

Agreement between the Government of the French Republic and the Government of the Republic of Slovenia on the reciprocal encouragement and protection of investments

The Government of the French Republic and the Government of the Republic of Slovenia, hereinafter referred to as "the Contracting Parties";

Desiring to strengthen economic cooperation between the two States and to create favourable conditions for French investments in Slovenia and Slovenian investments in France,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights and interests, and in particular but not exclusively:

(a) Movable and immovable property, as well as any other real right such as mortgages, liens, usufructs, bonds and similar rights;

(b) shares, capital stock, share premiums and other forms of participation, including indirect participation, in companies incorporated in the territory of one of the Contracting Parties

(c) Bonds, debentures, loans and other forms of indebtedness and rights thereunder;

(d) monetary claims and rights to any benefits of economic value

(e) Intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial designs, technical processes, know-how, registered names and intangible assets;

(f) Concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources.

Any change in the form of investment of assets shall not affect their characterization as investments, provided that such change is not contrary to the laws of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "nationals" refers to natural persons possessing the nationality of one of the Contracting Parties.

3. The term "companies" means any legal entity incorporated in the territory of one of the Contracting Parties, in accordance with the laws of that Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

4. The term "income" means all sums produced by an investment, such as profits, dividends, royalties or interest.

The income from the investment and, in the case of reinvestment, the income from its reinvestment shall enjoy the same protection as the investment.

Article 2. Application of the Agreement

This Agreement shall apply :

(a) In the territory of each Contracting Party, as well as in the maritime area of each Contracting Party, hereinafter defined as the exclusive economic zone and the continental shelf which extend beyond the limits of the territorial waters of each Contracting Party and over which they exercise, in accordance with International Law, sovereign rights and jurisdiction for the purpose of exploring, exploiting and preserving natural resources;

(b) Investments which have already been made or which may be made after the entry into force of this Agreement, in accordance with the legislation of the Contracting Party in whose territory or maritime area the investment is made.

Article 3. Admission and Security of Investments

Each Contracting Party shall admit and encourage in its territory and in its maritime zone, in accordance with its legislation and the provisions of this Agreement, investments made by nationals or companies of the other Contracting Party.

Investments made by nationals or companies of one of the Contracting Parties shall enjoy full and constant protection and security in the territory and maritime area of the other Contracting Party.

Article 4. Fair and Equitable Treatment

Each Contracting Party undertakes to ensure fair and equitable treatment, in accordance with the principles of international law, of investments made in its territory and maritime area by nationals and companies of the other Contracting Party, and to ensure that the exercise of the right so recognized is not hindered in law or in fact.

Article 5. National Treatment and Most-favoured-nation Treatment

Each Contracting Party shall, in its territory and maritime area, accord to nationals or companies of the other Party, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its nationals or companies, or the treatment accorded to nationals or companies of the most favoured Nation, whichever is more favourable.

Such treatment shall not, however, extend to privileges accorded by a Contracting Party to nationals or companies of a third State by virtue of its participation in or association with a free trade area, customs union, common market or other form of regional economic organization.

The provisions of this Article do not apply to tax matters.

Article 6. Expropriation and Compensation

1. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory and in their maritime zone, except in the public interest and provided that such measures are not discriminatory.

Any measures of dispossession which may be taken shall be subject to prompt and adequate compensation, the amount of which shall be equal to the real value of the investments concerned, before any threat of dispossession.

Such compensation, its amount and the manner of its payment shall be fixed not later than the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. Until the date of payment, it shall bear interest calculated at the appropriate market rate.

2. The nationals or companies of one of the Contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt in the territory or maritime area of the other Contracting Party shall be accorded by the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 7. Transfers

Each Contracting Party, in whose territory or maritime area investments have been made by nationals or companies of the other Contracting Party, shall guarantee to such nationals or companies the free transfer of:

- (a) interest, dividends, profits and other current income ;
- (b) royalties from intangible rights as defined in Article 1, paragraph 1, subparagraphs e and f ;
- (c) Repayment of loans regularly contracted;
- (d) Proceeds from the sale or liquidation of all or part of the investment, including capital gains on the investment
- (e) compensation for loss of possession or for loss as provided for in Article 6, paragraphs 1 and 2.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime area of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer to their country of origin their earnings and remuneration.

The transfers referred to in the preceding paragraphs shall be made promptly at the rate of exchange officially applicable on the date of transfer.

Article 8. Settlement of Disputes between a National or Company and a Contracting Party

Any investment dispute between one of the Contracting Parties and a national or company of the other Contracting Party shall be settled amicably between the two Parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall be submitted at the request of either party to arbitration by 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 in Washington, DC on March 18, 1965.

Article 9. Guarantee and Subrogation

1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.
2. Investments by nationals and companies of one of the Contracting Parties in the territory or maritime area of the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter Party.
3. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zone of the other Contracting Party, makes payments to one of its nationals or to one of its companies, it is thereby subrogated to the rights and actions of that national or company.
4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to continue the proceedings before it until the proceedings have been completed.

Article 10. More Favourable Provisions

Investments which have been the subject of special provisions by one Contracting Party in respect of nationals or companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of the said provisions in so far as they are more favourable than those of this Agreement.

Article 11. Settlement of Disputes between Contracting Parties

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, by negotiation through diplomatic channels.
2. If the dispute is not settled within six months of its being raised by either Contracting Party, it may, at the request of either Contracting Party, be submitted to an arbitral tribunal.
3. The arbitration tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint one member, and the two members shall appoint, by mutual agreement, a national of a third State who shall be appointed by both Contracting Parties as chairman of the arbitration tribunal. All members shall be appointed within two

months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the President of the International Chamber of Commerce to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from exercising this function, the most senior Vice-President who is not a national of one of the Contracting Parties shall make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The arbitration tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the arbitration tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

Article 12. Entry Into Force and Termination

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this agreement, which shall take effect one month after the date of receipt of the last notification.

The agreement is concluded for an initial period of ten years. It shall remain in force after that period unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

As from its entry into force, this Agreement cancels and replaces the Agreement signed on 28 March 1974 between the Government of the French Republic and the Government of the Socialist Federal Republic of Yugoslavia on the protection of investments, taken over by the Government of the Republic of Slovenia by exchange of letters dated 28 March 1994 and 25 May 1994.

Done at Paris on 11 February 1998 in two originals, each in the French and Slovenian languages, both texts being equally authentic.

For the Government of the French Republic :

Jacques Dondoux

Secretary of State for Foreign Trade

For the Government of the of the Republic of Slovenia :

Vojka Ravbar

State Secretary at the Ministry of Economic Affairs and Development

Protocol

At the time of signature of the Agreement between the Government of the French Republic and the Government of the Republic of Slovenia on the reciprocal encouragement and protection of investments, the two Contracting Parties have also agreed on the following provisions which form an integral part of the said Agreement:

With regard to Article 1, paragraph 1:

In particular, although not exclusively, the term "interests" includes shareholders' interests, as well as all other forms of legitimate interests having economic or financial value.

With respect to Article 1(3):

Direct or indirect control of a legal person may be established in particular by the following facts:

- the status of a subsidiary ;

- a direct or indirect shareholding percentage allowing effective control, and in particular a shareholding exceeding 50%; - direct or indirect ownership of shares in a company

- the direct or indirect possession of voting rights allowing a decisive position in the management bodies, or a substantial influence, by other means, on its functioning.

A company having its registered office in a third country and controlled directly or indirectly by nationals or companies of one of the Contracting Parties shall not be entitled to invoke the protection of this Agreement if there is an agreement on the encouragement and protection of investments in force between that third country and the Contracting Party in whose territory or maritime area the investment is made, provided that the latter agreement entitles the investment to more favourable treatment than that permitted by this Agreement.

With respect to Article 4:

In particular, although not exclusively, any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect, shall be considered as legal or de facto impediments to fair and equitable treatment.

Within the framework of their domestic legislation, the Contracting Parties shall give sympathetic consideration to applications for entry and authorization to stay, work and travel submitted by nationals of a Contracting Party in connection with an investment made in the territory or maritime area of the other Contracting Party. The nationals of one of the Contracting Parties authorized to work in the territory and maritime zone of the other Contracting Party must be able to benefit from appropriate conditions for the exercise of their professional activities.

Done at Paris on 11 February 1998 in two originals, each in the French and Slovenian languages, both texts being equally authentic.

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