

In addition, the following definition shall apply:

'budgetary framework' means the set of arrangements, procedures, rules and institutions that underlie the conduct of budgetary policies of general government, in particular:

- (a) systems of budgetary accounting and statistical reporting;
- (b) rules and procedures governing the preparation of forecasts for budgetary planning;
- (c) country-specific numerical fiscal rules, which contribute to the consistency of Member States' conduct of fiscal policy with their respective obligations under the TFEU, expressed in terms of a summary indicator of budgetary performance, such as the government budget deficit, borrowing, debt, or a major component thereof;
- (d) budgetary procedures comprising procedural rules to underpin the budget process at all stages;
- (e) medium-term budgetary frameworks as a specific set of national budgetary procedures that extend the horizon for fiscal policy-making beyond the annual budgetary calendar, including the setting of policy priorities and of medium-term budgetary objectives;
- (f) arrangements for independent monitoring and analysis, to enhance the transparency of elements of the budget process;
- (g) mechanisms and rules that regulate fiscal relationships between public authorities across sub-sectors of general government.

CHAPTER II

ACCOUNTING AND STATISTICS

Article 3

1. As concerns national systems of public accounting, Member States shall have in place public accounting systems comprehensively and consistently covering all sub-sectors of general government and containing the information needed to generate accrual data with a view to preparing data based on the ESA 95 standard. Those public accounting systems shall be subject to internal control and independent audits.

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

2. Member States shall ensure timely and regular public availability of fiscal data for all sub-sectors of general government as defined by Regulation (EC) No 2223/96. In particular Member States shall publish:

(a) cash-based fiscal data (or the equivalent figure from public accounting if cash-based data are not available) at the following frequencies:

— monthly for central government, state government and social security sub-sectors, before the end of the following month, and

— quarterly, for the local government sub-sector, before the end of the following quarter;

(b) a detailed reconciliation table showing the methodology of transition between cash-based data (or the equivalent figures from public accounting if cash-based data are not available) and data based on the ESA 95 standard.

CHAPTER III

FORECASTS

Article 4

1. Member States shall ensure that fiscal planning is based on realistic macroeconomic and budgetary forecasts using the most up-to-date information. Budgetary planning shall be based on the most likely macrofiscal scenario or on a more prudent scenario. The macroeconomic and budgetary forecasts shall be compared with the most updated forecasts of the Commission and, if appropriate, those of other independent bodies. Significant differences between the chosen macrofiscal scenario and the Commission's forecast shall be described with reasoning, in particular if the level or growth of variables in external assumptions departs significantly from the values contained in the Commission's forecasts.

2. The Commission shall make public the methodologies, assumptions and relevant parameters that underpin its macroeconomic and budgetary forecasts.

3. In order to support Member States in preparing their budgetary forecasts, the Commission shall provide forecasts for the expenditure of the Union based on the level of expenditure programmed within the multiannual financial framework.

4. Within the framework of a sensitivity analysis, the macroeconomic and budgetary forecasts shall examine paths of main fiscal variables under different assumptions as to growth and interest rates. The range of alternative assumptions used in macroeconomic and budgetary forecasts shall be guided by the performance of past forecasts and shall endeavour to take into account relevant risk scenarios.

5. Member States shall specify which institution is responsible for producing macroeconomic and budgetary forecasts and shall make public the official macroeconomic and budgetary forecasts prepared for fiscal planning, including the methodologies, assumptions and relevant parameters underpinning those forecasts. At least annually, the Member States and the Commission shall engage in a technical dialogue concerning the assumptions underpinning the preparation of macroeconomic and budgetary forecasts.

6. The macroeconomic and budgetary forecasts for fiscal planning shall be subject to regular, unbiased and comprehensive evaluation based on objective criteria, including *ex post* evaluation. The result of that evaluation shall be made public and taken into account appropriately in future macroeconomic and budgetary forecasts. If the evaluation detects a significant bias affecting macroeconomic forecasts over a period of at least 4 consecutive years, the Member State concerned shall take the necessary action and make it public.

7. Member States' quarterly debt and deficit levels shall be published by the Commission (Eurostat) every 3 months.

CHAPTER IV

NUMERICAL FISCAL RULES

Article 5

Each Member State shall have in place numerical fiscal rules which are specific to it and which effectively promote compliance with its obligations deriving from the TFEU in the area of budgetary policy over a multiannual horizon for the general government as a whole. Such rules shall promote in particular:

- (a) compliance with the reference values on deficit and debt set in accordance with the TFEU;
- (b) the adoption of a multiannual fiscal planning horizon, including adherence to the Member State's medium-term budgetary objective.

Article 6

1. Without prejudice to the provisions of the TFEU concerning the budgetary surveillance framework of the Union, country-specific numerical fiscal rules shall contain specifications as to the following elements:

- (a) the target definition and scope of the rules;
- (b) the effective and timely monitoring of compliance with the rules, based on reliable and independent analysis carried out by independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States;
- (c) the consequences in the event of non-compliance.

2. If numerical fiscal rules contain escape clauses, such clauses shall set out a limited number of specific circumstances consistent with the Member States' obligations deriving from the TFEU in the area of budgetary policy, and stringent procedures in which temporary non-compliance with the rule is permitted.

Article 7

The annual budget legislation of the Member States shall reflect their country-specific numerical fiscal rules in force.

Article 8

Articles 5 to 7 shall not apply to the United Kingdom.

CHAPTER V

MEDIUM-TERM BUDGETARY FRAMEWORKS

Article 9

1. Member States shall establish a credible, effective medium-term budgetary framework providing for the adoption of a fiscal planning horizon of at least 3 years, to ensure that national fiscal planning follows a multiannual fiscal planning perspective.

2. Medium-term budgetary frameworks shall include procedures for establishing the following items:

- (a) comprehensive and transparent multiannual budgetary objectives in terms of the general government deficit, debt and any other summary fiscal indicator such as expenditure, ensuring that these are consistent with any numerical fiscal rules as provided for in Chapter IV in force;
- (b) projections of each major expenditure and revenue item of the general government with more specifications on the central government and social security level, for the budget year and beyond, based on unchanged policies;
- (c) a description of medium-term policies envisaged with an impact on general government finances, broken down by major revenue and expenditure item, showing how the adjustment towards the medium-term budgetary objectives is achieved compared to projections under unchanged policies;
- (d) an assessment as to how in the light of their direct long-term impact on general government finances, the policies envisaged are likely to affect the long-term sustainability of the public finances.

3. Projections adopted within medium-term budgetary frameworks shall be based on realistic macroeconomic and budgetary forecasts in accordance with Chapter III.

Article 10

Annual budget legislation shall be consistent with the provisions of the medium-term budgetary framework. Specifically, revenue and expenditure projections and priorities resulting from the medium-term budgetary framework as set out in Article 9(2) shall constitute the basis for the preparation of the annual budget. Any departure from those provisions shall be duly explained.

Article 11

No provision of this Directive shall prevent a Member State's new government from updating its medium-term budgetary framework to reflect its new policy priorities. In this case, the new government shall indicate the differences from the previous medium-term budgetary framework.

CHAPTER VI

TRANSPARENCY OF GENERAL GOVERNMENT FINANCES AND COMPREHENSIVE SCOPE OF BUDGETARY FRAMEWORKS

Article 12

Member States shall ensure that any measures taken to comply with Chapters II, III and IV are consistent across, and comprehensive in coverage of, all sub-sectors of general government. This shall, in particular, require the consistency of accounting rules and procedures, and the integrity of their underlying data collection and processing systems.

Article 13

1. Member States shall establish appropriate mechanisms of coordination across sub-sectors of general government to provide for comprehensive and consistent coverage of all sub-sectors of general government in fiscal planning, country-specific numerical fiscal rules, and in the preparation of budgetary forecasts and setting-up of multiannual planning as laid down, in particular, in the multiannual budgetary framework.

2. In order to promote fiscal accountability, the budgetary responsibilities of public authorities in the various sub-sectors of general government shall be clearly laid down.

Article 14

1. Within the framework of the annual budgetary processes, Member States shall identify and present all general government bodies and funds which do not form part of the regular budgets at sub-sector level, together with other relevant information. The combined impact on general government balances and debts of those general government bodies and funds shall be presented in the framework of the annual budgetary processes and the medium-term budgetary plans.

2. Member States shall publish detailed information on the impact of tax expenditures on revenues.

3. For all sub-sectors of general government, Member States shall publish relevant information on contingent liabilities with potentially large impacts on public budgets, including government guarantees, non-performing loans, and liabilities stemming from the operation of public corporations, including the extent thereof. Member States shall also publish information on the participation of general government in the capital of private and public corporations in respect of economically significant amounts.

CHAPTER VII

FINAL PROVISIONS

Article 15

1. Member States shall bring into force the provisions necessary to comply with this Directive by 31 December 2013. They shall forthwith communicate to the Commission the text of those provisions. The Council encourages the Member States to draw up, for themselves and in the interests of the Union, their own correlation tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. The Commission shall prepare an interim progress report on the implementation of the main provisions of this Directive on the basis of relevant information from Member States, which shall be submitted to the European Parliament and to the Council by 14 December 2012.

4. Member States shall communicate to the Commission the text of the main provisions which they adopt in the field covered by this Directive.

Article 16

1. By 14 December 2018 the Commission shall publish a review of the suitability of this Directive.

2. The review shall assess, inter alia, the suitability of:

(a) the statistical requirements for all sub-sectors of government;

(b) the design and effectiveness of numerical fiscal rules in the Member States;

(c) the general level of transparency of public finances in the Member States.

3. By 31 December 2012, the Commission shall assess the suitability of the International Public Sector Accounting Standards for the Member States.

Article 17

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 8 November 2011.

For the Council

The President

J. VINCENT-ROSTOWSKI
