

AGREEMENT between the Government of the Republic of Austria and the Government of the Republic of Belarus for the Promotion and Protection of Investments

THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS, hereinafter referred to as "the Contracting Parties",

DESIRING to create favourable conditions for greater economic co-operation between the Contracting Parties,

RECOGNIZING that the promotion and protection of investments may strengthen the readiness for such investments and thereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" comprises all assets and in particular, though not exclusively:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges and similar rights;
- b) Shares and other types of participations in undertakings;
- c) Claims to money that has been given in order to create an economic value or claims to any performance having an economic value;
- d) Intellectual and industrial property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, including, but not limited to, copyright, trademarks, patents, industrial designs and technical processes, trade names, goodwill and undisclosed information, including know-how;
- e) Business concessions under public law to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested made in accordance with the legislation of either Contracting Party does not affect their character as investments.

(2) The term "investor" means

- a) Any natural person who is a citizen of either Contracting Party and makes an investment in the other Contracting Party's territory;
- b) Any juridical person, or partnership, constituted in accordance with the legislation of one Contracting Party, having its seat in the territory of this Contracting Party and making an investment in the other Contracting Party's territory;
- c) Any juridical person, or partnership, constituted in accordance with the legislation of a Contracting Party or of a third State in which the investor referred to in paragraphs (2) (a) or (2) (b) of this Article exercises a dominant influence. paragraphs (2) (a) or (2) (b) of this Article exercises a dominant influence.

(3) The term "associated activities" means activities connected with an investment and undertaken in accordance with the applicable laws and regulations of the host Contracting Party.

(4) The term "returns" means the amounts yielded by an investment, and in particular, though not exclusively, profits, interests, capital gains, dividends, royalties, licences and other fees.

(5) The term "without undue delay" means such period as is normally required for the completion of the necessary

formalities for the transfer of payments.

(6) The term "territory" refers to the territory of the State concerned over which that State may exercise sovereign rights or jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments and associated activities in accordance with its legislation and in any case accord such investments and associated activities fair and equitable treatment.

(2) Investments admitted according to paragraph (1) of this Article and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph (1) of this Article also for such returns in case of reinvestment of such returns. paragraph (1) of this Article and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph (1) of this Article also for such returns in case of reinvestment of such returns.

Article 3. Treatment of Investments

(1) Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable than that accorded to its own investors and their investments or to investors of any third State and their investments.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards, in particular, but not exclusively, the management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State whichever is more favourable.

(3) The provisions of paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from

a) Any customs union, common market, free trade area or membership in an economic community;

b) Any international agreement, international arrangement or domestic legislation regarding taxation;

c) Any regulation to facilitate frontier traffic.

Article 4. Expropriation and Compensation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the actual market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest calculated on the LIBOR basis or equivalent from the date of expropriation until the date of payment, shall be made promptly, be effectively realisable and be freely transferable. Such transfers shall be effected without undue delay in the convertible currency in which the investment was originally made or in any other convertible currency agreed by the investor and the Contracting Party concerned. Provisions for the determination and payment of such compensation shall be made in an appropriate manner not later than at the moment of the expropriation.

(2) Where a Contracting Party expropriates assets of a company which is considered as a company of this Contracting Party and in which an investor of the other Contracting Party owns shares, it shall apply the provisions of paragraph (1) of this Article so as to ensure due compensation to this investor. paragraph (1) of this Article so as to ensure due compensation to this investor.

(3) The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having induced the expropriation.

(4) The investor shall be entitled to have the amount and the provisions for the payment of the compensation reviewed

either by the competent authorities of the Contracting Party having induced the expropriation or by an international arbitral tribunal according to Article 9 of the present Agreement. Article 9 of the present Agreement.

Article 5. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from: paragraph (1) of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- a) Requisitioning of their investment or part thereof by the latter's forces or authorities, or
- b) Destruction of their investment or part thereof by the latter's forces or authorities which was not required by the necessity of the situation,

Shall be accorded by the latter Contracting Party restitution or compensation, which in either case shall be prompt, adequate and effective and with respect to compensation, shall be freely transferable in accordance with Article 4, paragraph (1) of this Agreement.

Article 6. Transfers

(1) Each Contracting Party shall guarantee without undue delay to investors of the other Contracting Party the free transfer in freely convertible currency of payments in connection with an investment, in particular but not exclusively, of

- a) The initial amounts and additional amounts for the maintenance or extension of the investment;
- b) Amounts assigned to cover expenses relating to the management of the investment;
- c) The returns;
- d) The repayment of loans;
- e) The proceeds from total or partial liquidation or sale of the investment;
- f) A compensation according to Article 4 paragraph (1) and Article 5 of the present Agreement; paragraph (1) and Article 5 of the present Agreement;
- g) Payments arising out of the settlement of a dispute.

(2) The provisions of paragraph (1) of this Article shall not be construed so as to permit tax evasion. paragraph (1) of this Article shall not be construed so as to permit tax evasion.

(3) Notwithstanding paragraphs (1) and (2) of this Article, each Contracting Party may protect the rights of creditors, or ensure compliance with laws on the issuing, trading and dealing in securities and the satisfaction of judgements in civil, administrative and criminal adjudicatory proceedings, through the equitable, non-discriminatory, and good faith application of its laws and regulations. paragraphs (1) and (2) of this Article, each Contracting Party may protect the rights of creditors, or ensure compliance with laws on the issuing, trading and dealing in securities and the satisfaction of judgements in civil, administrative and criminal adjudicatory proceedings, through the equitable, non-discriminatory, and good faith application of its laws and regulations.

(4) The transfers referred to in this Article shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(5) The rates of exchange shall be determined according to the quotations on the stock exchanges on the territory of each Contracting Party or in the absence of such quotations by the respective banking system in the territory of each Contracting Party.

Article 7. Subrogation

Where one Contracting Party or an institution authorized by it makes payments to its investor by virtue of a guarantee for an investment in the territory of the other Contracting Party, the other Contracting Party shall without prejudice to the rights of the investor of the first Contracting Party under Article 9 of the present Agreement and to the rights of the first Contracting Party under Article 10 of the present Agreement recognize the assignment to the first Contracting Party of all rights and claims of this investor under a law or pursuant to a legal transaction. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such rights or claims which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to the Contracting Party concerned by virtue of such assignment, Articles 4, 5 and 6 of the present Agreement shall apply *mutatis mutandis*.

Article 8. Other Obligations

(1) If the provisions of law and regulations of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

(2) Each Contracting Party shall observe any contractual obligation it may have entered into towards an investor of the other Contracting Party with regard to investments approved by it in its territory.

Article 9. Settlement of Investment Disputes

(1) Any dispute arising from an investment, between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If a dispute according to paragraph (1) of this Article cannot be settled within three months of a written notification of sufficiently detailed claims, the dispute shall upon the request of the Contracting Party or of the investor of the other Contracting Party be subject to the following procedures: paragraph (1) of this Article cannot be settled within three months of a written notification of sufficiently detailed claims, the dispute shall upon the request of the Contracting Party or of the investor of the other Contracting Party be subject to the following procedures:

a) To conciliation or arbitration by the International Centre for Settlement of Investment Disputes, established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18th, 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such disputes to this Centre and to accept the award as binding. This consent implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted; or Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18th, 1965. In case of arbitration, each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such disputes to this Centre and to accept the award as binding. This consent implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted; or

b) To arbitration by three arbitrators in accordance with the UNCITRAL arbitration rules, as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. The Contracting Party submits itself to the arbitral tribunal mentioned also in the case that no such agreement for arbitration exists. UNCITRAL arbitration rules, as amended by the last amendment accepted by both Contracting Parties at the time of the request for initiation of the arbitration procedure. The Contracting Party submits itself to the arbitral tribunal mentioned also in the case that no such agreement for arbitration exists.

(3) The award shall be final and binding; it shall be executed according to national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

(4) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received by virtue of a guarantee indemnity in respect of all or some of its losses.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as

possible, be settled through amicable negotiations.

(2) If a dispute according to paragraph (1) of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal. paragraph (1) of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these two members shall agree upon a citizen of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

(4) If the periods specified in paragraph (3) of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a citizen of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments. paragraph (3) of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a citizen of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

(5) The tribunal shall establish its own rules of procedure.

(6) The arbitral tribunal shall reach its decision by virtue of the present Agreement and pursuant to the generally recognized rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

(7) Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 11. Application of the Agreement

(1) This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its legislation in force by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

(2) The Contracting Parties are not bound by this Agreement insofar as it is incompatible with the legal acquis of the European Union (EU) in force at any given time.

(3) In case of uncertainties concerning the effects of paragraph (2) of this Article the Contracting Parties will engage in consultations. paragraph (2) of this Article the Contracting Parties will engage in consultations.

Article 12. Entry Into Force and Duration

(1) This Agreement is subject to ratification and shall enter into force on the first day of the third month that follows the month during which the instruments of ratification have been exchanged.

(2) This Agreement shall remain in force for a period of ten years; it shall be extended thereafter for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Article 1 to 11 of the present Agreement shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement. Article 1 to 11 of the present Agreement shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

DONE in duplicate at Minsk this 16th day of May 2001 in the German, Belarusian and English languages, each text being equally authentic. In case of divergencies the English text shall prevail.

For the Government of the Republic of Austria:

F. Cede

For the Government of the Republic of Belarus:

S. Martynov