

DOCUMENT PROVIDED BY BULGARIA

**ADDITIONAL INFORMATION TO
NEGOTIATING POSITION
ON CHAPTER 3 – FREEDOM TO PROVIDE SERVICES**

Bulgaria wishes to refer to the Additional Information to the Negotiating Position on Chapter 3 “Freedom to provide services” (CONF-BG 23/01), to the EU Common Position (CONF-BG 15/01) and to provide the required additional information and timetables on the transposition and implementation of the acquis.

ACQUIS ADOPTION AND IMPLEMENTATION

I. Financial Services

1.1. Banking

1.1.1. Information concerning the terms for achieving full compliance with the acquis on the capital adequacy of banks with regard to Directives 93/6/EC and 89/647/EC

As specified in Directive 93/6/EC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (CAD), it is acceptable that the credit institutions with negligible trading book business to be regulated according to the requirements of Directive 89/647/EC on a solvency ratio for credit institutions, excluding the regulation of the foreign exchange risk coverage (provisions). Therefore, at this stage, except the requirements related to credit risk, those related to foreign exchange risk (Annex III of the CAD) are implemented in Bulgaria. We envisage to implement Annexes I, II, and IV by 1.1.2005, or earlier if the business trading book of any bank in the country exceeds 6% of its total business or the total trading book positions exceed 20 million EURO in the context of the trading book definition in the CAD.

1.2. Insurance

1.2.1. *Timetable for the implementation of the main principles of the acquis in the insurance sector of Bulgaria /scope, definitions, taking up the licenses, removing prior control of tariffs, TPL etc./*

EU Directive	Date for entry into force	Bulgarian legislative acts to be introduced
Council Directive 78/473/EEC	31.12.2003	Amendments to the Law on Insurance
Council Directive 72/166/EEC	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Council Directive 84/641/EEC	31.12.2003	Amendments to the Law on Insurance
74/166/EEC first Commission Decision of 6 February 1974	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
74/167/EEC second Commission Decision of 6 February 1974	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
75/23/EEC third Commission Decision of 13 December 1974	31.12.2003	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Second Council Directive 84/5/EEC	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
86/218/EEC Forth Commission Decision of 16 May 1986	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
86/219/EEC Fifth Commission Decision of 16 May 1986	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
86/220/EEC Sixth Commission Decision of 16 May 1986	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Council Directive 87/343/EEC	31.12.2003	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Council Directive 87/344/EEC	31.01.2005	Amendments to the Law on Insurance
88/367/EEC Seventh Commission Decision of 18 May 1988	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
88/368/EEC Eighth Commission Decision of 18 May 1988	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau

88/369/EEC Eighth Commission Decision of 18 May 1988	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Council Directive 88/357/EEC	31.01.2005	New Law on the Insurance Undertakings
Third Council Directive 90/232/EEC	31.12.2005	Amendments to the Law on Insurance, New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Council Directive 90/618/EEC	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Council Directive 90/619/EEC	31.01.2005	New Law on the Insurance Contracts
91/323/EEC Commission Decision of 30 May 1991	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Council Directive 92/49/EEC	01.01.2005	Amendments to the Law on Insurance
Council Directive 92/96/EEC	01.01.2005	Amendments to the Law on Insurance
Council Directive 93/43/EEC	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
European Parliament and Council Directive 95/26/EEC	31.12.2005	Amendments to the Law on Insurance
97/828/EEC Commission Decision of 27 October 1997	31.12.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau
Directive 98/78/EC of the European Parliament and of the Council	01.01.2005	Amendments to the Law on Insurance
Directive 73/240/EEC	31.01.2005	Amendments to the Law on Insurance
Fourth Motor Insurance Directive 2000/26/EC	31.01.2005	New Law on the Obligatory Insurance, Draft of the Statute of the National Insurers' Bureau

Referring to point 2.2.2 of the Additional information to the Negotiating Position on Chapter 3 “Freedom to provide services” (CONF-BG 23/01) we would like to clarify that the “levels valid for the EU” concern the EU minimum levels of compensation while the insurance premiums are to be liberalized at the date of accession.

1.2.2. Further clarifications provided on the insurance supervision system in the Republic of Bulgaria

The Republic of Bulgaria would like to recall its Position Paper on Chapter 3 “Freedom to Provide Services” /CONF-BG 3/01/ stating that at present the Republic of Bulgaria has a two-tier insurance supervision system which consists of the National Insurance Council and the Agency for Supervision over Insurance and Gambling /ASIG/. Within the alignment process of Bulgarian legislation a gradual transferring of powers from the National Insurance Council towards the ASIG will be accomplished in conformity with the established European practice of one-tier supervision system.

1.2.3. The National Council on Insurance – “collective body”

According to the Bulgarian Law on Insurance the National Council on Insurance is a collective body with the Council of Ministers. National Insurance Council constitutes of 7 members: the Minister of Finance, the Minister of Justice, the Minister of Interior, the Minister of Labour and Social Policy, the Director of the ASIG, a representative of the Bulgarian Insurers’ Association to be appointed by rotation for each calendar year, and a representative — a Professor in insurance nominated by the Academic Council of the “Dimitar A. Tzenov” Economic Academy of the town of Svishtov.

1.2.4. Separation of responsibilities in the Agency for Supervision over Insurance and Gambling.

Within the ASIG there is a structural separation in two functional Directorates, namely the “Insurance Supervision” Directorate and the “Gambling Supervision” Directorate. The “Insurance Supervision” Directorate assists the Director of the Agency for Supervision on Insurance and Gambling to exercise responsibilities in conformity with the Insurance Act.

1.3. Investment Services and Securities Markets

1.3.1. Timetable for alignment by the end of 2004, on the following acquis provisions:

1. The following provisions of the **Post BCCI Directive**:

- The power of the competent authorities to refuse authorization to a financial undertaking under the meaning of the Directive if the laws, regulations or administrative provisions of a non-member country governing persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions (prudential supervision);
- Information received under the Directive’s provisions for exchange of information to be disclosed in the respective circumstances only with the express agreement of the competent authorities, which disclosed the information;
- The disclosure requirements towards the auditors when checking the accounts of investment firms and UCITS.

2. The provisions of **Council Directive 98/33/EC amending Council Directive 93/6/EEC** on the capital adequacy and liquidity of the investment firms relating to the calculation of the capital requirement on their OTC derivative instruments.

3. The provisions of **Council Directive 85/611/EEC on UCITS as amended by Council Directive 88/220/EEC and Directive 95/26/EC** concerning investments in recently issued transferable securities or shares held by an investment company in the capital of subsidiary companies carrying on the business of management, advice or marketing exclusively on its behalf.

4. The transposition shall be achieved through amendments to the Law on Public Offering of Securities /LPOS/ and the regulations on the activities performed under the LPOS.

5. The envisaged timetable includes:

5.1. Drafting of amendments to the LPOS – by the end of June 2002.

5.2. Adoption of the draft amendments by the Parliament – by the end of 2003.

5.3. Drafting of amendments to the implementing regulations to the LPOS – by the end of June 2004.

5.4. Adoption of the amendments to the implementing regulations by the Council of Ministers and entry into force – by the end of 2004.

1.3.2. Timetable for alignment by the end of 2006, on the following acquis provisions:

1. The provisions of **Council Directive 85/611/EEC on UCITS as amended by Council Directive 88/220/EEC and Directive 95/26/EC** concerning:

1.1. Possibility of establishment of UCITS under the law of contract (as common funds managed by management companies) or trust law (as unit trusts);

1.2. UCITS' single passport.

2. The transposition shall be achieved through amendments to the LPOS and the regulations on the activities performed under the LPOS.

3. The envisaged timetable includes:

3.1. Drafting of amendments to the LPOS – by the end of 2004.

3.2. Adoption of the draft amendments by the Parliament – by the end of 2005.

3.3. Drafting of amendments to the implementing regulations to the LPOS – by the end of June 2006.

3.4. Adoption of the amendments to the implementing regulations by the Council of Ministers and entry into force – by the end of 2006.

II. Information Society

With regard to the transposition of Directive 98/84/EC we would like to point out that in Bulgaria there is a detailed legislation of the intellectual property rights and the corresponding means for their protection are put in place.

The Penal Code of the Republic of Bulgaria envisages the legal protection of the owner of copyrights and related rights. The works of science, art, literature, audio- and videorecord or radiobroadcasting, TV broadcasting, software or computer programs must not be recorded, reproduced, distributed, transmitted or emitted without the content of the owner of the copyright. The corpus delicti includes the way of commitment – using technical device or by other means. The “technical device” can be interpreted as “illicit device” in the sense of Directive 98/84/EC. Regardless of the criminal responsibility, the device is liable to confiscation on behalf of the state, as it was designed or served for the commitment of the crime. As a measure against the usage of devices for commitments of offences the Copyright and Related Rights Act envisages the opportunity of bringing a civil suit for the confiscation of recording, decoding and reproducing devices, exclusively used for commitment of offences. According to Art. 26 (1) of the Law on Duties and Contracts the production, distribution and deals with an illicit device are illegal.

Taking into consideration the regulations of Directive 98/84/EC, relevant texts are to be included in the Bulgarian legislation acts that treat the intellectual property regime.

By the end the year 2003 Directive 98/84/EC is to be fully implemented in the Bulgarian Law on Radio and Television.

Directive 98/48/EC is partially implemented by the Law of National Standardization. The law specifies the rules of approving of European and international standards and the rule on services. From this point of view a lot of articles of the Directive are partially implemented. In the existing law there is no clear definition for “service”, “technical regulation”, “draft technical regulation” etc. Full compliance with the Directive 98/48/EC will be achieved by the end of the year 2003 with the determining of a body for the provision of information in the field of technical standards and regulations relating to the services in the field of information society.

With regard to the implementation of Directive 99/93/EEC the Electronic Document and Electronic Signature Act (EDESA) was promulgated in the State Gazette on the 6th of April 2001. This Act does not impose licensing regimes for products and services and envisages a voluntary registration scheme for Certification Service Providers (CSPs), providing advanced and universal electronic signatures, according to Articles 34, 35 and 36. This registration scheme includes the State Telecommunications Commission as registration body, and all of the registered CSPs. The future expectations are those laboratories (for security and interoperability testing of CSPs), and also validation/ accreditation bodies shall be included in the scheme. The Electronic Document and Electronic Signature Act introduces the universal (certificated from registered CSP), advanced and ordinary electronic signatures.

According to Art. 20 of EDESA the CSPs may set up organizations for voluntary accreditation schemes for better quality.

Chapter 7 of EDESA is foreseeing recognition of certificates issued by CSPs established in other countries. Details of the mutual recognition will be included in the secondary legislation acts which are to be elaborated by the end of 2001.

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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.