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Recent Developments in Bulgarian Transport Privatization Policy

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Abstract

Expanding Bulgaria's political, economic, and cultural cooperation with the countries of Asia is a major priority of the Bulgarian government policy. Transport plays a key role in the implementation of this priority both by providing the necessary conditions for international transit traffic and by meeting the needs of the Bulgarian economy and population. Structural reform in transport to a great extent depends on a sustainable investment policy. At present, prevailing conditions are likely to attract investments, especially to the airports of Sofia and Bourgas. In recent years, the Bulgarian State Railways ("BDZh") has lagged behind in its development in comparison with the other transport modes in the country and the railways in other European countries. The rehabilitation of the railways is crucial not only for BDZh itself but also for the entire country because the railways are the backbone of the international transport corridors that cross Bulgaria. The management of the Ministry of Transport considers privatization a significant element of the structural reform in the branch.

The introduction details how expanding Bulgaria's political, economic, and cultural cooperation with the countries of Asia is a major priority of the Bulgarian government policy, and how transport plays a key role in the implementation of this priority both by providing the necessary conditions for international transit traffic and by meeting the needs of the Bulgarian economy and population. Part I addresses how structural reform in transport to a great extent depends on a sustainable investment policy. Part II focuses on the opportunities which investment in airports present. Part III addresses the advantages of investment in ports. Part IV focusses on Bulgarian State Railways. Finally, Part V addresses how privatization intersects with each of these transport sectors and is a significant element of structural reform.

RECENT DEVELOPMENTS IN BULGARIAN TRANSPORT PRIVATIZATION POLICY

*Wilhelm Kraus**

INTRODUCTION

Bulgaria is the natural geographical center of South-Eastern Europe and was recognized as such even by the ancient Romans. It is a natural crossing point of roads and cultures. This is best seen from the system of European transport corridors officially adopted by the European Ministers of Transport in Crete in 1994[1] and approved in Helsinki in 1997.[2] Out of ten transport corridors, five cross the territory of Bulgaria. To take advantage of its geographical position to stimulate cooperation between Eastern and Western Europe, Bulgaria pursues a policy of good will and readiness for mutually favorable cooperation with its neighboring countries and the countries of Central and Western Europe.

Bulgaria's geographical position determines the particular importance of transport and its impact on the country's development. The transit corridors passing through Bulgaria follow historically established routes. For centuries, goods and people have traveled between Europe and Asia along the traditional routes of corridors such as the Silk Road, the Spices Road, and the Orient Express, all of which continue to operate to this day.

Expanding Bulgaria's political, economic, and cultural cooperation with the countries of Asia is a major priority of the Bulgarian government policy. Transport plays a key role in the implementation of this priority both by providing the necessary conditions for international transit traffic and by meeting the needs of the Bulgarian economy and population.[3]

The corridor concept has become the basis for the develop-

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1. Second pan-European Conference on Transport, Crete, March, 1994.
2. Third pan-European Conference on Transport, Helsinki, June 1997.
3. Bulgaria has a highly and evenly developed road network, totaling 37,286 km of asphalt roads. Three hundred and fourteen of these are motorways, while 3,029 are first-class roads. Currently a PHARE-financed project on road rehabilitation is under way that will improve pavement quality and will diminish travel time. PHARE is the French acronym for Poland and Hungary: Aid for Restructering of Economies. The Program, run by the European Union Commission, was initally intended to assist Hun-

ment of infrastructure in Central and Eastern Europe in recent years. Corridors are a flexible means of achieving better coordination in planning international transport infrastructure. Bulgaria's efforts are directed at creating transit alternatives for international transport. It is of great significance that the countries whose territories contain the common corridors need to combine their efforts and work in close cooperation as equal partners.

The government of the United Democratic Forces[4] ("UDF") has drafted a four-year investment program on the development of transport infrastructure in Bulgaria, with an overall cost of US$2 billion. The state budget alone could not furnish these sizable funds. The Bulgarian government is going to rely heavily on international financial institutions, private investors, and granting concessions. The development of infrastructure making use of the country's advantageous geographical situation will engage Bulgaria in the implementation of a number of priority projects that will bring the country's transportation system closer to Europe's. The major projects will involve Pan-European Transport Corridor VIII,[5] along with the Europe-Asia Link/Silk Road, Pan-European Transport Corridor IV,[6] Pan-European Transport Corridor X,[7] Pan-European Transport Corridor IX,[8] Pan-European Transport Corridor VII,[9] Sofia National Airport and Bourgas Airport, and the ports of Varna and Bourgas, as part of corridor VIII.

While recognizing the significance of all corridors, the Bul-

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gary and Poland but now provides aid to eleven countries of Central and Eastern Europe.

4. The United Democratic Forces ("UDF") is one of the major political parties in Bulgaria.

5. The route making Pan-European Corridor VIII is Durress-Tirana-Skopije-Sofia-Varna.

6. Pan-European Corridor IV route is Berlin/Nuremberg-Prague-Vienna/Bratislava-Budapest-Constanta-Sofia-Thessaloniki-Istanbul.

7. Pan-European Corridor X covers the following route: proposed link: Salzbourg-Ljubliana-Zagreb-Belgrade-Nis-Skopje-Veles-Thessaloniki; with several branches under consideration: X A: Graz-Maribor-Zagreb, X B: Budapest-Novi Sad-Belgrade, X C: Nis-Sofia-Dimitrovgrad-Istanbul, and X D: Veles-Bitola-Florina-Via Egnatia.

8. Pan-European Corridor IX covers the following route: Helsinki-St. Petersburg-Moscow/Pskov-Kiev-Ljubasivska-Bucharest-Dimitrovgrad with a branch IX A: Odessa-Ljubasivska and a branch IX B: Kiev-Minsk-Vilnius-Klaipeda/Kaliningrad.

9. Pan-European Corridor VII covers the following route: Gdansk-Katowice-Warsaw-Zilina, with a new branch between Katowice and Vienna.

garian government considers Corridor VIII a priority project. Corridor VIII traverses the territories of Albania, Macedonia, and Bulgaria. It has significant political and economic importance both at the national and regional levels. Italy, Greece, Turkey, and the countries of Central Asia, the Caucasus, and the Middle East show interest in Corridor VIII. The project is financially supported by President Clinton's South Balkan Development Initiative through the U.S. Trade and Development Agency ("TDA"). Bulgaria has a well-developed transport infrastructure along Corridor VIII that can support the free movement of passengers and cargo. The country has traditions in servicing transit traffic through its territory.

Establishing a direct railway link between Sofia and Skopje, the capital of Macedonia, is of main priority.[10] The project will also include the reconstruction of the railway section Radomir-Kyustendil-Gyueshevo. The first construction stage will cost approximately US$10 million. The U.S. government has extended US$30 million for the development of Corridor VIII on the territories of Bulgaria, Macedonia, and Albania. At present, the U.S. companies Bechtel and Sea Land are conducting a pre-feasibility study of the Corridor. There has been partial financing from the PHARE-program[11] in the amount of 900,000 ECU. In addition, the PHARE-program is expected to approve another 3.4 million ECU.

A number of international regulations and agreements govern transport activities. Bulgaria is an associate member of the European Union[12] ("EU") and transport is a means of establishing a direct connection with Member States. This is why the European Community[13] ("EC") directives on the development of

10. To this end, it is necessary to construct a bolder tunnel and a new 2.3 km railway.

11. PHARE, *supra* note 3, is the acronym for Poland and Hungary: Aid for Restructuring of Economies.

12. The Europe Agreement with Bulgaria was signed on March 8, 1993, 26 E.C. Bull., no. 3, at 58 (1993).

13. Treaty Establishing the European Community, Feb. 7, 1992, [1992] 1 C.M.L.R. 573 [hereinafter EC Treaty], *incorporating changes made by* Treaty on European Union, Feb. 7, 1992, O.J. C 224/1 (1992), [1992] 1 C.M.L.R. 719, 31 I.L.M. 247 [hereinafter TEU]. The TEU, *supra*, amended the Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty], *as amended by* Single European Act [hereinafter SEA], O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741, *in* TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES (EC Off'l Pub. Off. 1987). As of the signing of the TEU, the term European Community ("EC" or "Community") re-

transport and communications are mandatory for the Bulgarian carriers and the management of the transport process.

The transport sector is characterized by specific legislation for each mode of transport. The separate laws regulating the different modes of transport include Zakon za Bulgarskite Durzhavni Zheleznitsi [Bulgarian State Railways Act][14] ("BDZh Act"), Kodeks na Turgovskoto Moreplavane [Commercial Shipping Code],[15] Zakon za Grazhdanskoto Vuzduxoplavane [Civil Aviation Act],[16] Zakon za Putishtata [Roads Act],[17] and Zakon za Dvizhenie po Putishtata [Road Traffic Act].[18] These laws should be harmonized with the *acquis communautaire* of the European Union. Currently the Ministry of Transport is working on updat-

places the term European Economic Community ("EEC"). TEU, *supra,* art. G, O.J. C 224/1, at 6 (1992), [1992] 1 C.M.L.R. at 728; P.S.R.F. MATHIJSEN, A GUIDE TO EUROPEAN UNION LAW 4 (1995). In addition to the EEC, there is the European Coal and Steel Community ("ECSC") and the European Atomic Energy Community ("Euratom"). *Id.* The TEU established the European Union, which functions as a new chapter in the task of uniting the people of Europe more closely. *Id.* at 3-4. The EEC, ECSC, and Euratom comprise the first of the three pillars that form the European Union, while the second and third pillars are, respectively, Common Foreign and Security Policy, and Co-operation in the areas of Justice and Home Affairs. *Id.* at 4. The twelve Member States that signed the TEU were Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and the United Kingdom. TEU, *supra,* pmbl., O.J. C 224/1, at 1 (1992), [1992] 1 C.M.L.R. at 719. In 1995, Austria, Finland, and Sweden acceded to the European Union. Roger J. Goebel, *The European Union Grows: the Constitutional Impact of the Accession of Austria, Finland and Sweden,* 18 FORDHAM INT'L L.J. 1092, 1093 (1995).

14. Zakon za Bulgarskite Durzhavni Zheleznitsi [Bulgarian State Railways Act] *promulgated* State Gazette No. 53/1995 [hereinafter BDZh Act]. Under Bulgarian law, legal acts adopted by the National Assembly are required to be published in DURZHAVEN VESTNIK (State Gazette) [hereinafter SG] no later than 15 days of their adoption. CONSTITUTION OF THE REPUBLIC OF BULGARIA, SG No. 56, July 13, 1991, N.T.I.S. No.PB91-960422, 1991 WL 501431, Art. 88(3) [hereinafter BULG. CONST.].

15. Kodeks na Turgovskoto Moreplavane [Commercial Shipping Code], *promulgated* SG No. 55/1970, *amended and supplemented in* SG No. 56/1970, *amended* SG No. 58/1970, *amended* SG No. 55/1975, *amended* SG No. 10/1987, *amended* SG No. 30/1990.

16. Zakon za Grazhdanskoto Vuzduxoplavane [Civil Aviation Act] *promulgated* SG No. 94/1972, *amended and supplemented* SG No. 30/1990, *amended* SG No. 16/1997.

17. Zakon za Putishtata [Roads Act], *promulgated* SG No. 93/1969, *amended and supplemented* SG No. 37/1978, *amended and supplemented* SG No. 35/1996.

18. Zakon za Dvizhenie po Putishtata [Road Traffic Act] *promulgated* SG No. 53/1973, *amended and supplemented* SG No. 22/1976, *amended and supplemented* SG No.54/1978, *amended and supplemented* SG No. 28/1982, *amended and supplemented* SG No. 28/1983, *amended and supplemented* SG No. 36/1986, *amended and supplemented* SG No. 55 & 73/1987, *amended and supplemented* SG No. 26/1988, *amended and supplemented* SG No. 21/1990, *amended and supplemented* SG No. 32/1991, *amended and supplemented* SG No. 21 & 34/1994, *supplemented* SG No. 45/1996, *amended* SG No. 87/1997, *amended* SG No. 11/1998.

ing and harmonizing the acting legislation in the fields of transport with that of the European Union and on creating new regulations where there are gaps in the legal basis, for instance, with respect to port activity.

The functioning of transport enterprises is regulated by Bulgarian legislation governing enterprises in all other sectors of the economy. Under the Constitution of the Republic of Bulgaria[19] and Zakon za Durzhavnoto Imushtestvo [State Property Act],[20] transport infrastructure — railways, ports, and airports — is exclusive state property and is regulated by these instruments. This fact has a strong impact on the process of structural reform in transport. Transport infrastructure comprises a considerable part of the national infrastructure and plays a key role in the overall development of the economy. Transport is at the beginning and end of every production. It forms the basis of all communications in the country. For this reason the development and maintenance of transport and transport infrastructure is of great importance.

I. *INVESTMENT POLICY*

Structural reform in transport to a great extent depends on a sustainable investment policy. Modernization, reconstruction, and development of the main infrastructure sites such as ports, airports, and railways, takes enormous financial resources. Taking into account the fact that, at present, the state cannot afford to finance big infrastructure projects, the Ministry of Transport is trying to find other sources of financing for them.

There are a number of possible approaches to financing big financial projects. One possibility is getting financing from the international financial institutions. Funds from the World Bank, the European Bank for Reconstruction and Development ("EBRD"), the European Investment Bank, and the PHARE-program are currently used to finance the construction of sites under the Transport Border Crossing Program, the Bulgarian State Railways Rehabilitation Program, the Trans-European Motorways Program, and the masterplans for the ports of Bourgas, Varna, Rousse, and for Bourgas Airport.

19. BULG. CONST., *supra* note 14, Art. 18.

20. Zakon za Durzhavnoto Imushtestvo [State Property Act], *published* SG No. 44/1996, *amended* SG No. 104/1996.

Granting concessions for various sites is another possible way of financing big infrastructure projects. The Concessions Act[21] creates opportunities for private investment in the construction of infrastructure sites without government funds. This approach to investment will gradually develop as a major one and will be applied to all sites at ports, airports, and roads. Finally, building large infrastructure sites through the property ownership methods of Build-Own-Operate ("BOO") and Build-Operate-Transfer ("BOT") presents another source of project financing.

Investment transactions of this kind are a comparatively new phenomenon in national and world policy. They are based on two concepts: the legal concept of concessions, and the economic concept of project financing. These concepts are strategic for Bulgaria and its government, which work in the conditions of a currency board. So far the Bulgarian Council of Ministers has decided to award concessions for sections of the Trakia Motorway[22] and the Cherno More Motorway.[23] Investments amount to US$418 million and US$390 million, respectively.

II. *AIRPORTS*

At present, prevailing conditions are likely to attract investments, especially to the airports of Sofia and Bourgas. Considerable efforts have been made to develop the project on reconstruction and modernization of Sofia Airport. A new masterplan has been approved and financial studies have been done by world-famous consulting companies in this field, such as the British companies of Halcrow and Alexander Gibb. The studies forecast a serious possibility for steady increase in traffic and the possibility of guaranteeing the return of investments. A major step in this connection was the signing of a 60 million ECU loan agreement with the European Investment Bank in September in Luxembourg for the reconstruction project. The first stage will take 123 million ECU. Bulgaria is looking for various possibilities of providing cofinancing for the project. Talks are under

21. Zakon za Kontsesiite [Concessions Act] *promulgated* SG No. 92/1995, *amended* SG No. 16/1996, *amended* SG No. 44/1996, *amended and supplemented* SG No. 61/1997.

22. The Trakia Motorway covers 192 km, from Orizovo in Central Bulgaria to Bourgas on the Black Sea.

23. The Cherno More Motorway stretches for 93 km, from Bourgas to Varna on the Black Sea.

way for a US$40 million loan from the Kuwaiti Fund for Arab Economic Development and a study looking into the possibility of receiving a 25 million ECU grant from PHARE has been launched.

The airport of Bourgas has an approved general development and financial plan as well. It was drafted by the British company of Mott McDonald and included an Environment Impact Assessment. A schedule has been set up that details the development of the airport in stages, including the reconstruction of the passenger terminal for departures, expansion of the apron and creation of additional slots, a cargo terminal, as well as the establishment of a free trade zone near the airport. Investments in the future development of the airport are expected to total approximately US$67 million.

III. *PORTS*

A. *The Port of Bourgas*

There is an approved masterplan envisaging the construction of four new terminals: Terminal 1, for general and liquid bulks, with a total cost of US$69.2 million; Terminal 2, for bulk cargoes, machines and equipment, with a total cost of US$107.2 million; Terminal 3, for Ro-Ro-La and ferry-boat, with a total cost of US$41.6 million; and Terminal 4, for containers, with a total cost of US$46.8 million.

Following feasibility studies for these terminals, Bulgaria received a pledge from the Overseas Economic Cooperation Fund of Japan for a US$120 million credit to build the most necessary port facilities: a breakwater and terminals 1 and 2.

B. *The Port of Varna*

In 1994-1995, a masterplan was developed with funds from the International Bank for Reconstruction and Development. The masterplan needs to be updated. According to the drafted projects, investments are sought for the building of Container Terminal Varna-East, with a total cost of US$30 million, and the reinforcement of the Varna breakwater. Construction of the Varna breakwater has begun but had to be suspended for lack of funds. Approximately US$5 million will be necessary to complete the construction. In addition, in the Varna-West port, a new grain terminal for US$10 million will be constructed in place of the existing quay.

C. *The Ports of Rousse and Lom*

Under the PHARE-program, a Strategic Plan has been drawn for the development of the Port of Rousse. PHARE has furnished the funding for the following projects: 363,000 ECU for dredging in the Rousse-East port, 494,000 ECU for the rehabilitation of the quay wall in the Rousse-West port, and 363,000 ECU for the construction of a parking lot next to the ferry-boat terminal. The full implementation of the Strategic Plan will need another US$15 million of investments, for which no projects have been developed yet.

PHARE has also furnished 255,000 ECU for the drafting of a Strategic Development Plan for the reconstruction of the port of Lom, which has already begun.

IV. *BULGARIAN STATE RAILWAYS*

In recent years, the Bulgarian State Railways ("BDZh") has lagged behind in its development in comparison with the other transport modes in the country and the railways in other European countries. The renovation and medium-term rehabilitation of the tracks has been delayed. For this reason, a Rehabilitation Program is under way, financed by a state-guaranteed loan of US$152 million from the World Bank, the EBRD, and the Export Crediting Agency and by a US$18 million grant from the PHARE-program. Additional funding in the amount of US$126 million is coming out of BDZh's budget and the national budget.

The rehabilitation of the railways is crucial not only for BDZh itself but also for the entire country because the railways are the backbone of the international transport corridors that cross Bulgaria. More than two-thirds, approximately US$120 million, of the funds for the Rehabilitation Program are, therefore, allocated for the infrastructure of the main rail routes servicing the international transport corridors. The renovation of the rail tracks and the furnishing of annual funding of US$20 million out of the state budget, as planned, are of primary importance for the implementation of the Rehabilitation Program.

The Rehabilitation Program also covers passenger railcars and locomotives that BDZh is going to use to improve the quality of its international and domestic services. An estimated US$12 million will be needed for the improvement of the repair system and the maintenance of the locomotive fleet — spare parts, equipment, tools, and environment protection. Another US$12 million will be extended to the railcar plant in Dryanovo for the installation of imported equipment and the recycling of a hundred passenger railcars after the standards of the International Union of Railways.

V. *PRIVATIZATION*

The management of the Ministry of Transport considers privatization a significant element of the structural reform in the branch. Our concept in this respect is that all state-owned transport enterprises, except infrastructure, are eligible for privatization. The privatization process in transport allows the state to withdraw from the management of transport companies. From the beginning of the process to the end of 1997, assets worth 3,500 million levs went private, which comprises thirty-five percent of the total 10 billion levs assets eligible for privatization and 4.2% of all 83 billion levs assets in this sector. In 1997 alone, assets worth 3.25 billion levs comprising almost 95% of all denationalized assets in the sector changed hands through cash and mass privatization, liquidation, and transfer from government to municipal property. The same year, eighty-five privatization contracts were concluded for entire enterprises and self-contained parts of enterprises, which is fifteen more than those envisaged by the Privatization Program. The deals in cash privatization totaled 10.5 million levs in price and 3.8 million levs in investment. The privatization deals also generated 841 new jobs.

In preparation for the tasks of Agenda 2001, more than eighty sites, including entire enterprises and separate parts, were prepared for privatization. As of January 10, 1998, there were 223 commercial enterprises in which the state had an interest within the system of the Ministry of Transport. One hundred fifty-eight of these were fully state-owned. The total number of commercial enterprises in the system is 336.

A. *Railway Transport*

The policy of the Ministry of Transport on railway transport is the following:

1) Only the railway infrastructure with the National Railway company — tracks, power network, and stations— will remain state-owned. This is in accordance with the BDZh Act and EC Directive 440.[24] The BDZh Act and existing regulations governing the Bulgarian State Railways do not preclude the railway infrastructure from being separately managed.

2) Passenger and cargo transports could be granted on concession. This will require amendment of the BDZh Act, which regulates the national railway infrastructure, including the status, financing, and development of the national railway system as public state property. The BDZh Act also regulates the railway enterprises, including the status, markets, and public services as private state property. The licensing regime also falls within the ambit of the BDZh Act.

3) Private companies will be allowed to carry out railway transport services on concession only after the reconstruction of the Bulgarian State Railways.

4) Railway plants will be sold through contracts with foreign investors.

5) A similar approach is applicable in the restructuring process and to other sites of the railway industry.

6) Twelve plants and one repair-and-maintenance enterprise have been approved for privatization. These include the railcar plant in Bourgas, the automatic and telemechanics plant in Sofia, the breaks plant in Purvomay, the wooden sleepers and container plant in Belovo, the railcar repair plants in Levski and Septemvri, the railway plant in Sofia, the railcar and equipment repair plant in Han Kroum, the locomotive and railcar plant in Rousse, the KIPA control and measuring tools and equipment plant in Levski, and the repair-rehabilitation enterprise in Sofia. Restaurants and Specialized Railcars Ltd., which services the passenger railway transport, will be privatized as a whole company.

B. *Road Transport*

The policy of the Ministry of Transport regarding road

24. Council Directive No. 91/440, O.J. L 237/25 (1991).

transport is to effect an accelerated privatization. All commercial companies performing cargo transports, taxi transports, and repairs are to be totally privatized. There are no political or economic reasons for retaining the state-ownership of cargo road transport, taxis, and repair activities. As a result of the restructuring and privatization process, as of January 1, 1997, there were 172 road companies within the Ministry of Transport with some state ownership in them. Among these road companies, forty-five were less than 51% state-owned, six were between 51% and 99% state-owned, and 121 were entirely state-owned.

Road enterprises located near ports, airports, and major administrative and industrial centers, such as Bourgas, Varna, Rousse, Sofia, or Plovdiv, are attractive for investment. In the near future, 40% of the shares of the Economic Organization for International Road Transport[25] shares will go private. Due to the specific needs of passenger transport, the Ministry's policy is that ownership of passenger transport companies should be transferred to the municipalities. So far, forty companies have been transferred to municipalities. The process is still under way.

C. *Air Transport*

An attractive deal in the field of air transport will be the privatization of Balkan Airways, which is a national flag carrier and a company enjoying rights under eighty bilateral international agreements on air transport providing for the access to, and servicing of, all signatory countries' markets. The Bulgarian Privatization Agency recently held a PHARE-financed competition for a privatization underwriter of the Balkan deal, the winner of which was the TOB-Speeding consortium. The Bulgarian Council of Ministers has adopted a decision on the establishment of a Working Group for the privatization of Balkan Airways single-person shareholding, headed by the Minister of Transport.

There are no obstacles to the full privatization of the small aviation enterprises and the airplane repair plant in the town of Montana. In addition, the agricultural aviation companies are all up for privatization. As infrastructure sites, civil airports will

25. The Bulgarian acronym for the Economic Organization for International Road Transport is SOMAT.

not directly change hands. After the restructuring, various commercial activities will go private.

D. *Water Transport*

Ports for public use will not be directly privatized except for separate activities after their restructuring. The developing legal framework regulating the water transport sector lacks a law regulating ports. Only after the passage of such a law will the issue of the restructuring and management of ports as major infrastructure sites become regulated.

Concerning the maritime and river fleets, two companies will be restructured and optimized: Navi Bulgare and the Bulgarian River Shipping Corporation. Initially, self-contained units within the companies that are not representative of the companies' main activity, will go private. The rest of the companies will change hands at a later stage.

E. *Transport Construction*

All nine transport-construction companies are ready for privatization. Five of them sold twenty-five percent of their shares in the mass privatization process and one company sold sixteen percent of its shares. Because these companies specialize in the construction, modernization, and development of transport infrastructure, the Ministry of Transport expects to have foreign investors interested in them. The policy of transport infrastructure building remains a priority with the Ministry of Transport as one of the most important tasks of structural reform. The Ministry will continue developing ports, airports, railway infrastructure, and roads first, searching for financing from external organizations.

There are two laws intended to encourage investment in Bulgaria. One of these laws is the Foreign Investment Act[26] ("FIA") which came into force on October 24, 1997. The FIA replaced the old and, at times, cumbersome Encouragement and Protection of Foreign Investment Act, which had been amended several times before it was repealed. The FIA, to a

26. Zakon za Nasurchavane I Zakrila na Chuzhdestrannite Investitsii [Economic Activity of Foreign Persons and Protection of Foreign Investment Act] *promulgated* SG No. 8/1992, *amended and supplemented* SG No. 92 & 102/1995, *amended and supplemented* SG No. 109 & 110/1996, *amended* SG No. 55 & 68/1997 [hereinafter FIA].

great extent, expanded and alleviated the investment regime, greatly simplified procedures, and introduced a number of preferences aimed at attracting more investments to the country. It has served as the basis of a number of important measures towards harmonizing Bulgarian investment regulations with the conditions and requirements for Bulgaria's accession to the European Union.

Broadly speaking, the FIA principles are as follows: Any foreign person may make investments *according to the same procedure* applicable to Bulgarian persons, and shall enjoy equal rights with Bulgarian persons;[27] If an international treaty to which Bulgaria is a party envisages more favorable conditions for the conduct of business by foreign persons, the more favorable conditions shall apply as provided by the international treaty;[28] Any foreign person entitled to carry out business under the laws of his country may establish representative offices in Bulgaria which shall be registered with the Bulgarian Chamber of Commerce and Industry;[29] and Establishment of the Foreign Investment Agency as a public authority within the Council of Ministers whose task is to coordinate the operation of all public authorities in the fields of foreign investments and to encourage foreign investments, especially those in priority investment projects.[30]

A key advantage of the FIA is the fact that it gives a clearer and more comprehensive definition of the term "investment," specifying the range of investments eligible for protection and a special regime. Under the FIA, "foreign investment" means any investment made by any foreign person or its wholly owned subsidiary in:

—shares and interests in commercial partnerships;

—right of ownership of buildings and limited rights to real property;

—right of ownership of an enterprise as well as the self-contained units of an enterprise for purposes of the Transformation and Privatization of State-Owned and Municipal Enterprises Act;[31]

27. *Id.* art. 2.
28. *Id.* art. 3(1).
29. *Id.* art. 6(1).
30. *Id.* art. 10(1).
31. Zakon za Preobrazuvaneto I Privatizatsiyata na Durzhavnite I Obshtinski Pred-

—securities, including bonds and Treasury bills, as well as derivative instruments, issued by the state, municipalities or any other Bulgarian legal person with a residual period to maturity of no less than six months;

—credit, including a financial lease, extended for a term exceeding twelve months;

—intellectual property, including copyright and residual rights, patentable inventions, utility models, trade marks, service marks, and industrial designs; and

—rights arising under contracts of concession and management contracts.[32]

In addition, the FIA regulates a wide range of investments. A typical feature of the FIA is the text of Article 14, which provides for a value added tax, duty, and charge exemption for the import of machinery, process equipment, and plants, including navigation vessels, aircraft, railway, and motor vehicles.[33] These exemptions apply to non-cash assets transferred by a foreign member or shareholder in a commercial partnership on the condition that the non-cash interest paid toward an allotted interest in the capital is valued at the levs equivalent to no less than US$100,000.[34] Temporary import is allowed for up to six months and can be extended for a further six months by a decision of the Bulgarian Minister of Finance.

Under the FIA, priority investment projects are those which satisfy at least one of the following requirements: the amount of the investment exceeds US$5 million, the creation of more than a hundred new jobs, and investment in areas with unemployment rates exceeding the average national rate of unemployment, as designated by the Bulgarian Council of Ministers. Partnerships implementing priority investment projects are allowed to retain fifty percent of the profit tax due to the Central Government Revenue Service for a period of ten successive years.

priyatia [Transformation and Privatization of State-Owned and Municipal Enterprises Act] *promulgated* SG No. 38/1992, *amended* SG No. 51/1994, *amended* SG No. 45, 50 & 109/1995, *amended* SG No. 42 & 45/1996.

32. FIA, *supra* note 26, art. 12(1).

33. *Id.* art. 14.

34. *Id.*

F. *Concessions Act*

The Concessions Act[35] was passed in 1995. The most recent amendments to the Concessions Act were passed in the summer of 1997. The possibility of winning a concession contract is one of the most attractive options for investors and makes the Concessions Act similar in its subject matter to the FIA. Under the Concessions Act, a "concession" is defined as: the grant of a specific right to the use of items of state property, including property that is built by the concessionaire with his own funds;[36] the grant of a specific right to the use of items over which the state exercises sovereign rights in compliance with Article 18, paragraphs 2 and 3 of the Constitution of the Republic of Bulgaria, including through the use of existing facilities which are items of state property and/or through the construction of new facilities on the part and with the funds of the concessionaire;[37] and the grant of authorization for the implementation of activities for which a state monopoly has been established by law.[38]

The process of granting concessions includes several steps. The first step is making the decision to award a concession. The next step involves organizing competitive bidding or an auction to select the concessionaire, or selecting the concessionaire without an auction or competitive bidding in instances specified by the Concessions Act.[39] The final step consists of concluding a contract of concession. Concessions may be awarded for a comparatively long period, up to thirty-five years on the agreement of both parties to the contract and on the basis of a decision by the body which has rendered a decision to award the concession. The cumulative periods of a concession, however, may not exceed fifty years.[40]

Concessions may be awarded for the following types of sites:

1) subsoil natural resources, for prospecting, exploration, and extraction;

2) coastal beaches;

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35. Zakon za Kontsesiite [Concessions Act] *promulgated* SG No. 92/1995, *amended* SG No. 16/1996, *amended* SG No. 44/1996, *amended and supplemented* SG No. 61/1997.

36. *Id.* art. 2(1)(i).

37. *Id.* art. 2(1)(ii).

38. *Id.* art. 2(1)(iii).

39. *Id.* art. 2(3).

40. *Id.* art. 3(2).

3) biological, mineral, and energy resources of the continental shelf and in the exclusive economic zone, for exploration, development, exploitation, and utilization;
4) radio frequency spectrum;
5) national postal and telecommunication networks;
6) public roadways, ports for common carriers and civilian airports, both existing ones and/or those which shall be built with the concessionaire's funds, in the case of state-owned items of property;
7) waters, including mineral waters, of national importance;
8) electric and heat power stations and trunk pipelines;
9) forests and parks of national importance;
10) nuclear facilities;
11) nature and archaeological reserves; and
12) other items of state property as designated by law.[41]

An authorization to carry out an activity on concession may be granted for the transportation of energy resources, postal services, telecommunication services, carriage of passengers and goods by rail, utilization of nuclear power, and the production of radioactive materials, weapons, explosives, and biologically potent substances.[42] The decision to award a concession shall be adopted by the Bulgarian Council of Ministers on the reasoned proposal of the minister in charge of the respective sector and within the range of his competence.[43] The proposal shall be accompanied by a legal analysis, a feasibility study, a social analysis, and an environmental impact assessment of the concession. The concessionaire is selected through an auction or a competitive bidding, or, where so specified by the Concessions Act, without an auction or competitive bidding.[44] Bidders can be both Bulgarians and foreign legal and physical persons that are registered as merchants.[45]

The authorized minister and the winner in the competitive bidding process or auction sign a contract of concession. The Concessions Act enumerates the mandatory parameters of each

41. Concessions Act, *supra* note 35, art. 4.
42. *Id.* art. 5.
43. *Id.* art. 6.
44. *Id.* art. 8.
45. *Id.* art. 9.

concession contract.[46] The Council of Ministers may award a concession without competitive bidding or an auction to companies in which persons under paragraph 3[47] hold shares and an interest in the net amount of over 300 million levs, which comprises at least twenty-five percent of their capital.

G. *Property Restructuring*

The above discussion shows that Bulgaria provides a good legal basis for investment, consistent with international requirements. The main political issue confronting the Bulgarian government for the upcoming year, and probably for the entire term of office of this cabinet, is property restructuring. The restructuring of property can be called an outright revolutionary task. While Bulgaria has so far achieved the privatization of eighteen percent of its economy, we have to complete another thirty-eight percent of the privatization process by the end of this year. This will create new social relations and is an enormous responsibility to be borne by the majority in the National Assembly and, of course, by the Bulgarian government.

CONCLUSION

Bulgaria's geographical position determines the particular importance of transport for the country's economic development. The present Bulgarian government's four-year investment program for the development of the transport infrastructure in the country will significantly facilitate the privatization process in the transport sector. The privatization laws that have already been passed and those about to be passed are a step in the right direction. Each stage in the privatization process is accompanied by an ongoing dialogue with the public.

46. Concessions Act, *supra* note 35, art. 20.
47. Those are companies in which the state is the sole proprietor.