COUNCIL OF
THE EUROPEAN UNION

Brussels, 6 November 2000

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LIMITE

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"I " ITEM NOTE

from :	**Enlargement Group**
on :	**31 October 2000**
to :	**Permanent Representatives Committee**
Subject :	**ENLARGEMENT** - **Preparation of the next Accession Conferences at Deputy level with Malta, Slovakia, and Bulgaria** = **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 to Malta, Slovakia, and Bulgaria respectively before the next meetings of the Accession Conferences at Deputy level.

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CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- MALTA -

DRAFT

EUROPEAN UNION COMMON POSITION

Chapter 4: Free Movement of Capital

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

"- any view expressed by either party on a chapter of the negotiations will in no way prejudge 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 Malta of compliance with the Association Agreement as well as the Accession Partnership, which constitute basic elements of the specific pre-accession strategy. The EU encourages Malta to continue the process of alignment with the "acquis" and its effective implementation.

The EU notes that Malta, in its position (CONF-M 41/00), accepts the "acquis" under chapter 4 as in force on 31 December 1999, and that Malta declares that it will be able to implement it from the date of accession with some exceptions.

As an overall response to Malta's requests, 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". They must not involve amendments to the rules or policies of the Union, 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. While transposition is not relevant, it is nonetheless necessary for Malta 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 Maltese 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 before accession. This will allow economic agents and macro-economic policies to adapt in good time to the new framework, thus averting the risk of sudden disruptions on the financial markets upon accession.

The EU takes note of the progress Malta has already made in this chapter and the commitment it has made to liberalise all categories of capital transactions (with the exceptions mentioned above) before accession. It invites Malta to confirm that its liberalisation programme will be fully completed by 1 January 2003.

Concerning Malta's request on the acquisition of real estate by non-residents (foreigners), the EU stresses the significance of the principle of free movement of capital, which is of paramount importance for the proper functioning of the Single Market. The EU notes that Malta has requested a permanent derogation concerning the restrictions on the acquisition of real estate by non-residents (foreigners) for secondary residence purposes and for speculative purposes that will be in place by the date of accession. The EU also notes that Malta has declared it to be its intent to maintain its present prohibition of non-resident (foreign) participation in unlisted Maltese companies seeking to acquire real estate for speculative purposes. On the basis of the information provided by Malta, the EU sees no reason to accept these requests. In order to have a clearer understanding of the situation, the EU invites Malta to provide the following additional information:

- an exhaustive listing of the types of real estate acquisition it considers to be acquisitions for "speculative purposes". In particular, since the freedom to acquire real estate for purposes of renting concerns the freedom to provide services as well as the freedom of capital movements, Malta should clarify whether it intends to liberalise such acquisitions or considers them to be acquisitions for "speculative purposes";

- in view of the requested derogation concerning restrictions on real estate acquisition that will be in place by the date of accession, Malta should explain in detail its plans for changing its present regime before accession;

- since it does not present any substantive motivation for its requests, Malta should provide an in-depth analysis of the geographical, economic, social and political circumstances, which may have led it to put forward those requests, as well as to substantiate those circumstances, as far as possible, by empirical data.

Referring to Malta's request that the date of accession should be the applicable date for the standstill clause concerning restrictions on capital movements vis-à-vis third countries that is enshrined in Article 57.1 of the EC Treaty, the EU recalls that the Article applies only to a limited range of capital movements. The EU invites Malta to confirm that it will liberalise, before accession, capital movements vis-à-vis third countries that are not covered by that Article. Furthermore, the EU notes that Malta presents this request in order to take account of its evolving legislation. In this context, the EU invites Malta to provide detailed information on any legal measures that it has taken since 31 December 1993, and which have rendered its capital movement regime more restrictive. Furthermore it invites Malta to present its plans, if any, to introduce, forthwith and until accession, legal measures that could render the capital movement regime vis-à-vis third countries more restrictive.

The EU takes note of Malta's statement that it will not phase out current applicable restrictions on direct investment for some sectors for which special arrangements are to be negotiated. The EU invites Malta to provide a list of the sectors and restrictions that the statement is referring to, as well as to explain how and in which negotiating Chapter(s) it proposes to negotiate the restrictions on direct investment it is requesting to maintain for those sectors.

Finally the EU welcomes Malta's detailed listing of remaining restrictions as well as its commitment to abolish them. Malta is invited to confirm that there are no other restrictions in the field of free movement of capital.

The EU notes Malta's statement declared that full transposition of Directives 97/5/EC and 98/26/EC related to payment systems will be achieved by end 2001. The EU invites Malta to provide more information on the implementation of Recommendation 97/489/EC on electronic payment instruments.

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 stresses the importance it attaches to the proper functioning and monitoring of an efficient mechanism to prevent money laundering. The EU draws Malta's attention to the importance of the forthcoming evolution of the "acquis" in this area.

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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 Maltese 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, notably in order to reap the full benefits from liberalisation, 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, Freedom to provide services, Agriculture, Transport policy, Economic and Monetary Union, Culture and audiovisual policy, Cooperation in the fields of Justice and Home Affairs and External relations. A final assessment of the conformity of Malta'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 are to be provided to the Conference, the EU invites Malta to provide to the Association Council regularly detailed written information 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 January 2000 and the conclusion of the negotiations.

CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- SLOVAKIA -

DRAFT

EUROPEAN UNION COMMON POSITION

Chapter 4: Free Movement of Capital

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

"- any view expressed by either party on a chapter of the negotiations will in no way prejudge 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 Slovakia of compliance with the Europe Agreement as well as the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Slovakia to continue the process of alignment with the "acquis" and its effective implementation.

The EU notes that Slovakia, in its position (CONF-SK 41/00), accepts the "acquis" under chapter 4 as in force on 31 December 1999, and that Slovakia declares that it will be able to implement it from 1 January 2004 with the exception of restrictions in the real estate sector.

As an overall response to Slovakia's request 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". They must not involve amendments to the rules or policies of the Union, disrupt their proper functioning or lead to significant distortions of competition.

The EU recalls that the principle of free movement of capital and payments is one of the cornerstones of the single market. The "acquis" in the area of capital movements and payments *stricto sensu* is directly applicable. While transposition is not relevant, it is nonetheless necessary for Slovakia 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 Slovak 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 before accession. This will allow economic agents and macro-economic policies to adapt in good time to the new framework, thus averting the risk of sudden disruptions on the financial markets upon accession.

The EU takes note of the progress Slovakia is making in this chapter and its timetable for the removal of remaining restrictions. It further notes Slovakia's intention to complete the process of liberalisation by 1 January 2004, so as to be ready to assume the obligations of membership.

Concerning inward direct investment, the EU invites Slovakia to indicate in which particular areas it might consider availing of the possibility to adopt a differential regime vis-à-vis third countries and to verify that, in such cases, no tightening of its regime occurred since 31 December 1993. In particular, the EU invites Slovakia to verify that the 1998 Act on Civil Aviation did not tighten its regime on third countries vis-à-vis that in force on 31 December 1993, since this would be an area where a common external regime would be required under the "acquis".

The EU notes Slovakia's listing of remaining restrictions concerning foreign direct investment (energy sector, operation of lotteries, investment in air transport, equity participation in the Stock Exchange and Securities Centre), outward investment and other capital movements and notes that Slovakia has presented dates for abolishing each of these restrictions.

The EU recalls that one additional restriction, not specifically addressed by Slovakia in its plans for the removal of restrictions on outward investment, had been identified during the screening. This relates to investment rules applied to institutional investors. The EU invites Slovakia to present its time schedule for abolishing these restrictions and to confirm that there are no other restrictions to free movement of capital.

Concerning the acquisition of real estate, the EU stresses the significance of the principle of free movement of capital, which is of paramount importance for the proper functioning of the Single Market. The EU notes that Slovakia requests transitional periods concerning restrictions on the acquisition of real estate by non-residents (or non-nationals) for secondary residence purposes and for the acquisition of agricultural and forest land. In order to have a clearer understanding of the situation, the EU invites Slovakia to provide additional information on this issue as specified below.

Recalling that the freedom to acquire real estate also has a significant effect on other freedoms (e.g. freedom of establishment, freedom to provide services, freedom of movement for workers) as well as that of capital movements, the EU invites Slovakia to clarify whether it intends to liberalise such acquisitions associated with the other essential internal market freedoms.

The EU invites Slovakia to confirm its plans to liberalise investment in real estate (other than those in agricultural, forest land or secondary residences) in conformity with the "acquis" and to confirm its adherence to measures in relation to the other freedoms already contained in the Europe Agreement.

The EU invites Slovakia to confirm that the requested transitional periods concern restrictions to acquisitions by non-residents of Slovakia (as stated in Section I of Slovakia's position paper CONF-SK 41/00) rather than by non-Slovak nationals (as stated in Section III of the same position paper). It also requests Slovakia to explain the treatment that would be granted to Slovak non-residents conducting these operations.

Noting that Slovakia does not present any substantive justification for its requests, the EU invites Slovakia to provide a thorough analysis of the economic, social, geographical and sectoral circumstances which may have led it to put forward these requests, as well as to substantiate these circumstances, as far as possible, by empirical data. In particular, in the case of agricultural land, the EU requests information on market prices, ownership distribution (natural persons, legal persons, State), an elaboration of the "justified reasons" for the Government believing that liberalisation, *per se*, would lead to the abandonment of land, the reasons why an appropriate non-discriminatory land use policy might not produce similar results in economic and social terms, and why the current possibility for Slovak non-residents to acquire land does not lead to similar results.

Furthermore the EU invites Slovakia to provide detailed information on the rationale for the inclusion of forest land, and, in particular, the regional distribution as well as information on the importance of forestry products to the national and the local economies concerned.

As far as the market for secondary residences is concerned, the EU invites Slovakia to provide similar information on economic and geographical considerations involved as well as on the rationale for the absence of possible non-discriminatory alternatives.

The EU invites Slovakia to confirm that it intends to abolish all remaining restrictions to the acquisition of all other types of land by EU companies and EU nationals at the end of 2003 at the latest. In particular, the EU requests Slovakia to confirm that restrictions on the acquisition of land (other than agricultural land or secondary residences) for investment or renting purposes shall be abolished by the end of 2003.

The EU invites Slovakia to indicate the measures it intends to take, in the areas covered by both requests, to ensure gradual alignment on the "acquis".

The EU notes Slovakia's statement that full transposition of Directives 97/5/EC and 98/26/EC will be achieved by 1 January 2004. The EU invites Slovakia to speed up its efforts in order to fully implement the "acquis" in payment systems by the envisaged date, to indicate a timetable for the implementation of Recommendation 97/489/EC on electronic payment instruments and to provide more information on its efforts to improve the payment infrastructure and its related plans.

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 stresses the importance it attaches to the proper functioning and monitoring of an efficient mechanism to prevent money laundering. The EU also invites Slovakia to explain how existing bearers' accounts will be abolished ahead of the accession and to explain how and on which date it will fully implement the Directive. The EU draws Slovakia's attention to the importance of the forthcoming evolution of the "acquis" in this area.

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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 Slovak capacity to implement 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 negotiating chapters, such as Freedom of movement for persons, Freedom to provide services, Agriculture, Transport policy, Economic and Monetary Union, Culture and audio-visual policy, Cooperation in the fields of justice and home affairs and External relations. A final assessment of the conformity of Slovakia'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 are to be provided to the Conference, the EU invites Slovakia to provide to the Association Council regularly detailed written information 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 January 2000 and the conclusion of the negotiations.

CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- BULGARIA -

DRAFT

EUROPEAN UNION COMMON POSITION

Chapter 4: Free Movement of Capital

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 Accession Conference (CONF-BG 14/00), in particular:

"- any view expressed by either party on a chapter of the negotiations will in no way prejudge 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 with the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Bulgaria to continue the process of alignment with the "acquis" and its effective implementation.

The EU notes that Bulgaria, in its position paper (CONF-BG 35/00) accepts the "acquis" under chapter 4 as in force on 31 December 1999, and that Bulgaria declares that it will be able to implement it by the date of accession, except for the free acquisition of land by natural and legal foreign persons, currently banned by the Constitution, for which a 10-year transitional period is requested.

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 the 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.

The EU recalls that the principle of free movement of capital and payments is one of the cornerstones of the single market. The "acquis" in the area of capital movements and payments *stricto sensu* is directly applicable. While transposition is not relevant, it is nonetheless necessary for Bulgaria 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 Bulgarian 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 before accession. This will allow economic agents and macro-economic policies to adapt in good time to the new framework, thus averting the risk of sudden disruptions on the financial markets upon accession.

The EU takes note of the progress Bulgaria has already made in this chapter and the commitment it has made to liberalise all categories of capital transactions (with the exception mentioned above) no later than the date of accession. The EU invites Bulgaria to prepare for and accomplish the full liberalisation of capital movements in time before accession and to provide the EU with a timetable of the planned intermediate liberalisation steps leading to the completion of the process. In this context, the EU recalls that prior verification procedures go beyond the declaration procedures allowed by Article 58(1), since they give the public authorities the opportunity to intervene and stop the operation and that only if such restrictions were applied to sectors linked to one of the exceptions of the Treaty (i.e. public security, public policy, public health and defence as provided in Articles 45, 46, 58 and 296) they could be considered as compatible with EU legislation. Consequently, the EU invites Bulgaria to indicate when and how it intends to abolish this verification procedure. It also invites Bulgaria to confirm that its liberalisation programme will be fully completed by 1 January 2007.

Concerning the acquisition of land by foreign nationals and foreign legal persons, the EU stresses the significance of the principle of free movement of capital, which is of paramount importance for the proper functioning of the Single Market. The EU notes that Bulgaria has requested a 10-year transitional period in this field based on economic and social grounds. In order to have a clear understanding of the situation, the EU invites Bulgaria to provide additional information on this issue as specified below.

The EU invites Bulgaria to provide a description of the current state of the land restitution and reform and to indicate when the process is to be completed. The EU also invites the authorities to provide data on the present structure of the land by use of land (arable land, vineyards, orchards, forest, etc.) and to indicate the regions where the demand for land, in particular agricultural land and forest, is expected to concentrate.

As to agricultural land, the EU invites Bulgaria to clarify the particular elements of its agricultural policy and of the measures to promote the development of viable farms which may have led it to put forward its request for a transitional period and to substantiate these circumstances, as far as possible, with relevant empirical data. In this respect, information on the market price of the main categories of agricultural land in representative regions in recent years; size and distribution of farms; current ownership structure (numbers of farms and total areas which are owned respectively, by the State; by legal persons; by natural persons, etc.) is requested.

As to forests, the EU also invites Bulgaria to clarify the elements of its forestry policy which may have led it to put forward its request for a transitional period and to provide data on the distribution of forests, on the area covered, on the share owned by the State and by other entities.

The EU recalls that Article 57 (ex-73c) of the EC Treaty grants the right to Bulgaria to retain vis-à-vis third countries any restrictions involving, among others, investment in real estate, which existed on 31 December 1993 and are still in force.

Furthermore, the EU recalls that Bulgaria must give the European Economic Area (EEA) the same treatment as to the EU Member States.

The EU takes note of Bulgaria's statement that full transposition of Directives 97/5/EC and 98/26/EC will be achieved before accession. The EU invites Bulgaria to provide its plans and timetable for the transposition of the acquis related to payment systems, including the Recommendation 97/489/EC on electronic payment instruments, as well as for the establishment of a complaint and redress body according to Article 10 of the Cross-border Credit Transfers Directive.

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 stresses the importance it attaches to the proper functioning and monitoring of an efficient mechanism to prevent money laundering. The EU draws Bulgaria's attention to the importance of the forthcoming evolution of the "acquis" in this area.

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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 Bulgaria'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 negotiating chapters, such as Freedom of movement for persons, Freedom to provide services, Agriculture, Transport policy, Economic and monetary union, Culture and audiovisual policy, Cooperation in the fields of justice and home affairs and External relations. A final assessment of the conformity of Bulgaria'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 are to be provided to the Conference, the EU invites Bulgaria to provide to the Association Council regularly detailed written information 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 January 2000 and the conclusion of the negotiations.