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Communication from Romania

The following communication, dated 9 April 1991, has been received from the Permanent Mission of Romania, for circulation to the contracting parties, and with the request that it be inscribed on the Agenda of the Council at its meeting on 24 April.²

RECENT LEGISLATIVE MEASURES UNDER THE PROGRAMME
OF ECONOMIC REFORM FOR TRANSITION TO THE MARKET
ECONOMY

The Government Programme for the transition to the market economy, which was approved by the Parliament and examined with the International Monetary Fund, aims at a rapid formation of a market system in Romania. Under this Programme, a significant number of legislative measures have been already adopted and enforced or are under way.

I. Enterprise reform

In working out the new legislative framework of the market economy, the first decisive step was the establishment of autonomous economic agents specific to market economy, to replace the State-owned and State-controlled structures, operating in the centrally planned economy.

1. The process of reorganizing the economy was initiated by the Law No. 15/1990 on the reorganization of State enterprises as autonomous entities ("régies autonomes") and commercial companies (published in Monitorul Oficial - the Official Gazette - No. 98/8 August 1990).

Under this Law, most State-owned enterprises are converted into commercial companies, retaining ownership of the goods in their patrimony and enjoying full autonomy in the decision-making process with respect to their economic, commercial and financial activities. They are organized as joint stock commercial companies. The Law provides that 30 per cent of their shares shall be distributed free of charge, under a scheme to be worked out, to all adult Romanian citizens (with the exception of

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²Two brochures entitled "Doing business in Romania, Parts I and II" are also available for consultation in the secretariat, Office 1023.

beneficiaries of the land distribution scheme); the remaining 70 per cent will be sold totally or partially to public or private economic agents, Romanian or foreign.

The State enterprises which are not converted into commercial companies will become autonomous entities ("régies autonomes"), remaining under State ownership. The number of such entities is limited; they will operate in certain strategic sectors, such as defence, energy, mining, natural gas extraction, postal services, the railways. Even in these sectors, the Government retains the right to allow part of the industry to be privately owned, and to contract the management of autonomous entities to domestic or foreign private firms. In time, the Government will reduce the number of autonomous entities to the minimum necessary for the maintenance of essential public services. At the same time, in order to foster domestic competition, the Government is developing measures to eliminate the existing monopolies.

It is also worth mentioning that the possibility of subsidizing the activity of commercial companies has been drastically limited: it is possible only on the basis of a Government resolution and only for a maximum period of four years, during which the subsidies must be reduced by 20 per cent every year.

2. Continuing this process, the creation of a uniform legal framework for the setting up and operation of commercial companies, irrespective of their form of ownership, was a second important step made in implementing the enterprise reform.

Law No. 31/1990 on commercial companies (published in Monitorul Oficial - the Official Gazette - Nos. 126 and 127/17 November 1990) has created such a framework. The Law permits the establishment of commercial companies as: general partnerships, limited partnerships (sociétés en commandite), unlimited companies (sociétés en commandite par actions), limited (joint stock) companies and companies with limited liability.

The establishment procedure is based on the Contract of Partnership signed by the parties and the Company Rules, whose consistency with the legal provisions are certified by the resolution of a relevant court of law. The Law stipulates that commercial companies must register in the Trade Register, which was opened with the Chamber of Commerce and Industry of Romania. Commercial companies having their headquarters in Romania are Romanian legal persons. They may be founded by Romanian or foreign natural or legal persons.

II. Privatization and the expansion of private sector

Under the present reform process, private property is acknowledged and guaranteed in both industry and agriculture.

The State is no longer the sole owner and manager of the production units. The former State-run enterprises, which lacked patrimonial and decisional autonomy and were directly led by the Government through an

immense bureaucratic network, have been reorganized and converted into commercial joint-stock companies, or private companies.

1. The development of the private sector in Romania, almost inexistent before 1990, was introduced and promoted, from the very beginning, by the Decree Law No. 54/1990 on the organization and carrying out of some economic activities on the basis of free initiative (published in Monitorul Oficial - the Official Gazette - No. 20/6 February 1990). This Decree led to the establishment of small-scale private agents. Since March 1990 some 140,000 such economic agents have been set up in practically all sectors of the economy.

2. The cornerstone of the Government Privatization Programme is, however, the transfer of the State property to the private sector.

The principles and the general framework have been defined by Law No. 15/1990 on the reorganization of the State enterprises as autonomous entities ("régies autonomes") and commercial companies, mentioned above under Chapter I.

As it was already mentioned, the Law provides for the free transfer of 30 per cent of the property rights of all commercial companies operating under this Law to all adult Romanian citizens (excluding the beneficiaries of the land distribution scheme), through the National Agency for Privatization.

The Government envisages to carry out privatization in two main stages:

- selling at auction small units, to Romanian citizens only, thus creating an indigenous capital market. This will include all small State units which operate independently in trade, tourism, services and industry;
- total or partial selling of the State's stock in commercial companies of national interest to natural or legal persons, from Romania or abroad, under an annual programme of privatization containing specific targets, to be approved by the Government. The Programme will be enforced by a process of stock assessment which will be conducted in each company by Romanian and foreign experts. Specific schemes will be subsequently drawn up for the revitalization of each commercial company, so as to increase its attractiveness for Romanian and foreign investors when its shares are put up for sale.

3. Another way towards privatization is the transfer of the right of use of the State property to Romanian or foreign legal or natural persons, by concession, lease or location of administration in compliance with the provisions of Law No. 15/1990 and Government Resolution No. 1228/1990 (published in Monitorul Oficial - the Official Gazette - No. 140/12 December 1990). Thus, a more efficient operation of the respective economic units is envisaged, together with the encouragement of

the formation of managers, marketing and financial experts, easing the way towards full privatization.

4. As part of its privatization strategy, the Government has established a National Agency for Privatization to oversee the distribution of shares of the State-owned commercial enterprises. The Agency is developing a programme for the distribution of these shares.

Foreign investors will be allowed to purchase shares in Romanian companies.

On this issue, the Romanian Government will receive technical assistance from the World Bank and other sources.

5. In the field of agriculture, the development of private property has been re-established recently by the adoption of the Law No. 18/1991 on land ownership (published in Monitorul Oficial - the official Gazette - No. 37/20 February 1991).

This Law rights one of the most serious injustices committed by the former communist régime, by re-establishing the peasants' private property on land. The Law provides for the return of the land to its former owners and the allocation of land to the other peasants, through the liquidation of the existing agricultural co-operatives.

The area returned or allotted as private property shall not exceed 10 hectares per family, depending on the available land of the co-operative.

The land which is private property will remain under the jurisdiction of civil law; it can be alienated in any way allowed by law, but one person cannot own more than 100 hectares.

By effect of this Law, about 70 per cent of the country's agricultural land will become private property.

6. Going along the line of developing private property is the draft law on the authorization of construction and the stimulation of housing construction and the building of vacation houses, which will secure a general framework for the development of construction on the basis of private or public initiative.

The liquidation of the huge State property in the housing area will be the object of another law, aimed at ensuring the preponderance of private property in urban areas.

III. Foreign investments

1. In order to stimulate economic reform by encouraging foreign investments in Romania, new regulations were first introduced by Decree - Law No. 96/1990 (published in Monitorul Oficial - the Official Gazette - No. 37/30 March 1990).

This Decree was substantially amended by the provisions of the Law No. 31/1990 on commercial companies, which allows the participation of foreign capital in any kind of commercial company set up in Romania.

The present legislation provides that foreign participation to the capital of Romanian commercial companies is unlimited; it can reach 100 per cent of the capital.

2. Recently, starting from the experience acquired, Parliament passed the new Law on foreign investments (to be soon published). Setting the necessary conditions for the participation of foreign capital in the Romanian economy - provided by Law No. 31/1990 - this new Law improves and supplements the previous legal framework in this field, defining it in a unitary manner.

The new legislation provides favourable treatment for foreign investors, based on the following main principles:

- the investments are warranted against nationalization, expropriation, confiscation or requisition;
- the transfer abroad of all profits in foreign currency and of a quota of 8 to 15 per cent of the profits in national currency is ensured;
- fiscal facilities (exemptions from customs duties for goods imported as participation in kind to the capital of commercial companies, temporary exemptions or reductions of taxes on profits etc.) are provided to a larger extent than for Romanian economic operators.

Foreign investors may, at the same time, take under concession, rental or financial administration or lease public services, production companies, land and goods.

IV. Price and salary liberalization

1. On 1 November 1990 the first stage of the price liberalization process was launched, through the adoption of a number of measures to that effect (Government Resolution No. 1109/1990, published in Monitorul Oficial - the Official Gazette - No. 115/23 October 1990). During this first stage of price reform, for a limited number of products of special importance for the consumption of population the prices remained unchanged.

The second stage of this process was launched on 1 April 1991. Prices provisionally maintained at fixed levels after 1 November 1990 have also been liberalized; in order to contain strong inflationary pressures, maximum ceilings or increase indexes have been provisionally established.

2. Salary liberalization was introduced by Government Resolutions Nos. 127 and 133/1991 (published in Monitorul Oficial - the Official Gazette No. 45/7 March 1991), which stipulates that in autonomous entities

(régies autonomes") and commercial companies salaries are subject to negotiations. In order to avoid the fuelling of inflationary pressures, while introducing the minimum salary in the economy, the new legislation sets, through fiscal levers, certain upper indicative limits to be taken into consideration by companies.

The global aspects of salary policy are to be regulated by a separate law, the draft of which is under consideration in Parliament.

3. Price liberalization is accompanied by adequate social protection. In this respect, Law No.1/1991 on the social protection of the unemployed and their professional reintegration (published in Monitorul Oficial - the Official Gazette - No. 1/8 January 1991) is based on the following principles:

- providing unemployment benefits and guaranteeing other forms of social protection to those persons who are fit to work and do not find adequate jobs for their training;
- granting differentiated unemployment benefits, depending on the professional background, number of years served, the minimum pay legally accepted in the national economy, indexed or the latest monthly pay, indexed.

The Law lays down the terms and conditions on which unemployment benefits are granted and the procedure to be followed.

V. Reform of public finance, fiscal, banking and credit systems

1. Debates in Parliament on the Law on public finance and the Law on income tax are nearing completion.

In the field of public finance and fiscal policy a number of measures have already been adopted concerning the wage tax (Government Resolution No. 52/1991 published in Monitorul Oficial - the Official Gazette - No. 15/23 January 1991) and the tax on goods circulation (Government Resolution No. 1109/1990 published in Monitorul Oficial - the Official Gazette - No. 115/23 October 1990). Government Resolution No. 1109/1990 provides equality of treatment for all similar products sold domestically, irrespective of their origin (i.e. whether they are Romanian or imported).

2. Parliament is completing the examination of the draft of the national bank law, which establishes the bank's functions as a central bank (responsible for the issuance of currency, ensuring the stability of the national currency, providing liquidity to the banking and financial systems, etc.).

The draft law on banking activities is also before Parliament. It contains the following principles:

- the National Bank is authorized, as the sole bank of issue, to regulate money supply and credits and to supervise banking activities;
- commercial banks, which are being created, enjoy autonomy in the discharge of their responsibilities with respect to banking operations (granting credits, currency exchange etc.).

3. Government Resolution No. 9/1991 (published in Monitorul Oficial - the Official Gazette - No. 7/15 January 1991) provides for the organization of activities pertaining to inter-bank currency markets (as a transitory measure preparing the convertibility of the national currency). Basically, the Resolution regulates:

- the organization of currency auctions by banks and other economic agents or non-profit legal persons which have their headquarters in Romania and are authorized by the National Bank of Romania;
- the free rate of exchange between the national currency (the "leu") and the convertible currencies, at currency auctions, based on supply and demand;
- the actual operations involving currency exchange on the basis of an inter-currency rate of exchange, set with the agreement of all banks involved.

4. Parliament is also examining a number of draft regulations designed to combat tax evasion and smuggling and a law on the creation of the financial guard.

VI. Other measures in support of the market economy

1. Avoidance of monopolistic practices and unfair competition holds an important place in the present legislative process. A number of basic provisions have been laid down in this field. Law No. 15/1990 prohibits arrangements among commercial companies and/or among autonomous entities ("régies autonomes"), their pools and their decisions to take concerted action, if such decisions affect trade among economic operators and if they aim at or result in precluding, restraining or impairing free competition or if they conduce to the abusive exploitation of a dominant position in the market or in a substantial part thereof.

The law forbids:

- price-fixing or other measures resulting in the direct or indirect charging of monopolistic prices, as well as the sale of goods at dumping prices, or other unfair trade practices;
- the restriction or control of production, sales, technical development or investment;

- the arrangements whereby companies agree to divide among themselves their markets or sources of supply;
- unequal treatment of trade partners who deliver similar goods or services, thus placing some of them in an unfair position with respect to their competitors;
- tying up the signing of a contract to the acceptance by the partners of certain additional obligations which, by their nature or under the commercial usage, have no connection with the object of the contract itself.

Parliament has also adopted Law No.11/1991 on the prevention of unfair competition (published in Monitorul Oficial - the Official Gazette - No. 24/30 January 1991). The Law lists the categories of actions or inactions which constitute an infringement of the principles of fair competition, as well as the legal sanctions against such infringements.

2. Protection of intellectual property rights represents another field in which specific measures are to be taken shortly. Parliament is examining a number of draft laws regarding: inventions, protection of industrial designs and models, protection of trade marks and origin names, counselling on intellectual property issues.

Other laws that are being drafted refer to copyright, research and design activities, education.

VII. Trade policy reform

In addition to the regulations referred to above - which have an obvious impact on foreign trade too - a number of specific measures have also been taken, aiming to restructure the trade policy in keeping with the GATT rules and disciplines and taking into account the present requirements and capabilities of the economy.

1. The foreign trade and foreign exchange State monopolies have been eliminated. The first break through in this respect was made by the Decree - Law No. 54/1990 allowing small-scale private economic agents to be set up on the basis of free initiative to engage directly in foreign trade transactions and to retain at their disposal, in their foreign currency accounts, 50 per cent of their own export earnings.

Further on, in compliance with Law No. 15/1990, autonomous entities ("régies autonomes") and commercial companies (which have been created by the transformation of the former State companies) may directly engage in foreign trade activities in their own name.

Commercial companies which are privately owned by the Romanian or foreign capital, in whole or in part, may also engage in direct foreign trade operations.

So far, approximately 8,000 companies have been set up (most of them in pursuance of Decree Law No. 54/1990), which are authorized to engage in foreign trade activities; in addition, some 1,500 companies with foreign participation are also entitled to carry out such activities.

Under the Law autonomous entities ("régies autonomes") and commercial companies set up pursuant to Law No. 15/1990 are entitled to retain 50 per cent of their foreign currency net export earnings which they are free to spend as they deem necessary. The remaining 50 per cent is converted into national currency at the official rate of exchange in effect at the date of the operation.

These rules apply also to privately owned commercial companies, with 100 per cent Romanian capital. Commercial companies which are wholly or partially owned by foreign capital are not subject to this regulation; they are free to dispose of their entire net foreign currency earnings.

2. The customs tariff has become the most important and effective trade policy instrument.

Government Resolution No. 1194/1990 on the application of the import customs tariff under price liberalization conditions (published in Monitorul Oficial - the Official Gazette - No. 129/19 November 1990) provides that imported goods are subject to customs duties, which are applied effectively and without discrimination to all economic agents, irrespective of their status. A number of items can be imported duty free; these are: samples and materials for experiments, properties received by bequest, goods brought into the country by foreign partners as participation in kind to the capital of a jointly or wholly-owned commercial company, samples and models of no commercial value imported for reference, advertising materials, documentation etc.

Customs duties are ad valorem. The customs value of the imported goods is the c.i.f. transaction value expressed in foreign currency, converted into Romanian currency ("lei") at the official rate of exchange.

A number of tariff liberalization measures have been promoted and tariff discriminations removed. Thus, any differentiation among customs duties which was based on the end-use of the imported goods has been abolished. As a result, only one duty, the lowest one, is levied on the imported goods, irrespective of their end use. These liberalization measures involve 222 tariff lines.

At the same time, by Government Resolution No. 1274/1990 (published in Monitorul Oficial - the Official Gazette - No. 144/14 December 1990) temporary reductions of customs duties are granted on imports of products which are in short supply on the domestic market. Products under 82 tariff headings benefit from such reductions, which remain in effect until a new customs tariff is introduced.

Work is currently being carried out on a new customs tariff, based on the Harmonized Commodity Code Nomenclature (HS). The new customs tariff is to be finalized in the second half of 1991.

3. The export and import régime, as well as the licensing system have been liberalized.

government Resolution No. 6/1991 (published in Monitorul Oficial - the Official Gazette - No. 6/15 January 1991) lays down the rule according to which imports and exports are liberalized; licences for these operations are issued automatically by the Ministry of Trade and Tourism and they are used for statistical purposes only.

In an annex to Government Resolution No. 6/1991 are listed the goods which, under international rules and practices, are prohibited from import (nine categories) and from export (ten categories). They refer to materials and equipments for nuclear, chemical and biological arms, toxic products, drugs and narcotics etc.

Under special circumstances, when there is a serious disruption of the domestic production as a result of a sudden growth in imports, temporary customs surcharges can be introduced as a method of ensuring protection at the border. Likewise, quantitative restrictions may be introduced for balance-of-payments purposes, in accordance with the relevant provisions of the GATT.

No surcharges and no quantitative restrictions for imports have been introduced so far.

In order to facilitate the import of a limited number of raw materials which are of special importance for the national economy, Government Resolution No.8/1991 (published in Monitorul Oficial - the Official Gazette - No. 7/15 January 1991) provides that economic agents, private or State-owned, may buy foreign currency from the State's currency fund, on a competitive basis, at the official rate of exchange in effect on the date of the purchase.

Some exports of goods are subject to limitations in order to ensure their availability on the domestic market, as follows:

- staple commodities for domestic consumption are temporarily subject to global export quotas which are administered by the Ministry of Trade and Tourism and distributed without discriminating against any interested economic agent;
- raw materials and other materials included in the material balances at national level in order to ensure the supply of the domestic market may be exported with the prior permission of the relevant ministries;
- all the other products may be exported without any limitation.

4. Export promotion is of particular interest to the national economy.

In the context of price liberalization, the State does not grant export subsidies. Export incentives are provided only through fiscal and banking measures.

By Government Resolution No. 1274/1990, the drawback régime has been introduced. Pursuant to this regulation, customs duties paid for imported goods may be refunded, totally or partially, if the respective goods are re-exported in the same condition, or after being processed, transformed or repaired in order to be exported, or if they have been incorporated in export products.

In order to further encourage exports, as of 1 January 1991 the State budget refunds to the economic agents, upon request, the tax on the circulation of goods which is included in the price of the raw and other materials, semi-processed and other products representing the main intermediate components of the final export products.

On the other hand, in order to lessen the problems due to foreign exchange shortage caused by the lack of convertibility of the national currency, economic agents are encouraged to export by being allowed - as it was previously mentioned - to retain at their disposal 50 per cent of their export proceeds, in convertible currency.

Moreover, the economic agents who do not have direct currency earnings but carry on export activities under clearing agreements or barter deals, receiving goods which are important for the domestic market and are included in the material balances of the national economy, are also entitled to receive from State funds 50 per cent of the convertible currency which they would have received if they had exported directly.

If export goods are exported on credit, economic agents can retain all the foreign currency received as interest, having to pay only the interest in "lei" for the internal credit received in order to finance those exports.

5. The exchange rate has undergone substantial changes. The multiple exchange rate of the national currency was abolished; as a result, under the Decree Law No. 44/1990 (published in Monitorul Oficial - the Official Gazette - No. 18/2 February 1990) a single rate of national currency was introduced, which is applied both in commercial and non-commercial operations.

The official exchange rate was devalued twice in 1990 by an aggregate 60 per cent and by an additional 71 per cent at the end of March 1991, being at present at the level of 60 lei per 1 US dollar.

At the same time as it was already mentioned, in February 1991 a parallel inter-bank currency market, organized by the National Bank of Romania, is operating daily on the basis of supply and demand of foreign currency which is sold and bought, at auction, by the economic agents.

This inter-bank market provides the economic agents involved in import operations with the possibility to secure the necessary foreign currency. It also represents a stage towards establishing a realistic official exchange rate and ensure the convertibility of the national currency.