

EUROPEAN UNION COMMON POSITION

Chapter 13: Social Policy and Employment

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 5/00), 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 Association 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 strengthening its existing employment and social affairs institutions 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, while recognising that compliance with this part of the *acquis* will require Bulgaria to undertake significant investments. Furthermore, the EU underlines the importance of the social dimension of the Union, as reinforced under the Amsterdam Treaty, and emphasises that from the date of accession, timely and complete transposition and implementation of the social policy and employment *acquis* will be required.

The EU also notes the role played by civil society organisations in the debate at national and European level in promoting an inclusive society.

The EU notes that Bulgaria, in its position CONF BG 38/01 and in the addendum to its position CONF BG 54/01 accepts the *acquis* under chapter 13 as in force on 31 March 2001 and that Bulgaria declares that it will be able to implement it by accession with one exception.

The EU notes that Bulgaria requests a transitional period until 31 December 2016 in respect of tar yield of cigarettes as determined in article 2 (2) of Directive 90/239/EEC. However, the EU notes that Bulgaria has only provided a justification relating to aspects concerning agriculture and employment and that no evaluation of consequences for public health has been provided. Therefore, in order for the EU to assess the request, Bulgaria is invited to provide a detailed justification, including possible alternatives, and a detailed analysis of the public health implications of the request. In addition, the Conference will need to examine the full implications of this request in the light of the agriculture chapter.

As an overall response to Bulgaria's request for a transitional period, the EU recalls its general negotiating position that transitional measures are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis*. They must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition.

In addition to the information provided in its position, the EU invites Bulgaria to provide further clarifications to the Conference in the areas hereunder.

Labour Law

The EU notes that according to Bulgaria's position, its labour legislation currently in force complies to a significant extent with the basic requirements of the *acquis*.

The EU takes note of the additional information supplied by Bulgaria concerning the transposition of the labour law *acquis*. However, the EU invites Bulgaria to further specify what additional measures are needed to fully align with and implement the *acquis* in the field of labour law. In particular, Bulgaria is invited to provide information on the transposition of Directive 94/45/EC on the establishment of a European Works Council and Directive 80/987/EEC on insolvency, where very little progress has been achieved so far.

The EU furthermore notes that the new amendments of the Labour Code will achieve almost full transposition of Directives 93/104/EC concerning certain aspects of the organisation of work, 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, 94/33/EC on the protection of young people at work, 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' right in the event of transfers of undertakings, businesses or parts of undertakings businesses (the consolidated version of Directive 77/187/EEC amended by Directive 98/50/EC) and 99/70/EC concerning the fixed-term work.

The EU also takes note that, as a result of the new amendments of the Labour Code, the following Directives will be partially transposed: 98/59/EC on the approximation of the laws of Member States relating to collective redundancies and 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or temporary employment relationship.

Finally, the EU takes note of the detailed information provided by Bulgaria on the institutions responsible for the implementation of the labour law *acquis*, and in particular on the activities for strengthening the General Labour Inspectorate Executive Agency.

Equal treatment for women and men

The EU takes note that, according to Bulgaria, the parts of the *acquis* which have not yet been transposed by existing legislation and the recent amendments to the Labour Code will be transposed by the proposed Bill on Equal Opportunities and in legislation to be adopted in the "medium term".

The EU invites Bulgaria to provide information on developments in that area. The EU takes note of Bulgaria's intention to amend in due course certain provisions of the amended Labour Code (such as the prohibitions on certain categories of women undertaking night and overtime work) which are incompatible with the *acquis*.

The EU takes note of Bulgaria's plan for the development of enforcement mechanisms (including a National Council on the Equal Opportunities for Women and Men, Ombudsman for the Equal Opportunities for Women and Men). The EU invites Bulgaria to provide further information on the envisaged timetable for the establishment of these bodies and on the detailed proposals for their role and powers.

Anti-Discrimination

The EU recalls that the fight against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation is a prominent element of the political *acquis* in the EU, and as such is covered by the political Copenhagen criteria. As legislative *acquis* develops under Article 13 of the EC Treaty, Bulgaria will need to give continuous attention to combating these phenomena and to supply, in the pre-accession context, regularly updated information on its initiatives in this regard.

In particular, the EU draws Bulgaria's attention to the fact that Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin was adopted on 29 June 2000, with a transposition date of 19 July 2003 will require equal treatment in employment, access to goods and services, education and vocational training, housing, social advantages, social security and health care. In addition, Directive 2000/43/EC requires the establishment of a body to promote equality irrespective of racial or ethnic origin.

The EU also draws Bulgaria's attention to the fact that Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation was adopted in 2000, with a transposition date of 2 December 2003 (with a possibility of extension of three years for the provisions on disability and age discrimination), prohibits discrimination on grounds of religion and belief, disability, age and sexual orientation in the labour market, including the membership of trade unions and professional organisations. In addition, Directive 2000/78/EC requires extra measures to be put in place to meet the specific needs of people with disabilities.

Both Directives require Member States to provide effective redress for both direct and indirect discrimination, harassment and victimisation, among other means by shifting the burden of proof to the respondent under certain circumstances. They also require Member States to take preventive action by providing appropriate public information about rights under the Directives.

The EU notes that according to Bulgaria discrimination is prohibited on a range of grounds and under several separate, sectoral pieces of legislation, and takes note of the detailed information on how combating discrimination is achieved in practice.

The EU invites Bulgaria to specify the content and timetable for the entry into force of the Bill on Prevention of Discrimination, with an indication of any further steps which may be necessary to comply with the requirements of the relevant Directives. As regards the new Labour Code, the EU notes that, according to Bulgaria, there is no specific mention of "sexual orientation" in the list of discriminatory grounds and stresses the need to introduce an explicit definition of discrimination in Bulgarian law in order to comply with the *acquis*.

Bulgaria is also invited to further elaborate on the measures taken or planned to raise public awareness against racism and xenophobia and on any specific awareness and training actions for civil servants and, especially, the police and judiciary, for combating discrimination and racism.

Employment and the European Social Fund

The employment situation and the employment policies of the Member States are an issue of common concern, as defined in Title VIII of the EC Treaty. The EU attaches great importance to the labour market situation in Bulgaria as well as social policy in this area and will monitor developments in Bulgaria throughout the negotiations.

The EU takes note of the information provided by Bulgaria and invites Bulgaria to continue to provide regularly updated information about on-going developments with respect to the elaboration of a national employment strategy and its consistency with the European Employment Strategy. The EU notes that Bulgaria has agreed to carry out, jointly with the European Commission, an Employment Policy Review and has started to draw up a Joint Assessment of Employment Policies Priorities (JAP) in 2000 which would be reflected in the national employment strategy.

The EU takes note of the information on the preparation for eventual participation in the European Social Fund. The EU invites Bulgaria to provide information on further developments and encourages Bulgaria to strengthen its administrative capacity to plan, manage and evaluate ESF co-funded programmes and to co-ordinate ESF interventions in view of the European Employment Strategy, the National Action Plan for Employment and the Social Inclusion process.

Bulgaria's compatibility with the part of the *acquis* related to the ESF will also need to be reviewed, notably in the framework of the chapter on regional policy and coordination of structural instruments.

Social Dialogue

The EU emphasises that the Treaty requires that social dialogue be promoted and gives additional powers to the social partners. The EU invites Bulgaria to indicate how it intends to promote tripartite consultations, in order to make them more effective and to ensure that social partners are sufficiently developed in order to discharge their responsibilities at EU and national level, and to indicate whether they are consulted on legislative drafts relating to the taking over of the employment and social policy *acquis*.

In addition to the improvement of tripartite structures, the development of autonomous, representative bipartite social dialogue is an important aspect for the future involvement of Bulgaria's social partners in the social dialogue activities developed at European and national level. Bulgaria is invited to inform the Conference on how it intends to strengthen autonomous social dialogue and social partners' structures at sectoral - including the public sector - and regional level. Additionally, Bulgaria is invited to clarify how it intends to promote workers' participation at enterprise level.

Social protection

The EU emphasises that an effective system of social protection is an important component of the overall employment and social situation in the EU, and points to the evolving co-operation for modernising and improving social protection. While the funding and organisation of social protection systems remain the responsibility of individual Member States, they must have the capacity to develop and operate sustainable and universally applicable social protection systems in line with the Treaty objectives.

The EU takes note of the information provided by Bulgaria on the ongoing social protection reforms and invites Bulgaria to provide regularly updated information on its initiatives in this regard.

Public health

The EU recalls the importance it attaches to ensuring a high level of human health protection in the definition and implementation of all Community policies. Bulgaria should take this into account when developing its policies. Bulgaria is invited to provide updated information on the measures taken and planned in this respect, and in particular on how it intends to prepare for Community activities in the field of public health. Bulgaria is encouraged to participate in the new Public Health programme.

The EU invites Bulgaria to continue the transposition, implementation and enforcement of the tobacco *acquis*. In doing so, Bulgaria should take into consideration the new Directive 2001/37/EC, which replaces Directive 89/622/EEC, as amended by Directive 92/41/EEC, and Directive 90/239/EEC. Bulgaria is also invited to take note of the fact that Directive 98/43/EC has been annulled, and to follow-up on any future developments of the *acquis* in the area of tobacco product advertising.

Bulgaria is invited to continue developing a health monitoring system in order to obtain health data and indicators comparable with the Community health monitoring system, and to report on progress achieved.

Bulgaria is also invited to develop measures to meet the requirements of the Community network for the epidemiological surveillance and control of communicable diseases, and to report on progress achieved. The EU also draws Bulgaria's attention to forthcoming new *acquis* in the area of quality and safety of human blood and blood components.

Disability

The EU takes note of Bulgaria's statement that a National Strategy for integration of disabled persons in all spheres of economic and social life and a Bill on Social Integration of Disabled People are under preparation. Bulgaria is invited to provide regularly updated information on these initiatives.

Health and safety

The EU takes note that, according to Bulgaria, full conformity with the *acquis* will be achieved by the time of accession. The EU recalls that the *acquis* in the health and safety field is considerable. Accordingly, Bulgaria still has some legislative work to do in this field and, above all, much work is required as regards the implementation and enforcement structures, which involve multiple agencies. The EU also underlines that compliance with the health and safety *acquis* is essential to reap the benefits notably from fewer work accidents and occupational injuries and diseases. To achieve this goal, timely and complete transposition and implementation of the health and safety at work *acquis* must be accompanied by the effective operation of labour inspection institutions. The EU underlines that the transposition and implementation of the health and safety legislation require a significant amount of investment, both for the national authorities and for private businesses. It is also an area of great concern to the governments and social partners of the Member States. Bulgaria is invited to confirm that it is aware of the investment needed to implement the health and safety Directives. Where an assessment of the costs of implementing individual Directives has been or will be carried out, Bulgaria is encouraged to make this information available to the Conference.

The EU notes the difficulties in the implementation of the *acquis* in the field of health and safety at work referred to by Bulgaria in its position and invites Bulgaria to provide more details concerning the precise timetable for the abolition of the compensation system for bad working conditions (sectors, number of enterprises and workers concerned and foreseen measures).

The EU notes that an evaluation of Bulgaria's implementation capacity in this area will be difficult to make before accession, if the dates of transposition and implementation of many EU provisions are close to the accession date. The EU urges Bulgaria to take all the necessary measures within the timeframe fixed by its commitments with a view to ensuring early compliance with the *acquis* and its effective implementation, as well as progressive alignment of its policies with those of the Union, in order to facilitate accession. The EU will closely follow Bulgaria's progress to this regard.

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The EU will continue to monitor progress in the implementation of the *acquis* throughout the negotiations, in particular as regards adherence to the planned legislative schedule and further measures aimed at ensuring effective enforcement and the reinforcement of Bulgaria's institutions. Particular consideration needs to be given to the links between the present chapter and other negotiating chapters, such as Free Movement of Goods, Freedom of Movement for Persons, Freedom to Provide Services, Regional Policy and Co-ordination of Structural Instruments, Environment and Justice and Home Affairs. A final assessment of the conformity of Bulgaria's legislation and policies with the *acquis* and of its effective implementation can only be made at a later stage of the negotiations after the adoption of new legislation. 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 Conference will have to return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 January 2000 and the conclusion of the negotiations.
