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The Freedom of Providing Financial Services

(Banking services and investment services on the capital market)

I. Banking services

The harmonisation of the legal framework governing the business of credit institutions within the EU mainly aims at eliminating all legal restrictions on the right to establish such institutions, at the freedom to provide services in a stable banking system environment, and at securing adequate measures for the protection of depositors. The approximation of Bulgarian legislation in this field with the European regulations in this sphere is among the major guarantees ensuring the freedom of banking services (along with the financial and political stability necessary to this effect, the availability of an adequate technological environment, etc.). The freedom to provide financial and banking services in particular, and the establishment of an institutional and legal infrastructure in compliance with the European standards, are among the most essential prerequisites for Bulgaria to fulfil the commitments it has undertaken upon signing the EU association agreement. A major consideration when assessing Bulgaria's progress towards EU accession and outlining the future tasks Bulgaria faces is the degree to which Bulgarian legislation reflects first the general requirements with respect to taking up and pursuing the business of banking, and second, the specific requirements with respect to the activities of lending institutions.

First, with regard to the general requirements to take up and pursuit the business of banking services (definition of the basic concepts, the requirements for licensing banks and banking operation, mutually recognised services, etc.)

The Banks Act effective at present in Bulgaria, which has been in force since July 1st 1997, and the amendments subsequently made to it, are largely uniform with the general requirements to take up and pursuit the business of credit institution as laid down in the First Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (First Bank Directive) and the Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Council Directive 77/780/EEC (Second Bank Directive). The definition of a bank complies with the one laid down in the first bank directive. Both the Banks Act and the regulations concerning its application have adopted the other major definitions contained in the two directives as well. What remains to be defined is a definition of a credit institution's branch in line with the meaning envisaged by the above-mentioned directives. Neither the Commercial Act, regulating issues related to a commercial company branch, which is also applicable to banks, nor the Banks Act, which regulates only the establishment of a bank's branch in more than one particular settlement, have given such a definition. Harmonisation has been achieved in terms of the field of application of the Act: it covers all commercial banks and branches of foreign banks, that have been granted license by the Bulgarian National Bank (later referred to as BNB or the Central

Bank), as well as banks set up under special laws, inasmuch as the latter do not stipulate some special provisions. In compliance with the directive, the following institutions the operation of which is regulated by a special law, do not fall within the scope of application of the Banks Act: the Central Bank, insurance companies, the postal system, social security and health insurance institutions, pawning or mortgage houses, investment intermediaries, investment and privatisation funds, loan and savings institutions set up as cooperatives, which extend loans only to the cooperative's members in exchange for the contributions they pay in and at the expense of the co-operative's funds.

The object or line of business of banks, as stipulated in Article 1, paragraphs 1 and 2 of the Banks Act, provides the legal framework regulating bank services. The latter largely comply with the mutually recognised services laid down in the annex to the Second Bank Directive.

The general requirements stemming from the two directives that credit institutions should be subject to preliminary approval (licensing), should possess nominal capital and equity up to a stipulated minimum amount, and should be managed by two persons at least, are fully incorporated in the Banks Act , the new Ordinance No. 2 of BNB on Licenses and Permits issued by the BNB, which has been in force as of February 21st 2000, and in some other ordinances. The requirements and conditions under which a license can be granted or withdrawn have been largely harmonised as well.

Second, with regard to the specific requirements related to the business of credit institutions

The harmonisation of legislation in this field aims at establishing uniform standards on the equity and solvency of credit institutions, on the enhanced supervision of credit institutions and the supervision of the major risks in particular, on the control and evaluation of large credit exposures, on bank accounting and supervision on a consolidated basis, on ensuring deposit guarantees.

A key factor for the establishment of an internal market in the banking industry are the requirements related to a bank's equity, its capital adequacy and solvency, because meeting these requirements will guarantee the operation of the credit institutions, the protection of deposits and coverage of losses should profit prove insufficient.

Regarding the requirements for the equity of banks, the Banks Act has adopted the regulation of European legislation (Council Directive 89/229/EEC of 17 April 1989 on the equity of credit institutions, further specified for the purposes of application with Council Directive 91/663/EEC of 3 December 1991 and amended by Council Directive 92/16/EEC), that any bank or bank group must dispose at any time of a minimum amount of capital of its own. The minimum amount, structure and ratios of banks' equity, their balance sheet assets and liabilities, and off-balance sheet liabilities are defined in Ordinance No. 8 on the capital adequacy of banks in force as of August 5th 1997. These two regulatory acts require that the minimum amount of paid-in capital as of the date of granting the license and at any other time should exceed BGN 10 million. The capital adequacy is defined as percentage ratio between a bank's equity and its overall risk component.

The introduction of strict rules on reporting the capital adequacy to the Central Bank and the rules concerning the control exercised on the part of the Central Bank comply with the requirements provided in Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment companies and credit institutions (and the annexes to them, related to the various types of risks). The directive lays down the uniform standards about the market risk of banking institutions and establishes an additional

framework covering market risk supervision and risk positions in particular, settlement of payments with customers and partner institutions and foreign exchange risk.

Ordinance No. 9 on assessing banks' risk exposures and the formation of provisions covering the risk of loss, which has been in effect as of October 1st 1997, and the subsequent amendments to it, define the criteria and methods of assessing banks' risk exposures, the conditions, amount and order of setting aside provisions to cover the risk of loss, as well as BNB's supervisory functions related to the observance of these requirements.

The recently adopted Mortgage Bonds Act, in force as of October 14th 2000, regulates the conditions and order of issuing and repaying mortgage bonds. To a large extent the Act adopts the regulations, introduced with Directive 98/32/EEC of the European Parliament and the Council of 22 June 1998, containing amendments with regard to mortgages, Council Directive 89/647/EEC on the solvency ratio for credit institutions, adopted with a view to providing the possibility to treat mortgage-backed securities (mortgage bonds) as loans under certain conditions pursuant to the provisions of Council Directive 89/647/EEC. This directive is the first step towards establishing the legal prerequisites for the freedom of providing services in the field of mortgage-backed loans. The National Cadastre Act and Real Estate Register, recently passed by Parliament and in force as of January 1st 2001, is expected to set the stage for the gradual transition to a genuine system of real estate registration and the creation of a modern farm land register where mortgages will be duly entered.

The instrument of financial netting has been implemented in the relations between the larger Bulgarian banks and other credit institutions, mainly abroad, for servicing payments on various transactions. Since this instrument has not been developed and widely applied to date, there are no regulations connected with it in our legislation. There are also no regulations providing for the possibility of recognising certain types of contractual netting as risk reduction, as does Directive 96/10/EEC of the European Parliament and the Council of 21 March 1996, amending Directive 89/647/EEC on the recognition of contractual netting.

Requirements for control and evaluation of large exposures

The requirements under Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of the large exposures of credit institutions have been introduced in both the Banks Act and the secondary legislation, namely Ordinance No. 7 of the BNB on the evaluation of banks' risk exposures and the formation of provisions covering the risk of loss, which has been in force as of November 30th 1999. The Banks Act reproduces the obligation of banks and bank groups not to exceed the established ratios between large exposures and banks' equity. An exposure to a person or related persons shall be deemed a large exposure where its amount is equal to or exceeds 10% of the bank's or bank group's equity. The directive allows for the imposition of a lower exposure rate (a transition period for the 25% provided for by it is envisaged, lest the lending activity of smaller banks may shrink); and the above-mentioned 10% take into consideration the potential and specificity of the lending activity of Bulgarian banks. The directive's restrictions on large exposures to one person or related persons have been fully adopted, namely that a credit institution may not incur an exposure to a client or group of connected clients the value of which exceeds 25 % of its equity and that the total of large exposures should not exceed 8 times a credit institution's equity.

The rules governing the large exposures of branches of foreign banks and subsidiaries have also been adopted, i.e. the level of exposures incurred by a branch of a foreign bank shall be evaluated on the basis of the foreign bank's equity; the exposure level of a bank licensed in Bulgaria while being a subsidiary of a foreign bank shall be determined on the basis of the consolidated capital of the banking group under certain conditions.

Requirements on bank accounting practices and supervision on a consolidated basis

In the field of bank accounting a high degree of harmonisation with European legislation has been achieved. Under the general provisions of the Banks Act, bank accounting practices and financial statements are guided by the Accounting Act (effective since April 1st 1991), the National Accounting Standards and the National Chart of Accounts, and the requirements of the Central Bank. The contents and structure of the annual financial report, provided for in the Accounting Act, conform to European accounting standards. The contents and layout of the balance sheet, the headings and structure of the profit and loss account, the cash flow statement, and the report on the bank's equity are prescribed in the National Accounting Standards and above all in Standard No. 30. National Accounting Standard (NAS) No. 30, concerning the methods of reporting bank financial statements and reports, regulates the specific requirements for the accounting of bank transactions, and those on drawing up and filing in accounting reports. In compliance with the Directive's requirements, the major principles and rules governing the elaboration and disclosure of banks' accounting policy, connected with the specific object of reporting, have been formulated.

The new Bulgarian legislation has also adopted the requirements for credit institutions supervision on a consolidated basis, as prescribed in Council Directive 83/350/EEC on the supervision of credit institutions on a consolidated basis of 13 June 1983, which has been further developed by Council Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions. Further precision in terms of the methods of exercising supervision on a consolidated basis has been introduced by Council Directive 92/30/EEC of 6 April 1992 on credit institutions supervision on consolidated basis, and the provisions of the latter are applicable to lending institutions, financial holding companies, and holding companies domiciled in a EU member country. The Banks Act contains a general provision to the effect that the Central Bank shall exercise supervision on a consolidated basis over banks, banking groups and financial holdings. The Act incorporates the definitions of a 'banking group' (the case in which a parent bank has other banks or non-banking financial institutions as subsidiaries) and a 'financial holding' (when an enterprise has a bank as a subsidiary). At the same time, the Act provides that banks, banking groups and bank holdings shall submit to the Central Bank financial reports disclosing their performance and financial health both individually and on a consolidated basis.

Ordinance No. 12 of the Bulgarian National Bank of July 21st 2000 on the supervision on consolidated basis incorporates the general provisions of the directive on the conditions and order governing the supervision on a consolidated basis of banks, banking groups and financial holdings based on their financial and accounting statements and reports, and the solvency requirements of supervision. In compliance with the Directive, the conditions under which the Bulgarian National Bank may not require financial reports on a consolidated basis have been defined. Despite the high degree of harmonisation of the Bulgarian and European legislation in this respect, as a result of the underdevelopment of the Bulgarian

financial sector, the principles and rules guiding supervision on a consolidated basis do not enjoy much practical application as yet.

Deposit- guarantee requirements

Directive 94/19/EEC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes aims to guarantee the protection of depositors and also the stability and integrity of the financial system by introducing a uniform deposit-guarantee scheme valid for the depositors at any bank branch located in a EU member state other than that in which the credit institution has its head office; to eliminate all conditions of unequal compensation and unfair competition between the national credit institutions and the branches of institutions set up in other member states; to make it possible for the branches to join the deposit-guarantee scheme of the host country.

The protection of deposits in this country is regulated by the Deposit Guarantee Act, in force as of January 1st 1999, and Ordinance No. 23 of the Bulgarian National Bank on the conditions and order of reimbursement of deposits in banks, the licenses of which have been withdrawn, up to the legally guaranteed amount, in effect as of February 12th 1999. The partial and incomplete regulation of this matter that existed thus far in the secondary legislation was overcome in this way. The Act guarantees deposits made both in BGN and in foreign currency. The Act regulates the establishment, the functions and operation of the bank deposits guarantee fund, the conditions, which give rise to the obligation to repay certain sums of money on behalf of the fund, and the order in which deposits shall be repaid up to the guaranteed amount. The Act covers all banks that have been granted permission to hold deposits in compliance with the provisions envisaged in the Banks Act, and the branches of foreign banks operating in this country in case that the country of the bank's registered head office does not have any operating deposit-guarantee scheme, or when the existent deposit-guarantee scheme in that country provides for a smaller amount of compensation or a lower level of deposit protection than that prescribed in the Bulgarian Act, or in the cases when the deposit-guarantee scheme of the foreign bank does not cover the bank's branches abroad. A comprehensive list of all cases of exclusion from protection has been laid down; the cases being harmonised with the mandatory exclusions pursuant to Article 2 of the Directive, and with Article 7, paragraph 2, of the annex to the Directive, which contains a list of the exclusions from protection, that may be introduced at discretion. The uniform rules on determining the deposit amount under all possible hypotheses have also been adopted – in the case of a single depositor, of a joint deposit, of a deposit contract made in favour of a third party, or in the event of restructuring of two or more banks.

The only significant disparity with the directive's provision refers to the minimum guarantee levels, which are considerably lower than the European and international standards but are substantiated by the country's poorer economic development and the poorer financial health of Bulgarian banks. The guarantee levels may increase in future after a considerable improvement of the major economic indicators of this country has taken place. A longer transitional period will be necessary so that uniformity could be fully achieved in this respect as well.

Despite the above-mentioned disparities in the level of minimum guarantees, the legal prerequisites for ensuring a modern, self-financing deposit-protection scheme have already been put in place in Bulgaria. The consolidation and further development of the scheme would contribute to abolishing all still existing

barriers to the freedom to provide investment services and to protect depositors, thus enhancing the stability of the banking system.

Requirements on the legal framework of electronic signature

The regular report of the European Commission on Bulgaria's progress to EU accession gives due consideration to the necessity to develop the legal framework of the information society and to adopt legislation complying with the legal framework of the community with respect to electronic signatures. There is as yet no legislation recognising the legal validity of electronic signatures in Bulgaria. However, a first reading of the Draft Bill on electronic signatures and electronic documents was held in Parliament on January 17th 2001. The bill was drafted by a working party of the Centre for the Study of Democracy with the assistance of an expert council, including specialists and representatives of all interested parties, both private institutions and state authorities. The Draft Bill was subject to a broad public debate for almost a year and it was published in "Electronic Commerce: legal aspects", prepared by Centre for the Study of Democracy and published with the assistance of the BNB.

The Bill introduced in Parliament has incorporated the majority of opinions and recommendations submitted by the interested institutions, the Bulgarian and foreign experts. The Bill has adopted the major definitions and principles laid down in Directive 1999/938/EEC of the European Parliament and Council of 13 December 1999 on the legal framework of the community regarding electronic signatures in force as of 20 January 2000. The directive establishes the legal framework governing electronic signatures and certain certification services so as to provide for the safe functioning of the internal market. The directive does not regulate the conclusion and validity of contracts or any other legal liabilities concerning their form, stipulated in the provisions of the national or European legislation. Neither does it provide for the regulation and limitations pursuant to the provisions of the national legislation or that of the community with regard to the application of documents.

The timely adoption of this Bill will ensure the much greater security of providing financial services in an electronic environment and will ensure the freedom of providing cross-border services. The bill shall also establish a comparatively liberal regulatory regime, approximating the one adopted in the legislation of a number of foreign countries and complying with the general principles and requirements laid down in the European Directive on the Community's legal framework governing electronic signatures.

Yet another priority in relation to the freedom to provide services in general, connected with the forthcoming adoption of legislation concerning electronic signature, is the urgent necessity to pass a law on the protection of personal data and the free transfer of such data. The absence of any development in this respect has been given a special mention in the report.

In conclusion it should be mentioned that alongside the harmonisation of the legal framework concerning the freedom to provide bank services, further efforts should be made for the accelerated development of the market for banking services.

II. Investment services and the freedom to publicly offer securities

The issues relating to the freedom of offering securities and providing investment services has traditionally been part of the freedom of movement of financial services within the European Community. The Acquis

communautaire in the field of the free movement of investment services and securities can be subdivided into the following five major fields:

1. Requirements for the disclosure of information on the part of issuing companies (issuers), which offer securities to the broad public with a view to raising funds for their operations;
2. Rules guiding the official listing of securities to be traded on the stock-exchange;
3. The legal form of organisation of companies undertaking collective investment in securities, also known as investment funds;
4. Some specific rules concerned with the protection of investors, e.g. rules about internal information and insider dealing;
5. Investment services, provided by the so called investment firms, known as investment intermediaries or broker's and dealer's companies in this country.

There has been a substantial evolution in the development of modern Bulgarian legislation on matters relating to the free movement of investment services and securities. The first legislative act in this field was the Securities, Stock Exchanges and Investment Funds Act, passed by Parliament in 1995. On February 1st 2000, the Public Offering of Securities Act came into force. It is a new and modern Act, which has been harmonised with European legislation to a much higher degree.

1. Disclosure of information

As far as the requirements for publishing information on a regular basis are concerned, the Public Offering of Securities Act has adopted the regulatory pattern prescribed in the European legislation, which is intended to ensure the protection of investors by providing regular and appropriate information on the investments offered. It provides that the public offering of securities meant to finance a company's activities, as well as the company's admission to the official stock exchange listing, shall be permitted only on condition that the issuing company has published an information document called a prospectus, which is subject to preliminary approval by the specialised government authority, namely the State Commission on Securities (SCS). The requirements on the contents of prospectuses, the conditions and order of their approval by the SCS, and for the partial or complete exemption of specific share flotations from publishing a prospectus, the conditions for the promotion and distribution of the prospectus, the responsibility of the persons that have signed it, the published advertisements and materials in connection with the public offering of securities, envisaged by this Act, are, with few insignificant exceptions, harmonised with the provisions of Council Directive 89/298/EEC, which coordinates the requirements related to the preparation, control and distribution of the prospectuses to be published in the event of a public offering of transferable securities. The requirements on the disclosure of regular and incidental information under the Public Offering of Securities Act completely comply with the standards of European legislation, introduced by Council Directive 80/390/EEC, which coordinates the requirements concerning the preparation, control and distribution of the prospectus to be published upon admission of securities to the official stock-exchange listing, and Council Directive 82/121/EEC of 15 February 1982 on the information to be published on a regular basis by companies the shares of which have been admitted to official

stock-exchange listings. The Public Offering of Securities Act provides that the SCS may recognise a securities prospectus that has been drawn up, approved of and published in compliance with the provisions of the legislation of the country of origin of the company issuing the securities in question, when an international treaty to which Bulgaria is a party explicitly envisages this. This regulation aims at ensuring that, upon a country's accession to the EU, the principle of mutual recognition of prospectuses adopted by European legislation will be effective on the territory of the new member country as well. According to this principle, whenever a prospectus has been approved of by the competent regulatory authority of a member state, it shall be recognised in all other member states, and the company that has drawn it up shall be able to offer its securities on the territory of any member state without carrying out the same administrative procedures of that other member state once again. Thus the European Community has achieved its objective in the field of effective business financing throughout the entire territory of the common market.

2. Admission of securities to the market

The requirements for the admission of securities to the official stock-exchange listing concern the company-issuer of the securities: its legal status, its minimum market capitalisation, its minimum period of duration, the number of shareholders, and the securities themselves. The latter must be issued in compliance with the law, be freely negotiable and transferable, and a sufficient amount of securities must be owned by the public. These conditions are provided for by Council Directive 79/279/EEC, which coordinates the conditions for the admission of securities to official stock exchange listing. Both the Public Offering of Securities Act and the Rules of Organisation and Procedures of the Bulgarian Stock Exchange - Sofia have incorporated the regulations laid down in the above mentioned Directive. In this sense the harmonisation between the Bulgarian and the European legal requirements in this respect has been achieved.

3. Undertakings for collective investment in securities (investment funds)

European legislation regulates the matters relating to the undertakings for collective investment in securities with Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative acts concerning the undertakings for collective investment in transferable securities. In more concrete terms, Council Directive 85/611/EEC concerns the undertakings (investment funds) the sole line of business of which is raising funds from the public and investing them in only one type of assets, i.e. securities, on the basis of risk distribution. These investment funds are constantly engaged in offering their securities to the public and may, at the request of investors, redeem them or buy them back. Therefore, subject to this Directive is the open or public type of investment funds. Council Directive 85/611/EEC introduces the principle of mutual recognition of licenses issued. On the basis of this principle, any undertaking for collective investment in securities, which has been granted a license to operate by the competent authorities in its country of origin, may freely offer its stocks or shares and thus attract the free financial funds of the investors on the territory of any other member state, without carrying out the same administrative procedures in that other member state. This principle refers to the issuance of the so-called uniform license (or uniform passport). To this end, Directive 85/611/EEC provides

for uniform requirements on the operation of and the administrative control on the undertakings for collective investment in securities.

With the adoption of the Public Offering of Securities Act, the legal form of organisation of an investment company of the public type is fully aligned with the respective European model for the functioning of such institutions. Harmonisation has been achieved with respect to the capital structure of an investment company of the open type, the functions and duties of the depositary bank chosen to safe-keep and dispose of the assets acquired by the investment company in the form of securities, the types of securities in which the funds raised by the investment company may be invested, the diversification of its portfolio and the spreading of risk, the contents of the prospectus upon any public offering of securities by an investment company, the methods of calculating and disclosing the issue, market and redemption price of the securities of a company of the public type, and the discontinuation of the redemption of securities.

4. Special rules on investors' protection

4.1 Inside information and insiders

The major principles underlying the European rules on insider dealing relate to the assurance afforded to investors that they are placed on an equal footing on the capital market, and, in particular that they are provided equal access to information, which implies that some investors will be denied access to the internal information, which is not available to the public. The repealed Securities, Stock Exchanges and Investment Funds Act closely followed Council Directive 89/592/EEC, which coordinates the regulations on insider dealing with respect to the definition and scope of "inside information" and "insiders" within a company, as well as the situations of inappropriate use of inside information. It is for that reason that the Public Offering of Securities Act preserves the approach of the repealed Securities, Stock Exchanges and Investment Funds Act concerning the definitions of key terms and notions, including the prohibitions with respect to insiders connected with buying and selling securities on the basis of inside information; with respect to sharing and communicating acquired inside information to any other person, that is not deemed to be an insider, without the permission of the General Assembly of the company to which this inside information is related, with respect to any advice given to a third party about acquiring or transferring securities on the basis of inside information about these securities possessed by the insider. The Public Offering of Securities Act broadens the scope of protection against the abuse of inside information to all regulated markets and exchanges, including the over-the-counter markets (OTC), thus encompassing not only the Stock Exchange, as was the case with the Securities, Stock Exchanges and Investment Funds Act, but other securities markets as well. To comply with the requirement of Council Directive 89/592/EEC, providing that the competent authorities shall be given all supervisory and investigation powers necessary for the exercise of their functions of detecting insider dealings, including, where appropriate, collaboration with the authorities of other countries, the Public Offering of Securities Act has considerably broadened the powers of the State Commission on Securities.

4.2. Disclosure of Share Holdings

The European Community's rules on the disclosure of the holdings of companies, whose shares have gained admission to stock-exchange listing, incorporated in Council Directive 88/627/EEC on the information to be published when a majority stake in a listed company is acquired or disposed of, require that the company, the State Commission on Securities and the Stock Exchange, where the respective company shares have been admitted, be informed of any person whose voting rights reach or go beyond or fall below 5% of the number of votes in the company's General Assembly or a multiple thereof. The new Public Offering of Securities Act is fully compliant with Council Directive 88/627/EEC.

5. The establishment and functioning of investment firms (investment intermediaries)

Council Directive 93/22/EEC on securities-related investment services introduces the principle of mutual recognition of firm's licenses issued. It is on the basis of this principle that any investment firm, which has been granted a license to operate by the competent authorities in its country of origin, may carry out any or all of the services covered by this Directive on the territory of any other member state, by establishing branches or freely providing services, without undertaking the same administrative procedures in that other state by virtue of this uniform license (or uniform passport). The directive introduces the principle that, as with banks and undertakings for collective investment in securities, the specialised supervision over an investment firm shall be performed by the competent authorities in the country of origin of this firm (or intermediary). To establish the conditions necessary for the provision of the above-mentioned investment services, Council Directive 93/22/EEC introduces uniform regulation of the various types of investment services and the types of securities to which these services may refer. The Directive also lays down the requirements on granting a company authorisation or license to function as an investment firm, as well as the requirements for such a firm to operate and exercise control on a day-to-day basis. The Directive introduces the definition of "a regulated market for securities" as well.

Unlike the repealed on Securities, Stock Exchanges and Investment Funds Act, the Public Offering of Securities Act introduces the distinction between basic and complementary operations of an investment firms (intermediaries) contained in Council Directive 93/22/EEC. On the one hand the directive defines the basic transactions constituting the object of an investment firm (intermediary); on the other it provides a list of the transactions an investment firm may carry out, which are complementary to its basic line of business. The Act introduces the requirements on granting authorisation to a person to operate as an investment firm, as well as requirements on the day-to-day operation of the firm. It is these requirements that secure the harmonisation with the regulatory pattern of Council Directive 93/22/EEC. The regulatory pattern of Council Directive 93/22/EEC has also been adopted with respect to the definition of a "regulated securities market". The Act defines this regulated market for securities as divided into a stock exchange and an unofficial or over-the-counter market for securities, whereby both types must meet certain requirements, typical of regulated markets in the sense of Council Directive 93/22/EEC. The most essential requirements in this respect are: regular trade in securities, regular disclosure of information and equal footing for any investment firm (or intermediary) engaged in such trade,

which functions on the basis of operating rules approved by the competent authority entrusted with controlling powers (the SCS). Foreign investment firms (intermediaries) may become members of a regulated market in Bulgaria provided they establish a branch in the country. A conclusion can be made that with the adoption of the Public Offering of Securities Act a complete harmonisation with the European legislation has been achieved with respect to the requirements for the legal organisation of investment firms and the operation of the regulated securities markets.

Conclusion

In conclusion it can be said that Bulgarian legislation in the field of providing investment services and public offering of securities has achieved a high degree of harmonisation with the legislative achievements of the Community. As regards the disparities that still exist, the latter relate to individual specific issues that may be easily remedied by some of the inevitable fiture amendments to the Public Offering of Securities Act.

By the time of Bulgaria's accession to the European Union, its legislation will be obliged to provide for the possibility for investment funds and investment firms from member states to function and operate on the territory of Bulgaria by way of exercising the freedom of establishment or by free provision of services on the basis of a uniform license. The latter implies that Bulgaria shall recognise the permits and licenses issued by the competent controlling authority of any respective EU member state. We may conclude that the regulatory prerequisites for Bulgaria's integration into the single financial area of the Community, which provides conditions for the effective financing of business, safeguards investor's interests and facilitates the free provision of services on the part of institutional investors, have to a large extent been put in place. The single key issue in connection with which Bulgaria is to take respective measures is the introduction of a scheme for compensating investors in the event of insolvency of the investment firm (intermediary), to which the investors have entrusted their funds for the purpose of securities transactions. Such a scheme should follow the pattern of the respective EEC directive and should closely approximate the deposit-guarantee scheme currently functioning in this country.

The European Commission's report, and its section on the free movement of financial services in particular, mentions, though without elaborating in any detail, the conclusions made above about the degree of approximation. The European Commission, however, has expressed its concern about the actual implementation of this legislation. The SCS has been functioning for 5 years, and is still making efforts for its institutional strengthening and recruitment of personnel. This will obviously be a process of a longer duration. Yet, it should be borne in mind that the actual implementation and law enforcement of the Acts passed by Parliament is suffering not only because of the inevitable "subjective" reasons, but because of purely objective ones, connected with the absence of a functioning capital market in this country. The merits of harmonisation with the European standards undertaken in a strictly Bulgarian environment may be tested only in the conditions of a functioning market, be it merely of an "emerging" or "fledgling" nature. This finding, however, should not be taken as an underestimation of the achievement with respect to the adoption of harmonised legislation in the field of investment services and securities.

The NGO sector should continue to monitor the country's achievements in the field of the free movement of services and capital. Practice shows that the elaboration of analyses on the degree of harmonisation between the achievements of EU and Bulgarian legislation in a particular field, has always proved

beneficial to the institutions involved in the process of pre-accession negotiations. It is often the case that the state of harmonisation is presented in too general terms, and particular discrepancy issues are not given due attention or are omitted altogether at the joint sessions of the European Commission and the respective Bulgarian representatives. And sometimes it is the absence of harmonisation on such concrete, even technical matters that may prove a barrier to the free movement of services and capital respectively. Therefore NGOs should continue their work on preparing detailed analyses on harmonisation. Because of their wealth of resources, NGOs should also take part in developing the so-called impact studies on the introduction of a particular EEC directive into Bulgarian legislation. Such impact studies should concern the legal aspects of the respective subject matter, and especially its economic aspects. Impact studies are given due consideration by the European Commission, since the cost and benefit analysis of the introduction of a particular piece of EU legislation has always proved to be the weakness of Bulgaria's efforts in the direction of harmonisation. NGOs can have a key role in carrying out such studies. Of course, it is the state and the competent state institutions that should decide upon the degree and specific parameters of introducing a concrete directive into Bulgarian legislation, inasmuch as the directive itself provides for such a discretionary attitude. The NGO sector may also play a substantial role in facilitating the enforcement of legislation by way of monitoring the practices of the respective institutions in charge of its enforcement; and may contribute to enhancing the efficiency of such institutions by way of provoking a public debate on their functioning and the public services they provide.

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