

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR AND THE BELGIUM-LUXEMBOURG ECONOMIC UNION CONCERNING ENCOURAGEMENT AND PROTECTION RECIPROCAL INVESTMENTS

The Government of the Kingdom of Belgium,

Acting in the name and on behalf of

The Government of the Grand Duchy of Luxembourg, under existing agreements,

The Walloon Government,

The Flemish Government,

And the Government of the Brussels-Capital Region,

On the one hand

And

The Government of the Republic of El Salvador

On the other hand

(hereinafter referred to as the Contracting Parties)

Desiring to intensify economic cooperation through the creation of favourable conditions for investment by nationals 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) "nationals": any natural person who, according to the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of El Salvador is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of El Salvador respectively;

b)

- For the Belgo-Luxembourg Economic Union "companies", i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium or the Grand Duchy of Luxembourg and having its registered office in the territory of the Kingdom of Belgium or the Grand Duchy of Luxembourg.

- For the Republic of El Salvador, legal persons constituted in accordance with the law of any country and controlled directly or indirectly by natural persons of that Party or by juridical persons located in the territory of the Party where the juridical person exercises its main economic activity.

2. The term "investment" means any asset any and all direct or indirect contributions in cash or in kind or in services, invested or reinvested in any sector of the economy.

The following shall be considered in particular, though not exclusively, as investments within the meaning of this Agreement:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufruct and similar rights;
- b) Shares, stocks and any other forms of participation, even indirect minority, or to companies established 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 assets and capital invested or reinvested shall not affect their classification as "investment" within the meaning of this Agreement.

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

4. The term "territory" means:

- For the Belgo-Luxembourg Economic Union, the territory of the Kingdom of Belgium and Luxembourg as well as the maritime areas, i.e. Marine and Submarine Areas which extend beyond the territorial waters of the State concerned 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.

- For the Republic of El Salvador, territorial sea and airspace under the sovereignty of each party, in accordance with the respective laws and international law.

Article 2. Promotion of Investments

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

2. In particular, each Contracting Party shall permit the conclusion and the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance, in so far as these activities were related to the investment.

Article 3. Protection of Investments

1. All investments, direct or indirect, made by investors of one of the Contracting Parties shall enjoy, in the territory of the other Contracting Party, fair and equitable treatment.

2. Subject to the measures necessary for the maintenance of public order, such investments shall enjoy constant security and protection, excluding any unjustified or discriminatory measure which might hinder, in law or in fact, their management, maintenance, use, enjoyment or liquidation.

3. The treatment and protection referred to in paragraphs 1 and 2 shall be at least equal to those enjoyed by investors of a third country and shall in no case be less favourable than those accorded by international law.

4. However, this treatment and such 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 or common market, other forms of regional economic organizations.

Article 4. Deprivation or Restriction of Property

1. Each Contracting Party undertakes not to take any expropriation, nationalisation or other measures having the effect of directly or indirectly dispossessing investors of the other Contracting Party of investments belonging to them in its territory.

2. If the requirements of public security or national interest justify derogation from paragraph 1, the following conditions must be met

- a) The measures shall be taken under due process;
 - b) They are neither discriminatory nor contrary to a specific commitment;
 - c) They are accompanied by provisions for the payment of adequate and effective compensation.
3. The amount of compensation will correspond to the market value of the affected investments "or immediately before the measures taken or to be made public.

The compensation shall be paid in the currency of the Member State to which the investor or in any other convertible currency. they shall be made without delay and freely transferable. it shall include interest at a normal commercial rate from the date of establishment until the date of payment.

4. 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, shall be accorded by the latter treatment not less than that accorded to the investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other remedies.

5. For the matters governed by this article, each Contracting Party shall accord to investors of the other party treatment no less than that which the reservation in its territory for investors of the most favoured nation. this treatment shall in no case be less favourable than that recognised by international law.

Article 5. Transfers

1. Each Contracting Party shall accord to investors of the other Contracting Party, the free transfer to or from its territory, all payments relating to an investment, and in particular:

- a) In relation to establish and maintain or expand the investment;
- b) Amounts intended for the payment of contractual obligations, including the amounts required for the repayment of loans; royalties and other payments deriving from franchises, licences, concessions and other similar rights as well as salaries of expatriate personnel;
- c) Revenue from investments;
- d) The proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;
- e) Compensation paid pursuant to article 4.

2. The nationals of either Contracting Party who are authorised to work in connection with an investment in the territory of the other Contracting Party shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

3. Transfers shall be made in a freely convertible currency, on applicable at the date of the latter to spot transactions in the currency used.

4. Each Contracting Party shall issue the required authorisations to ensure the execution of transfers without undue delay and without any fees or other charges that the usual costs.

5. The guarantees provided for by this article shall be at least equal to those accorded to investors of the most favoured nation.

Article 6. Subrogation

1. If one of the Contracting Parties or a public agency thereof pays compensation to its own investors under a guarantee given in respect of an investment, the other Contracting Party acknowledges that the rights and claims of the investors are transferred to the contracting party or the public body.

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 investment simultaneously is governed by this Agreement and by the national legislation of

either Contracting Party or under existing international conventions or undertaken by the 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 investment which has been the subject of a special agreement between investors of one Contracting Party and the other party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement.
2. Each Contracting Party shall at all times compliance with the commitments it has made to investors of the other Contracting Party.

Article 9. Settlement of Disputes Relating to Investments

1. Any dispute regarding investments between an investor of one Contracting Party and the other Contracting Party, shall be the subject of a written notification, accompanied by an aide-memoire sufficiently detailed, by the most expeditious party.

To the extent possible, the parties will endeavour to settle the dispute amicably by negotiation, which may have recourse to the expertise of a third party, or by conciliation between the Contracting Parties through diplomatic channels.

2. In the absence of amicable settlement by direct arrangement between the parties to the dispute by conciliation or through diplomatic channels within six months of its notification, the dispute shall be submitted, at the choice of the investor, either to the competent court of the State in which the investment has been made or to international arbitration.

To this end, each Contracting Party consents advance irrevocable and that any dispute to arbitration. this consent implies that they do not require that all administrative or judicial remedies be exhausted.

3. In the event of recourse to international arbitration, the dispute shall be submitted 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.

4. Neither of the Contracting Party, Party to the dispute raise objection shall not, 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.

5. The arbitral tribunal shall decide on the basis of the domestic law of the Contracting Party involved in the dispute in whose territory the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreement which may be made in respect of investment, as well as the Principles of International Law.

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. 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 11. Settlement of Disputes Relating to Interpretation of this Agreement

1. any dispute concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. In the absence of rules through diplomatic channels, the dispute is submitted to a joint commission composed of representatives of both sides, which shall meet at the request of either party diligent and without undue delay.

3. If the Joint Commission cannot settle the dispute shall be submitted, at the request of either of the contracting parties; arbitration proceedings implementation, for each individual case in the following way:

Each Contracting Party shall appoint an arbitrator within two months from the date on which either Contracting Party has informed the other of its intention to submit the dispute to arbitration. Within two months after their appointment, the two arbitrators shall appoint by mutual agreement a national of a third State who shall be Chairman of the Panel of Arbitrators.

If the time limits have not been made, either Contracting Party may invite the President of the International Court of Justice to make the appointment of the arbitrator or arbitrators not appointed.

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which either contracting party does not maintain diplomatic relations or if he is otherwise prevented from exercising this function, the Vice-President of the International Court of Justice shall be invited to make the appointment.

4. The Panel thus constituted shall determine its own rules of procedure. its decisions shall be taken by a majority of the votes; they shall be final and binding on the Contracting Parties.

5. Each Contracting Party shall bear the costs of its appointed arbitrator. the costs resulting from the appointment of the third arbitrator and operating expenses of the panel shall be borne in equal parts by the contracting parties.

Article 12. Existing Investments

This Agreement shall also apply to investment made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations.

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 six months before the expiration 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 six months before the date of expiry of the current period of validity.

2. The investment made prior to the date of termination of this Agreement shall continue to apply for a period of ten years from that date.

Done at Brussels on 12 October 1999 in two originals, each in Dutch, French and Spanish, all texts being equally authentic.

BY THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR

H.E. Lic. María Eugenia Brizuela de Avila,

Minister for Foreign Affairs

BY THE BELGIUM-LUXEMBOURG ECONOMIC UNION:

For the Government of the Kingdom of Belgium acting both on its own behalf and on behalf of the Government of the Grand Duchy of Luxembourg

Louis MICHEL,

Deputy Prime Minister for Foreign Affairs