Green Paper: Modernising labour law to meet the challenges of the 21st century -

QUESTIONARY:

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

Reply: The country's joining the EU was bound up with accepting engagements in the field of labour law as well. Notwithstanding the fact that transposing European regulations and directives has been completed, some of them proved to be effective in practice, while others caused certain problems. New needs have emerged and they could be satisfied only by a reform with clear priorities:

- Firstly, the role, position and tasks of the employees' and the employers' organizations as social-economic partners should be clearly defined, as these associations have to be the main factor and safeguard for the successful implementation of the reform being well aware of the strengths and weaknesses of the current legislation;

- Flexible forms of employment that play an important role within the new substance of the regulated employment relations should be encouraged. Their main objective is to reduce unemployment and limit at most employment in the grey sector. Implementing new efficient employment forms will entail better economic results;

- While keeping the freedom of labour principles, employers should be given more opportunities when selecting the personnel wanted. Developing new forms of training and qualification connected with the specific job position is one of the preconditions for the above;

- The new flexible forms of employment and professional training and qualification should be an element of the collective labour agreement at sector, branch and company level;

- Tax regime that encourages employment, investment in human resources and increased productivity.
Regulating amendments to the labour legislation that are directed towards the labour market, professional training and qualification and a preferential tax regime will promote raising competitiveness of the Bulgarian companies in the European single market, as well as attracting foreign investments, as international investors consider Bulgaria needs to make substantial improvements in infrastructure, education and qualification, tax concession regime and administrative efficiency.

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

Reply: Collective labour agreement framework defined in the Labour Code is not flexible enough to provide opportunities for a good adaptability of employees. Collective labour agreement involving flexible forms of agreement would contribute to the gradual improvement of the legal employment relations.

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?

Reply: Reforms in the Bulgarian economy and mostly the increasing significance of sectors that rely on service and high technology knowledge lead to the prime importance of the human resource in the labour market. The regulations should be more flexible in order to meet the new requirements in stead of just providing standardized rules of the traditional employer-employee relations. Our labour legislation has been developed with a view to the conventional production and does not respond to the necessities of a specific, competitive market depending on a qualified labour force.

A lot of Bulgarian companies are not clear-sighted about the international situation as a basis for comparison but they are perfectly aware of the competitive pressure coming from the integration of the Bulgarian economy in the European and world economy. They have to immediately respond to the higher requirements of customers while at the same time operate under the conditions of bad infrastructure and legislation that is bringing on non-payment of liabilities, shadow economy and corruption.

In order to stimulate investments in activities that increase employment and with a view to the small internal market and the limited resources available, our country should take advantages of the potentialities provided by the service and the high-tech knowledge sectors. Service in the international markets requires strong competitive infrastructure, business and professional services provided. Their effect on the labour market is considerable and it could be generalized within a new regulatory framework.
4. How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective 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?

**Reply:** Depending on the specific characteristics of the particular branch, collective agreement within branches should make provisions for different non-standard forms of employment. Here, the social dialogue among the representative organizations of employers and employees is of great importance as by taking complex decisions they will provide adequate employment security standards. The Labour Code does not provide employers with enough incentives to create new jobs and to invest in the long-term development of personnel. For this purpose more flexible regulations are needed.

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?

**Reply:** The current legislation regulates to a great extent the different occasions for termination of labour law relations on the part of the employer or of the employee. However new terms might be provided in agreements referring to additional requirements/rules to the employee. In case of failure to execute these, the employee might be dismissed by the employer. Flexible forms of employment will encourage employment and lower unemployment. Any raise in the unemployment relief rates though, might encourage non-regulated employment in the shadow sector and at the same time hinder effective implementation of the active labour market services.

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?

**Reply:** Human resources are the most important factor for raising the competitiveness of the Bulgarian economy. No Bulgarian enterprise could meet the high requirements of the European market if it doesn't have qualified and trained personnel with skills matching the particular job. An urgent educational reform has to be done in order to meet the growing needs of the business. The Bulgarian employer is ready to stimulate each employee and invest in his qualification provided that the latter has the adequate training. That is why reform in labour legislation should be in line with amendments in the education and qualification systems. This especially applies to some of the economic sectors that are now of high priority for the country. The National Action Plan on Employment emphasizes on life-long learning, professional training and education.
7. Is greater clarity needed in Member States' legal definitions of employment and self-employment to facilitate *bona fide* transitions from employment to self-employment and *vice versa*?

Reply: Employment relations between employee and employer are regulated in the Labour Code. According to the labour contract signed between the employer and the employee the latter is bound to observe the labour discipline while fulfilling his duties at the fixed work place and work time and job description defining the nature of the work he is doing. Any signed labour contract or any change in it must be reported to the National Revenue Agency within three days. Observance of the labour legislation is controlled by the General Labour Inspectorate. With the latest amendments to the legislation the size of the penalties and property sanctions imposed on employers for non-observance of the law was increased.

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?

Reply: Such "floor of rights" of workers and employees are settled in our current legislation. It includes right of safe and healthy work conditions, health and social insurance, right to strike and so on. Additional rights above this floor might be negotiated in the collective agreements.

9. Do you think the responsibilities of the various 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 that responsibility in the case of sub-contractors? If not, do you see other ways to ensure adequate protection of workers in "three-way relationships"?

Reply: Our labour legislation does not regulate these types of relations. Relations between employer and users are mostly based on contract relations and this brings forth the necessity of regulating the statute of employees and workers using the services of temporary employment agencies in our labour legislation.

10. Is there a need to clarify the employment status of temporary agency workers?

Reply: Yes. Our labour legislation clarifies this issue.

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?
Reply: The Labour Code lays down the five-day workweek and 8-hour working day which might be reduced in case of negotiations complying with the Collective labour agreements. The latest amendments in this direction allow employers to organize a more flexible working time. In case of prolonging working time this might be compensated by shortening it in other days. This is especially useful in some fields of business activities.

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?

Reply: There is no legal definition of "worker" in the Labour Code which is rather derived from the context implication. After joining the EU and the free movement of workers within the Community, the convergence of the definition would be in favour of its uniform interpretation and enforcement.

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?

Reply: The national bodies responsible for enforcing labour legislation are the General Labour Inspectorate, the National Revenue Agency an the National Social Security Institute and an effective cooperation and coordination among them will boost a better regulation of employment relations.

The role for the social partners in this cooperation is of special importance in the combating of non-regulated labour since the above authorities have the primary information for occurrences of such kind of labour relations. According to the current legislation representatives of employees and workers have the right to report infringements of labour laws to the authorities.

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

Reply: We consider it necessary effective control and combating of undeclared work to be implemented at national level by the respective regulating authorities. The national legislation should make provision for the measures for restricting shadow economy and hidden employment.