

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

NEGOTIATING POSITION
ON CHAPTER 4 “FREE MOVEMENT OF CAPITAL”

OVERALL POSITION

The Republic of Bulgaria accepts and will implement in full the *acquis* in the field of the free movement of capital and requests a transitional period only concerning the prohibition for foreign physical and legal persons to acquire property rights over land in the country. The request for the transitional period does not apply to domestic legal persons including those with a majority or 100 percent foreign capital participation, registered according to the Bulgarian legislation.

Chapter 4 “Free movement of capitals” covers a number of topics related to various types of capital movements, payment systems and money laundering. Up to the present moment the legislation of the Republic of Bulgaria in the area of free movement of capital has been harmonised to a great extent with the EU *acquis*. The main legislative acts regulating the free movement of capital are the Foreign Exchange Law, Law on Bulgarian National Bank, Law on Foreign Investment, Law on Measures Against Money Laundering, Law on the Public Offering of Securities as well as other by-law regulations. The Republic of Bulgaria will fully harmonise its legislation with the EU *acquis* no later than the date of accession.

The only exception in this field is the acquisition of property rights over land by foreign citizens or foreign legal persons, which have not registered economic activity in Bulgaria, according to the Bulgarian legislation. In relation to this the Republic of Bulgaria requests a 10-year transitional period from the date of accession to the European Union, the motivation of which is given in Annex I.

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

ACQUIS ADOPTION AND IMPLEMENTATION

1. Free movement of capital and payments

The objective of the Republic of Bulgaria is to reach full conformity with the EU legislation in the area of capital movements and payments. Substantial progress towards liberalisation was made in 1998, when the Republic of Bulgaria accepted the obligations under Article VIII of the IMF Articles of Agreement on full convertibility of the balance of payments current account.

With the adoption of the new Foreign Exchange Law in September 1999, that entered into force on 1 January 2000, the capital account of the balance of payments was considerably liberalised. According to the Foreign Exchange Law the transactions and payments between residents and non-residents, cross-border transfers and payments, foreign exchange transactions in the line of business, transactions with precious metals and precious stones in the line of business as well as their import, export and processing are executed freely. Cash import and export of levs and foreign currency is performed under the regulations foreseen in the law and does not contradict the European Union law.

The legislative and institutional framework concerning issuing and trade with securities is given in the Public Offering of Securities Law (POSL), adopted on 30th December 1999, entered into force on 31st January 2000. The POSL explicitly allows for public offering of securities issued by foreign persons, public offering of securities abroad issued by domestic persons, as well as for the possibility a foreign person to act as an investment intermediary through a branch. The current regime for acquisition of securities by foreign (legal and physical) persons on the Bulgarian capital market and by domestic persons on the foreign capital market is liberal.

The competent Bulgarian authorities executing surveillance over free movement of capital are the Ministry of Finance, the Ministry of Agriculture and Forestry, the Bulgarian National Bank, the State Securities Commission, the Insurance Supervision Directorate and the Foreign Investment Agency.

The Republic of Bulgaria does not request transitional periods in the area of free movement of capital and payments, except for the 10-year transitional period, concerning acquisition of land by foreign persons.

2. Payment systems

The Republic of Bulgaria has the readiness to implement the EU legislation concerning the payment and settlement systems by the date of accession to the European Union. The strategic objective of Bulgaria in the field of payments is to operate a payment system that is in full compliance with the European standards and the requirements of the European System of Central Banks. The project of real-time gross settlement system is being developed. The Bulgarian National Bank is responsible for elaboration of the strategy for creation and development of payment system in Bulgaria and is in charge of settlement operations management. By the accession to EU, Bulgaria will elaborate legislation, which will be in full conformity with the EU legislation in the area.

Republic of Bulgaria does not require transitional period for EU *acquis* implementation in payment systems.

3. Prevention of the Use of the Financial System for the Purpose of Money Laundering

The legislative framework of the Republic of Bulgaria with regard to prevention of the use of the financial system for the purpose of money laundering meets the fundamental principles of Directive 91/308/EEC. With the amendment to the Law on

Measures against Money Laundering the legislation of the Republic of Bulgaria on prevention of money laundering is fully harmonised with the EU *acquis*. The authorities responsible for the implementation of the Law on Measures against Money Laundering are the Bureau of Financial Intelligence and the Minister of Finance.

The Republic of Bulgaria does not require a transitional period for the implementation of EU legislation in the field of the prevention of money laundering.

The Bulgarian government proposes the negotiations on chapter four “Free movement of Capital” to be provisionally closed on the basis of the existing EU *acquis*.

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

Acquisition of property rights on land by foreign persons

Legal framework of the restriction foreign persons to acquire property rights on land in Bulgaria:

1. Art. 22, Paragraph 1 of the Constitution of the Republic of Bulgaria;
2. Art. 23, Paragraph 2 of Law on Foreign Investment (LFI);
3. Art. 10, Paragraph 2 of Law on Forestry (LF);
4. Art. 10, Paragraph 2 of Law on Protected Areas (LPA);
5. Art. 3, Paragraph 3 and 4 of Law on Ownership and Use of Agricultural Land (LOUAL).

According to art. 22, Paragraph 1 of the Constitution, foreigners and foreign legal persons are not allowed to acquire land with the exception of inheritance by law. In that case they have to transfer their property rights on land to a Bulgarian person. Art. 10, Paragraph 2 of Law on Forestry, art. 10, Paragraph 2 of Law on Protected Areas and art. 3, Paragraph 3 and 4 of LOUAL repeat the constitutional ban in relation to the specific categories of land. The terms “foreigner” and “foreign legal person” are defined respectively on the basis of citizenship of the physical person or the domicile of the legal person.

Pursuant to art. 23, Paragraph 2 of Law on Foreign Investment a foreign person, including a sole trader or a branch, may not acquire property rights over land. According to art. 5, Paragraph 1 from Law on Foreign Investment a “foreign person” is a legal person, not incorporated under Bulgarian law or a physical person, who is a foreign citizen and has a permanent residence abroad.

Legal persons with foreign participation, registered in Bulgaria may acquire property rights over land. According to the law they are considered Bulgarian legal persons irrespective of the size of the foreign capital participation.

Request for a transitional period

Having in mind the social and economic conditions determined by the transition to a free market economy, as well as on the basis of the above described legislation, Bulgaria requests for a 10 years transitional period from the date of accession of Bulgaria to the EU, during which the legal restrictions on acquisition of land by foreign legal and physical persons will be retained.

The necessity of the transitional period is justified by several social and economic factors the most important of which are:

1. The land market in the country is in the process of development;
2. The price of land in Bulgaria is several times lower than the price of land in EU Member States.
3. Due to the low income the Bulgarian citizens do not have yet the same possibilities as the citizens of the EU to acquire land.

4. A uniform land cadastre and a property register are not completed yet. Their final completion and the availability of market information are basic prerequisites for further development of the land market;
5. After the completion of land restitution , a process of land consolidation is under way aimed at creation of economically viable farm structures.

For further development of real land market in Bulgaria, as well as for guaranteeing the opportunity of Bulgarian citizens to act there competitively and on equal terms with foreign nationals, a transitional period is necessary, during which the market principles will be ascertained and the income of persons working in agriculture will be stabilised.