



Brussels, 22.12.2023
C(2023) 9289 final

COMMISSION IMPLEMENTING DECISION

of 22.12.2023

on the partial suspension of the disbursement of the third and fourth instalments of the non-repayable support for Portugal

(Only the Portuguese text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility¹, and in particular Article 24(6) thereof,

Whereas:

- (1) According to Article 4(2) of Regulation (EU) 2021/241, the specific objective of the Recovery and Resilience Facility is to provide Member States with financial support with a view to achieving the milestones and targets of reforms and investments as set out in their recovery and resilience plans.
- (2) Council Implementing Decision of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Portugal² (the ‘Council Implementing Decision’) provides that the Union is to release instalments in accordance with the Financing and the Loan Agreement conditional on a decision by the Commission, taken in accordance with Article 24(5) of Regulation (EU) 2021/241, that Portugal has satisfactorily fulfilled the relevant milestones and targets identified in relation to the implementation of the recovery and resilience plan.
- (3) On 4 October 2023, Portugal submitted a request for payment of the third and fourth instalments of the non-repayable support and the third instalment of the loan support, accompanied by a management declaration and a summary of audits. Pursuant to Article 24(3) of Regulation (EU) 2021/241, the Commission assessed on a preliminary basis whether the relevant milestones and targets set out in the Council Implementing Decision had been satisfactorily fulfilled. For the purpose of that assessment, the operational arrangements concluded between the Commission and Portugal³, in accordance with Article 20(6) of Regulation (EU) 2021/241, were taken into account.
- (4) Section 2(1)(1.3) of the Annex to the Council Implementing Decision provides the relevant milestones and targets that are to be satisfactorily fulfilled for the third instalment of the non-repayable support for an amount of EUR 2 010 220 573.

¹ OJ L 57, 18.2.2021, p. 17.

² 10149/21 + ADD 1 REV 1; 13351/23 + ADD 1 REV 1, not yet published.

³ Recovery and Resilience Facility Operational arrangements between the European Commission and Portugal, entered into force on 18 January 2021. The amendment to the Operational arrangements entered into force on 23 November 2023.

- (5) Section 2(1)(1.4) of the Annex to the Council Implementing Decision provides the relevant milestones and targets that are to be satisfactorily fulfilled for the fourth instalment of the non-repayable support for an amount of EUR 937 165 319.
- (6) As a result of the assessment provided for in Article 24(3) of Regulation (EU) 2021/241, the Commission established that target 1.3, milestone 1.12 and milestone 6.15 have not been satisfactorily fulfilled. In accordance with Article 24(6) of Regulation (EU) 2021/241, the Commission communicated to Portugal its assessment on 13 December 2023 and informed Portugal that it could present its observations on the Commission's assessment within one month from the date of that communication.
- (7) On 14 December 2023, Portugal presented its observations on the Commission's assessment pursuant to Article 24(6), first subparagraph of Regulation (EU) 2021/241. Portugal recognised that target 1.3, milestone 1.12 and milestone 6.15 have not been satisfactorily fulfilled by 6 December 2023. Portugal added, without specifying, that some progress has been made since then and that it will continue to take the necessary steps to ensure the satisfactory fulfilment of the milestones and targets.
- (8) On the basis of the justification provided in the request for payment and the observations presented by Portugal, the Commission considers that target 1.3, milestone 1.12 and milestone 6.15 have not been satisfactorily fulfilled.
- (9) Target 1.3 requires the completion of the decentralisation of responsibilities in the field of health. To transfer health responsibilities to the local level, the government should conclude transfer agreements with the municipalities and these agreements should be in force, otherwise the process of decentralisation is not completed as required by the Council Implementing Decision. The target requires that there be 201 municipalities with the transfer of responsibilities completed, whilst only 142 transfer agreements have been concluded and entered into force. As of this, Portugal has completed the decentralisation process in 142 out of 201 municipalities, which is not sufficient to consider this target satisfactorily fulfilled. Portugal submitted that it had no observations to present that could affect the Commission's assessment. The Commission therefore considers that target 1.3 is not satisfactorily fulfilled.
- (10) Milestone 1.12 requires the entry into force of the new full dedication work regime in the national health service. Portugal has published Decree-Law No. 103/2023 that introduces this regime, but which has not entered into force. In addition, Decree-Law No. 103/2023 is insufficient to establish the full dedication regime in the integrated responsibilities centres of the hospitals of the national health service, as required by the Council Implementing Decision. As recognised in Decree-Law No. 103/2023, the full dedication regime in the integrated responsibilities centres of the hospitals of the national health service will be done by another legal act that has not been provided to the Commission. Portugal submitted that it had no observations to present that could affect the Commission's assessment. The Commission therefore considers that milestone 1.12 is not satisfactorily fulfilled.
- (11) Milestone 6.15 requires the entry into force of the law on regulated professions. Portugal has amended Law No. 2/2013, of 10 January, which determines the establishment, organisation, and functioning rules applicable across the 20 professional public associations (professional public associations framework law), and Law No. 53/2015, of 11 June, which establishes the rules on creation, organisation and functioning of business services firms that carry out the professional activities regulated by the professional public associations (business firms framework law). However, Portugal has not amended the statutes of each professional public

association, which are adopted by law and put into effect the professional public associations framework law and have to comply with the business firms' framework law. The amendments of the framework laws are not sufficient to consider the milestone 6.15 satisfactorily fulfilled, taking into account that the professional public associations' statutes have not been revised in order to implement the changes brought by the revised framework laws. Portugal submitted that it had no observations to present that could affect the Commission's assessment. The Commission therefore considers that milestone 6.15 is not satisfactorily fulfilled.

- (12) Therefore, as target 1.3, milestone 1.12 and milestone 6.15 constituting part of Portugal's request for payment are not satisfactorily fulfilled, the disbursement of the financial contribution for the third and fourth instalments of the non-repayable support should be partially suspended, pursuant to Article 24(6) of Regulation (EU) 2021/241.
- (13) Pursuant to Article 24(6) of Regulation (EU) 2021/241, the Commission has determined the suspended amount by applying the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation explained in its Communication of 21 February 2023⁴.
- (14) A coefficient of 5 was applied to target 1.3 as it regards the last and only step of the decentralisation of responsibilities reform. An upward adjustment of the corrected unit value was also applied (factor of 3) to target 1.3, as the related reform is considered by the Commission of particular importance to justify the rating for addressing all or a significant subset of challenges identified in the relevant country-specific recommendations. The component aims at addressing challenges linked to the accessibility and resilience of the health system in Portugal. As such, as per the component description, the component contributes to address the country-specific recommendation on strengthening the resilience of the health system and ensuring equal access to quality health and long-term care (Country Specific Recommendation 1 2020). This is reflected in recital (15) of the Council Implementing Decision of 13 July 2021 which provides, when referring to this assessment criteria, "*The RRP includes an extensive set of mutually reinforcing reforms and investments that contribute to effectively addressing all or a significant subset of the economic and social challenges outlined in the country-specific recommendations addressed to Portugal by the Council in the European Semester in 2019 and in 2020, in particular with regard to [...] the accessibility and resilience of [...] the health system [...].*" Recital (17) also states that "*[...] such reforms and investments aim to strengthen the response capacity of the primary healthcare, mental health and long-term care services, combined with steps to enhance efficiency and the articulation between different elements of the National Health Service.*" Target 1.3 is the only target of the decentralisation of responsibilities in health care. This upward adjustment factor is applied by taking into consideration the relative importance of this reform in the Portuguese RRP. Finally, a downward adjustment of the corrected unit value was applied (factor of 0.2935⁵) to target 1.3 taking into account that Portugal has completed the decentralisation process in 142 out of 201 municipalities.

⁴ Communication from the Commission to the European Parliament and the Council of 21 February 2023 'Recovery and Resilience Facility: two years on A unique instrument at the heart of the EU's green and digital transformation' COM (2023) 99 final.

⁵ Rounded to four decimal places.

- (15) A coefficient of 5 was applied to milestone 1.12 as it regards the entry into force of a reform. A downward adjustment of the corrected unit value was also applied (factor of 0.25) as the policy objective of the milestone is partly met.
- (16) A coefficient of 5 was applied to milestone 6.15 as it regards the entry into force of a reform. An upward adjustment of the corrected unit value was applied (factor of 3) to milestone 6.15 as the related reform is considered by the Commission of particular importance to justify the rating for addressing all or a significant subset of challenges identified in the relevant country-specific recommendations. The component aims at addressing challenges linked to the reduction of restrictions in regulated professions. As such, as per the component description, the component contributes to address the country-specific recommendation on the development of a roadmap to reduce restrictions in highly regulated professions (Country Specific Recommendation 4 2019). This is reflected in recital (15) of the Council Implementing Decision of 13 July 2021 which provides, when referring to this assessment criteria, “*The RRP includes an extensive set of mutually reinforcing reforms and investments that contribute to effectively addressing all or a significant subset of the economic and social challenges outlined in the country-specific recommendations addressed to Portugal by the Council in the European Semester in 2019 and in 2020, in particular with regard to [...] the business environment [...].*” Recital (19) also states that “*The RRP includes reforms and investments that address long-lasting bottlenecks affecting the business environment. Those reforms and investments include the reduction of the restrictions weighing on various regulated professions to foster competition [...].*” Milestone 6.15 is the only milestone of the highly regulated professions reform. This upward adjustment factor is applied by taking into consideration the relative importance of this reform in the Portuguese RRP.
- (17) Pursuant to Article 24(6), second subparagraph of Regulation (EU) 2021/241, the suspension should only be lifted where Portugal has taken the necessary measures to ensure a satisfactory fulfilment of target 1.3, milestone 1.12 and milestone 6.15.
- (18) Pursuant to Article 24(8) of Regulation (EU) 2021/241, where Portugal does not take the necessary measures within a period of six months from the adoption of this Decision, the Commission should reduce the amount of the non-repayable support proportionately after having given the Member State concerned the possibility to present its observations within two months from the communication of its conclusions,

HAS ADOPTED THIS DECISION:

Article 1

Suspension of the payment of the non-repayable support

The payment of EUR 761 432 554 from the third instalment of the non-repayable support as laid down in Section 2(1)(1.3) of the Annex to Council Implementing Decision of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Portugal shall be suspended.

The payment of EUR 49 053 828 from the fourth instalment of the non-repayable support as laid down in Section 2(1)(1.4) of the Annex to Council Implementing Decision of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Portugal shall be suspended.

Article 2
Addressee

This Decision is addressed to Portuguese Republic.

Done at Brussels, 22.12.2023

For the Commission
Paolo GENTILONI
Member of the Commission