

TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE SOCIALIST REPUBLIC OF ROMANIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF CAPITAL INVESTMENT

The Federal Republic of Germany and the Socialist Republic of Romania,

Desiring to promote the friendly relations existing between their States, good-neighbourliness and economic co-operation between the two countries,

Anxious to create favourable conditions for capital investment by investors of the Federal Republic of Germany in the territory of the Socialist Republic of Romania and by investors of the Socialist Republic of Romania in the territory of the Federal Republic of Germany,

Recognizing that the protection of capital investment through this Treaty will stimulate initiative in this area,

Mindful of the Final Act of the Conference on security and co-operation in Europe,

Have agreed as follows:

Article 1.

1. Each Contracting Party shall promote capital investment in its territory by investors of the other Contracting Party.
2. Capital investment permitted under the legislation of the Contracting Party in whose territory that capital is invested shall enjoy the protection of this Treaty.

Article 2.

1. Neither Contracting Party shall, in its territory, apply to investments by investors of the other Contracting Party treatment less favourable than that granted to investments by investors of third States with which it has concluded similar treaties. Neither Contracting Party shall, in its territory, apply to any activities of investors of the other Contracting Party in connection with investments treatment less favourable than that granted to investors of third States with whom it has concluded similar treaties.
2. If the legislation of either Contracting Party or present or future mutual international obligations of the two Contracting Parties not covered by this Treaty give rise to regulations which accord to the investors of the other Contracting Party or their investments more favourable treatment than is provided for by this Treaty, such regulations shall have precedence over this Treaty, in so far as they are more favourable.
3. Each Contracting Party shall comply with any other obligation it may have entered into with regard to investments in its territory by investors of the other Contracting Party.

Article 3.

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party may be expropriated only for reasons of public policy and against fair compensation. The compensation paid shall be in the form of liquid resources, freely transferable and paid without delay. Adequate arrangements shall be made at or prior to the time of expropriation for determining and paying such compensation. The procedure for determining compensation shall be established in accordance with the legislation of the Contracting Party in whose territory the capital has been invested.
2. The legality of any expropriation measure within the meaning of paragraph 2 (b) of the protocol to this Treaty shall be reviewed at the request of the investor in a legal proceeding of the respective Contracting Party:

(a) In the Federal Republic of Germany: in all cases;

(b) In the Socialist Republic of Romania: only in those cases in which expropriation has not been ordered by law or by a decree of the State Council or by presidential decree.

3. The amount of the compensation shall be reviewed in a legal proceeding of the Contracting Party concerned. If, after the conclusion of the legal proceeding, the investor and the Contracting Party concerned continue to disagree on the amount of the compensation, they may, with the consent of the investor, submit the dispute for conciliation and arbitration to the International Centre for Settlement of Investment Disputes in accordance with the procedure provided for in the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington on 18 March 1965. The request to institute proceedings under this Convention must be made within two months from the date when the decision in the legal proceeding acquires the force of *res judicata*.

4. Investors of either Contracting Party who suffer investment losses in the territory of the other Contracting Party as a result of war or other armed conflict, revolution, civil unrest or national emergency shall be accorded, in the Federal Republic of Germany, treatment no less favourable than that which it grants to its own investors in respect of restitution, indemnities, compensation or other forms of reparation; in the Socialist Republic of Romania, they shall be treated in the same manner as investors from third States that receive the most favourable treatment in this respect.

5. In matters governed by this article, the investments and investors of either Contracting Party shall enjoy treatment in the territory of the other Contracting Party that is no less favourable than that enjoyed by investments and investors of those third States that receive most favourable treatment in this respect.

Article 4.

Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer abroad of investment capital and the earnings therefrom and, in the event of liquidation or sale, of the proceeds thereof, in addition to the other rights listed in the authorization document.

Article 5.

Should a Contracting Party, by virtue of a guaranteed investment made in the territory of the other Contracting Party in accordance with this Treaty, make payments to its own investors, the other Contracting Party shall, irrespective of the legal grounds, recognize the transfer of the rights and claims of such investors to the Contracting Party that made the payment and the subrogation by the paying Contracting Party of the rights and claims transferred to it; the paying Contracting Party may assert the rights and claims to which the investor is entitled only to the extent to which they have been transferred to it and only if existing obligations of the investor are respected. Article 3, paragraphs 1 to 4, and article 4 shall apply *mutatis mutandis* to the transfer.

Article 6.

1. The transfer under articles 3, 4 and 5 shall be effected without delay in the currency in which the investment was made or, if so agreed, in another currency.

2. For converting one currency to another, the rate of exchange prevailing on the respective date shall be used in accordance with the regulations of the International Monetary Fund. If such an exchange rate does not exist, the exchange rate shall be ascertained from those conversion rates which the International Monetary Fund would apply for converting the currencies concerned into special drawing rights. The exchange rate in effect at the time of the payment shall be used for the conversions.

Article 7.

1. The term "investment" shall include all shares and other kinds of interest in companies, all goods and other property rights, including increment value and reinvested profits, particularly but not exclusively:

(a) Property and other rights in rem to which the investors are entitled;

(b) Pecuniary claims or claims for any performance having an economic value;

(c) Copyrights, patents, trademarks, trade names, technical processes, good will and know-how;

(d) Concessions under public law, including exploration and exploitation concessions. Any change in the form in which assets are invested shall not affect their status as investments.

2. "Earnings" shall mean those net amounts yielded during a specified period in the form of profits, interest and other income from an investment.

3. "Investors" shall mean

(a) In respect of the Socialist Republic of Romania: Romanian economic entities with legal personality that are authorized by law to conduct foreign trade and to engage in economic and technical co-operation with other countries;

(b) In respect of the Federal Republic of Germany:

1. Germans with a residence within the area of application of this Treaty, and

2. Any body corporate or any commercial or other company or association, with or without legal personality, which has its registered office in the area of application of this Treaty and is validly constituted under legislation, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not it operates for profit, that under the terms of this Treaty make investments on the territory of the other Contracting Party.

Article 8.

This Treaty shall also apply to investments made since 31 January 1967 by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation.

Article 9.

1. Disputes between the two Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled through negotiations between the two Governments. If a settlement cannot be reached within six months after the beginning of negotiations, the dispute shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

2. The arbitral tribunal for the settlement of disputes shall be constituted on an ad hoc basis in the following manner and shall work as follows:

Each Contracting Party shall appoint an arbitrator. By mutual agreement, the two arbitrators shall propose a chairman, who must be a national of a third State and shall be designated by both Contracting Parties. The arbitrators shall be appointed within three months and the chairman within five months from the date on which one Contracting Party has notified the other of its desire to submit the dispute to an arbitral tribunal. If the arbitrators are not appointed within the given time, the Contracting Party that has not appointed an arbitrator shall agree to have an arbitrator appointed by the Secretary-General of the United Nations. If the two Contracting Parties do not reach an agreement upon the appointment of a chairman within the given time, they shall agree to have the chairman appointed by the Secretary-General of the United Nations.

3. The arbitral tribunal shall take its decisions on the basis of this and other relevant treaties between the two Contracting Parties and in accordance with general international law. The arbitral tribunal shall reach its decisions by majority vote. Its decisions shall be final and binding.

4. Each Contracting Party shall bear the costs of the arbitrator appointed by it and of its counsel in the arbitral proceedings. The costs of the chairman and any other costs shall be shared equally by the Contracting Parties.

5. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 10.

In conformity with the Quadripartite Agreement of 3 September 1971, this Treaty shall be extended to Berlin (West) in accordance with established procedures.

Article 11.

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged as soon as possible at Bonn.

2. This Treaty shall enter into force 30 days after the exchange of the instruments of ratification. It shall remain in force for

10 years and shall thereafter be renewed for successive terms of 10 years, unless denounced in writing by one of the Contracting Parties one year before the expiry of the current term.

3. In respect of investments made prior to the expiry date of the Treaty, the provisions of this Treaty shall continue to be applicable for 20 years from the date of its expiry.

Done at Bucharest on 12 October 1979, in two original copies, each in the German and Romanian languages, both texts being equally authentic.

For the Federal Republic of Germany:

GENSCHER

For the Socialist Republic of Romania:

ST. A. ANDREI

PROTOCOL TO THE TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE SOCIALIST REPUBLIC OF ROMANIA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF CAPITAL INVESTMENT

The Contracting Parties have agreed on the following arrangements, which form an integral part of this Treaty:

1. Ad Article 2:

(a) Notwithstanding the particular provisions on mixed companies, as far as general rules of law apply to them, the mixed companies established in Romania with the participation of investors from the Federal Republic of Germany shall be accorded no less favourable treatment than any other economic entities in Romania having legal personality. Investors from the Socialist Republic of Romania in the Federal Republic of Germany shall be granted no less favourable treatment than any natural person or body corporate or any commercial or other company or association, with or without legal personality, referred to in article 7, paragraph 3 (b).

(b) The following, in particular but not exclusively, shall be deemed to be "activities" for the purposes of article 2, paragraph 1: the management, application and enjoyment of an investment. The following shall be "less favourable treatment" for the purposes of article 2, paragraph 1: any restriction on the purchase of raw or auxiliary materials, energy and fuel, and means of production or operation of any kind, any impediment to the sale of products on the domestic or foreign markets and any other measures having similar effects. Measures taken for reasons of public safety and order or public health or morality shall not be deemed to be less favourable treatment for the purposes of article 2.

(c) Within the scope of their legislation, the Contracting Parties shall decide as benevolently as possible on the entry and stay of persons from the territory of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with investing capital; the same shall apply to employees from the territory of either Contracting Party who enter the territory of the other Contracting Party on behalf of the investor or spend time there in order to carry out an activity in connection with the investment. The granting of a working permit shall also be decided as benevolently as possible.

(d) The provisions on most-favoured-nation treatment in accordance with this Treaty shall not apply to privileges that a Contracting Party grants to investors of third States on the basis of an existing customs union, free trade zone or membership in an economic community.

2. Ad Article 3:

(a) The term "fair compensation" in article 3 shall mean compensation equal to the value of the expropriated investment at the time of the expropriation.

(b) The provisions of article 3, paragraphs 1 to 3, shall also be applicable to the transfer of a capital investment into public ownership, its placement under public control or any similar action by the public authority. "Expropriation" shall mean any kind of official measures that withdraw or restrict right of ownership or any other rights constituting a capital investment or part of a capital investment, as well as any other official measures that in their effect on the investment are tantamount to an expropriation.

3. Ad Article 4:

(a) It is understood that the transfer of the sums referred to in article 4 shall take place after the fulfilment of the existing legal provisions on taxes and other public charges and of the other obligations of the investor arising from the authorization documents.

(b) The term "authorization document" shall mean documents with which a Contracting Party authorizes investment to be made in its territory by an investor of the other Contracting Party. Such an "authorization document" shall list separately the privileges, exemptions and conditions which the former Contracting Party grants or imposes in connection with the authorized capital investment.

4. Ad Article 6:

A transfer shall be deemed to have been made "without delay" for the purposes of article 6, paragraph 1, when made within the period normally required for the completion of transfer formalities. The period shall run from the day on which the relevant application is submitted requesting the transfer of a sum in accordance with articles 3, 4 and 5 of the Treaty as well as other sums which may be at the disposal of the mixed companies, and shall in no case exceed two months after submission of the application.

5. Ad Article 7:

Investment earnings and, in the event of re-investment, earnings from re-investment shall enjoy the same protection as investments.

6. Ad Article 9:

Only the Governments of the two Contracting Parties may, through their representatives, enter petitions to the arbitral tribunal and participate in it.

7. With regard to the transport of goods or persons in connection with the investment of capital, the Contracting Parties shall neither exclude nor impede transport enterprises of the other Contracting Party and shall grant the required transport permits, if any.

Done at Bucharest, on 12 October 1979, in duplicate, in the German and Romanian languages, both texts being equally authentic.

For the Federal Republic of Germany:

GENSCHER

For the Socialist Republic of Romania:

ST. A. ANDREI

Exchange of Letters

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THE MINISTER OF FOREIGN AFFAIRS

Bucharest, 12 October 1979

Mr. Minister,

On the occasion of the signing of the Treaty between the Federal Republic of Germany and the Socialist Republic of Romania concerning the promotion and reciprocal protection of capital investment, I have the honour to inform you that the Government of the Federal Republic of Germany is prepared, if your Government so desires, to discuss with the Government of the Socialist Republic of Romania within the framework of bilateral economic co-operation all questions of common interest which concern the planning, carrying out and termination of capital investments.

At the same time, I take note of the fact that the Government of the Socialist Republic of Romania is prepared to proceed in a like fashion.

Accept, Sir, the assurances of my highest consideration.

HANS-DIETRICH GENSCHER

His Excellency Stefan Andrei

Minister of Foreign Affairs of the Socialist Republic of Romania

Ila

THE MINISTER OF FOREIGN AFFAIRS OF THE SOCIALIST REPUBLIC OF ROMANIA

Bucharest, 12 October 1979

Mr. Minister,

On the occasion of the signing of the Treaty between the Socialist Republic of Romania and the Federal Republic of Germany concerning the promotion and reciprocal protection of capital investment, I have the honour to inform you that the Government of the Socialist Republic of Romania is prepared, if your Government so desires, to discuss with the Government of the Federal Republic of Germany within the framework of bilateral economic co-operation all questions of common interest which concern the planning, carrying out and termination of capital investments.

At the same time, I take note of the fact that the Government of the Federal Republic of Germany is prepared to proceed in a like fashion.

Accept, Sir, the assurances of my highest consideration.

ST. A. ANDREI

His Excellency Hans-Dietrich Genscher

Minister of Foreign Affairs of the Federal Republic of Germany

Ib

THE MINISTER OF FOREIGN AFFAIRS OF THE SOCIALIST REPUBLIC OF ROMANIA

Bucharest, 12 October 1979

Mr. Minister,

On the occasion of the signing of the present Treaty between the Socialist Republic of Romania and the Federal Republic of Germany concerning the promotion and reciprocal protection of capital investment, we hereby declare that in the situations provided for under article 3, paragraph 4, care will be taken, to the extent possible, that the conditions for the continuation of the investment-related activity provided for in the respective contracts on the establishment of the mixed company are fulfilled.

Accept, Sir, the assurances of my highest consideration.

ST. A. ANDREI

His Excellency Hans-Dietrich Genscher

Minister of Foreign Affairs of the Federal Republic of Germany

IIb

THE MINISTER OF FOREIGN AFFAIRS

Bucharest, 12 October 1979

Mr. Minister,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

[See letter Ib]

Accept, Sir, the assurances of my highest consideration.

HANS-DIETRICH GENSCHER

His Excellency Stefan Andrei

Minister of Foreign Affairs of the Socialist Republic of Romania

reads as follows:

[See letter Ib]

Accept, Sir, the assurances of my highest consideration.

HANS-DIETRICH GENSCHER

His Excellency Stefan Andrei

Minister of Foreign Affairs

of the Socialist Republic of Romania