



Brussels, 14.11.2024
C(2024) 8046 final

COMMISSION IMPLEMENTING DECISION

of 14.11.2024

on the partial suspension of the disbursement of the third instalment of the non-repayable support for Cyprus

(Only the Greek 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 28 July 2024 on the approval of the assessment of the recovery and resilience plan for Cyprus (the ‘Council Implementing Decision’) provides that the Union is to release instalments in accordance with the Financing Agreement conditional on a decision by the Commission, taken in accordance with Article 24(5) of Regulation (EU) 2021/241, that Cyprus has satisfactorily fulfilled the relevant milestones and targets identified in relation to the implementation of the recovery and resilience plan.
- (3) On 15 December 2023, Cyprus submitted a request for payment of the second and third instalments of the non-repayable 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 Cyprus 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 103 036 204.
- (5) As a result of the assessment provided for in Article 24(3) of Regulation (EU) 2021/241, the Commission established that milestone 209 “Entry into force of the law to tackle aggressive tax planning” has not been satisfactorily fulfilled. In accordance with Article 24(6) of Regulation (EU) 2021/241, the Commission communicated to

¹ OJ L 57, 18.2.2021, p. 17.

Cyprus its assessment on 16 September 2024 and informed Cyprus that it could present its observations on the Commission's assessment within one month from the date of that communication.

- (6) On 16 October 2024, Cyprus presented its observations on the Commission's assessment pursuant to Article 24(6), first subparagraph of Regulation (EU) 2021/241.
- (7) In its observations, Cyprus did not contest the Commission's findings.
- (8) On the basis of the justification provided in the request for payment and the observations presented by Cyprus, the Commission still considers that milestone 209 on the "Entry into force of the law to tackle aggressive tax planning" has not been satisfactorily fulfilled.
- (9) Measure C3.5R10 is entitled 'Addressing Aggressive Tax Planning' and its description requires the imposition of 'a withholding tax on outbound payments of interest, dividends and royalty payments and the introduction of a further corporate tax residency test based on the incorporation of each entity. A withholding tax shall be imposed to jurisdictions in Annex I of the EU list of non-cooperative jurisdictions on tax matters, as a first step through enactment of the Law by 31 December 2021, providing for its entry into force by 31 December 2022'.
- (10) Milestone 209 of the Council Implementing Decision, which pertains to measure C3.5R10 requires the entry into force of a law to tackle aggressive tax planning by (a) imposing a withholding tax on interest, dividends and royalty payments to jurisdictions included in Annex I of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and (b) introducing a further corporate tax residency test based on the incorporation of each entity. The fulfilment of the milestone is subject to the entry into force of the law to tackle aggressive tax planning.
- (11) Cyprus amended its Income Tax Law and the Special Contribution for the Defence of the Republic Law. The amendments were published in the Official Gazette on 21 December 2021 and entered into force on 31 December 2022². The amendments introduce a withholding tax, but with a series of exemptions and restrictions. Those exemptions and restrictions are broad and extensive to such an extent that the withholding tax introduced in the national legislation cannot be considered as meeting the requirements of Milestone 209 of the Council Implementing Decision. Cyprus has not provided to the Commission due justification that this milestone has not been satisfactorily fulfilled.
- (12) Specifically, Milestone 209 requires Cyprus to impose a withholding tax on all interest, dividends and royalty payments to non-cooperative jurisdictions. However, the amendments to the legislation that have entered into force limit the scope of the imposed withholding tax only to payments between associated entities in specific cases. Specifically, Article 2 of the Law 195(I)/2021 amending the Special Contribution for the Defence of the Republic Law provides that the withholding tax on dividends only applies if the dividend recipient located in a non-cooperative jurisdiction directly participates in the company resident in Cyprus, either with voting rights of more than fifty percent (50 %) or capital more than fifty percent (50 %) or is

² Law No. 193(I)/2021 amending the Income Tax Laws of 2002 up to (No. 2) of 2021 and Law No. 195(I)/2021 amending the Special Contribution for the Defence of the Republic of Cyprus Laws of 2002 up to (No. 3) of 2021, both published in the Official Gazette of the Republic of Cyprus No. 4867 of 21 December 2021.

entitled to receive more than fifty percent (50 %) of profits. In addition, by introducing the above limits, Cyprus is putting at risk the actual imposition of the tax, given that the obligation to pay such tax can be easily circumvented by creating a different group structure. For example, the above tax will not be due in case that a company in a jurisdiction other than the non-cooperative jurisdiction or an individual control both the Cypriot company and the recipient company located in a non-cooperative jurisdiction, or where the Cypriot company controls the entity in the non-cooperative jurisdiction.

- (13) In addition, Milestone 209 requires the entry into force of a law to tackle aggressive tax planning on payments to non-cooperative jurisdictions by introducing a withholding tax. However, the introduced withholding tax only applies to dividends, interests and royalties directly paid by Cypriot companies to entities in non-cooperative jurisdictions, in accordance with Article 2 of the Law 195(I)/2021 amending the Special Contribution for the Defence of the Republic Law and Article 3 of the Law 193(I)/2021 amending the Income Tax Law. Indirect payments to non-cooperative jurisdictions are not covered under the law. This limitation leaves a high risk of circumvention by artificially interposing companies in other jurisdictions, which is a very common aggressive tax planning structure. As such, the amendments that have entered into force do not consider the possibility of companies located in noncooperative jurisdictions being beneficial owners of the dividend, interest or royalty payments that are first received by entities in jurisdictions other than non-cooperative jurisdictions through aggressive tax planning structures.
- (14) On the basis of the information provided, the Commission concludes that milestone 209 is not fulfilled.
- (15) Therefore, as milestone 209 constituting part of Cyprus' request for payment is not satisfactorily fulfilled, the disbursement of the financial contribution for the third instalment of the non-repayable support should be partially suspended, pursuant to Article 24(6) of Regulation (EU) 2021/241.
- (16) 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 2023³.
- (17) In line with the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation:
 - i. The unit value for the milestone was derived by dividing the financial contribution made available to Cyprus in the Council Implementing Decision of EUR 1 020 223 681 by the number of milestones and targets in that Decision related to the financial contribution (266).
 - ii. A coefficient of 5 was applied to the milestone as it concerns a milestone related to the entry into force of a legislative reform.
 - iii. An upward adjustment of the corrected unit value was applied to the milestone (a factor of 3), as the reform is considered by the Commission of particular importance to justify the rating for addressing all or a significant subset of

³ Communication from the Commission to the European Parliament and the Council, Annex II "Commission methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation", COM (2023) 99 final of 21.2.2023

challenges identified in the relevant country-specific recommendations, including fiscal aspects thereof and recommendations made pursuant to Article 6 of Regulation (EU) No 1176/2011 where appropriate, addressed to the Member State concerned, or challenges identified in other relevant documents officially adopted by the Commission in the context of the European Semester. Specifically, the component description in the Council Implementing Decision Annex specifies that the measures therein “contribute to addressing Country Specific Recommendations 1 of 2019 and 4 of 2020 and to address features of the tax system that ‘facilitate aggressive tax planning by individuals and multinationals’”. In the Staff Working Document from 8 July 2021 (page 44), the Commission assessed that the measure in question is of relevance to combat tax evasion and aggressive tax planning by multinationals. Furthermore, the link of these country-specific recommendations is further substantiated in Recital 14 of the Council Implementing Decision of 29 July 2021, which provides, when referring to this assessment criterion, that: “*The RRP includes measures which are expected to address features of Cyprus's tax system that facilitate aggressive tax planning, in particular by multinationals, including the introduction of withholding taxes on outbound payments of dividends, royalty payments and interest.*”.

- iv. A downward adjustment of the corrected unit value was applied (a factor of 0.75) to the milestone, as the policy objective of the milestone is partly met, namely the requirements of milestone 209, part (b): “introduction of a further corporate tax residency test based on the incorporation of each entity”. In considering this downward adjustment, the Commission assessed the substantive progress towards the achievement of the overall objective of the reform, in accordance with the Commission methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation. For part (a) of the milestone, it is acknowledged that amendments to Income Tax Law and the Special Contribution for the Defence of the Republic Law have entered into force and a withholding tax on dividends, interests and royalties has been established. Nonetheless, the withholding tax established is not addressing all of the requirements of part (a) of milestone 209, as explained in points 12 and 13 above. Consideration was, however, given to the fact that Law 193(I)/2021 amending the Income Tax Law fulfils part (b) of milestone 209, related to the introduction of a further corporate tax residency test based on the incorporation of each entity, and that this requirement is considered as fulfilled. Whilst this constitutes progress towards the fulfilment of the measure, such progress cannot be considered as fully compensating the limited progress on part (a) of the milestone but warrants a downward adjustment of the suspended amount.
- (18) 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 43 148 558 that should be suspended.
 - (19) Pursuant to Article 24(6), second subparagraph of Regulation (EU) 2021/241 the suspension should only be lifted where Cyprus has taken the necessary measures to ensure a satisfactory fulfilment of milestone 209.
 - (20) Pursuant to Article 24(8) of Regulation (EU) 2021/241, where Cyprus 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 43 148 558 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 28 July 2024 on the approval of the assessment of the recovery and resilience plan for Cyprus shall be suspended.

Article 2

Addressee

This Decision is addressed to the Republic of Cyprus.

Done at Brussels, 14.11.2024

For the Commission

Paolo GENTILONI

Member of the Commission