

France

High Council for Public Finances (Haut Conseil des finances publiques, HCFP)

Established: 2013.

Enabling legislation: 17 December 2012, Organic Law on the Planning and Governance of Public Finances (Loi Organique du 17 Décembre 2012 relative à la Programmation et à la Gouvernance des Finances Publiques).

Mandate: To provide an opinion on: the government's macroeconomic forecasts underlying draft financial laws (programming legislation, finance laws, financing of social security and stability programmes); *ex ante* compliance of these draft financial texts with the multi-year structural balance trajectory; and *ex post* compliance with the structural balance trajectory.

Budget: EUR 800 000 (2014).

Number of Staff: Ten council members and four to five secretariat staff (all part-time).

1. Context

Over the past 30 years, France has failed to bring its public finances to sustainable levels. The last government surplus was in 1974. Since then, while public finances have gone through a number of recovery phases (1976-80, 1988-90, 1997-2000 and 2004-06) each recovery was followed by setbacks, and France entered the 2008 financial crisis with a deficit of nearly 3% of GDP and public debt (as defined by Maastricht) of 65% of GDP. In 2014, the government deficit was 4% and public debt amounted to 90% of GDP. Though successive governments have promised a return to fiscal balance none have been successful. France has systematically failed to adhere to the stability programmes submitted to the European authorities, a problem compounded by over-optimistic macroeconomic assumptions.

Nevertheless, in the latter half of the 2000s, France gradually strengthened its budgetary framework. Today the state budget is structured around several instruments:

- so-called “zero volume” spending standards (increase in state spending from one year to the next is limited to inflation) and “zero value, excluding debt and pensions” (increase in state spending is frozen from one year to the next);
- three-year ceilings on spending for the state’s general budget missions, set every two years for a three-year period;
- a freeze (in volume and then in value) on government financial assistance to local authorities (*collectivités territoriales*);
- so-called cross-cutting rules, which apply to certain expense categories: e.g. replacing only one out of every two retiring government workers (staff costs), multi-year objectives to reduce operating expenditures, etc.

These rules were added in 2008 to the Public Finance Programming Laws (LPFP), which are approved every two years and cover a period of at least three years. While they are not formal legal constraints, the Court of Auditors (*Cours de Comptes*) assesses *ex post* compliance with them when it audits implementation of the Finance Law.

Since 1997, social security expenditures have typically been voted as part of the social security financing laws. This legislation includes a National Objective for Health Insurance Expenditures (ONDAM), which is an effective tool for regulating health insurance spending. An “early warning committee” was formed in 2004 to alert the government if changes in health insurance spending make it incompatible with the national objective approved by the parliament.

The creation of an independent fiscal institution was the subject of intense debate in early 2010 within an group of experts and parliamentarians chaired by economist Michel Camdessus which was set up to examine ways to improve fiscal governance and anchor a fiscal rule in the constitution. Many reservations were expressed, notably by parliamentarians. There were, for example, concerns about how an independent fiscal institution would fit into the current institutional framework – would its functions overlap with those of the Court of Audit? Would it undermine or supplant the role of the parliament in budget oversight?

March 2012, however, brought a change of perspective as France ratified the new European Treaty on Stability, Co-ordination and Governance (TSCG or Fiscal Compact) and the government began looking at how to translate the European requirements into French law, including the requirement that an independent institution monitors compliance with the national fiscal rules.

The first option considered was the establishment of an *ad hoc* institution, separate from the government and the parliament, as well as from the Court of Auditors, which would focus exclusively on *ex post* monitoring of public finances. The Court of Auditors, concerned about conflicting mandates, proposed a second option in which it would continue to monitor compliance with fiscal objectives and the new fiscal council would analyse the macroeconomic projections and underlying assumptions used to prepare the budget. As the European Commission indicated in its September 2011 Report on Public Finances, the Court of Auditors already performed a number of the tasks typically assigned to a fiscal council. In particular, it examined public finance developments and stances, verified compliance with fiscal rules, and issued opinions and recommendations on fiscal policy. However, the court did not have jurisdiction to produce or endorse macroeconomic forecasts, a function unrelated to its historical role.

A compromise was finally announced by the President of the Republic on 7 September 2012: the creation of the High Council of Public Finances (HCFP), the “indisputable authority” tasked with monitoring and ensuring the application of fiscal rules as well as verifying the assumptions on which the budget would be based.

The government presented a draft organic law on the planning and governance of public finances to the parliament on 19 September 2012. After lively debates in both chambers, which focussed mainly on the composition and tasks of the HCFP, the organic law was passed by a large majority. Some members of parliament did speak out, however, to condemn what they saw as a new technocratic framework divesting the parliament of its prerogatives in the budget process.

The organic law, which translates the provisions of the Fiscal Compact into French law, contains a number of provisions in addition to the creation of the HCFP:

- It defines the content of public finance programming laws that set, with a view to achieving the government’s medium-term objective, successive annual structural balance trajectories and actual balance trajectories for the public accounts and the structural adjustment effort for each fiscal year of the programming period.
- It expands finance laws and budget settlement laws, which previously covered only state finances expressed in cash-based accounting, to include an “introductory article” (*article liminaire*) outlining the forecasted structural and actual public balance, expressed in national accounting, for all public administrations. This provision should allow for the Constitutional Council to monitor compliance with the trajectory.
- It introduces a correction mechanism in which the HCFP plays a central role.

2. Relationship with the executive and the legislature

The HCFP is an independent body alongside the Court of Auditors. This means that it is fully independent from both the government and the parliament, and that it has a special separate status from the Court of Auditors. The tasks of the Court of Auditors with regard to budgetary oversight have been adapted to prevent duplication with those conferred by law to the HCFP. It was thought that the HCFP would benefit from being

attached to the Court of Auditors due to the court's well established reputation for independence and its high level of credibility within France's institutional landscape, in particular the trust placed in it by the parliament. The court and the HCFP maintain close ties in order to guarantee the consistency of their tasks. The HCFP is presided over by the First President (*Premier président*) of the Court of Auditors, and the Chief of Staff (*Rapporteur général*) is also a magistrate of the Court.

While the strong links between the Court and the HCFP may risk giving the perception that the HCFP is essentially a part of the Court, the organic legislation makes several provisions in order to guarantee the complete independence of the members of the HCFP. For example, members of the HCFP are appointed by six different authorities, which include representatives from the opposition. In France, the National Assembly and Senate Finance Committees are chaired by opposition members. And council members cannot receive or solicit any instructions from the government or any other organisation.

The HCFP's enabling legislation provides the basis for the relationship between the parliament and the HCFP. The Presidents of the National Assembly and the Senate and the Presidents of the Finance Committees in both chambers appoint four of the ten council members who make up the council (*collège*). The parliament also reviews and approves the HCFP's budget. Given the parliament's constitutional mandate to approve and oversee the national budget, all opinions rendered by the HCFP are sent to the parliament for consideration during budgetary and related debates on financial legislation. Finally, the Finance Committees of either chamber can request a hearing with the President of the HCFP at any time (Article 20).

HCFP opinions on the texts specified in the HCFP mandate are not binding on the government. However, given that HCFP opinions are public, are in the parliamentary debate, and receive media attention, the government runs a reputational risk if it chooses to disregard them.

Box 1. Role of the legislature in the budget process

France has a bicameral legislature comprised of the National Assembly and the Senate. The 577 members of the National Assembly are elected in a two-round, first-past-the-post ballot, in which the candidate is elected with an absolute majority in the first round (i.e. more than 50%) or a relative majority in the second round. The 348 Members of the Senate are elected by a college of approximately 150 000 members, comprised of the members of the National Assembly, municipal and regional councillors, and their delegates.

Constitutionally, legislation that seeks to authorise expenditure or impose taxation must originate in the National Assembly by the government. The parliament is constitutionally prohibited from changing overall revenues or expenditures in the government's proposed budget. Parliamentarians are also prohibited from creating new "missions" or programmes, or from proposing amendments to revenue measures. However, the parliament has full freedom to amend proposed expenditure within these restrictions by shifting the amounts allocated among programmes within the same "mission". Total amendments tend to be very small; in 2013 they were less than 0.1 per cent of the total budget.

The French fiscal year runs from January to December. The 2001 Organic Budget Law (LOLF) provides that around the end of each spring, the government tables a report on economic and fiscal developments which is subsequently debated by parliamentarians. The results of this debate inform the development of the budget law, which must be submitted

Box 1. Role of the legislature in the budget process (cont.)

to the parliament by the first Tuesday of October. There are time limits set out in statute regarding debate in the National Assembly (40 days) and Senate (20 days), as well as an overall limit of 70 days from introduction of the proposed law to a final vote. This includes time for scrutiny by legislative committees. The constitution provides that if a final vote is not taken within 70 days, the previous year's budget takes effect for a limited period.

The Finance Committees take the lead in budget scrutiny, co-ordinating a process in which sectoral committees can make recommendations which the Finance Committees then review and accept or reject. They are supported by a sizeable staff (over 20).

The LOLF requires that the budget law be accompanied by several documents, including an overall economic and fiscal outlook covering at least four years, proposed new measures and their relationship with existing policies, performance-related information for programmes, as well as estimates of tax expenditures. This overall "budget package" is presented as a collection of roughly 50 major public policies ("missions"), which in turn are comprised of approximately 170 specific programmes linked to objectives and performance indicators. The parliament is required to vote on each individual "mission", which typically includes planned expenditures across several ministries or agencies. Apart from expenditure limits on human resources, allotments approved by the parliament can then be redistributed among different types of expenditure provided that the limits for each programme are respected. Supplementary budget laws (i.e. "rectifying laws") are typically submitted to the parliament at least once a year to modify the initial revenue and expenditure figures.

Parliamentarians also exercise in-year oversight regarding execution of the budget law. More specifically, the government is required to apprise the Presidents of the National Assembly and Senate Finance Committees of proposed reallocations between programmes (maximum 2%) or expenditure reductions (maximum 1.5%). The LOLF also vests these Finance Committees with authority to "monitor execution of the budget acts and evaluate public finance issues ... [via] ... documentation or on-the-spot investigation". These committees can compel testimony from any witness deemed pertinent to this work.

The High Council on Public Finance is expected to complement the support provided by the French Court of Accounts, which can assist both Finance Committees throughout the year in their scrutiny and evaluation of spending. In addition, the National Assembly Finance Committee will continue to rely on its Monitoring and Evaluation Task Force to support analysis and propose reforms to public policies, programmes and services.

Box 2. Role of the Court of Auditors in the oversight of the public finances

The 4 October 1958 Constitution and the 2001 Organic Law on Financial Legislation (LOLF) give a key role to the court in oversight of public finances. As such, the court is already considered a "budget watchdog". It controls *ex post* government budget implementation and the implementation of social security funding legislation. It controls the public accounts *ex post*, certifying government accounts and the overall social security system. Finally, it monitors the status of and outlook for public finances throughout the year. A sub-report on this topic is prepared in February as part of the court's annual report, and again in June, as part of the report on the status of and outlook for the public finances.

3. Legal basis for establishment

The HCFP was established by Law No. 2012-1403 on the planning and governance of the public finances on 7 December 2012. In its Decision No. 2012-653 DC of 9 August 2012, the Constitutional Council determined that the implementation of the Treaty on Stability, Co-ordination and Governance did not require the constitution to be revised. However, in the absence of constitutional amendments, it also decided that an organic law was necessary to establish the rules regarding the medium-term objective and the budgetary adjustment trajectory of public administrations, the correction mechanism and the independent bodies involved in the budget process. An organic law, under French law, is higher-level legislation and has quasi-constitutional standing. An organic law therefore takes precedence over finance laws and social security financing laws. Article 21 of the organic law states that the HCFP shall establish and publish its own rules of procedure. Article 18 of these rules for procedure calls for an information-sharing protocol to be developed between the HCFP and the government.

4. Mandate

The mandate of the HCFP is different from many of its European counterparts in two key ways. First, the HCFP is directly involved in the budget process – it must be consulted before any draft financial texts are presented in the parliament. However, its opinions are not binding on the government. Secondly, its mandate is strictly defined and does not include an overall assessment of the status and outlook – or sustainability – of public finances. This last task remains under the responsibility of the Court of Auditors.

The HCFP is an advisory body tasked with providing fully independent opinions on all financial texts presented by the government, including the following:

- public finance programming laws, passed every two years, which set the annual successive structural and actual balance trajectories of public administration accounts (medium-term objective) for a minimum of three years;
- draft finance laws and social security financing laws, passed every year in December, which will now include a structural balance objective and an actual balance objective for all public administrations;
- amended finance laws and amended social security laws, which may arise throughout the year to modify laws previously approved by the parliament;
- budget settlement laws passed in May of the year following the year to which they refer, which now outline results with regard to the structural balance and actual balance for the year in question; and
- stability programmes presented each year in April to the European Commission and the European Council.

While the HCFP must assess numerous laws, its opinions are limited to:

- assessing the soundness of the macroeconomic forecasts on which the draft finance law and stability programme are based;
- examining potential output and the output gap in the programming laws;
- analysing *ex ante* whether the annual objectives in the finance law are coherent with the multi-year structural balance trajectory; and

- identifying *ex post* any significant deviations from the medium-term objective or the adjustment path towards it as defined in the programming law.

HCFP tasks are strictly defined in its enabling legislation which states that the HCFP may not discuss or issue opinions on anything above and beyond the topics provided for in the organic law.

5. Functions

The HCFP does not prepare its own macroeconomic projections – this is the prerogative of the government. Its role is to examine the robustness and accuracy of key macroeconomic forecasts: GDP components, inflation, payroll, etc. The HCFP assesses their accuracy based on the information at its disposal, as well as alternative projections from international organisations and other economic bodies. As part of this work, it carries out risk-assessment-type analyses.

The organic law provided for a “coherence review” (*examen de la cohérence*) without detailing what was expected in practice. At one end of the spectrum this could simply mean ensuring that the figures match. A more ambitious approach taken by the HCFP is to analyse both revenue and expenditure projections. The short time frame within which the HCFP prepares its opinion means it will most likely have to focus its analysis on key revenue and expenditure lines and whether they have optimistic or pessimistic biases.

The HCFP does not have the authority to analyse the long-term sustainability of public finances. It has no role in policy costings or costings of electoral platforms and does not provide normative policy recommendations. The Court of Auditors continues to play the main *ex post* assessment role, but the HCFP is responsible for the *ex post* evaluation regarding structural balance projections.

6. Work programme

The organic law establishes the timings for main HCFP reports in September, April and May, and in response to government reports that may be presented during the year. Article 21 of the organic law prohibits the HCFP from undertaking work on its own initiative beyond what is provided for in the law.

7. Budget

The HCFP has its own budget line as part of the appropriations for the budget of the Court of Auditors in the finance law. The HCFP annual granted budget is approximately EUR 800 000, of which 45% is intended to finance staff costs and 55% is for operations and the use of external expertise. Effective expenses excluding wages have so far been very limited (less than EUR 30 000). In addition, the Court of Auditors provides logistical support.

8. Staffing

8.1. Leadership

The HCFP is chaired by the First President of the Court of Auditors and consists of a council and a permanent secretariat responsible for preparing proposals to be discussed by the council. The First President of the court is a magisterial appointment and he or she cannot be dismissed. The HCFP President speaks on behalf of the council.

In addition to its President, the council has ten members:

- four Court of Auditors magistrates are appointed by the First President of the Court;
- five recognised experts in economics and public finance, appointed by the Presidents of the National Assembly and the Senate, the Presidents of the National Assembly and Senate Finance Committees and the President of the Economic, Social and Environmental Council (Conseil économique, social et environnemental); and
- the director general of the National Institute of Statistics and Economic Studies (Institut national de la statistique et des études économiques or INSEE).

The members of the HCFP are appointed for a five-year term. Half are renewed every 30 months (two and one-half years). The terms of the Court of Auditors magistrates are renewable once. The terms of the outside experts are non-renewable. Membership is part-time and unremunerated; only expenses (e.g. travel) associated with their work are reimbursed. The council must maintain a gender balance with an equal number of men and women. Although council members are part-time, they are restricted from holding elected office. There is no provision prohibiting the appointment of a foreign national to the HCFP.

Council members can only be removed by the institution that appointed them and after the majority of two-thirds of the other members has been notified. Cause for dismissal includes cases of permanent physical incapacity or serious breach of duties (violation of deliberative secrecy, etc.). Council members must make a declaration of interests to the First President of the Court of Auditors. These declarations are also published on the HCFP website.

8.2. Staff

The permanent secretariat is headed by a Rapporteur General who acts as chief economist and is supported by a small team. The Rapporteur General has two assistants, one to synthesise macro-economic and public finance data and one handling administrative issues. The Rapporteur General can recruit secondees to the HCFP secretariat from among the magistrates in the Court of Auditors (magistrates may work part-time on HCFP business and maintain duties within the Court of Auditors) and public employees. The HCFP can also recruit experts from academia or other organisations. The first Rapporteur General was a former general director of INSEE, former director of forecasting at the Ministry for the Economy and Finance and former chief economist of the OECD. The second Rapporteur General had over 40 years of experience at the Court of Auditors and in the Ministry of Finance. The HCFP can also draw on outside experts, particularly from academia, to enhance the quality and credibility of its work.

9. Access to information

The organic law states that the government must respond to requests for information from the HCFP. In practice, information has not always been forthcoming. The HCFP has attempted to develop a memorandum of understanding with the relevant administrative actors (budget directorate, treasury, social security administration). Where relevant, the HCFP has strongly underlined the problems posed by incomplete information in its opinions.

10. Transparency

The HCFP publishes all its opinions on its website, as well as information on its participation in parliamentary hearings and other news on its work. Opinions are sent first

to the government and rendered public when they are presented in the National Assembly. Preparatory work, however, remains confidential as, in keeping with French legal tradition, the HCFP is not authorised to publish dissenting opinions.

The HCFP bases its assessment on the government its GDP projections on the estimates of the government, the most recent economic information available, and forecasts produced by other organisations (a list of which is made public). Official contacts between the President of the HCFP and government officials are made public. Similarly, working conditions agreed between the permanent secretariat and the administration will be made public in the memorandum of understanding.

While the establishment of the HCFP and its initial work have already received significant media coverage, it has faced challenges in terms of distinguishing the HCFP from the Court of Auditors which has a very high profile in the media. Given the sensitive nature of HCFP work, communications are handled by the President of the HCFP with the support of the permanent secretariat. A further challenge, faced by many IFIs, is that the subject matter covered by the HCFP is not always easily accessible for the general public. The HCFP has organised and participated in seminars on topics related to its work.

11. Governance, advisory support, monitoring and evaluation

The HCFP may consult outside experts or organisations for its analyses, but it does not have an oversight board or advisory panel.

12. Concluding remarks

The HCFP faces a number of challenges as a new institution with an unprecedented role in the French budget process. First, it has been established in a particularly difficult economic period which means that extreme caution has to be used when assessing government macroeconomic projections.

Secondly, although its placement alongside the Court of Auditors means that it benefits from the court's solid reputation for independence, it has to build up its own macroeconomic credibility.

Finally, the HCFP depends heavily on information on the public finances provided by the government and on whether such information is accurate and easily accessible. The HCFP and the executive will have to build trust over time in order to work together productively on public finances.

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