COUNCIL OF
THE EUROPEAN UNION

Brussels, 23 May 2000

8717/00

LIMITE

ELARG 72

"I" ITEM NOTE

from :	**Enlargement Group**
on :	**23 May 2000**
to :	**Permanent Representatives Committee**
Subject :	**ENLARGEMENT** **- Preparation of the next Accession Conferences at Deputy level with Estonia and the Czech Republic** **= Chapter 4 : Free Movement of Capital**

1. With a view to preparing the above-mentioned Accession Conferences, the Enlargement Group has reached agreement on draft European Union common positions on Free Movement of Capital.

2. In this light, and in line with the internal arrangements for the negotiations (doc. 5361/00), the Permanent Representatives Committee is invited to define the common positions as set out in the Annex.

   Following agreement by the Permanent Representatives Committee, the EU common positions will be made available respectively to Estonia and the Czech Republic before the next meetings of the Accession Conferences at Deputy level.

ANNEX

CONFERENCE ON ACCESSION TO THE EUROPEAN UNION - ESTONIA -

DRAFT

EUROPEAN UNION COMMON POSITION
(Replaces doc. 20239/99 CONF-EE 43/99)

Chapter 4: Free Movement of Capital

This position of the European Union is based on its general position for the Accession Conference with Estonia (CONF-EE 2/98), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-EE 6/98), 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 Estonia of compliance with the Association Agreement as well as with the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Estonia to continue the process of alignment with the "acquis" and its effective implementation.

The EU recalls that Estonia, in its position (CONF-EE 27/99), accepts the "acquis" under chapter 4 as in force on 1 March 1998, and that Estonia declares that it will be able to implement it by the date of accession, with the following exceptions:

– Pursuant to Article 57(1) (ex-73c(1)) of the EC Treaty, Estonia reserves the right to apply restrictions on certain capital movements vis-à-vis third countries, and requests that the operative date, as far as those limited restrictions are concerned, should be the date of accession, rather than 31 December 1993;

– Pursuant to the Declaration to Article 58(1)(a) (ex-73d(1)(a)), affirming the right of Member States to apply the relevant provisions of tax law which existed at the end of 1993 to capital movements and payments between Member States, Estonia requests that, in its case, the date of accession should replace that of the end of 1993.

The EU takes note of the additional information provided by Estonia (CONF-EE 75/99) in response to EU requests for clarifications (CONF-EE 43/99). The EU also notes that this additional information does not modify Estonia's position on "acquis" acceptance as stated in document CONF-EE 27/99.

As an overall response to the Estonian request for a derogation, the EU recalls its general negotiating position that they must not involve amendments to the rules or policies of the EU, disrupt their proper functioning, or lead to significant distortions of competition.

The EU recalls that the principle of free movement of capital and payment is one of the cornerstones of the single market. The ‘acquis’ in the area of capital movements and payments *stricto sensu* is directly applicable. There are no directives to transpose. While transposition is not relevant, it is nonetheless necessary for Estonia to complete its legal and institutional regime so that the freedom of all categories of capital transactions as listed in the nomenclature contained in Annex 1 of Directive 88/361/EEC be guaranteed. The sustainable implementation of this principle will be one of the indicators of the ability of the Estonian economy to cope with market pressures. Therefore, for a proper functioning from the date of accession, a timely and orderly removal of remaining restrictions on capital movements, together with an appropriate strengthening of the financial sector and its supervision, will be required already ahead of the accession. This will allow economic agents and macro-economic operators to adapt in good time before accession to the new framework, therefore, averting the risk of sudden disruptions on the financial markets upon accession.

Strategy of liberalisation of capital movements

The EU notes the progress Estonia has already made in this chapter and the commitment it has made to liberalise all categories of capital transactions and adopt the acquis, with the exceptions mentioned above, by the date of accession at the latest.

The EU takes note of the provision by Estonia of a detailed timetable for the abolition of remaining restrictions from now until accession, leading to the completion of the liberalisation process.

Date applicable to certain restrictions vis-à-vis third countries: Article 57(1)

The EU notes that Estonia maintains its request that a later date be substituted for the date of 31 December 1993 given in Article 57(1) of the EC Treaty, and that Estonia now proposes 1 January 2000 (CONF-EE 75/99), instead of the date of accession, as that date.

The EU notes that the 1 January 2000 now proposed by Estonia, means that Estonia's third country regime would no longer be indeterminate at the conclusion of the accession negotiations. The EU further notes that the differential treatment vis-à-vis third countries, which the adoption of a revised date would entail, would be limited, thus fulfilling the spirit of the Treaty with respect to freedom of movement of capital and payments, not only within the EU, but also in respect to operations with third countries. Furthermore, the EU understands Estonia's desire for legal clarity with respect to coverage of the codification of regulations which, since 1994, had replaced a regime where most operations were subject to the discretion of the authorities. However, the EU proposes that, in order to be consistent with dates more generally foreseen in the Treaty, the date of 31 December 1999 would apply, in the context of the date foreseen in Article 57(1) of the Treaty.

The proposed date of 31 December 1999 will have to be introduced in Estonia's Treaty of Accession. Consequently, this date will constitute a derogation for Estonia from the EC Treaty.

Date applicable to standstill on intra-EU tax differentiation: Declaration to Article 58(1)(a)

The EU notes that Estonia maintains its request that a later date be substituted for "at the end of 1993" contained in the Declaration to Article 58(1)(a) of the EC Treaty, and that Estonia now proposes 1 January 2000, instead of the date of accession, as that date.

The EU notes that the date of 1 January 2000 now proposed by Estonia means that differential tax regimes on capital movements and payments operations between Estonia and EU Member States would no longer be indeterminate at the conclusion of the accession negotiations. The EU also notes that its concerns on possible changes introduced by the new Income Tax Law, that came into effect on 1 January 2000, and which might affect intra-EU operations, would be resolved by the adoption of the date of 31 December 1999 which it considers more appropriate. It also recalls that the Declaration is without prejudice to any determination that might be made on the acceptability of any specific tax measure under Article 58(3). Therefore, as above, the EU proposes that the date of 31 December 1999 would apply in respect to the Declaration for tax measures affecting capital movements or payments both as regards Estonia's treatment of Member States and Member States' treatment of Estonia.

The proposed date of 31 December 1999, will have to be introduced in Estonia's Treaty of Accession. Consequently, this date will constitute a derogation for Estonia from the EC Treaty.

* * *

The EU notes that, provided the proposed dates are accepted by Estonia, this chapter does not, at this stage, require further negotiations. Monitoring of progress in the adoption and implementation of the "acquis" will continue throughout the negotiations. Special attention will be dedicated to the monitoring of the Estonian capacity to implement its commitments and of the further steps it needs to take to complete the orderly liberalisation process. In the latter context, the monitoring will also encompass the measures taken to maintain sound macro-economic fundamentals and an efficient and well supervised financial sector in order to reap the full benefits from liberalisation and to withstand any disturbances which might arise from international capital flows. Particular consideration needs to be given to the links with other negotiating chapters, such as freedom of movement for persons, agriculture, transport policy, taxation, EMU, financial services, and culture and audiovisual policy. A final assessment of the conformity of Estonia's legislation and policies with the "acquis" and its implementation can only be made at a later stage of the negotiations. In addition to all the information the EU has required for the negotiations on this chapter and which have been provided to the Conference, the EU invites Estonia to provide regularly detailed written information to the Association Council on progress in the implementation of the "acquis".

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

The EU recalls that there may be new "acquis" between 1 March 1998 and the conclusion of negotiations.

**CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- CZECH REPUBLIC -**

<u>DRAFT</u>

**EUROPEAN UNION COMMON POSITION
(Replaces doc 20240/99 CONF-CZ 42/99)**

Chapter 4: Free Movement of Capital

This position of the European Union is based on its general position for the Accession Conference with the Czech Republic (CONF-CZ 2/98), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-CZ 6/98), 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 agreements has been established".

The EU underlines the importance for the Czech Republic of compliance with the Association Agreement as well as with the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages the Czech Republic to continue the process of alignment with the "acquis" and its effective implementation.

The EU recalls that the Czech Republic, in its position paper (CONF-CZ 37/99) accepts the "acquis" under chapter 4 as in force on 1 March 1998, and that the Czech Republic declares that it will be able to implement it by the date of accession, except for the free acquisition of real estate by non-residents for which a transitional period is requested.

The EU takes note of the additional information by the Czech Republic (CONF-CZ 4/00) in response to the EU requests for clarifications (CONF-CZ 42/99). The EU also notes that this additional information does not modify the Czech Republic's position on "acquis" acceptance as stated in document CONF-CZ 37/99.

As an overall response to the Czech Republic's requests for transitional periods, 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 the application of the "acquis". Furthermore, they must not involve amendments to the rules or policies of the EU, disrupt their proper functioning, or lead to significant distortions of competition.

The EU recalls that the principle of free movement of capital and payment is one of the cornerstones of the single market. The "acquis" in the area of capital movements and payments stricto sensu is directly applicable. There are no directives to transpose. While transposition is not relevant, it is nonetheless necessary for Czech Republic to complete its legal and institutional regime so that the freedom of all categories of capital transactions as listed in the nomenclature contained in Annex 1 of Directive 88/361/EEC be guaranteed. The sustainable implementation of this principle will be one of the indicators of the ability of the Czech economy to cope with market pressures. Therefore, for a proper functioning from the date of accession, a timely and orderly removal of remaining restrictions on capital movements, together with an appropriate strengthening of the financial sector and its supervision, will be required already ahead of the accession. This will allow economic agents and macro-economic operators to adapt in good time i.e. before accession to the new framework, therefore, averting the risk of sudden disruptions on the financial markets upon accession.

Strategy of liberalisation of capital movements

The EU welcomes the timetable for the completion of the liberalisation of capital movements presented by the Czech Republic and takes note of the planned steps for abolishing the remaining obstacles to the free movement of capital. The EU notes however, that the Czech Republic links the abolition of a number of restrictions to the date of accession. Consequently, the EU reiterates the above request and invites the Czech Republic to explain why, apart from the derogation issue, it is considered necessary to wait until accession before abolishing the last set of restrictions.

Real estate

The EU takes note of the detailed information submitted by the Czech Republic to support its request for a transitional period for the acquisition of real estate by non-residents, including information on agricultural and forestry policy, structure of the land, market prices in representative regions of the country, size and distribution of farm ownership, as well as economic data and information on the housing sector. The EU notes however, that the length of the transitional period is not specified by the Czech Republic.

In the specific case of non-residents from a non-EU Member State, the EU considers that Act No 95/1999 on Coll. on Conditions Relating to the Transfer of Agricultural Land and Forests from the State to Ownership of other Entities introduces restrictions on capital movements with third countries insofar as the acquisition of agricultural land and forests is reserved to Czech nationals. While liberalisation will be carried out in an EU context by the Czech Republic, this measure would still involve a supplementary restriction on third country acquisitions which did not exists on 31 December 1993 and which, therefore, cannot be covered by Article 57 of the EC Treaty. Furthermore, the EU recalls that the Czech Republic must grant the European Economic Area (EEA) countries the same treatment as that provided to the EU Member States.

The EU notes that the Czech Republic considers a transitional period for the acquisition of agricultural land and forests to be necessary because of the re-structuring that this sector is undergoing and because markets for agricultural land and forests are not as yet sufficiently developed. The EU notes that the Czech Republic explains this situation not only by economic reasons, such as the disparity in the purchasing power of Czech residents and those in neighbouring EU Member States, but also by a number of yet unresolved important legal problems. Among these, the EU notes that:

- the process of restitution of the land is not as yet achieved and that in this respect there are problems concerning property rights;
- that there are as yet unresolved problems of ownership rights of land between municipalities and the State and subsequent registration in the Land Fund is therefore not completed;
- the privatisation of agricultural land and forests is in the early stages.

The EU notes that the Czech Republic considers a transitional period for the acquisition of secondary residences and plots for building residences of such type, to be necessary because of economic and political reasons. In this respect, the EU notes that in the Czech Republic"s view, liberalisation of the sector while the economic disparity between Czech Republic and the EU continues could lead to social tensions in the country.

However, after having carefully examined the additional information provided by the Czech Republic the EU invites the Czech Republic to reassess it in the light of the requirements for transitional measures set out above and because of the possible implications of such a transitional measure for EU citizens. The EU stresses the significance of the principle of the free movement of capital, which is of paramount importance for the proper functioning of the Single Market.

With regard to bilateral investment treaties concluded by the Czech Republic which could contain possible incompatibilities with the "acquis", the EU notes the Czech Republic's readiness to solve the problems arising from those agreements before the date of accession. In this context, the EU recalls its general position that the rights and obligations, which the applicant States as Member States will have to honour, imply the termination of all agreements between the Czech Republic and the Communities, and of all other international agreements which are incompatible with the obligations of membership.

Money laundering

With reference to Directive 91/308/EC on the prevention of the use of the financial system for the purpose of money laundering, the EU recalls the importance it attaches to the proper functioning of an efficient mechanism to prevent money laundering. In this context the EU notes the timetable presented by the Czech Republic for the phasing out of anonymous accounts and invites the Czech Republic to further define the meaning of termination of the deposit relationship and to indicate the real effect of the twenty years negative prescription time.

* * *

The EU will continue to monitor progress in the adoption and implementation of the "acquis" throughout the negotiations. Special attention will be dedicated to the monitoring of the Czech Republic's capacity to implement its commitments already entered into and of the further steps it needs to take to complete the orderly liberalisation process. In the latter context the monitoring will also encompass the measures taken to maintain sound macro-economic fundamentals and an efficient and well supervised financial sector in order to reap the full benefits from liberalisation and to withstand any disturbances which might arise from international capital flows. Particular consideration needs to be given to the links with other negotiation chapters, such as freedom of movement for persons, EMU, financial services, taxation, transport, audio-visual policy, agriculture and external relations. A final assessment of the conformity of the Czech Republic's legislation and policies with the "acquis" and its implementation can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations on this chapter and which will be provided to the Conference, the EU invites the Czech Republic to provide regularly detailed written information to the Association Council on progress in the 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 March 1998 and the conclusion of the negotiations.