Case: Modernising labour law to meet the challenges of the 21st century (Green paper) – answers of given questions

According to the publishing of the Green paper by the European commission about labour law, which is solving the problemacy of „Modernising labour law to meet the challenges of the 21st century“. In this document were setted questions, which should launch among the European union (further as EU) a public debate. The target of this debate is to publish in June 2007 an announcement about „flexicurity“ and define „a file of social principles“. We are mentioning following answers:

Question:

1. What would you consider to be the priorities for a meaningful labour law reform agenda?

Answer:

- equalization of employment for limited and unlimited period of time and part-time jobs (temporary contracts).
- to solve active the problemacy of demography, its renewal, to set a new active policy of natality, better balance between professional, private and family life.
- to support employment, increase the number of working stations, extension of time spent in work, incentive for „an active aging“, improvement of public health
- improvement of productivity of labour, recruitment and integration of migrants
- to secure, that the public finances will stay healthy and will garant corresponding social security and intergenerational equity
- tax-admitted costs for employees, not only for self-employers (for example education, mobility...)
- administrative unification of payments of social benefits into one place (only one managing subject, eg. National administrative authority) in the Czech republic (further as CR), eventually in every EU Member State, with a target of objectification of the level of costs or eventually its saving.
- reform of old age pension scheme, according to the three-pillars system1 (1.pillar-intergenerational solidarity and consecutive financing, 2.pillar-insurance from employers, financed from funds, 3.pillar-private activities of citizens) with a pass to a benefit system, by keeping the solidarity, respectively matching the period of insurance, assessment of its concrete duration, for example for superannuation scheme, life insurance and alternative programmes for tax-reliefs, in the relationship to extension of the age limit for the retirement (not as written now, that the limit for those products is 60 years).

Question:
2. **Can the adaptation of labour law and collective agreements contribute to improved flexibility and employment security and reduction in labour market segmentation? If yes, then how?**

**Answer:**
- can, for example:
  - not allow the decrease of achieved standards of service by dependent work (§2 article 4 and §3 of law nr. 262/2006 Sb., labour law, further as LL)
  - by changes of labour regulations try to enforce the principle of „flexicurity“, combination of flexibility and security
  - specification of control competences of the Ministry of employment and social affairs CR, employment office National authority for labour inspection (regional labour inspectorships), Authority for protection of personal data in the field of labour relations
  - specification and completion of needed facts of the offences and delinquencies from the side of employing subjects
  - enforcement of possibilities of targeted grants in the frame of national policy for employers, who are working in a shorter work load, primarily in regions with a high unemployment
  - securing the enforcing of laws and duties in labour relations, fully use the control competence of trade unions3 and support the tendencies of good personal and technical equipment of state authorities, mainly the National authority for labour inspections
  - consolidation of the role of collective bargaining and collective agreements in CR on the standart of the EU

**Question:**

3. **Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate enterprises and employees seeking to avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to international competition? How can improvements be made in the quality of regulations affecting SMEs, while preserving their objectives?**

**Answer:**
- the existing regulations mainly do not obstruct
- intensive changes in informational and communication technologies and biotechnologies should bring an improvement in life standards of the whole society (for example support of the project Internet for every household...)
- creation of new informational and communication technologies is a great opportunity, which can be used with a target not to deepen the differences
between those, who have access to information and knowledge, and those, who are out of the educational process

Question:

4. How might recruitment under permanent and temporary contracts be facilitated, whether by law or colletive agreement, so as to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?

Answer:

- in the conditions of Labour Law of CR, valid from the 1.1.2007 are in case of temporary and permanent contracts written agreeable with those bilateral legal acts and are reccommendable for the EU

Question:

5. Would it be useful to consider a combination of more flexible employment protection legislation and well-designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market policies?

Answer:

- rather no

- we reccommend for the benefit of employees to give priority to security of employment, through legal regulations of the supporting system of unemployment

- in this case actively support the imposition of minimal standarts for protection against job remove

- we recommend to take the system of support in unemployment as a needed subject, but always as second, in this connection to respect the percentage of workers, who are very hardly able or are not able to enter again the labour market

- to motivate workers, who are taking supporting benefits in unemployment or social security benefits to be employed again

Question:

6. What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?

Answer:

- the legislative changes and a massive support of mobility in the frame of the Czech republic and the EU

- to support more flexible models and forms of education and training of employees and help them to get new working knowledge and information
- the monitoring of the relation between the increase of wages and the increase of productivity, pay attention, that the increase of wages will not be higher as the increase of productivity, to maintain the price stability.

- actively use of the European informational and advisory system EURES, as an instrument for leading labour migration, which has a target to support working mobility on the labour market and help to solve the disbalance between supply and demand on the european and national labour markets.

- in this frame actively use the financial sources from the project PROGRESS.

Question:
7. Is greater clarity needen in Member States’ legal definitions of employment and self-employment to facilitate bona fide transitions from employment to self-employment and vice versa?

Answer:
- yes
- the legal definition of employment and self-employment, used in the Member States should be defined by minimal standarts with a possibility for each country to increase the standart, this mentioned should be legislatively set up, for example by a guideline of the European association.

Question:
8. Is there a need for a „floor of rights“ dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

Answer:
- we have the opinion, that it is neccessary to legislatively set up a minimum of rights in working conditions of all workers, set up their minimal standarts, with a possibility for separate states to increase the standart
- the results should be positive.

Question:
9. Do you think the responsibilities of the varios parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish the responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in „three-way relationship“?

Answer:
- we can define temporary agency work as one possibility of transmission of work, its principle is a three-parties relationship-between the employment agency7 and the employee, who signs a contract with the agency with a the target to make part-time jobs for a third party, the result with two employers makes the working relation more complicated
- the responsibility of different parties in the frame of more-parties or three-parties working relations should be defined, and clearly set up, who is responsible for observance of employees rights.
Question:
10. Is there a need to clarify the employment status of temporary agency workers?
Answer:
- It is possible to clarify and legislatively set up the employee status of workers, temporary recruited with agencies and set their minimal standards in the frame of the EU.

Question:
11. How could minimum requirements concerning the organization of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers’ health and safety? What aspects of the organization of working time should be tackled as a matter of priority by the Community?
Answer:
- This problemacy is influenced mainly by the resolutions of the European law court8 and the Article 2 directive 2003/88/ES about some aspects of working time, which solves the work time and emergency.

- As inspirational flexible forms of employment is a work time account, flexible working hours, compressed work week, work time influenced by the school year, phased or partial retirement, distance work etc.

- In occupations, where this can be accepted9, supported flexible working hours (flexible work day, flexible work week, flexible four-days working period).

- The flexibility of allocation of the working our is very big in the Czech republic and is confirmed by international confrontation, methodology of international confrontation of the World Bank uses the index of rigidity of work time10.

- In this case we recommend to support the effort by assessment of European minimal wage in all Member States11 as a principal of the EU (possible to make in phases).

Question:
12. How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of „worker“ in EU Directives in the interests of ensuring that these workers can exercise their employment rights, regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter?
Answer:
- Adjust the definition of the worker in the EU directives seems to be useful, mainly with the target to ensure to all workers the same conditions in all Member States.

- To actively support the usage of financial sources from „the Fund for assimilation to globalisation“12.
Question:
13. Do you think it is necessary to reinforce administrative co-operation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

Answer:
- yes

- actively use the control competences of state administration body, e.g. The national authority of labour inspection (regional labour inspectorates), employment office, The czech authority for social security, (regional authorities), tax office, and authorities of the Ministry of Internal affairs (alien and border police), Ministry of Finance with a target to find out illegal employment further to help employees to enter the labour market of the Czech republic (citizens from EU member states and the European economic space and Switzerland included) and express them before people from other-third countries

- EU member states citizens and their family members are not taken as foreigners in the frame of the labour law and have the same position as the citizens of the Czech republic, the same position have people from Norway, Lichtenstein and Island, who are also in the European economic space

- with the help of the interdepartmental authority for abatement of illegal employment of foreigners coordinate the activities of the higher mentioned state administration body, prepare new legislative, preventive instruments, get information from the surveys of migration, grey economy...

- social partners should in this area actively fulfill their competences, sequent upon § 32 Labour law, this means maintain the Labour law about employment laws and agreements about safety and health protection by work and other labour-law provisions and make by the employers controls of abidance of labour law, agreements and collective bargains

- social partners should play the role of positive coordinators and execute international projects and projects of the EU, in the problemacy of illegal employment of foreigners (e.g. seminars, social-law consultancy etc) with the use of high-quality special technical and organizational capacities

Question:
14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?

Answer:
- yes
it is neccessary, that all national subjects in EU react actually, in the frame of their competences, by using the information systems, including the new methods of their activities, against all kinds of undeclared work.

Notes:

1. every participant has his account, on which are added benefits, but only in a virtual character
2. e.g. in the law nr. 200/2000 coll., misdeed law, law nr. 251/2005 coll., about labour inspection etc.
3. e.g. regulation §321 article 2 of labour law
4. e.g. the advantage of employees and employers by the tax base – the possibility of novelisation of institutes, which have relationship to mobility, mainly the costs for transport, accommodation, connecting technologies etc.
5. in the Czech republic this function makes the Czech national bank, which is the central bank of the state, and its main target is the care for price stability
6. for the period 2007-2013 is set off cca 630 million euros, this program supports mainly three activities – analitical work, support of interested institutes and bilateral learning
7. has the permit of the Ministry of social affairs and employment
8. the judgement from the 3.10.2007 in the case C-303/98, SIMAP, s. I-7963, judgement from the 9.10.2003 in the case C-151/02, Jäger, I-8389, and the judgement from the 1.12.2005 in the case C-14/04, Dellass, s. I-10253
9. in those operations and activities, when the work performance is not connected to other operations
10. aggregates five basic points: limitation of night work, limitation of work at weekends, the lenght of the work day and overtime, the lenght of payed vacation, by the index value 0-100 is the Czech republic classified as -20
11. till now is in the legal law only 15 Member States (from total 27)
12. every year is set off 500 million euro – the possibility of pumping by redundance of 1000 employees in the frame of structural changes of the world trade, even exceptions, the fund was established 1.1.2007
13. in the frame of regulation §5 e) article 2 nr. 435/2004 coll., about employment
15. law nr. 309/2006 coll., which defines the other demands for health protection by work in labour relations and about security of health protection by other activities out of the labour relations (law about safeness of other security conditions for health care and safety by work)