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Corporate Changes in the Bulgarian Market due to the Compliance of the Bulgarian Law with the European Legislation

Elaborated by the University of Macedonia
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Contents

Introduction

Bulgaria applied for membership in the European Union on 14 December 1995. On 30 March 1998 the accession process was formally launched during a meeting of the Ministers for Foreign Affairs of the fifteen EU Member States, the ten Central and East European applicant states and Cyprus. Prior to this meeting specific Accession Partnerships were adopted to support the applicant countries in their preparations for membership.

The Accession Partnership adopted in 1998 was revised in 1999, taking into account further developments in Bulgaria. This Accession Partnership has been decided by the Commission, after consulting Bulgaria and on the basis of the principles, priorities, intermediate objectives and conditions, which have been decided by the Council.

The present study refers to the Bulgarian law and to the European Acquits in the field of enterprises and proposes recommendations in order for the Bulgarian law to be consistent with the European Acquits.

PART I: Bulgarian Law

A. Company law and business organizations

1. Forms of business organizations

The following forms of business organization exist under Bulgarian law:

- An unlimited (general) partnership
- A limited partnership
- A private limited company
- A joint stock company
- A public limited partnership
- A sole trader
- A joint venture
- A branch
- A holding
- A co-operative
- A representative office

The forms of business organizations, except representative offices, are governed by the Commerce Act 1991. Representative offices are regulated by the Foreign Investments Act 1997. The most appropriate type of company in order to conduct business in Bulgaria is in the form of a limited company, including a one-member private limited company, and a joint stock company. The specific type of company must be recorded into the commercial register of the relevant district court.

Private limited company (OOD) is a commercial company, whose capital is formed in quotas (sometimes referred to as shares) of its members/shareholders. The members' liability is limited to the amount of the capital they have subscribed. A private limited liability company must be found by at least two persons, including foreign natural or legal persons. The minimum authorized capital is BGN 5,000. Each share must have the value of at least BGN 10 and must be divisible by 100. At least 70% of the capital must be paid up before registration. Contributions to the foundation capital can be paid in cash or in kind. The general meeting of members/shareholders, which must be held at least once a year, and a manager (or managers) are the statutory bodies of an OOD.

A one-member private limited company (EOOD) is owned by one person, including a foreign individual or legal entity. The sole owner exercises the powers of both the general meeting and the manager, unless another manager has been appointed to run the company. The sole owner's liability is limited to the amount of the capital subscribed (as to capital requirements referred to OOD).

Both OODs and EOODs must prepare a balance sheet and financial statements each year.

A Joint-stock company (AD) is a company whose capital is divided into shares, each of a par value of at least BGN 0,1. Any larger par value must be divisible by 100. The company is liable towards its creditors to the extent of its assets. An AD is required to have at least two shareholders, including foreign natural or legal persons. The only exception to this rule occurs when the State is the only founder and therefore the sole owner of the whole capital of the company. In this case we have a one-member public limited company (EAD).

The minimum capital of an AD is BGN 50,000 or BGN 100,000 in the case of capital raised by subscription. In general, contributions to the foundation capital of an AD may be paid in cash or in kind and at least 25% of the capital must be paid up on foundation. A joint-stock company may issue either registered, bearer or preference shares.

The Management bodies of an AD are the general meeting of shareholders, which must be held at least once a year, and the board of directors (one-tier management system) or the general meeting, supervisory board and managing board (two-tier management system). An AD must be entered into the commercial register of the relevant district court and must prepare a balance sheet and financial statements each year.

2. Formation and registration of a company

A company is deemed incorporated from the date of its registration to the commercial register of the relevant district court. The application for registration, accompanied by certain documents required by the law, is filed in the court by the elected managing body.

In order to be registered a private limited company must: a) produce its articles of association (memorandum of association for one-member public limited companies), b) have appointed a manager (or managers) and c) have paid up at least 70% (BGN 3,500) of its authorized capital, including at least one-third of each member's quota. This information together with details on the management etc. is recorded in the commercial register and promulgated in the State Gazette.

In order to be registered a joint-stock company must: a) have adopted its articles of association, b) have its authorized capital fully subscribed, c) have paid up at least 25% of its authorized capital, d) have elected a board of directors, supervisory respectively and e) have met any other statutory requirements. Details on the business name, seat and head office address of the company, the managing bodies etc. are recorded in the commercial register and promulgated in the State Gazette.

B. Law on SMEs

The objective of this Law (Published, State Gazette No. 84/1999; amended, SG No. 80, 92/2000) is to establish a propitious institutional, regulatory, administrative and financial environment for setting up and developing small and medium-sized enterprises in the Republic of Bulgaria.

1. Definition of SMEs

According to Article 3 small enterprises are the enterprises which:

i. have an average annual number of up to 50 employees;

ii. have an annual turnover not exceeding BGN 1 million or a fixed tangible assets value not exceeding BGN 800 thousand; and

iii. are not dependent.

And medium-sized enterprises are the enterprises which:

i. have an average annual number of up to 100 employees; and

ii. have an annual turnover not exceeding BGN 3 million or a fixed tangible assets value not exceeding BGN 2.4 million; and

iii.are not dependent.

Micro-enterprises are the enterprises which have an average annual number of up to 10 employees.

The enterprises of public companies are not considered as small and medium-sized enterprises as provisioned by Art. 83 of the Law on Securities, Stock Exchanges and Investment Companies. The same applies to the enterprises carrying on by way of occupation banking or insurance transactions, transactions in securities, organize gambling games or produce and trade in wine and spirits.

2. The Agency for Small and medium-sized enterprises

The law foresees the creation of the Agency for Small and medium-sized enterprises, which will set and pursue the State policy for the promotion of them. The Chairman of the Agency shall be nominated by the Decision of the Council of Ministers and shall be appointed by the Prime - Minister.

The Chairperson of the Agency has the following responsibilities:

i. co-ordinates the activities to implement the State policy in regard to small and medium-sized enterprises and collaborates in substantiating the interaction between governmental bodies, the associations in support of small and medium-sized enterprises and the local self-governance structures.

ii. elaborates and reviews draft legal instruments and international draft international treaties providing for certain rights and/or obligations of small and medium-sized enterprises; also analyze existing legal instruments with regard to their impact on the competitiveness of small and medium-sized enterprises;

iii. develops and co-ordinates the preparation and execution of projects and programmes for the promotion of setting up and development of small and medium-sized enterprises;

iv. holds educational training events and seminars for small and medium-sized enterprises;

v. co-operates in the provision of information and consulting services to small and medium-sized enterprises, including the publishing of bulletins and other publications for information and references concerning small and medium enterprises;

vi. analyzes the status and development of the small and medium-sized enterprises in the Republic of Bulgaria by the means of preparing an annual report to be adopted by the Council of Ministers and further submitted to the National Assembly;

vii. facilitates the investment in small and medium-sized enterprises on the part of foreign physical persons and legal entities;

viii. takes part in the preparation of the Republic of Bulgaria for accession to the European Union, focusing on the issues relating to small and medium-sized enterprises;

ix. collaborates with domestic, foreign and international governmental and non-governmental organizations and bodies working for the promotion and development of small and medium-sized enterprises;

x. keeps records of small and medium-sized enterprises;

xi. undertakes other activities to promote the development of the small and medium-sized enterprises.

The Agency has built up an information system. It maintains a data-base for:

i. the small and medium-sized enterprises in the Republic of Bulgaria;

ii. the associations supporting small and medium-sized enterprises;

iii. the organizations and people providing information and consulting services to small and medium-sized enterprises;

iv. projects, contests/bids, programmes and training courses for small and medium-sized enterprises;

v. investment options in or by small and medium-sized enterprises;

vi. international and foreign programmes and credit lines for credit extension to small and medium-sized enterprises.

This Information system constitutes part of the administrative communication and information infrastructure of the executive power.

3. The Advisory Board for Small and Medium-Sized Enterprises

There is also the Advisory Board for Small and Medium-Sized Enterprises which:

i. deliberates on the standing and the promotional policy for setting up and development of small and medium-sized enterprises and make proposals with respect to its priority lines for the respective year;

ii. analyzes the results of studies on small and medium-sized enterprises, by sector and by industry, and contributes during the preparation of the annual report under Art. 6;

iii. makes proposals for improvement of the regulatory framework governing the social relations connected with small and medium-sized enterprises;

iv. secures the public access to information about legislative initiatives and the participation of entrepreneurs and their associations in the discussion of draft laws and other legal instruments.

It may also form task forces for specific issues falling within its competence.

4. Measures to promote the establishment and development of SMEs

The establishment and development of small and medium-sized enterprises is promoted via:

i. financially supporting their operations;

ii. guaranteeing part of their credit risk on extended credits earmarked for small and medium-sized enterprises;

iii. development and execution of programmes for small and medium-sized enterprises;

iv. information and consultative servicing of the small and medium-sized enterprises;

v. access to public orders as regulated by the Law on Public Procurement;

vi. educational projects for professional qualification and the acquisition of entrepreneurial skills;

vii. privatization of state-owned and municipal enterprises;

viii. leasing of real estate -- privately owned by the state and by municipalities;

ix. setting up of infrastructure in support of small and medium-sized enterprises and fostering the interaction between them;

x. building up technological parks and business incubators for the development of small and medium-sized enterprises;

xi. other activities and measures for the benefit of small and medium-sized enterprises stipulated in other laws.

Priority promotional treatment enjoys:

i. manufacturing small and medium-sized enterprises;

ii. high-technology small and medium-sized enterprises;

iii. export-oriented small and medium-sized enterprises;

iv. small and medium-sized enterprises creating jobs in regions with unemployment above the country's average;

v. small and medium-sized enterprises carrying out tourist activities;

vi. small and medium-sized enterprises -- health care establishments;

vii. small and medium-sized enterprises performing by way of occupation transportation activities;

viii. newly constituted small and medium-sized enterprises;

ix. small and medium-sized enterprises involved in agricultural production;

x. small and medium-sized enterprises involved in environment conservation activities;

xi. small and medium-sized enterprises involved in research and development activities.

Financial and technical assistance for the development of five regional business center (Varna, Dupnitsa, Shumen, Sliven and Haskovo) was granted in 1999 for further improvement of their information and consulting services for SMEs within the framework of the project BG 9702/0202 under Phare Program. In 1999 the Agency on SME signed an agreement for cooperation with the regional agencies that are members of the Bulgarian association of the Agencies of Regional Development, continuing the initiative for creation of a regional network for support of SMEs.

In the field of formation of entrepreneurial skills the ''Professional Qualification and Unemployment'' (PQU) Fund granted EURO 1.132.000 for starting an independent economic activity. Within the framework of the program ''Start your business'' held in 5 regions in Bulgaria PQU Fund granted EURO 23.000. Furthermore, the Agency on SME contributed to the development of entrepreneurial skills. In 1999 two training courses were organized in Athens, where Bulgarian entrepreneurs had the opportunity to meet their Greek partners.

It should be mentioned that the draft of the National Plan for the development made in 1999 provides a number of measures for encouraging the development of SME in Bulgaria for the period 2000-2006. The approved National plan for Regional Development (State Gazette, issue 106/1999) and the regional development plans included in it also provide a complex of activities in support of SME in order to create an environment favorable for the entrepreneurs and for fostering economic activity.

5. Financial Support for the Small and Medium-Sized Enterprises Promotional Activities

The State supports the activities promoting the establishment and development of small and medium-sized enterprises securing funds for:

i. development and implementation of projects and programmes;

ii. training courses and seminars;

iii. information and consulting services on small and medium-sized enterprises, publishing materials for reference and information;

iv. maintaining the register of small and medium-sized enterprises;

The money are expended by the Agency.

''Encouragement Bank'' PLC started its activity in September 1999 by granting credits mainly to SME. By the end of 1999 it has granted credits to SME up to BGL 665.500. The Agency on SME has developed a concept on the creation and functioning of a guarantee fund aiming partial covering of the

risk on credits granted to SME. Furthermore, in compliance with an Agreement with the American Agency on International development (USAID) and United Bulgarian Bank (UBB) a guarantee scheme of the Bank is developed.

6. Small and Medium-Sized Enterprises' Participation in the Privatization of State-Owned and Municipal Enterprises

In the case of privatization of integral parts of state-owned and municipal enterprises, whenever the buyer constitutes a small and medium-sized enterprise, it is entitled to acquiring the property under rescheduled payment conditions, upon which:

i. the initial sum is paid on entering upon the contract and amount to 50% of the price;

ii. the payment is rescheduled for a period of three years.

In the case of privatization of unfinished building sites, whenever the buyer constitutes small and medium-sized enterprises, it is entitled to rescheduled payment of the price for a period of five years. The initial payment accounts to 30% of the price of the site and is paid on entering upon the contract.

C. Labour force and employment regulations

1. Remuneration and non financial means for motivation

The full remuneration and salary structure is set up according to the Labour code in Bulgaria. The total cost of employment consists of the basic salary plus the social security payments plus a number of other smaller taxes. Salaries in the private sector are usually higher than in the State sector. It is not uncommon for workers and managers in the private sector to be paid a higher salary than those of many senior government officials. There is a tendency for new companies coming to Bulgaria to pay what they consider a fair salary, lower than in their home country, but still higher than is normally found in Bulgaria. This problem is compounded when applicants for jobs state their present salary at a higher level than they actually are. For example they might say their salary is the net figure when in reality it is the gross or they might include overtime and bonuses as part of the basic salary. It is difficult for a new investor to be able to judge what the real situation is.

The Bulgarian International Business Association (BIBA) provides, every year, a very detailed set of salary tables for most of the industry sectors including consulting, retailing and manufacturing. These figures are averaged in most cases over 20 or 30 companies and give a good guide to the real salary figures. The BIBA salary survey also gives information on the levels of bonuses, provision of cars and telephones and other components of the full remuneration package. It should be remembered that any additions to the basic salary are taxable. One must be careful that these incentives are not included as part of the basic salary otherwise they will be included in calculating the Social Security taxes. If the incentives are given as extras to

the basic salary then they are not counted for Social Security and the employee is liable for taxation. It should be noted that salaries outside Sofia are lower for all positions than those for workers in Sofia.

The most common forms of incentives are:

- Free medical service
- Food vouchers
- Transport cards for the public transport
- Clothing allowances
- Discount on company's product

Most of the senior managers frequently get a car, telephone or representation allowances and often club membership.

2. Employment relations

The relations between the company and the workers in Bulgaria are governed by the Labour Code. All Bulgarian citizens have a right to work. Management cannot make any restriction on the workforce made by race, sex or any other discriminating factor. The Constitution and the Labour code prevent such discrimination.

Labour relations within the country at a national level are governed by agreements between the representative trade unions, the government and representative organizations of the employers. At the work level, agreements are made between the trade unions and the employer. There are a number of representative trade unions in Bulgaria: the Confederation of Independent Trade Unions of Bulgaria and Podkrepa and some juridical registered confederations, having rights to participate in collective labor agreements on the enterprise level. Newly privatized companies can expect attempts by the trade union leaders to increase their power within the company. In general this should not be a problem because although in the state industries trade unions theoretically did have much power, in practice their views were rarely listened to. Good managers can have large benefits by working closely with the trade union. The trade union workers tend to listen carefully to the union leaders in a factory. It is found that working with the unions to increase the quality of life of the workforce, work hygiene and the safety of working conditions can bring a good working relationship with the unions and hence increased productivity.

3. Employment contracts

Employment relationships are regulated by the Bulgarian Labor Code through employment contracts. The employment contracts between the employee (not under 16-years of age) and the employer can be prepared in written form and should specify the place and nature of work and the agreed salary. It may be concluded for a fixed or for an indefinite period. The law provides an opportunity for transformation of the fixed term contract into one for an

indefinite period, which is a suitable way for both parties to make the relationship more stable and effective. The parties may also choose a trial period of up to 6 months. Other types of employment contracts include those for part time work.

The content of the contract must comply with the mandatory provisions of the Labor Code, concerning the special protection of the employee: working hours, labor remuneration, holidays, safe and healthy conditions of work, social and cultural services, and conditions and requirements for termination of the contract. In the individual labor contracts there cannot be agreed worse conditions than the one in the collective labor agreement. The monthly labor remuneration must not be less than the amount of the minimum labor salary in the country, defined by the Council of Ministers for the respective period of 1 month (from October, 2000 onwards, it amounts to 79 BGN). Payment may be done in advance or twice a month, or as agreed. Income taxes, due and voluntary social security and health insurance contributions are deducted at source.

Together with employment relationship there is the obligation of the employer to provide social security and make contributions regularly at his expense for the employee.

Another way to use the labor force is through concluding a civil contract. The difference between the civil and the employment contract extends to the following: a civil contract is the contract pursuant to which the two parties agree that one of them shall perform an activity that shall produce a result of the assigned activity, while the other shall pay a remuneration i.e. the subject of the contract is the result of the activity and the employer can not specify the working conditions, working time, leaves, etc. More important he/she could not exercise a control. The employer can only specify the particular time of the activity that should be done and set requirements to the produced result. Under civil contract the employee pays 15% Advance Tax defined by the Law for Taxation of the Incomes of Physical Persons but neither the employer, nor the employee pays 4,5% Unemployment Fund Contribution. If the employee has worked only under civil contract and the term of the contract expires, the employee cannot register him/herself, as unemployed and can not receive unemployment severance. Because of those unpleasant results for the employee, the State Labor Inspectorate which provides control over the employment relations, can impose a penalty if the subject of the concluded civil contract is not as the aforementioned, and the employer attempts to conceal its employment relationship (i.e. not paying the Unemployment Contribution).

Termination of the contract is a significant point in labor regulation. The law provides three possibilities: general grounds, special grounds for termination with notice or without a notice. Notices should be in writing for a period from 30 days up to 3 months. Each of the parties may terminate the relationship without notice only in the cases listed by the law, so that parties can be protected from detrimental behavior. If notice periods are not observed, the regular party is entitled to compensation to the extent of the gross labor remuneration or real damages caused.

There are special provisions about dismissal and protection against it in favor of some categories of workers. In some cases of terminating a contract, the employer is obliged to choose among employees.

The employer exercises disciplinary power and is still the strongest party at the labor –force market.

4. Social security

The employers must register at the local social security administration within 15 days from the day, they have employed anyone subject to compulsory insurance. Branches that are not financially separated do not register separately. They are included in the registration of their central company. In the case of liquidation, changes in organization or merging, the insurer must report in written form all the changes to the social security authorities.

Public Social Security is obligatory for all employees employed by Bulgarian or foreign physical or corporate bodies within the country. They are secured for all risks.

The code of the social insurance includes insurance for general illnesses, work accidents, professional diseases, maternity leave, old age and death, as well as additional compulsory pension. The main principles are: compulsion and comprehensiveness, solidarity and equality of the insured persons, the fund organization and others.

Compulsorily, all workers and employees are to be insured, no matter if they had labor or civil contracts. An exception of this obligation is possible only if the civil contract was for monthly payment under one minimum working salary (BGN 79)- then the obligation is only for insuring work accidents, professional diseases, disabilities and for general illness and death.

Insurers are the juridical and physical persons, having an obligation, by law, to pay in insurance installments. The amount of the insurance installments is determined by the Law of the Government and Social Insurance Budget.

The distribution of the installments between insurers and insured are at the rate of 80:20 for years 2000 and 2001, 75:25 for 2002, 70:30 for 2003 until the gradual equalization at year 2007 - 50:50. The insurance installments to fund 'Work accidents and Professional diseases' is on behalf of the insurers. On the social insurance expenses, the workers periodically pay in insurance installments. The installments are paid in banks to the respective fund accounts with separate paying orders, as well as when paying salaries as when paying in advance. The part of insurance installments due the insured persons is paid in when remuneration is paid.

The government and social insurance financial resources are grouped in three separate fund -'Pensions', 'Work Accidents', "General Illnesses and Maternity'. The Insurance installments are paid in by the 10th of each month, following the month they apply to.

With the Code of the Compulsory Social Insurance, changes have been made in the Law on Foreign Investments, according to which the workers and employees are insured under the Bulgarian Law.

The same new legal provisions, effective from 1 January, 1998, allow voluntary social security for unemployment which is possible for every Bulgarian citizen above 18 years of age who has concluded a contract for

voluntary social security for unemployment with the especially created and licensed for this purpose social security institutions. Employers may participate in these social security contracts, too. The installments made under the contracts, which must comply with the explicit legal requirements, are deducted from the taxable income of the persons and the taxable profit of the employers.

Public social security provides the following: financial aids and compensation in case of temporary disability due to illness, accident, pregnancy, birth, raising a young child, quarantine, taking care of a sick family member, as well as additions to the salary after labor readjustment of pregnant women and persons with temporarily decreased working capacity when the new job is paid less, pensions in case of disability, age, as well as inheritable pensions of family members in case of death of the person that has provided them, one time aid after birth of a child. In case of labor accident the employers have to pay back the amount of the compensations paid by Public Social Security. Such payments are made within the monthly payments to Public Social Security.

5. Health Security System

The health insurance in Bulgaria is both compulsory and voluntarily. It is a system for a social health protection of the people that guaranties a package of health services and is carried out by the National Health Insurance Fund. The voluntarily health insurance is a supplementary one and is carried out by Joint Stock Companies, registered under the Commercial Law and licensed under the Law on the Health Insurance.

The health insurance contribution is not a subject of taxation. It is the exact amount in percentage on the ground of the gross remuneration is set out in the Law for the Annual Budget of the National Health Insurance Fund. The contribution measuring at 6% is paid by both the employer and the employee in the following proportion:

- for year 2000 and 2001 - 80:20
- for year 2002 - 75:25
- for year 2003 - 70:30
- for year 2004 - 65:35
- for year 2005 - 60:40
- for year 2006 - 55:45
- for year 2007 and after - 50:50

The payments due amount up to 10 minimum labor salaries. The contribution to the National Health Insurance Fund are paid by the employer on a monthly basis and are deducted from the gross remuneration and the financial aids for temporary disability. The employers are obliged on request to submit

information for the insurable income on the ground of which the contribution shall be calculated to the National Insurance Institute.

6. Working hours

The normal duration for a five-day working week is up to 40 hours, and 46 hours for a six-day workweek. The general principle laid down in the Labor Code is that overtime work is prohibited. The code considers as overtime work, the work done by order or with the knowledge of the employer, beyond the normal working hours. There is a governmental institution- Labor Inspectorate, which supervises the use of overtime. In enterprises where organization of work allows, flexible working hours may be established. The period, during which the employee must be at work in the enterprise, as well as the manner of accounting it, shall be specified by the employer. Outside the time of the compulsory presence, the employee may decide on when to begin the working day.

7. Holidays

The employee is entitled to an annual paid leave after 8 months length of service amounting to at least 14 days depending on the length of service. During the maternity leave the employee is entitled to receive her remuneration paid by the National Security Institute budget. Furthermore, the Labor Code allows additional paid leave for raising a child until 2 years of age. During that period the mother is paid an indemnity from the National Security Institute amounting to the minimum salary in the country. There is also a leave for temporary disability during which compensation is paid by the funds of the National Insurance Institute.

8. Disability

Disability is when the employee can not or is hindered from doing his work due to: illness, work accident, professional disease, sanatorium treatment, medical examination, quarantine, taking care of a sick family member, accompanying a family member to a medical institution and also in case of pregnancy and birth for women.

Primary medical aid rendered by the duly chosen personal doctors and dentists is free of charge. The rest of the medical services are chargeable pursuant to a tariff issued by the Ministry of Health. The obligation for ensuring safe and healthy work conditions concerns medical service, special work clothes and measures for preventing and reducing injuries and general illness as a whole. A special law together with the Labor Code elaborates on the obligations of employers to assure healthy and safe work conditions. Employers must undertake at their expense all the necessary statutory measures in order to prevent accidents and avoid their detrimental consequences in case of emergencies. They are also obliged to inform the employees about the risks for their health and safety and appoint one/several persons whose tasks is/are to organize activities for prevention and protection from these professional risks. To facilitate exercising of control, every

employer must declare to Regional Labor Inspectorate his/her activities, number of employees, work conditions, risk factors and undertaken preventive measures when beginning his/her business activity and whenever he/she changes the existing technology.

In the field of health and safety a new Occupational Health and Safety law has been passed by the National Assembly. It obliges the employers whose staff outnumbers 100 employees to establish Occupational Health Services and Health and Safety Committee. The functions of the Occupational Health Services are preventive and prophylactic. The members of the Health and Safety Committee are appointed by the general meeting.

9. Exemption of Some Types of Indemnities under the Labor Code from Insurance Contributions

The exemption of some indemnities is regulated by the Directive on the remuneration elements and the income, on which insurance contributions are made, and on calculating the monetary indemnities for temporary disability, pregnancy and bearing a child. The indemnities are exempt, which are paid to the heirs of the employee, when the death of the testator has occurred as a result of a labor accident, and the employer's financial liability is realized. In the event of a damage inflicted on the employee's health and a limited employer's financial liability, no insurance contributions are made on the indemnity paid. The following indemnities are also exempt from insurance contributions: in case of removal; default in giving notice; termination of the employment contract without notice; termination of the employment contract due to sickness; termination of the employment contract due to entitlement to a full old-age pension; for unused paid annual leave, etc., under Art. 232 of the Labor Code.

10. Insurance of Persons Working without an Employment Contract and Receiving a Monthly Remuneration more than the Minimum Salary

Under these terms and procedures, employers usually hire consultants under a civil part-time contract, to do a specific task under specified terms of reference. The practice so far has proved that it is easier to regulate the relationship between employer and consultant under the terms and procedures of the Obligations and Contracts Act, which allows more flexibility in the bargaining than the Labor Code. The remuneration for the work done by consultants is given, after deducting the operating costs, recognized pursuant to the Natural Persons Income Tax Act, and then the tax due under the same Act is deducted. Such persons are subject to insurance only against disability due to a general disease, old age and death, the amount of the insurance contributions being 32 per cent.

11. Tax Rebates for Insurance Contributions Made

The employer's contributions for additional compulsory pension insurance are recognized as operating costs, pursuant to Art. 161 of the Corporate Income Tax Act. The additional compulsory pension insurance applies to employers, working under particularly difficult conditions, and for some categories of employees, born after December 31, 1959. The ratio between the employee's and the employer's parts is the same as in the case of the compulsory pension insurance. The Compulsory Social Insurance Code regulates the three anchors of the pension reform. The third anchor is the voluntary pension insurance. Employees can pay their contributions in the voluntary pension funds themselves. The Act, however, provides the possibility for the employer to also insure the employees. This possibility is regulated by the collective employment contract, signed by the employer and the representatives of the trade unions or those elected by the employees' general meeting. In this case, the employer owes a tax only on 20 % of the funds set aside for social benefits costs, in the event that the funds set aside for voluntary pension insurance do not exceed 30 levs per person.

12. Employment of foreign persons

All foreign persons who have permanent residence permit or are granted right of sanctuary or refugee status can be employed in the same way as Bulgarian citizens. Temporary work permits are issued by the National Office of Employment of the Ministry of Labor and Social Policy. The work permits are issued for a specified time, job and employer.

The permit is issued after a request by the employer. A work permit is issued for work, requiring specialized knowledge, skills and professional experience. It is valid for the time of the employment contract but not more than one year. The permission can be prolonged several times but within a three year period. For issuing the permit the employer submits to the Labor Authority the following documents:

- Application-request form (2 copies).
- Four photographs of the employee.
- Motivation of the request.
- Certified copy from the court registration of the employer.
- Certificate for tax registration of the employer.
- An inquiry form of the employer on the foreigners working for him.
- Copy from the papers for the payments of contributions to the "Social Security Fund" and the "Qualification and Unemployment Fund" for the previous 12 months.
- Legalized documents for qualifications, education, etc.

- Two copies of an employment contract signed and stamped by the employer.
- Medical certificate form approved by the Minister of Health.
- Other documents necessary due to the specific job requirements according to the Bulgarian labor legislation.
- A fee of six minimal monthly salaries

The time necessary to grant a work permit is between 3 weeks and 1 month. When the employer receives the work permit on the name of the employee who is a foreign citizen, he must pay a contribution to the "Qualification and Unemployment Fund". The amount of the contribution is equal to the amount of six minimal monthly salaries.

The permit can be issued only if there is no Bulgarian citizen suitable for the job. The number of employees who are foreign citizens cannot be over 10% of the total work force. The employer must assure transport expenses for the foreigner's return in case of termination of the employment contract ahead of term, expiry or annulment of the granted work permit.

The law specifies that the permit is issued only on the name of the employee for a specified employer, job, place and a period of time. The employment contracts concluded with a foreign person should specify some other points too: the obligations of the parties about accommodation expenses, medical treatment, insurance, transport from and to the home country of the foreigner.

The law does not allow the issuing of work permits when:

- the applying employer has dismissed within the previous eight months Bulgarian citizens who are suitable for the jobs for which the issuing of work permit is asked;
- the offered work conditions and remuneration are less favorable than the usual ones for Bulgarian employees;
- the offered salary is insufficient to ensure the necessary means of existence; or the Constitution or the laws require Bulgarian citizenship for the job.

Moreover, foreign persons are obligatorily insured only for temporary and permanent disability. For this risk only, the contribution percentage is 22% of the gross monthly salary paid by the local employer. For all other risks, depending on their own choice they can be secured according to the regulations for citizens. The insurance conditions should be settled in the employment contract. Disputes under contract with foreigners may be handled either by Bulgarian or other court, as agreed.

The labor legislation is well-organized and quite comprehensive for foreigners so there could be no problems in the legal aspect of employment relations.

The latest Law on Foreign Investments repealed the limit for transferring foreign currency abroad. In the explicitly enumerated cases, including

received salaries, foreigners may transfer foreign currency freely, after presenting a certificate for paid taxes.

13. Work regulations for foreigners

Entry to the country

A foreign person may enter the Republic of Bulgaria only if they have valid papers including: a passport or other alternative document allowing him to travel abroad and an entry permit - either entry or transit visa. A visa is not required where there is a bilateral agreement between Bulgaria and the native country of the visitor. Currently no visas are required from citizens of European Union member staying for a period of less than 30 days.

Issuing and validity of visas

Entry or transit visas are issued by the diplomatic or consulate offices abroad. Some types of visas can be issued also at the border check-points at the entry to Bulgaria.

The Diplomatic or consular offices issue the following types of visas:

- Visa for airport transfer - the foreigner does not enter the country but only change flights at the airport
- Transit visas - the foreigner should leave the country within 24 hours after the entry with such visa
- Short-term visa - it is only for a single entry for no more than 90 days. The visa is valid for three months after the issuing.
- Long-term visa - it is for multiple entries, up to 90 days each. The visa is valid for no more than 12 months.

Long stay entry visas may be issued to foreign persons that are in contact with a company, organization or any institution registered in Bulgaria and their activities imply multiple visits to the country. Limits of the stay for citizens of countries with which Bulgaria has bilateral agreements, are set in compliance with those agreements. Foreign persons that have an employment contract and valid working visa can acquire a permit for stay in the country for the time of the contract but no more than one year. This permission can be prolonged if there is a new valid working visa. Foreign persons that have legal registration to carry out business activities in Bulgaria can acquire a permit for stay up to one year. The permit can be prolonged every year.

D. Foreign trade regulation

Bulgaria applies a liberal foreign trade regime that meets the WTO requirements. A limited number of goods are subject to administrative control. In accordance with the trade liberalization policy, the number of goods subject to permits has been reduced for another time, following the Council of Ministers Decree No. 233 of 8 November 2000, which establish the foreign trade regime for 2001.

Registration (automatic licensing) means registration of export and import transactions of goods, carried out for statistic purposes. The permit (non-automatic licensing) is a license for transactions of goods; this requirement originates from Bulgaria's compliance with international agreements and respective domestic laws. Registration and permit are required for a limited number of goods.

In order to register or obtain a permit, the company has to submit to the relevant competent Ministry a filled-in certificate form together with other documents like court registration and tax registration certificate, identification code of the BULSTAT register, as well as the relevant documents which verify the data, contained in the filled-in certificate form, such as contract or pro-forma invoice, order, quality certificate, veterinary certificate, certificate of origin. In some cases additional documents are required; for instance, for the import of matrixes for CD production a copyright certificate is required, licenses for trade or production (if necessary) and others may also be required.

The entry*, direct transit, export and re-export of military and special production as well as goods and technologies with possible dual use (civil and military) are subject to particular rules (Bulgaria is a party to the Waassenar Agreement).

*Entry (physical entry, or introduction) means entry of goods into the customs territory of Bulgaria, upon border crossing.

1. Export regulation and Import regulation

Transactions of only few goods are subject to registration and they include:

- polycarbonates; stampers (matrixes) for compact disk production in case of entry. Responsible for registration is the Ministry of Economy;
- hard alcohol drinks in bulk as well as ethyl alcohol with titer less than 80 vol.% in case of entry. Registration is by the Ministry of Economy;
- precious metals and articles thereof with regards to entry, export and re-export. Responsible ministry is the Ministry of Finance;
- some kinds of timber in case of export.

Registration is performed by the Ministry of Agriculture and Forestry. During 2001, permits (licensing) are required for transactions with several commodity groups. Some of the more significant commodity groups include:

- entry, export and re-export of nuclear material, radioactive substances and other sources of radiation, always in compliance with the requirements of the Peaceful Use of Atomic Energy Act. Authority responsible for registration is the Committee for Peaceful Use of Nuclear Energy.

- entry, export and re-export of gunpowder, explosives and pyrotechnic material and products made from them for civil uses; trinitrotoluene (TNT); hunting and sporting arms, gas- and signal- guns and revolvers and ammunitions for these, and in case of physical entry: of sights, laser beam sights and gas sprays, always in compliance with the requirements of the Control of Foreign Trade Activities with Arms and Goods and Technologies with Possible Dual Use Act. Responsible authority: Ministry of Economy;

- import of pharmaceuticals for human medicine, always in compliance with the Human Medicine Pharmaceuticals and Pharmacies Act; Responsible authority: Ministry of Health;

- in case of entry, direct transit, export and re-export of military products or special-purpose products, and of goods and technologies with possible dual use (civil and military) - always in compliance with the Control of Foreign Trade Activities with Arms and Goods and Technologies with Possible Dual Use Act, the Rules for Implementation of the Control of Foreign Trade Activities with Arms and Goods and Technologies with Possible Dual Use Act, and the List of Arms and Goods with Possible Dual Use, determined in Decree of the Council of Ministers No. 205/1998;

- in case of entry, export and re-export of controlled chemical substances used in the production of general anesthetic and psychotropic substances, always in compliance with the Control of Narcotic Substances and Precursors Act, the Ordinance for Precursor Control, said Ordinance been adopted by Decree of the Council of Ministers No.104/2000, etc.

It should be mentioned that on 01.01.2000 registration was abolished for the following goods: import and export of steel and coke (carbon), liquid fuels, ferrous and non-ferrous metals; import of crude oil, crease oils, natural gas and mineral turpentine; reexport and export of textile products, export of medicaments, software, audio and video recorded carriers.

Bulgaria applies export quotas only for those goods, which are subject to international agreements. Quotas are applied for the export of textile and clothes to the USA and Canada. No customs duties and taxes are charged for exported goods.

2. Customs Law and Tariff System

The new Customs Law that entered into force on 1 January 1999 is based on the EU Customs Code. The same terms and regimes as those of the EU are applied: entry into customs territory, import, temporary import, temporary storage, transit, export, temporary export, active and passive improvement, processing under customs control, postponed payment, etc.

The Bulgarian Customs Tariff, the latest version of which entered in force on 1 January 2001, is based on the international Harmonized Commodity Description and Coding System and on the EU Combined Nomenclature. The adoption of both the new Customs Law and the modified Customs Tariff is a part of the National Strategy for joining the European Union.

The customs clearance of goods requires the presentation of a customs declaration, which is similar to the Single Administrative Document (SAD) used in the EU, accompanied by the required commercial documents like invoice, certificate of origin, transport document or any other relevant official papers.

In the new Customs Tariff for 2001 customs duties on significant number of industrial goods are reduced; the average rate for industrial goods is 10% with respect to the import from countries treated according to the Most Favored Nation principle. A large number of industrial commodity groups (20% of tariff lines) are treated with zero rate of customs duties and they include mainly energy sources, raw materials, medicines and others.

According to the Association Agreement with the European Union and the Agreement with EFTA a large proportion of the imports from their member countries in 2001 is taxed with reduced or zero import duties. For instance, an average rate of customs duties for industrial goods is below 1%. In accordance with the respective Free Trade Agreements significant reducing of duties is applied with regards of import of industrial goods.

Bulgaria applies the General System of Preferences, recommended by the UNCTAD, which sets lower tariffs for imports from developing countries.

Bulgaria's membership in the World Trade Organization guarantees the stability of the customs duty system.

3. Trade license

Some trade activities in the country, which have particular meaning in respect to the national security, life and health of people, animals and plants, environment and protection of culture values, are subject to licensing (permission) by the appropriate authorities. License is required for production and trade of spirits and alcohol drinks; trade with plant protection chemicals, trade with arms, production and trade of medicines, processing and trade with tobacco and tobacco products, etc.

4. Duty free zones

The free zones were established in Bulgaria in 1987 under Decree No. 2242 on the Duty-Free Zones and its Regulations for Application. The new economic agenda of the country raised the profile of the free zones. There are six duty-free zones in Bulgaria. All of them are initiated and provided with land and infrastructure by the state. Each zone is managed by a purpose-set joint stock company or a state owned company.

The duty-free zones are located on strategic transport routes leading to the main international markets: the EC, the Central European and ex-Soviet countries, the Middle East and Northern Africa. Two of them are along the Danube River at the ports of Vidin and Rousse with an access to Central and Western Europe via the waterway Rhine-Maine-Danube, and with the ex-Soviet countries via the Ro-Ro line between the Port of Rousse and the Port of Reni - in Ukraine.

Two other zones are at the cross points of the Trans-European motorways, connecting Western and Northern Europe with the Middle East and Greece - one near the Bulgarian-Serbian border in the town of Dragoman and the other in the city of Svilengrad close to the Bulgarian-Turkish border.

Another duty-free zone is in Plovdiv, second largest city, situated in the heart of Bulgaria. It includes the territory of the Plovdiv International Fair and the industrial zone of the town having a very well developed infrastructure. The Plovdiv International Airport has got air connections throughout Europe, the Middle East and Northern Africa.

The Bourgas duty-free zone is positioned next to the largest Bulgarian Black Sea port with convenient maritime connections to all Black Sea and Aegean countries. The zone includes a cargo terminal at the Bourgas International Port.

The Law on Customs, which has entered into force in January 1999, has renamed the duty-free zones to "free zones". It governs the regime of the free zones in detail and brings it in compliance with the new customs legislation. Under the Law on Customs, the free zones are to be established as separate parts with check-in control at fixed entrance and exit points.

A new construction on the territory of the free zones is to be undertaken in conformity with the customs authorities. All of production and trade activities and services are allowed to be performed on the territory of the free zones, as provided for in the Law. Foreign goods may be kept in the free zones:

- under customs regime "import" as provided for in the law;
- without a special permission, as subject to operations designated to storage thereof, to improve their trade image and quality or processing for new delivery or sale;
- under customs regime "active improvement" according to the provisions of the Law;
- under customs regime "processing under customs control" according to the provisions of the Law; ·

- under customs regime "temporary import" according to the provisions of the Law.

Local goods, kept in the free zones, may be subjects only to operations aimed at their storage. Permission by the customs authorities is required for such operations. The local goods may be subject to other operations beyond storage, in case they will be exported.

Standard features of the Bulgarian free-trade zones are as follows:

- convertible foreign currency is in use;
- revenues can be transferred abroad freely without any restrictions;
- administrative structures relieve the investor's need to directly contact the local authorities;
- well-developed and convenient railway links;
- production and labor cost are low, as well trained and highly qualified labor is available.

5. Standardization

Bulgaria has made further progress in this domain in particular with the adoption of the framework law implementing the New and Global Approach principles.

The adoption in September 1999 of the Law on Technical Requirements for Goods established a horizontal legal framework to take on board all the principles of the 'New and Global Approach'. This Law, however, is not entirely in line with the *acquis,* an issue which will need to be resolved soon. Together with the Law on National Standardisation in force since September 1999 and the Ministerial Decree creating the Bulgarian Accreditation Service in December 1999, the legal framework has been established for the functional independence between technical regulation, standardisation, accreditation and certification (including testing and control). Mandatory prior controls of industrial goods (including border control on import) was abolished as of 1 January 2000, providing for free access and equal treatment on the basis of a voluntary standardisation regime. The adoption of European Standards is proceeding at a good pace. The State Agency for Standardisation and Metrology has been appointed as National Enquiry Point for technical regulations, standards and conformity assessment procedures.

E. Capital movements and payments

Bulgaria has made significant progress in liberalising capital movements with the adoption of two new laws, the Foreign Exchange Law and the Law on Public Offering of Securities, which entered into force in January 2000.

In the field of capital movements and payments, the most important development has been the entry into force of the Foreign Exchange Law, adopting the general principle that all transactions involving residents and non-residents may be conducted freely unless otherwise stipulated in the Law. A limited number of transactions between residents and non-residents must be registered with the Bulgarian National Bank prior to being conducted. In turn, the Bank is required to issue a statement on the applicant's request within 10 days. The registration requirement is waived, however, in several specified cases. Import of national and foreign exchange cash by residents and non-residents is free, while export of over BGN 20,000 or its equivalent in foreign exchange requires a permit by the Bank. However, the main remaining restriction on capital movements concerns the acquisition of land by foreigners, which is forbidden by the Constitution. Joint ventures or 100%-foreign owned companies registered under Bulgarian law are allowed to buy land, including agricultural land, for business purposes.

The Bulgarian National Bank and the Ministry of Finance are the authorities responsible for the implementation of the Foreign Exchange Law. Institutional adjustments have been made in order to facilitate the implementation of the new Law.

The Law on Public Offering of Securities, which stipulates all requirements for the activities of market participants, applies equally to local and foreign persons. Furthermore, this Law explicitly provides for the admission of foreign securities to the Bulgarian capital market.

An Amendment to the Bulgarian National Bank Regulation on payments adopted in July 2000 is linked to the introduction of a modern payment infrastructure. The Bureau of Financial Intelligence (BFI), which was charged with the implementation of the 1998 legislation on money laundering and was formerly a directorate within the Ministry of Finance, is being restructured into an Agency as a separate administrative structure responsible to the Minister of Finance in order to strengthen its independence and effectiveness. A Special Supervision Directorate of the Bulgarian National Bank – supporting the work of the BFI – has undertaken organisational measures including on-site inspections in the banking system for the implementation of the law on money laundering.

The law on Securities, Stock Exchanges and Investment Companies is replaced by the law on Public Offering of Securities (LPOS), which took effect from 31-1-2000. The new law supervises and regulates the public offering and trade in securities, the establishment and functioning of regulated securities markets, the Central depository, the investment firms, investment companies and others. The new law will promote capital markets development and will support principles incorporated in Bulgarian securities regulation-protection of investors' interests, level playing field for all participants in the capital market, transparency, prudential requirements and exercise control by the competent

national authority. The new Ordinance on the Activities of the Investment Intermediary provides for the possibility orders for concluding transactions with securities transactions to be replaced by means of electronic method.

The new law (LPOS) improves the regulation of investment companies viewed as a major type of non-bank financial institution. It covers their activities, investment portfolio and the diversification of risk, provides for the regulation of controlling functions of depository, introduces the management company as a new participant in the financial sector contributing towards effectiveness of business activities of investment companies.

F. Protection of competition

The new Law on Protection of Competition came into force on 12.05.1998 repealing the Law on Protection of Competition 1991. The main objective of the Law is to secure protection and good conditions for the expansion of competition and free initiative in the economic activities, in order to make them main regulators of the market economy in Bulgaria.

The Law provides protection against:

- agreements, decisions and coordinated practices;
- misuse of monopolistic and dominating position on the market;
- concentration of economic activities and unfair competition;
- other actions which may result in prevention, restriction or breach of competition. The Law applies to all enterprises out activities in Bulgaria, including the enterprises with foreign investment.

Pursuant to the Law on Protection of Competition "enterprise" means any natural person, legal person or entity pursuing activities on the relevant market, regardless of the particular legal form.

1. Commission for the Protection of Competition

The Commission is the state authority that is responsible for the effective application of the Law. The Commission:

- ascertains violations and imposes sanctions as specified by the law;
- issues permissions as specified by the law;
- suggests to the competent bodies of the executive and the local government to repeal regulative acts, issued in violation of this Law, and files claims with the Court for the revocation of individual administrative acts which are contrary to the law;

In the course of its operation the Commission:

- conducts survey and ascertains the position of enterprises on the relevant market, pursuant to methods adopted by the Commission;

- offers assistance on projects for the transformation and privatization of enterprises or parts thereof, where requested by the relevant Government and local bodies, in the event of circumstances which may eventually violate the Law.

The Commission may permit:

- preliminary equalization of the general terms for enterprises which offer contract's conclusion by applying the general terms as specified by the law;

- state aids designated to:

- accelerate the economic development in regions with low living standard or unemployment above the average for the country;

- promote the economic growth in particular economic activities or regions as provided for in the law;

- support the implementation of projects that are of significant importance for the country or to surmount considerable difficulties in Bulgaria's economy;

- state aids monitoring of the countries, with which Bulgaria has established monitoring for state aids. · concentration of economic activity as provided for in the Law; · exemption of the prohibited acts as set forth in the Law.

In the field of anti-trust, the Commission for the Protection of Competition (CPC) re-organised its internal structure in May 2000 by adopting new rules of Organisation and Procedure. The number of economists and lawyers was increased from 39 to 50. The CPC made 132 decisions in 1999, of which 63% concerned unfair competition, 15% related to abuse of dominant position, 13% were associated with merger control, and 8% concerned agreements and concerted practices. An important trend is the increase in the number of merger notifications.

2. Restriction of competition

Certain acts are prohibited by the Law in case they aim at or lead to the restriction of competition. These are agreements, decisions and coordinated practices, which have as their object or effect the prevention, restriction or distortion of competition in the relevant market, such as: direct or indirect fixing of prices or other trading conditions; sharing of markets or sources of supply; limitation or control of the production, trade, technical development or investments; application of dissimilar conditions to the same type of contracts in respect of certain parties, thereby placing them at a competitive disadvantage; making the conclusion of contracts subject to acceptance by

the other party of supplementary obligations or to the conclusion of supplementary contracts which, by their nature or according to commercial usage, are not connected with the subject of the main contract or with its performance. They are also prohibited misuse of monopolistic and dominating position on the market, concentration of economic activities, unfair competition, damage of the repute of competitors, misleading, imitation, unfair attracting clients, disclosure of production or business secrets, which may result in prevention, restriction, or breach of competition.

If these acts are accomplished in contradiction to the Law on Protection of Competition they are considered to be null and void. The Commission proclaims the invalidity although any person may rely on it.

On the other hand, the Commission may exempt from the above-mentioned prohibition an act that fosters the growth and enhancement of the production of goods and provision of services, the technical and economic development or the improvement of competitiveness on foreign markets and does not result in restriction or elimination of competition. It may also exempt from the prohibition agreements, decisions and coordinated practices of small and medium-sized enterprises, when they lead to enhancing their competitiveness.

3. Monopolistic and dominating position

Under the Law, monopolistic is considered the position of an enterprise, which has by law the exclusive right to pursue a certain type of economic activity. Monopolistic position may be granted only by the law in cases it has been provided to the State pursuant to Article 18, paragraph 4 of the Constitution of the Republic of Bulgaria. Any other granting of monopolistic position shall be considered null and void.

According to the Law, an enterprise has a dominating position when in view of its market share, financial resources, opportunities for access to the market, technological level and business relations with other enterprises it may prevent competition on the relevant market, since it is not dependent on its competitors, suppliers or buyers. There is an assumption that an enterprise has a dominating position, if it has a market share exceeding 35 % of the relevant market.

4. State aid

A State aid is the aid granted by the State or through State resources in any form whatsoever which distorts or might distort competition by putting in a more favourable position certain undertakings or the production of certain goods, or the provision of certain services.

State authorities and institutions which grant State aid and thereby affect or might affect the trade relations between the Republic of Bulgaria and the countries with which a State aid regime established by virtue of a treaty, shall be obliged to notify the Commission in advance of the corresponding project for State aid, on the admissibility of which the Commission shall pronounce.

The obligation for notification shall not apply to aid:

1. having a social character and granted to individual consumers regardless of the origin of the goods or services;

2. for making good the damage caused by natural disasters or other exceptional circumstances.

The Commission may consider admissible the aid in the following case:

1. designed to accelerate the economic development of areas where the standard of living is low or the rate of unemployment exceeds the average level for the country;

2. designed to assist the economic development of certain economic activities or certain areas, where the conditions of commercial turnover are not changed contrary to the common interest of the parties;

3. assisting the execution of a project having a significant economic interest to the parties or the overcoming of serious difficulties in the economy of the Republic of Bulgaria;

4. assisting the conservation of cultural and historical heritage, where the aid does not affect trading conditions and competition to an extent that is contrary to the mutual interests of the parties;

5. determined with the consent of the countries with which the Republic of Bulgaria has established a regime for monitoring of State aid.

When the Commission realises that the project or the State aid granted fall outside the scope of admissible exceptions, it shall propose to the corresponding authority or institution to reverse the project within a prescribed time-limit or shall request the aid to be reimbursed. In such a case the Commission may also propose that only the amount or modifications of the conditions for granting the aid, where this is sufficient to prevent the restriction and to restore effective competition.

5. Concentration of economic activity

The Law regulates the consequences in the case of concentration of economic activity, namely merger or acquisition of two or more independent enterprises, direct or indirect control over one or more enterprises or parts of them.

In the case the total market share of the goods or services involved in the concentration exceeds 20% or the total turnover of the participants in the concentration for the preceding year exceeds BGN 15 million, the enterprises are bound to notify in advance the Commission of their intention to pursue concentration.

The Commission may take the following decisions:

- to declare the concentration as being beyond the above mentioned criteria;

- to permit the concentration;
- to begin investigation if there are serious doubts that it might result in the establishment or strengthening of the existing dominating position and that the efficient competition on the relevant market could be prevented, restricted or breached.

The court shall enter the merger or acquisition in the commercial register after an issued permission by the Commission.

G. Foreign Investment Legislation

On 24 October 1997, the Parliament of Bulgaria adopted a new Law on Foreign Investment (promulgated in the State Gazette, Issue Nr. 97 of 1997; supplemented, State Gazette, Issue Nr. 29 of 1998; amended and supplemented, State Gazette, Issue Nr. 153 of 1998, Issue Nr. 110 of 1999). The Law brings the legal framework on foreign investment in full compliance with the accepted international standards and provides for even more attractive investment regime.

1. Institutional framework

Foreign Investment Agency

In April 1995, the Foreign Investment Agency was established as a one-stop shop institution for foreign investors. It is a governmental body within the Council of Ministers for coordination of the activities of State institutions in the field of foreign investments and for promotion of foreign investments in the country.

A key function of the Agency is to assist the companies in the investment process. It provides potential investors with up-dated information on the investment process in the country, legal advice, searching for suitable Bulgarian partners, co-ordination of the investment policy with other institutions, etc.

Advisory Council on Foreign Investment and Financing

An Advisory Council on Foreign Investment and Financing was established as a consultative body to the Prime Minister with the purpose of further improving the investment climate in the country. Members of the Council are representatives of the largest foreign investors, consulting companies, banks and international organizations. The Advisory Council discusses the policy for promotion and attraction of foreign investment and adopts measures for improving the investment environment in the country.

2. Foreign investors

Under the Law on Foreign Investments, foreign investors are:

- legal persons which are not registered in Bulgaria;
- partnerships which are not legal persons and are registered abroad;
- individuals who are foreign citizens and have permanent residence abroad.

A Bulgarian national, who is a national of another country as well, should choose whether to avail himself of the status of a Bulgarian or foreign national under the Law.

3. Definitions and forms of investment

Foreign investment is any investment, which is made by a foreign person or company, in any of the following:

- shares and stakes in commercial companies;
- ownership title over buildings and limited ownership title over property;
- ownership title and limited ownership title over movable property when considered long-term tangible assets;
- ownership title over enterprise, or detached parts thereof, in accordance with the stipulations of the Law on Restructuring and Privatisation of State-Owned and Municipal Enterprises;
- securities, including debentures and Treasury bonds, as well as their derivative instruments issued by the State, by the municipalities or by other Bulgarian legal persons, with a remaining term until maturity not shorter than 6 months;
- loans, also in the form of financial leasing, for a term not shorter than 12 months;
- intellectual property rights - articles of copyright and neighbouring rights, patented inventions,
- utility models, trade marks, service marks and industrial designs;
- rights stemming from concession contracts and contracts for the assigning of management.

A foreign investment shall, furthermore, include the accretion in value of the investment initially made. Bilateral treaties on promotion and mutual protection of foreign investment to which Bulgaria is a party may provide for a wider definition of foreign investment.

4. Legal and international guarantees for foreign investment

National Treatment

The Bulgarian Constitution and the Law on Foreign Investments provide national treatment to foreign investors which means that foreign investors are entitled to perform economic activity in the country under the same provisions applicable to Bulgarian investors except from the case that it is provided by law. In particular this principle covers the whole range of economic and legal forms of activities for accomplishing entrepreneurial businesses. However, a foreign natural person must hold a permit for permanent residence in the cases where, for the purpose of carrying on economic activities, he registers as a sole trader or participates in a co-operative or participates in a general partnership or he participates as a partner with unlimited liability in a limited partnership or in a limited partnership with shares. The national treatment to foreign investors includes the participation in the process of Privatisation and acquisition of shares, debentures, treasury bonds and other kinds of securities.

It should be mentioned that Bulgaria is signatory to a system of bilateral treaties on promotion and mutual protection of foreign investment which provide, further to the national treatment regime, for the most favored nation status of the investment made by entities and individuals from one of the contracting countries on the territory of the other contracting country.

In addition, when international treaties to which Bulgaria is a member, provide more favourable terms and conditions for foreign investment, these terms have precedence over the local rules. This guiding principle finds expression in the treaties for protection of foreign investments and especially in the agreements for abstaining of double taxation regulations. The international treaties on mutual protection of foreign investment always include an extended concept of a foreign direct investment, and the application of this concept shall be prior to the Bulgarian legislation.

Legal Guarantees Against Adverse Changes in the Law and Expropriation

The Law on Foreign Investments stipulates the principle that foreign investment made prior to the adoption of amendments in law imposing statutory restrictions only with regards to foreign investments, shall not be affected by these restrictions. The sense of the law prompts that foreign investments shall be guaranteed against subsequent legislative changes.

Moreover, the Bulgarian Constitution allows forcible expropriation of property in the name of the state or for municipal needs only if effected by virtue of a law provided that these needs cannot otherwise be met, and after a fair compensation has been ensured in advance. Expropriation under Bulgarian Law is governed by the Law on State Property and Law on Municipal Property.

The Law on Foreign Investments provides additional protection to foreign investors. The first added protection granted to foreign investors is that the expropriation may only occur for exceptionally important state needs, which

cannot be otherwise met. Immovable property owned by foreign persons may not be expropriated for municipal needs.

Another form of protection for foreign investors is the requirement of the Law for compensation in the form of another immovable property in the same location, and only given the foreign investor's consent, in another location, or by cash if the foreign investor prefers so. Compensation equals the immovable property's market price on the day of expropriation.

5. Establishment of enterprises with foreign investment

Bulgarian legislation provides assistance in the establishment of enterprises with foreign investment. These must take the form of any of the business organizations stipulated in the Commercial Code. There are no limitations as far as the share participation of foreign persons is concerned and so is the extend of their investments.

Under the Commercial Code, the following forms of business organisations are open to foreign investors:

- private limited company
- single-owner private limited liability company
- public limited company
- general partnership (unlimited partnership)
- limited partnership
- public limited partnership
- sole trader

Foreign legal entities registered abroad, as well as foreign natural persons and entities, which are not legal persons, may register branches if they have been registered as merchants in accordance with the legislation of their countries. A branch is a part of the main company, but with a different seat. It is entered into the commercial register of the court at its location. A branch keeps account books as an independent company. A branch of a foreign company prepares a balance sheet. No authorized capital is needed for its opening. Foreign nationals and companies can register a branch provided they are registered abroad and are entitled to engage in business activities under the national law.

Representative office is regulated by the Law on Foreign Investments. Foreign persons entitled to engage in business activities under their national legislation may set up representative offices, which are registered at the Bulgarian Chamber of Commerce and Industry. The representative offices are not legal persons and may not engage in economic activities. They may only engage in activities related to marketing, finding clients, establishing contacts within the country, as well as any other activities which are not considered as economic or commercial by virtue of the Law.

Joint venture is a company formed jointly between a Bulgarian and a foreign partner. The size of foreign participation in a joint venture is not limited. Joint ventures must take one of the forms of business entities pursuant to the Bulgarian Commercial Code.

A foreign national must obtain a permit for permanent residence in Bulgaria when applying for registration as a sole trader or when participating in an unlimited partnership or a co-operative or participates as an unlimited partner in a limited partnership or in a public limited partnership.

As a rule, no prior permits from government institutions are required.

Like the Bulgarian entrepreneurs, foreign investors have to register their activities with:

- local Tax Administration Offices for taxation purposes;
- local Social Security Offices if foreign investors have employees on their pay-roll;
- the National Institute on Statistics under the registration system BULSTAT for statistical purposes;
- customs authorities when foreign trade operations are performed.

6. Profit and capital repatriation

Bulgaria has established a liberal regime for repatriation of after-tax profit and capital.

Foreign investors can freely purchase foreign currency and transfer it abroad upon presentation of receipt for paid taxes in the following instances:

- income generated through an investment;
- property alienation driven indemnification proceeds, when for state needs;
- liquidation quota resulting from the termination of the investment;
- proceeds from the sale of the investment good;
- a sum received after the enforcement of a writ of execution.

This right may also be exercised by foreign nationals working in the country, with respect to the remuneration received by them, and by foreign nationals who have obtained a permit for permanent residence and are registered as sole traders or participate in a co-operative or as an unlimited partner in a partnership, after a certificate for paid taxes is submitted.

7. Ownership of real estate

According to the Bulgarian Constitution and Articles 28 and 29 of the Law on Ownership foreign nationals and foreign legal entities may not directly acquire ownership rights on land. If foreigners inherit land in the country, they are obliged to transfer the ownership of the land to local natural or legal persons within three years after the inheritance becomes effective.

The above restrictions, however, do not concern Bulgarian companies with foreign participation, irrespective of the percentage of the foreign participation in the company. This is because Bulgarian companies, which are registered into the commercial register of the relevant district court, are able to acquire ownership rights on land. Thus foreign persons can acquire full land ownership rights, including ownership rights on agricultural land by setting up or joining a company incorporated under the Bulgarian legislation.

Foreign nationals and foreign legal entities are free to acquire property rights over buildings and limited property rights (right to build and right to use) over real estate, including residential property rights. In these cases, permission from the Ministry of Finance is required due to foreign exchange regulations. Bulgarian companies with foreign participation (100 % inclusive) do not need a permission to acquire ownership rights over real estate.

At the request of an investor, the Foreign Investment Agency may trigger a special mechanism for institutional support and propose to the competent authorities (regional governors or municipal councils) to transfer, further to the Law on State Property and Law on Municipal Property, limited property rights (right to build and right to use) on real estate - state private or municipal property, with the view to implement a priority investment project.

Foreign persons and companies with foreign participation need an advanced authorisation from the Council of Ministers to acquire ownership rights over real estate in border zones and in areas of national security importance as determined by the Council of Ministers.

8. Interministerial groups for institutional support for priority investment projects

The Law on Foreign Investments allows special institutional help for the investors accomplishing an investment project acknowledged by the Council of Ministers as priority one. At the request of the investor, the Foreign Investment Agency may propose to the Council of Ministers to form an interministerial group, comprising representatives of ministries and agencies concerned, in order to provide institutional support for appointed investment projects acknowledged by the Council of Ministers as priority investment projects.

Based on the institutional support mechanism, the Council of Ministers recently set an interministerial group in order to co-ordinate the institutional help to the "green-field" investment project of Metro Group in Bulgaria.

9. Concession regime

The Bulgarian Constitution 1991 proclaims that concessions can be granted for objects which are exclusive state property or over which the state exercises its sovereign right or has established monopoly, under the conditions and by the procedure set forth in a specific law - the Law on Concessions 1995. The Constitution guarantees municipalities' ownership and its exercise to the benefit of the relevant municipality, by virtue of the local self-government principle. It is the Law on Municipal Ownership, which regulates the granting of concessions over objects - public municipal property.

Concessions over objects which are public state property and over activities for which state monopoly has been established (regulated by the Law on Concessions).

The Law on Concessions establishes the objects - public state property over which concessions may be granted:

- ores and minerals in connection with relevant extraction;
- the waterfront beach strip;
- the biological, mineral and energy resources of the continental shelf and in the exclusive
- economic zone, in reference to exploration, development, production, utilisation thereof;
- the national post networks;
- the national roads, ports for public transport and civil airports, existing and/or such which shall be built by and with the funding of the concessionaire;
- the waters, including mineral waters - sole state property;
- the aquaculture and the water supply facilities and systems, which are public state property;
- the plants for generating electric and thermal power, the electric power transmission and distribution networks, the main pipelines and major deviations therefrom for the transmission of power resources and products, which are public state property;
- the forests and parks of national significance;
- the nuclear facilities;
- the natural and archaeological preserves;
- other objects which are public state property, specified by law.

According to the Law, the following activities on which state monopoly has been established may be subjected to concession:

- transfer of energy resources and products in pipelines and storage there of;
- post services;
- transportation of passengers and cargo by railway;
- usage of nuclear power;
- manufacture of radioactive products, arms, explosives and substances with strong biological activity.

Under the Law, concessions may be granted not only over existing objects - public state property, but also over objects which shall be built and funded by the concessionaire. The procedure for granting concessions includes:

- adoption of a decision to grant a concession by the Council of Ministers upon the corresponding minister's proposal;
- a competition or tender organised and carried out by a minister appointed in the above decision;
- assignment of the concessionaire;
- conclusion of a concession agreement with the concessionaire.

In some cases, envisaged by the law, the concessionaire may be determined without competition or tender. Concessions may be granted for a period up to 35 years. This term can be extended but the total duration of the concession cannot be longer than 50 years. When the contract has expired, per equal other conditions the concessionaire under the contract has priority for the conclusion of a new concession contract for the same object or activity.

b) Granting concessions over object - public municipal property (regulated by the Law on Municipal Ownership)

Pursuant to the Law on Municipal Ownership "concession" is the grant of a particular right to use an object, which is public municipal property with the purpose of permanently satisfying the public needs of municipal importance, and allowing that the activities be conducted by the municipality.

The objects over which concessions may be granted include:

- water resources (including mineral waters) used solely for municipal needs;
- municipal water basins and beaches thereto;
- inert and other materials necessary for meeting the populations demand and extracted by a quarry method in volume not bigger than 10000 c.m. per year;
- local roads and parking lots;

- municipal forests.

The activities for which a concession may be granted by a municipality are specified as:

- water supply and sewerage;
- activities involving transport infrastructure and transportation of passengers;
- business conducted in objects which are public municipal property.
- The procedure for granting concessions includes the following steps:
- adoption of a decision to grant a concession by the Municipal Council;
- carrying out of a competition or tender;
- concluding the concession contract.

Concession may be granted for a period of up to 15 years. However, the term can be extended. The total duration of the concession may not be longer than 25 years.

H. Services

In the area of freedom of establishment and freedom to provide services, progress has been made in alignment with the acquis through the Law on Consumers and Rules for Trade in relation to traders that entered the market in 1999. However, this law requires non-residents to establish themselves in Bulgaria, therefore preventing the free provision of services.

In the field of financial services Bulgaria has made good progress. New regulations in the banking sector have been adopted. Procedures for the issuing of permits for performing banking activity were published in February 2000 and for the regulation of the supervision and control of large exposures in November 1999. In July 2000, provisions on consolidated supervision were issued, in line with the relevant acquis in these areas. All this legislation has given the banking supervision department of the Central Bank additional powers and expanded legal scope for action. Progress in the insurance *sector* includes the introduction of a legislative framework in relation to annual accounts of insurance undertakings, insurance agents and brokers, as well as a revision of rules on motor vehicles. In the area of investment services and securities markets, the entry of the new Public Offering of Securities Act in January 2000 provided for substantial alignment with the acquis in this area.

No new legal developments can be reported with regard to protection of personal data and free movement of such data.

As concerns the information society, no new legislative developments can be reported since the Council of Ministers adopted a Strategy on the Development of the Information Society in October 1999 which set out the

overall vision and institutional structures for the elaboration of legislation in this respect, aligned with the relevant acquis.

1. Privatisation

Regulatory framework

Privatisation in Bulgaria started in 1993 using various techniques, such as public offering of shares, public auctions, public competitive bidding by invited tenderers, management buy-outs, negotiations with potential buyers and central public offering.

The privatisation process is carried out under two separate, but associated programmes:

- market (cash) privatisation of state and municipal (property) enterprises and
- voucher privatisation.

Within the decentralised privatisation model, the Privatisation Agency (PA) operates as the main privatisation authority for all companies with book value of fixed assets exceeding BGN 1 million. The small scale privatisation of state-owned enterprises is managed by the respective principal Ministries; the privatisation of municipal property is under the authority of the respective Municipalities; the voucher privatisation scheme is executed by the Centre for Mass Privatisation.

2. Privatisation Legislation

The Bulgarian government provides incentives for domestic and foreign investors mainly through the variety of payment instruments. Up to 50% of the negotiated price of any state-owned company put up for privatisation can be paid by the use of external (Brady bonds) or internal (ZUNK bonds) state debt instruments, as well as through compensatory notes since the end of 1998. The effective reduction in price is provided up-front in order to be more attractive to investors compared to the future benefits of a profit tax holiday.

As a result of the adopted new privatisation strategy, the privatisation legislation underwent a number of major amendments in 2000. The most important ones stipulate that:

- the Council of Ministers will become the privatisation body which will take the decisions and conclude the contracts for the privatisation of the companies, included in the list to be approved by the Parliament;
- the Council of Ministers will elaborate strategies for the privatisation of the big state-owned monopolists and for the companies from the infrastructure sector. These privatisation strategies will be approved by the Parliament;

- the Executive Director of the PA will be replaced by an Executive Board, consisting of one Director and two Deputy Directors. The Executive Board will be appointed by the Council of Ministers;

- the powers of the Supervisory Board of the PA, whose members will be elected by the Parliament, will be increased. It will become responsible for the post-privatisation control of the privatisation deals, concluded by all privatisation bodies;

- a new privatisation method - acceptance of public tender offer for share purchase - is adopted (in relation to article 149 of the Law for public offering of securities);

- the Center for Mass Privatisation will start to organise public tenders, along with the centralised tenders;

- privatisation authorities are obliged to evaluate objectively MEC offers against those of strategic investors. The price offered by MEC will be discounted at 25%, instead of 10%;

- the initial payment of MEC, upon concluding privatisation contracts, have been increased from 10% to 25% of the whole price. The term for the final payment of the price by MEC have been decreased from 10 to 5 years. The one year grace period for MEC is to be abolished;

- the Council of Ministers will enact a Regulation for the negotiations with potential buyers via privatisation;

- the deadline for MEC to pay with compensatory notes is extended to 31 December 2001. The formulation of privatisation policy has been assisted by the foreign investors' suggestions and recommendations. Most of their concerns were associated with the frequently changing tax policy, the lack of legislation clarity and other difficulties. Some of their recommendations include tax reductions, public debates on tax policy, administration efficiency improvement and privatisation acceleration, including through the Bulgarian Stock Exchange.

3. Voucher Privatisation

In 1996, the government adopted an ambitious voucher privatisation programme where more than 1,000 companies were offered for sale to the Bulgarian citizens. The first wave of voucher privatisation ended in July 1997. Approximately 21.1% of all state assets were privatised.

The second wave is currently in progress. It is expected that majority stake owners in the already privatised companies will express interest in acquiring the remaining minority stake packages. Individuals are eligible to participate in the tenders individually or by authorising an investment intermediary. The deadlines for registration of vouchers expire at the end of 2001. So far 14 tenders have been held and shares from 547 companies have been offered for privatisation. In 2001, shares amounting to BGN 1.2 million will be offered for privatisation. The objective of the government is to divest of its remaining shares in newly privatised companies.

4. Restitution

In parallel with the privatisation process, the property restitution was launched. It aims at returning expropriated land, including agricultural land, forests, urban property, factories and workshops to former owners.

According to government estimates, some 90% of the land and almost all urban property subject to restitution have been returned to its former owners. The restitution of forests is under way (56% have been returned to their owners so far).

In cases when property cannot be returned in real terms to its owners, the latter are redeemed with compensatory notes which are recognised as a legal payment instrument in cash privatisation. The recent amendments in the privatisation legislation increased the attractiveness of the compensatory notes as instruments of payments in the privatisation process by:

- giving the MEC, which had become owners of privatised companies before 1 February 2000, the right to pay the whole price of the deal through compensatory notes by 31 December 2001;

- including the tenants and landlords, who had concluded contracts for rent separate parts before 15 October 1993, in the range of persons having right to use compensatory notes as instrument of payment.

5. Restructuring

A Government Council for supervision of financial discipline and fiscal risks was established in late 1999 to oversee a group of 154 companies with a 50% or more state ownership. The list of these companies was prepared to meet the requirements of the World Bank with regards to the second loan for restructuring of the real and financial sector, FESAL 2, amounting to USD 100 million. The list included large state companies like Bulgarian Posts, the Water and Sewerage companies, ports, airports and some mines.

In 2000, the restructuring of some of the companies, included in the above mentioned group, effectively started:

- The Sofia Water and Sewerage Company formed a joint-venture company with the British International Water. The latter was granted a 25 year concession and will invest USD 152 million for a 9 year period. The granting of concessions for the Water and Sewerage companies of Varna, Shumen, Dobrich and Bourgas is expected in 2001.

- The Varna Shipbuilding Yard rehabilitation plan, proposed by the British Cammell Laird, was approved by the Varna district court. The plan includes the commitment of Cammell Laird to invest between USD 5 and 10 million and to pay outstanding debts, amounting to USD 14 million.

In conclusion it is important to mention that the execution of the Government's programme "Bulgaria 2001" is intended to complete the restructuring process in the Bulgarian economy and to create premises for stable economic growth.

PART II: European Law

A. Birth and Growth of the Community

On 18 April 1951 six European countries, France, Germany, Italy, Belgium, Netherlands and Luxembourg, signed a Treaty in Paris establishing the European Coal and Steel Community (ECSC). The Treaty came into force on July 1952 and created a common market in two important economic sectors which until then had been used for military purposes, namely the coal and steel sectors. The vision was the creation of a common market for all products and the development of competition. This Treaty in all markets will come to an end in 2002 while the rules covering the coal and steel sectors will gradually be incorporated into the EEC Treaty.

The Treaty establishing the European Atomic Energy Community (EAEC but more commonly known as Euratom) was signed in Rome on 25 March 1957 and came into force on 1 January 1958. At the same time the Treaty establishing the European Economic Community (EEC) was likewise singed and brought into force. Although the EEC and EAEC treaties are sometimes referred to as the "Treaties of Rome", the Treaty of Rome is obviously the EEC Treaty which created a common market between Member States where products, persons and capitals move freely.

An important amendment to the Treaties establishing the European Communities took place on 1 July 1987 with the enforcement of the **Single European Act.** Supplementing in particular the EEC Treaty, the Single Act committed the Community to adopt measures with the aim of progressively establishing the internal market over a period ending on December 31st 1992. Furthermore it created the European Political Cooperation.

However, it is the **Treaty on European Union (TEU)**, signed in Maastricht on February 7th 1992, that marked the beginning of an era where European citizens will be more united. The essential economic character of the Communities is surpassed, in order to allow the establishment of an entity with global character. The TEU covered, encompassed and modified the previous Treaties. The Treaty on the European Economic Community was renamed as the **'Treaty establishing the European Community (TEC)'.**

Finally, the TEU was amended by the **Treaty of Amsterdam,** which was signed on 17 June 1997 and came into force on 1 May 1999. This last Treaty is a step forward towards strengthening the institutions and encouraging political integration of the European Union.

The Member States are: France, Germany, Italy, Belgium, Netherlands, Luxembourg, United Kingdom, Ireland, Denmark, Greece, Spain, Portugal, Austria, Finland and Sweden.

B. The chapters of the *acquis*

1. Free movement of goods

According to the customs union, established in article 23 TEC, the Community is based upon a customs union which covers all trade in goods, prohibits the use of custom duties on imports or exports among Member States and adopts a custom tariff for goods coming from non member countries. The customs union of EC covers ‘‘all trade in goods’’. This means that products coming from a third country can move freely within the Community if the import formalities are in accordance with the rules set by the union and any payable customs duties or charges having equivalent effect are levied in the importing Member State (Article 24 TEC).

Since January 1, 1993, no customs formalities are required for trade within the Community. Hence, all checks and all formalities in respect of goods moving within the Community have been eliminated. The Community henceforth forms one single border-free area for the purposes of the movement of goods under cover of the TIR (international road transport) and ATA (temporary admission of goods) carnets. This saves a great deal of time for economic operators and thus facilitates decreasing the cost of transporting goods within the Community. The customs officers collect customs duties, which must be paid in the Community budget, guard the external frontiers against illicit trading and act in the name of the Community applying the Community law.

The Community Customs Code groups together and presents all of the provisions of customs legislation. The Code is divided into three parts: a) the basic rules of customs legislation, such as customs territory of EU, customs tariff, customs value, goods origin, b) rules relative to customs destinations with economic impact, such as customs systems with economic impact (free zones, temporary admission, processing under customs control), instances of goods redirection or destruction and c) rules relating to custom debt and appeals against decisions taken in customs matters.

The free movement of goods within the Community is established by Articles 25 to 31 (TEC) and is in fact safeguarded by the infringement procedures introduced by Article 226 of the EC Treaty. Article 25 TEC prohibits export and import duties in the commercial transactions between Member States, Article 26 TEC stipulates the adoption of a common Tariff System between the Community and third countries and Articles 28 and 29 TEC prohibit export and import quotas between Member States. Article 30 TEC imposes some restrictions on imports, exports or transports on the grounds of public morality, public policy or public security, but specifies that they must not constitute disguised restrictions on trade between Member States (Judgement of the Court on German Beer, Case 178/84, ECR 1987,1227). According to the Court of Justice, to ensure the survival of a company cannot be a justification founded on this Article (Judgement of March 1995, Case C-324/93).

Because of the increase of technical obstacles in trade and in order to prevent them the Court gave a broad definition of the obstacles to free trade. It stated that any product lawfully manufactured and marketed in a Member State should in principle be accepted to the market of any other Member State (C 120/78, Cassis de Dijon, ECR 1979, p.649). According to another Court judgment, national provisions must not act discriminatory against traders, to

whom they apply against marketing of national products and products from other Member States (Joined Cases C-267/91 and C-268/91, Keck and Mithouard, ECR 1993,p.I-6097). Even if they are applicable without distinction to domestic and imported products, national regulations must not create obstacles unless they are necessary to satisfy mandatory requirements and are directed towards an objective of general interest such as fulfilling the requirements of the free movement of goods, which is one of the basic rules of the Community. In other words, a country must not prevent and block competition from imported products by other Member States solely because they are slightly different from domestic products. If it does so, the Commission will take proceedings against it, by taking the case to Court.

In addition, the Commission secured that the Council adopted a procedure for the provision of the information in the field of technical standards and regulations. This Directive is vital instrument for preventing the appearance of new obstacles to trade. The Commission must be notified of these and thus notify the other member States and request amendments before their entry into force. The Court has ruled that technical regulations which have been adopted in violation of the Directive, i.e. without notification, are inapplicable, have no legal effect for individuals and national courts, and must refuse to apply them.

The removal of technical obstacles to trade in industrial products is traditionally based on Article 94 TEC, which provides, for the approximation of such provisions laid by law, regulation or administrative action as they directly affect the functioning of the common market. Up to now some 250 directives on the harmonization of laws have been adopted by the Council. As far as the existing rules and standards is concerned, at the instigation of the Commission, the Council adopted a new approach to technical harmonisation and standards. This approach does not rule out the harmonisation of laws, which by virtue of Article 94 TEC, can be achieved by a qualified majority, but it simplifies and facilitates it. In cases where mutual recognition can not be applied, because divergences are too great between the essential aims of different national laws, legislative harmonization is confined to the adoption of the essential safety requirements with which products must conform and should therefore enjoy free movement throughout the EU. The European standardisation bodies prepare technical specifications, which the manufacturers must meet in order to produce and place in the market products, that comply with the essential requirements laid down by the directives. No mandatory nature is attributed to these technical specifications. This means that the producer has the right not to manufacture in accordance with the standards, but he is responsible for proving that his products comply with '' essential requirements'' of the Community Directive. On the other hand, the national authorities are obliged to recognise that products manufactured in conformity with harmonised standards are presumed to conform to the essential requirements laid down in the Directive. The key to implementation of the new approach to technical harmonisation is standardisation, i.e. the establishment of standards that determine the specifications for industrial products. The standards are adopted by bodies recognised by the official authorities

2. Public procurement

If a genuine single market is to exist, the public sector will have to be opened to intra-Community trade and competition. A Directive adopted in 1971 establishes the principle of abolition of restrictions on freedom to provide services in respect of public works contracts and the award of public work contracts to contractors acting through agencies and branches. Another 1971 Directive concerns the coordination of procedures for the award of public works contracts in the Member States. This coordination consists of the publication of notices of public works contracts in the Official Journal of the Communities so that all those interested in the Member States are informed at the same time. It is also comprised by common rules on the selection of candidates and on the award of contracts.

Only contracts up to € 5,000,000 are subject to the arrangements of the Directive. The Directive stipulates that official authorities must refer to European standards and technical specifications. The liberation of public work contracts was completed in 1993 by a Directive, which coordinates and codifies the procedures for the award of public works contracts. The liberation of public supply contracts began in 1976 through a directive and was completed in 1993 by the codification of this Directive. According to the Directive, States, public bodies etc., which have to propose or award supply contracts more than €200,000 have to publish a notice in the Official Journal of the Communities while the contracting authorities are obliged to treat all undertakings on an equal basis and apply the same criteria when making a selection. Finally, the transparency of non-discrimination in public service contracts is guaranteed by a Council Directive on the coordination of procedures for the conclusion of these contracts at national, regional and local levels.

Specifications are used to ensure that certain sectors of the economy are given priority when it comes to cross-border transactions. These sections are: maintenance and repair, computer technology, advertising, architecture, engineering and a few financial. The non-priority services such as social services and legal services are subject to minimum transparency requirements.

3. Free movement of workers

Under the article 39 TEC free movement of workers entails the right, subject to limitations justified on grounds of public policy, public security or public health to accept offers of employment actually made, to move freely within the territory of Member States for this purpose, to stay in a Member State for the purpose of employment and to remain in the territory of that Member State after having been employed in it. The principle of the free movement of

workers applies equally to nationals of third countries, who stay lawfully in a Member State.

Adequate protection in the field of social security is a pre-condition to the effective use of the right to move and to stay within the Union. Article 42 TEC provided for adopting the necessary measures for that purpose through arrangements to secure migrant workers: a) aggregations, for the purpose of acquiring and retaining the right to benefit of all periods taken account under laws of several countries and b) payment of benefits to persons resident in the territories of the Member States. The detailed rules for applying social security schemes to employed persons and their families moving within the Union were elaborated in Regulation No 1408/71 and its implementing Regulation No 574/72. On the basis of those Regulations pensions of similar nature, acquired in the various Member States, may be aggregated, but the person concerned may not obtain total benefits in excess of the highest pension he would have obtained if he had spent his whole insurance career under the legislation of any of the State in which he had been employed. The supplementary pension rights are equally guaranteed. The unemployed person who leaves for another Member State to seek for a job receives for a maximum period of three months the benefits of the country in which he was last employed. Repayments in respect of health care provided for members of the family resident in a Member State other than that in which the worker is employed and insured, are made entirely to the institutions of the country of residence. Family allowances are granted under the legislation of the country of employment.

The free movement of self-employed persons is treated in the EU according to the same principles as the free movement of salaried workers. In both cases the basic principle is equality of treatment with nationals. Freedom of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings. In particular companies and firms within the meaning of the second paragraph of Article 48 TEC, i.e. companies established under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter of the Treaty relating to capital. It also extends to what is known as freedom of secondary establishment, i.e. the setting up of agencies, branches or subsidiaries (Art.43 TEC).

Under Article 46 TEC the principle of freedom of establishment does not concern national provisions providing for special treatment for foreign nationals on grounds of public policy, public security or public health. A Directive of 25 February 1964 contains an enumeration of the circumstances which cannot be invoked as grounds for refusal of entry or deportation and a series of rules concerning the procedure which must be followed where nationals of Member States may be refused entry or deported.

4. Freedom to provide services

Article 49 TEC provides that restrictions on ''freedom to provide services'' within the Community shall be abolished in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. Under Article 50 TEC services shall be considered as such where they are normally provided for remuneration, in so far they are not governed by the provisions relating to freedom of movement for goods, capitals and persons. This Article specifies however that the provisions on the free movement of services cover all activities of an industrial or commercial character or of craftsmen and the activities of the professions.

The activity must be limited in time, must normally be pursued against payment and must involve some form of foreign aspect, unless the border is physically crossed. The person providing the service may temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals (Art. 50 par.3 TEC). Services provided under contract outside the country of establishment may be of a long duration. There is nothing moreover to preclude an activity for the provision of services from being of a magnitude such as to necessitate the acquisition of goods in the country of provision of services. However, the person providing the service must remain established in his own country and his services must cross borders.

5. Free movement of capital

Freedom of capital movement is another essential component for the creation of the large European internal market. The liberalization of payments transactions is a vital complement to the free movement of goods, persons and services. Borrowers, notably SMEs, must be able to obtain capital where it is cheapest and best tailored to their needs, while investors and suppliers of capital must be able to offer their resources on the market where there is the greatest interest.

The principle of the free movement of capital and payments is laid down under Articles 56 to 60 TEC. Article 56 declares that all restrictions on the movement of capital between Member States and third countries are prohibited. In addition Article 58 authorises Member States to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions. According to the Court the Treaty does not allow any restrictions to the free movement of capital, but the export of large amounts of money may be subject to a prior declaration. Nevertheless, Article 59 TEC authorises temporary safeguard measures to be taken where they are

justified on serious political grounds or where capital movements to and from third countries cause serious difficulties for the functioning of economic and monetary union.

6. Social progress policies

The Community Charter on the fundamental rights of workers adopted by the European Council in December 1989 is the bedrock for the construction of a social area, which is vital for the progress of the EU. It clearly states that the workers aspirations, interests and rights will be guaranteed in the Single Market. The Social Charter of the Community fixes the main principles on which the European model of labour law is founded. Although it also concerns freedom of movement, employment matters and vocational training, the Charter insists mainly on the improvement of the living and working conditions.

In Article 136 TEC the Community and the Member States having in mind the Community Charter on the fundamental rights of workers and the Social Charter of the Community declare having as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between the management and the labour force, the development of human resources with view to lasting high employment and the combating of social exclusion. In order to achieve these objectives, the Community supports and complements the activities of the Member States namely in: the improvement of the working environment to protect the workers health and safety, the working conditions, the information and the consultation of workers, the integration of persons excluded from the labour market and equality between men and women with regard to the labour market opportunities and treatment at work (Art. 137 TEC).

As it is mentioned in the 1989 Social Charter ‘’every worker in the EU has the right to adequate social protection and regardless of his status or the size of the company in which he works, must be entitled to adequate social security benefits’’. An important Community measure for the social protection of employees is the Directive on the approximation of the laws of the Member States relating to collective redundancies. Employers who envisage such redundancies have to hold consultations with workers representatives in order to avoid reducing such redundancies. Moreover, the employer has to notify any proposed collective redundancy to the competent official authority and may not implement it before the expiry period of 30 days that the authority uses in order to find solutions to the problems that have arisen and/or to lessen the impact of the redundancies. In the same vein, a Directive on the approximation of the laws of the Member States aims at safeguarding employees right in the event of transfers of undertakings, business or part of business. Before any such amalgamation, the workers representatives have

to be informed of the reasons for it and of the consequences for the employees and of the measures envisaged in their favour. The workers' rights and obligations are transferred to the new employer for at least a year and agreement on the conditions of the take-over has to be reached in consultation with the work force. But the workers' interest is also protected in the event of the insolvency of their employer.

A Directive on the protection of young people at work prohibits work by children (less than 15 years of age or still subject to compulsory full-time schooling) with the exception of certain cultural, artistic or sporting activities and for children of at least 14 years of age combined work/training schemes, in-plant work-experience schemes and certain light work. The Directive asks Member States to strictly regulate work done by adolescents of more than 18 years of age, by imposing specific rules in respect of working time, daily rest periods, weekly rest periods and night work, and laying down technical health and safety standards.

Another Directive concerning certain aspects of the organisation of working time lays down a basic set of minimum provisions covering more practically: the maximum weekly working time (48 hours), the minimum daily rest period (11 uninterrupted hours), the minimum period of paid leave (4 weeks), conditions relating to night work and the maximum period if such work (8 hours), and breaks in the event of prolonged periods of work. Another Directive aims to prevent part-time workers from being treated less favourably than the full-time workers concerning particularly employment conditions and continuing training.

The determination of wages is the sole responsibility of the Member States. However, the Community and the Member States are expected to implement the engagement taken in the Community Charter on the fundamental rights that workers are assured of equitable remuneration (which is a different notion from the minimum wage), meaning a reward for work done which is fair and sufficient to enable them to have a decent standard of living.

Furthermore, Article 141 TEC stipulates that each Member State ensures and subsequently maintain the application of the principle that men and women should receive equal pay for equal work, which means a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement and b) that pay for work at time rates shall be the same for the same job. Article 141 TEC defines pay as the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which workers receive directly or indirectly in respect of their employment from their employer. No discrimination based on sex is allowed.

In the field of safety and health at work the Council adopted in 1989 a Framework Directive on the introduction of measures to encourage improvements in the safety and health of workers at the workplace. This

Directive lays down three main principles: a) the employer's general obligation to guarantee the workers' safety and health in all work-related aspects, in particular by preventing professional risks, by keeping the work force informed and by training, b) the obligation of every worker to contribute to his own safety and health and that of others by using the work facilities correctly and respecting the safety instructions, and c) the absence or limited liability for employers for things caused by abnormal unforeseen circumstances or exceptional events.

7. Competition policy

Article 81 TEC declares that all arrangements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their objective or effect the prevention, restriction or distortion of competition within the common market shall be prohibited as incompatible with the common market. In particular, this article prohibits agreements which:

a) directly or indirectly fix purchase or selling prices or any other trading conditions,

b) limit or control production, markets, technical development or investment,

c) share markets or resources of supply,

d) apply dissimilar conditions to equivalent transaction with other trading parties, thereby placing them at a competitive disadvantage and

e) make the conclusion of contracts subject to acceptance by the other party of supplementary obligations which by the nature or according to commercial usage have no connection with the subject of such contracts.

Prohibited agreements shall be automatically void.

However, under paragraph 3 of Article 81, the Commission may declare the provisions of paragraph 1 of that Article, inapplicable in the case of any agreement between undertakings and any concerted practice or category of concerted practices, on the following conditions:

- Contribution to the improvement of the production or distribution of goods
- Promoting of technical or economic progress
- Offering to consumers a fair share of the resulting benefit
- There is no possibility of eliminating competition

When a concerted practice in the conditions above occurs, the Commission can issue a negative clearance either on an individual basis or on every part of the group.

To be able to judge on the compatibility or non-compatibility of agreements with the common market the Commission has separated them.

For this purpose, the notification of the following agreements was required (Regulation No 17 of 1962):

- International agreements for the purpose of establishing restrictions on competition
- Agreements involving only undertakings from one Member State, with implications for intra-Community trade
- Agreements in which third country undertakings participate, insofar as they may affect intra-Community trade.

In any case that undertakings do not fall into the ‘’block exemptions’’ category, agreements between undertakings and decisions made by undertakings’ associations must be submitted to the Commission. In addition it must be stated that the agreement does not infringe Article 81 TEC paragraph 1 (negative clearance) or that while the agreement falls under Article 81 TEC paragraph 1 it also fulfill the conditions for exemption under Article 81 TEC paragraph 3. The responsible form for the above notification comes under the label of ‘’Form A/B’’ and is provided by the Commission.

According to the Commission, agreements with minor importance do not fall under Article 85 EEC paragraph 1(Art.81 TEC), as they do not appreciably affect competition within the common market or trade between Member States. This ‘’de minimis‘’ rule applies to agreements between businesses, which satisfy specific market-share and turnover criteria. Those criteria were revised once in 1986 and again in 1997. In the latter Notice The Commission supports that a ‘’horizontal’’ agreement is not likely to affect market conditions especially where the market share held by the interested companies does not exceed 5% of the total market for the goods or services concerned the common market. Where the ‘’vertical’’ agreements are concerned the threshold of the criterion of combined market shares held by the parties is 10%. This distinction between horizontal and vertical agreements is based in the assumption that an anti-competitive practice committed within vertically linked companies has a less serious impact on markets. The 1997 Notice introduced a blacklist of restrictions which are regarded as incompatible with Article 81 TEC and hence liable to be caught by the ban on agreements. The derogation from notification agreements of minor importance is in the interest of SMEs, as it enables them to avoid the laborious procedure of notification-negative clearance and to cooperate without fear of infringing the rules of the

common market. Agreements made by SMEs with annual turnover and balance-sheet total do not exceed EURO 40 million and 27 million respectively and which have maximum of 250 employees, are not investigated by the Commission.

In addition, in December 1978 the Commission published a statement on the appraisal of subcontracts. The Commission states, under Article 81 TEC, that when a large undertaking provides know-how or equipment to a small undertaking then the latter is obliged to provide only manufactured goods or executed work while it does not restrain competition.

Furthermore, the instrument of the ‘’block-exemption’’ regulation, as it was mentioned above, is used by the Community to exempt a class of agreements whose pro-competitive benefits outweigh their anti-competitive effects. Those ‘’block-exemption’’ regulations are particularly useful for SMEs and were in many respects formed for their benefits.

A first group of ‘’block-exemption’’ regulations concerns the cooperation agreements. A Commission Regulation of 19 December 1984 exempts from application of Article 81 TEC specialization agreements, i.e. agreements under which parties mutually undertake not to manufacture certain products themselves in order to specialize in the manufacture of other products. Although competition is restricted, as the parties refrain from the independent manufacture of certain products, exemption by this category was introduced to allow SMEs to improve their production process and to strengthen their competitive position ‘vis a vis’ larger undertakings. In order for the agreement to be exempted, it is necessary for the market with respects to the products forming the subject of specialization, not to represent more than 20% of the total market in such products and for the aggregate turnover of the participating undertakings not to exceed EURO 500 million. A Commission Regulation of 1992 seeks to encourage cooperation between joint ventures of cooperative character. Such enterprises enjoy a block exemption, which applies to specialisation agreements, research and development agreements, patent licenses agreements and know-how licensing agreements.

A second group of Commission regulations concerns distribution agreements. For instance, exclusive purchasing agreements exempts the application of Article 81TEC only if the maximum length of the exclusive purchasing obligation is limited to 5 years and the range of products covered by the obligation confines to products that are linked by virtue of their nature or of commercial practice. A third group of exemption regulations concerns industrial property rights.

In the field of competition, Article 82 TEC also stipulates that any abuse by one or more undertakings of dominant position within the common market or in a susbtantial part of it shall be prohibited as incompatible with the common

market in so far as it may affect trade between Member States. Abuse may in particular consist of: imposing unfair purchase or selling prices or other unfair trading conditions, limiting production, markets or technical development, applying dissimilar conditions to equivalent transactions with other trading parties, making the conclusion of contracts subject to acceptance by other parties of supplementary obligations which have no connection with such contracts.

Competition in the common market can be distorted not only by the machinations of undertakings but also by State intervention. To that end, Article 87 TEC stipulates that any aid granted which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, when it affects trade between Member States, be incompatible with the common market. Paragraph 2 of the same Article refers to the aid given to individual consumers in order to compensate the damage caused by natural disasters or exceptional occurrences that shall be compatible with the common market. Paragraph 3 stipulates that the following may be considered to be compatible with the common market:

- aid to promote the economic development of areas with economic or social problems,
- aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State,
- aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions,
- aid to promote culture and heritage conservation and such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Finally, according to Article 86 TEC in case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measures contrary to the rules contained in the Treaty. Such undertakings therefore have the same obligations as private firms including those laid down in Article 12 (prohibition of discrimination on grounds of nationality) and 81 to 89 (rules of competition).

8. Environment policy

The legal base of environmental policy is established in Article 2 TEC which sets the achievement of balanced and sustainable development among the

objectives of the Union. The Community policy on environmental issues has the following objectives: preserving, projecting and improving the quality of environment, protecting human health, prudent and rational utilisation of natural resources promoting measures at international level to deal with regional or world-wide environmental problems. Environmental policy is based on the precautionary principle and on the principles taking preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should be penalized and deposit the respective fine (Art.174 TEC).

The transition towards a more pro-active policy of voluntary prevention is manifested in the Directive on the assessment of the effects of certain public and private projects on the environment and on natural resources. According to this Directive, the promoter of the project, whether it be industrial, agricultural or relating to infrastructure, has to apply detailed information on its possible consequences for air, water, soil, noise, animals and their habitats, etc. The decision of the public authority as to whether authorise the project must weigh the economic, social or other advantages of the project against its environmental consequences.

Another means for the prevention of pollution is the ‘’eco-label’’ which guides the consumers towards ‘’clean’’ products and thus incites the industrialists to produce them. A competent body appointed by the Member State in which the product is manufactured, placed on the market for the first time or imported is responsible for deciding whether or not to grant the ‘’eco label’’ after assessment of the ecological performance of the product in accordance with the general principles given in the Regulation and the specific criteria set by the Commission.

The growing use of chemicals compounds in industry and agriculture poses serious dangers to the environment and human health. Detergents are significant cause of pollution of the Community’s aquatic system. A Directive has been adopted relating to the approximation of laws of the Member States relating to the placing on the market and the use of detergents. Another Directive contains provisions on the collection, processing and discharge of urban waste water and biodegradable water from industrial sectors. It stipulates that as a general rule waste water which enters into collection system must before disposal be subjected to secondary treatment in accordance with a timetable adjusted to the size of the population covered and the type and the situation of the collection of water.

9. Enterprise policy

Just recently with the entry into force, in November 1993, of the Treaty on European Union, industrial competitiveness became one of the stand

objectives of the European integration. Article 3 TEC states, in fact, that the action of the Community includes, inter alia, the strengthening of the competitiveness of Community industry. The Title on Industry of the TEU announces that the Community and the Member States must ensure the existence of conditions necessary for the competitiveness of the Community's industry. For this purpose, in accordance with a system of open and competitive markets, their action aims at: speeding up the adjustment of industry to structural changes, encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particular small and medium-sized undertakings, encouraging an environment favourable to cooperation between undertakings and fostering better exploitation of the industrial potential of innovation and research and technological development policies (Art.157 TEC).

It should be mentioned that until recently different definitions of SMEs were used in Community policies and this diversity could give rise to doubts among public authorities and even confusion among the businessmen concerned. Replying to a request by the Council (Ministers of Industry), the Commission adopted a recommendation on the definition of small and medium-sized enterprises. Thereafter, in order to be concerned as an SME, an undertaking must have fewer than 250 employees and may not belong to one or more large enterprises. More specifically, an enterprise is considered ''medium-sized'' if it has more than 50 and fewer than 250 employees, an annual turnover not exceeding EURO 40 million or annual balance sheet total not exceeding EURO 27 million. A small enterprise must have fewer than 50 employees, an annual turnover not exceeding EURO 7 million or annual balance sheet total not exceeding EURO 5 million. Without regard to their turnover, undertakings with fewer than 10 employees are considered to be ''micro-enterprises''. It should be noted that with this definition, the Union numbers some 17 million SMEs, providing over 70% of its employment, accounting for 50% of investment and representing 60% of its wealth.

Since 1990 three multiannual programmes were implemented in favour of SMEs. The third multiannual programme (1997-2000) pursues the policy in support of SMEs and introduces a series of new initiatives. Its objectives are: to simplify and improve the administrative and regulatory business environment, to improve the financial environment for enterprises, to help SMEs to Europeanise and internationalise their strategies, to enhance SME competitiveness and improve access to research, innovation and training, to promote entrepreneurship and support special target groups such as craft industries, small firms, women and young entrepreneurs.

In order to apply these new priorities and update the 1994 integrated programme, the Commission adopted a new integrated programme in favour of SMEs and the craft sector. The integrated programme seeks to bring together, within a coherent global framework, actions in order to make it

easier for SMEs to take advantage of the opportunities being offered to them, enhance SME competitiveness, promote entrepreneurship and thus make a contribution to solving unemployment problem.

The integrated programme provides three types of action to be taken in close collaboration between all the parties involved in the development of SMEs:

a) Action from the Member States in order to provide access to SMEs to the information society, to the forum on entrepreneurship or to the forum on craft and small enterprises,

b) European Union aid in the form of measures set out in the third multiannual programme for SMEs, and

c) measures taken under other Community policies, such as simpler legislation for the internal market(SLIM), loan guarantees for employment (ELISE), introduction of the euro, support for international cooperation, innovation in SMEs and market-oriented technological development.

A Recommendation by the Commission, addressed to the Member States, on the method of taxing SMEs depending on whether they are incorporated or not aims at improving the fiscal environment of SMEs. In order to make it easier for SMEs to be financed the Commission recommended to the Member States to set the tax burden on reinvested earnings, in the case of sole proprietorships, at the same level as that applied to non-distributed corporate income. Another Recommendation of the Commission addressed to the Member States, concerning payment deadlines concerning the commercial transactions, aimed at reducing the burden on SME liquidity caused by late payments. Not satisfied with the implementation of its Recommendation, the Commission is now proposing a Directive intended to combat late payments in commercial transactions. In another Recommendation on the transfer of enterprises, the Commission advocated changes in the law of succession and easing the taxation burden. In order to improve and simplify the environment for starting up business, a Commission Recommendation invited the Member States to reduce the fiscal, social, environmental and statistical burdens imposed on business start-ups.

Moreover, the improvement of the quality and the flow of information on the internal market and other fields of Community policy directed towards enterprises, in particular SMEs, is pursued through the Euro-Info Center network. Because it is generally more difficult for smaller enterprises to participate in research and development programmes, the Commission is making considerable efforts to promote SME participation in Community programmes such as BRITE and CRAFT, which are designed to stregthen the scientific and technological basis and thereby the competitiveness of European industry. The BRITE programme provides feasibility awards for SMEs, to help them find partners for subsequent calls for proposals of

applied research. CRAFT is designed to enable SMEs which do not have any research and development potential to join together to define common approach and commission a third party (a university, a research center or a firm) to carry out technological development on their behalf.

In order to help SMEs to overcome their financial problems, the Regulation on the European Regional Development Fund provides a series of measures to support local development initiatives and the activities of SMEs. More particularly, it provides:

a) aid for services in undertakings, notably in the fields of management, market study, and research, and common services for many undertakings,

b) the financing of the transfer of technology, including the dissemination of information and the implementation of innovation in the businesses,

c) the improvement in access of undertakings to capital markets, notably through the provision of guarantees and participation,

d) directly aid for investment in the absence of an aid system and

e) the realisation of small dimension infrastructure.

Furthermore, the Business and Innovation Centers are designed to promote business, creation and expansion by providing a comprehensive programme of services (training, finance, marketing, technology transfer, etc.) to SMEs, which are developing innovatory technology-based projects. The European Investment Fund offers loan guarantees intended to improve access to financial markets for SMEs in whatever form is permitted by the rules stated by the law.

PART III: Proposals for the Adoption of the Acquis from the Bulgarian laws

Taking into account the Bulgarian law and the European Acquis, suggestions are made on the changes that should take place for the Bulgarian law to be consistent to the European Acquis. The suggestions are in line with the proposals of the European Commission presented on the Regular Report 2000.

In the Report, the Commission indicated that in all areas of the internal market, Bulgaria's legislation was partially in line with the acquis. The assessment in the regular report of 2000 recognised that progress has been made but the scale of progress still required called for considerable and sustainable efforts both in approximation of legislation and in its implementation.

The Union's internal market is defined in Article 14 of the Treaty as an area without internal frontiers in which free movement of goods, persons, services and capital is ensured. This internal market, central to the integration process, is based on an open-market economy in which competition and economic and social cohesion must play a full part. Effective implementation and enforcement of this measure (free movement) requires not only compliance with such important principles as, for example, non-discrimination or mutual recognition of national legislation but also the effective application of common rules, such as those designed for safety, environmental or consumer protection, and effective means of redress.

A. Free movement of goods

Bulgaria has made considerable progress in this field. The transposition of the acquis on the free movement of goods is progressing as Bulgaria applies a liberal foreign trade that meets the WTO requirements. A limited number of goods is subject to administrative control. It should be mentioned that the number of goods subject to permits have been reduced in 2000. Furthermore, Bulgaria applies export quotas only for those goods which are subject to international standards No duties and taxes are charged for exported goods. In addition, the new Customs Law is based on the EU Customs Code. The Bulgarian Customs Tariff is based on the international Harmonized Commodity Description and Coding System and on the EU Combined Nomenclature. The adoption of both the new Customs Law and the modified Customs Tariff is part of the National Strategy for becoming a member of the European Union.

However, major steps have to be taken for Bulgaria in order to achieve transposition in a number of sectors. At this point only one New Approach Directive has been transposed so far while the Law on Technical requirements for Goods established is not entirely in line with the acquis. The

adoption of European harmonised standards should be accelerated for Bulgaria to enter the EU as planned. In the non-harmonised areas information is required on the internal legislative screening with regard to possible barriers to trade.

It is difficult for the Commission to assess administrative capacity, as institutional reorganisations and transpositions have taken place only recently. However, it appears that much work remains to be done to build up and consolidate capacity. While functional separation of standardisation, certification and market surveillance activities have been provided for, it is not clear how this will work in practice and when it will be implemented to ensure appropriate independent administrative capacity. The creation of an effective network of independent certifying bodies and laboratories needs to be promoted. The abolition of border and ex ante controls calls for reinforced market surveillance, which remains weak and not yet fully established because the New Approach Directives has not been approved yet. The Bulgarian Accreditation Service needs to be developed – created as an independent agency within the Ministry of Economy – in order to become a full member of the EA (European Accreditation). The Committee for Standardisation and Metrology will be the National Enquiry Point (NEP) in charge of notification of national technical rules to the Commission.

As far as safety checks on products at external borders are concerned, Bulgaria still needs to establish appropriate customs and market surveillance infrastructure as well as effective administrative co-operation between competent authorities.

In the area of public procurement the legislation is partially in line with the acquis. A number of amendments will be required, including clear rules on legal remedies for unsuccessful bidders. Rules have to be developed in order to ensure that legislation is fully and properly applied by the public authorities/utilities throughout the country. The administrative capacity of the Directorate responsible for public procurement has to be adopted to the new conditions in order to ensure effective implementation.

B. Free movement of persons

In the field of free movement of workers, Bulgaria has a bilateral agreement with Germany concerning workers in the hotel and catering industry which came into force in September 1999 and an agreement with the Czech Republic, which was contacted in December 1999. Transposition ie free movement of workers is progressing but will need to be sustained in order to ensure that there are no provisions in Bulgarian legislation which contradict Community rules. The majority of these provisions concern work permits and the right to work as a self-employed person.

Efforts have to be made to strengthen public employment services with a view to future participation in the EURES network, with particular emphasis on language training of staff.

C. Freedom to provide services

Legislation in the area of services, has to be further developed in order for Bulgaria to align its legislation with the acquis. The freedom of establishment and providing services requires some modifications to be made necessary in relation to legal protection of designs and biotechnological inventions. Specifically in the insurance sector measures have to be applied in the field of motor insurance, while in the securities sector the introduction of an investor protection scheme is needed.

The EC directive on data protection still needs to be implemented in Bulgarian legislation with a separate legislative act. Additional frameworks that need to be developed and implemented are those of the Information Society and the Community framework for electronic signature.

Especially in the insurance sector, an independent authority should be introduced responsible for handling issues related to the particular sectors.

D. Free movement of capital

Bulgaria has already achieved substantial progress in the process of aligning to the acquis of capital movement. Although some uncertainties regarding the regime still exist, the main outstanding issue concerns the constitutional ban on the acquisition of land by foreigners (see also Ownership of real estate).

The implementation of the new Foreign Exchange Law requires the upgrading and strengthening of the present administrative framework.

Bulgaria has started preliminary activities to modernise payment infrastructure. However, substantial work is required in order to transpose and implement the acquis in relation to the payment and security settlement systems.

In the area of money laundering, the results achieved so far by the BFI have been limited, especially due to a number of weaknesses in the present legislation. These need to be addressed so that the BFI can play its role in full. Further institutional reinforcement is also required at the Bulgarian National Bank in this respect. The existing legislation is too recent for a valid assessment of implementation to be made.

Bulgaria still applies an authorisation procedure for most outward capital transactions. Adopted in September 1999 the new Currency Law which has entered into force from January 2000 will contribute to liberalisation of capital exports.

E. Competition policy

Bulgaria needs to make significant efforts in order to adapt to the EC acquis regarding the competition policy.

As far as anti-trust is concerned, Bulgaria's legislation is largely in line with the acquis. Further alignment is still necessary, especially with respect to the development of the acquis on vertical restraints. Concerning administrative capacity, the independent Commission for Protection of Competition (CPC) is the body responsible for implementing and enforcing competition policy. The CPC has broad investigative powers and has examined a large number of cases, raising public awareness on competition policy. The main challenge is now to apply and enforce effectively the anti-trust rules, focusing on the most serious distortions of competition.

As far as state aid, is concerned Bulgaria is still at elementary level concerning the development and implementation of the legal framework and the control system for state aids, and cannot yet be considered as complying with the acquis. The broad legal framework is concluded in the Law on the Protection of Competition but it lacks proper implementation. Clarifying institutional responsibilities in order to be able to ensure effective monitoring and control of direct and indirect state aids at national and regional level must be addressed as a matter of priority.

The CPC has not yet made clear how and when it intends to align old aid measures (i.e. those cases where aid continues to be granted and which existed before Article 20 of the Law on the Protection of Competition was implemented) with the acquis.

A state aids notification system has been established using forms identical to those used by the European Commission. However, the extent to which the CPC actually receives notifications on a systematic basis from all planned state aids projects at national, regional and local level is not clearly specified. In the absence of a comprehensive system, the CPC seems unable to authorise, forbid or impose conditions on state aids projects in line with the acquis.

With regard to the obligation of establishing a comprehensive state aid inventory, Bulgaria has updated its 1996 inventory to cover the years 1996 to 1998. Rather than using such periodic updates, the inventory should be based upon a continuously updated system, thereby ensuring that

information on all aid measures can be retrieved at any time from the database.

Regional state aids maps need to be adopted with a view to differentiating aid intensity levels according to the severity of the regional problems being addressed, in consultation with the European Commission.

A lack of administrative capacity underlies many of the deficiencies in state aids monitoring and control. In the CPC, a director of the state aids division has only recently been appointed, while only one person has been assigned to handle state aids cases. The state aids department at the Ministry of Finance has a staff of four people and its ability to influence policy even within the Ministry is limited.

F. Social policy and employment

According to Regular Report 2000 of the Commission Bulgaria has made little progress in this area.

As regards labour law, no progress in the adoption of the acquis can be reported.

Concerning the equality of treatment, there is little evidence of concrete enforcement on the existing legislation. An inter-institutional working group (including NGOs) is preparing further legislation including the establishment of a National Council on Equal Opportunities.

Progress has been made in the area of occupational health and safety, inter alia by the adoption of legislation in the area of minimum safety and health requirements at the workplace and for the use of work equipment. However, further legislative work is necessary, including the transposition of directives in the field of personal protective equipment, physical agents, explosive atmospheres and the amendments recently made to the work equipment directive. A General Labour Inspectorate at the Ministry of Labour and Social Policy as well as regional inspectorates have been created as enforcement bodies for both labour and occupational safety and health legislation. Furthermore, some sector and regional Councils on Working Conditions as well as a considerable number of company based Committees and groups on working conditions (including workers and employers representatives) have been established.

Bulgaria has ratified the European Social Charter (revised) of the Council of Europe, which includes articles related to Social Dialogue. However, social dialogue is still weak; this refers particularly to the collective bargaining ability of private sector employees. The situation does not seem to have progressed at enterprise level, either in the public or private sector (including some

foreign-owned companies), especially in small and medium private enterprises, where there is frequently an absence of individual labour contracts and of collective agreements, and non-payment of overtime. A strengthened Social Dialogue would also be helpful in dealing with the social tensions caused by the privatisation and restructuring process. Through a Decree of the Council of Ministers in January 2000, a formal mechanism for the consultation of social partners regarding accession negotiations was established, but it still needs to prove its effectiveness. Moreover, there are regularly complaints about the lack of social dialogue in the public sector. More generally, at sectoral level, the development of autonomous social dialogue and collective agreements still has a long way to go before the government's commitments in this area are fully realised and social partners are ready to assume their role in the sectoral social dialogue at European level.

As far as the employment and labour market policies are concerned, Bulgaria has started the process of Joint Employment Review with the European Commission. In addition a National Plan on Employment has been prepared, which takes strong account of the EC Employment Guidelines. This issue is to be discussed by the National Council for Tripartite Co-operation. Although the regional set up has been improved by the establishment of Regional Employment Councils (including employment commissions) further steps need to be undertaken to effectively decentralise as well as co-ordinate employment policy and promotion, including the National Employment Service. More frequent training and retraining as well as employment programmes, particularly including socially vulnerable groups, are necessary and a functioning monitoring and assessment system for the impact of measures on the labour market has to be developed, since unemployment remains one of the main problems of Bulgaria. At the same time, mainly due to constant lack of funding, the share of unemployed people covered by active labour market measures as well as unemployed people receiving unemployment benefits is decreasing. Social dialogue and NGO involvement in this sector needs to be strengthened. Bulgaria is still facing severe problems on the labour market with rising unemployment rates (17% in 1999).

The capacity of the Ministry of Labour needs particular strengthening with a view to the implementation of future European Social Fund type measures.

Major reform has been introduced in the area of social protection. A three-pillar pension system was introduced at the beginning of the year 2000, including a public mandatory pension system, an additional mandatory pension system, depending on the amount of the participant's security contributions, and a voluntary pension system. The Compulsory Social Security Code which entered into force in January 2000 also strives for unified social security administration. There is a chronic lack of funding in the

area of social insurance since all three insurance funds (the Social Security Tax Fund, the National Health Insurance Fund and the Professional Qualification and Unemployment Fund) have been in deficit.

Therefore:

Further alignment with the acquis is necessary in all areas of the social acquis. Amendments to the labour law are currently under preparation which – if adopted - could represent progress in the adoption of the acquis.

In order to enforce legislation on equal opportunities and labour law, efficiently operating labour and social courts are needed. The principle of compensation for hazardous work, which is not compatible with the EC acquis, needs to be replaced by an approach aiming at the prevention of health risks. The General Labour Inspectorate needs further strengthening. Social partners need to be involved on a more structured basis; activities would be needed to structure a more effective social dialogue at intermediate levels (sectoral, regional) and prepare social partners at these levels. The government's administrative capacity on social dialogue should be reinforced and it should better follow and motivate autonomous social dialogue, in particular at sectoral level, for instance by encouraging the development of appropriate structures, and by monitoring of collective agreements and their contents. Inter-ministerial co-ordination as well as the administrative capacity of and the relationship between national and regional administration needs to be improved with a view to future ESF type activities.

A law on equal opportunities for men and women has not yet been adopted and there are no independent commissions or ombudsmen which oversee policy development in the field of equal opportunities and the fight against racism. Legislation transposing the EC Directive based on Art. 13 of the Treaty on discrimination on the grounds of race or ethnic origin will have to be introduced and implemented.

H. Industrial policy[1]

Industrial policy is driven largely by the ambitious agenda of structural reform supported by the international financial institutions and the EU. The government's industrial policy has been set out in the National Economic Development Plan. It aims at sustained economic growth, the completion of privatisation and restructuring, improved competitiveness and the development of small and medium-sized enterprises. However, it is unclear to what extent these statements of industrial policy act as an operational framework for policy decisions.

[1] Developments in industrial policy should be seen in relation to developments in the context of SME policy (*see Chapter – Small and medium sized enterprises*).

In 1999 the biggest wave of privatisation was recorded. The share of privatised long-term fixed assets reached 49% at the end of 1999 (30% increase compared to 1998), while the share of privatised assets excluding infrastructure reached the level of 78%. However, there remains a difficult residual group of state-owned enterprises, notably in the energy, transport and telecommunications sectors. The privatisation process occasionly lacks transparency, and some new owners of privatised enterprises have unproven management skills.

A factor that hinders restructuring in other sectors is the lenient financial discipline in enterprises. Some measures have been taken to improve the legislation regulating the sale of assets and therefore ensuring efficient and transparent procedures for liquidation and insolvency. Further efforts are needed to streamline these procedures. An important event of the past years was the creation of the Ministry of Economy in December 1999, by merging the former Ministries of Industry and Trade and Tourism. The Minister of Economy also acts as Deputy Prime Minister. This administrative reform aims inter alia at lending new momentum to structural reform and the adoption of a coherent industrial policy that focuses on the opportunities for, and obstacles to, economic growth.

Bulgaria continues to make progress in the structural reform of its enterprise sector, although some difficulties remain to be tackled, notably with respect to state-owned utilities and the steel sector.

Further efforts need to be made to establish a coherent market-oriented industrial policy which will be in line with the concepts and principles of EC industrial policy. Other areas for improvement are the business environment, bankruptcy and liquidation procedures, enterprises' access to loan and equity capital. Systematic and regular independent audits of the business environment would help identify the significant remaining administrative obstacles to business development and inward investment. Strong efforts also need to be made to improve corporate governance, including the stringent enforcement of international and EC accounting standards.

An important dimension of industrial policy that has so far received insufficient attention is the monitoring and control of state aids (see chapter competition).

Regarding administrative capacity, as the agenda of privatisation and restructuring nears completion, the new Ministry needs to re-orient its role and equip its staff to focus increasingly on developing and implementing a pro-active and market-oriented industrial policy, creating a favourable business environment and pursuing appropriate regional and sectoral strategies. This will require the tide cooperation between the new Ministry with other ministries as well as with the private sector business organisations.

J. Small and medium-sized enterprises[2]

The Government has introduced a number of important measures to increase the impact of its SME policy, including the area of administrative capacity.

As regards SME policy, the Agency for SMEs has been transferred from the Ministry of Industry to the Council of Ministers to act as a central point for co-ordinating and promoting SME-related policies. The Agency needs now to build on this strategic move to maximise its influence. The Agency has started to build a national SME support network including the Euro Info Centres, the European Innovation Centre, the regional development agencies, business centres and NGOs.

Taking action in order to facilitate the access of SMEs to finance, the state-owned Encouragement Bank, which specialises in SME lending, has commenced operations. This action will be complemented by numerous donor-supported initiatives.

The creation of the new Ministry of Economy in December 1999 is expected to enforce the governments' efforts in improving the business environment. Some administrative procedures have already been simplified; e.g. each company now has a single identification number.

Bulgaria's SME policy is overall in line with the principles and objectives of EC enterprise policy. The administrative ability for implementing the SME policy is in place but needs some strengthening. The Agency for SMEs needs to receive proper funding from the national budget in order to implement appropriate policies. The administrative ability of the Agency for SMEs should be strengthened, and the national SME support network needs further development and better co-ordination. In general, more active consultative links need to be forged between the public sector and business representatives.

[2] Developments in policy towards small and medium sized enterprises should be seen in relation to developments in the context of industrial policy (*see Chapter Industrial policy*).