Agreement between the Belgian-Luxembourg Economic Union and the Republic of Tunisia concerning the encouragement and reciprocal protection of investments

The Government of the Kingdom of Belgium, the Government of the Walloon Region, the Government of the Flemish Region, the Government of the Brussels-Capital Region, and the Government of the Grand Duchy of Luxembourg, on the one hand, and the Government of the Republic of Tunisia, on the other hand, (hereinafter referred to as the Contracting Parties)

Desiring to strengthen their economic relations and intensify cooperation between the two countries in order to facilitate their development.

Convinced that a Protection reciprocal investments based on a bilateral agreement is likely to stimulate private business initiative and increasing prosperity of both countries.

Recognizing the need to provide fair and equitable treatment to investments of investors of one Contracting Party in the territory of the other Contracting Party.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. the term "investors" means:

a) With respect to the Kingdom of Belgium and Grand Duchy of Luxembourg: any natural person who, in accordance with its legislation is considered as a citizen of the Kingdom of Belgium and the Grand Duchy of Luxembourg and any legal person constituted in accordance with the laws and regulations of the Kingdom of Belgium and the Grand Duchy of Luxembourg, having its head office in its territory and who performs investment in the territory of the Republic of Tunisia.

b) In respect of the Republic of Tunisia shall mean any natural person having the nationality of Tunisia and any legal person constituted in accordance with the laws and regulations of the Republic of Tunisia, and who makes an investment in the territory of the Kingdom of Belgium and the Grand Duchy of Luxembourg.

2. The term "investment" means any investment in the territory of one Contracting Party whose owned or controlled directly or indirectly by investors of the other contracting party including but not limited to:

a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructs and similar rights;

b) Shares, stocks and any other forms of participation in companies formed in the territory of one of the Contracting Parties;

c) The obligations and rights, claims to any performance having an economic value;

d) Copyrights, industrial property rights, technical processes, trade names and goodwill;

e) The concessions under public law or under contract, including those relating to prospecting, culture, extract or exploit natural resources.

Any alteration of the form in which the legal investments has been made shall not affect their classification as investment within the meaning of the present agreement on condition that such change is not contrary to the legislation of the Contracting Party in whose territory the investment is made.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, profits, interest, dividends, royalties or fees.

4. The term "territory":

- means in respect of the Kingdom of Belgium and Grand Duchy of Luxembourg, the Territory as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters and upon which it exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources;

- means in respect of the Republic of Tunisia, the territory of that Party as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters and upon which it exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources.

Article 2. Promotion of Investments

Each Contracting Party shall encourage equal investments in its territory by investors of the other Contracting Party and admits such investments in accordance with its laws and regulations.

Article 3. Treatment and Protection of Investments

1. All investments made by investors of either Contracting Party, shall be accorded in the territory of the other Contracting Party fair and equitable treatment.

2. Subject to the measures necessary for the maintenance of public order, these investments shall enjoy constant security and protection, excluding any unjustified or discriminatory measure which could adversely affect their activities, management, maintenance, use, enjoyment or disposal.

3. The treatment and protection defined in paragraphs 1 and 2 granted by either Contracting Party to investors of the other Contracting Party shall be at least equal to those enjoyed by its own investors investors or of any third State, whichever treatment is more favourable, and shall in no case be less favourable than those accorded by international law.

4. However, this treatment and protection shall not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union, common market or any kind of regional economic organizations.

5. Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party benefit, on the part of this latter, as regards restitution, indemnification, compensation or other indemnities, treatment which is not less than that accorded to its own investors to investors or of any third State, whichever is more favourable treatment.

Article 4. Expropriation

1. The investments of investors of either Contracting Party shall not be expropriated or nationalized, subject to any other measure having an effect equivalent to expropriation or nationalization unless the following conditions are met:

a) The measures are taken in the public interest and under due process;

b) The measures are not discriminatory;

c) The measures shall be accompanied by the payment of prompt, effective and adequate compensation.

2. The amount of compensation will correspond to the real value of the investment concerned to be equal before the date on which the measures taken or to be made public.

The compensation shall be paid without delay and freely transferable.

3. In matters governed by this Article, each Contracting Party shall accord to investors of the other Contracting Party treatment at least equal to that which it accords in its territory to its own investors or to investors of any third State, whichever is the more favourable. Such treatment shall in no case be less favourable than that recognised by international law.

Article 5. Transfers

1. Each Contracting Party in whose territory the investment equal have been made by investors of the other Contracting Party shall grant those investors the free transfer of all payments relating to an equal investment, including:

a) Returns of investments;

b) The amounts required for the repayment of loans contracted regularly;

c) Claims of the recovery of the proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;

d) Compensation paid pursuant to Article 4;

e) royalties and other payments deriving from the licence fees and commercial, administrative or technical assistance;

f) Appropriate remuneration for the amount of nationals of one Contracting Party who have been authorized to work under an investment in the territory of the other Contracting Party.

2. The transfers referred to in Article 4 and paragraph 1 above shall be made in any freely convertible currency at the rate of exchange prevailing on the date of transfer and according to the procedures provided for by the laws and regulations of the Contracting Party in whose territory the investment is made.

Article 6. Subrogation

1. If one of the Contracting Parties or a public body thereof pays compensation to its own investors under a guarantee given for an investment, the other Contracting Party recognises that the investors' rights and shares are transferred to the Contracting Party or public body concerned.

2. As far as the transferred rights, the other Contracting Party shall be entitled to plead against the insurer, subrogated into the rights of the investors indemnified the obligations under a legal or contractual relationship with them.

Article 7. Applicable Rules

Where a matter relating to investments simultaneously is governed by this Agreement and by the national legislation of either Contracting Party or in international conventions on the investments, existing or undertaken by the contracting parties in the future, investors of the other Contracting Party may avail itself of the provisions that are most favourable.

Article 8. Specific Agreements

1. The investments which has been the subject of a special agreement between investors of one Contracting Party and the other Contracting Party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement.

2. Each Contracting Party shall respect any commitments by it in respect of investments made by investors of the other Contracting Party.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute concerning investments between an investor of one Contracting Party and the other Contracting Party, shall be the subject of a written notification by the most expeditious party.

To the extent possible, the parties will endeavour to settle the dispute amicably by negotiation or by conciliation between the Contracting Parties through diplomatic channels.

2. If a dispute cannot be settled in this way within six months from the date of notification, the investor may submit the dispute for resolution to his choice:

a) Either to the competent court of the Contracting Party in whose territory the equal investment was made;

b) Either to the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and nationals of other States, opened for signature at Washington, on 18

March 1965;

c) Or to an ad hoc tribunal which, unless otherwise direct arrangement between the parties to the dispute shall be established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party consents so that any dispute concerning the investments is submitted to conciliation or to international arbitration.

4. Once the investor has submitted the dispute to the courts of the Contracting Party concerned, or to the Centre, or an ad hoc arbitration, the choice of one of these procedures provided for in paragraph 2 shall be final.

5. Neither of the Contracting Party, Party to the dispute shall not raise an objection, at any stage of the arbitration proceedings or enforcement of an arbitration award, on account of the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy or to the guarantee provided for in article 6 of this Agreement.

6. The arbitration awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the award according to its national law.

Article 10. Disputes between the Contracting Parties Relating to the Interpretation or Application of the Agreement

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall as far as possible, be settled through diplomatic channels.

2. If a dispute cannot be settled in this way within six months from the beginning of negotiations, it shall be submitted upon request by either contracting party to an arbitral tribunal.

3. The arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall select a national of a third State as Chairman of the arbitral tribunal. The arbitrators shall be appointed within three months and the Chairman within five months of the receipt of the notice of arbitration.

4. If within the periods specified in paragraph 3 of this article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is unable for any reason to carry out those functions, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also prevented from carrying out the function, the said member of the International Court of Justice in next authority immediately and who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall decide on the basis of respect for the Law, the provisions of this Agreement as well as the principles of international law.

6. The tribunal shall determine its own procedure. it interprets the award at the request of either Contracting Party. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties.

7. Each Contracting Party shall bear the cost of its own arbitrator and its representation. The costs related to the Chair and any remaining costs shall be borne in equal parts by the Contracting Parties.

Article 11. Implementation of the Agreement

This Agreement shall also apply to investments carried out by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations as from 1 January 1957.

Article 12. Most Favoured Nation

For all matters relating to the treatment of investments, investors of either Contracting Party shall enjoy, in the territory of the other party, the most-favoured-nation treatment.

Article 13. Entry Into Force and Duration

1. This Agreement shall enter into force one month after the date on which the contracting parties have exchanged their instruments of ratification. It shall remain in force for a period of ten years.

Unless one of the Contracting Parties denounces it at least twelve months prior to the expiry of the period of validity, whenever it shall be automatically renewed for a further period of ten years. Each Contracting Party reserving the right to terminate the agreement by a notification made at least twelve months before the date of expiry of the current period of validity.

2. Upon the entry into force of the present Agreement, the provisions of the Agreement between the Belgo-Luxembourg Economic Union, of the one part, and the Republic of Tunisia, on the other hand, concerning the encouragement of capital investments and the Equal Protection of Goods, done at Tunis on 15 July 1964 shall cease to have effect between the Belgo-Luxembourg Economic Union and the Republic of Tunisia.

3. As regards the investments made prior to the date of termination of this Agreement, they would continue to enjoy the equal protection of its provisions for a further period of ten years.

Done at Tunis on 8 January 1997 in two originals in the Arabic, Dutch and French languages, all texts being equally authentic. The French text is authentic in case of divergence of interpretation.

For the Belgian-Luxembourg Economic Union :

For the Government of the Kingdom of Belgium,

For the Government of the Walloon Region,

For the Government of the Flemish Region,

For the Government of the Brussels-Capital Region :

For the Government of the Grand Duchy of Luxembourg :

Eric DERYCKE,

Minister of Foreign Affairs

For the Government of the Republic of Tunisia :

Habib BEN YAHIA,

Minister of Foreign Affairs.