

EUROPEAN UNION COMMON POSITION
(Replaces 20369/01 CONF-BG 28/01)

Chapter 4: Free movement of Capital

This position of the European Union is based on its general position for the Accession Conference with Bulgaria (CONF-BG 2/00), and is subject to the negotiating principles endorsed by the Conference (CONF-BG 14/00), and in particular:

- "- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements –even partial– reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established".

The EU underlines the importance for Bulgaria of compliance with the Europe Agreement as well as with the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Bulgaria to continue the process of alignment with the *acquis* and its effective implementation.

The EU notes that Bulgaria, in its positions (CONF-BG 35/00 and 34/01) accepts the *acquis* under chapter 4 as in force on 31 December 1999, and that Bulgaria declares that it will be able to implement it by the date of accession with the following exceptions:

- requests for a transitional period on the acquisition of ownership over agricultural land, forests and forestry land by EU citizens and legal persons and for a transitional period on the acquisition of ownership over land for secondary residences;
- maintenance vis-à-vis third countries of the legal prohibition in force on 31 December 1999 for foreign natural and legal persons from third countries to acquire ownership over land in the country.

The EU takes note of the additional information provided by Bulgaria (CONF-BG 05/01, 34/01 and 42/01).

As an overall response to Bulgaria's requests for transitional periods and other requests, the EU recalls its general negotiating position that transitional measures are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis*. They must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition.

The EU recalls that the principle of free movement of capital and payments is one of the cornerstones of the single market. The *acquis* in the area of capital movements and payments *stricto sensu* is directly applicable. While transposition is not relevant, it is nonetheless necessary for Bulgaria to complete its legal and institutional regime so that the freedom of all categories of capital transactions as listed in the nomenclature contained in Annex 1 of Directive 88/361/EEC be guaranteed. The sustainable implementation of this principle will be one of the indicators of the ability of the Bulgarian economy to cope with market pressures. Therefore, for a proper functioning from the date of accession, a timely and orderly removal of remaining restrictions on capital movements, together with an appropriate strengthening of the financial sector and its supervision, will be required before accession. This will allow economic agents and macro-economic policies to adapt in good time, i.e. before accession, to the new framework, thus averting the risk of sudden disruptions on the financial markets upon accession.

Strategy of liberalisation of capital movements

The EU takes note of Bulgaria's commitment to accomplish a complete freedom of capital movements (with the exceptions mentioned above) by the time of accession and of the timetable provided by Bulgaria for removing the remaining restrictions (CONF-BG 34/01). The EU takes note of Bulgaria's commitment (CONF-BG 05/01 and 34/01) to adopt by the end of 2002 the necessary amendments to the Foreign Exchange Law and, shortly afterwards, the regulations on its implementation. Based on its acceptance of the *acquis* and readiness to implement it, the EU takes note that Bulgaria states its intention to harmonise prudential rules relating to placement of assets of insurance companies, pension funds and saving and credit unions by the date of accession at the latest. The EU encourages Bulgaria to align these rules already before accession.

The EU notes Bulgaria's confirmation (CONF-BG 34/01) that all restrictions on free movement of capital have been identified and that, should other such restrictions be identified, they will be abolished before accession.

Acquisition of land

The EU takes note of Bulgaria's commitment to amend Article 22 of its Constitution before accession in order to abolish the general prohibition for foreign natural and legal persons from Member States of the EU and of the EEA to acquire ownership over land.

The EU takes note of the progress Bulgaria has made in liberalising the acquisition of real estate other than land. The EU takes note of Bulgaria's commitment (CONF-BG 34/01), taking into account the ruling of the European Court of Justice of 13 July 2000 in case C-423/98 Alfredo Albore, to establish before accession a non-discriminatory regime for the acquisition of ownership over real estate in areas related to the national security. The EU notes that, however, Bulgaria intends to retain in this field the regime in force on 31 December 1999 vis-à-vis third countries.

The EU also notes that Bulgaria intends to retain the legal prohibition as in force on 31 December 1999 for foreign natural and legal persons from third countries to acquire ownership of land in the country. The EU recalls that Article 57 of the EC Treaty grants Bulgaria the right to retain vis-à-vis third countries restrictions pertaining notably to direct investment in real estate which existed on 31 December 1993 and are still in force. The EU notes that the differential treatment vis-à-vis third countries, which the adoption of a revised date would entail, would be limited and would represent an overall liberalisation, thus fulfilling the spirit of the Treaty with respect to freedom of movement of capital and payments, not only within the EU, but also in respect to operations with third countries. The EU can accept that the Accession Treaty with Bulgaria will substitute the date of 31 December 1999 for the reference date contained in Article 57(1) of the EC Treaty as regards acquisition of real estate in Bulgaria by natural and legal persons from third countries.

The EU takes note of Bulgaria's revised position (CONF-BG 34/01), in which it limits its request for a transitional period regarding the acquisition of ownership over real estate other than agricultural land, forests and forestry land to the acquisition of ownership of land for secondary residence. The EU takes note of the information provided by Bulgaria on its legal framework for land ownership and of the legal definitions of the different types of land. The EU also takes note of Bulgaria's statement that its legislation allows foreign citizens and legal persons to freely acquire ownership over buildings and limited property rights over land, comprising usufruct, easement right, the right to build and the right to add a premise to an existing building. The EU further notes Bulgaria's statement that the limitations on land ownership do not apply to companies, even those with 100% foreign participation, which are registered in accordance with Bulgarian law. The EU notes that, from the date of accession, foreign natural and legal persons, willing to establish in Bulgaria, will be granted the right to buy land for primary residences, administrative and industrial buildings; EU citizens residing in Bulgaria will be granted the same rights as Bulgarian nationals with respect to acquisition of land for secondary residences; the Member States of the European Economic Area will be granted the same treatment as the Member States of the European Union.

In the light of Bulgaria's revised position and justifications, the EU notes that the request for a transitional period on the acquisition of ownership over land for secondary residences is limited in time and scope, will not lead to distortion of competition on the internal market nor have any significant implications on the proper functioning of common policies of the EU. The EU furthermore notes that the request is not linked to direct foreign investment and will not impede the exercise of freedom of establishment for professions.

On the basis of these considerations the EU can accept a transitional period of five years, during which Bulgaria may maintain national provisions in line with the above-mentioned information and commitments on the acquisition of ownership over land for secondary residences by EU citizens and by legal persons resident in the EU. However, the EU stresses that such a transitional period should not have any implications for rights under other freedoms.

With regard to agricultural land, forests and forestry land, the EU stresses that the completion of the internal market is a key element of the *acquis* and that full alignment on the *acquis* in this field by the earliest possible date is therefore highly desirable. The EU takes note of the timetable of measures planned to be taken during the requested transitional period for the full liberalisation of the land market (CONF-BG 34/01). The EU notes that Bulgaria's positions (CONF-BG 34/01 and 42/01) on this point is fully in line with the EU Common Position (CONF-BG 28/01).

The EU recalls that it could envisage a transitional period of seven years with regard to the acquisition of agricultural land, forests and forestry land by non-resident legal persons and by non-national natural persons. The EU notes that it will be necessary to further address this issue and, if necessary, to return to this chapter at an appropriate moment to consider any outstanding issue in the light of the negotiations on chapter 7 Agriculture.

A general review of the transitional period shall be held in the third year of the transitional period. To that aim, the Commission shall report in due time to the Council. The Council may, acting unanimously on a proposal from the Commission, decide whether to shorten or lift the transitional period. The EU notes that Bulgaria accepts this condition (CONF-BG 42/01).

During the transitional period, Bulgaria may apply the national legislation to be enacted to replace the constitutional ban and regulate the acquisition of land in the country. In no instance may EU citizens, in this respect, receive a less favourable treatment than at the time of signature of the Accession Treaty nor be treated in a more restrictive way than a national from a third country.

Self-employed farmers who want to establish themselves and reside in Bulgaria shall be excluded from the scope of the transitional period and shall not be subject to any other procedure than nationals of Bulgaria. The EU notes that Bulgaria also accepts this condition (CONF-BG 34/01).

Payment systems

The EU takes note of the information supplied by Bulgaria on payment systems and of Bulgaria's commitment to fully implement Directives 97/5/EC (including the redress scheme provided for in Article 10) and 98/26/EC and Recommendation 97/489/EC by the end of 2004 (CONF-BG 5/01).

The EU furthermore takes note of the detailed timetable provided by Bulgaria for the implementation of these two Directives and of the Recommendation, and of the information on the ways and means through which Bulgaria intends to introduce by the end of 2004 adequate and effective procedures for handling customers' complaints as well as for the settlement of disputes between banks and customers (Article 10 of Directive 97/5/EC) (CONF-BG 34/01).

The EU stresses the importance it attaches to an efficient functioning of payment systems and will monitor progress in the implementation of the *acquis* in this area. Special attention will be reserved to the introduction in Bulgaria of adequate and effective redress procedures for the settlement of disputes between banks and customers.

Money Laundering

With reference to Directive 91/308/EC on the prevention of the use of the financial system for the purpose of money laundering, the EU stresses the importance it attaches to the proper functioning and monitoring of an efficient mechanism to prevent money laundering. The EU takes note of the information provided by Bulgaria on its legislation in this field and of its commitment to complete its alignment on the definition of money laundering set out in the Directive 91/308/EEC before the date of accession. The EU draws Bulgaria's attention to the importance of the forthcoming evolution of the *acquis* in this area.

The EU notes that, within the monitoring, particular attention will be given to Bulgaria ensuring that all relevant professions, particularly all credit and financial institutions, co-operate fully with the authorities responsible for combating money laundering in accordance with the Anti Money Laundering Directive (91/308/EEC) well ahead of accession.

The EU underlines the importance it attaches to Bulgaria taking all necessary measures to comply with the FATF Recommendations.

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While bearing in mind the possible implications of a transitional period concerning the acquisition of agricultural land on the chapter Agriculture, the EU notes that at this stage this chapter does not require further negotiations. Monitoring of progress in the adoption and implementation of the *acquis* will continue throughout the negotiations. Particular attention will be given to the timely amendment of Bulgaria's Constitution as well as of the Foreign Exchange Law and the conformity of the new legislation with the *acquis* will be examined in detail after adoption. Special attention will also be dedicated to the monitoring of Bulgaria's capacity to implement its commitments already entered into, including the fight against money laundering, and of the further steps it needs to take to complete the orderly liberalisation process. In the latter context the monitoring will also encompass the measures taken to maintain sound macro-economic fundamentals and an efficient and well supervised financial sector notably in order to reap the full benefits from liberalisation and to withstand any disturbances which might arise from international capital flows. Particular consideration needs to be given to the links with other negotiating chapters, such as Freedom of Movement for Persons, Freedom to Provide Services, Agriculture, Transport Policy, Taxation, Economic and Monetary Union, Culture and Audio-visual policy, Cooperation in the Fields of Justice and Home Affairs and External Relations. A final assessment of the conformity of Bulgaria's legislation and policies with the *acquis* and its implementation can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations on this chapter and which is to be provided to the Conference, the EU invites Bulgaria to provide regularly detailed written information to the Association Council on progress in the implementation of the *acquis*.

In view of the above considerations, the EU may return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 January 2000 and the conclusion of the negotiations.
