

**INTERGOVERNMENTAL CONFERENCE
ON THE ACCESSION OF THE REPUBLIC OF BULGARIA TO THE
EUROPEAN UNION**

**NEGOTIATING POSITION
ON CHAPTER 5 "COMPANY LAW"**

OVERALL POSITION

The Republic of Bulgaria accepts and will implement in full the *acquis communautaire* in the field of Company Law in place in 1999.

As a working hypothesis, the Bulgarian Government considers that the accession will take place on January 01 2007.

No derogations or transitional periods in this area will be requested.

ACQUIS ADOPTION AND IMPLEMENTATION

The matters that will be considered in the framework of the chapter "Company Law" are, as follows:

1. Company Law
2. The Rome, Brussels and Lugano Conventions
3. Accountancy
4. Intellectual property
5. Industrial property

All the necessary institutional infrastructures for the implementation of the EU legislation in the field of Company law have been built already. The Republic of Bulgaria does not need to establish new institutions or administrative bodies for the implementation of the *acquis*.

COMPANY LAW

The existing legal regulation in the field of Company law in Bulgaria, is laid down mainly in the 1991 Commercial Law. The regulation exhibits a high degree of conformity with the relevant *acquis communautaire*. The provisions of the Commercial Law follow closely the spirit of European legislation and often reproduce the wording of certain provisions.

The Supplementing Draft Law which is expected to be adopted by the National Assembly by the end of July 2000 will fully transpose the requirements of I, II, XI and XII EEC Directives in the field of company law.

The Bulgarian Commercial Law in force regulates the mergers and the division of public limited liability companies in conformity with the main principles of the EU directives. A more detailed regulation will be needed in respect of merger and division of companies in order to bring the Bulgarian commercial legislation in full compliance with the requirements of the Third (concerning mergers of public limited liability companies) and the Sixth (concerning division of public limited liability companies) Council Directives. These new amendments will be prepared by the end of 2002. This will bring the Bulgarian commercial legislation in full compliance with the *acquis communautaire*.

The Council Regulation on the European Economic Interest Grouping will be introduced into the Bulgarian legislation by the date of accession to EU.

Administrative capacity

The main authority that monitors the implementation of the commercial legislation is the Court. The commercial registers kept with the District Courts (28 on the territory of the Republic of Bulgaria at present) operate effectively. Special attention, in order to constantly up-grade performance, is being paid to training of magistrates, including on European legal matters.

ROME, BRUSSELS AND LUGANO CONVENTIONS

A. The 1980 Rome Convention on the Law Applicable to Contractual Obligations

The main principles of the 1980 Rome Convention have been implemented in the Bulgarian legislation, in particular by *Chapter 37- Applicable Law* of the Commercial Law.

By June 30 2000 the Draft Law Amending the Law on Obligations and Contracts will be ready. It will introduce the rules of the Rome Convention in Bulgarian Civil law as well.

By virtue of Article 5(4) of the Constitution of the Republic of Bulgaria international instruments which have been ratified by the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise. By virtue of this constitutional rule the provisions of the Rome Convention will become a part of the Bulgarian domestic legislation by the date of accession to the Convention.

B. Brussels and Lugano Conventions on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters

The provisions of the Civil Procedure Code (CPC) are partially in accordance with the Brussels and Lugano Conventions but full implementation of the *Brussels and Lugano*

Conventions will necessitate changes in our procedural legislation, in particular the CPC. The relevant Bulgarian legislative provisions will be elaborated by the end of 2001.

In parallel with the work for harmonising our national legislation, the necessary diplomatic steps will be taken in order to ensure that Bulgaria accedes to the Lugano Convention before the date of accession to the EU.

Under the Constitution of the Republic of Bulgaria international instruments which have been ratified by the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise. By virtue of this constitutional rule the provisions of the Lugano Convention will become a part of the Bulgarian domestic legislation by the date of accession to the Convention.

ACCOUNTANCY

The accountancy legislation of the Republic of Bulgaria, containing *the Accountancy Act, the National Accountancy Standards, and the National Accountancy Plan* has been harmonized with the EEC Directives in this area, the Fourth and the Seventh EEC Directives in particular.

The national accountancy standards have been worked out in compliance with the basic International Accountancy Standard requirements.

The national audit and certification accountancy standards have been coordinated with the International Audit Standards.

The Accountancy Act implements the EU principles, under which observation the accountancy is being proceeded, also, the *acquis communautaire* for auditing and certifying the annual accountancy audits of enterprises (excluding the budget enterprises) by a chartered accountant, or a specialized audit institution, as the requirements for their work have been regulated by the Accountancy Act and the Chartered Accountancy Regulation /in compliance with the requirements of the Eighth EEC Directive/.

The practice of the Member-States in the enforcement of the accountancy legislation will be fully implemented in Bulgaria by the date of accession.

Administrative Capacity

The structure, committed to elaborate and apply the accountancy area priorities, is the Ministry of Finance.

Since the beginning of year 2000, the Ministry of Finance has assigned to the Institute of Chartered Accountants the work on the accountancy legislation updating, while at the same time monitoring and approving their tasks performed.

The monitoring on how the accountancy legislation is being applied is performed by the Ministry of Finance, The Court of Audits, the members of the Institute of Chartered Accountants and the monitoring units in the bigger enterprises.

The control over the banks is performed by the Bulgarian National Bank and specialized audit institutions that are included in a list, approved by the Bulgarian National Bank.

COPYRIGHT AND RELATED RIGHTS

The 1993 Law on Copyright and Related Rights (LCRR) is to a great extent in conformity with the *acquis communautaire*. Amendments to the Law on Copyright came into force on May 06 2000. By these amendments the relevant provisions of the *acquis* are fully adopted, save for the *sui generis* right for the maker of a database. Those provisions will be transposed upon accession.

By the end of 2000 the already prepared Bulgarian Council of Ministers' Act concerning a more detailed regulation of border control will be adopted. The Draft Act is in compliance with the relevant EU instruments and will ensure the application of border control measures related to the field of intellectual and of industrial property rights as well.

Administrative capacity

The implementing structures applying the law have been established and operate effectively. The Ministry of Culture is the main law implementing authority. Other administrative structures that take part in the process are the police, the investigative authorities, the court and the societies for collective management of the copyright and related rights. The General Customs Directorate at the Ministry of Finance will play an increasingly important role concerning the implementation of the border control measures. The removal of our country from all observation lists compiled under Section 301 of the US Uniform Commercial Code confirms the law enforcement in Bulgaria.

INDUSTRIAL PROPERTY

With regard to protection of industrial property the Bulgarian legislation has incorporated to a large extent the *acquis communautaire*. The 1993 Patent Law is to a high degree harmonised with the European Patent Convention. Our country is a member state to the Paris Convention and the Patent Co-operation Treaty. Bulgaria received an invitation for membership to the European Patent Organisation as of July 01 2002.

The achievements of the breeders are protected under the Law on Protection of New Varieties of Plants and Animal Breeds in force since 4 January 1997. Bulgaria became member of UPOV in 1998.

Three new laws have entered into force since 15 December 1999 – the Law on Industrial Design, the Law on Marks and Geographical Indications and the Law on Topologies of Integrated Circuits. The scope and the structure of the above instruments correspond to the relevant legislation of the EU Member-States and the established international practice.

With respect to the exhaustion of the rights it is envisaged, that the principle of national exhaustion will be applied by the date of accession, followed by further application of the principle of Community exhaustion of rights.

The Supplementary Protection Certificate for medicinal products and for plant protection products is envisaged to be introduced upon accession. In 1993 Bulgaria adopted, by means of the § 4 of its Patent Law the so called pipe-line protection, providing the same level of protection for the products, excluded before 1993 from patent protection, as the one granted in the country of origin

including the EU Member State. Bulgaria proposes this issue to be subject to further talks.

Administrative capacity

The Patent Office - the main national independent authority responsible for providing protection of industrial property, is established and operates efficiently. Other law applying structures in the field are the court, the police and the General Customs Directorate at the Ministry of Finance. The General Customs Directorate will play a key role in the implementation of the border control measures.