



Brussels, 26.7.2024
C(2024) 5547 final

COMMISSION IMPLEMENTING DECISION

of 26.7.2024

on the partial suspension of the disbursement of the fifth instalment of the non-repayable support for Italy

(Only the Italian 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 31 July 2021 on the approval of the assessment of the recovery and resilience plan for Italy² (the ‘Council Implementing Decision’) provides that the Union is to release instalments in accordance with the Financing Agreement and the Loan Agreement conditional on a decision by the Commission, taken in accordance with Article 24(5) of Regulation (EU) 2021/241, that Italy has satisfactorily fulfilled the relevant milestones and targets identified in relation to the implementation of the recovery and resilience plan.
- (3) On 29 December 2023, Italy submitted a request for payment of the fifth instalment of the non-repayable support and the fifth 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 Italy³ in accordance with Article 20(6) of Regulation (EU) 2021/241, were taken into account.
- (4) Section 2(1)(1.5) of the Annex to the Council Implementing Decision provides the relevant milestones and targets that are to be satisfactorily fulfilled for the fifth instalment of the non-repayable support for an amount of EUR 3 731 584 149.

¹ OJ L 57, 18.2.2021, p. 17.

² ST 10160/21; ST 10160/21 ADD 1 REV 2, as amended by ST 9399/24; ST 9399/24 ADD 1 not yet published.

³ Recovery and Resilience Facility Operational arrangements between the European Commission and Italy, entered into force on 22 December 2021, as amended on 26 June 2024.

- (5) Section 2(2)(2.5) of the Annex to the Council Implementing Decision provides the relevant milestones and targets that are to be satisfactorily fulfilled for the fifth instalment of the loan support for an amount of EUR 9 030 593 086.
- (6) As a result of the assessment provided for in Article 24(3) of Regulation (EU) 2021/241, the Commission established that target MIC1-85 - Average time between the contract award and the realization of the infrastructure - has not been satisfactorily fulfilled. In accordance with Article 24(6) of Regulation (EU) 2021/241, the Commission communicated to Italy its assessment on 2 July 2024 and informed Italy that it could present its observations on the Commission's assessment within one month from the date of that communication.
- (7) On 11 July 2024, Italy presented its observations on the Commission's assessment pursuant to Article 24(6), first subparagraph of Regulation (EU) 2021/241 within one month of the communication of the Commission's assessment.
- (8) On the basis of the justification provided in the request for payment, the Commission is not in a position to conclude on the satisfactory fulfilment of MIC1-85 - Average time between the contract award and the realization of the infrastructure.
- (9) Reform 1.10: is entitled "Reform of the public procurement legislative framework" and its description requires that "The first step of this reform consists in the adoption of a first set of urgent simplification measures with a Law-Decree by May 2021 to: simplify and digitalize the procedures of central purchasing bodies; register contracts in the anti-corruption database of the national anti-corruption authority (ANAC); set up dedicated offices in charge of public procurement procedures at Ministries, Regions and Metropolitan Cities; setting a target to reduce the timing between the publication and contract award and between the award of the contract and the completion of the infrastructure; and incentivize alternative dispute resolution mechanisms in the execution phase of the contracts. Before the end of 2021, the Single Coordination Body for public procurement policy shall have an adequate level of staffing and shall adopt a professionalization strategy providing trainings at different levels; the dynamic purchasing systems shall be made available, in line with Public Procurement Directives; and ANAC shall complete the exercise of qualification of contracting authorities. The second step of this reform consists in a set of amendments to the Public Procurement Code to be implemented by the second quarter of 2023, with actions aimed at: reducing the fragmentation of contracting authorities; requiring the setting of an e-platform as a basic requirement to participate in the nationwide evaluation of procurement capacity; and empowering the national anti-corruption authority to review the qualification of contracting authorities. The scope of the reform shall be also to further simplify and digitalize the procedures of central purchasing bodies and define interoperability and interconnectivity requirements. The reform shall also reduce the restrictions to the possibility to subcontracting, currently contained the Public Procurement Code. This reform also consists in making the national e-Procurement System operational by the end of 2023 and introduce targeted actions, including through the adoption of primary and/or secondary legislation, to further enhance the qualification and professionalisation of contracting authorities and increase competition (e.g. modifying the applicable rules on project financing)".
- (10) Target MIC1-85 of the Council Implementing Decision which pertains to Reform 1.10 requires that "The average time between the contract award and the realization of the infrastructure ('fase esecutiva') shall be reduced at least by 10%." The indicator of the target is "Percentage".

- (11) However, the wording of the Council Implementing Decision approving the Italian recovery and resilience plan did not provide sufficient clarity on the methodology to apply for the assessment of the satisfactory fulfilment of this target.
- (12) On 11 July, Italy presented its reply to the Commission's assessment pursuant to Article 24(6), first subparagraph of Regulation (EU) 2021/241. In the reply, Italy, after taking into consideration the reasons explained by the Commission for considering of not being in a position to assess the satisfactory fulfilment of target M1C1-85, informed the Commission that it did not contest the Commission's preliminary assessment. Furthermore, Italy communicated its intention to submit a reasoned request to the Commission to amend target M1C1-85 on the basis of Article 21 of Regulation (EU) 2021/241. In view of this reply, the Commission's assessment stands as above.
- (13) On the basis of the information provided, it is therefore not possible to assess the satisfactory fulfilment of target M1C1-85.
- (14) Therefore, as target M1C1-85 constituting part of Italy's request for payment cannot be assessed as satisfactorily fulfilled, the disbursement of the financial contribution for the fifth instalment of the non-repayable support should be partially suspended, pursuant to Article 24(6) of Regulation (EU) 2021/241.
- (15) 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 2023.⁴
- (16) The unit value for the target was derived by dividing the financial contribution of non-repayable support made available to Italy of EUR 71 779 623 788 by the number of milestones and targets related to the financial contribution of non-repayable support (326). A coefficient of 0.5 was applied to the target as it concerns an intermediate target for the implementation of reform 1.10: Reform of the public procurement legislative framework. No upward or downward adjustment of the corrected unit value will be applied for the target as the reform was not considered by the Commission of either less or particular importance to justify the rating for addressing all or a significant subset of challenges identified in the relevant country specific recommendations.
- (17) The application of the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation as above leads to an amount of EUR 110 091 448.
- (18) Pursuant to Article 24(6), second subparagraph of Regulation (EU) 2021/241 the suspension should only be lifted where Italy has taken the necessary measures to ensure a satisfactory fulfilment of target M1C1-85.
- (19) Pursuant to Article 24(8) of Regulation (EU) 2021/241, where Italy 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,

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

HAS ADOPTED THIS DECISION:

Article 1

Suspension of the payment of the non-repayable support

The payment of EUR 110 091 448 from the fifth instalment of the non-repayable support as laid down in Section 2(1)(1.5) of the Annex to Council Implementing Decision of 31 July 2021 on the approval of the assessment of the recovery and resilience plan for Italy shall be suspended.

Article 2

Addressee

This Decision is addressed to the Italian Republic.

Done at Brussels, 26.7.2024

For the Commission

Paolo GENTILONI

Member of the Commission