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ORDINANCE OF EMERGENCY

CONCERNING CERTAIN PROTECTION MEASURES FOR THE PERSONS WHOSE INDIVIDUAL LABOUR CONTRACTS ARE TO BE TERMINATED AS A CONSEQUENCE OF THE COLLECTIVE REDUNDANCIES GENERATED BY THE IMPLEMENTATION OF THE RESTRUCTURING, PRIVATISATION AND LIQUIDATION PROGRAMMES

Based upon the provisions of the art. 114, para (4) in the Constitution of Romania,

**THE GOVERNMENT OF ROMANIA adopts the following
ORDINANCE OF EMERGENCY**

Chapter I - General provisions

Art. 1 - The employees of the commercial companies where the state expresses at least one third of the votes in the stockholders' general board as well as of the RAs^{*} recording losses, arriers and negative financial flows, and whose individual labour contracts are to be terminated following collective redundancies occured in the process of restructuring, privatisation and liquidation benefit from the protection stipulated in the present ordinance of emergency.

Art. 2 - In the sense of art. 1, one considers as massive lay-offs the situation when the termination of the individual labour contract occurs in the following cumulative conditions:

a) member of the persons laid off is of least:

- 10, for the companies employing 11 to 100 people;
- 10% for the companies employing 101 to 300 people;
- 30, for the companies employing over 301 people;

b) the termination of the individual labour contract is in accordance with art. 130 paragraph 1 letter a in the Labour Code within 60 days from

^{*} RA = regie autonome

the date of approval by the competent bodies of the restructuring, privatisation and liquidation programmes.

Art. 3 - The bodies competent to endorse the restructuring, privatisation and liquidation programmes are:

- a) the State Ownership Fund, for commercial companies;
- b) the respective ministries for the RAs under their authority;
- c) the local or county councils, for the RAs under their authority.

Art. 4 - (1) The State Ownership Fund, the respective ministries, the local or county councils endorse the restructuring, privatisation and liquidation programmes after analysing the situation in every commercial company or RA, taking into account:

- a) the decision of the stockholders' general assembly of the commercial companies where the state expresses at least a third of the votes or, as the case may be, of the RAs' governing body, stating that the commercial companies or the RAs record losses, arrears and negative financial flows;
- b) the programme of restructuring, privatisation and liquidation of the CC's or RA's activity issued in consultation with the unions or, as the case may be, with the employees' representatives elected as by the Law no. 130/1996 on collective labour contracts.

(2) The programmes stipulated in paragraph 1 become an annex to the management contract concluded in accordance with the Law nr. 66/1993. In the case the management contract is not concluded until this ordinance of emergency's coming into force, the observance of the programmes becomes compulsory for the executive management and for the governing body.

Art. 5 - (1) Commercial companies or RAs which the restructuring, privatisation and liquidation programmes have been endorsed for according to articles 3 and 4 above shall inform the CC or RA level trade unions or the employees' representatives about the lay-off, the number of staff to be laid off, the reasons for this measure as well as the moment it will take place.

(2) Within 5 days from the receipt of the notification, the trade unions or, as the case may be, the employees' representatives may submit to the CCs' or RAs' management written objections as to the staff lay-off measure.

* CC = commercial company

Art. 6 - (1) The management of CCs or RAs is compelled to examine the objections formulated as in art. 3, paragraph 2 within 3 days since their receipt to answer in writing.

(2) In case the unions or, as the case may be, the employees' representatives do not agree with the response they may appeal the bodies stipulated in art. 3, whose decision is definitive.

Art. 7 - (1) Vacancies shall be cut off under the [circumstances of] the restructuring, privatisation and liquidation programmes.

(2) In the case the programme of restructuring, privatisation and liquidation of the CCs and RAs requires a more significant cut off than as in para (1), other positions will be cut off in the following order:

- a) positions of people cumulating jobs, except those persons whose "base" job is with the company which the provisions of the present ordinance of emergency get implemented for;
- b) positions occupied by persons cumulating pension and wages;
- c) positions occupied by employees who fulfill the conditions seniority and age limit retirement;
- d) positions occupied by employees who fulfill the conditions for retirement upon request;
- e) positions occupied by employees who possess stocks or social shares amounting to over 5 % of the votes in the stockholders' or associates' general assembly of the company;
- f) other positions.

(3) In case the restructuring, privatisation or liquidation requires that certain positions occupied by employees finding themselves in conditions similar to those under paragraph 2 be cut off, persons whose individual labour contracts are to be terminated shall be selected depending on the professional capabilities and with observance of the following criteria:

- a) if the contract termination regards a couple working in the same company, only the contract of the less paid of the spouses shall be terminated, unless that position is not subject to the cut off;
- b) the contract termination affects employees with no children at charge;
- c) the contract termination affects least the women and/or men with children at charge, employees who are unique providers as well as those having less than 3 years until fulfilling the conditions for retirement upon request.

(4) The management of CCs or RAs in consultation with the trade unions or employees' representatives, may settle other criteria in addition to those under paras 1 - 3.

Art. 8 - The lists of employees to be subject to contract termination shall be communicated to the employees and the territorial labour & social protection directorates.

Chapter II - Active protection measures
meant for persons who have been subject to contract termination as
a consequence of massive lay-offs

Art. 9 - The Ministry of Labour and Social Protection - through its territorial labour & social protection directorates - has the obligation to provide services prior to collective redundancies consisting of assistance to the CCs and RAs in putting together vocational reconversion programmes as well as in individual guidance to the employees.

Art. 10 - (1) In the sense of the present ordinance of emergency, active measures are those aiming at creating new jobs or supporting the jobseekers in view of getting hired.

(2) The main active measures for fighting the unemployment are: vocational guidance, training in jobseeking methods, entrepreneurial and vocational training, setting-up of consultancy & business development centres, financial support for the creation of new jobs, including civil works programmes.

Art. 11- For the coordination of the activities provided for by art. 9 and 10, it is established the National Board for the Coordination of the active employment measures as a tripartite body; its structure shall be approved by a Decision of the Government following the proposal by the Ministry of Labour and Social Protection.

Art. 12 - For the implementation of the decisions National Board for the Coordination of the active employment measures are established County tripartite Coordination Boards in each county which are subordinated to the " prefect" and which will include representatives of the county councils, de-centralized services of the ministries, SOF, of the trade unions and employers associations.

Art. 13 - (1) The Ministry of Labour and Social Protection will establish the Rapid Intervention Team, mainly including experts in labour force and unemployment issues from central and local level, meant to work out active measure programmes for enterprises and RAs.

(2) In order to achieve its goal, the Rapid Intervention Team shall cooperate with the management of enterprises and RAs, the trade unions and employers associations as well as with other institutions and organizations which can contribute to the implementation of the active measures.

Art. 14 - The National Board for the Coordination of the active employment measures has the following main activities:

- a) analyse and evaluates the size of the redundancies following the putting into practice of the restructuring, privatisation and liquidation programmes;
- b) settles the priorities of the Rapid Intervention Team;
- c) settles the priorities at national level, the types of intervention and approves the active employment measures submitted by the County Coordination Boards;
- d) proposes to the Ministry of the Labour and Social Protection the priorities for providing the financial resources;
- e) coordinates and supervises the activity of the county Coordination Boards meant to implement the active measures.

Art. 15 - The county Coordination Boards have the following main attributions:

- a) to analyse the request of the enterprises' management regarding the assistance needs for active employment measures;
- b) to identify and to evaluate the redeployment opportunities for the dismissed persons in accordance with the local development programmes;
- c) to analyse and to follow the intervention priorities and to rapidly submit to the National Coordination Boards the programmes worked out by the Rapid Intervention Teams;
- d) to control the implementation of the active employment active measures' by the services providers financed to this purpose and to notify the National Coordination Board the eventual irregularities.

Art. 16 - The selection of the services providers for the active measures provided for by art. 10 will be made by the Ministry of Labour and Social Protection through bids organized according to the legal provisions in force.

Art. 17 - The prefect's office and the local public administration authorities have the obligation to support the implementation of the active employment measures programmes.

Art. 18 - (1) In order to put into practice the provisions of the present Ordinance of Emergency, the Ministry of Labour and Social Protection shall use the resources of the unemployment fund budget as well as other resources attracted to this purpose according to the law.

(2) Public opinion survey and information campaign regarding the achievement of the active measures provided for by the present Ordinance of Emergency shall be financed from the resources under paragraph 1.

Chapter III - Severance Payments

Art. 19 - (1) The employees whose individual labour contracts have been terminated as a consequence of the collective redundancies receive a severance payment representing a tax free amount equal to the economy wide monthly net average wage notified by the National Commission for Statistics at the time when the entitlement is settled.

(2) The entitlement to the severance payment occurs at the date of the individual labour contract termination.

(3) The employees whose individual labour contracts have been terminated as a consequence of the collective redundancies also enjoy, according to the law, the rights stipulated by the Law nr. 1/1991 on the social protection of the unemployed and their professional reinsertion (republished).

(4) Are not entitled to receive the severance payment by paragraph 1 the employees whose posts are reduced according to art. 7, paragraph 2, letters a - e.

Art. 20 - (1) The total amount granted as a severance payment is established differentially for each person made redundant according to the present Ordinance of Emergency having a minimum 6 months length in service in enterprises or in RAs, as follows:

- a) 6 net economy-wide average wage, for the employees having a length in service under 5 years;
- b) 9 net economy-wide average wage for the employees having a length in service between 5 and 15 years;
- c) 12 net economy-wide average wage for the employees having a length in service over 15 years.

(2) The total amount provided according to para (1) can be increased by maximum 3 net average wage for the whole economy in the following situations:

- a) the beneficiary has its domicile in a geographical area where the unemployment rate is over 12%;
- b) the beneficiary has its domicile in a geographical area where there is a limited number of professional activities;
- c) the beneficiary performs a strictly specialised trade, profession and occupation.

Art. 21 - (1) The payments of the severance payment - related amounts are made in installments.

(2) The payments of the severance payment related amounts can be made as a lump sum if the beneficiary commits himself to use this amount to the purpose of certain activities such as: to establish a trade company, a family association or to perform a commercial activity as self-employed, to purchase or to make an association for purchasing agricultural equipments and tools and for buying shares.

(3) The persons whose individual labour contracts have been terminated as a result of the collective redundancies are entitled only once to receive the amounts provided for by the present Ordinance of Emergency.

Art. 22 - The severance payments - related amounts are covered from the Unemployment Fund, provided by the Law no. 1/1991, up to the amounts settled by the Law on the state social insurance budget.

Art. 23 - (1) The severance payments - related amounts are transferred by the territorial Directorates of Labour and Social Protection into personal accounts, providing interest rates, opened to Savings House on the name of the beneficiaries; in this respect, the Ministry of Labour and Social Protection will conclude a convention with Savings House.

(2) The account opening and operation are exempted from commissioning.

Art. 24 - (1) The persons whose individual labour contracts have been terminated as a result of collective redundancies enjoy the following facilities:

a) exemption from income tax for two years for the persons who will be authorised to perform economic activities on a free initiatives basis as independent natural persons or as family associations.

b) loans according to the provisions stipulated by Law nr. 1/1991.

(2) The exemption provided by para (1), letter a) applies to the persons who the functioning authorisation within 6 months from the termination of the individual labour contract.

Art 25 - The persons whose individual labour contract have been terminated according to the present Ordinance of Emergency can take action against the decision made to the competent judicial bodies, under the conditions provided in the Labour Code.

Art. 26 - In the art. 24, para (1) in the Law no. 1/1991 are added letters e) and f) with the following content:

e) " coverage of the expenses regarding the severance payments provided for the employees whose individual labour contracts are to be terminated as a consequence of the collective redundancies resulting from the putting into practice of the restructuring, privatisation and liquidation programmes;

f) " coverage of the expenses regarding the achievement of the active employment measures".

Art. 27 - (1) Art. 22 in the Ordinance nr. 13/1995 on certain measures for speeding-up the restructuring process of RAs and mostly capital state-owned enterprises, for strengthening the financial discipline and for improving the discounts in economy, approved through the Law no. 119/1995 abrogated.

(2) The exemption from of the income tax provided according to art. 22, lit c) from the Ordinance nr. 13/1995 remains in force until completion of the two-year term.

Art. 28 - Within 30 days from the coming into force of the present Ordinance of Emergency, the respective ministries will work out implementation norms approved through a Decision of the Government.

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