

AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE SOCIALIST REPUBLIC OF ROMANIA CONCERNING THE RECIPROCAL PROMOTION, PROTECTION AND GUARANTEEING OF INVESTMENTS

The Government of the Kingdom of Belgium, acting in its own name and on behalf of the Grand Duchy of Luxembourg, under the Convention establishing the Belgo-Luxembourg Economic Union, and

The Government of the Socialist Republic of Romania,

Desirous of furthering economic cooperation between the Contracting States,

Seeking to create favourable conditions for investments by investors of one State in the territory of the other State,

Aware that the signing of an agreement concerning the reciprocal promotion, protection and guaranteeing of investments could be conducive to these goals,

Considering, moreover, the potentially beneficial effect of such an agreement on improving business relations and confidence in the area of investments,

Attaching particular importance to the implementation of the Final Act of the Helsinki Conference on Security and Cooperation in Europe³ regarding economic, industrial and technical cooperation,

Have agreed as follows:

Article 1.

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

2. All investments belonging to investors of either Contracting Party shall, in the territory of the other Contracting Party, enjoy fair and equitable treatment.

Each Contracting Party shall undertake to ensure that, as regards investments, the exercise of the rights recognized under this Agreement shall not be impeded by measures adopted by the authorities which are restrictive or discriminatory compared with those applied to other foreign investors.

3. The treatment provided for under paragraphs 1 and 2 of this article shall be no less favourable than that enjoyed by the investments and investors of third States.

The treatment shall not, however, extend to privileges that a Contracting Party accords to investors of a third State by virtue of its participation in or association with an economic union, customs union, common market, free trade area or regional economic organization of an international character.

Article 2.

For the purposes of this Agreement:

1. The term "investments" shall mean any input of capital, or any other kinds of assets, for the attainment of an economic goal, consisting of goods, rights and interests invested in companies by participants in the investment.

The following, in particular, though not exclusively, shall be considered "investments":

- (a) Movable and immovable property, as well as any other rights in rem;
- (b) Shares and other kinds of interest in companies;
- (c) Title to money and to any performance having economic value;
- (d) Brand marks or trade marks, patents, technical processes, trade names and any other industrial property right, as well as goodwill;
- (e) Business concessions conferred by law.

2. The term "investor" shall mean:

(a) In respect of the Socialist Republic of Romania: Romanian economic entities possessing legal personality which, in accordance with Romanian law, engage in foreign trade and foreign economic cooperation;

(b) In respect of the Kingdom of Belgium and the Grand Duchy of Luxembourg: individuals considered under Belgian or Luxembourg law to be nationals of the Belgian State or Luxembourg State, as well as any corporation or commercial firm having its head office in the territory of the Kingdom of Belgium or the Grand Duchy of Luxembourg, which has been properly constituted under Belgian or Luxembourg law.

Article 3.

1. Investments made by the investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated or subjected to other measures having a similar effect unless the following conditions are fulfilled:

- (a) The measures are adopted in the public interest and in accordance with an appropriate legal procedure;
- (b) They are not discriminatory compared with measures taken in relation to investments and investors of third States;
- (c) An appropriate procedure is provided for determining the amount and method of payment of compensation.

The amount of compensation shall correspond to the value of the investment on the date of the measures of expropriation or similar measures.

That amount shall be effectively provided to the interested party, transferred freely and paid without delay.

2. At the request of the interested party, the amount of compensation may be reviewed by a competent tribunal of the country in which the investment was made.

3. If a dispute arises between an investor of one Contracting Party and the other Contracting Party regarding the amount of compensation, and after the judicial remedies available under the legislation of the Contracting Party in whose territory the investment was made have been exhausted, the Contracting Parties shall recognize the right of each party to the dispute to apply to 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 18 March 1965, for settlement of the dispute by conciliation or arbitration according to the procedure provided for under the said Convention; for that purpose, each Contracting Party shall give its consent by means of this Agreement.

4. However, the condition referred to in paragraph 3 of this article concerning the exhaustion of judicial remedies available under the legislation of the Contracting Party in whose territory the investment was made cannot be invoked by that Party against the investor of the other Party more than two years after the date of initiation of judicial process for settlement of the dispute by the courts.

5. Each Contracting Party shall undertake to enforce the decision handed down by the International Centre for Settlement of Investment Disputes.

Article 4.

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, in accordance with national laws and regulations in force, the free transfer in the currency used to make the investment, or in another agreed convertible currency, of:

- The capital invested or net proceeds of the total or partial liquidation or disposal of the investment;
- Net income, such as profits, dividends or interest, resulting from the invested capital;

— The net proceeds of the work of citizens authorized to engage in an activity relating to the investment in the territory of the other Contracting Party.

2. Each Contracting Party shall provide the necessary authorizations to ensure that such transfers are effected without delay.

3. The transfers shall be effected at the official rates of exchange applicable on the date on which such transfers take place.

Article 5.

If either Contracting Party makes payment to its own investors under a guarantee it has given for an investment made in the territory of the other Contracting Party, that Party shall ipso facto be subrogated with regard to the rights, obligations and actions of the aforementioned investors.

This subrogation shall also extend to the right of transfer referred to in article 4 above.

It shall be subject to the payment of the duties and taxes legally incumbent on the investor and to the performance of all commitments still in effect and envisaged in the documents admitting the investment.

Article 6.

1. Disputes arising between the Contracting Parties regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled through negotiation between the two Parties. If the dispute cannot be settled within six months after the start of the negotiations, it shall — at the request of either Contracting Party — be submitted to an arbitral tribunal.

2. The arbitral tribunal shall be constituted as follows. Each Contracting Party shall appoint an arbitrator; the two arbitrators shall jointly agree to propose to the two Parties a chairman who shall be a national of a third State designated by the two Contracting Parties. The arbitrators shall be appointed within three months and the chairman within five months after either Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration. If the arbitrators are not appointed within the agreed period, the Contracting Party which has yet to appoint its arbitrator shall agree to the arbitrator being appointed by the Secretary-General of the United Nations. If the two Parties cannot agree on the appointment of a chairman, they shall also agree to the chairman being appointed by the Secretary-General of the United Nations.

3. The arbitral tribunal shall base its decisions on the provisions of this Agreement and of other similar agreements concluded by the Contracting Parties, as well as on the principles and rules of international law. The arbitral tribunal shall reach its decisions by a majority vote and its decision shall be final and binding. Only the two Contracting Parties may submit disputes to the arbitral tribunal and participate in the proceedings.

4. Each Contracting Party shall bear the costs associated with its appointed arbitrator, as well as costs associated with its representation before the tribunal. The costs of the chairman and other costs shall be borne equally by the Contracting Parties.

5. The arbitral tribunal shall decide its own procedure.

Article 7.

1. In implementing this Agreement, each Contracting Party shall, in its territory, accord to investments or investors of the other Contracting Party a treatment no less favourable than that accorded to investments and investors of a third country.

2. When a question relating to investments is governed by this Agreement, on the one hand, and also by an international agreement or by national regulations of either Contracting Party, on the other hand, the investors of each Contracting Party may invoke the provisions which are most favourable to them.

Article 8.

1. This Agreement shall be approved or ratified in accordance with the constitutional procedures in force in each State.

2. The Agreement shall enter into force one month after the exchange of notifications of completion of the required constitutional formalities for entry into force.

3. The Agreement shall be concluded for an initial period of ten years and shall remain in force subsequent to that period

unless one of the two Contracting Parties terminates it through the diplomatic channel by giving one year's notice.

4. If terminated, this Agreement shall continue to be applicable to investments made while it was in force, for a period of 15 years.

Done in Brussels on 8 May 1978, in two original copies, in the French, Dutch and Romanian languages, all texts being equally authentic.

For the Belgo-Luxembourg Economic Union:

H. de BRUYNE

For the Socialist Republic of Romania:

A. LAZAREANU