

Opinion n° HCFP-2017-5
on the first amending budget bill for the year 2017

30 October 2017

Under article 15 of the constitutional bylaw n°2012-1403 of 17 December 2012, the Government referred to the High Council of public finance (Haut Conseil des finances publiques, HCFP) on 26 October 2017, its macroeconomic forecasts and the introductory article of its first amending budget bill for the year 2017. After its deliberations on 27 October 2017, the High Council delivered the following opinion.

Introductory remarks

Following the receipt of the referral file, the High Council heard the Treasury and the budget department on 27 October 2017. Complementary written information was sent by the finance administration.

This amending budget bill's purpose is, on the word of the Government, to take into account the financial consequences of the Constitutional Council's invalidation published on 6 October 2017, of the 3 % contribution on dividends put in place by the amending budget law n° 2012-958 on 16 August 2012 (and modified by several amending budget laws since then). The Government estimates that the litigation represents "*an extra cost for the State's budget of about 10 billion €*"¹ (including interests) which will weigh equally on 2017 and 2018, reaching 5 billion € each year. In order to offset this extra cost in 2017, the Government plans a "*one-off and temporary contribution on corporate tax, bringing about 5 billion €*" in 2017.

In the amending budget bill's introductory article, the Government states, "*given the urgency in this measure's preparation, it was not possible to update spending and revenue estimates with regards to the year-end budget scheme*".

This choice makes this amending budget bill peculiar. It solely focuses on the consequences of the Constitutional Council's decision and on a new one-off contribution. Furthermore, unlike usual amending budget bills, it does not take into account the recent developments observed in the economic situation or the 2017 revenues and expenditure updates since the presentation of the 2018 budget bill.

I- The Government's scenario for the handling of the litigation

The Government presents its litigation and one-off contribution scenario as neutral for public finances in 2017: "*this bill introduces a one-off and temporary contribution on corporate tax, bringing about 5 billion € in 2017, which will offset the extra cost caused by the litigation in 2017, estimated at 5 billion €*".

The revenue estimate of the one-off contribution is fraught with the usual uncertainties on corporate tax forecasts, the contribution being based on this tax.

¹ Subject to rules on the fiscal period of limitation.

Information transmitted to the High Council on the practical details of the settlement – in particular the priority given to the greatest amounts until the end of December – makes the assumption of 5 billion € in 2017 plausible.

Regarding national accounting, article 20.189 of the 2010 European System of Accounts (ESA) provides that *“When a court of justice rules that compensation must be paid, or a transaction reversed, resulting from or related to past events, the time of recording of the expenditure or revenue is when the claimants have an automatic and incontrovertible right for a given amount that can be individually determined, and when it is unlikely that claimants will fail requesting their due. When a court of justice merely sets a principle of compensation, or when the claims must be reviewed for eligibility and in relation to determination of the amount by administrative services, expenditure or revenue is recorded as soon as the value of the obligation is reliably determined.”*

The Government refers to the second part of this article to estimate the impact on public finances in national accounting terms at 5 billion € in 2017 and 5 billion € in 2018. This accounting treatment is the same as for previous mass fiscal litigations (OPCVM, withholding tax, Ruyter, Stéria,...). Under this treatment, the cost associated to a claim is recorded at the point where the fiscal administration has reliably determined the value of the obligation. It requires a case by case individual analysis, which seems here more simple than in previous litigations.

The treatment foreseen by the Government needs to be formally confirmed by Insee together with Eurostat. If it is confirmed, the amount included in the 2017 public deficit will depend on the timing of the case analyses by the fiscal administration. If not, the entire cost of the litigation could weigh on 2017.

The High Council points out several uncertainties concerning the scheme’s figures. Regarding national accounting, the Government’s scenario matches the treatment of previous mass fiscal litigations. It needs to be formally confirmed by Insee and Eurostat. Furthermore, the High Council notes that the Government’s referral file does not take into account the scheme’s impact on public finances in 2018, which can yet be substantial. It will need to be included in the 2018 budget bill during parliamentary discussion.

II- The macroeconomic and public finance scenarios are unchanged since the 2018 financing bill

The macroeconomic forecasts for the year 2017 attached to the amending budget bill are identical to those of the 2018 budget bill. The public finance scenario is almost unchanged since the 2018 budget bill. It assumes that only 5 billion € of the litigation settlement process will weigh on 2017 in national accounting terms. Although slightly deteriorated (by 0.4 billion €)², the public balance in percentage of GDP stays unchanged for 2017, at -2.9 % of GDP, as in the 2018 budget bill.

The components of the 2017 public balance (structural balance, cyclical component and one-off and temporary measures) are unchanged from those presented in the 2018 budget bill. The cost of the litigation and the one-off contribution are recorded as one-off and temporary measures by the Government; these two measures almost offset each other so that the one-off

² This is notably due to the fact that a small part of the one-off contribution on big corporates would be collected in 2018, and also to the fact that the Constitutional Council’s decision squeezes the 0.2 billion € revenue of the 3 % contribution which had been expected in 2017.

and temporary component is unchanged in percentage of GDP. In addition, the macroeconomic assumptions being constant, the cyclical component of public deficit stays unchanged.

The registration as one-off and temporary measure of the litigation's settlement is consistent with the treatment of previous mass fiscal litigations and with the Government's criterion exposed in the programming bills.

The registration as one-off and temporary measure of the planned contribution is also justified with regards to the Government's criterion. If it were not considered a one-off and temporary measure, this contribution would distort the path of the structural balance, improving it by 0.25 point of GDP in 2017 and then deteriorating it similarly in 2018 in reaction, though this contribution is meant to offset an expenditure itself considered as one-off and temporary.

The Government justifies the fact that the revenue and expenditure estimates have not been updated in this amending budget bill by "*the urgency in this measure's preparation*". It adds that "*the usual year-end amending budget bill will be presented mid-November [...]. It will include the complete updates of economic and financial data, taking into account all the new information available since the 2018 budget bill presentation*".

The High Council emphasizes that the opinion it has to give on this amending budget bill is therefore highly formal. Some new information available since the 2018 budget bill presentation could lead to revise significantly forecasts on public finances for 2017. The lack of updating does not allow the High Council to assess this amending budget bill's macroeconomic scenario and public finance forecasts as a whole. It also does not enable the assessment of the presented scheme as a part of an updated economic and financial framework and the full assessment of its consequences.

In its opinion on the coming usual year-end amending budget bill, the High Council will deliver mid-November its analysis of the updated economic assumptions and public finance estimates attached to the forthcoming bill.

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This opinion has been published in the *Official Journal* of the French Republic and attached to the first amending budget bill for 2017.

Annex: introductory article of the first amending budget bill for 2017

La **prévision de solde structurel et de solde effectif** de l'ensemble des administrations publiques pour 2017 s'établit comme suit :

	Prévision 2017
Solde structurel (1)	-2,2
Solde conjoncturel (2)	-0,6
Mesures exceptionnelles et temporaires (3)	-0,1
Solde effectif (1 + 2 + 3)	-2,9

En points de produit intérieur brut (PIB)

Exposé des motifs

A la suite de l'invalidation par le Conseil constitutionnel le 6 octobre dernier de la contribution de 3 % sur les revenus distribués, le présent projet de loi introduit une mesure fiscale, afin de garantir le respect de nos engagements européens.

L'article 13 du PLF pour 2018 prévoyait d'ores et déjà la suppression de cette mesure créée en 2012 sous la précédente majorité, qui venait elle-même compenser l'annulation d'une taxe d'un montant proche. Toutefois, les conséquences financières de cette invalidation avaient été envisagées selon une chronologie plus étalée et sans incidence sur l'exercice 2017.

Le présent projet de loi crée donc une contribution exceptionnelle et ponctuelle à l'impôt sur les sociétés d'un rendement proche de 5 Md€, qui permettra de compenser le surcoût prévu en 2017 au titre de ce contentieux, évalué à 5 Md€.

Afin d'éclairer au plus vite les contribuables sur cette contribution exceptionnelle et ponctuelle, ce projet de loi de finances rectificatives doit entrer en vigueur avant la mi-décembre.

En ce qui concerne les données macroéconomiques, les informations nouvelles apparues depuis le dépôt du projet de loi de finances pour 2018 et du projet de loi de programmation des finances publiques pour les années 2018 à 2022 n'amènent pas à modifier les hypothèses macroéconomiques retenues à l'occasion de la construction de ces textes.

Au regard de l'urgence entourant la préparation de cette mesure, il n'a pas été possible de procéder à une actualisation des prévisions de recettes et de dépenses au regard du schéma budgétaire de fin de gestion. La trajectoire de finances publiques ici présentée retrace donc la seule évaluation à date des conséquences de la décision du Conseil constitutionnel et du présent projet de loi. La prévision de solde public reste inchangée par rapport à celle présentée à l'article liminaire du projet de loi de finances pour 2018, à - 2,9 % du PIB. Toutefois, le traditionnel projet de loi de finances rectificative de fin d'année sera présenté mi-novembre à l'issue de l'examen du présent projet de loi. Il comportera une actualisation complète des données économiques et financières, intégrant l'ensemble des informations nouvelles intervenues depuis le dépôt du projet de loi de finances pour 2018 ainsi que le schéma d'ouvertures et d'annulations de crédits de la fin de gestion budgétaire.

En outre, l'institution de la nouvelle contribution exceptionnelle à l'impôt sur les sociétés et le coût du contentieux sur la taxe de 3 % sur les dividendes sont traités comme des mesures exceptionnelles et temporaires ayant vocation à se compenser. Elles ne conduisent pas à faire évoluer la décomposition du solde 2017, par rapport à celle présentée à l'article liminaire du projet de loi de finances pour 2018, en cohérence avec le traitement retenu dans le projet de loi de programmation des finances publiques.