

## **EMERGENCY ORDINANCE no. 113 of July 14, 2005**

for the amendment and completion of Government Emergency Ordinance no. 194/2002 regarding the regime of foreigners in Romania

ISSUER **GOVERNMENT**

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Considering the importance of fulfilling the commitments assumed by Romania for the year 2005 in order to integrate into the European Union, respectively the transposition of the community documents in the field of migration into the Romanian legislation within the assumed term,

taking into account the fact that the amendment of the legislation regarding the regime of foreigners is found as the main objective in the application of the Schengen Action Plan, as well as the Priority Action Plan for the accession to the European Union, their implementation without delay representing one of the tasks whose failure to fulfill can be the basis for activating the clause to postpone Romania's accession to the European Union,

taking into account, at the same time, the need for the appropriate solution of the difficulties encountered in the application of the legislation in force regarding the regime of foreigners,

taking into account the fact that all these elements are aimed at the public interest and constitute extraordinary situations whose regulation cannot be postponed,

pursuant to art. 115 para. (4) from the Constitution of Romania, republished,

The Government of Romania adopts this emergency ordinance.

### **UNIQUE article**

Government emergency ordinance no. 194/2002 regarding the regime of foreigners in Romania, republished in the Official Gazette of Romania, Part I, no. 201 of March 8, 2004, with subsequent amendments and supplements, is amended and supplemented as follows:

1. In article 5, after paragraph (2), two new paragraphs are inserted, paragraphs (3) and (4), with the following content:

"(3) The Government of Romania, through the authorized institutions, transmits to the European Commission and the governments of the other member states in due time and no later than the moment when they are made public, information regarding:

a) draft normative acts that propose measures regarding workers from third countries and their family members, in terms of entry, stay and employment, as well as the achievement of equal treatment in living and working conditions, salary rights and other economic rights, the promotion of integration into the native labor force and society and the voluntary return to the country of origin of such persons;

b) draft agreements regarding the subjects provided for in letter a), as well as the draft cooperation agreements that they intend to negotiate or renegotiate with third countries, when these agreements contain provisions relating to the subjects mentioned in letter a);

c) draft agreements regarding the conditions of residence and employment of their own citizens working in third countries and their family members, which they intend to negotiate or renegotiate with the respective states.

2. Article 8 paragraph (2), letter c) will have the following content:

"c) they have previously violated, unjustifiably, the purpose declared when obtaining the visa or, as the case may be, upon entering the territory of Romania or have tried to cross the

Romanian border with false or falsified documents;".

3. Paragraph (1) of Article 12 will have the following content:

"(1) The foreigner who legally entered the territory of Romania has the obligation to notify the competent territorial police body about this, within 3 days from the date of entry. Citizens of the member states of the European Union and the European Economic Area are an exception."

4. Article 13, letter a) of paragraph (1) is repealed.

5. In article 13, after paragraph (1), a new paragraph, paragraph (1<sup>1</sup>), is inserted, with the following content:

"(1<sup>1</sup>) The foreigner who changes his domicile or residence is obliged, within 15 days from the date of moving to the new address, to present himself at the territorially competent formation of the Authority for Foreigners, for recording and making the appropriate mentions in identity document."

6. Paragraph (1) of Article 14 will have the following content:

"(1) If the foreigner is no longer in possession of the state border crossing document on the basis of which he entered the country, he must present a new valid state border crossing document when leaving Romania."

7. Paragraph (1<sup>1</sup>) of article 14 is repealed.

8. In article 19, after paragraph (1), a new paragraph, paragraph (1<sup>1</sup>), is inserted, with the following content:

"(1<sup>1</sup>) Foreign aircraft pilots and other crew members, holders of a flight license or a crew certificate, provided for in Annex No. 9 to the Convention on International Civil Aviation, signed in Chicago on December 7, 1944, are exempted from the obligation to have a passport and visa only in situations where they are in the exercise of their duties and:

- a) do not leave the stopover airport;
- b) do not leave the airport of destination;
- c) do not leave the territory of the city located near the airport;
- d) I only leave the airport to go to another Romanian airport."

9. Article 24 paragraph (1), letter i) will have the following content:

"i) other purposes - foreigners seconded by foreign companies, trainee or seasonal workers, foreigners undergoing long-term medical treatment, foreigners whose presence on the territory of Romania is necessary in the interests of national security and those who carry out other activities that do not contravene Romanian laws."

10. Paragraph (1) of Article 46 will have the following content:

"(1) Foreigners holding a right of temporary or permanent residence, as well as refugees recognized by the Romanian state, may request family reunification for:

- a) husband/wife;
- b) the minor, unmarried children of the holder of the right of residence and of the spouse, including the children jointly adopted by them;
- c) minor, unmarried children, including adopted ones, of the holder of the right of residence, if they are in his effective maintenance;
- d) the minor, unmarried children, including the adopted ones, of the spouse of the holder of the right of residence, if they are in his effective maintenance."

11. Article 48 paragraph (1), letter a) will have the following content:

"a) to those seconded by:

(i) a foreign company with headquarters on the territory of a member state of the World Trade Organization at a representative office, branch or subsidiary, located on the territory of Romania, or at a commercial company, Romanian legal entity, of which the company is an associate/shareholder foreign, with the same object of activity, if they prove that they are not in employment with another Romanian legal entity;

(ii) an employer based abroad at a legal entity in Romania, based on a commercial service contract concluded between the two parties."

12. In article 48, after letter b), a new letter is inserted, letter b<sup>1</sup>), with the following content:

"b<sup>1</sup>) to those designated as administrators of a commercial company, with the cumulative fulfillment of the following conditions:

(i) based on a contract of mandate;

(ii) on the date of the request, not to be a partner or shareholder in the commercial company in question or in another Romanian legal entity and not to have had these qualities in the last 2 years;

(iii) at the commercial company in question, there is no other foreign partner who has obtained a right of residence for this purpose."

13. In article 49, letter d) will have the following content:

"d) relatives of the first degree in the ascending line."

14. Article 50 paragraph (2), letter c) will have the following content:

"c) possess a valid travel document, except in cases where the travel document expired after entering Romania and, for reasons independent of the foreigner's will, it could not be extended;"

15. Article 50 paragraph (2), letter g) will have the following content:

"g) present proof of social health insurance."

16. In article 51, after paragraph (4), a new paragraph, paragraph (4<sup>1</sup>), is inserted, with the following content:

"(4<sup>1</sup>) When the extension of the right of residence is requested on the basis of marriage and additional verifications are required according to art. 64, the deadline for resolving the request can be extended up to a maximum of 90 days, in which case the right of residence is extended by right until the request is settled."

17. Article 58 paragraph (1), letter c) will have the following content:

"c) proves the means of maintenance, in the amount of at least the minimum net salary for the country, during the period of validity of the residence permit."

18. Article 63 will have the following content:

"ARTICLE 63

Subsequent extension of the right of temporary residence for family reunification

(1) Subsequent extensions of the right of temporary residence granted for family reunification may be granted if the applicant:

a) presents translated and legalized documents from which the existence of the marriage or the family relationship results;

b) presents the statement, in writing, of the family member who requested family reunification, from which it follows that they will live together;

c) provides proof of the appropriate living space;

d) proves that the foreigner who requested family reunification has means of maintenance above the amount provided for when issuing the residence permit, at least at the level of the

minimum net salary in the country, for each family member.

(2) The extension of the right of residence for foreign family members of Romanian citizens can be granted as follows:

a) for foreigners married to Romanian citizens, if:

(i) presents the marriage certificate in original and copy, which must produce legal effects on the territory of Romania;

(ii) prove the means of maintenance at the level of the minimum net salary in the country;

b) for foreigners who live with Romanian citizens, if:

(i) presents the birth certificates of the children, Romanian citizens, in original and in copy;

(ii) presents the declaration of the Romanian citizen, in authentic form, from which it can be concluded that they live together;

(iii) prove the means of maintenance at the level of the minimum net salary in the country;

c) for unmarried minor children, including adopted ones, if:

(i) translated and legalized documents showing the existence of the relationship are presented;

(ii) proof of means of maintenance is provided at the level of the minimum net salary in the country;

d) for first degree relatives in ascending line, if:

(i) present translated and legalized documents from which the existence of the kinship relationship results;

(i) provide proof of means of maintenance at the level of the minimum net salary in the country."

19. Article 68 paragraph (1), letter a) will have the following content:

"a) posted foreigners - with the presentation of a work permit issued under the law. The right of residence for this purpose can be extended only once for a period of up to one year, for subsequent extensions the legal provisions regarding the extension of the right of residence are applicable of foreigners engaged in work."

20. In article 68, paragraph (1), after letter b), a new letter, letter b<sup>1</sup>), is inserted, with the following content:

"b<sup>1</sup>) foreigners appointed as administrators of a commercial company, under the following conditions:

(i) with the presentation of the mandate contract;

(ii) on the date of the request, not to be a partner or shareholder in the commercial company in question or in another Romanian legal entity and not to have had these qualities in the last 2 years;

(iii) at the commercial company in question there is no other foreigner who has obtained a right of residence for this purpose."

21. Paragraphs (3) and (4) of Article 68 will have the following content:

"(3) When requesting the extension of the right of temporary residence, the foreigners provided for in paragraph (1) letters a), b) and c) must provide proof of means of maintenance, at least at the level of the average net salary in the national economy, and those provided for in paragraph (1) letter b<sup>1</sup>), in the amount of at least 500 euros per month from the activity carried out according to the mandate contract.

(4) The foreigners provided for in para. (1) lit. d) are exempt from the obligation to present proof of means of maintenance."

22. Paragraph (1) of Article 69 will have the following content:

"(1) The right of permanent residence is granted, upon request, under the conditions of this emergency ordinance, for an indefinite period, to the foreigner holding a temporary residence right or to the refugee recognized by the Romanian state, who has been approved to establish a domicile in Romania. "

23. Paragraph (3) of Article 70 is repealed.

24. In article 70, after paragraph (4), two new paragraphs are inserted, paragraphs (4<sup>1</sup>) and (4<sup>2</sup>), with the following contents:

"(4<sup>1</sup>) Foreigners who have acquired refugee status under the terms of the law may be approved to establish their domicile in Romania without fulfilling the condition provided for in paragraph (1) letter b).

(4<sup>2</sup>) Foreigners who prove that they have made investments of at least 1,000,000 euros or have created more than 100 full-time jobs can be approved to establish their domicile without fulfilling the condition set out in paragraph (1) lit. a). The proof of the investment or the jobs created will be calculated according to the profit and loss participation rate in the commercial company."

25. Article 71 will have the following content:

"ARTICLE 71

Conditions regarding the request to establish domicile in Romania

(1) In order to establish the domicile in Romania, the applicant must personally submit, to the territorial formations of the Authority for foreigners or, as the case may be, to the National Office for Refugees, a standard application accompanied by the following documents:

a) foreigners holding a right of temporary residence:

(i) the state border crossing document, in original and in legalized copy;

(ii) legalized copy of civil status documents;

(iii) documents proving the legal ownership of the living space, in the original and in a legalized copy;

(iv) supporting documents regarding means of maintenance;

(v) criminal record certificate, issued by the Romanian authorities;

(vi) proof of social health insurance;

b) foreigners who have refugee status:

(i) the state border crossing document, in original and copy;

(ii) legalized copies of civil status documents;

(iii) documents proving the ownership or legal use of the living space, in the original and in a legalized copy;

(iv) criminal record certificate, issued by the Romanian authorities;

(v) proof of social health insurance.

(2) If the applicants who have refugee status do not have the documents provided for in para. (1) lit. b) points (i) and (ii), the application will be analyzed based on the declared identity."

26. Article 86, paragraph (2), letter a) will have the following content:

"a) they illegally crossed the state border of Romania;"

27. In article 86, paragraph (2), after letter a), a new letter, letter a<sup>1</sup>), is inserted, with the following content:

"a<sup>1</sup>) have not left the territory of Romania upon the expiration of the right of residence conferred by visa or pursuant to international conventions or normative acts by which the visa regime is unilaterally abolished, and the period elapsed since the termination of this right is greater than 60 days;"

28. In article 86, paragraph (2), after letter d), a new letter, letter e), is inserted, with the following content:

"e) were convicted for crimes committed with intent, and the punishment provided by law for them is greater than 3 years."

29. In article 86, after paragraph (3), a new paragraph is inserted, paragraph (3<sup>1</sup>), with the following content:

"(3<sup>1</sup>) The applicable procedures in case of non-cooperation of some diplomatic representations in connection with the issuance of travel documents for the removal of foreigners from the territory of the Romanian state are established by joint order of the Minister of Foreign Affairs and the Minister of Administration and Interior."

30. After article 88<sup>1</sup>, a new article is inserted, article 88<sup>2</sup>, with the following content:

"ARTICLE 88<sup>2</sup>

Organization of joint flights with the member states in order to return foreigners

(1) The authority for foreigners can organize or participate in joint return actions, by air, with competent authorities from one or more member states of the European Union, of foreigners, citizens of third countries, who are the subject of return decisions .

(2) When the Authority for foreigners decides to organize a joint flight for the return of citizens from third countries, which may also benefit from the participation of other member states, it informs the competent authorities of the participating member states.

(3) In order for the flight to run smoothly, the Authority for Foreigners adopts measures regarding the selection of the carrier, according to the legal provisions, obtaining the necessary authorizations from the transit and destination states, jointly establishing with the competent authorities of the other participating states the number of personnel of the necessary escort, the conclusion of the necessary financial agreements, as well as other necessary measures.

(4) If the Authority for foreigners decides to take part in a joint flight, it informs the national authorities of the organizing member state about the intention to participate, specifying the number of persons to be returned, and ensures a sufficient number of escort personnel . If the escort is carried out only by the organizing member state, the Authority for Foreigners ensures the presence of at least 2 representatives on board, who are responsible for handing over the citizens they are responsible for from third countries to the authorities in the destination states.

(5) The authority for foreigners provides both returned foreigners and their own escort personnel with valid travel documents, visas and other necessary documents and, through the General Directorate of Consular Affairs, requests the necessary assistance from the diplomatic representations of Romania."

31. Paragraph (1) of Article 93 will have the following content:

"(1) Taking into public custody is a measure to restrict freedom of movement on the territory of the Romanian state ordered by the magistrate against the foreigner who could not be returned within the term provided by this emergency ordinance, as well as against the foreigner who was declared undesirable or in respect of which the court ordered the expulsion."

32. In article 101, after paragraph (1), a new paragraph, paragraph (1<sup>1</sup>), is inserted, with the following content:

"(1<sup>1</sup>) The measure provided for in paragraph (1) can also be ordered against foreigners who left Romania after the date from which their stay became illegal, without being subject to a measure of removal from the country's territory."

33. In Article 102, paragraph (2), after letter c), a new letter, letter c<sup>1</sup>), is inserted, with the following content:

"c<sup>1</sup>) does not require international transport costs for removal from the territory of Romania;"

34. Article 106 paragraph (2), letter c) is repealed.

35. After article 120<sup>2</sup>, a new article is inserted, article 120<sup>3</sup>, with the following content:

"ARTICLE 120<sup>3</sup>

Granting the right of temporary residence for foreigners who are victims of human trafficking, migrant trafficking or the crime provided for in art. 130<sup>1</sup>

(1) Foreign victims of human trafficking, migrant trafficking or the crime provided for in art. 130<sup>1</sup> they can be granted a temporary residence permit, even if they entered Romania illegally, at the request of the prosecutor or the court, under the following conditions:

a) shows a clear intention to cooperate with the Romanian authorities in order to facilitate the identification and prosecution of the participants in the commission of the crimes of which they are victims;

b) relations with persons suspected of committing the crimes of which they are victims have ceased;

c) granting the right of residence is opportune for conducting judicial investigations;

d) their stay in Romania does not pose a danger to public order and national security.

(2) The right of residence can be granted for a period of 6 months, with the possibility of extension for new periods under the same conditions.

(3) The right of residence can be revoked in the following situations:

a) the conditions stipulated in para. (1);

b) the holder of the right of residence, intentionally, renewed contacts with the persons suspected of committing the crimes provided for in paragraph. (1);

c) if it is found that the foreigner has misled the competent authorities regarding the quality of the victim or regarding the data and information provided;

d) when the victim stops cooperating;

e) when the competent authorities find the existence of any of the cases provided for in art. 10 of the Criminal Procedure Code.

(4) The residence permit for the persons referred to in para. (1) is issued free of charge."

36. In article 124, after point 3, a new point is inserted, point 3<sup>1</sup>, with the following content:

"3<sup>1</sup>. non-compliance by the foreigner with the obligation provided for in art. 13 paragraph (1<sup>1</sup>);"

37. Article 125, letter a) will have the following content:

"a) with a fine from 100 lei (RON) to 500 lei (RON), those provided for in points 3, 3<sup>1</sup>, 4, 6, 6<sup>1</sup>, 8, 9, 10, 11 and 12;"

38. In article 130<sup>1</sup>, after paragraph (3), a new paragraph, paragraph (3<sup>1</sup>), is inserted, with the following content:

"(3<sup>1</sup>) If the act provided for in paragraph (1) is committed by a person who is part of an organized group or who has produced or obtained important material benefits for himself or for another, the special maximum of the punishment is increased by 3 years."

39. After article 130<sup>1</sup>, a new article is inserted, article 130<sup>2</sup>, with the following content:

"ARTICLE 130 2

Liability of legal entities

(1) If the act provided for in art. 130<sup>1</sup> was committed in the name or in the interest of a legal entity, by its bodies or representatives, is punishable by a fine from 15,000 lei (RON) to 30,000 lei (RON).

(2) The act provided for in art. is sanctioned with the same penalty. 130<sup>1</sup>, if it was committed in the interest of a legal entity, as a result of non-exercise by the persons provided for in para. (1) of the control attributions, by any person under their authority.

(3) The liability of the legal person does not exclude the criminal liability of the natural persons participating in the commission of the offense provided for in art. 130<sup>1</sup>."

40. Article 135<sup>1</sup> will have the following content:

"ARTICLE 135<sup>1</sup>

Provisions applicable from the date of Romania's accession to the European Union

The provisions of art. 5 para. (3) and (4), art. 88<sup>1</sup>, 88<sup>2</sup>, 92<sup>1</sup>, 120<sup>1</sup> and of art. 120<sup>2</sup> enters into force on the date of Romania's accession to the European Union."

PRIME MINISTER

CĂLIN POPESCU-TĂRICEANU

Countersign:

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Vasile Blaga

p. Minister of Foreign Affairs,

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Bucharest, July 14, 2005.

No. 113.