

Document provided by Bulgaria

Subject : Additional information
Chapter 6 – Competition Policy

DOCUMENT PROVIDED BY THE REPUBLIC OF BULGARIA

Additional information to the Negotiation position on Chapter 6 – Competition policy

With reference to the EU Common Position (CONF-9 /03), Bulgaria hereby provides Additional information on the approximation of its legislation and enforcement practice to the European Union's competition acquis.

Bulgaria declares that it fully accepts the acquis on Chapter 6 (Competition policy) as at 31.12.2003.

Antitrust

Approximation of Legislation

The amendments to the 1998 Law on Protection of Competition (LPC) entered into force on 04.02.2003. In the process of implementing the law the Commission on Protection of Competition (CPC), reviews its practice in enforcing it.

Based on this analysis further amendments to the LPC will be made. These will reflect the CPC's experience in enforcing the LPC, the recommendations of the European Commission for fine-tuning of certain texts in the law, developments in the acquis, as well as, preparation for implementation of Regulation 1/2003.

Bulgaria has continued the process of aligning its secondary legislation with the acquis, in particular the EU policy in the field of horizontal agreements.

On 8.07.2003 the Commission on Protection of Competition adopted two Decisions (Nos. 118 and № 119) transposing the provisions of Commission Regulation (EC) 2658/2000 on specialization agreements, Commission Regulation (EC) 2659/2000 on research and development agreements and the Commission guidelines on the implementation of these regulations. Decisions 118 and 119 have been published in the State Gazette, no.70/2003 and translated into English.

Bulgaria confirms its commitment, as stated in position CONF-BG 5/03, to follow the Community's block exemption policy when issuing individual exemption decisions.

Acquis in the field of block exemptions is being regularly translated and uploaded on CPC's Internet site, with an explicit note that the CPC will base its individual exemption decisions on these rules.

Administrative capacity

According to the current LPC, the procedure for electing the body of the Commission on Protection of Competition is within the powers of the Parliament. The Law on Protection of Competition of 1998 provided for a body of 11 members of the CPC to be elected and released by Parliament for a term of office of 5 years. The process of constituting the body was undergoing through two stages. The first was the election of a Chairman of the Commission and the second – vote on the body of the members proposed by the Chairman.

With the amendments of the Law on Protection of the Competition, in force as of 04.02.2003, the number of the CPC members was reduced from 11 to 7. At the same time the provision empowering the Chairman to nominate the members was abolished. These powers were vested onto the very Members of Parliament.

On October 3, 2003, based on the new procedure provided for in the Law, the National Assembly (the Bulgarian Parliament) elected the new body of the Commission for Protection of Competition. The election process took into consideration the need to guarantee independence, continuity and high professionalism of the new body. Before the debates and the voting during the plenary session, for the first time since 1991 the Economic Commission of Parliament conducted hearings of the candidates. They were asked questions regarding their views on the role and the priorities of the national competition authority. The aim of these preliminary considerations was to select candidates possessing strong professional qualifications and vision for the future activities of the Commission. The new election achieved also continuity in the activities of the Commission as three of the members will serve for a second term after one in the previous CPC body. Another 3, even though newly elected, have a long professional experience working as experts at the CPC. The Chairman of the CPC served previously as Chairman of the Supervisory Board of the Privatization Agency, and before that – as lawyer with experience in competition cases. Four of the CPC members are lawyers, and three are economists.

Within the next LPC amendment, Bulgaria will further improve the quality of the election procedure to make it commensurate with the best international examples.

The CPC continues to improve the professional knowledge of its staff. To ensure training continuity, having finalized the PHARE 1999 project “Strengthening the administrative capacity to manage the *acquis* in the field of competition”, the CPC is now preparing a Twinning Light project. The Twinning Light objective is to respond to the immediate training needs of the CPC in relation to its new powers deriving from the latest LPC amendments, in particular “on the spot investigation”.

To prepare Bulgaria for the direct application of *acquis* after EU accession, the CPC prepared and presented a new project under PHARE 2004 – 2006, namely “Preparing the Commission on Protection of Competition for direct application of the competition *acquis* and for cooperative work with the European Commission”. The Financial Memorandum is due for signature in December 2004. The objective is to further the training of both CPC staff and judges to a more advanced level. As a result of the project, both the CPC and the Supreme Administrative Court will be able to directly apply the antitrust *acquis* on the basis of the new procedural Regulation 1/2003.

Internal learning is implemented on day-to-day basis in order to improve the professional knowledge of the CPC experts. The groups are formed in a way as to include both

experienced and less experienced staff members. The aim is that the experienced staff share their knowledge acquired during previous trainings or in practice within the working group. It is also an existing practice to have discussions within the directorates on more complicated cases.

An indispensable part of these discussions is the reference made to similar cases from EC and ECJ practice. Furthermore, contacts are maintained with EC experts, requesting their assistance on particular CPC cases.

Enforcement Record

The CPC has focused its efforts on the application of antitrust rules at the expense of unfair competition cases.

To meet this priority, on 28.10.2003 the CPC adopted new Rules of Organisation, which approved the Commission's new structure. The new Rules of Organization fully reflect the recommendations of EC experts made in the framework of the completed 1999 PHARE project. The main part of the experts is concentrated in the "Antitrust" Directorate, which is tasked with studies and investigations as per LPC Art. 9 (Art. 81 of the EC Treaty) and LPC Art.18 (Art. 82 of the EC Treaty). This organizational arrangement contributes to the specializing of experts in one particular chapter of the law or another.

The CPC has submitted to the EC detailed information on its antitrust enforcement record in 2003 in the form of a table of all decisions with basic information therefor, an overview table for the year and annotations on some of its decisions. These records demonstrate an appreciable change in the balance between the two types of cases. Thus, of all 64 decisions adopted in 2003, 19 were in the area of antitrust and mergers (adopted in the period 01.10.2003-20.12.2003 alone). It is true indeed, that decisions related to unfair competition again form the biggest share of the decisions adopted the in 2003. In the last months however, there is a significant shift in the ratio of the two types of cases. For the period 01.10.2003-20.12.2003 there are 20 decisions on unfair competition cases and 19 decisions on anti-trust cases.

In addition, in six of the anti trust decisions adopted, the CPC has imposed high pecuniary sanctions for hardcore infringements of competition rules: 4 – for abuse of dominant position and 2 for collusive agreements.

Bulgaria follows a more deterrent sanctioning policy with an emphasis on preventing serious distortions of competition. This is supported by statistical data of decisions adopted in the period 01.10.2003-20.12.2003. 5 out of all 19 cases (anti-trust and mergers) decided on during the period involve abuse of dominant position, and 3 involve collusive agreements. In 4 of those 5 investigations on alleged abuse, the CPC established violations and imposed pecuniary sanctions. In 2 of the 3 cases under Art.9 the conclusion was again that the agreements involved are collusive in the meaning of the law.

There is also a radical change in the amount of fines imposed by the Commission. While in 2002 the total sum of all pecuniary sanctions imposed amounted to as little as 13 500 Euro (imposed with 5 decisions for abuse of dominant position), in 2003 the total sum of the sanctions amounted to 393 000 Euro (imposed by virtue of 12 decisions – 10 for abuse of

dominance and 2 for prohibited agreements), of which 325 500 Euro of sanctions were imposed by decisions adopted in the period 01.10.2003-20.12.2003. The Commission has also demonstrated bigger severity against individual infringers. For the purpose of comparison it could be pointed out that while in 2002 the highest sanction was 2 500 Euro, for the period 01.01.2003-30.09.2003 it was 25 000 Euro, and the strongest fine for the period 01.10.2003-20.12.2003 was 40 000 Euro.

In order to make the objective of its sanctioning policy known to the public – namely fair punishment of infringers and deterring the other undertakings and individuals from violating the law, and to make the public aware of the criteria used in defining individual sanctions, the CPC has drafted a Methodology. This will ensure greater transparency and objectivity of CPC sanctioning policies.

Competition advocacy is a significant part of CPC activities. Its efficiency largely depends on the extent, to which the Commission is involved in the process of drafting of legislative acts. In order to guarantee this participation in the legislative process, following a proposal by the CPC Chairman in 2003, the General Secretary of the Council of Ministers (the Government) issued a circular to all ministers and heads of agencies informing them that documents prepared for the meetings of the Council of Ministers and related to the activities and powers of the CPC would not be considered by the CM and would be accordingly returned to the initiating authority if not consulted with the CPC in advance.

Raising awareness in the field of antitrust legislation and practice

Raising the public's awareness of competition legislation and practice is one of the CPC's priorities. The Commission established a press centre, which launched, in the period 01.10.2003 – 20.01.2004 alone, more than 320 press releases and comments relating to the work of the CPC. Furthermore, two conferences were held – one for presenting the new body of the Commission and the priorities to be followed, and another one in the beginning of 2004 when the Commission's activities in 2003 were reported.

In the end of October 2003 the CPC drafted a list of institutions, business organizations and regulatory bodies, with which it wishes to cooperate. Meetings were held and cooperation agreements were signed with the State Commission for Energy Regulation, the Commission for Financial Supervision, the Union of Employers, with the General Tax Directorate, the Commission for Regulation of Communications, the Agency for Post-Privatisation Control and with the National Statistical Institute. The CPC has also established contacts with representatives of the Bulgarian Industrial Chamber, the Bulgarian Chamber of Commerce and Industry, the Union for Economic Initiative, the Privatisation Agency, etc.

State Aids

Legislative Framework

On 23.07.2003 the Council of Ministers adopted new Implementing Rules of the SAA. The European Commission prepared and sent to Bulgaria detailed comments on certain provisions, which need to be amended or supplemented. Mainly the EC comments relate to the degree of harmonization of the substantive rules on State aid for: operational aid, aid for environmental protection, rescue and restructuring of firms in difficulty and regional aid for large investment projects.

Bulgaria took account of the recommendations and is already working on a draft to amend the Rules accordingly. The draft is being drawn up by a working group formed in the framework of Phare project BG 0201.08 (BG 02/IB-FI 03) with representatives of MoF, experts from the CPC, Ministry of Economy, Ministry of Regional Development and Public Works, Ministry of Environment and Waters. The drafting of the new rules is supported by UK experts from DTI – the twinning partner for this project. The new Rules will be adopted by the Council of Ministers by 30.09.2004 at the very latest, and they will transpose the current *acquis*.

Regional Map

A Draft Decision approving the regional state aid map as proposed by Bulgaria is pending adoption by the EU-Bulgaria Association Committee.

Under the draft the entire territory of Bulgaria shall be regarded as an area eligible for regional aid, identical to those areas in the Community described in Art. 87(3) (a) of the Treaty establishing the European Community.

The regional aid intensity ceilings applicable throughout Bulgaria shall be limited to 50% net grant equivalent.

These ceilings may be raised by 15 percentage points gross grant equivalent in the case of aid granted to small and medium –sized enterprises.

They shall constitute upper limits, which apply to the total aid whenever assistance is granted concurrently under several regional schemes, and regardless of whether it comes from local, regional, national or Communities sources.

Administrative capacity

Bulgaria is making further efforts for strengthening its administrative capacity to ensure proper implementation of the *acquis*.

In document CONF-BG-5/03 Bulgaria provided information on the activities carried out within the 1999 project “Strengthening the administrative capacity to manage the *acquis* on state aid and improvement of the system for monitoring and control of State aid”, namely trainings and internships in EU Member States. Bulgaria wishes to provide the following new information on activities aimed at increasing the qualification of experts in CPC, Ministry of Finance (MoF) and other institutions.

Training continued notwithstanding the end of the PHARE 1999 project. In 2003 five representatives of the CPC participated in the TAIEX Joint training session on State aids.

In November 2003 a Twinning project under Phare 2002 between the UK Department of Trade and Industry on one hand and the MoF and CPC on the other hand started, namely Project No BG 0201.08 (BG 02/IB-FI 03) “Strengthening the administrative capacity to manage the *acquis* on state aid and improvement of the system for monitoring and control of State aid”. The activities under the project are divided in 4 components – Prevention,

Enforcement, Exchange of information, Human resources and Knowledge management. It is previewed to carry out deeply specialized training and advising on the monitoring of State aids, the ex-ante assessment of new State aids, the assessment of existing aids, the illegal aid, as well as the processing of complaints for State aid granted.

Implementation of some project activities is already under way. On 18.12.2003 the first meeting was held of the interagency working group under the project. It includes, besides representatives of the MoF and of the CPC, experts from the Ministry of Regional Development and Public Works, the Ministry of Agriculture and Forestry, the Ministry of Economy and the Agency for Small and Medium-Size Enterprises. The short-term expert from the DTI was also present at the meeting - he is to consult on the harmonization of legislation. It was decided on the basis of this working group to form smaller sub-groups on particular subjects and these sub-groups to prepare specific proposals for the approximation of the national legislation with the *acquis* in the field of taxation, promotion of investments, small and medium-size enterprises, etc.

Funded by the project, in March 2004 a group of 6 experts from the CPC and MoF will visit the European Institute of Public Administration in Maastricht to attend the Workshop on State Aid, organized twice a year for experts from EU Member States.

In the course of the project, which is expected to last until April 2005, experts from the CPC, MoF, other Ministries and state bodies, officials from regional administrations, and judges and prosecutors will be trained on different aspects of State aid *acquis*.

With strengthening the administrative capacity in mind, the Rules on Organisation of the CPC provided for the setting up of a new Directorate, namely “Administrative, Legal and Information Services”, part of which is the Human Resources Department, which is tasked with precise personnel selection and professional development activities.

A recruitment competition was held in January 2004 ending with appointment of 6 new staff, one of which is assigned to the State Aid Policy Directorate. Yet another competition is scheduled for mid-2004 to select more staff for this Directorate.

All new appointees will be included with priority in the training plan under the PHARE project, which will ensure faster acquisition of theoretical and practical knowledge in the State aid field, as well as stronger motivation of the staff.

The further improvement of the administrative capacity of the CPC experts is also facilitated by the routine internal learning and discussions performed within the working groups assigned with a task of a particular investigation of state aid cases. The groups include experienced experts, who share with their colleagues knowledge acquired during previous training.

It is also a regular practice to discuss similar EC cases during these training sessions.

Contacts with colleagues from DG Competition to exchange experience on particular cases, at an early investigation phase have been established. The objective of this informal cooperation, which the CPC intends to make a daily routine, is to align its practice to that of

the EC through discussions and assistance provided before the formal issuance of the decision in question, rather than by EC's ex-post evaluation of the enforcement record.

The advisory assistance of PHARE experts is beginning to play a similarly preventive role, thus improving the quality of CPC's practice.

The new MoF Rules on Organisation have strengthened the role of the Minister of Finance and the State Aid Department in implementing the state aid policy.

Extended cooperation between the two institutions with competence in the State aid field – CPC and MoF

Full and efficient cooperation exists between the State aids controlling authority – CPC, and the State aids monitoring authority – MoF. As stated in document CONF-BG-5/03 the exchange of information in relation with notifications and CPC decisions is a daily routine. CPC's practice is reviewed at regular quarterly meetings with experts from MoF's State Aids Department.

The understanding both of high level management and experts from the two institutions is that without close cooperation between the two institutions it would be impossible to achieve progress in the area of State aids monitoring and control. The coordination and joint elaboration of Chapter 6 documents are daily practices.

Examples of these practices are: the work on identifying and analyzing the fiscal measures contained in the national legislation, which was carried out by staff from MoF Tax Policy and State Aid Department, the General Tax Directorate and the CPC; the elaboration of a concept on alternative taxation, the "Concept for legislative amendments related to the structural and functional establishment of the National Revenue Agency", as well as the interagency working groups on: transposing the Transparency Directive, the amendment of Article 12 of the Tax Procedural Code and the alignment of SAA Implementing Rules with acquis.

CPC and MoF have joint responsibility for ensuring observance of the notification obligation, for the dissemination of knowledge on legislation and practice in the State aids field.

Without the assistance of the experts from the tax administration and the information at their disposal, the CPC would be unable to assess aid schemes and individual aids in the form of tax deferrals. This led to the signature in January 2004 of a Cooperation Agreement between the CPC and the General Tax Directorate.

Under the shared PHARE 2002 twinning project, which started in November 2003, the CPC and MoF work in close cooperation and coordination.

As pointed out in CONF BG 9/03, an online connection between the two institutions will be established to ensure exchange of information and permanent access of CPC to the State Aids Inventory.

Raising awareness in the field of State aids legislation and practice

In document CONF-BG 5/03 Bulgaria provided information on awareness raising activities accomplished in the framework of PHARE Project BG 9910.02: “Strengthening the administrative capacity to manage the *acquis* on state aid and improvement of the system for monitoring and control of State aid”.

Activities in this line are continuing. In a joint letter of February 2003, the Minister of Finance and the Minister of European Affairs urged all authorities of the central executive branch of power (ministries, agencies, institutions), as well as local governments, to designate persons responsible for state aid matters. Subsequently, the Minister of Finance issued in February 2003 an order requiring that such persons be appointed in all agencies and directorates of the specialized administration within MoF. Both papers include the requirement that the commitment to implement the state aid regime should be made part of the nominees’ job descriptions.

These steps yielded a network of contact persons with state aid responsibilities, including 77 representatives of the central executive branch of power (i.e. ministries – 27, agencies – 22, other representatives of the central institutions – 28) as well as 59 representatives of local governments divided in planning regions. Within MoF and its structures, the number of designated staff responsible for the implementation of state aid regime is 28.

3 workshops were held during the period May – July 2003. The target audience was comprised of state administration representatives at different levels as follows: 1 seminar on 16 May 2003 attended by 59 participants; 1 seminar on 30 May 2003 attended by 40 participants from 28 District Administrations and the Association of Bulgarian Municipalities; 1 seminar on 11 July 2003 attended by 26 participants from MoF’s specialized administration.

Sets of information materials were issued and distributed to all ministries and agencies, to all regional and municipal administrations, and to NGOs, as follows:

- a Handbook on State Aids in Bulgaria comprised of 2 sections: State Aids Manual and Glossary of Terms, in more than 700 copies. The same information materials were provided to each employee attending the above-mentioned seminars;
- The EC brochure on “Competition policy in Europe and the citizens”, in the Bulgarian language.

Workshops for municipal administrations are scheduled in March, April, May and June 2004. The objective is to train 2 representatives from each of the 264 Bulgarian municipalities. Thus the total number of trainees will come to 650 people.

A series of workshops and seminars will be held with various target groups, and separate training modules will be developed to this end on the following topics: horizontal aids, rules applicable to the various types of transport, specific provisions of the Multisectoral Framework for large investment projects.

To support the staff to increase its State aids knowledge, the PHARE 2002 project will finance the development of an e-learning module, which will be added to the Internet site of MoF's State Aid Department.

These training efforts are beginning to yield a bigger number and higher quality of notifications filed with the CPC, which is essential for improving the State aids control exercised by the CPC. The information available on the Internet site of the MoF's State Aid Department as well as the Department's networking with MoF directorates and agencies, with other ministries and regional administrations is another contributory to this trend.

The State Aids Acts provides that CPC decisions are subject to appeal before the Supreme Administrative Court (SAC) and as such Bulgaria is taking measures to train the judges. In addition to the activities in the framework of the 1999 PHARE project, in 2004 the PHARE 2002 project will fund two workshops for SAC judges and prosecutors from the Supreme Administrative Prosecution Office (SAPO).

Two SAC representatives attended a seminar "Introduction to State Aids" organised by MoF on 16 May 2003.

Enforcement Record

Transparency

Bulgaria will fulfill the EC request in CONF-BG 9/03 by ensuring that the State Aid Inventory and the 2003 Annual Report cover the State aid measures in force granted in Bulgaria.

In April 2003, based on an enquiry from the European Commission, a review process was initiated - aiming to identify tax measures, which by their nature could be qualified as State aid. As a result of meetings between MoF experts (Tax Policy Directorate, General Tax Directorate, and State Aid Department) and CPC experts, in January 2004 a table consisting of 25 fiscal measures was produced.

The adoption by the CPC of decisions on the notifications already made will result in further completeness of the Central State Aid Inventory, containing all aids assessed by the Commission, and the Annual Report on aids granted in Bulgaria in 2003.

Enforcement Practice

The Commission on Protection of Competition makes substantial efforts to ensure that the enforcement of the SAA provisions is in line with the *acquis*.

The CPC provided to the EC detailed information on its State aid enforcement record for 2003 in the form of a table with all decisions adopted with basic information as well as check lists of most decisions. The CPC is working towards further improving the expertise

and quality of its decisions taken under the SAA. The following factors contribute to this improvement: the experience gained by part of the staff from past training and in the practical application of the SAA; the availability of the acquis in the Bulgarian language, the extensive State aid materials at the Commission's library, the unlimited Internet access available to all experts and the State aid web site of MoF's State Aid Department.

The assessment, which the EC has been making for three years now on the enforcement record of the CPC in the state aid area, is also among the major contributors to improving the quality of the decisions adopted. The EC's questions and comments on particular decisions have been both corrective and instructive as to how the State aid rules should be most accurately interpreted.

A number of activities (consultations, training, internship) is forthcoming in 2004 within the PHARE 2002 Twinning project, the aim of which is to increase the experts' knowledge in the State aid area and ensure acquis-conforming enforcement.

The CPC strictly applies the procedure laid down in SAA and the implementing Rules. This is confirmed by the review carried out by the "Supervision and Legality" Department of the Supreme Administrative Prosecution Office on the procedural legal conformity of CPC's State aid decisions under the SAA and the Rules Implementing the SAA. The review covered the period 2002 – 2003. The review ended with the finding that the Commission had carried out its investigations and had taken decisions on the basis of these investigations in conformity with the procedural provisions laid down in the SAA and the Rules Implementing the SAA. Thus the conclusion can be made that the administrative acts issued by the CPC under the State Aids Act are lawful, with respect to the procedural provisions.

Notification obligation of all future aids to the CPC

Further to what has been stated in document CONF BG 5/03, Bulgaria provides the following new information on the measures taken to ensure compliance with the notification obligation:

Parallel to the opening of the 2004 budget procedure, the Ministry of Finance and respectively the State Aid Department sent letters to all directorates and agencies within the structure of the Ministry of Finance, to the first level spending units of budget funds and to the 28 district administrations in order to recall the obligations resulting from the provisions of the State Aid Act and its Implementing Rules with regard to the obligation for preliminary notification of all aids, which will be provided under the 2004 State Budget.

On the grounds of Art. 58 of the Rules for Organization and Activities of the Council of Ministers, the State Aid Department and the CPC are preparing opinions on the drafts of all laws, regulations and administrative acts related to the provision of state aid.

In October 2003 the General Secretary of the CM reminded all institutions submitting draft laws, draft secondary legislation and administrative acts to the Council of Ministers of their obligation to notify the CPC in advance.

To ensure compliance with the above obligation, on his part the Deputy Minister of Finance instructed the heads of all structural units and agencies within the MoF to coordinate with the CPC in advance the drafts of laws, draft secondary legislation and administrative acts which include measures that might be defined as state aids.

CPC's opinions on draft laws become part of the complete dossier of the particular draft, which is brought by the CM to Parliament for consideration and adoption. In furtherance of its remit, having given its opinion on the draft, the CPC continues to play a role in the legislative process by participating in the meeting of the Economic Commission of Parliament. An example of this arrangement is the Law for amendment of the Investment Promotion Act. As the EC had certain comments as regards the initial draft, some texts of the draft had to be revised to ensure consistency with the *acquis*. A Commissioner from the CPC was invited to attend the discussions on these changes at the Economic Commission of Parliament in January 2004. The tendency is to continue this practice in future.

The dissemination of knowledge on State aid legislation, the popularization of the importance and benefits deriving from the control over the granting and using of State aids are part of the activities under the 2002 Phare twinning project which will contribute to the observance of the notification obligation. Most of these activities will be carried out in 2004. For instance, in 2004 it is envisaged to elaborate a strategy for a PR campaign designed to clarify and disseminate state aid rules through regular publications and weekly updates of the MoF's State Aid Department Internet site. In particular, it is foreseen to train the representatives of NGOs, business associations, managers of state companies, etc. for raising their awareness on state aid, thus help ensure adherence to the rules.

The imposition of sanctions for failure to comply with the notification obligation, as well as the recovery of unauthorized state aids granted are also forms of prevention, which the CPC will pursue in its practice. The PHARE 2002 Twinning will provide training to the CPC on how to detect unnotified aids.

Alignment of existing aids to SAA requirements

Bulgaria has completed the alignment with SAA requirements of aid measures existing at the time of SAA's entry into force, both at national and municipal level.

As regards the existing fiscal measures, they are presently being aligned with the SAA.

By introducing appropriate legislative changes, Bulgaria will align those fiscal measures with the SAA and *acquis*.

Bulgaria's efforts to align fiscal measures with the *acquis* will also be supported by experts from DTI – twinning partner under the PHARE 2002 project. The project foresees a thorough review of the existing relevant national legislation on state aid and its alignment with the state aid *acquis*.

A working group has been set for this purpose between representatives of MoF, CPC and other institutions. The working group had its first meeting in December 2003. The project

also envisages DTI experts - on the CPC initiative - to render advice in the evaluation of existing aids compatibility with the *acquis*.

Fiscal measures, deferrals and cumulation

Fiscal measures

Bulgaria is working intensively to fulfill the recommendation given in CONF BG 9/03 and ensure comprehensive control on all fiscal measures. In 2003 Bulgaria undertook a thorough screening of all laws (current, abolished or draft legislation) that could potentially contain fiscal measures.

In January 2004 the screening results were put together in a table showing which legal provisions are currently in force, how many of them contain general measures and how many of them should be qualified as state aids. Some measures have already been evaluated by the CPC in its decisions, however, following consultations with the EC Competition services, the Commission will revise the assessment of two of these decisions, because they are incorrect.

All fiscal measures identified in the table have been already notified to the CPC. The CPC will assess the cases in 2-month period as stipulated in the SAA, but not later than 01.05.2004. The CPC assessment process gave start to the implementation of the time-schedule for the necessary amendments to the Bulgarian legislation.

In 2005 all incompatible fiscal measures will be gradually aligned with the *acquis*.

The definition of the exact further steps under the time-schedule for alignment, as well as the drafting of the specific legal texts, will be effected in close collaboration with the EC advisers under the twinning assistance.

Individual tax benefits

From the review made of the tax legislation to date, only one tax aid scheme has been identified (Par. 60 of the Transitional and Concluding Provisions of the Law on Corporate Income Tax) which will expire after Bulgaria's accession to the EU (1.1.2007), namely in the end of 2007.

The CPC requested and the MoF provided information, according to which only one person benefited from this preference in 1999 – 16 871 002 BGN, and one for the 2000 – 15 570 084 BGN. In 2001 the number of beneficiaries was 15 -33 338 168 BGN, and 38 undertakings benefited from the measure in 2002- 34 802 335 BGN.

The 2003 data is not available yet, because taxpayers are required by the Corporate Income Taxation Act to submit their 2003 tax returns by March 31, 2004.

Bulgaria declares that no individual tax benefits under this scheme will be provided after the date of accession.

Payment deferrals

The legal basis for deferrals, including tax liabilities, social security payments and customs levies is contained in the Tax Procedural Code (TPC), Art. 147-152.

To ensure full control on these deferrals, the CPC has signed an agreement with the General Tax Directorate, within the framework of which a review was made on the deferrals granted from the enactment of these TPC provisions in 2002 until the end of 2003. The review found that part of the deferrals granted are under the *de minimis* threshold. To avoid any omission or failure to consider other types aid granted to the same beneficiaries within the 3-year period, MoF's inventories were screened for information on *de minimis* aids and assessed aids. The screening report shows that neither of the undertakings that had received *de minimis* deferrals had received aid in any other form within the three-year period stipulated in the SAA.

Having identified the number of deferrals granted under the *de minimis* threshold, the General Tax Directorate undertook to notify these to the CPC. By 01.02 2004 the process is already under way with several notifications submitted for evaluation.

Under the Agreement with the General Tax Directorate, notification of deferrals under the TPC is an indispensable condition for their future authorization. To overcome the problem with the access to tax secrets of undertakings before the amendments to TPC Art. 12 whereby CPC will become officially authorized to access such information – the applicants will provide declarations voluntarily waiving the tax secrecy of their information for the purposes of CPC assessment.

In addition to these declarations, the prospective beneficiaries of TPC deferrals will, in future, be required to submit a statement showing whether or not they have received any other aids during the preceding three years.

Notwithstanding the efforts made to control deferrals under the TPC, Bulgaria acknowledges that the approach to assess only deferrals above the *de minimis* threshold is no more than a temporary measure dealing with already granted state aids.

Bulgaria undertakes to change its legislation, and to include the possibility for judicial review of administrative acts authorizing any deferrals, in order to align it with the *acquis*. Liable to notification will be only exceptional cases not falling within the general rules. The aim of the envisaged legislative change will be to eliminate the possibility for administrative discretion and selective treatment by defining conditions for deferral based on maximally objective criteria. This will be achieved by explicitly listing the criteria for authorizing any deferrals in the secondary legislation.

Following the analysis on the legislation in force, Bulgaria declares that there are also specific legal deferral procedures that exist - other than the general procedure for deferral of tax and public liabilities under the TPC. These specific arrangements are contained in the Social Security Code (SSD).

In the SSD, the terms and conditions for deferral are governed by Article 116, according to which deferrals are subject to interest defined in accordance with Article 113. The latter article stipulates that deferral interests must be equal to the basic interest rate plus 20 percentage points, i.e. the rate is based on market terms and respects the private creditor principle, which proves that the interest in this case does not contain an element of state aid.

The Customs Act and the Rules Implementing the Customs Act do not foresee any special rules for deferral of customs levies, which are thus subject to the general deferral procedures laid down in the TPC. The only option for postponing the payment of customs levies is foreseen in Article 209 of the Customs Act, and the specific terms and conditions therefor are defined in Art. 840 – 843 of the Rules Implementing the Customs Act (RICA). According to RICA Art. 840, the maximum postpone period is 30 days without any possibility for extension.

Bulgaria takes account of the fact that deferrals, in addition to being granted on legislative grounds, may also be contractually agreed between large State-owned undertakings such as the National Electricity Company (NEC), Bulgargaz and others, on one hand, and their debtors, on the other hand.

To ensure that its control covers the second type of deferrals, the CPC requested from the MoF and received full information on the deferrals, which large State-owned undertakings, such as NEC, Bulgargaz, the Bulgarian State Railways (BDZ), etc. have granted to their debtors. Seen from the data obtained, in addition to Kremikovtzi (whose deferrals the CPC assessed by its Decision 6/03.02.2004), there is only one other undertaking – Electrorazpredelenie Sofia Oblast EAD (Electric Power Distribution-Sofia District Ltd.) – which has been granted a deferral until 31.03.2008, i.e. after the date of Bulgaria's accession to the EU. The CPC will require this deferral to be notified in order to assess its compatibility with the SAA.

As part of the effort to exercise full control on any deferrals, the CPC Chairman disseminated on 12.02.2004 letters to the line ministries holding majority stock in the capital of State-owned undertakings. The letters require the ministries to fulfill their obligation to notify to the CPC any deferrals before they are authorized by the State-owned firms, so that the CPC evaluates their compatibility with the SAA, the Implementing Rules and acquis.

An example of already evaluated deferrals of liabilities payable to both State institutions and State-owned undertakings are two of the recent CPC decisions on the aids extended to Kremikovtzi in relation to its privatization (assessed by Decision 175/03) and the aid granted to Kremikovtzi from 1998 through 31.12.2003 by deferring various liabilities of the company (assessed by Decision 6/03.02.2004). The so-assessed liabilities are due to both State bodies and institutions (including the National Social Security Institute, the General Tax Directorate, the State Revenue Agency, the Privatisation Agency and the Agency for

Post-Privatization Control, concession fees due to the Ministry of Economy, payables under environmental protection loans granted by the Ministry of Environment and Waters, funds owed to the MoF for elimination of past pollution), as well as to public undertakings, namely NEC, BDZ and Bulgargaz.

The CPC considers that in assessing these aids, account has been taken of the specific rules for sensitive sectors prevailing at the time of granting the aid, as these apply to the steel industry, too.

Bulgaria commits to align as far as possible by the end of 2005 its legislation to allow deferrals in line with the state aid rules. The remaining deferrals, not falling within the general rules, will be notified in advance to the CPC.

Planned schemes for foreign investments

The draft Incentive Investments Law from May 2003, which provided fiscal aid schemes for investor's incentive, is completely abandoned.

The current Draft Law for amendment of the Foreign Investment Act which is in the Parliament for second reading does not envisage fiscal aid schemes or other incentives for investments which are incompatible with the *acquis*.

Bulgaria declares that in future it will not introduce new aid schemes incompatible with the *acquis*.

Control on the cumulation of various forms of aid

To ensure control of the cumulation of various forms of aid, since August 2002 a separate inventory of *de minimis* aid exists at the State Aid Department under the MoF for easier and more effective tracing of the accumulation of *de minimis* aid granted over a period of 3 years.

The CPC carries out cumulation control between different aid measures in compliance with Chapter X of SAA Implementing Rules, which is reflected in its Decisions nom. 194, 195/2002 and 103/2003.

In gathering information on any previous aids granted to undertakings applying for new aids, the CPC refers to the obligation, which the SAA imposes on all public bodies and undertakings to provide all information available with them as necessary for the evaluation. A routine practice of the CPC is to invite, either at the time of submitting the notification or in the course of its assessment, declarations from the potential beneficiaries as to whether or not they have received any form of aid during the preceding three years.

According to the internal procedures of the General Tax Directorate (GTD), the firms will be obliged to submit similar past-aid declarations as part of their applications for deferral.

On the other side, GTD notifications to the CPC will contain, in addition to the declaration submitted by the firm, an ex-officio report issued by the GTD in the form of excerpts from MoF's State aid inventory, confirming the statements made in declaration as regards past aids.

Privatization and restructuring

To insure prior control on the provision of any state aids in the framework of privatization agreements, on 12.02.2004 the CPC signed an Agreement with the Privatization Agency (PA). Art. 3(2) obliges the Agency, whenever a privatization deal includes rescission or deferral of past debt, transfer of assets or any other form of state aid, to notify the CPC so that these are assessed before the PA signs the privatization agreement.

With regard to the need for ex-post control on amendments or infringements of privatization agreements, in January 2004 the CPC initiated a meeting with the Agency for Post-Privatization Control (APPC) on the need to provide the CPC with information relating to the provision of state aids by addenda to privatization agreements or in any other form.

An example of CPC's cooperation with PA and APPC are the Commission's two decisions for assessment of aids granted to Kremikovtzi – Decision 175/03 and Decision 06/04. The key evidences for these assessments were provided by PA and APPC, as most of the issues related namely to the privatization agreement and its fulfillment.

Rescue and restructuring aid

To ensure the proper implementation of acquis in this field, Bulgaria will amend the SAA Implementing Rules in order to fully harmonize the Rules with the acquis. The Draft amending the SAA Implementing Rules will be adopted by the Council of Ministers by 30.09.2004 at the very latest.

CPC makes efforts to apply correctly the Community's Rescue and Restructuring guidelines. In assessing such aids the CPC uses the form applied by the EC for the assessment of restructuring plans.

To ensure that cases involving such aids are decided in line with the acquis, the CPC will rely on day-to-day support from the PHARE experts as well as on its daily contacts with EC staff to avoid inconsistencies with EC practice.

Aid for the steel sector

Bulgaria will submit to the EC the National Programme for Restructuring and Development of the Steel sector, including Viability Plan for "Kremikovtzi" and business plans of the steel undertakings in March.

The chapter covering the state aids in the National Programme includes also an assessment of aids granted from 1998 to date, and, of the state aid planned during the grace period. CPC and MoF representatives participate in the working group preparing the National Programme.

The CPC adopted two decisions (No. 175/2003 and No. 06/04) on the assessment of all state aids granted to “Kremikovtzi” steel company since 1998. The state aids have been assessed as two types of compatible aid. The first one is aid for the closure of excess capacity, the implementation of which is enabled by the Additional Protocol to Bulgaria’s Europe Agreement, extending the transitional period in respect of state aids granted for restructuring of steel undertakings for 8 years as from 01.01.1998.

The second type of compatible aid is the aid for making good past pollution, provided by the National Environment Protection Fund in the form of three interest-free loans.

Bulgaria commits to grant restructuring aid in compliance with the EAA and Community rules on state aid for steel sector, and to confine such aid only within the grace period.

Coal and District heating

Bulgaria considers that the coal mined by the companies envisaged to benefit from state aid fall within the scope of Regulation 1407/2002. A survey will be provided to confirm this statement.

Since the entry into force of the SAA, the CPC has been regularly assessing the aids extended to the sector, including the aids proposed to be granted in 2004 to coal mining companies. The assessment will be made on the basis of the individual restructuring plans provided to the CPC.

Bulgaria commits to cease, by the end of 2005, the state aids granted for restructuring or production activities to coal undertakings. This is foreseen in the National Programme for restructuring of the coal sector.

After the end of 2005, funds will only be provided for abandonment of mining sites, securing the mining area and cleanup of pollution, respecting the rules laid down in the acquis.

Given that the district heating service is provided to residential consumers at prices fixed by the State, the discharge of this service of public interest needs to be subsidized on annual basis. Under Chapter “Energy”, Bulgaria has committed to discontinue these subsidies by the end of 2005, and Bulgaria does hereby confirm this commitment.

District heating subsidies are notified annually in the context of the annual budgeting process. Currently the CPC is assessing the subsidies extended to district heating companies in 2004.

Procedure with regard to existing aids after accession

Bulgaria will continue to provide on a regular basis every 6 months updated list of the aids, which the CPC has assessed as compatible for the purposes of the procedure foreseen in Treaty Article 88(1).

Community's transparency directive

Bulgaria declares that by the date of accession the Transparency Directive will be fully transposed in the Bulgarian legislation.

In order to ensure full harmonization of Ordinance No. 6/2002 on the Procedure for Monitoring and Ensuring Transparency of State Aids, a working group has been set up at the request of the Minister of Finance. The working group includes, besides experts from the CPC, representatives of MoF's State Aid Department. The draft has been prepared and submitted for expertise to the DTI twinning consultant.

Bulgaria took into consideration the recommendations of DTI experts and reflected their comments—in the draft ordinance. The revised ordinance was presented at DG COMP for comments and after that it should be approved by the Minister of Finance and published in the State Gazette before long.

In compliance with the requirements of Minister of Finance's Ordinance No. 6 on the procedure for monitoring and ensuring transparency of state aid, the State Aid Department initiated joint actions with the State Receivables Collection Agency (SRCA) and the Public Internal Financial Control Agency (PIFCA) for ex-post control of the state aids approved by the Commission on Protection of Competition

By proposal of the State Aid Department, agreements for joint activities with the above mentioned Agencies have been reached to ensure routine control on the undertakings, to which state aids have been granted. A review was made on the grounds of Art. 7, item 3 of Ordinance 6, covering aids declared compatible by the CPC in decisions awarded prior to the entry into force of the State Aid Act.

On the premises of the Public Internal Financial Control Act, PIFCA carried out a dedicated audit on the status and level of utilization of state aids granted to the companies after the CPC had ruled the aids compatible with the SAA.

Audits, which covered 21 decisions of the Commission, were conducted in 20 Territorial Directorates across the country under criteria coordinated in advance with the Internal Audit of Companies Directorate.

As regards the companies falling outside of the scope of Art.4 of PIFCA (i.e. undertakings where the State's stockholding is below the level controlled by the Agency), the State Aid Department in MoF took joint measures with SRCA, and 11 existing agreements on deferral of bad debts were amended to include the requirement for filling out and submitting to the State Aids Department, once in every six months, an approved reporting form on state aid status.

The State Aid Department is currently monitoring ex-post more than 42 cases of compatible state aid granted. The forms were presented by PIFCA and the data was entered in the Ex-Post Inventory created in the last trimester of 2003. The audit did not come across serious infringements of the pertinent CPC decisions, nor of the conditions for granting the aid.

Bulgaria will continue to exercise ex-post control on the state granted, and will in a timely fashion reflect the so-collected data in the dedicated Ex-Post Inventory. Any infringements will be promptly advised to the CPC, which will take the measures foreseen in the State Aids Act.

State monopolies of a commercial character

Bulgaria confirms that at present there are no monopolies of a commercial character, while the Constitution contains detailed provisions on activities for which State monopoly can be established by law.

No state monopolies of a commercial character incompatible with the acquis will be created in future.

Public undertakings and undertakings with special and exclusive rights

Bulgaria confirms that both the 1998 Law on Protection of Competition, as amended, and the 2002 State Aid Act fully apply to public undertakings and undertakings with special and exclusive rights, in compliance with Treaty Article 86 and the acquis definition of an “undertaking”.
