

Press release

The ‘Renault Act’ – ten years on: company restructurings and social plans, what are the trends in Belgium?

Brussels, 22 October 2008. The law firm Claeys & Engels has just published a study concerning company restructurings and social plans. The study is based on 216 collective bargaining agreements (CBAs), concluded as a result of the hundred most recent restructurings (2006-2008). Claeys & Engels demonstrates that the consultation procedures only take longer and that the social plans have only become more expensive. Resettlement of dismissed workers gains indeed in significance, but is certainly not the most important thing. The impact of the Generation Pact remains limited because the social partners introduce, even more than in the past, early retirement as from the age of 50.

Early retirement: the Generation Pact has a limited impact

One of the priorities of the Generation Pact was to keep everyone at work for as long as possible. The government wanted to drastically restrict the right to early retirement. In reality, the effect of the Generation Pact is rather limited: the average age of early retirement following a restructuring has increased by one year to 54 years.

Before the Generation Pact, it was enough that the worker reached the age of early retirement during the period of validity of the company’s recognition as a company in restructuring (often two years). When a company introduced early retirement as from 52 years, workers who were 50 years old at the moment of the announcement, could still go on early retirement two years later. Nowadays, that age must already be reached at the beginning of the procedure. This modification of the law in theory could increase the age of early retirement by two years. In reality, the social partners have partly undermined this measure by applying for early retirement at a lower age. In as much as 40% of the cases in which early retirement is applied for, the social partners choose for early retirement as from 50 years!

The social partners also still tend to make early retirement financially attractive by raising the legal early retirement compensation, and this in spite of the fact that the workers continue to have the advantage of this compensation in the event of resumption of work.

Resettlement: 74 % of the companies go further than their legal obligations require them

The Generation Pact obliges the companies that want to decrease the age of early retirement to develop resettlement measures. The Claeys & Engels study reveals that almost three-quarters of the employers go further than their legal obligations require them.

This indicates an important change in mentality, in which financial compensation evolves towards the promotion of resettlement of workers. This evolution was already to a certain extent noticeable in 2004, but has now been speeded up by the dynamics of the Generation Pact.

Consultation procedure takes longer

Under the “Renault Act”, an employer who wants to proceed to a collective dismissal must inform and consult his employees or their representatives before taking a decision and negotiating a “social plan”. The procedure consists of two phases: first a consultation (on the collective dismissal itself), afterwards a negotiation (on the indemnities in lieu of notice).

The Act does not determine the duration of the consultation procedure nor of the negotiating procedure.

The Claeys & Engels study shows a prolongation of the consultation phase – that was already noticeably before the coming into force of the Generation Pact – by about 33%, and this in the entire country. Nowadays, the consultation phase takes on average 52 days, where this was only 39 days in the period 2002-2004.

The negotiation phase on the other hand takes a little less time than before, that is to say on average 36 days against 41 in the past, but the gain here is more than offset by the prolongation of the consultation phase.

Thus, a restructuring in Belgium lasts on average 88 days (against 80 days in 2004) with still marked regional differences (a restructuring in Wallonia or in Brussels-Capital takes on average about 50% longer than in Flanders).

The increased duration of the negotiation process can mainly be attributed to the fact that the discussions on the social plan are more often already started during the consultation phase. This evolution is not only contrary to the law, moreover it is also counterproductive. A real consultation on the plan itself is bothered by discussions on financial compensations. Moreover the consultation process that is foreseen by law is unnecessarily slowed down.

Notice periods: increase for the blue-collar workers

With regard to the notice periods, there is no significant evolution noticeable with regard to the white-collar workers. The Claeys formula is still applied in the great majority of the cases.

The notice periods for the blue-collar workers did however increase: in 19% of the cases the notice periods awarded to the workers are longer than what is stipulated by law (against 6% before)

Decrease in the complements to the unemployment benefits

The payment of complements to unemployment benefits (such as the notorious “Canada Dry” arrangements) has seriously decreased. Where those complements were granted in two-thirds of the cases in 2004, it is now halved to one-third of the cases.

According to Claeys & Engels, the fact that increasingly frequently indemnities in lieu of notice that are higher than foreseen by law are granted to blue-collar works can not be seen separately from the decrease in the number of extralegal complements to employment benefits.

An increasing restructuring cost

The cost of a restructuring has increased. This increase is partly caused by a few symbolic files (such as Volkswagen Vorst) that are quoted as a reference by the employees and the trade unions. On the other hand, also the legislator has contributed to a higher restructuring cost by raising the social contributions on several accompanying measures (such as with “Canada Dry” arrangements and extralegal closing compensations).

Does the higher cost stop companies from restructuring? The answer is probably not. In practice, companies are rather inclined to not proceed to a formal collective dismissal and to implement the restructuring step by step. In that way the procedures of the “Renault Act” are avoided. The higher cost will sometimes lead to the postponement of restructurings, as a result of which painful measures are necessary afterwards with all their negative consequences on the employment.

And because no restructuring budget is unlimited, each euro that is spent on compensations and social contributions, can not be spent on the resettlement of the workers concerned.

Conclusion

Restructurings last longer and cost more. This is not beneficial to the resettlement of the dismissed workers, which is however an explicit objective of the legislator.

Claeys & Engels is of the opinion that the government should take initiatives on two fields:

1 More legal certainty

A Belgian employer who wants to proceed to a collective dismissal does not know how much time the consultation procedure will take, nor what the budget of the restructuring will be. This legal uncertainty is obviously not something that is attractive to potential investors.

2 Aim still more at resettlement

As long as the indemnities in lieu of notice remain so expensive, the budgetary margin to invest in resettlement measures remains limited.

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