CONFEDERATION OF INDEPENDENT TRADE UNIONS IN BULGARIA

Standpoint of CITUB
On the posed 14 questions concerning the Green Paper
“Modernizing Labour Law to meet the challenges of the 21st century”.

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

In order to answer this question we have to clarify before all:
A/ What and why should include in itself the category “flexibility” and the category “security”?
B/ What should be the correlation between “flexibility/security”? 

This is the “Alpha and Omega”, “the beginning and the end”, around which the debate on the necessity of reform in the sphere of labour legislation (at least in Bulgaria) is now carried out, although unorganized and incidental at times.

In the second place it should be clarified to a what extend and if it is admissible to liberalize labour legislation and to entrust certain part or levels of these relations to the social partners on the different levels (enterprise, sector, national level, regional level, international level, etc.).

In that connection we should give a new answer to the question about the role, the place and the tasks of the workers’ and employees’ organizations in the society’s political system and to confirm and further develop their political role, at least what refers the regulation of the public relations connected with labour and social insurance legislation.

According to us these are fundamental issues. Their clarification will outline the interests, the difference between them and the common features, which could unite employers, trade unions (as representatives of the workers and employees) and at the end to be expressed in some document of the Commission.

Q. 2 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?

We cannot understand very well what this idea or expression “adaptation” of labour law means. Probably the word is about legislative implementation of
regimes, regulations and practices, which the changing practice imposes in contradiction to the regulations determined by law. If that is the idea of the question, we are skeptical to such a thesis. The assumptive and thoughtless (from a social point of view) adoption of everything imposed on labour law by every day practice is not a way to solve the interests of competitiveness and economic benefit. Competitivity on the account of the interests of the working people is an unacceptable thesis for us.

At the same time we cannot deny that practice, but the good practice (that protects the interests of the workers and the self employed) should be taken into account when making reforms in the sphere of labour law. The practice that takes into account flexibility as well as security should be studied and if possible (upon mutual agreement of the interested sides) adopted in labour law.

Q.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?

This question, at least in Bulgaria is not reduced only to the qualities or disadvantages of the regulations, but to their clear writing out and observance. From this point of view we can talk about:
- Effectiveness of the norms and the system for control over the observance of labour law;
- Effectiveness of the system for settling of individual and collective labour disputes.

We have to note that in Bulgaria the processes of collective negotiation on all levels should be supported by active legislative measures.

As far as the SMEs are concerned, there could be considered some ideas, which are imposed by the nature of the enterprises and necessitate certain limitation of some principles and norms of the general labour law. For this purpose certain exceptions from the general labour legislation could be recorded in the respective law.

Q. 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?
Under “flexibility” we basically understand the possibilities for termination of the labour contract.

Labour contacts are submitted to special requirements by law. This is the durable historical tendency in the development of the labour legislation in international aspect, incl. in the EU and in Bulgaria as well. In fact the question comes to that if we can deviate from this tendency, why and in the name of what. How it will be explained and apprehended.

In principle there is no problem to think over and explore such a step as a possibility, but only, if and as far as it secures adequate labour and social protection. Under “adequate” we understand such protection and such security, which the person would have had if the labour relation were not terminated (disrespectful of the grounds for termination) for a minimum of two years after the termination. Within these two years the person should have:

- High probability for new employment;
- Unemployment compensations approaching the maximum salary he/she had received;
- All rights of the socially insured person;
- Possibility for re-qualification on the account of public or other funds;
- Other similar measures.

Q.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?

Under “more flexible employment protection” you probably mean a liberalized regime for termination of the employment relations. We have a skeptical attitude to that. According to us the “cause-consequence” approach set in the Bulgarian Labour Code is flexible enough.

Part of the answer to this question is contained in our answer to question 4. We can add that such an approach supposes:

- Clearly written in the law, and specified and elaborated in the collective agreement rules for selection of the fired person according to his/her social, marital and financial status and at equal other conditions with persons occupying the same or similar position;
- Obligatory protection against dismissal of persons from the trade union bodies and representatives of workers and employees on information and consultation;
- Compensation (outside the one referred in Q.4) at a minimum amount of at least six salaries with a possibility for negotiating (in a collective agreement) of a higher amount.

Q. 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?

Undoubtedly a positive role. In fact this should be one of the priorities of the labour law reform (see Q. 1).

Q. 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?

Categorically yes. In Bulgaria as well practice has begun to impose the masking of labour relations, presenting them as another kind of relations. Legislative forms are used for this purpose (outside the labour contract), which are “masked” as another type of relations (obligational or commercial contracts), which practically create labour relations.

According to us it is necessary that the term “employer” (with which we indicate the side, the person /physical or juridical/ which seeks to hire and use the working force) should be suspended from usage. Because the word goes of a “leaseholder” of working force and not of a physical/juridical person, which gives work. This is not the subject, the meaning and the contents of his existence.

Q. 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?

The operating labour laws determine exactly such a “floor of rights” in the sense of legally regulated rights to working conditions. No matter what term is the labour contract, or what working time is contracted. If under “floor” you mean the minimum rights stipulated by law, which could then be enlarged and improved through a collective agreement, this objective has been reached with the present law regimes.
Q. 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 subcontractors? If not, do you see other ways to ensure adequate protection of workers in "three-way relationships"?

We think that law should regulate these complicated employment relations, where between the real employer and the worker there is a third party – a contractor.

A/ The responsibility for the conditions of the employment relationships, reflecting the will of the employer and the worker or employee in the labour contract, should be separately stated and borne by the employer and the subcontractor jointly.

B/ The responsibility for observation of the labour rights and obligations has to be assumed by the employer and by the worker.

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

We cannot understand clearly the question. The temporary agency workers are workers who have signed a labour contract for a definite term or under a definite condition. It is hardly necessary their employment status to be determined in an act.

Q.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?

No doubt working time is one of the basic elements of employment relations. In this respect new, up-to-date decisions should be sought but not on the account of the workers’ interests and their possibility to dispose of free time for themselves, their homes, families and children.

Any possible decisions affecting the workers’ interests and satisfying the employer’s interest, should follow the principles of:

- To guarantee the voluntary decision of the worker to go outside the standards;
- High financial compensation, i.e. increased salary for working under such conditions, as well as other compensations – food, drinks, breaks, etc.
- A ban for going out of the standards for a certain category workers and employees.

We think that Bulgarian labour legislation contains very flexible decisions referring the working time. The lack of good management on behalf of certain employers should not be compensated with better working time possibilities given to them by law.

Q. 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?

We don’t have such cases (workers operating in transnational context or frontier workers). Due to that it is difficult for us to have a standpoint on that issue.

We think that the term “worker” has to be unified on the basis of careful analysis based on what are the basic characteristics of the relations that the physical person called “the worker” gets in. We already stated some of our views in the answers to questions No 7 and 9.

The worker is such as the relation characterizes him/her, no matter in what country that relation is carried out. It is namely the relation that has to be defined and then it will be possible to define the notion “worker”.

Q. 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?

According to us any form/forms of reinforced, active administrative co-operation between the relevant authorities aiming at improvement of their effectiveness when implementing the labour law of the Community is imperative. There shouldn’t be any distortions or concussions in these relations because they have a basic character in relation to the other public relations.

We already answered about the role of the social partners in Q. 1. There is no obstacle to give a higher role and responsibility to the social partners in this direction as well.
Q.14 Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work

If the word is about the informal economy – categorically yes. There is no place for shadow economy if we want to have well regulated labour relations by means of law and contracts.

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