

**CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- BULGARIA -**

Brussels, 29 May 2002

CONF-BG 26/02

**EUROPEAN UNION COMMON POSITION
(Replaces doc. 20547/01 CONF-BG 50/01)**

Subject : Chapter 10: Taxation

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), in particular:

- "- any view expressed by either party on a chapter of the negotiations will in no way prejudge 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 Association Agreement, as well as the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy.

The EU takes note of the progress Bulgaria has made in this chapter and encourages it to carry out its commitment to further align its tax legislation before accession. In addition, the EU encourages Bulgaria to continue to strengthen its administrative capacity in order to ensure the effective application of the *acquis*. In this context, the EU refers to the relevant *acquis* in the field of administrative co-operation and mutual assistance. The EU takes note of the additional information provided by Bulgaria (CONF-BG 69/01 + ADD1 + ADD2 + ADD3 and 13/02).

The EU notes that Bulgaria, in its supplementary information (CONF-BG 22/01) also accepts the *acquis* under chapter 10 as adopted in 2000, and that Bulgaria declares that it will be able to implement it by accession, except for certain aspects of the *acquis* relating to VAT and excise duties, for which transitional periods or derogations are requested.

As an overall response to Bulgaria's requests for transitional periods 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 the application of the *acquis*. They must not involve amendments to the rules or policies of the EU, disrupt their proper functioning, or lead to significant distortion of competition.

The EU recalls that one of the main objectives of the Treaties is to create a single market whose characteristics are similar to those of a domestic market and which guarantees the free circulation of persons, capitals, goods and services. Indirect taxation having a direct impact on the free circulation of goods and services is an element of major importance in the proper functioning of the single market. Its basic rules and principles must therefore be respected and transitional arrangements may only be considered where distorting effects can be excluded.

Furthermore, the EU recalls that any deviation from the Community's VAT system in respect of the tax base would have an effect on the Union's own resources for which the basis of assessment would have to be adjusted in accordance with the relevant *acquis*.

The EU notes the commitments undertaken by Bulgaria to align its legislation to the EU *acquis*, in accordance with the timetable presented in its negotiating position CONF-BG 22/01.

Value added tax

The EU welcomes Bulgaria's decision to withdraw its request for a transitional period to continue exempting from VAT pharmaceutical products, prostheses and technical appliances for disabled (CONF-BG 69/01).

The EU notes that Bulgaria intends to transpose the VAT transitional regime into its national legislation one year prior to accession, that it will transpose all related provisions by that date, and that such provisions will enter into force as of the date of accession.

The EU can accept Bulgaria's request to apply a VAT registration and exemption threshold for small and medium-sized enterprises of BGL 50,000, provided that Bulgaria fulfils the following conditions: SMEs with a turnover lower than the above threshold are to be registered with the tax authorities for other tax purposes, must be considered as taxable persons and be allowed to opt for the normal VAT scheme, should they wish so, in accordance with Article 24(6) of the Sixth VAT Directive. Furthermore, SMEs below the threshold should be required to register for VAT when involved as clients in transactions listed in Article 9(2)(e) in order to avoid possible double taxation. Bulgaria must take the necessary steps to ensure that any exemption has no adverse effects on the European Communities' own resources accruing from VAT, the basis of assessment for which must be reconstituted in accordance with Regulation (EEC, Euratom) No 1553/89. In addition the EU recalls the principle that exemptions do not dispense from general obligations in particular in the case of SMEs involved in inter-Community trade.

The EU can accept Bulgaria's request for a permanent derogation to continue exempting from VAT with right of deduction international transport of passengers, provided that Bulgaria will only apply it until the condition of Article 28 (4) of Directive 77/388/EEC is fulfilled, or so long as the same exemption is applied to any of the current Member States, whichever date comes first. Bulgaria must take the necessary steps to ensure that the exemption has no adverse effects on the European Communities' Own Resources accruing from VAT, the basis of assessment for which must be reconstituted in accordance with Regulation (EEC, Euratom) No 1553/89.

Excise duties

The EU welcomes Bulgaria's decision to withdraw its requests for transitional periods to continue applying excise duties lower than the EU *acquis* on alcoholic products and on unleaded petrol and diesel (CONF-BG 13/02).

Concerning Bulgaria's request to continue to apply its excise duty scheme for fruit grower's distillation, in particular the application of a reduced excise duty rate by distilleries producing, on an annual basis, in excess of 10 hectolitres of ethyl alcohol, exclusively for personal consumption, bearing in mind the provisions of Directive 92/83/EEC, the EU could accept the request, provided that the quantity does not exceed 30 litres of fruit spirit per producing fruit grower's household per year and that the excise duty applied to fruit growers' distillation is set at a level of not less than 50% of the standard national duty rate for ethyl alcohol.

The EU notes that Bulgaria maintains its request for a transitional period on cigarettes until 31 December 2011 regarding the application of the overall minimum excise duty envisaged under Directive 2002/10/EC as regards the structure and rates of excise duty on manufactured tobacco. On the basis of the information provided by Bulgaria, and in consideration of the economic and social consequences for Bulgaria from bringing the excise duties on cigarettes to the required level by accession, the EU could accept Bulgaria's request, provided that the transitional period lasts no longer than 31 December 2009, and that Bulgaria provides a revised calendar of alignment with the Directive, starting in 2002 and ending on 31 December 2009.

Furthermore, the EU recalls that Bulgaria needs to ensure effective control, in line with the *acquis*, of the cigarettes covering the production, wholesale and retail chain, and to provide detailed information on how this will be done during the transitional period. This includes increased co-operation between existing and new Member States, improved legislation compliance, enhanced control levels and upgraded information technology.

Moreover, Member States may, until full application of the *acquis* by Bulgaria, maintain with regard to private travellers entering their territories from Bulgaria, the same restrictions on the quantity of cigarettes as applied with regard to private travellers from third countries and carry out the necessary checks without affecting the proper functioning of the internal market. Member States making use of this possibility shall inform the Commission in advance thereof.

The EU will closely monitor Bulgaria's progress in ensuring that the revised timetable for gradual alignment is met. Monitoring under chapter 25 Customs Union will also be relevant for this area.

Direct taxation

As regards the indirect tax on the raising of capital by companies pursuant to Council Directive 69/335/EEC, the EU takes note of Bulgaria's intention not to apply such tax. The EU underlines that, should Bulgaria decide to introduce any such tax on any of the operations listed in Directive 69/335/EEC, then all other transactions thereby listed should be subject to a uniform tax with a minimum rate of 1%.

The EU recalls Bulgaria's commitment to accept and comply with the principles of the Code of Conduct for Business Taxation, and, notably, to introduce only new tax measures which are in conformity with these principles. In this respect, the EU will closely monitor Bulgaria's implementation measures as regards full alignment with the principles of the Code, including possible measures to eliminate any tax provisions which may be contrary to these principles.

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Provided that Bulgaria accepts the considerations above and provides the requested information, the EU notes that at this stage this chapter does not require further negotiation. Monitoring of progress in the adoption and implementation of the *acquis* will continue throughout the negotiations. Special attention will be dedicated to the monitoring of Bulgaria's capacity to implement its commitments already entered into and of the further steps it needs to take to pursue the process of harmonisation of indirect taxation. A final assessment of the conformity of Bulgaria's legislation and policy with the *acquis* and its implementation capacity can only be made at a later stage of the negotiations. Particular consideration needs to be given to the links with other negotiating chapters, such as Free Movement of Goods, Freedom to Provide Services, Free Movement of Capital, Competition Policy and Customs Union. 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 2001 and the conclusion of the negotiations.
