Agreement between the Belgo-Luxembourg Economic Union and the Government of Romania on the promotion and reciprocal protection of investments

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 under existing agreements,

the Government of the Walloon Region,

the Government of the Flemish Region,

and the Government of the Brussels-Capital Region, on the one hand,

AND

THE GOVERNMENT OF ROMANIA, on the other hand,

HEREINAFTER REFERRED TO AS "THE CONTRACTING PARTIES",

DESIRING to strengthen their economic cooperation by creating favourable conditions for the realisation of investments by one of the Contracting Parties in the territory of the other Contracting Party

CONVINCED that the conclusion, on the basis of equality and mutual interest, of an agreement on the encouragement and protection of investments is likely to stimulate investors' initiatives and will thus contribute to increasing the economic prosperity of the Contracting Parties

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

1. The term "investor" means :

a) any natural person who, under Belgian, Luxembourg or Romanian law, is considered as a citizen of the Kingdom of Belgium, the Grand Duchy of Luxembourg or Romania respectively;

b) any legal person which is incorporated under the laws of Belgium, Luxembourg or Romania and has its registered office in the territory of the Kingdom of Belgium, the Grand Duchy of Luxembourg or Romania respectively.

2. The term "investments" means any assets and any contribution in cash, in kind or in services invested in any sector of economic activity in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made.

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

(a) movable and immovable property as well as all other rights in rem such as mortgages, liens, pledges, usufruct and similar rights

(b) shares, corporate units and all other forms of participation in companies incorporated in the territory of one of the Contracting Parties;

(c) obligations, claims and rights to all benefits having an economic value;

(d) copyright, industrial property rights (such as patents, licences, trademarks, industrial models and designs), technical

processes, know-how, registered names and goodwill;

(e) concessions granted under public law or by contract, in particular those relating to the prospection, cultivation, extraction or exploitation of natural resources;

(f) reinvested profits.

The term "investments" also means investments owned or controlled by investors of one of the Contracting Parties and made in the territory of the other Contracting Party through an investor of a third State.

No change in the legal form in which the assets and capital have been invested or reinvested shall affect their qualification as investments within the meaning of this Agreement.

3. The term "income" means the sums produced by an investment and includes, but is not limited to, profits, dividends, interest, capital increases, royalties, management bonuses, indemnities, technical assistance fees.

4. Territory" means national territory as well as maritime zones, i.e. marine and submarine areas, over which one of the Contracting States has, in accordance with its laws and international law, sovereignty, sovereign rights or jurisdiction.

Article 2. Promotion of Investments

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

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 investments.

3. Each Contracting Party shall take appropriate measures to promote, obtaining the necessary permits for the realization of investments.

4. Each Contracting Party shall in its laws and regulations relating to the entry, residence and movement, work in its territory of investors and nationals of the other contracting party engaged in activities related to investments covered by this Agreement.

Article 3. Protection of Investments

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

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

3. The treatment and protection referred to in paragraphs 1 and 2 shall be at least equal to those that each Contracting Party to its own investors to investors or of any third State if the treatment and protection accorded by the latter are more favourable. In no case shall be less favourable than those accorded by international law.

4. However, such treatment and protection shall not include the privileges which a Contracting Party grants to investors from a third State under the law of a Contracting Party.

(a) its participation in or association with a free trade area, customs union, common market or other international regional economic cooperation agreement;

(b) a convention for the avoidance of double taxation or any other tax convention.

Article 4. Expropriation and Compensation

1. Each Contracting Party undertakes not to take any measure of expropriation or nationalization or any other measure the purpose of which is directly or indirectly dispossessing investors of the other Contracting Party of their investments in its territory.

2. If the requirements of public interest, national security interest or 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 prompt, adequate and effective compensation in accordance with the relevant principles of international law.

3. The amount of compensation will correspond to the real value of the affected investments immediately before the date on which the measures are taken or to be made public.

The compensation shall be paid in a freely 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. Under the laws and regulations of the Contracting Party in whose territory the investment is made, the investor concerned shall have the right to have the legality of the expropriation, the valuation of its investment and the amount of compensation promptly reviewed by the competent judicial or administrative authority of that Party in accordance with the principles established in this Article.

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 to investments of the most favoured nation.

6. If a Contracting Party expropriates the assets of a company incorporated in its territory under its laws and regulations and whose units or shares are held by investors of the other Contracting Party, the expropriating Party shall apply the provisions of this Article to ensure prompt, adequate and effective compensation to investors of the other Party for their investments.

Article 5. Force Majeure

Investors of one of the Contracting Parties whose investments have suffered damage as a result of war or any other armed conflict, revolution, national emergency or revolt occurring in the territory of the other Contracting Party, shall enjoy, on the part of the latter, treatment at least equal to that accorded to investors of the most-favoured-nation with regard to restitution, compensation, indemnification or other relief.

Article 6. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of their liquid assets and in particular:

a) Investment income, including interests profits, dividends, royalties, capital;

b) The amounts required for the repayment of loans contracted regularly;

c) Claims of the recovery of the proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;

d) Compensation paid pursuant to Articles 4 and 5;

e) Royalties and other payments arising from the licence fees and commercial or administrative assistance.

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

3. 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.

Shall be deemed to be made without delay, transfers made within the period normally required for the completion of the formalities prescribed by the legislation of the Contracting Parties and which in no case shall not exceed a period of two months. The guarantees provided for by this Article shall be at least equal to those accorded to investors in like circumstances of the most favoured nation.

4. Each Contracting Party shall retain the right, in the event of exceptional difficulties balance of payments to establish fair and in good faith, limitations on transfers, in accordance with its rights and obligations as members of the International Monetary Fund.

5. The transfers referred to in this article shall be made at the rate of exchange applicable on the date of the latter and in accordance with the foreign exchange regulations in force in the State in whose territory the investment has been carried out.

Article 7. 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 of the indemnified investors have been transferred to the contracting party or to the public body, as the insurer.

2. In the same way as investors, and within the limits of the rights so transferred, the insurer may, by virtue of subrogation to exercise the rights and assert the claims of investors and those relating thereto.

The rights of subrogation shall also apply to the transfer of rights and to the arbitration referred to in Articles 6 and 10. These rights and actions may be exercised by the insurer within the limits the number of covered by the contract of guarantee, and by the investor to guarantee the recipient, within the limits of the risk that is not covered by the contract.

3. 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 8. Applicable Rules

Where a matter relating to investment is governed by this Agreement and simultaneously by the laws and regulations 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 9. Specific Agreements

1. Investments covered by a special agreement between one of the Contracting Parties and an investor of 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 an investor of the other Contracting Party.

Article 10. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any investment dispute between an investor of one of the contracting parties is the subject of a written notification, accompanied by a sufficiently detailed memorandum by the most expeditious.

To the extent possible, the dispute shall be settled amicably between the parties to the dispute and otherwise by conciliation between the Contracting Parties through diplomatic channels.

2. If the dispute cannot thus be settled within six months from the date of notification, the investor may submit the dispute either to national jurisdiction of the Contracting Party in whose territory the investment has been made or to international arbitration.

In the latter case, 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. To this end, each Contracting Party consents advance irrevocable and that any dispute to the Centre. this consent implies that they shall waive the requirement of exhaustion of administrative or judicial remedies.

3. Neither of the Contracting Party, Party to the dispute raise objection shall not, at any stage of proceedings or enforcement of an 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 7 of this Agreement.

4. The ICSID shall decide on the basis of the national law of the Contracting Party in whose territory the dispute in the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreement which would be reached on investment, as well as the Principles of International Law

5. The awards of ICSID shall be definitive and binding on the parties to the dispute. Each Contracting Party undertakes to

execute the award according to its national law.

Article 11. Most-favoured-nation Treatment

For all matters relating to the treatment of investments of investors of either Contracting Party shall enjoy, in the territory of the other party, the most-favoured-nation treatment.

Article 12. Disputes of Interpretation or Application of the Contracting Parties

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 committee of experts composed of representatives of both sides, which shall meet at the request of either party diligent and without undue delay.

3. If the Committee of Experts is unable to settle the dispute, it shall be submitted, at the request of either Contracting Party, to an arbitration procedure implemented, for each individual case, in the following manner :

Each Contracting Party shall appoint an arbitrator within three months from the date on which one of the Contracting Parties has notified the other of its intention to submit the dispute to arbitration. Within two months of their appointment, the two arbitrators shall designate by common agreement a national of a third State to be chairman of the panel of arbitrators.

If these time limits have not been observed, either Contracting Party shall invite the President of the International Court of Justice to proceed to 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 third State with which either Contracting Party does not maintain diplomatic relations, or if for any other reason he is prevented from holding that office, the Vice-President of the International Court of Justice shall be invited to make the appointment.

If the Vice-President is a national of one of the Contracting Parties or of a third State with which one of the Contracting Parties does not maintain diplomatic relations, or if for some other reason he is prevented from holding office, the senior member of the Court 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 cost of its own arbitrator is appointed. 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 13. Existing Investments

This Agreement shall apply to investments made before 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. it shall not apply to disputes arising before its entry into force.

Article 14. 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 fifteen 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 fifteen 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. Upon the entry into force of this Agreement, the provisions of the Agreement between the Belgo-Luxembourg Economic Union, on the one hand, and the Socialist Republic of Romania, on the other hand, concerning the Promotion and Reciprocal Protection of Investment signed in Brussels on 8 May 1978 shall cease to have effect between the Belgo-Luxembourg economic union and Romania.

3. In the event of termination, investments made prior to the date of termination of this Agreement shall continue to apply for a period of fifteen years from that date.

In WITNESS WHEREOF the undersigned, duly authorized thereto by representatives, their respective Governments, have signed this Agreement.

Done at Brussels on 4 March 1996 in two originals, each in Romanian, Dutch and French languages, all texts being equally authentic.

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:

Philippe MAYSTADT.

Minister of Finance and Foreign Trade

For the Government of Romania :

D.I. POPESCU.

Minister of Commerce

For the Government of the Walloon Region :

J.-P. GRAFÉ.

Minister for International Relations

For the Government of the Flemish Region :

E. VAN ROMPUY.

Minister for the Economy

For the Government of the Brussels-Capital Region :

J. CHABERT.

Minister for External Relations