

EUROPEAN UNION COMMON POSITION  
(Replaces doc. 20692/01 CONF-BG 59/01)

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Subject : Chapter 2: Freedom of Movement for Persons

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This position of the European Union is based on its general position for the Accession Conference with Bulgaria (CONF-BG 2/00), and is subject to the negotiating principles endorsed by the Conference (CONF-BG 14/00), in particular:

- "- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements - even partial - reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established".

The EU underlines the importance for Bulgaria of compliance with the Europe Agreement, as well as the Accession Partnership which constitute basic elements of the enhanced pre-accession strategy. The EU notes that Bulgaria is committed, through the Accession Partnership and the National Programme for the Adoption of the *Acquis*, to take the necessary legislative and enforcement measures needed for the mutual recognition of professional qualifications and to become integrated in the EU system of co-ordination of social security systems and to align with the EU *acquis* in these areas. The EU encourages Bulgaria to continue its progressive legislative alignment with the *acquis*, as well as its efforts to ensure effective implementation.

The EU notes that Bulgaria in its positions CONF-BG 37/01 and 23/02, accepts the *acquis* under chapter 2 as in force on 31 December 2000 and that Bulgaria declares that it will be able to implement it before 1 January 2007. The EU also takes note of the additional information provided in CONF-BG 20/02.

The EU considers that the information provided by Bulgaria on its legislative framework allowing for the implementation of the *acquis* under Chapter 2 is sufficient at this stage. However, the EU invites Bulgaria to ensure that all necessary practical steps are taken in order to fully respect the relevant Community rules at all levels and to report regularly on achievements in this regard. The EU will closely monitor Bulgaria's progress in this area.

**Mutual recognition of qualifications**

The EU notes that Bulgaria has provided texts and drafts of legislation on mutual recognition of qualifications. It notes furthermore that, in its additional information, Bulgaria has provided a detailed timetable for the transposition of the measures needed to achieve full harmonisation with the *acquis*. Details on the entry into force of this legislation, where available, are provided by Bulgaria. The EU notes that this information will need to be continually monitored and updated

between now and accession and it invites Bulgaria to continue to supply updated information on a regular basis.

### *General system Directives*

The EU takes note of the confirmation given by Bulgaria that it is undertaking all necessary measures for harmonisation of its national legislation with the *acquis* on mutual recognition of qualifications and of the details provided by Bulgaria on these measures.

The EU takes note of Bulgaria's commitment to ensure a clear distinction between academic and professional recognition and of the detailed timetable for amendments required to the Higher Education Act and the Vocational Education and Training Act.

The EU notes that amendments to date have mainly focused on providing a regulatory framework for the recognition of academic qualifications and that, according to Bulgaria, these amendments have also prepared the way for the legislative amendments and institutional and organisational changes that will be required to comply fully with the General System Directives and to develop a system of professional recognition in line with the *acquis*. The EU takes note of the details provided by Bulgaria on the measures it intends to take to establish the required administrative structures. The EU will monitor closely Bulgaria's progress in this area.

The EU takes note of Bulgaria's confirmation that any requirements concerning residence and nationality will be removed by accession and that any requirements concerning language will be proportionate and non-discriminatory.

### *Sectoral Directives*

The EU notes that Bulgaria will introduce provisions on simpler procedures for the provision of services through amendments to the sectoral legislation and takes note of Bulgaria's statement that full compliance will be achieved by accession.

### *Lawyers*

The EU notes that legislative preparations to comply with the *acquis* on lawyers have been advanced and that the necessary amendments to the Bar Act will now be adopted by mid 2002.

### *Architects*

The EU takes note of the information provided by Bulgaria on training for architects. It also notes that professional recognition and licensing of architects will be regulated by the Bill on the Chamber of Architects and the Chamber of Engineers in Investment Design in Bulgaria, which was approved by the Council of Ministers on 18 April 2002.

The EU takes note of the further legislative measures to be adopted by Bulgaria to ensure compliance with Directive 85/384/EEC. It takes note of Bulgaria's confirmation that the *acquis* on architects as regards establishment will also be transposed by these measures.

### *Health professions*

The EU takes note of the information supplied by Bulgaria on the health professions. The EU notes that Bulgaria has provided, by profession, information on the current legislative framework, curriculum and length of training as well as the legislative amendments that will be required to ensure compliance, together with a timetable for their adoption. The EU furthermore welcomes Bulgaria's commitment to take the recommendations of the recent peer review on the health professions into account in ensuring that the curriculum, in terms of content and duration, complies with the *acquis*.

The EU takes note of the information supplied by Bulgaria on the ongoing reforms to the health care system. It notes the explanations provided by Bulgaria on the role of the Act on the Medical Establishment and the Public Health Act in transposing the *acquis* on mutual recognition of professional qualifications. The EU however notes that further amendments will be required to the Act on the Medical Establishment and will closely monitor the compliance of this Act with the *acquis*.

#### *Veterinary surgeons*

The EU notes that Bulgaria has provided information on the current legislative framework, curriculum and length of training as well as the legislative amendments that will be required to ensure compliance, together with a timetable for their adoption. The EU furthermore welcomes Bulgaria's commitment to take the recommendations of the recent peer review on the health professions into account in ensuring that the curriculum, in terms of content and duration, complies with the *acquis* for vets.

#### *Administrative structures and training*

In the field of professional recognition, the EU encourages Bulgaria to enhance its efforts to introduce the necessary administrative structures as well as the education and training programmes to guarantee the level of competence of the qualified professionals required by the Directives in this field.

The EU recalls that, under the sectorial Directives, professional qualifications are automatically recognised on the basis of a coordinated training. It is therefore essential that citizens can be assured that professionals have the minimum standard of qualification provided for in these Directives.

The EU recalls that it will closely monitor Bulgaria's alignment with the sectoral Directives. It will in particular monitor the situation of individuals whose professional qualifications have been obtained before harmonisation. It expects Bulgaria to take measures to ensure that all its professionals can meet the requirements laid down by the Directives and can therefore benefit from professional recognition throughout the EU from accession, in line with the procedures applied in previous accessions, thus ensuring that recognition of professionals from Bulgaria is not subject to verification at the time of applying for recognition. The EU nevertheless notes that it is also necessary to ensure that professionals from Bulgaria are not subject to unnecessary additional training and that due account is taken of equivalent experience.

The EU reiterates that it will closely monitor the transposition of the *acquis* and the introduction of the necessary administrative structures. Throughout the monitoring process, the EU will advise Bulgaria on the measures needed in order to be fully aligned with this area of the *acquis* by accession.

#### **Citizen rights**

### *Gravier ruling*

The EU notes that Bulgaria confirms that it will comply fully with the Gravier ruling and that, in this regard, the Higher Education Act and related secondary legislative acts will be amended by 2003.

### *Right of Residence*

The EU takes note of the information provided by Bulgaria on existing rules on residence permits. It notes that Bulgaria has confirmed that it will fully comply with the *acquis* on this and on all other points concerning residence rights by accession. The EU furthermore takes note of the timetable provided by Bulgaria.

### *Voting rights*

The EU notes that Bulgaria has confirmed that it will comply with the voting rights Directive by accession and it takes note of the timetable provided.

### **Free movement of workers**

The EU takes note of Bulgaria's confirmation that, by accession, there will be no provisions in its internal legal order in conflict with Regulation (EEC) 1612/68, other than those permitted or required under the terms of the Accession Treaty. The EU notes that Bulgaria has outlined the current practice and takes note of planned legislative amendments relating to the application of this Regulation.

The EU notes that Bulgaria will assure full compliance with Directive 68/360/EEC and Regulation (EEC) 1251/70 by amending and supplementing the Foreigners in the Republic of Bulgaria Act and by adopting secondary legislation. The EU takes note of the timetable provided.

The EU takes note of the information provided by Bulgaria on labour migration and on cross-border mobility. It encourages Bulgaria to pursue its efforts to deal with these matters.

The EU notes Bulgaria's readiness to apply the decisions of the European Court of Justice with respect to employment in the public sector from accession.

The EU stresses that freedom of movement concerns not only the economic but also the social and cultural integration of migrant workers and their families in the host Member States.

The EU recalls the political and practical importance of this area of the *acquis* and notes that there are sensitivities over the issue of mobility of workers.

The EU recalls the arrangement it has proposed in its position CONF-BG 59/01 and notes that Bulgaria accepts it (CONF-BG 20/02).

The arrangement proposed by the EU, and accepted by Bulgaria, is as follows:

- current Member States will continue to apply national measures as regards the right of Bulgarian nationals to take up work. In this context, any current Member State may introduce, under national law, greater freedom of movement of workers than at present, including full

labour market access. Current bilateral agreements will continue to apply and may be further developed. The access of Bulgarian nationals to current Member State labour markets cannot be more restricted than that prevailing at the time of the signature of the Accession Treaty. In addition, current Member States will introduce a preference for Bulgarian nationals over non-EU labour ("*préférence communautaire*"). The Commission will on a regular basis closely monitor labour market developments, in particular in any Member State applying labour market restrictions;

- before the end of the second year following Bulgaria's accession a review of the functioning of the national measures shall be held, on the basis of a report from the Commission to the Council. On completion of the review and no later than at the end of the second year following Bulgaria's accession, current Member States should notify the Commission on whether they intend to continue applying national measures or whether they intend to apply the *acquis* henceforth. In the absence of such notification, the *acquis* will apply;
- one further review may be held for Bulgaria upon its request. The same procedure as above shall apply;
- five years after Bulgaria's accession a current Member State maintaining national provisions may, in case of serious disturbances of the labour market or threat thereof, prolong these for a maximum of two years, after notifying the Commission accordingly. In the absence of such notification the *acquis* will apply;
- any current Member State applying the *acquis* may invoke a safeguard clause until the end of the seventh year following Bulgaria's accession. The safeguard clause could be based on the model or a variant of former Article 20 of Regulation (EEC) 1612/68 on freedom of movement for workers within the Community. As long as safeguard measures can be invoked, Member States may, in urgent and exceptional cases, suspend full application of the *acquis*, followed by a reasoned *ex-post* notification to the Commission. Member States issuing work permits to Bulgarian nationals during this period will do so automatically;
- a declaration shall be attached to the Final Act of the Accession Treaty stating that current Member States shall endeavour to grant increased labour market access under national law, with a view to speeding up the approximation to the *acquis*.

The specific case of commuters or frontier workers is also subject to the above arrangements and may be dealt with through national measures during the transitional arrangements.

In the context of the freedom of movement of workers, there will be no global transitional arrangements in relation to any provision of services (self-employed with a genuine legal status, service providers etc.) nor for any other categories of persons. However, as long as they apply national measures to the free movement of Bulgarian workers, Austria and Germany may, after notifying the Commission, apply flanking national measures to address serious disturbances or threat thereof, in specific sensitive service sectors on their labour markets, which could arise in certain regions from cross-border provision of services, as defined in Article 1 of Directive 96/71/EC, by companies established in Bulgaria, involving temporary movement of workers whose right to take up work in Austria and Germany is subject to national measures. Bulgaria will find annexed to this position the list of services which could be covered by the above arrangements, as provided by Austria and Germany respectively, with a view to the inclusion of an agreed list in the Accession Treaty.

Bulgaria may apply to nationals from a current Member State national measures equivalent to the

measures applied by that Member State with regard to Bulgaria in the context of the above arrangement on free movement of workers and provision of services. As long as a current Member State applies national measures to nationals of a new Member State Bulgaria may resort to the safeguard provisions outlined above with regard to new Member States, with the exception of Cyprus and Malta. National measures both of a current Member State and of Bulgaria will not fall behind the current status.

Member States and Bulgaria will strive to liberalise, under national law, access to their labour market for each others' nationals already before accession.

In the context of the arrangement outlined above, Bulgarian nationals legally resident and employed in a given Member State shall enjoy treatment equal to its nationals in respect of working conditions, pay etc., but not as regards access to the labour market of another Member State. Nationals of other Member States legally resident and employed in Bulgaria shall enjoy treatment equal to Bulgarian nationals in respect of working conditions, pay etc.

In all instances where the *acquis* is suspended during the transitional arrangements, members of the family of a worker already living in a Member State or Bulgaria at the time of Accession shall have the right to install themselves with the worker, and shall have immediate access to the labour market of that Member State or Bulgaria, respectively. Members of the families of workers arriving later shall be given progressive rights, consistent with the general arrangements outlined above.

Bulgarian migrant workers and their families legally resident and working in another Member State or migrant workers from other Member States and their families legally resident and working in Bulgaria may not be treated in a more restrictive way than those from a third-country resident and working in that Member State or Bulgaria respectively. Furthermore, in application of the principle of "*préférence communautaire*", migrant workers from third countries resident and working in Bulgaria, may not have a more favourable treatment than Bulgarian nationals.

## **EURES**

The EU takes note of the information provided by Bulgaria concerning its preparations for participation in the EURES network and it notes the detailed timetable provided. It nevertheless notes that pre-selection of Euroadvisers by Bulgaria for training by the Commission will occur closer to accession. It notes furthermore that investments in computer infrastructure should await the development of a new database by the Commission. The EU encourages Bulgaria to follow developments closely so as to be in a position to participate in the network in due course.

## **Supplementary pension rights of employed and self-employed persons moving within the Community**

The EU takes note of the timetable provided by Bulgaria indicating the measures to achieve full transposition of Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community into national law.

## Co-ordination of social security systems

The EU notes Bulgaria's commitment to ensuring that its administrative structures will be sufficiently developed by the time of accession in order to meet the requirements for full implementation of Regulation (EEC) 1408/71 and Regulation (EEC) 574/72. It takes note of the efforts that are being made in this area, in particular the work being carried out by the working sub-group on co-ordination of social security schemes.

The EU takes note of Bulgaria's confirmation that, by accession, it will fully apply the respective Regulations on social security co-ordination and will assume the corresponding obligations, both in terms of financial and administrative capacity.

The EU notes that an impact analysis and estimates on the financial implications of reimbursement of health care costs is being conducted, the results of which are to be available by 2003. The EU invites Bulgaria to provide the results of this study as soon as they are available.

The EU takes note of the details supplied by Bulgaria regarding bilateral agreements concluded and under discussion. It encourages Bulgaria to continue to conclude further bilateral agreements with Member States between now and accession.

The EU recalls that for the application of the specific provisions of Regulations (EEC) 1408/71 and (EEC) 574/72 special procedures in relation to Bulgarian legislation might be needed. The EU notes that Bulgaria has already presented a first draft of its requests for specific entries in the Annexes of these Regulations. It informs Bulgaria that further information will be required to enable the EU to evaluate the need for their entry in the Annex. The EU confirms that preparation of this matter will take place in the Administrative Commission on Social Security for Migrant Workers, with the results reached to be included in the negotiation process at a latter stage.

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The EU notes that, at this stage, and considering Bulgaria's agreement on the arrangement set out above on the free movement of workers, this chapter does not require further negotiation. Monitoring of progress in the adoption and implementation of the *acquis* will continue throughout the negotiations, in particular as regards adherence to the planned legislative schedule and further measures aimed at ensuring effective enforcement. With respect to mutual recognition of qualifications, the EU will closely monitor Bulgaria's alignment with the sectoral Directives. It will in particular monitor the situation of individuals whose professional qualifications have been obtained before harmonisation. It expects Bulgaria to take measures to ensure that all its professionals can meet the requirements laid down by the Directives and can therefore benefit from professional recognition throughout the EU from accession. A final assessment of conformity of Bulgaria's legislation and policies with the *acquis* and of its effective implementation can only be made after the adoption of the new legislation and at a later stage of negotiations. Particular consideration needs to be given to the links with other negotiating chapters, in particular those chapters dealing with the other freedoms, Free Movement of Goods, Freedom to Provide Services and Free Movement of Capital as well as with the chapters on Transport Policy, Social Policy and Employment and Cooperation in the Fields of Justice and Home Affairs. In addition to all the information the EU may require for the negotiations on this chapter and which is to be provided to the Conference, the EU invites Bulgaria to provide regularly detailed, written information to the Association Council on progress in the adoption and implementation of the *acquis*.

In view of the above considerations, the EU may return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 January 2001 and the conclusion of the negotiations.

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## **ANNEX**

### **Austria**

Sector	
Construction, including related branches	45. 1-4 NACE, branches related to construction of the annex of the posting of workers Directive (96/71/EC)  26.7 Cutting, shaping and finishing of stone  28.11. Manufacture of metal structures and parts of structures
	01.41.01 Horticultural service activities
Cleaning Services	74.70 Industrial cleaning
Social Work	85.32 Social work and activities without accommodations and 85.14.02 Home nursing
Other Services	74.60.01 Security activities

### **Germany**

Sector	
Construction	Activities as listed in the annex to the Directive concerning the posting of workers in the framework of the provision of services (96/71/EC) and Activities as described in 45.1 to 4 (NACE): Construction, including related branches
Cleaning Services	74.70 (NACE) Industrial cleaning
Other Services	74.84 (NACE) Only activities of interior decorators

NACE: Commission Regulation (EC) 761/93 on statistical classification of economic activities in the European Community.