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REFORM & INVESTMENT TASK FORCE
Director-General

DIRECTORATE GENERAL
ECONOMIC AND FINANCIAL AFFAIRS
Director-General

Brussels, 25 March 2025

Mr Marcel Boloș
Minister for European Investments
and Projects
7 Menuetului Street, Sector 1
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Romania

Subject: **Communication to Romania of the Commission's assessment of milestone 215 of the third instalment of the non-repayable support in accordance with Article 24(6) of Regulation (EU) 2021/241**

Dear Minister,

Council Implementing Decision of 29 October 2021 on the approval of the assessment of the recovery and resilience plan for Romania ([1]) (the 'Council Implementing Decision') provides that the Union is to release instalments in accordance with the Financing Agreement and the Loan Agreement conditional on, *inter alia*, a decision by the Commission, taken in accordance with Article 24 of Regulation (EU) 2021/241, that Romania has satisfactorily fulfilled the relevant milestones and targets identified in relation to the implementation of the recovery and resilience plan.

On 15 December 2023, Romania submitted a request for payment. The request concerned the third instalment of the non-repayable support and the third instalment of the loan support. In accordance with Article 24(3) of Regulation (EU) 2021/241, the Commission services have assessed on a preliminary basis whether the relevant milestones and targets set out in that Council Implementing Decision had been satisfactorily fulfilled.

On 15 October 2024, the Commission adopted its positive preliminary assessment for 39 out of the 43 milestones and targets related to the third instalment of the non-repayable support and 29 out of the 31 milestones and targets related to the third instalment of the loan support, in accordance with Article 24(4) of Regulation (EU) 2021/241.

([1]) ST 12319/21; ST 12319/21 ADD 1 as amended by ST 15833/23; ST 15833/23 ADD 1, not yet published.

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For the purpose of this assessment, the operational arrangements concluded between the Commission and Romania ([2]) in accordance with Article 20(6) of Regulation (EU) 2021/241, were taken into account.

The EFC adopted its opinion on the Commission's positive preliminary assessment on 8 November 2024. However, the Commission considers that milestone 215 which was assessed as satisfactorily fulfilled in its positive preliminary assessment of 15 October 2024 is no longer satisfactorily fulfilled, for the reasons indicated below:

1. **Assessment of the milestone**

Milestone 215: Entry into force of the legislative framework for reducing expenditure on special pensions

The description of reform 6 – Reform of the public pension system states that:

"The reform involves the adoption of a new law on the public pension system, with the input of technical assistance, which is going to replace the Law 127/2019. [...] The new legislation shall: [...]

- revise special pensions to bring them in line with the contributory principle;

- strengthen the contributory principle of the system;[...]

The government shall seek for technical assistance to prepare the draft law, which shall also be subject to consultation with social partners. As part of the preparation of the law, there shall be an ex-ante assessment of the impact of the new pension system in particular on fiscal sustainability, which shall feed in the reform process. [...]

An analysis of special pensions shall also be carried out with a view to identifying concrete solutions aimed at streamlining special pensions, and at correcting the inequities between beneficiaries of these pension categories and beneficiaries of the public pension system from the point of view of the contributory aspect, also taking into account the case-law of the Constitutional Court.

Technical assistance is envisaged (through a public tender) to produce ex-ante analysis of the pension reform, to elaborate the legislation of the reform, and to produce an ex-post analysis and impact assessment. The implementation of the reform shall be completed by 30 March 2023"

Milestone 215 of the Council Implementing Decision establishes that:

"The new legislative framework shall review special pensions and bring them in line with the contributory principle.

- No new categories of special pensions shall be created and current categories shall be streamlined.

([2]) Recovery and Resilience Facility Operational arrangements between the European Commission and Romania, entered into force on 25 May 2022; The amendment to the Operational arrangements entered into force on 15 March 2024.

- Current special pensions shall be calculated based on the contributory principle, seniority in the profession, and the readjustment of the percentage related to the obtained income. The minimum contribution period shall be similar to that applied in the public pension fund.

- The protection of the decisions of the Constitutional Court shall refer only to the pensions of magistrates and not for other categories and shall refer only to the limits explicit in the arguments of the Court.

No special pension shall exceed the income obtained during the contribution period."

The qualitative indicator of the milestone is: "*Provision in the law indicating the entry into force of the legislative framework for reducing the expenditure on special pensions*".

Facts

On 9 October 2023, the World Bank delivered a report (the 'World Bank report') under the Reimbursable Advisory Services Agreement providing an "*Analysis, impact assessment and recommendations for the reform of special pensions*".

Law No. 282/2023 on the amendment and addition of legislative acts in the field of service pensions and Law No. 227/2015 on the Fiscal Code (hereinafter referred to as "the reform") was published in the Official Journal No. 950 on 20 October 2023. The reform entered into force on 1 January 2024. Art I, VI, VIII, IX, XI, XII, XIII, XIV, XVII and XVIII of the reform, among others: tighten eligibility conditions for retirement and foresees a gradual increase in the standard or statutory retirement age for all special pensioners, to ultimately align it with that in the general pension system; establish that special pensions are calculated based on the contributory principle, seniority in the profession and readjustment of the percentage related to the obtained income; establish that the minimum contribution period of special pensions categories is similar or, in most cases, higher than for the general system and; establish that net pensions cannot exceed the net income obtained during the contribution period. The Commission took into account all the above elements to positively assess milestone 215 as satisfactorily fulfilled in its positive preliminary assessment of 15 October 2024.

On 19 December 2024, the Romanian Constitutional Court adopted Decision 724/2024. In this decision, the Court declared a key element of the reform, the progressive taxation for special pensions, unconstitutional (specifically, the Constitutional Court ruling declares the provision of Art. 101 of the Law No. 227/2015, which was introduced through Article XVIII of Law No. 282/2023, unconstitutional).

Analysis

With respect to the requirements according to which the reform shall "*strengthen the contributory principle of the system*" and "*correct the inequities between beneficiaries of these pension categories and beneficiaries of the public pension system from the point of view of the contributory aspect*", the following should be noted.

The reform introduced higher taxation for the non-contributory part of special pensions which are above a certain threshold. Most special pensions include both a contributory and a non-contributory part. The latter is funded by the State budget and is particularly large for high special pensions. A higher taxation of this non-contributory part therefore increased the contributory nature of the system. All pensions in Romania are taxed at a

10% tax rate, applicable to the full pension minus a fixed non-taxable income of RON 3.000. Article XVIII of Law No. 282/2023 introduced a 15% tax rate for special pensions (which only concerns the non-contributory part) higher than the average net wage used at the time of the preparation of the previous year's social security state budget, and a 20% tax rate of personal income tax for pensions (non-contributory part) higher than the average gross wage used at the time of the preparation of the previous year's social security state budget. As a result, the introduction of additional taxation for the non-contributory part of special pensions increased the contributory nature of special pension regimes.

This provision applied only to high and very high pensions, which are generally paid to judges and magistrates in Romania. Even after the reform, magistrates retained an 80% replacement rate applied to the average earnings over 4 years before retirement (for all other special regimes the replacement rate was reduced by the reform to 65%, applied to a longer period before retirement) and pensions of beneficiaries already in profession remained indexed on wages. Therefore, the higher taxation measure, which would apply to high and very high pensions (i.e. with a high non-contributory part) reduced inequities within the pension system, ensuring that pensioners receiving high or very high pensions (such as magistrates), disconnected from the contributions paid during their working life, contribute to financing the pension system.

On that basis, the Commission considered that the higher taxation of high and very high pensions, which was a key element of the reform, strengthened the contributory nature of special pension regimes and ensured greater equity of the overall pension system.

Following the Decision 724/2024 of the Romanian Constitutional Court adopted on 19 December 2024, the Commission understands that the relevant provisions of Law No. 282/2023 introducing the higher taxation of high and very high pensions cannot be implemented by the government.

For this reason, milestone 215 requiring to *"strengthen the contributory principle of the system"* and to *"correct the inequities between beneficiaries of these pension categories and beneficiaries of the public pension system from the point of view of the contributory aspect"* cannot be considered satisfactorily fulfilled.

1. CALCULATION OF AMOUNT TO BE SUSPENDED

The "Communication to Romania of 15 October 2024" ([3]) calculated the amount to be suspended at EUR 1 050 911 233 from the non-repayable support and EUR 55 428 273 from the loan support. This calculation is hereby updated, in view of the above preliminary negative assessment of milestone 215. ([4])

([3]) C(2024) 7332 final.

([4]) This update also takes into account that a suspension of an amount equal to EUR 330 342 263 was initially calculated in October 2024 due to non-fulfilment of milestone 206 which, following today's positive preliminary assessment of that milestone, is to be deducted from the amount to be suspended. The assessment of milestones 72, 79, 86, 121 and 440 and the calculation of the amounts to be suspended for those milestones set out in the letter of 16 October 2024 remain unchanged.

Subject to any observations to be provided by Romania capable of affecting the above assessment, the draft implementing act to be submitted to the committee assisting the Commission in accordance with Article 35(2) of Regulation (EU) 2021/241 will provide for a partial payment of the third instalment related to non-repayable support equal to EUR 906 870 025 while the payment of EUR 951 808 555 will be suspended, in accordance with Article 24(6) of that Regulation.

The amount to be suspended was calculated in accordance with the Commission methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation ([5]). In line with this methodology:

1.1. Milestone 215: Entry into force of the legislative framework for reducing expenditure on special pensions.

i. the unit value for the milestone will be derived by dividing the financial contribution made available to Romania in the Council Implementing Decision of EUR 13 566 055 514 by the number of milestones and targets in that Decision related to the financial contribution (308);

ii. a coefficient of 5 will be applied to the milestone, as it concerns the entry into force of a reform;

iii. an upward adjustment of the corrected unit value (i.e. the unit value resulting from the application of the coefficient) will be 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 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 public pension reform aims at addressing relevant country-specific recommendations (country specific recommendation 2.2 and 2.3, 2019), and in particular ensuring fiscal sustainability, equalisation of retirement age and financial stability of pension pillar II*". Moreover, the link with these country-specific recommendations is further substantiated in Recital 14 of the Council Implementing Decision of 29 October 2021, which provides, when referring to this assessment criterion, that: "*The plan also aims at ensuring the sustainability and fairness of the public pension system*". Based on this measure, the Commission was able to conclude in Recital 12 of the Council Implementing Decision that the recovery and resilience plan is expected to effectively address *all or a significant subset of challenges (Rating A) identified in the relevant country-specific recommendations addressed to Romania, including fiscal aspects*

([5]) Communication from the Commission to the European Parliament and the Council Recovery and Resilience Facility: Two years on; A unique instrument at the heart of the EU's green and digital transformation Annex II, COM(2023) 99 final adopted on 21 February 2023.

thereof. Finally, in the Staff Working Document of 27 September 2021 ([6]) (page 38), it is specified that "*The reform of the public pension system included in the Plan aims at ensuring its sustainability and improving its transparency and fairness* (…). *Further measures in the pension reform are the streamlining and full revision of the special pensions to bring them in line with the contributory principle and the increase in the adequacy of minimum and lower pensions*". The measure in question is of relevance to ensure the sustainability and improve the transparency and fairness of the pension system.

iv. a downward adjustment of the corrected unit value will be applied to the milestone (a factor of 0.35) as some of the measures included in the reform contribute to meeting some of the dimensions laid out in the Council Implementing Decision, namely the entry into force of a new legislative framework to review special pensions and bring them in line with the contributory principle.

In considering this downward adjustment, the Commission assessed the substantive progress towards the achievement of the overall objective of the reform. In particular, Law No. 282/2023 introduces the following provisions:

- The law brings the calculation of most special pensions more closely linked to the contributions paid during the working life, and therefore in line with the contributory principle. However, this does not apply to judges and magistrates, whose pensions are generally high or very high, also compared to other special pensions;
- Specifically, for all special pension categories covered by the reform, the target benefit ratio will be reduced from 80% currently to 65% after the reform. The only exception to this rule is magistrates, who will retain a target benefit ratio of 80%.
- The law establishes that the minimum contribution period for all special pensions categories will be similar or higher than for the general system. For most categories, this represents a significant increase compared to the previous regime. This reform element will contribute to strengthening the contributory nature of special pension regimes.
- The law tightens eligibility conditions for early retirement. It also increases the standard or statutory retirement age for all special pensioners, and aligns it with that in the general pension system in a gradual manner. The only exception to this rule is special pensioners working in the civil aeronautics sector, who will be able to retire at 52, vs. 50 before the reform. This contributes to the key reform objective of strengthening the contributory nature of special pension regimes.
- For several special pensions categories, the reform foresees a gradual increase in the number of months used for the calculation of the benefit ratio. This will, over time, considerably reduce the gap between pensioners in the general regime and those benefitting from special regimes.

(6) SWD(2021) 276 final. Commission Staff Working Document. Analysis of the recovery and resilience plan of Romania of 27.09.2021 (source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0276).

In practice, this means that the target benefit ratio will apply to a lower base, leading to less generous special pensions. This increase will be gradual, in most cases over a period running from January 2029 to January 2043.

- The law foresees that special pensions will be updated every year based on the inflation rate, with a lag of two years. This means that over time the average benefit ratio of special pensions will converge towards that in the general system, which has more favourable indexation rules (inflation plus 50% of the increase in real wages in the previous year).
- The law also removes the ability to collect more than one special pension. Beneficiaries eligible for more than one service pension will have to choose one.
- The law does not create any new special pension category and streamlines most current categories of special pensions, by ensuring that features of most special pension regimes will over time converge towards those prevailing in the general system. However, this does not apply to judges and magistrates;
- The law also establishes that net pensions cannot exceed the net income obtained during the contribution period.

On this basis, an amount of EUR 231 239 584 will be suspended for milestone 215.

In accordance with Article 24(6) of Regulation (EU) 2021/241, Romania may present its observations on the Commission's assessment within one month from the date of this letter.

The Commission stands ready to support Romania and looks forward to continued cooperation on the implementation of Romania's recovery and resilience plan.

Yours sincerely,

(e-signed)

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Reform & Investment Task Force

(e-signed)

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