

**NEGOTIATING POSITION  
ON CHAPTER 3 “FREEDOM TO PROVIDE SERVICES”**

***OVERALL POSITION***

The Republic of Bulgaria accepts and will implement in full the *acquis* in the field of freedom to provide services.

The Republic of Bulgaria requests for a 3-year transitional period from the date of accession to the European Union with respect to the minimum level of compensation of EURO 20 000 for each investor as provided for in Directive 97/9/EC on the investor-compensation schemes.

All issues concerning acquisition of real estate by foreign physical and legal persons in the Republic of Bulgaria are reflected in the Position Paper of the Republic of Bulgaria for Chapter 4 “Free movement of capital”.

As a working hypothesis, the Bulgarian Government considers that Bulgaria will become a member of the EU on 01.01.2007.

This Position Paper is based on the *acquis communautaire* as of 31.12.2000.

***ACQUIS ADOPTION AND IMPLEMENTATION***

**1. Right of establishment and freedom to provide services -**

**Article 43 EC, Article 49 EC, Directives 1973/148/EC, 1999/42/EEC**

Bulgaria has established a general non-discriminative regime of national treatment of the EU nationals and companies as regards their right of establishment and provision of services on the territory of the country. The legal basis for this regime is laid down in the Commercial Code (CC), Foreign Investment Law (FIL) and the Law on Foreigners in the Republic of Bulgaria (LFRB).

Citizens and companies from the Member-States are allowed to perform economic activity in the Republic of Bulgaria through the establishment and management of a commercial partnership registered in Bulgaria. There is no limitation concerning the size of the foreign capital participation in the commercial partnership. The citizens and companies from the Member-States are free to establish any of the partnership types envisaged by the Commercial Code. The right of establishment may be exercised also by the setting up of a branch in the Republic of Bulgaria. The capacity of a trader is attributed also to a physical person registered as a sole trader.

According to the Foreign Investment Law foreign physical persons shall hold permit for permanent residence in the Republic of Bulgaria, when for the purpose of performing economic activities they register as a sole trader, participate in a general partnership or in a limited joint-stock company in the capacity of an unlimited liable partner. The Law on Foreigners determines the terms and procedure under which foreigners may enter, reside and leave the Republic of Bulgaria.

Currently Bulgaria allows for certain exceptions from the granting of national treatment of establishment for nationals and companies of the European Community. These exceptions are envisaged by Art.45 of the Europe Agreement and concern acquisition of participation which ensures a majority in adopting decisions or blocks the adoption of decisions in companies engaged in the activities of manufacturing or trading with weapons, munitions or military equipment; representation at court and legal services not including legal advice in business related matters; and arrangement of gambling games and lotteries. Such treatment would be granted in these areas at the latest by the end of the transitional period mentioned in Art. 7 of the Europe Agreement – 1<sup>st</sup> of February 2005.

The issues of the right of establishment related to the acquisition by foreigners of property rights over land in the country are considered within Chapter 4 “Free Movement of Capital”.

Whenever the performance of services and activities is connected with certain specific features as regards professional qualification of the persons involved in these activities, the requirements for certifying this qualification are applied on non-discriminative basis of national treatment. The issues related to the recognition of professional qualification of regulated professions are subject to a detailed consideration within Chapter 2 “Free Movement of Persons”.

Bulgaria declares that by the date of accession to the European Union, all the remaining impediments to the right of establishment and to the freedom to provide services by EU nationals in the country will be abolished in accordance with the provisions of articles 43 and 49 EC and Directive 73/148/EEC.

## **2. Banking**

The Republic of Bulgaria is ready to implement the Community acquis in the field of provision of banking services before the accession to the European Union.

Bulgaria does not require any transitional periods or derogations concerning the banking sector. Bulgaria will not request any credit institution to be excluded from the scope of Directive 2000/12 relating to the taking up and pursuit of business of credit institutions.

The Bulgarian legislation in the banking area includes: the Law on Banks (LB), Law on the Bulgarian National Bank (LBNB), the Regulations adopted for the implementation of the LB, the Law on Bank Deposit Guaranty and the regulation on its implementation, the Foreign Exchange Law, the Law on Mortgage Bonds, the Commercial Code and the Law on the Public Offering of Securities. These acts incorporate the EU banking standards laid down in the directives.

Directive 2000/12/EC relating to the taking up and pursuit of business of credit institutions and Post BCCI Directive 95/26/EC

There is a high-degree of compliance of the Bulgarian legislation with the provisions of the Directives. The right to take up and pursue banking activity is regulated by the Law on Banks and Regulation № 2 on the Licenses and Permits granted by the Bulgarian National Bank. The minimum authorization requirements are the same as in the EU Directive. The requirements and procedure for issuance of permits for conducting banking activity in Bulgaria refer without restriction or discrimination to domestic and foreign banks, conducting banking activity within the territory of the country. The provisions of the Directive, concerning the single license will be applied from the date of accession of the Republic of Bulgaria to the European Union.

The provisions of the Directive relating to the supervision of credit institutions on a consolidated basis are incorporated in the national legislation by Regulation № 12 on the Supervision on a Consolidated Basis. The Regulation sets the conditions and the procedure for carrying out supervision on a consolidated basis of banks, bank groups and financial holding companies on the basis of their financial statements and the supervision requirements for solvency.

The Law on Banks provides that the central bank in exercising its functions may conclude bilateral arrangements with other foreign central banks or other foreign supervisory bodies for exchange of information on a reciprocal basis. Agreements of formal and informal character for exchange of supervisory information are undertaken. In carrying out on-site inspections the BNB "Banking Supervision" Department exchanges information on an informal basis with the other supervisory authorities in Bulgaria, or the institutions jointly execute the inspections.

The prudential supervision principles concerning own funds, solvency ratio and large exposures are fully transposed in the Bulgarian legislation, namely by the Law on Banks, Regulation № 7 on the Large Exposures of Banks, Regulation № 8 on the Capital Adequacy of Banks.

The provisions of the Post BCCI Directive concerning the banking sector are introduced with the Law on Banks and Regulation № 2 on the Licenses and Permits granted by the Bulgarian National Bank.

In 2001 the National Assembly is expected to adopt a Bank Insolvency Law that will improve the legislation concerning the "exit" from the banking business.

Directive 85/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and Directive 89/117/EEC on the obligations of branches established in a Member-State of credit institutions and financial institutions having their head offices outside that Member-State regarding the publications of annual accounting documents

The legal framework of the Bulgarian legislation in this field is based on the Law on Accountancy, the National Chart of Accounts and National Accounting Standards. The Directives are transposed in the Bulgarian legislation.

Capital Adequacy Directives - 93/6/EEC and 98/31/EC

The Capital Adequacy Directive establishing the minimum capital requirements for banks and investment firms, concerning the market and other risks related to the

trading books, will be implemented consecutively complementing the capital requirements for the credit risk taking into account the importance of the various risks for the sector. By the end of 2004 a Draft Regulation is to be prepared and with its adoption in 2005 a full transposition of the requirements for the trading book and the capital requirements concerning the market risks along with the New Framework of the Basel Capital Accord. The same time frame will be followed for the adoption and implementation of a Regulation concerning the capital adequacy requirements for the non-bank investment firms according to the Directive 98/31/EC.

#### Directive 94/19/EC on deposit-guarantee schemes

EU legislation in the field of deposit guarantee has been transposed by the Law on Bank Deposit Guaranty (LBDG) and BNB Regulation No. 23 on the Terms and Procedure for Payment of Insured Amounts on Deposits with Banks with Revoked Licenses.

The LBDG and Regulation No. 23 comply with Directive 94/19/EC with the exception of the guaranteed amount of deposits. Currently the amount of deposit guaranteed in Bulgaria may reach maximum BGN 6,900 (approximately EURO 3,500).

The Republic of Bulgaria declares that till the date of accession the amount of deposit guaranteed will reach EURO 20 000 in accordance with the requirement of Directive 94/19/EC.

#### **Capacity to implement the acquis**

The Republic of Bulgaria has developed the administrative infrastructure and human resources necessary for effective implementation and enforcement of the acquis in this area.

The supervision of the banking system in Bulgaria is being performed in compliance with the Law on Banks. The "Banking Supervision" Department of the Bulgarian National Bank has the statutory responsibility for the regulation and supervision of banks and branches of foreign banks in Bulgaria. The BNB "Banking Supervision" Department comprises of "Supervision Policy and Methodology" Directorate, "Special Supervision" Directorate, "Off-site Supervision and Analyses" Directorate, "Inspections" Directorate and "Supervision Administration" Division. This structure allows for supervision over the banking sector in compliance with the Basle Core Principles for Effective Banking Supervision and the EU legislation.

The administrative structure for the enactment of the LBDG is the Deposit Insurance Fund (DIF). Since its establishment in January 1999 the DIF efficiently performs the functions assigned to it by the Law.

### **3. Insurance**

The Republic of Bulgaria is ready to implement the Community acquis in the field of provision of insurance services before the accession to the European Union.

Bulgaria does not require any transitional periods or derogations concerning the insurance sector.

The following laws and secondary legislation regulate the insurance sector in Bulgaria: Law on Insurance, Law on Export Insurance, Regulations on the Operation of the National Insurance Council, Draft Regulations on the Structure and Operation of the Agency for Supervision over the Insurance and Gambling (ASIG), Ordinance for Determining the Own Resources, Solvency Margin and its Calculation by Insurers, Ordinance Regulating the Procedures and Methods of Setting up Insurance Reserve, Obligatory Insurance Ordinance, Regulation on the Structure and Operation of the Guarantee Fund, Regulation on Conditions and the Order of Expending the Resources of the Temporary Guarantee Fund, Ordinance for Insurance Broker and Insurance Agent, Tariff on the Fees Collected by the Agency for Supervision over the Insurance and Gambling.

#### Life and Non-Life Framework Directives

The prudential rules of the first generation Directives in the field of life assurance and non-life insurance have been accepted – Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of the direct insurance other than life assurance and Directive 79/267/EEC – for the life assurance. Further to the amendments of the Law on Insurance (promulgated State Gazette No.88/1999), the requirements set in Directive 76/580/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance have been accepted.

#### Insurance Intermediaries

The texts of Chapter 5 of the Law on Insurance transpose in the national legislation the requirements of Directive 77/92/EEC relating to the insurance broker and insurance agent. With reference to the accepted legislative texts, Ordinance on the Insurance Broker and Insurance Agent was accepted and became effective.

#### Insurance Accounts Directive

An Amendment of the National Accounting Standard No.14 was accepted and became effective, which introduced as a national legal norm the basic principles of Directive 91/674/EEC on the annual accounts of the insurance undertakings.

#### Motor Vehicles Directives

Art.82 of the Law on Insurance, created the prerequisite for the implementation in the national legislation of the requirements of Directive 84/5/EEC, Directive 90/618/EEC and Resolutions of the Council of Europe 86/218/EEC, 86/219/EEC, 86/220/EEC, 88/367/EEC, 88/368/EEC, 91/323/EEC, 93/43/EEC and 97/828/EEC relating to the international insurance contracts against civil liability of the owners, holders and drivers of motor vehicles. The establishment of National Bureau of the Bulgarian Motor Insurers, acknowledged by the National Council on Insurance is envisaged to be representative before the international insurance organizations for the activities on the international insurance against civil liability related to motor vehicles. In its draft Articles of Association the requirements of the above Directives and Resolutions are transposed.

An Amendment of the Ordinance on the Obligatory Insurance was adopted, which transposed in the national legislation the requirements of Directive 84/5/EEC relating to the obligatory TPL insurance of owners, users and holders of motor vehicles.

### The Post BCCI Directive 95/26/EC with respect to the insurance sector.

Article 66, par. 4 of the Law on Insurance reflects the provisions of Directive 95/26/EC concerning the obligation of the auditors to inform ASIG if they encounter a significant violation, which could jeopardise the ordinary activity of an insurer. The requirement for confidentiality of the data is reflected in Art. 23 of the Law on Insurance.

The Law on Insurance does not reflect the requirements of Directive 95/26/EC concerning the exchange of data for the insurers, performing their activity in Bulgaria, with other insurance supervision authorities of Member-State countries. This is due to the fact that Bulgaria is not yet a Member-State country. Nevertheless data for the Bulgarian insurance market are published on an annual basis according to Art. 48 of the Regulations on the Structure and Operation of the Agency for Supervision over the Insurance and Gambling. The information is published in English and Bulgarian and is available for all domestic and foreign persons.

The rules of the following Directives of EU – 88/357/EEC, 90/232/EEC, 90/618/EEC, 90/619/EEC, 91/371/EEC and 98/78/EEC will be fully transposed by the date of accession of the Republic of Bulgaria to the EU through amendments to the Law on insurance and the adoption of three new laws, namely the Law on Insurance Undertakings, Law on Obligatory Insurance and the Law on Insurance Contracts.

The introduction of the rules set in the Directives of the EU in the field of insurance will follow the dynamics of the development of the national insurance market and the process of harmonisation will be completed before the date of accession of the Republic of Bulgaria to the EU.

### **Capacity to implement the acquis**

The supervision of the insurance sector in Bulgaria is carried out by the National Council on Insurance and the Agency for Supervision over the Insurance and Gambling in accordance with the legislation in the field, namely, the Law on Insurance and the Law on Export Insurance. With the adoption of the Law Amending and Supplementing the Law on Money Laundering and the amendments to the Law on Insurance, from the 1<sup>st</sup> of January 2001, the Insurance Supervision Directorate and the Directorate for Control over Gambling are transformed into an Agency for Supervision over the Insurance and Gambling.

The National Council on Insurance (NCI) is the body empowered to issue and revoke licenses for carrying out of insurance business in Bulgaria as well as to permit mergers and separation of insurers.

The Agency for Supervision over the Insurance and Gambling (ASIG) has supervision and regulatory functions in the insurance sector.

The future extension of the administrative powers and functions of the ASIG will require further strengthening of its administrative capacity, taking into consideration the recommendations of the European Commission, reflected in the Regular Report 2000, concerning the functioning of a stronger and independent supervision authority in the insurance sector.

#### 4. Securities

The Republic of Bulgaria declares that it will apply the Community acquis in the field of securities regarding the freedom to provide services by the date of accession to the European Union.

In the securities sector the Republic of Bulgaria asks for a 3-year transitional period – till the 31<sup>st</sup> of December 2009 - for the implementation of the requirement for a minimum guarantee of EURO 20 000 per investor as provided for in Directive 97/9/EC on investor compensation schemes. The grounds for the transitional period and its timetable are explained in the Annex I.

Bulgarian legislation on securities includes the Law on Public Offering of Securities (LPOS), in force as of January 31, 2000, the Regulation on the Requirements towards the Activities of the Investment Intermediaries (05.05.2000), Regulation on the Capital Adequacy and the Liquidity of the Investment Intermediaries (13.06.2000), Regulation on the Licenses for Acting as a Stock Exchange, OTC-market, Investment Intermediary, Investment Company and Management Company (13.06.2000), Regulation on the Prospectuses for Public Offering of Securities and for Disclosure of Information by Public Companies and Other Issuers (11.07.2000), Regulation for Disclosure of Holding in a Public or Investment Company (01.12.2000), Regulation on the Requirements towards the Activities of Investment Companies, Regulation on the Requirements towards the Activities of Management Companies, the Rule-Book of the Bulgarian Stock Exchange (BSE), certain rules of the Commercial Law, Regulation No19 of 12.08.1996 for the Central Depository.

Bulgarian legislation in the securities sector incorporates the basic goals, principles, and provisions of the following EC legislation:

Directive 79/279/EEC coordinating the conditions for the admission of securities to official stock exchange listing, Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing, and Directive 89/298/EEC coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public.

These Directives are transposed by the LPOS, the Regulation on Prospectuses, and the Rule-Book of the BSE.

Where so provided in an international treaty, to which Bulgaria is a party, the Bulgarian National Securities Commission (BNSC) may recognize the prospectus for public offering of securities of a foreign issuer published according to the law at the place of its scrutiny.

Where shares of a foreign investment company are offered to the public, the Regulation on Prospectuses provides for the possibility of exchange of information between BNSC and the competent authority supervising the securities market in the country where the investment company has its registered office.

Directive 82/121/EEC on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing, and Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of.

The requirements of the above Directives are implemented in the LPOS, the Regulation on Prospectuses and the Regulation on the Disclosure of Holding in a Public Company.

Taking into consideration that the disclosure of information on behalf of companies whose securities are offered to the public, is among the basic principles for the transparency and integrity of the capital market, the requirement under this Directive for cooperation and exchange of information among the competent authorities in the Member States is among the basic measures under these provisions.

Directive 89/592/EEC coordinating regulations on insider dealing is transposed by the LPOS.

Directive 93/22/EEC on investment services in the securities field.

The Directive is transposed by the LPOS, the Regulation on the Requirements towards the Activities of the Investment Intermediaries and the Regulation on the Capital Adequacy and the Liquidity of the Investment Intermediaries.

The BNSC may grant a license to a foreign investment intermediary to perform activities as an investment intermediary in Bulgaria through a branch.

Where so provided in an international treaty, to which Bulgaria is a party, BNSC may recognize the authorization of a foreign investment intermediary.

The Post BCCI Directive in its part concerning the investment firms is transposed to a great extent through provisions in the LPOS and the Regulation on the Licenses for Acting as a Stock Exchange, OTC-market, Investment Intermediary, Investment Company and Management Company. Further regulation is envisaged concerning the disclosure requirements towards the auditors when checking the accounts of the investment firms.

Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

The Directive is transposed by the LPOS, as well as the Regulation on Prospectuses, Regulation on the Requirements towards the Activities of Investment Companies, and the Regulation on the Requirements towards the Activities of Management Companies.

Further harmonization will be achieved through the adoption of a regulation concerning the disclosure requirements towards the auditors when checking the accounts of the investment companies.

Directive 97/9/EC on investor compensation schemes.

A legislative act for the transposition of the Directive is to be drafted and adopted. The transposition will be made in stages, taking into consideration that meeting the requirement for a minimum guarantee of EURO 20 000 per investor in the provided cases will depend on the economic conditions in the country, namely the development of the capital market, the growth of the resources managed, and the increase in the number of the financial services providers.



## **Capacity to implement the acquis**

Basically, the legislative framework and the institutional environment – stock exchange, central depository, authorized investment firms and investment companies, and the state regulator – are in place.

The BNSC is the state regulator of the public securities market. BNSC supervises and regulates the public offering and trade in securities, the establishment and functioning of the regulated securities markets, the activities of the Central depository, the authorization and the activities of the investment firms, investment companies and management companies. The BNSC is empowered to issue and revoke licenses as well as to impose fines on the participants in the securities market.

The LPOS provides for the possibility of establishment of BNSC regional offices. No such offices are set up yet, but whenever established they shall cooperate with the local public authorities and NGOs which activities are relevant to the securities market.

The Central Depository (CD) is set up under the provisions of the LPOS. The CD ensures the registration and the disposition of dematerialized securities, as well as the settlement in relation to transactions in such securities.

The Bulgarian Stock Exchange – Sofia Ltd. organizes the trade in securities.

### **5. Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data**

The Republic of Bulgaria has signed Convention No. 108 of the European Council on the protection of individuals with regard to processing of personal data. For the entering into effect of the Convention a special state body should be established for the application of the provisions concerning personal data protection. This is the reason why the Personal Data Protection Law should be adopted by the Parliament before the ratification of the Convention. It is also a requirement of the Directive 95/46/EC that a separate legislative act should be adopted and implemented. The Draft Law on the Personal Data Protection is fully in accordance with the requirements of the Convention No. 108 and Directive 95/46/EC. This Draft Law covers not only the automatic processing of data but all kinds of processing of data. The Draft Law on the Personal Data Protection provides for the establishment of a supervisory body. It has been approved by the Bulgarian Council of Ministers on the 7<sup>th</sup> of December 2000 and sent to the National Assembly for adoption.

The Personal Data Protection Law will be adopted in 2001 and thus a full harmonization with the acquis in the field of personal data protection and the free movement of such data will be achieved.

### **6. Directive 86/653/EC on the co-ordination of the laws of the Member States relating to self-employed commercial agents**

The legal equivalent of the self-employed commercial agent according to the Bulgarian legislation is the commercial representative as defined in the Commercial

Code. The regulation of the commercial agent's activities in Bulgaria is fully harmonized with the *acquis*, in particular with the provisions of Directive 86/653/EC.

## **7. Information Society Directives**

Directive 98/48/EC laying down a procedure for the provision of information in the field of technical standards and regulations will be implemented in the Bulgarian legislation before accession in accordance with Art. 3.1.5 of the National Strategy for the Information Society Development of the Republic of Bulgaria, adopted with Decision № 676/29.10.1999 of the Council of Ministers. With the latest reorganization of the management structure at the Ministry of Transport and Communications an administrative unit with coordination functions was established, namely the "Information Society and Information Technologies" Directorate.

Directive 98/84/EC will be fully implemented in the Bulgarian legislation by the date of accession to the EU.

For the implementation of Directive 99/93/EC on the electronic signature a Law on electronic documents and signature has been drafted. The Draft Law is currently being discussed in Parliament and is going to be adopted in 2001.

The full implementation of the *acquis* in the area of Information Society will be achieved by the date of accession to the EU according to the National Strategy for the Information Society Development of the Republic of Bulgaria.

## **8. Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service**

The provision of the postal services is regulated by the Law on Postal Services (LPS) in force as of 1<sup>st</sup> of August 2000. The postal services are liberalized in harmonization with the principles and mechanisms of Directive 97/67/EC. The universal services are granted on the basis of a single license, whereas the non-universal services – only with a registration. The Minister of transport and communications issues the licenses and registration certificates. The main postal operator "Bulgarian Posts" EAD has the obligation to grant the universal postal service. The Ministry of Transport and communications is the regulating body, which presently represents the state's interest as a holder of the capital of the main postal operator - "Bulgarian Posts" EAD. The partial state monopoly on the reserved sector of the universal service will be abolished as of the 31<sup>st</sup> of December 2002.

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The Bulgarian government proposes the negotiations on this chapter to be provisionally closed on the basis of the existing *acquis*.

Should new elements of the *acquis* make it necessary, Bulgaria recognises the possibility of opening supplementary negotiations before the end of the Intergovernmental conference.

## **Investor compensation schemes**

The full transposition of Directive 97/9/EC on investor compensation schemes in the Republic of Bulgaria will need a transitional period till 31.12.2009 taking into consideration the envisaged accession date 01.01.2007.

The transposition will be made in stages, taking into consideration that meeting of the requirement for a minimum guarantee of EURO 20 000 per investor in the provided cases will depend on the economic conditions in the country, namely the development of the capital market, the growth of the managed assets, and the increase of the number of financial services providers.

The necessary stages include:

- I. Till the accession date 01.01.2007 – 1) adoption of an act of the national legislation and a guaranteed amount of EURO 6 000 per investor under the terms of the Directive – till 01.01.2005; 2) a guaranteed amount of EURO 12 000 per investor – till 01.01.2007;
- II. During the transitional period – 1) a guaranteed amount of EURO 15 000 per investor – till 01.01.2008; 2) a guaranteed amount of EURO 20 000 per investor – starting from the date 01.01.2010.