Re.: Filling in a questionnaire to the Green Paper:  
Meeting the challenges of XXI Century - Actualization of Labour Law

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

In the Bulgarian labour law it is not necessary to thoroughly reform the current framework. By the end of 2006 the transposition of labour law directives related to the commitments of Bulgaria towards EU accession was completed. Currently through different mechanisms the Labour Code provides for labour market flexibility while taking into account social partners’ interests. Employers have the opportunity to adapt their labour force to dynamically changing environment. With respect to the employees the legal framework is built on the principle of equality of rights and obligations of those with permanent employment and of those employed on fixed-term labour contracts or on labour contracts for additional work, under the terms of part-time work and other terms under an employment relationship. Part of the existing legal restrictions of flexible employment (related to extension of working time, overtime work, the opportunities for concluding fixed-term labour contracts and the terms stipulated by law under which contracts for performing additional work are concluded) are in line with the conventions of the ILO ratified by the Republic of Bulgaria as well as with the EU directives already transposed in the Bulgarian law.

World Bank analysis of the legal constraints to labour market flexibility in Bulgaria are humble, and as a whole in line with those of the other economies in transition having a comparatively flexible labour market.

At the same time the Bulgarian state supports the idea for modernizing and further improving the labour law having in mind the process of globalization of the European labour market and the need to ensure greater flexibility, combined with maximum security for the parties to an employment relationship.

The reform of the Bulgarian labour law could be implemented by means of legal decisions related to the promotion of the different forms of employment. That would ensure labour realization of workers and employees from different sectors and levels as well as for a great part of those workers who have been unemployed or who have worked in the grey sector.

The aim is to achieve and to preserve equality between the classical labour relationships and the temporary (atypical) employment since the advantages of the classical labour relationship are numerous and diverse. Employment relations which have as their legal basis the permanent labour contract, together with the protection against dismissal, regulation of the pension age and stimulation of professionalism open the perspective for realization on the labour market and thus – for personal and social realization.

Presently the three-way labour relationship created through the so called „temporary labour by an agency /TLA/” is not grounded in the Labour Code and the Bulgarian labour law. That is why there exist no specific labour law obligations of the user to the workers. It is primarily the contract between the user and the employer that defines the legal framework for the functioning of the three-way labour relationship and for the rights and obligations of parties involved, in particular of the user. The classical civil contract for the provision of services which is not based on labour law is most often used in these cases.
An intergovernmental working group was established at the Ministry of Labour and Social Policy /MLSP/ having the task to elaborate draft legislation on the activities of the enterprises providing temporary employment and the relevant amendments to the labour law.

Teleworking is another form of “flexible work” which could lead to new jobs creation, restructuring of working places /in small and medium-sized companies in particular/ while lowering expenses for offices and transportation of workers and employees and mainly “for the social inclusion” of a certain category of people from the disadvantaged groups /mostly people with disabilities/. Teleworking is not included in the Labour Code. The implementation of the European Framework Agreement on Telework, signed between the social partners at European level on 16.07.2002, shall be carried out through the instruments for collective bargaining at sectoral, branch and enterprise level.

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?

The law allows for collective bargaining at different levels whereas the contracts concluded regulate issues of labour and social insurance relations of workers and employees which have not been settled by imperative provisions.

The framework of collective bargaining provided for by the Labour Code is quite flexible to offer opportunities for adaptability of employers and employees. The provisions of the Law on settlement of collective labour disputes is another guarantee for implementing effective collective bargaining.

Knowing and applying the legal rules gives the employers the opportunities for better adaptability, to make workforce more dynamic while considering their corporate interests. Insufficient knowledge of employers and employees concerning the opportunities offered by labour law is an obstacle in performing effective labour market flexibility.

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?

The legal regulation of the flexible working time in the Labour Code gives the opportunity for flexible organization of working time while reconciling personal and professional life. The worker/employee chooses by himself the beginning and the end of his/her working time and lunch break. Thus a flexible allocation of the working hours is achieved according to the personal needs of the worker/employee – with longer or shorter working day. The employer determines the actual working time. We should note that there is not great experience in Bulgaria in using the regime of the flexible working time which is mostly due to the lack of appropriate technical devices to measure it. That is why, having in mind foreign countries’ experience, the establishment of the changing working time should be preceded by improvement of labour organization, better discipline and raising of the self-consciousness of workers and employees.
The flexible work presupposes first of all making use of the information and communicational technology devices for telework. This means workers or employees working outside the enterprise or organization, e.g. at home, in his/her car, or at a specially equipped telecentre. Teleworking might be applied everywhere but it is appropriate for a wide range of administrative activities, accountancy, information servicing (in the broadest sense), mass-media, insurance sector, scientific research, software development, etc. In addition, flexible work means a wide variety of possibilities for flexibility in terms of working time and working place. As already mentioned, Bulgarian social partners should put into practice the European framework agreement on “telework”, signed by the social partners at European level on 16.07.2002.

Companies’ willingness for saving resources and for better adjustment to market demands stimulates the implementation of flexible work. The main reasons are stemming from the need for a rapid adaptation to market demands, creation of more efficient and productive enterprises and substantial decrease of operational expenses.

Introducing flexible work in small and medium-sized enterprises as a new kind of work could enhance social and economic benefits both for the companies and for the staff.

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?

In our view, greater flexibility in cases of permanent or temporary labour contracts might be achieved through simultaneous elaboration of legal measures and collective agreements in order to ensure adequate standards for employment security and social protection. Developing social dialogue at national, sectoral and branch level as well as at enterprise level means the introduction of new forms of internal flexibility. The close relation between legislation and collective agreements creates good conditions for the conclusion of such agreements encompassing a broader range of topics related to restructuring, competition, access to training in the enterprises, etc., including the new forms of employment as those of the temporary workers. Collective contracts, which provide for clauses more favourable than those stipulated by law, serve as an important instrument by which legal principles are adapted to a specific economic situation as well as to the specific circumstances in different sectors.

According to the Labour Code the Ministry of Labour and Social Policy is in charge with the elaboration of the drafts of legal acts concerning labour and insurance relationships in cooperation and in dialogue with the representative organizations of workers and employees and of the employers. To this end, in the end of 2004 the Ministry of Labour and Social Policy signed an Agreement with the CITUB and Podkrepa Labour Confederation under which the parties shall be committed to enlarge the scope of themes for discussion by the tripartite dialogue how to find complex solutions for labour remuneration, as well as the distribution of working time while transferring European experience (mechanisms, systems

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1 Such measures are foreseen in the answers to first question – namely legislative act, regulating the activity of temporary work agencies and collective agreements in the implementation of the European Framework Agreement on Telework.
and schemes) to guarantee security from labour income and the objective assessment of qualification, experience and length of service of workers and employees.

Consequently, only upon reaching a consent between the parties concerned, steps might be taken towards concrete proposals for amendment to legislation referring to the flexibility of the labour market.

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?

In the Labour Code there are 52 different grounds for termination of labour contract by the employer or by the employee, under mutual consent or due to other objective reasons. There exist also different opportunities for dismissing, depending on the way of recruitment of workers – permanent or temporary.

A legal opportunity has been established for the parties to employment relationship to reach consent for its termination which can be expressed in two forms, namely: by a proposal of each party and within a term provided by law in which the other party must state whether it accepts the proposal for the termination; by initiative of the employer for a specified compensation whereas the law regulates the minimum rate of the compensation below which negotiation is not acceptable.

Because of these reasons the legislation does not lack grounds for dismissing from work. It is not acceptable to introduce new grounds for terminating the employment relationship practically without reasons. Such an approach will contradict to the principle established in the Bulgarian labour law /Art.66 of the Labour Code/, according to which the labour contract can provide for other conditions related to the provision of labour force including also the dismissal from work only when these conditions are not regulated by imperative provisions of the law; it will create danger of forcing the worker to accept conditions in the labour contract concerning the termination which contradict to the moral and good manners and difficulty in the implementation of legal protection and establishment of permanent and lasting legal practice on disputes related to termination of labour contracts.

The proposal for establishing new conditions for terminating the labour contract to a significant extent can be realized under the conditions of the existing labour legislation. The parties can negotiate additional requirements related to the provision of the labour force which are not regulated by imperative provisions of the law including additional requirements to the worker in the implementation of which he is disciplinary dismissed by the employer.

On the other side the Law on Employment Promotion provides for various measures for employment promotion. Under different programs and measures for employment the State ensures funds for unemployed – from payment of their remunerations and various social benefits - to funds for vocational training, entrepreneurship or employment of another unemployed family member. Incentives are set up for transition from passive receiving of unemployment benefit to employment.
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?

The promotion of access to training and transition from one contractual form to another or enhancement of mobility during the active professional life can be achieved through combined legislative measures in the field of labour law and respective collective agreements between the social partners.

In 2006 the Labour Code was amended and supplemented in order to enhance the dialogue and promote the mutual trust within enterprises, in order to improve the opportunity to foresee the risks, to introduce more flexible organization of work and facilitate the access of workers and employees to training thus enhancing their competitiveness on the labour market.

For example, there have been regulated the actions which the employer is undertaking with a view to establishing the opportunity for the workers and employees of part-time work to pass to full-time work or vice versa. It has been facilitated the access of part-time workers to vocational training in order to increase opportunities for career promotion and professional mobility. Thus an opportunity is created for the workers and employees to better reconcile working and personal life and take advantage of education and training opportunities. This amendment to legislation reflects the interests of employers and of working people. The collective agreements between the social partners on the other hand can provide for even more favourable conditions for access of workers and employees to training and enhancing the mobility over the course of the active professional life.

The education is an important factor influencing the labour market flexibility. In Bulgaria the flexibility is not revealed amongst the highly qualified people in the form of freelance practice, but rather amongst the low qualified workers or in the traditional activities as agriculture. The opportunities for concluding a labour contract increase with the acquisition of a higher educational level.

As an element of a future amendment to labour legislation we can consider its binding with the amendments to the educational and qualification systems – for example, developing programs for practical training, programs and degrees for certification which can ensure functional skills. The latter concerns particularly sectors like hotel keeping, health care, accountancy, and supply management.

The life-long training and vocational education and training are of key importance for the preparation of qualified staff. The investments in human capital and the improvement of the competitiveness of the labour force are of vital importance for enhancing the productivity of labour and the sustainable economic growth in the country. That is why the emphasis is placed on life-long training in elaborating the National Employment Action Plan 2007. It is necessary to ensure greater flexibility, adaptability and competitiveness of business, labour force and the country in general.

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?
According to the Labour Code the relations in providing labour force are regulated only as labour relations. Therefore the subject of the labour contract is the real work of the worker or employee, not a specific work result. Under the labour contract the worker or employee is subjected to working regime, determined by the employer and take up the obligation to observe the labour discipline and order. The worker has a determined work place, working time, type of work and is hierarchically dependent on the employer. The control over the observance of labour legislation is implemented by the Labour Inspectorate.

The use of civil contracts is not acceptable when they are used to hide the provision of labour force. These hypotheses involve a violation of the Labour Code with the aim to avoid the legal protection of labour relationships envisaged by the law. After the introduction of the obligation for the employer to send information to the respective territorial directorate of the National Revenue Agency within three days from the conclusion or amendment to the labour contract, many employers desisted from recruiting workers and employees on civil contracts. It is feasible for the future to introduce also online registration of the labour contracts which will substantially facilitate the business activity of enterprises and ensure greater flexibility in recruiting new workers and employees.

For the purposes of control over the observance of labour legislation the National Revenue Agency is obliged to provide the necessary tax and insurance information to control bodies. In 2006 the rates of fines and property sanctions respectively imposed on officials and employers for breaching the labour legislation provisions have been raised with the aim to prevent violations of Labour Code provisions.

The issue of control and collection of insurance contributions, which is to be discussed, requires to undertake all possible measures so that for really performed work by the worker or employee the employer makes a real insurance contribution, as well as to strengthen the administrative capacity of the competent bodies which exercise control and respectively sanction incorrect employers operating in the field of the so called “grey economy”.

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 existing legislation on labour relations provides for such a “floor of rights” in order to protect the interests of employees accordingly to achievements of the labour legislation. The collective labour agreements as well as the individual agreements between the parties of the labour relationship are the instruments for negotiating more favourable rights than those provided by law. As far as the civil contracts are concerned it should be taken into consideration that they are concluded and implemented under the general provisions of the civil law and depend wholly on the autonomous will of the parties to the civil contract. According to the Law on obligations and contracts, the parties may freely define the contents of the contract if it does not contradict to the imperative provisions of the law and the good manners. In civil contracts there is no employer but contracting party, no workers and employees but executing party, therefore the provisions of the Labour Code are not applied to them. In case of not meeting the obligations under such a contract by the other party, the defence is implemented using the general civil law means.
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"?

As it has been already mentioned “the three-way” relationship presently does not find its legal basis in the Labour Code and labour legislation in Bulgaria. That is the reason why there are no specific labour law obligations of the user towards the workers. The legal framework in which the three-way relationship is functioning and which defines the rights and obligations of the parties in it, and the user in particular, is determined first of all by the contract between user and employer. It has been recognized that it is necessary for the status of the temporary workers and employees performing work through temporary employment agency to find its place in the labour legislation. The first steps in this direction have been already made in the field of health and safety at work of the so called temporary workers. The enterprises which use workers and employees, provided by an enterprise ensuring temporary employment, are obliged to ensure health and safety at work and equal degree of protection from production risks for all workers and employees. These enterprises are also obliged to provide information about the necessary vocational qualification or skills for performing the work as well as to ensure at their own expense medical supervision of the workers and employees recruited under the conditions of temporary employment.

Concerning the rest of the responsibilities of the enterprises which use workers and employees provided by an enterprise ensuring temporary employment as well as the enterprise providing the temporary employment, they will be discussed by an interdepartmental working group with the task to prepare a draft legislation to regulate the activity of the enterprises providing temporary employment and the amendments to labour legislation resulting from this. The compliance with the labour legislation and non-usage of civil contracts as a cover of labour relations is a condition for protection of the employees’ rights.

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

As it has been already mentioned, it is necessary for the status of the temporary workers and employees, performing work through temporary employment agencies to find its place in the labour legislation.

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?

Presently, the Labour Code provides for a number of legal norms which allow the employer to organize the working process more flexibly. These are the provisions for extension of working time in certain days and its compensation in other days, for the reduced working time, part-time work, summarized calculation of working hours and others.

These are opportunities the employers may take advantage of, with a view to avoid the conclusion of a number of fixed-term contracts and sending information to the respective territorial directorate of the National Revenue Agency, and at the same time to protect and
guarantee the rights of the workers and employees by the provisions of the labour legislation applicable to the employment relationships.

In Bulgaria the five-day working week is the regime for the working time. The normal daily duration of the working time is up to 8 hours whereas it is possible to reduce it by virtue of collective bargaining.

By virtue of Art. 154а of the Labour Code with the observation of the general rules for the provision of health and safety at work the Council of Ministers may determine another duration of the daily, weekly or monthly working time, of day-to-day and weekly rest periods, rest periods during the working day and the night work for workers and employees who perform work with specific character and/or organization.

As it is known, our country takes advantage of the norm of paragraph 22 of Directive 2003/88/EC concerning certain aspects of the organization of working time allowing the workers to work more than 48 hours for 7-days period by their consent. Internally it is recognised that it is necessary to improve the control mechanisms so that careless employers can not exercise pressure and misuse the opportunity provided as well as to ensure the free will of the person in giving consent to work more than 48 hours. At the EU level, Bulgaria participates in the discussions for amendments in the directive 2003/88/EC by considering the fact that the possibilities for flexibility have to be combined with adequate security for employees. The most important issue in the field of the organization of working time is whether and for what period of time will be used the provision of the “opt-out” clause of directive 2003/88/EC allowing exemption from the maximum level of the weekly working time. Bulgaria considers that this possibility has to be maintained while respecting all necessary guarantees for health and distant working conditions of the worker, using this possibility.

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?

The term worker or employee is not legally defined in the Labour Code but the law presupposes it. It means able to work natural person who offers for temporary use his working force to another person – the employer, against payment (labour remuneration). We do not consider it necessary to introduce a legal definition of that term and we are of the opinion that member states must preserve their independence in determining the coverage of the definition for a worker or employee, except may be the case when we talk about posting of workers or transfer of undertakings, where it is possible to have such a unification of the term with a view to protect the respective workers. As far as the Bulgarian legislation is concerned, there are no problems in the practice when defining and differentiating the terms employed person and self-employed person.

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?
It is necessary to promote the more efficient cooperation at national level between the different state bodies – the labour inspectorate, the social security institute and the revenue agency with a view to reducing the cases of the so called undeclared labour and further strengthening their administrative capacity.

According to the Bulgarian labour legislation the trade union organizations have also the right to signal the control bodies for violations of the labour legislation as well as to request administrative penalties for the respective officials.

14. Do you consider that further initiatives are needed at an EU level to support action by the Member States to combat undeclared work?  
We are of the opinion that basic measures for combating the so called undeclared labour must be undertaken and implemented at the level of the national control bodies.

We consider that the fight against non-declared labour has to be undertaken and implemented basically with measures at the level of the national control bodies.