Agreement between the Belgo-Luxembourg Economic Union on the one side, and the Republic of Estonia on the other side, concerning the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Belgium acting both in its own name and in the name of the Government of the Grand-Duchy of Luxembourg, by virtue of existing agreements, the Government of the Region of Wallonia, the Government of the Region of Flanders and the Government of the Region of Brussels-Capital, on the one hand, and the Government of the Republic of Estonia, on the other hand, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen their economic cooperation by creating favourable conditions for investments by investors 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 "investor" shall mean:

- with respect to the Republic of Estonia,

a) Any natural person who is a national of the Republic of Estonia in accordance with its laws, and

b) Any legal person constituted in accordance with the legislation of the Republic of Estonia and having its seat in the territory of the latter or in a third country, with a predominant interest of an investor of the Republic of Estonia;

- with respect to the Belgo-Luxembourg Economic Union,

a) The "nationals", i.e. any natural person who is considered as a citizen of Belgium or of Luxembourg in accordance with the Belgian or Luxembourg legislation;

b) The "companies", i.e. any legal person constituted in accordance with the Belgian or Luxembourg legislation and having its registered office in the territory of Belgium or of Luxembourg.

2. The term "investment" shall mean any kind of assets and any direct or indirect contribution in cash, in kind or in services, invested or reinvested in any sector of economic activity.

The following shall more particularly, though not exclusively, be considered as investments for the purposes 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, corporate rights and any other kind of shareholdings, including minority or indirect ones, in companies constituted in the territory of one Contracting Party;

c) Bonds, claims to money and to any other performance having an economic value;

d) Copyrights, industrial property rights, technical processes, trade names and goodwill;

e) Concessions granted under public law or under contract, including concessions to explore, develop, extract or exploit natural resources.

Changes in the legal form in which assets and capital have been invested or reinvested shall not effect their designation as

"investments" for the purpose of this Agreement.

3. The term "incomes" shall mean the proceeds of an investment and shall include in particular, though not exclusively, profits, interests, capital increases, dividends, royalties and payments.

Article 2. Promotion of Investments

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

2. When a Contracting Party shall have admitted an investment in its territory, it shall allow in accordance of its legislation the conclusion and the fulfilment of licence contracts and commercial, administrative or technical assistance agreements, as far as these activities are in connection with such investments.

Article 3. Protection and Treatment of Investments

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

2. Except for measures required to maintain public order, such investments shall enjoy continuous protection and security, i.e. excluding any unjustified or discriminatory measure which could hinder, either in law or in practice, the management, maintenance use, possession or liquidation thereof

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

4. However, such treatment and protection shall not cover the privileges granted by one Contracting Party to the investors of a third State pursuant to its participation in or association with a free trade zone, a customs union, a common market or any other form of regional economic organization.

Article 4. Expropriation and Compensation

1. Neither of the Contracting Parties shall take any direct or indirect measure of expropriation or nationalization or any other measure having the same effect or the same nature against investments in its territory belonging to investors of the other Contracting Party.

2. If reasons of public purpose, security or national interest require a recession from the provisions of paragraph 1, the following conditions shall be complied with:1, the following conditions shall be complied with:

a) The measures shall be taken under due process of law;

b) The measures shall be neither discriminatory, nor contrary to any specific commitments;

c) The measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation.

3. Such compensation shall amount to the actual value of the investments on the day before the measures were taken or became public.

Such compensation shall be paid in the currency of the State of which the investor is a national or in any other convertible currency. It shall be paid without delay and shall be freely transferable. It shall bear interest at the normal commercial rate from date of the determination of its amount until the date of its payment.

4. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that accorded by the latter Contracting Party to the investors of the most favoured nation.

5. In respect of matters dealt with in this Article, each Contracting Party shall grant to the investors of the other Contracting Party a treatment which shall at least be equal to that granted in its territory to the investors of the most favoured nation. This treatment shall in no case be less favourable than that recognized under international law.

Article 5. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors a free transfer of the payments relating to these investments particularly of:

a) Return on investments, including profits, interests, return on capital, dividends and royalties;

b) Amounts necessary for the repayment of regularly contracted loans;

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

d) Compensation paid pursuant to Article 4;

e) Royalties and other payments resulting from licence rights and from commercial, administrative or technical assistance.

2. The nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an approved investment shall also be permitted to transfer their earnings to their country of origin.

3. Transfers shall be effected in a freely convertible currency in the normal applicable exchange rate at the date of the transfer, in accordance with the exchange regulations established by the Contracting Party in whose territory the investment was made.

4. Each Contracting Party shall issue the authorization required to ensure that the transfers can be made without undue delay, with no other expenses than the usual taxes and costs.

The guarantees referred to in this Article shall at least be equal to those granted in similar cases to the investors of the most favoured nation.

Article 6. Subrogation

1. If one Contracting Party or any public institution of this Party makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize that the former Contracting Party or the public institution concerned is subrogated as insurer into the rights of the indemnified investors.

The insurer shall be entitled by virtue of subrogation to exercise the rights of the investors and to invoke the related claims with the same authority as the said investors and within the limits of the rights transferred in this way.

The subrogation of rights shall also apply to the rights of transfer or arbitration referred to in Article 5 and 10.

Such rights shall be exercised by the insurer to the extent of the proportion of the risk covered by the contract of guarantee and by the investor entitled to benefit from the guarantee to the extent of the proportion of the risk not covered by the contract.

2. As far as the transferred rights are concerned, the other Contracting Party shall be entitled to invoke against the insurer who is subrogated into the rights of the indemnified investors the obligations of the latter under law or contract.

Article 7. Applicable Regulations

If an issue relating to investments is covered both by this Agreement and the national legislation of one Contracting Party or by international conventions, existing or to be subscribed to by the Parties in the future, the investors of one Contracting Party shall be entitled to avail themselves of the provisions that are the most favourable to them.

Article 8. Specific Agreements

1. Investments made pursuant to a specific agreement concluded between one Contracting Party and investors of the other Party shall be covered by the provisions of this Agreement and by those of the specific agreement.

2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis--vis investors of the other Contracting Party shall be observed.

Article 9. Settlement of Investment Disputes

1. Any investment dispute between an investor of one Contracting Party and the other Contracting Party shall be notified in

writing. The notification shall be accompanied by a sufficiently detailed memorandum.

As far as possible, such disputes shall be settled amicably between the parties to the dispute or otherwise by conciliation between the Contracting Parties through diplomatic channels.

2. In the absence of an amicable settlement by direct agreement between the parties to the dispute or by conciliation through diplomatic channels within six months from the receipt of notification, the dispute shall be submitted to international arbitration, any other legal remedy being excluded.

To this end, each Contracting Party agrees in advance and irrevocably to the settlement of any dispute by this type of arbitration. Such consent implies that both Parties waive the right to demand that all domestic administrative or judiciary remedies be exhausted.

3. In case of international arbitration, the dispute shall be submitted for settlement by arbitration to one of the hereinafter mentioned organizations, at the option of the investor:

- the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965;

- the Arbitral Court of the International Chamber of Commerce in Paris;

- the Arbitration Institute of the Chamber of Commerce in Stockholm.

If the arbitration procedure has been introduced upon the initiative of a Contracting Party, this Party shall request the investor involved in writing to designate the arbitration organization to which the dispute shall be referred.

4. At any stage of the arbitration proceedings or of the execution of an arbitral award, the Contracting Party involved in a dispute shall not be entitled to raise as an objection the fact that the investor who is the opponent party in the dispute has received compensation totally or partially covering his losses pursuant to an insurance policy or to the guarantee provided for in the Article 6 of this Agreement.Article 6 of this Agreement.

5. The arbitral tribunal shall decide on the basis of:

- the national law, including the rules relating to conflicts of law, of the Contracting Party involved in the dispute in whose territory the investment has been made;

- the provisions of this Agreement;

- the terms of the specific agreement which may have been entered into regarding the investment;

- the principles of international law.

6. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.

Article 10. Most Favoured Nation

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

Article 11. Disputes between the Contracting Parties Relating to the Interpretation or Application of this Agreement

1. Any dispute relating to the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. In the absence of a settlement through diplomatic channels, the dispute shall be submited to a joint commission consisting of representatives of the two Parties; this commission shall convene without undue delay at the request of the first party to take action.

3. If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an arbitration court set up as follows for each individual case:

Each Contracting Party shall appoint one arbitrator within a period of two months from the date on which either Contracting Party has been informed the other Party of its intention to submit the dispute to arbitration. Within a period of two months following their appointment, these two arbitrators shall appoint by mutual agreement a national of a third State as chairman of the arbitration court.

If these limits have not been complied with, either Contracting Party shall request the President of the International Court of Justice to make the necessary appointment(s).

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which one of the Contracting Parties has no diplomatic relations or if, for any other reason, he cannot exercise his function, the Vice-President of the International Court of Justice shall be requested to make the appointment(s).

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

5. Each Contracting Party shall bear the costs resulting from the appointment of its arbitrator. The expenses in connection with the appointment of the third arbitrator and the administrative costs of the court shall be borne equally by the Contracting Parties.

Article 12. Previous Investments

This Agreement shall also 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 the latter's laws and regulations.

Article 13. Entry Into Force and Duration

1. This Agreement shall enter into force one month after the date of exchange of the instruments of ratification by the Contracting Parties. The Agreement shall remain in force for a period of twenty years.

Unless notice of termination is given by either Contracting Party at least six months before the expiry of its period of validity, this Agreement shall be tacitly extended for a period of ten years, it being understood that each Contracting Party reserves the right to terminate the Agreement by notification given at least six months before the date of expiry of the current period of validity.

2. Investments made prior to the date of termination of this Agreement shall be covered by this Agreement for a period of twenty years from the date of termination.

Done at Brussels on this 24th January 1996 in two original copies, each in the French, Dutch, English and Estonian languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

For the Belgo-Luxembourg Economic Union:

For the Government of the Kingdom of Belgium acting both in its own name and in the name of the Government of the Grand-Duchy of Luxembourg:Ph. Maystadt Minister for Finance and External Trade

For the Government of the Region of Wallonia:Ph. Maystadt Minister for Finance and External Trade

For the Government of the Region of Flanders:L. Van Den Brande Minister-President

For the Government of the Region of Brussels-Capital:J. Chabert Minister for External Relations

For the Republic of Estonia:A. Lipstok Minister for Economic Affairs